New Zealand Law Society
Te Kāhui Ture o Aotearoa

Natural Environment Bill
Planning Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

11 February 2026

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Natural Environment Bill and the Planning Bill (**Bills**). The Bills are proposed to replace the Resource Management Act 1991.

1.2 This submission has been prepared with input from the Law Society's:

(a) Environment Law Committee;

(b) Climate Change Law Committee;

(c) Criminal Law Committee;

(d) Public Law Committee; and

(e) Property Law Section Ngā Rōia Ture Rawa.[1]

1.3 The Law Society **wishes to be heard** on this submission.

2 Submission structure

2.1 The submission comprises this front section, followed by two tables addressing, respectively, the Natural Environment and Planning Bills. Each table sets out changes recommended to individual clauses that, in the Law Society's view, are required.

2.2 The front section addresses several general matters that are relevant to both Bills:

(a) te Tiriti o Waitangi | Treaty of Waitangi (**Treaty**) obligations and the rights and interests of Māori;

(b) the Bills' approach in respect of climate change;

(c) proposed changes affecting enforcement; and

(d) that one Bill would have been preferable.

2.3 The front section also raises one further matter. In the Planning Bill, the Law Society's Property Law Section has identified that Schedule 7 of the Bill presents an opportunity to address current issues arising from road vesting on subdivisions. This issue was also raised, but not addressed, in the course of the 2022/23 reforms.

3 Treaty obligations and the rights and interests of Māori

Key concerns

3.1 The Bills make significant changes to the way in which Treaty obligations and the rights and interests of Māori are recognised and provided for. These are contained primarily in clauses 8, 9 and 11 of both Bills. The Law Society's concerns include:

(a) **A specific (exclusive) approach to acknowledgement of Treaty obligations.** Clause 8 of both Bills departs from an overarching Treaty clause of the type presently provided in section 8 of the Resource Management Act 1991 (**RMA**), which requires ongoing, substantive consideration of the Treaty and principles of

[1] More information about the Law Society's law reform sections and committees is available on the Law Society's website: NZLS | Branches, sections and groups.

the Treaty. The clauses instead state specifically how the Government's obligations under the Treaty have been recognised in the Bills in certain clauses (a 'specific measures' approach).[2]

(b) **Limitations on Māori involvement in decision-making.** In clauses 8 and 11 of both Bills, Māori involvement is contemplated in some planning processes and the development of national instruments. However, there is no specific role for Māori in *permitting* processes, unless they can establish standing as a qualifying resident or affected person.[3]

(c) **Narrowing the wording of a provision** pertaining to the identification and protection of sites of significance to Māori in clause 11, so that it does not capture important matters that are currently recognised under the RMA, such as kaitiakitanga (section 7(a) of the RMA) and "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" (section 6(e)). In both Bills, the clause 11 provisions regarding sites of significance are narrower than this and do not capture the relational element and cultural significance.[4]

(d) **Restricting the future implementation of Mana Whakahono ā Rohe.** Schedule 3, cl 3 of the Planning Bill requires local authorities to prepare and change their natural environment plans and land use plans in accordance with "any existing or initiated Mana Whakahono ā Rohe". Mana Whakahono ā Rohe are iwi participation arrangements negotiated and agreed with local authorities. The same requirement is noted in clause 8 of both Bills as a way in which the Bills have recognised the Crown's Treaty responsibilities.[5] However, the reference to "any existing or initiated Mana Whakahono ā Rohe" does not allow for new Mana Whakahono ā Rohe.

(e) **Negotiations with post-settlement governance entities.** Clause 9 of both Bills, which provide for the Crown to work with Māori post-settlement governance entities to seek agreement on how their Treaty settlements can operate with the "same or equivalent effect" as they have done under the RMA, propose an unworkable timeframe given the work that can be anticipated. Other aspects of clause 9 are problematic.

(f) **Insufficient Treaty impact analysis.** The Regulatory Impact Statement (**RIS**) prepared for the reforms identifies concerns relating to incomplete Treaty analysis.[6] Officials' ability to carry out Treaty impact analysis of the proposed

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2 The change is from 'general measures' to 'specific measures': see further Legislation Design and Advisory Committee *Legislation Guidelines: 2021 edition* (September 2021) at [5.6]. Under section 8 of the RMA: "In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)"

3 Natural Environment Bill (**NEB**), cl 11(f)(i); Planning Bill (**PB**), cl 11(1)(i)(i) (reproduced in NEB, cl 8(a)(i) and PB, cl 8(a)(i)).

4 NEB, cl 11(f)(ii); PB, cl 11(1)(i)(ii).

5 NEB, cl 8(c)(ii); PB, cl 8(d)(ii).

6 Ministry for the Environment "Regulatory Impact Statement: Replacing the Resource Management Act 1991" (12 March 2025).

reforms was affected by compressed timeframes and limited engagement (due to those timeframes), meaning that advisers were "unable to be as thorough as would be expected for a matter of this significance".[7] In Bills intended to be durable and provide a generational change for planning and resource management, such a gap in analysis is concerning.

Contrary to advice

3.2 On certain key matters above, the approach in the Bills also differs from that recommended to the Government by its advisers. The Government's Expert Advisory Group on resource management reform (**EAG**)[8] recommended that the main protections for Māori interests that are in the RMA should be carried forward,[9] and that:

(a) Future legislation should retain the requirement under section 8 of the RMA for persons exercising powers and functions under the RMA to take into account the principles of the Treaty of Waitangi.[10]

(b) In seeking to address Māori rights and interests, "[t]he relationship and kinship connections of Māori with the environment is fundamental to the Māori world view and is inherent to the guarantees and protections afforded by the Treaty".[11] The EAG recommended retaining provision for "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, the protection of protected customary rights and kaitiakitanga".[12] As noted above, this is not presently captured in the wording of clause 11.

3.3 The approach adopted in the Bills also appears to be inconsistent with advice contained in the RIS:[13]

> The expert advisory group's Blueprint report recommends carrying … existing provisions from the current system into the new system. However current provisions and protections have long been criticised by the Waitangi Tribunal as being inadequate in providing proper protections for realising Māori rights guaranteed under Article 2 of the Treaty. Carrying forward provisions from the RMA that look to address Māori rights and interests in the system (or at least provide an appropriate equivalent) may help to ensure the Crown meets its broader Treaty of Waitangi obligations.

3.4 As the RIS also notes, "current provisions and protections are a fundamental aspect of the resource management system in which Treaty Settlement redress was negotiated and agreed".[14]

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7 Above n 6 at 137–138.
8 Report from the Expert Advisory Group on Resource Management Reform *Blueprint for resource management reform: A better planning and environmental management system* (2025).
9 At [142].
10 At [145].
11 At [146].
12 At [149].
13 Above n 6 at 138.
14 Above n 6 at 138.

3.5 Instead, the approach now taken in the Bills is substantially more restrictive than current provisions and protections. The "degree of participation opportunities" was a factor assessed by officials as having high Treaty impacts, as this can determine opportunities for rights and interests to be adequately considered in the management of natural resources and aspirations to be realised. In addition to provisions to provide for Māori participation in the system, the RIS also refers to the significance of "an overarching Treaty clause".[15]

Importance of retaining a clause comparable to section 8 of the RMA

3.6 Of the matters listed above, the one of the greatest importance and concern is the decision not to include an overarching Treaty clause — and specifically, not to carry over section 8 of the RMA, as the EAG had recommended. A substantive Treaty clause of the kind provided for in the RMA enables the Crown's obligations under the Treaty and its principles to be upheld on an ongoing basis. In resource management and planning legislation, it reflects the extent of Māori interests in the resource management and natural environment space, and the rights which article 2 of the Treaty guarantees.

3.7 The legal impact of section 8 of the RMA is well understood due to the case law that has developed over the years. By contrast, there would be considerable uncertainty about what the proposed approach would mean in practice until case law is developed under the new legislation. The removal of a substantive Treaty clause can be expected to create considerable legal uncertainty and likely lead to years of litigation about the Treaty's relevance and impact under the new legislation. The Supreme Court has made clear that a 'specific measures' Treaty clause of the kind proposed should not be interpreted as constraining the ability of decision-makers to respect Treaty principles unless Parliament makes its intention to do so quite clear.[16] It is therefore likely that the courts would hold that Treaty principles remained relevant outside of the specific contexts referred to in clause 8, so that removing the clause may achieve little except a long period of uncertainty.

3.8 In light of these concerns, the Law Society opposes the departure from a 'general measures' Treaty clause of the type presently contained in section 8 of the RMA, and recommends retention of section 8 as it has long stood in that Act. We acknowledge that clause 8 of the Bills reflects a signalled policy shift by the Government away from references to the principles of the Treaty, to provide more specific direction as to how the Government considers that its obligations under the Treaty have been recognised. However, the Law Society considers that, whatever the merits of this policy shift generally, the matter is of such significance to resource management, the natural environment, and to Māori, that the change of policy cannot be justifiably applied. That is certainly so without having undertaken a thorough (or indeed, as outlined above, a *sufficient*) regulatory impact assessment.

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15 Above n 6 at 21.

16 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 at [151].

3.9 If the select committee does not accept this recommendation, we have limited amendments that we suggest to clause 8, and to the other clauses, proposed in the tables following. They include:

(a) Specifically enabling Māori participation in permitting processes, not subject to the barrier of establishing oneself as a 'qualifying resident or affected person', as this will place an onus on Māori to establish their eligibility, with associated time and costs. Increasing the burden for Māori to participate risks decision makers not having relevant information before them about Māori perspectives.

(b) Minor modifications of clause 9 to mitigate the concerns identified, including reconsidering the proposed 2-year timeframe and providing for dispute resolution or a binding determination of disagreements.

(c) Addition or revision in the relevant part of clause 11 of the respective Bills of wording closer to that recommended by the EAG. In addition to providing for the "identification and protection" of culturally significant areas, the relationship of Māori and their culture and traditions, including kaitiakitanga, with their ancestral lands, water, sites, wāhi tapu, and other taonga, and the exercise of protected customary rights, should be provided for.[17]

(d) Changes to enable new Mana Whakahono ā Rohe to be established and recognised by planning authorities, by rewording Schedule 3, cl 3, adding provisions to the Schedule based on subpart 2 of part 5 of the RMA, and reflecting these changes in clauses 11 and 8.

4 Climate change

4.1 In the Law Society's assessment, there are gaps in the Bills in respect of coherent legal provision for climate change. The Bills address natural hazards and adaptation plans prepared under the Climate Change Response Act 2002 and include occasional references to climate change.[18] However, it is unclear how the Bills are intended to regulate greenhouse gases and the extent to which mitigation of climate change (as opposed to adaptation to it) is intended. If such matters remain unclear it is likely that litigation will follow, which may result in delays to implementation of meaningful measures to meet New Zealand's international climate change obligations.

4.2 To reduce the likelihood of these outcomes, and improve the Bills' clarity and workability, amendments are proposed in the tables including definitions of relevant terms, and clarifying the Bills' intended interaction with other climate legislation (e.g. the Climate Change Response Act 2002 and the Emissions Trading Scheme). Consideration is needed of how some of the Bills' proposed processes are intended to operate for greenhouse gases. The committee is urged to consider providing more legislative clarity around intentions for mitigation (as opposed to adaptation). Part of the potential for confusion arises because in the Explanatory Notes to both Bills — setting out the objectives that have guided the development of the new planning and environmental management system — only "adapting to the effects of climate change" is mentioned.

17 Above n 8 at [149].
18 For example, the definition of natural hazards.

However, the goals set out in clause 11 of the Bills do indicate that mitigation is envisaged.[19] Clarifying this point is desirable, to avoid the development of planning instruments at central and local government levels becoming bogged down in and thwarted by climate policy debates and litigation.

4.3 There is also a risk in the Bills that both adaptation and mitigation measures could become compromised, due to insufficient provision and/or elements of the framework that will have a chilling effect. For instance:

(a) An action plan prepared by a council must not include controls on land use or inputs unless satisfied that other interventions will not be sufficient.[20] The timeframe within which to assess the likely outcomes from those other measures is not stated, and there is vague reference, for example, to unspecified "non-regulatory measures". In practice, the requirement on councils to assess all rules restricting land use in the proposed manner is likely to give rise to risk aversion and to have a 'freezing effect' on land use rules.

(b) The Bills set out a clear intention to facilitate infrastructure, providing for infrastructure activity with "significant public benefits" that may breach environmental limits.[21] A Minister developing national standards for a consenting pathway for such projects must consider the likely opportunity costs. However, the risk remains that without clear legislative direction, the ultimately subjective standard of "significant public benefits" may enable projects that could aggressively undermine climate aims (such as a new LNG terminal, or waste incineration).

(c) The RMA currently contains national requirements to provide for the preservation of remaining wetlands, which, from a climate perspective, are sequestration assets.[22] No comparable provision is proposed in the Bills, and risks arise that because of both significantly weakened goals in respect of wetlands and the proposed regulatory relief regime,[23] there will be a high risk of the loss of sequestration assets of this nature.

4.4 These are in some measure policy matters. However, to the extent that New Zealand's international climate change obligations and relevant statutes do require the achievement of specific and adequate outcomes, there are grounds for concern about whether governments will continue to be able to sustain a cohesive approach.

5 Enforcement

5.1 Part 6 of both Bills, and Schedule 8 of the Planning Bill, contain provisions relating to enforcement, and other miscellaneous matters. The Bills broadly retain the enforcement framework from the Resource Management Act 1991 (RMA), reproducing a number of

19 See NEB, cl 11(a)–(c); PB, cl 11(1)(g) and (h).
20 NEB, cl 64.
21 NEB, cl 86.
22 RMA, s 6(a); compare PB, cl 11(g).
23 PB, cl 92 and sch 3, pt 4; NEB, cl 111.

the existing offences. The Law Society is generally supportive of the two Bills' proposed approach in respect of enforcement, including:

(a) An expanded enforcement role for the Environmental Protection Agency (EPA), by enabling the EPA to intervene in an enforcement action being taken by a local authority in addition to its own enforcement functions.[24] This may enable a more centralised and consistent approach to enforcement.

(b) The continuing central role for Environment Judges and the Environment Court in enforcement matters, while enabling flexibility by retaining the discretion of the Chief District Court Judge to allow District Court judges who are not Environment Judges to hear offence proceedings.[25]

(c) The simplification/streamlining of infringement regimes in the respective Bills.[26]

(d) Providing limitation periods consistent with those in the RMA, of a 12-month period from the time when offending became known or should have become known.[27] The continuity of approach from that presently taken in the RMA will enable the jurisprudence developed over limitation issues to continue to be applied.

(e) Retaining vicarious liability. Both Bills retain the liability of principals for the acts of agents.[28] Again, this will allow jurisprudence developed under the RMA to continue to apply.

(f) The Bills propose to prohibit insurance for fines being obtained.[29] However, insurance may be obtained for remediation. This is a positive change from the RMA, where insurance for fines could be obtained, and brings the Bills into line with other statutes (for example, health and safety legislation).[30]

(g) New duties on local authorities to prepare a compliance and enforcement strategy and provide information about their functions, duties and powers.[31] The duties appear akin to those under section 35 of the RMA in respect of monitoring efficiency of district plans, but related to compliance and enforcement functions.

5.2 We make the following further brief remarks regarding:

(a) strict liability offences; and

(b) proposed changes to maximum penalties, which will affect eligibility for alleged offenders to elect jury trial.

24 NEB, cls 245–252, PB, cls 219–226.
25 NEB, cl 253(2)(b); PB, cl 227(2)(b).
26 NEB, cls 289–296; PB, cls 263–269.
27 NEB, cl 279; PB, cl 255.
28 NEB, cl 281; PB, cl 257.
29 NEB, cl 287; PB, cl 261.
30 See for example Health and Safety at Work Act 2015, s 29.
31 NEB, cl 298–299; PB, cls 272–273.

Strict liability offences

5.3 The Bills retain a strict liability offence regime.[32] This is reinforced by clauses 285 (NEB) and 259 (PB), which now expressly state that a defendant has the burden of proving defences to specific offences in the Bills. While previous jurisprudence from existing resource management case law will continue to apply, we do note some initial observations on the use of strict liability offences in the context of this legislation.

5.4 First, there is arguably a misfit between the level of penalty (imprisonment and/or fine) and the strict liability offence regime. Ordinarily, strict liability offences would only attract a financial penalty, and the risk of imprisonment is regarded as unusual. In this respect, the proposed framework departs from standard legislative practice. This is acknowledged in the Bill of Rights advice on the Bills (but considered appropriate nevertheless) where it is stated:[33]

> Although the potential for imprisonment for a strict liability offence is highly unusual, we consider that in this instance the severity of the penalty is in proportion to the significant and irreparable environmental harm that could be caused by contravention of the Bill. As above, a court retains discretion as to both the type and extent of any penalty.

5.5 The Departmental Disclosure Statement (**DDS**) goes further, noting that the Ministry of Justice's offence and penalty (**OPV**) team have not had sufficient time to consider the Bills and fully satisfy themselves that there are adequate reasons to depart from ordinary principles of offence construction to justify the continuation of a strict liability offence regime. The DDS also states the OPV team's view that:[34]

> … some elements of the currently proposed and previous offence and penalty provisions appear to be inconsistent with the Legislation Design and Advisory Committee's *Guidelines*.
>
> Examples of this approach departing from standard practice include:
>
> - significant discretion for enforcement being provided to regulators and subsequently, the judiciary;
> - strict liability offences that carry terms of imprisonment (although we note that there is case law demonstrating that the judiciary considers mens rea at sentencing, which partially mitigates the effects of a strict liability offence);
> - defences for strict liability offences that are narrowly constructed; and
> - continuing penalties existing in circumstances where the sanctioned conduct does not necessarily result in the harm to the environment (for example, continuing penalties for the strict liability offence of failure to give information).

5.6 According to the Legislation Design and Advisory Committee's *Guidelines*: "the maximum penalty should not be disproportionately severe, but should reflect the worst case of possible offending".[35]

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32 NEB, cl 282; PB, cl 258.
33 At [35].
34 At 24.
35 Above n 2 at [24.7].

5.7 The OPV team notes these points may be usefully further considered by the select committee while the Bills are before it, and we raise them for the committee's consideration also.

5.8 Second, we note a slight change in wording as to the defences available. Previously, prescribed defences under the RMA were phrased "… if a defendant proves …". Wording proposed in clauses 285 (NEB) and 259 (PB) now reinforces the burden of proof on the defendant by stating (for example) that: "the burden of proving that a defence in section 283 or 284 applies lies on the defendant". While, arguably, this does not make any significant practical change — and it may be entirely consistent with the LDAC view that "[l]egislation must be very clear if it is intended to place a legal burden of proof on the defendant"[36] — we nevertheless note it among the matters for the committee's consideration.

Penalties

5.9 The Bills propose penalty changes, including slightly shorter maximum terms of imprisonment of 18 months, and increases in maximum fines. Without commenting on the suitability of the level of penalty, we simply note that the penalty change to terms of imprisonment has procedural implications. The reduction of a maximum prison sentence to a period of less than two years makes the offence a category 2 offence under the Criminal Procedure Act 2011. This will prevent any opportunity for an alleged offender to seek a jury trial.

6 Preference for one, integrated Bill

6.1 The exercise of reviewing the Bills has been significantly complicated by the large amount of duplication and need to cross refer between them. The EAG — responding to a legislative design principle set by Cabinet to "establish two Acts with clear and distinct purposes" — was satisfied of the feasibility of doing so.[37] However, the interaction and overlaps that are now evident from the two Bills invites the conclusion that one integrated Bill would be significantly less complex, and more efficient. An opportunity might have been taken to re-examine whether two Bills was still the best way to proceed.

6.2 The Law Society acknowledges that merging the separately drafted Bills into one would require time and care. There have been time pressures in the Bills' development, as there continue to be at select committee, and it would be a major and unusual operation to do at the select committee stage.

6.3 Still, we note the concern, now having seen the Bills, that the rationale for their separation is not sufficiently clear. In our view one Bill may have been easier and provided better direction. We anticipate that how the Bills integrate will be an area ripe for litigation. This means that there are risks, potentially outweighing any perceived advantages, involved in the chosen approach.

36 Above n 2 at [24.5].
37 Above n 8 at [23]–[25].

7 Planning Bill: fixing a common problem with road vesting on subdivision

7.1 A last matter, before turning to the tables, relates to the Planning Bill. The Law Society's Property Law Section Ngā Rōia Ture Rawa has identified that this Bill is an opportunity to address current issues arising from road vesting on subdivisions. It is recommended that the select committee take this opportunity to remedy the issues identified through a simple redrafting of Schedule 7, clause 28(2) of the Bill.

Current issues with road vesting on subdivisions

7.2 Issues often arise, particularly in new property developments, when the title to the land being subdivided is subject to land covenants or easements that benefit other land. This is a very common occurrence. The law at present requires the owners of other land that has the benefit of those easements and covenants to either:

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

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

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

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

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

7.6 In relation to the vesting of land as a reserve, the Court often similarly recognises there is no prejudice and the interest is extinguished or varied. However, reserve land differs from road as it can cover much larger areas (for example, parks). The interest can protect matters such as a pipeline running through the land, meaning it is appropriate for it to stay in place. Alternatively, the interest may provide controls around what can or cannot happen on the land, and from the neighbouring landowners' perspective, they are

likely to want some form of that control to continue. The relevant territorial authority will often take the land as reserve, and can choose to take the land subject to the constraints of an easement or a covenant.

Schedule 7, clause 28(2): proposed amendment of requirement for consent

7.7 Schedule 7, clause 28(2) of the Bill prohibits land vesting in the territorial authority or Crown unless all parties with an interest in the land consent to it. This will include all neighbouring lots that have the benefit of easements or land covenants. Clause 28(2) simply carries through (with slightly different wording) the existing road vesting provisions in the RMA. Therefore, unless amendments are made to the Bill, we consider the issues discussed above will continue.

7.8 In our view, the Bill provides a timely opportunity to correct the issues outlined above and avoid the potential for significant additional time and cost for many future subdivisions. Proposed modifications to clause 28(2) (discussed in more detail below), would also remove a contradiction that presently exists in the RMA between section 224(b)(i) and section 239(2) and which has been carried over into the Bill. Section 224(b)(i) requires all interest holders to provide consent while section 239(2) allows a territorial authority to take land as reserve subject to specified interests (without obtaining consent). However, in practice, the consent of interest holders (under section 224(b)(i)) is often not sought if a territorial authority simply accepts land subject to the interest (under section 239(2)), even though the RMA does not expressly allow for section 224(b)(i) to be ignored.

Proposed solution

Vesting of land as road

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

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

Vesting of land as reserve

7.11 In relation to vesting of land **as reserve**, the right of the relevant territorial authority to take the land subject to existing interests should be prioritised. If it chooses to do that,

then requiring the consent of the other parties to those instruments should also be negated. Only the registered owner of the land being subdivided, and the mortgagee, or encumbrancee of that land, should be required to provide consent to the vesting of land as reserve (occurring on deposit of a subdivision plan).

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

7.13 In our view, although this solution is a logical one, clause 28(2) currently prohibits this by requiring the consent of **all interested** parties, including those under easements and covenants. We note the processes that are required to deal with the vesting of land as reserves, are already largely built into Schedule 7, clause 33. However, as clause 28 is independent from clause 33, the consent of potentially hundreds of parties (regardless of what clause 33 says) will be required. We consider this ambiguity can and should be avoided.

Recommendation

7.14 To address the problems identified above, the Law Society recommends that clause 28(2) of the Bill be redrafted as follows:

(2) The persons who must give written consent are—

(a) in the case of land subject to the Land Transfer Act 2017:

(i) in relation to land to vest as road, every registered owner of that land, and every mortgagee and encumbrancee registered against the record of title for that land; and

(ii) in relation to land to vest as a reserve, every registered owner of an interest in the land except for the registered owner of a specified interest in the land which the territorial authority has certified, on the survey plan, shall remain with the land, under clause 33(3); or

(b) in the case of land not subject to that Act, every registered owner with an interest in the land, including any encumbrance, as evidence by an instrument registered under the Deed Registration Act 1908.

7.15 This recommendation would:

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

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

Table 1: Natural Environment Bill

Clause	Comment	Recommendation
Part 1: Preliminary provisions		
cl 2(2)(d)	Typo.	Correct "waiter" to "water".
cl 3 "common marine and coastal area"	Typo: the letter "n" is missing the in the word "and".	Correct "ad" to "and".
cl 3 "contaminant", "discharge" and "effect"	Clause 3 reproduces Resource Management Act (**RMA**) definitions of "contaminant", "discharge" and "effect". These definitions will be sufficient to capture greenhouse gases. However, as later references in the Bill all relate to adaptation, the position regarding emissions reduction and mitigation is unclear. If this is not clarified expressly in the Bill, then we anticipate that the uncertainty will lead to litigation.	Clarify whether greenhouse gases are captured by the Bill.
cl 3 "identified Māori land"	Correction required (alphabetical order).	Should precede "incineration".
cl 3 "market-based allocation process"	Paragraph (a) of the definition of "market-based allocation process" should have a comma after the word "process".	Insert comma.

cl 3 "natural environment"	Missing word. Paragraph (a) of the definition of "natural environment" should have the word "and" after the word "energy" and before the word "plants".	Insert "and".
cl 3 "natural resources" and "natural and physical resources"	The Bill includes a definition of both "natural and physical resources" and "natural resources". There are differences between them which is likely to give rise to uncertainty and it is unclear why both are required. The Law Society is not aware that the definition of "natural and physical resources" has caused any difficulties under the RMA, and accordingly considers that this definition should be retained in the Bill without adding a further definition of "natural resources".	Consider deleting the definition of "natural resources" and retaining the existing RMA definition of "natural and physical resources". If the definition of "natural resources" is to be retained, then a more expansive definition of physical resources should be included, and the combined definition of natural and physical resources would appear redundant and should be deleted.
cl 3 "qualifying resident"	The Bill includes a definition for a "qualifying resident". The first three criteria (a) to (c) refer to persons that live, pay rates or provide infrastructure within a region. The definition also includes in (d) persons (other than natural persons) that have an office or operate in a *district*. The reference to "district" in para (d) of the definition should be changed to "region" to align with the other paragraphs and the introductory words of the definition.	Change the reference to "district" in para (d) of the definition to "region" to align with the other paragraphs and the introductory words of the definition.
cl 3 "renewable energy activity"	The Bill includes a definition for "renewable energy activity". The definition incorporates some but not all elements of the definition of renewable electricity generation activities in the NPS-REG. If the intention is that subparagraph (b) (which refers to subsidiary activities) would capture those activities, it would be clearer to expressly refer to those activities. In the	Align the definition with the NPS-REG and/or provide clarification as to the meaning of "supporting and subsidiary activity".

	absence of such a reference, it is unclear what the scope of a subsidiary activity is. Further, the definition refers to "a supporting *and* subsidiary activity" in relation to an activity described in (a). It is unclear how an activity can be both a supporting and a subsidiary activity, and whether it is intended that an activity must meet both of these requirements to fall under the definition in (b).	
cl 3 "significant non-compliance"	The definition of "significant non-compliance" includes reference to any such non-compliance being "substantial not minor or technical". It is not clear whether "substantial" in this context is the same as "significant" or would also encompass something less than "significant". Clarification would be useful. Additionally, the definition refers to harm/potential harm that is "serious enough to warrant further attention and further action". The term "serious enough" is subjective and no guidance is provided as to what might qualify. Again, clarification and increased certainty of the definition would be useful. The defined term is intended to be used to guide the exercise of statutory discretions elsewhere in the Bill with potentially serious consequences for resource users.	Clarify the meaning of the terms "substantial" and "serious enough", if they are to remain in the definition.
cl 3 no definition of "adaptive management approach"	The Bill does not contain a general definition of "adaptive management approach", which is a term used in clauses 104, 166, and 167. There is a definition in Schedule 3, cl 64(3), but it only applies for the purposes of Schedule 3, cl 64(2). There is a different definition of "adaptive management approach" in section 64(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. Inserting a general	Insert a general definition of "adaptive management approach" in cl 3. Remove the definition of "adaptive management approach" in Schedule 3, cl 64(3), unless it is considered that a different definition is needed for the purposes of that clause.

	definition of "adaptive management approach" in clause 3 (drawing on one or both of these definitions) would improve clarity.	
cl 3 no definitions of "climate change" or "greenhouse gas"	"Climate change" and "greenhouse gas" are undefined, and "greenhouse gas" is not referenced in the Bill at all but, as discussed above, would be captured by the definition of "contaminant". As these terms have previously been defined in the RMA, excluding them may give rise to uncertainty and/or legal challenge around the definition of these terms.	Include definitions from the RMA, s 2.
cl 3 no definition of "prescribed manner"	The term "prescribed manner" is used in various places in the Bill. It would be useful to define it for clarity. It appears to refer to a manner prescribed in regulations, but without a definition there could be uncertainty about whether such matters could be prescribed in national instruments as well. "Prescribed form" is defined as "a form prescribed by regulations made under this Act and containing and having attached such information and documents as those regulations may require", but there is no definition for "prescribed manner".	Include a definition of "prescribed manner".
cl 3 no "wetland" definition	Clause 3 provides that "**water body** means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area". The Bill does not include any definition of "wetland", although wetland is referred to in the definition of a waterbody, and the NPS-FM includes a definition of "natural inland wetland". Query whether it would assist to have such a definition	Consider including a definition of "wetland".

	included, given the controversy about whether wetlands within modified pasture environments qualify.	
cl 8	The submission's front section has commented on the approach to clause 8. The Law Society recommends changes in clauses 8, 9 and 11 of both Bills, and the PB, Schedule 3, cl 3. If the recommendations made relating to clauses 9, 11 and the PB, Schedule 3, cl 3 are progressed, clause 8 would require consequential amendment, specifically: (a) clause 8(a)(i), which refers to Māori participation in certain planning processes, but does not provide any role for Māori in permitting processes unless they can establish that they are a qualifying resident or affected person. This is discussed further under clause 11 below. (b) clause 8(c)(ii), which presently reflects the current provision in Schedule 3, cl 3 of the PB by referring to "existing or initiated" Mana Whakahono ā Rohe, not allowing for any new agreements. The Law Society considers that both these proposals could be progressed even if the select committee does not adopt its recommendation of retaining an overarching Treaty of Waitangi (**Treaty**) clause in the legislation comparable to section 8 of the RMA.	Amend clause 8(a)(i) and 8(c)(ii), reflecting changes proposed below to clause 11(f)(i) and the PB, Schedule 3, cl 3 to: (a) provide a role for Māori to participate in permitting processes; and (b) enable consideration of new Mana Whakahono ā Rohe by local authorities preparing or changing their plans (also reinserting relevant provisions in the PB, Schedule 3 relating to making Mana Whakahono ā Rohe agreements).
cl 9	Clause 9 provides for the Crown to work with post-settlement governance entities (**PSGEs**) to seek agreement on how their Treaty settlement redress can operate with the same or	Delete reference to "the greatest extent possible" from the clause. Amend the clause by:

	equivalent effect to "the greatest extent possible" under the two new Acts. The Law Society is concerned that aspects of this clause are unworkable. The reference to "the greatest extent possible" is subjective and introduces uncertainty into the provision since what one party considers possible may differ from another. The phrase also does not appear necessary, given there is already a degree of flexibility provided in the clause through reference to "equivalent" arrangements. Secondly, the clause imposes a two-year timeframe for such agreements to be made, with a limited provision for the Crown to continue discussions or enter agreements after that time. Given the number of Treaty settlements, there is potential that such discussions/agreements may not be concluded with all parties (we note here the view from the RIS, at page 22, that "[c]onsiderable work is required to ensure that Treaty settlement agreements and other arrangements are upheld in the new system"). There is considerable potential for disagreement between iwi and the Crown over what is required to provide equivalent settlement redress or arrangements. Given the potential for disagreements and the number of iwi with whom it will be necessary for the Crown to negotiate, a two-year timeframe for negotiations appears unrealistic. If the Crown is unable to complete such agreements within two years, its obligation to negotiate should not cease. That would be unfair to iwi and inconsistent with the Treaty's principles.	(a) deleting cl 9(2) and (3), thereby removing the two-year deadline; or (b) extending the two-year timeframe; or (c) clarifying that the two-year timeframe starts to run from the date that engagement starts with a Treaty settlement entity. Add provisions for dispute resolution.

	A Treaty settlement entity should also not be prejudiced due to the Crown's delay or failure to engage within the proposed 2-year timeframe. While potential prejudice is mitigated to an extent by clause 10 (which requires Treaty redress/arrangements to be given the same or equivalent effect to the greatest extent possible until an agreement is reached), it relies on a decision maker (rather than a PSGE and the Crown) determining what that means. To address these concerns, consideration should be given to either removing the timeframe, extending the timeframe or to amending the clause so that the timeframe does not run until engagement starts with a particular Treaty settlement entity. There is also no provision for dispute resolution or a binding determination of disagreements between the Crown and iwi over what comprises equivalent redress or arrangements. Providing for this is recommended.	
cl 10	This clause includes the qualifier "to the greatest extent possible". This phrase should be deleted for the reasons noted for clause 9 above.	Delete reference to "the greatest extent possible".
Part 2: Foundations		
Subpart 1—Core provisions		
cl 11	Clause 11 sets out the goals that those exercising functions under the Bill "must seek to achieve", as worded in the chapeau of the clause.	Consider amending: (a) The chapeau of the clause to delete the words "seek to", instead rewording to provide that "All persons exercising or performing functions, duties, or powers

	The inclusion of the words "must seek to" is inconsistent with the direction in clause 69(2)(b) that not all goals need to be always achieved in all places, and moreover is unnecessary. It is inherent in a 'goal' that decision makers have it as their objective without being required to achieve it. The wording of the natural hazards goal is confusing and does not make it clear what the outcome sought is. There is clearer and simpler wording in section 6(f) of the RMA, which lists "the management of significant risks from natural hazards" as a matter of national importance. Subclause (f) seeks to provide for Māori interests. However, it limits those interests to three discrete areas (development of instruments/plans, identification/protection of sites of significance, and development/protection of Māori land). Māori hold mātauranga which will be relevant to all aspects of the new system, including permitting, and that should be recognised in the goal statement. Reference is made to Māori participation in certain planning and national guidance processes, but there is no associated role for Māori in permitting processes. This means that Māori would only be able to participate in such processes if they were able to establish they were a qualifying resident or affected person. This creates a barrier to Māori participation and shifts the onus, and associated time and costs, to Māori to establish that they qualify. It also risks a decision-maker not having all relevant information before them if Māori do not or are not enabled to participate in these processes. Such a limitation	under this Act must, subject to sections 12 and 16, have the following goals:". (b) Subclause (e) to say "to manage significant risks from natural hazards". If the wording is not amended, correct the typo ("hazard"). (c) Subclause (f) to include reference to Māori participation in all aspects of the new system including permitting. (d) Subclause (f) to make it clear that it is tangata whenua interests within an area rather than "Māori" which are to be provided for. (e) Subclause (f)(ii) to align more closely with the formulation recommended by the EAG, by providing for "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga, the protection of protected customary rights and kaitiakitanga" — in addition to the identification and protection of certain sites.

	does not sit comfortably with the provisions of the Treaty and Treaty settlements. Subclause (f) also refers to Māori interests rather than tangata whenua interests. However, it is the iwi or hapū of a particular area that hold the mana and the mātauranga for that particular area. Without qualifying the reference to "Māori", there is a risk that a goal could be said to have been achieved if, for example, some Māori have been consulted even where they have no actual link to or knowledge about the area. In respect of subclause (f)(ii) ("the identification and protection of sites of significance to Māori (including wāhi tapu, water bodies, or sites in or on the coastal marine area)"), we note that the Expert Advisory Group (**EAG**) chose a slightly different form of words that may be preferable, to better capture the relational importance and cultural significance of such sites. We consider that the language from the EAG report referring to "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga, the protection of protected customary rights and kaitiakitanga" could be adapted for the purposes of subclause (f)(ii).	
cl 12(2)(a)	While national standards are intended to give effect to national policy direction, there is potential for matters to be addressed in the latter that are not expanded on or clarified in national standards. In that situation, the instruction to implement the instrument listed directly above it might mean that a spatial plan failed to capture all aspects of national direction. Similarly, a spatial plan will not necessarily implement all	Consider how this direction is framed and whether it ensures an appropriate cascade down the planning framework.

	aspects of national direction, because its role is to set strategic direction. Put another way, if a spatial plan in fact addressed all matters of detail, natural environment plans sitting below it would probably be superfluous.	
cl 13(a)	This clause requires documents to be succinct and use plain language "readily understood by the public". As the understanding of the public may differ from person to person, the additional words introduce an element of subjectivity and uncertainty. Further qualification beyond the reference to succinctness and plain language appears unnecessary.	Delete the words "readily understood by the public".
cl 13(e)	This subclause refers to acting in an "enabling manner". It is unclear what acting in an enabling matter and being solution-focused means in practice. Adding in the requirement for this to be consistent with other principles adds to the confusion. It is assumed that the requirement to act in an "enabling manner" relates to procedural matters as opposed to substantive considerations. If so, it would be useful to clarify this in the clause to avoid uncertainty.	Consider either: (a) clarifying what the requirement to act in an enabling manner relates to; or (b) deleting this provision.
cl 14(b)	A person exercising functions, etc under the NEB (e.g. permit authority) must not consider effects regulated under the Planning Act. This could preclude an integrated approach in some areas such as effects on the landscape values of geothermal features. Landscape effects are only able to be considered under the Planning Act, but geothermal permits are obtained under the NEB.	Consider amending to include an exception to this broad exclusion to deal with integrated management issues (that is, where there are dual functions between territorial authorities and regional councils, such as geothermal, contaminated land, or natural hazards), or where a natural environment plan provides for relevant effects (which are effects regulated under the PB) to be considered under the NEB (e.g. effects on landscape values of geothermal features).

cl 15	Under clause 15(1)(a), a person exercising or performing functions, powers, or duties under this Act who is considering the effects of an activity must consider how: (a) adverse effects are to be avoided, minimised, or remedied, where practicable; (b) adverse effects are to be offset or compensated, where appropriate. The addition of the qualifier "where practicable" will serve to limit the extent to which effects are to be avoided, minimised, or remedied. It is unclear how the requirement for offsetting or compensation "where appropriate" is intended to interact with, for example, Emissions Trading Scheme (**ETS**) requirements. Under subclause (1)(b), a decision maker "must not consider a less than minor adverse effect unless the cumulative effect of 2 or more such effects create effects that are greater than less than minor". This makes it unclear whether minor greenhouse gas emissions can be considered as part of overall greenhouse gas emissions.	Clarify the intended interaction of what is "appropriate" with the ETS, and consider the framing of subclause (1)(b) in the context of greenhouse gas emissions.
cl 15(2)(b)	Clause 15(2)(b) also provides that a national instrument may specify "… when it is practicable for adverse effects to be avoided, minimised or remedied". Such an approach confers significant discretion on the author of a national instrument to disregard certain adverse effects on the environment because they consider it would not be "practicable" to avoid, minimise	Consider reframing this clause and/or deleting subclause (2)(b).

	or remedy these effects. This discretion is particularly broad because "practicable" is not defined in the Act and thus remains subjective. This is an inappropriate reservation of discretion. What is practicable is a question of fact that should be determined in the circumstances of each case.	
cl 15(3)	This provision is confusingly worded. It is not clear what the restrictions on undertaking "the management of adverse effects … except in the context of determining an application for a permit" if "no national instrument is in force to guide or direct the use of offsetting and compensation" means and whether the restriction is limited to the management of them by offsetting and compensation.	Clarify the meaning of this provision, for instance by adding the words "by the use of offsetting or compensation" after the words "the management of adverse effects".
cl 15(4)	The final words "with any change being slight or barely noticeable" make the initial description of effects that are "acceptable and reasonable in the receiving environment" superfluous. Slight or barely noticeable effects will presumably be acceptable and reasonable, but the reverse is not necessarily the case. Tests of acceptability and reasonableness are also subjective and open to challenge.	Focus the subclause solely on whether effects are slight or barely noticeable.
Subpart 2—Duties and restrictions		
cls 25(1), 25(1)(a)(i) and 25(2)	The concepts of a "permitted activity" and "permit" have meanings that are specific to the Bill. This clause needs to recognise permitted activities and permits under the RMA.	Provide more clearly for existing lawful activities that predate the Bill.

cl 26(1)	Unlike previous references to minimising adverse effects, this clause does not qualify the obligation by reference to what is practicable. On the face of the matter, it would apply irrespective of cost.	Consider defining "minimise" to relate to a reduction to the lowest practicable extent, so that this defined term would apply in this and other clauses where the term is used.
Subpart 3—Key instruments		
cl 28(1)	In saying that a purpose of national policy direction is to "help resolve conflicts between the goals in section 11 of this Act and the goals in section 11 of the Planning Act 2025", it is not clear whether the conflict must be between a goal in the Natural Environment Act and a goal in the Planning Act, or whether it can be between two goals in the same Act. The latter interpretation appears to make more sense.	Clarify the wording.
cl 29	The heading of this clause refers to rules, but the body of the clause does not explain what a rule is, it just advises what instruments may contain rules.	Insert a new subclause that cross-refers to clause 31.
cl 29(2) and (3)	The definitions of "method" and "policy" fail to clearly distinguish method and policy from each other. Methods would seem likely to often involve a course of action and could therefore also come within the definition of a policy.	Clarify the definitions.
cl 30(a)	The word "may" is unnecessarily duplicated in clause 29(1)(a); it is already in the chapeau of clause 29(1), so there are two consecutive words that are "may".	Delete "may" in clause 29(1)(a).

cl 32	Clause 32, which states principles for classifying activities, provides in subclause (a) that an activity should be classified as a permitted activity if: (i) either— (A) the activity is acceptable, anticipated, or achieves the desired level of use, development, or protection of the natural environment; or (B) any adverse effects of the activity on the natural environment are well understood and can be managed; and (ii) there is sufficient allocation for any anticipated cumulative effect without breaching an environmental limit. The reference to "the desired level" in clause 32(a)(i)(A) is subjective and unclear. It is unclear whether the allocation referred to in clause 32(a)(ii) relates to greenhouse gases and/or the ETS.	Clarify.
cl 39	We query the necessity for all permitted activities that are subject to conditions (except for those relating to a matter described in cl 169) to be registered. Typically, RMA plans have provided for a wide range of activities as permitted activities that lay people would not realise were even regulated. That is also likely to be the position under the Natural Environment Act. Making registration a prerequisite is likely to result in serial non-compliance with the new Act and impose a significant administrative burden and therefore cost on local	Consider whether this degree of regulation is workable or warranted. Review cross references in subclause (1) and (2).

	authorities. It is suggested that registration be required for permitted activities only where the local authority has determined that the particular activity warrants that step and provided for that in the relevant plan. The cross references to section 169 appear to be an error. That section relates to conditions on natural environment permits, not to matters that might not require registration.	
cl 44	Bylaws are made under other enactments and generally for different purposes than rules in resource management instruments. For instance, bylaws may be made for the purpose of protecting public health and safety or to prevent nuisances or offensive behaviour. A broad provision that prevents bylaws from being more restrictive than national rules under the Planning Act unless this is expressly allowed by the national rule could lead to unintended consequences and prevent bylaws that are necessary for protecting matters such as public health and safety.	Delete this clause.
Subpart 4—Environmental limits		
cl 45 "air"	Clause 45 defines terms in this subpart. "Air" means "the composition of the shallow layer of gases, vapours, and particulates surrounding the earth, that is, the lower atmosphere (troposphere) in which people live".	Consider implications if any for greenhouse gases.
cl 45 "freshwater"	"Freshwater" is defined as meaning all "freshwater ecosystems". This conflates two separate elements, namely the	Revert to the RMA definition of "freshwater", meaning "all water except coastal water and geothermal water".

	water itself, and the ecosystem that lives within the water. "Ecosystem" is itself separately defined.	
cls 46–57	Clause 46 prescribes the purpose of an environmental limit, being to: (a) protect human health (human health limits); or (b) protect the life-supporting capacity of the natural environment (ecosystem health limits). The Minister sets health limits in national standards. Regional councils set ecosystem health limits in their natural environment plans: clause 47. The Minister sets human health limits for coastal water and air: clause 49. Regional councils set ecosystem health limits for coastal water, and air ecosystem health (but only if a national standard directs it): clause 50. It is unclear how the proposed split in functions/statutory responsibilities between local authorities and the Minister is intended to operate for greenhouse gases. Clause 51(4) contemplates that an ecosystem health limit may be set at lower than national minimum acceptable levels, subject only to a requirement that if a regional council proposes or an independent hearings panel recommends an ecosystem health limit that is less stringent than the minimum acceptable level specified in national standards, the council or panel must prepare a justification report. Under these clauses, the question arises of whether regional councils or an independent hearings panel is intended to be able to depart	Clarify how the proposed split in functions/statutory responsibilities is intended to operate for greenhouse gases. Are regional councils or an independent hearings panel intended to be able to depart from nationally-determined limits set in relation to greenhouse gases? Clarify the interaction between Ministerially-prescribed human health limits and council-prescribed ecosystem health limits where the same 'domain' is involved and/or there is an inter-relationship between domains.

	from nationally-determined limits set in relation to greenhouse gases. Clauses 53 and 56 relate to developing human health limits and assessing the impact of a proposed environmental limit, respectively. Clarification around the interaction between 'human health limits' prescribed by the Minister, and 'ecosystem health limits' is required, given that humans exist within a wider natural environment. For example, human health limits for immersion in freshwater will differ to ecosystem health limits for a waterbody. Greenhouse gases are another similar example.	
cls 49 and 50	It is unclear whether the list of domains for which human health limits and ecosystem health limits must be set is exclusive or inclusive. Given the potential for new environmental issues to arise, an inclusive approach (allowing limits to be set for other domains) would be more prudent.	Add a provision clarifying that human health limits and ecosystem health limits can be set for domains other than those listed.
cl 52(3)	Clause 52(1) and (2) refer, respectively, to the Minister and the regional council when making certain decisions. Subclauses (3), (4) and (6) then refer to "a decision maker". It is unclear whether these latter references apply to just the Minister and the regional council when making decisions under clauses 52(1) and (2), or to all decision makers (e.g. to independent hearing panels or the Environment Court making decisions on applications for permits or proposed plan provisions).	Amend subclauses (3), (4) and (6) to clarify the meaning of "decision maker". Amend subclause (7) to include a definition of "final draft".

	Subclause (4) refers to a "final draft" and while subclause (7) defines a "notification draft", there is no equivalent definition of a "final draft".	
cl 54(2)(a)	Missing word: the word "with" is missing in clause 54(2)(a) between "accordance" and "section 57".	Insert the word "with" between "accordance" and "section 57".
cl 56(c)(i)	The word "national" in "national resources" appears to be an error; presumably, as in other parts of this clause, it should read "natural resources".	Change "national resources" to "natural resources".
cl 58	National standards that include environmental limits must have those limits apply to management units. It is regional councils' role to define the units: clause 58(1)(b). As above, it is unclear how this is intended to work in respect of greenhouse gases. As the impacts of greenhouse gases or climate change go beyond boundaries, it would be difficult to set management units. However, where it relates to ecosystem health limits, it is the regional council which sets them, and regional councils only have jurisdiction over their respective regions.	Consider and clarify how this section is intended to work in relation to greenhouse gases.
cl 59(2)	The final part of cl 59(2) is not clearly worded: "When considering whether information is the best obtainable information, the decision maker must be guided by any criteria prescribed in regulations *but is subject to section 52(5).*" It would be clearer to have a further subclause that states: "Section 59(2) is subject to section 52(5)."	Remove the words "but is subject to section 52(5)" at the end of clause 59(2), and add a clause 59(3) providing that: "Section 59(2) is subject to section 52(5)."

cls 60–61	Caps and action plans are the tools for managing environmental limits. The first preference for a resource subject to environmental limit is a cap on resource use (see further clause 62), unless that is "not feasible because the resource is affected by a range of different causes". In the latter case, an "action plan" will be required. It is unclear: (a) how this is intended to work in respect of greenhouse gases; (b) how these provisions relate to the Climate Change Response Act 2002 (**CCRA**); and (c) whether, for example, a regional cap on greenhouse gases is envisaged.	Consider and clarify how this section is intended to work in relation to greenhouse gases.
cls 63–65	The Bill provides direction on the content of action plans but no process for their promulgation. While clause 61(c)(ii) states that national standards may specify the process for their development, this is a power that may not be exercised and it provides no assurance that the views of interested parties will be properly considered.	Given the role that action plans are intended to perform, the process should be established within the legislation in a manner that provides for participation by interested parties.
cl 64	This provision places restrictions on land use controls or inputs as a pathway to achieving the purpose of an action plan unless the regional council is satisfied that certain provisions (including non-regulatory measures) "will not be sufficient" to achieve the purpose of the action plan. If a regional council wants to include controls on matters such as (as stated in clause 64(3)) "the type of forestry planting,	Amend the wording to align it more closely with current language in section 32 of the RMA, which requires analysis of other reasonably practicable options for achieving objectives and an assessment of the *efficiency and effectiveness* of other options. Remove reference to the stated matters.

	construction or use of urban or built areas, or fertiliser application rates" in an action plan, they must be satisfied that this is required despite: (a) national standards: (b) existing rules in a natural environment plan: (c) freshwater farm plans: (d) non-regulatory measures. The proposed wording is unclear and likely to lead to confusion around the timeframe within which those instruments could lead to change, particularly where non-regulatory measures and ongoing actions such as freshwater farm plans are involved. Given some of the matters listed are non-regulatory measures, one preferable option may be for the wording at least to state that they "are *unlikely to be* sufficient to achieve the purpose". Returning to something closer to the wording of section 32 of the RMA is another alternative ("efficient and effective" in achieving the purpose).	
cl 67	Clause 67 relates to a breach of an environmental limit, and provides a mandatory direction for councils to publicly notify the "cause" of the breach. Where cumulative effects or multiple sources have contributed, it may not be possible to clearly identify the cause.	Amend the wording of 67(2)(b) to state "cause or causes (where identified)".

Subpart 5—National instruments		
cl 68(1)(a)	We suggest providing greater direction as to when standardised approaches are appropriate. The merits of standardised approaches when different local authorities are dealing with essentially the same issue are obvious. The problem will arise when the context within which those approaches must be applied is different. For instance, what is appropriate for braided Canterbury rivers is not necessarily appropriate for the rivers of the West Coast.	Expand subclause (a) to identify when standardised approaches are appropriate.
cl 69(5)	We suggest providing greater direction as to what might be considered 'new' (new compared to what?). In particular, is a national instrument substantially duplicating national direction under the RMA providing 'new' content? If the intention is that the Minister needs to consider all existing national instruments to ensure consistency, then any changes to those other instruments should be consulted on and the public given an opportunity to comment.	Clarify the intended meaning.
cl 70(1) and (2)	Clause 70(1)(b) and (2)(b) reserve discretion to the Minister to set timeframes for consultation on a national instrument that they consider to be adequate. This includes consultation with iwi authorities. The proposed approach risks timeframes being set that are not appropriate in the circumstances and which fail to provide adequate time for meaningful input, which will impact the quality of the decision-making process. This assumes particular importance when reflecting on the role of national	Amend clause 70(1)(b) and (2)(b) to provide for an objective standard by deleting the words "what the Minister considers to be".

	instruments in the planning framework proposed under the Bills.	
cl 70(2)(a)(iv)	The cross reference to section 80 appears to be incorrect. That clause does not provide for preparation of a report.	Check cross reference.
cl 70(3)	Subclauses (1) and (2) already provide for consultation on a proposal. Presumably the intention is to provide the Minister with the option of consulting directly with certain parties outside of the process set out in subclauses (1) and (2). This should be clarified.	Explain the difference between the consultation contemplated in (3) from that required in (1) and (2).
cl 75(4)	The reference to "subsection 1(b)" should be to "subsection 2(b)".	Correct cross reference.
cl 76	Given the central importance of national instruments in the hierarchy of decision making under the Bill, it should be mandatory for national instruments to include transitional provisions specifying how any existing processes are affected by any new national instruments or changes to existing instruments.	Transitional provisions are required to ensure that existing processes or instruments impacted by national instruments are transitioned appropriately into the new regime. Change "may" to "must".
cl 78(1)(a)	Stating that the purpose of national policy direction is to direct how goals "must" be achieved conflicts with clause 69(2)(b) which recognises that not all goals need to be achieved in all places at all times. It also fails to recognise that some goals are beyond the power of local authorities to achieve.	Amend the language of this subclause to align it with clause 69(2)(b).
cl 79(1)	It is unclear what the reference to "directives" refers to in clause 79(1)(b), and to the extent it relates to directions on	Delete "directives" or provide more clarity on what this term is intended to encompass.

	matters of policy then it is superfluous because that it is already in (1)(a).	
cl 79(2)(a)	Local authorities provide a framework within which activities may occur. Managing activities does not necessarily result in outcomes being achieved as the natural environment is subject to a wide variety of influences.	Qualify the reference to outcomes that must be achieved so that it is confined to matters that local authorities can control.
cl 79(2)(a)(ii)	Incorrect cross reference to clause 77.	Amend cross reference to clause 78.
cl 80(1)	Both subclauses purport to state ways in which goals are achieved. This fails to take account of the language of clause 11 which talks of seeking to achieve goals, reflecting the fact that some goals are outside the power of regulatory authorities to achieve, and others might be achieved despite regulatory controls, not because of them.	Align the language with clause 11.
cl 83	The equivalent clause in the PB, cl 59(2), provides that: "Before making national standards, the Minister must be satisfied that the proposed national standard achieves its purpose." Clause 83 lacks such provision. It is difficult to see why this requirement should not apply to national standards made under the NEB as well as those made under the PB.	Add a subclause in clause 83 stating: "Before making national standards, the Minister must be satisfied that the proposed national standard achieves its purpose."
cl 84(1)(g)	The "may" at the beginning of clause 84(1)(g) is unnecessary because there is already a "may" in the opening part of clause 84(1).	Remove the word "may" at the beginning of clause 84(1)(g).
cl 86	This clause provides a specific consenting pathway for significant infrastructure, but does not define what qualifies as infrastructure for this purpose. The definition will be	Define "infrastructure" for the purposes of the Bill.

	important, because the clause defines situations where "significant public benefits" mean that environmental limits can be breached.	It may also be preferable to attempting a definition to lay out clear principles in this clause.
cl 86(5)	Missing word: the word "section" is missing before "85".	Add the word "section" before "85".
cl 90(1)(c)	National standards can be amended by the Minister without consultation for reasons including to: (a) implement New Zealand's obligations under any international convention, protocol, or agreement to which New Zealand is a party; or (b) give effect to a national adaptation plan. The reference to "national adaptation plan" needs clarification.	Add reference to the CCRA, following the style as drafted in clause 97. See also PB, cl 80.
Part 3: Combined plan and other matters		
Subpart 1—National environment plans		
cl 95(2)(b)	This subclause is unnecessary. If a national instrument provides alternative standardised options, the corollary is that the local authority has a choice which one to adopt.	Delete subclause.
cl 97(2)(a)	The requirement that a regional council make decisions so that the resulting plan implements, for example, national direction is inconsistent with the directions in clause 12(3)(b).	Align this subclause with clause 12(3), e.g. see wording at 106(1)(c) "how the proposed plan implements … any applicable goal to the extent permitted by section 12(4)."
cl 97(4)(v)	In making a natural environment plan for the region, the regional council must "have regard to … any adaptation plan prepared under the Climate Change Response Act 2002".	Review consistency of clauses 90 and 97, amending clause 90 to refer to "any adaptation plan prepared under the Climate Change Response Act 2002".

	The drafting approach taken here is preferable to that for national standards and should be followed for consistency: see further clause 90(1)(c). One practical point is whether such adaptation plans will have been prepared in advance of preparing the first round of natural environment plans to inform the approach and ensure alignment and consistency. In addition, under the RMA councils are required to consider both the adaptation plan and emission reduction plan when preparing policy statements and plans. However, the provisions contain reference to an "adaptation plan" only and are silent on the emissions reduction plan. This is likely to lead to uncertainty and potential for legal challenge, given references are made to some components of climate mitigation measures in the Bills (for example, renewable energy generation).	Consider inserting an additional subparagraph, requiring regard to be had to any emissions reduction plan prepared and published under section 5ZG of the CCRA.
cl 99, 99(1), 99(2), 99(2)(e)	These provisions refer to allocation of an "activity". The body of the clause makes it clear that what is contemplated is allocation of a natural resource.	Delete "activity" so that the clause refers consistently to allocation of a natural resource.
cl 99(2)(d)	Under clause 99(2)(d), a rule that allocates a natural resource use activity "must not allocate water, heat, or energy from water in a way that affects the activities authorised by section 20(4)(b) to (e)". Clause 20(4)(b) to (e) refer to certain essential uses (e.g. the taking of freshwater for reasonable domestic needs or reasonable needs of an animal's drinking water). We query whether the intention is that some residual adverse effect on	Clarify whether the intention is that all adverse effects irrespective of nature and scale are precluded.

	those permitted uses is considered acceptable, or whether there are to be no effects at all. Regardless, it is suggested that the subclause refer to "adverse" effects, since it is assumed that positive effects would not be an issue.	
cl 103(2)	It is unclear why a regional council can classify an activity that will have a more than minor adverse effect on the relationship of a customary marine title group with their customary marine title area as a permitted activity if the rule requires the activity to be registered with the council before it is carried out. Registering the activity with the council will not alter its adverse effect on the customary marine title group. This provision is modelled on section 85A of the RMA, but applies to customary marine title groups rather than protected customary rights. The exception in clause 103(2) does not exist in section 85A of the RMA. It is so broad that it risks defeating the purpose of clause 103(1) and will derogate from the property rights of customary marine title groups.	Delete clause 103(2).
cl 108(2)(c)	It is unclear whether quantified assessments should be obtained if practicable, and we would recommend such a requirement. Experience of the implementation of section 32 of the RMA suggests that qualitative assessments are frequently of little value and, in any event, a type of qualitative assessment already appears to be provided for under clause 108(2)(b) where a description of positive and negative impacts is required.	Consider requiring quantitative assessments if practicable.

cl 108(4)	This subclause refers to a justification report needing to comply with "the prescribed requirements", but unlike in respect of (2) and (3) above, there is no detail given as to what those requirements are.	Define the prescribed requirements or insert an appropriate cross reference.
cl 118(1)	The clause does not make clear who the dispute can be between.	Clarify the provision — for instance, by stating that the dispute can be between any person or body referred to in clause 118(2).
cl 118(3)	Typo. The reference to "1" in "relevant 1 instrument" might be meant to be a reference to "subsection (1)".	Correct or delete.
cl 119	The presumption that this clause applies would presumably only arise once the Schedule 3 process has been completed. It is suggested the clause should say that.	Amend to indicate when such a claim might be made.
cl 122(2)	Clause 122 gives the Environment Court the power to give directions (including to pay compensation, offer alternative land packages, etc) to the regional council relating to a provision in a proposed plan, if the provision would: (a) severely impair the reasonable use of land; and (b) place an unfair and unreasonable burden on any person who has an interest in the land. There is no comparable direction as to what the powers of the council are at first instance considering the matter. It seems also that there are wide-ranging implications, given landowners will be able to challenge provisions that were in a plan (and proposed plan). The process may involve some retrospectivity, given that there will be a new set of plans with	Address, as a minimum, the apparent gap in the process for considering such challenges at first instance. Provide that whether the reasonable use of land would be severely impaired should be assessed on the basis of all available reasonable uses of the land, not each reasonable use individually.

	existing restrictions being carried over in some cases into the new plans and, in consequence, available for scrutiny. A landowner can also challenge existing provisions through a plan change. The flow-on implications for local authorities of enabling such wide grounds of challenge and retrospective challenge are significant. It is also unclear whether, in assessing if a provision "would severely impair the reasonable use of land", each reasonable use of land should be considered individually or in light of other reasonable and available land uses. If one reasonable use of land is severely impaired but others remain open to the landowner, would this constitute a severe impairment of the reasonable use of land? Overseas jurisprudence on takings, for instance in the United States, would suggest not. Environmental considerations may mean that particular land uses are inappropriate in a given location, but there are other available reasonable uses.	
cl 122(5)(a)(i)	The reference to provisions "first" notified should be amended to include reference to previous plans, including under the RMA. More generally, the logic of this provision is to prevent landowners who purchase property subject to regulatory constraints at a price that reflects those constraints from making a windfall gain through this process. We query whether the same logic applies equally to the relief provided in subclauses (4)(b)–(f).	Consider whether: (a) the list of relevant provisions should be expanded to include prior plans; and (b) the same approach should be taken to other monetary relief a landowner might seek.

cl 122(9)	The definition of "reasonable use" would appear to preclude any consideration of natural hazard risk. Landowners could therefore seek compensation for their inability to develop land because of an underlying natural hazard risk. Likewise, a landowner that owns land subject to a restriction based on the NPS-HPL (or NEB equivalent) might also seek compensation. Is that intended?	Consider excluding development of hazard-prone land and NPS-HPL qualifying land as a reasonable use for the purposes of this clause. This is also relevant to natural hazards arising from or exacerbated by climate change. Current wording would make restrictions relating to such hazards compensable.
Subpart 2—Coastal matters, water conservation orders, and freshwater farm plans		
Missing clause	The Bill does not contain a provision requiring regional councils to update plans to reflect new aquaculture settlement areas, or the addition or removal of space from an aquaculture settlement area. Section 85AA of the RMA currently requires this. The Ministry for the Environment has stated that this was an oversight that it will seek to rectify through the Parliamentary process.	Include an equivalent to s 85AA of the RMA, which provides: "If a notice issued under section 12 of the Māori Commercial Aquaculture Claims Settlement Act 2004 declares space in the coastal marine area to be an aquaculture settlement area or adds or removes space from an aquaculture settlement area, a regional council must— (a) amend any aquaculture settlement area shown on the plan to reflect any new aquaculture settlement areas or changes to existing areas made by the notice; and (b) make the amendment as soon as practicable after the notice is issued; and (c) make the amendment without using the process set out in Schedule 1."

Part 4: Natural resource permits		
Subpart 1—Types of permit		
cl 128	A natural resource permit (**NRP**) may "include" a wildlife approval, which is a lawful authority for an act or omission that would otherwise be an offence under various sections of the Wildlife Act 1953. The NEB does not appear to contain any provisions governing how wildlife approvals should be determined and what criteria would apply. Is this proposed to occur through a consequential amendment to the Wildlife Act? Or are the approvals still granted under the Wildlife Act but become "included" (i.e. housed) within the NRP?	Clarify what is meant by the concept of a NRP "including" a wildlife approval. Is that approval still granted under the Wildlife Act and simply "housed" in the NRP? If it is intended that the wildlife approval is granted under the NEB, recommend making this clear, and including substantive provisions around how these should be applied for and approved (or include cross references to Wildlife Act).
Subpart 2—Applying for natural resource permit		
cl 135	Incorrect cross reference. Clause 135 omits a provision included in clause 143, which also relates to applications deemed incomplete and returned. Consider aligning these clauses for consistency.	Amend incorrect cross reference: should be clause 14 of Schedule 10. Consider including a requirement that a returned application must be by a method prescribed in section 324, for consistency with clause 143.
cls 140 and 141	There is discretion to request further information or commission a report at any time before hearing or decision, but only if satisfied that the information or report will ensure that the permit authority has enough information to understand the implications of its decision after considering "cost and feasibility" of obtaining the information and the scale	Consider requiring (in either the NEB or regulations) grounds in support of an assessment that information is required. Include cross reference to the review power under the PB, Schedule 10, cl 15, if that is what is intended.

	and significance of the matter. A request must be made in the "prescribed form and manner". It is not clear where this will be prescribed (presumably regulations), or whether it will include a requirement to include reasons relating to the assessment of cost and feasibility, etc. Those matters are likely to be grounds for an applicant to request a review of the information request. There is no clear process for obtaining a review. Presumably, this is intended to be via clause 15 of Schedule 10 of the PB, which appears to provide for reviews by the Planning Tribunal of requests for further information or reports (although that clause is poorly drafted).	
cl 143	Failure to respond to information or report requests or complete other requirements within 3 months may result in a determination that an application is incomplete or to be returned with reasons (by a method specified in clause 324 for service of documents). There is no direct reference to a review power if the application is determined incomplete.	Include cross reference to the review power under clause 15 of Schedule 10 of the PB (as recommended above for clause 135 which relates to incomplete applications).
Subpart 3—Notification, submissions and hearings		
cl 146	Clause 146 sets out notification requirements if clause 145 does not apply (i.e. there has not been mandatory public notification). The drafting of the clause is convoluted. To address this, we recommend consideration is given to including a flowchart or similar guide. In subclause (5), it is not clear what "identified" means. It appears to be different from ascertaining who is affected, and instead to relate to whether they can be physically located	Include a flowchart to assist with steps. Clarify the intended meaning of "identified" (e.g. does it mean identify a person's name based on ascertaining a category of affected people, or does it mean physically locating them / ascertaining their address for notification purposes). Reconsider whether the test should allow for: (a) public notification solely based on whether there are significant effects on the natural environment or

	(subclause (4) separates out the assessment of whether there are affected persons, which presumably involves "identifying" at least a category of person, and whether they can be "identified", which presumably means their identity can be ascertained, but it could also mean whether they can be physically located for notification purposes). We recommend that this is clarified. There is a substantive change for public notification, requiring *significant* adverse effects on natural resources or people *and* either that there are no affected persons or those persons cannot be "identified" (if there are such persons, only targeted notification is permitted). By contrast, the RMA required only "more than minor" effects and was a separate category/concept from effects on people. In tying effects on people to effects on the wider environment, the proposed approach is potentially problematic. There will be no public notification if people are affected, unless they cannot be identified, but this presumes that the affected people will represent the wider environmental issues. It is possible that affected people will be unable, unwilling or simply not well-equipped to raise issues impacting the wider environment, making it more difficult for permit authorities to make sound, evidence-based decisions. Alternatively, natural environment plans (which can provide for public notification) will be required to make provision for a general public notification category to deal with significant environmental effects to ensure mandatory public notification under clause 145. The approach may have the perverse outcome of more	people (i.e. remove the requirement that there must also be no affected or identifiable parties). (b) Alignment of the thresholds for public notification for the NEB and the PA to be "more than minor": see further comments below on the PB, cl 125, which has retained "more than minor" as the threshold.

	public notification through blanket plan categories rather than allowing for case-by-case assessment at the permit stage.	
cl 148(1)	Incorrect cross reference: the reference to "section 145(6)(a)" should be to "section 146(6)(a)".	Change "section 145(6)(a)" to "section 146(6)(a)".
cl 149	Clause 149 defines an "affected person" for targeted notification purposes. The drafting of the clause is confusing, and we suggest could be improved by removing a redundant phrase.	Consider removing the part-sentence as shown (struck through): *(a) a person is an affected person if the permit authority decides that—* *(i) the activity's adverse effects on the person are more than minor; or* *(ii) the activity's adverse effects on a management unit~~, or the persons within that management unit,~~ are more than minor, and the person resides within that management unit; …*
cl 152	There is a reference to "district" in clause 152 which appears to be a typo. It should be "region". "District" (as defined) relates to territorial authorities, whereas "region" relates to regional councils. Only regional councils are permit authorities under the NEB. The PB has the same definition except that it refers only to "district".	Correct apparent typo. The reference to "district" in the definition of "qualifying resident" in relation to place of office for non-natural persons should be to "region".
Subpart 4—Consideration of application and decision		
cl 155	Clause 155(1)(b) refers to adverse effects on the "natural environment", as a matter which must be disregarded if a rule permits an activity with that effect. It is unclear whether the reference to "natural environment" (which excludes "humans"	Check whether "natural environment" is the intended terminology.

	from the definition) rather than "natural resources or people" (the term used in clause156(2), to which clause 155(1)(b) is subject, and also used in the public notification tests in clauses 146 and 148) is intentional. The list of matters to be disregarded also applies when considering "submissions". It is unclear why this addition is needed, given that consideration of submissions is part of the process of determining a substantive application (which is what this subpart addresses, and there are separate provisions relating to considerations when striking out submissions: clause 152(4)). Retaining the apparently redundant provision may cause confusion.	Remove reference to consideration of submissions in clause 155(4).
cl 156	Clause 156 lists matters to which a permit authority must have regard when considering submissions or substantive applications. For the reasons suggested above (clause 155), the reference to submissions may be redundant. We query whether reference in clause 156(1)(h) to effects "of" long-lived infrastructure should be effects "on" that infrastructure. If the long-lived infrastructure is the activity being applied for (i.e. to continue) then the effects "of" that infrastructure would be considered under the other subsections which require consideration of effects of the activity on various things (e.g. people and the natural environment) — unless it is intended to clarify that you must assume on a renewal that the existing activity exists (i.e. an	Remove reference to consideration of submissions in clause 156(4). Clarify what is meant by consideration of the effects "of" long-lived infrastructure in a renewal situation. If it is intended that the existing infrastructure (the activity which is sought to be renewed) should be treated as part of the existing environment this could be made clearer.

	existing environment point). Either way, this matter could give rise to confusion requiring clarification.	
cl 163	Clause 163 (which provides that a land use permit may be refused or granted with conditions if there is a significant risk from natural hazards) provides a broad exception in subclause (4) for primary production activity. Such a blanket exemption for primary production appears too broad and could significantly reduce the ability to manage natural hazard risk, including where the proposed use of the land would result in adverse effects on natural resources or people or accelerate, worsen or result in material damage (for example, large scale commercial forestry harvesting on landslip-prone land).	Rather than a blanket exclusion for primary production activities, consider an additional criterion where the land use is primary production (such as the impact on the primary production activity or the impact of the proposed primary production activity), or excluding primary production only where doing so is required by a natural environment plan or national policy direction.
cl 167	Clause 167 codifies an adaptive management approach. This generally appears sensible and workable subject to the following suggestions. It would be advisable to include a qualification that the baseline to be provided by an applicant should be "adequate", to avoid the likelihood of applicants otherwise asserting that any baseline information is sufficient. The word "adequate" is used elsewhere in the Bill where provision of information is required. A requirement to assess the "importance" of the activity is uncertain and subjective, and may be used as a reason for not adopting an adaptive management approach where it might otherwise be appropriate.	Insert the bold text in clause 167(2)(b): (b) must require **adequate** baseline information for … monitoring and reporting; and setting triggers and limits (other than an environmental limit) for the purpose of monitoring and reporting; … Amend clause 167(3)(c) as shown in the following strikethrough and bold text: In determining the use of an adaptive management approach, the permit authority must consider … (c) ~~the importance of the activity for which the permit relates~~ **the positive effects or benefits of the activity for which the permit relates and whether they might be impacted by the proposed adaptive management approach**

Subpart 5—Conditions and other requirements for decisions		
cl 168	Clause 168 reflects the RMA except for a new proviso added to the *Augier* concept (clause 168(2)(a): formerly RMA, s 108AA(1)(a)), which requires not only that the applicant volunteers the condition but that it must also contain measures to generate positive effects or manage adverse effects. The RMA provision requiring a condition to be "directly connected" to an adverse effect of the activity has been removed (or at least reworded to require only that a condition "contains measures in order to"). The policy basis for these changes is unclear and may give rise to litigation, given both former tests (the *Augier* and *Newbury* tests) are part of long-established RMA case law. The *Augier* principle is an equitable concept recognising that a consent holder who has agreed to a condition which is otherwise ultra vires should not be entitled to resile from it later. While it is difficult to conceive of an example where an *Augier* condition would not relate to a positive or adverse effect, this proviso may give rise to litigation around its meaning and whether it is intended to depart from the *Augier* principle. Similarly, the requirement that a condition must have a direct connection to the particular development and be for a resource management purpose rather than an ulterior purpose (the *Newbury* tests) were codified under the RMA through the two direct connection requirements in section 108AA(1)(b)(i) and (ii), i.e. that there must be a direct connection to an adverse effect or a rule or standard (respectively). The merging of the two case	Revert, in clause 168(2), to the structure of section 108AA of the RMA, which separately addresses the *Augier* and *Newbury* principles, as follows: A permit authority must not include a condition unless— (a) the applicant has agreed to the condition**; or**~~and~~ **(b)** the condition **is directly connected to** ~~contains measures in order to —~~ (i) ~~give rise to positive effects ; or~~ ~~(ii) avoid, minimise, remedy, offset, or provide compensation for, any~~ **a positive or** adverse effect~~s~~ **of the activity;** ~~or~~ ~~(b) the condition is directly connected to—~~ ~~(i)~~ (ii) an applicable provision in the natural environment plan or national rule; or (iii) a water services standard; or (c) the condition relates to administrative matters that are essential for the efficient implementation of the natural resource permit.

	law principles in the current clause is confusing and the intent is unclear.	
Subpart 6—Nature of permits, commencement, duration and review		
cl 179	Clause 179 is the same as section 123B of the RMA (new provision inserted in August 2025) but "relevant group" does not appear to be defined. Omitting to do so is likely to create uncertainty, given it was defined under the RMA.	Include definition of "relevant group" based on RMA definition as follows: "In this section, **relevant group** means a group who may be or is required to be involved in processes under this Act that relate to planning documents or resource consents by virtue of any Treaty settlement, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, or the Marine and Coastal Area (Takutai Moana) Act 2011."
cl 180	Query whether "environment" in clause 180(2)(b) should say "natural environment", consistent with clause 179(3)(a).	Ensure consistent terminology.
cls 182–183	The drafting is confusing and requires numerous cross references.	Improve clarity and readability of provisions such as through "signposting" with subheadings, summarising cross referenced provisions within the text to avoid having to scroll to another section, or providing a flowchart.
cl 196(3)(b)	This provision does not provide that the permit authority has to grant the application for the transfer of the permit for the permit holder to be able to make the transfer. This seems to be implicit and is explicit in clause 195(b)(ii). It should be made explicit here as well for clarity.	Add "and has been approved by the permit authority" to the end of clause 196(3)(b).
cl 196(6)	Unlike in clause 195, a transfer that is subject to the approval of the permit authority is not excluded from the provision that	Amend clause 196(6) to read: "A transfer under subsections (2) or (3)(a) has no effect until written notice of the transfer is

	the transfer has effect from when the permit authority receives written notice for it. Clearly this cannot apply where the permit authority must approve the transfer, so transfers under clause 196(3)(b) should be excluded from the application of clause 196(6).	received by the permit authority that granted the permit." The proposed change would reflect the wording of clause 195(4).
cl 198(6)(a)	This provision should instead refer to "regulations made under section 307", rather than under "section 800" (which does not exist).	Change "section 800" to "section 307".
cl 202	The issue of registered permitted activities is discussed above (clause 39). We query whether the 10 working days provided for in clause 202(3) is sufficient time for a council to both review an application and register an activity, especially if there is a flurry of applications when the Act comes into force.	Consider reasonableness of 10 working days for review and registration, particularly during the transitional period.
Part 5: Key roles		
Subpart 1—Functions and powers of central and local government		
cl 215(b)	Suggested drafting improvement (incorrect or incomplete terms).	Replace "the issue of water conservation orders" with "the issue, revocation or amendment of water conservation orders".
cl 215(f)	Clause 215(f) states that the Minister has the function of monitoring and investigation of any "significant land use matter". It is unclear what a "significant land use matter" is, as the term is not defined or used anywhere else in the NEB (or in the PB). The word "investigation" should read "investigating".	Clarify or delete subclause (f). If retained, change "investigation" to "investigating".

cl 216	Clause 216 provides that in addition to the powers set out in the Bill, the Minister can also exercise the powers relating to Ministerial directions in cls 201, 202, 204 and 207 of the Planning Bill, subject to necessary modifications. The powers in the relevant clauses in the Planning Bill are: (a) cl 201: to investigate the local authority and make recommendations; (b) cl 202: if the local authority is not exercising its powers, functions or duties under the Act, appoint someone to exercise them instead; (c) cl 204: to direct a local authority to achieve an outcome; (d) cl 207: to direct local authorities to supply information. The proposed Ministerial discretion and powers to intervene are wide-ranging and without checks. The ability under clause 204 to direct a local authority to achieve an outcome is particularly broad. There is little guidance on what would trigger the exercise of powers and little time for local authority response. As proposed, this framework provides insufficient checks on Ministerial intervention including processes for investigation, reporting and response. If the process is to be retained there should be specific, clearly identified intervention criteria which are capable of being objectively measured. Decision making should be subject to a public process, including opportunity for consultation, with decisions to intervene recorded in writing.	Strengthen checks and balances on the proposed powers of Ministerial intervention, by setting out clear processes with adequate timeframes. Decision making should be subject to a public process, including opportunity for consultation, with decisions to intervene recorded in writing. Consider providing: (a) greater statutory guidance on what would trigger the exercise of powers; and (b) a discretion for the Minister to extend the timeframe in which local authorities must respond.

cl 217	Clause 217(1) and (2) provide that the Minister must not direct a regional council to prepare planning documents unless the Minister has first investigated the regional council's performance and made recommendations to the regional council in relation to the issue. This is carried over from the RMA, s 25A. Clause 217(3) introduces an exception to this procedural requirement if the Minister has "reasonable evidence" that a regional council is not exercising or performing the relevant functions, powers or duties. "Reasonable evidence" is defined, which provides some check on the exercise of the power, but the assessment of reasonableness will remain with the Minister, and the power can be triggered readily around failure to meet timeframes. There are a number of incorrect cross references in this clause.	Consider deleting clause 217(4)(b), which relates to evidence of the regional council's failure to comply with statutory time frames. In clause 217(1)(a), replace "section 224" with "section 221". In clause 217(3), replace "subsection (3)(a)" with "subsection (2)(a)". In clause 217(4), replace "subsection (4)" with "subsection (3)".
cl 218	Typo.	In clause title replace "Ministers" with "Minister".
cl 219(a)	Incorrect term.	Replace "making" with "approval".
cl 219(g)	Suggested drafting improvement (incorrect/incomplete terms).	Replace "issue or amendment" with "issue, revocation or amendment".
cl 220	Typos. There is an error in the clause title. In clause 220(1), a comma and space are missing after the phrase "subsection (2)".	In clause title, delete "to". Insert comma and space after the phrase "subsection (2)".

cl 220	Clause 220 and the corresponding PB, cl 183 address the Minister of Conservation's powers with respect to listed islands for the surrounding coastal marine area (**CMA**) and for the islands themselves. Drafting around allocation of responsibilities in this section is not clear, and clarity is required around who has been conferred powers. Clause 220 is drafted more clearly than the PB, cl 183 and in our view should be preferred, but the content of the two clauses does not align and neither clause appears to be complete. Both clauses confer regional council powers for the CMA on the Minister of Conservation. However, with respect to the islands themselves, PB, cl 183 confers regional council powers and NEB, cl 220 confers territorial authority powers. It is unclear whether: (a) these powers have been conferred in the correct Bills (we query whether the territorial authority powers should be conferred in PB, cl 183 and the regional council powers — for the CMA and the islands — should be conferred in this clause); or (b) the two provisions should be identical; or (c) all of the powers should be conferred in PB, cl 183 and a simple cross reference included in NEB, cl 220.	Clarify the correct conferring of regional council and territorial authority powers with respect to the CMA and the islands in each Bill, and refine the drafting of the clause.

Subpart 2—Functions, powers, and responsibilities of regional councils		
cl 221	Clause 221(1) requires every regional council to "enable and regulate" the use, protection and enhancement of the natural environment. However: (a) clause 221(2) requires that in undertaking these responsibilities the regional council must "regulate and manage" listed matters; (b) clause 222(1)(d) states that a regional council has the function of "regulating and managing effects"; (c) clause 4 states that the purpose of the NEB is to "establish a framework for" the use, protection and enhancement of the natural environment; and (d) clause 92(a) states that the purpose of a natural environment plan is to "enable and regulate" use and development. It is unclear why the different provisions use different language. Consistent language should be used in describing the responsibilities of regional councils.	Clarify and use consistent language in describing the responsibilities of regional councils.
cl 222(1)(a)	Clause 222(1)(a) relates to the regional council's function of "making and maintaining" a natural environment plan. In light of clause 112, which relates to review of natural environment plans, it is suggested that clause 222(1)(a) should be amended to "making and reviewing" a natural environment plan.	Amend "making and maintaining" to "making and reviewing".

cl 222(1)(d)	Clause 222(1)(d) states that a regional council has the function of "regulating and managing effects". As for clause 221(1) above, consistent language should be used in describing the responsibilities of regional councils.	Clarify and use consistent language in describing the responsibilities of regional councils.
cl 222(2)	Clause 222(2) provides that an additional responsibility of the regional council "in its region" is "monitoring compliance with standards, rules, and permits and *responding proportionately, consistently, and reasonably to non-compliance* using the functions and powers available to them under this Act, so as to promote compliance, in a way that gives effect to the purpose, goals, and procedural principles of this Act" (emphasis added). The proposed requirement on regional councils to monitor compliance "proportionately, consistently and reasonably" is subjective. Though regulatory authorities, as a general principle, must already act accordingly, it potentially undermines the enforcement role of councils by creating a legislative obligation that brings with it legal uncertainty and litigation risk. It is likely to lead to increased numbers of collateral challenges to enforcement action based on lack of proportionality. Given the risk of efficiency to the system and the courts, this simply does not need to be said. The discretion to take enforcement action should sit with the regulator, based on the facts and the exercise of judgment in the circumstances. These principles are also already embedded into many local authority enforcement policies to inform regulatory decision making, which is the appropriate approach.	Delete the words "proportionately, consistently, and reasonably". (See also clause 224, which duplicates this requirement.) In subclauses (3) and (5), correct the reference to subsection (3A).

	Note also there is no subsection (3A). The reference should be to subsection (4), since this states "the functions referred to in subsection (3) are…". Clause 222(2) does not need to be in the form of a list: the list contains only one item.	
cls 222(2) and 224	Clauses 222(2) and 224 appear to be duplicates.	Clarify and correct duplication.
cl 222(3)	Incorrect cross reference.	Replace "(3A)" with "(4)".
cl 222(5)	Incorrect cross reference.	Replace "(3A)" with "(4)".
cl 223(d)	Clause 223(d) refers to "the capacity of air or water to assimilate a discharge of a contaminant". "Assimilate" should not be a new standard.	For clarity and certainty, it would be desirable to refer back to other norms, such as (to name some options) within limits, without adverse effects, cumulative effect, life-supporting capacity, within CCRA targets, and so on.
cl 227	Clause 227 deals with information-gathering, monitoring and record-keeping by regional councils. The clause is missing the obligation to gather information and undertake or commission research found in the corresponding PB, cl 186(1).	Replicate PB, cl 186(1) in clause 227.
cl 227(4)	Clause 227(4) addresses the obligation to take appropriate action if monitoring shows that action is needed. The drafting of clause 227(4) and the corresponding PB, cl 164(4) is not consistent.	Amend clause 227(4) or the corresponding PB, cl 186(4) for consistency.
cl 228(2)(c)	Typo. The "… matters provided for in paragraphs (a) and (c) that the regional council has advised to the Crown" is a typo:	Correct references.

	This is paragraph (c), meaning that this should instead refer to paragraphs (a) to (b) which set out matters the Crown may be advised on.	
cl 228(6)	Clause 228 provides a duty on regional councils to keep records about iwi and hapū, including contact details and planning documents. Under subclause (6), "Information kept and maintained by a regional council under this section must not be used by the council except for the purposes of this Act or of regulations made under this Act." While a provision of this kind is currently in the RMA, we query whether the prohibition on information kept and maintained by a council under this section being "used by the council" except for the purposes of the NEB may be over-broad. It is unclear, for example, whether the prohibition is still intended to allow information to be provided in response to requests under the Local Government Official Information and Meetings Act. Iwi and hapū with working relationships with councils may also, presumably, be contacted by council staff from time to time for a range of purposes, not always confined to matters under the NEB. The committee may wish to consider and seek advice on whether the broad drafting of the provision captures matters that were not intended.	Consider and seek advice on whether clause 228(6) is broader than necessary.
Missing clause	The NEB does not include a provision mirroring PB, cl 187, requiring publication of monitoring results.	Consider whether such a provision should be included.

Subpart 3—Transfer and delegation of powers		
cl 231(1)	The definition of "public authority" for the purposes of transfer of regional council functions does not include an iwi authority. This differs from the present position under section 33(2) of the RMA. The ability to transfer functions to iwi authorities supports partnership and tino rangatiratanga, consistent with the Treaty and its principles. The Law Society would support retaining "an iwi authority" in the definition.	Add "an iwi authority" to the definition of "public authority".
cl 232	Clause 232 and the corresponding PB, cl 193 address transfer of powers. Clause 232 does not include the obligations of authorities to whom powers are transferred addressed in PB, cl 193(4). PB, cl 193 does not include the transitional arrangements addressed in clause 232.	Amend clause 232 and the corresponding PB, cl 193 for consistency.
cl 232(3)	Incorrect term.	Replace "local authority" with "regional council".
cl 233(1)	Clause 233(1) provides for delegation by a regional council to a "local board or community board". Local boards only apply to unitary authorities and are addressed in clause 233(2). Community boards only apply to territorial authorities. Clause 233(1) omits provision for delegation to a committee of the council, which is provided for in the corresponding PB, cl 194(1).	Delete "local board or community board" and replace with reference to a committee of the council as per PB, cl 194(1).

cl 235	Clause 235 deals with delegation of functions to employees and others. There are drafting inconsistencies between clause 235 and the corresponding PB, cl 196. Clause 235(2), containing considerations relating to appointment of hearings commissioners, is missing from the corresponding PB, cl 196. PB, cl 196(4) providing a cross reference to presumptions applying to delegations (PB, cl 195) is missing from clause 235.	Clarify and amend clause 235 and PB, cl 196 to achieve consistency.
cl 235(1)(a)	Incorrect cross reference.	Delete reference to clause 43 of Schedule 3 of the PB and replace with appropriate NEB cross reference.
cl 235(3)(b)	Typo.	Delete "or consent".
Part 6: Enforcement and other matters		
Subpart 1—Enforcement		
cl 278	Clause 278 lists provisions that it is an offence against the Act to contravene. There should be a reference to "restrictions on land use" contained in the brackets in clause 278(1)(a). These restrictions are set out in clause 17 of the Bill.	Include "land use" in the listed bracketed items in clause 278(1)(a).
cl 280(6)	In clause 280 (penalties), subclause (6) provides that the court "may, instead of or in addition to imposing a fine or a term of imprisonment" impose a section 258 order. That suggests that if the court imposes another type of sentence, such as home	Amend subclause (6), to instead say, for example, that: (6) If a person is convicted of an offence against section 278, the court may, instead of or in addition to imposing any other available sentence, make 1 or more of the following orders: …

	detention, and has formed the view that a fine is inappropriate, there is no jurisdiction to impose a section 258 order. To address this, different wording is proposed.	
cl 281(4)	It is difficult to see how the defence in clause 281(4) could ever apply when an offence would otherwise have been committed by a principal. If a principal authorised or consented to the act constituting the offence or knew the offence was, or was to be, committed and failed to take all reasonable steps to prevent or stop it (as clause 281(2) requires for liability by a principal), then it cannot be the case that the principal did not know and could not reasonably be expected to have known that the offence was to be or was being committed or that the principal took all reasonable steps to prevent the commission of the offence (as clause 281(4) requires for the defence to apply).	Remove clause 281(4) as unnecessary.
cls 288 and 289	Clauses 288 and 289 are both headed "infringement offences". The same title for two different (and adjacent) sections is confusing.	Fix duplication.
Subpart 2—Emergency works		
cl 301(3)	Incorrect cross references. The reference to "paragraphs (d) to (f) of subsection (1)" should be "paragraphs (e) to (g) of subsection (1)".	Change "paragraphs (d) to (f) of subsection (1)" to "paragraphs (e) to (g) of subsection (1)".
cl 301(4)	The reference to "subsection (4)" should be a reference to "subsection (6)". The equivalent provision in the RMA, s 330(3A), refers to "subsection (3)", but in clause 275 of the Planning Bill the equivalent provision is subsection (6).	The reference to "subsection (4)" should be a reference to "subsection (6)".

Subpart 3—Regulations		
cl 307(1)(l)	Clause 307(1)(l) gives the Governor General by Order in Council, on the advice of the Minister, the power to make regulations regarding: "…transitional and saving provisions relating to the coming into force of this Act, *which may be prescribed in addition to or in place of any of the provisions of Schedule 1*…" To the extent that it allows regulations to be made that replace Schedule 1, which forms part of the Act, this is a Henry VIII power allowing any and all of the transitional and savings provisions enacted by Parliament to be replaced or altered. In the Law Society's view, the proposed power is unduly broad and is neither necessary nor appropriate.	Delete subclause (1)(l), or limit its scope to providing for additional transitional or savings provisions (not provisions "in place of").
cls 308–310	Clauses 308–310 introduce new powers for the Minister to promote regulations. The scope of powers to intervene in these clauses is very broad, including enabling amendment by way of regulations of permits that have been granted and plans that have been promulgated, on the recommendation of the Minister for aquaculture: clause 310. While the matters are described as procedural, clause 310 in particular is substantive. There is the ability to make regulations in relation to any procedural matters (through the general catch-all) and of most relevance are timeframes for particular steps in decision-making	Seek advice on the rationale for clause 310 with a view to either strengthening safeguards in respect of this clause or deleting the clause. Seek advice on other options for setting appropriate limits on the proposed regulation-making powers.

	processes, which could unilaterally impinge on the rights of those participating in the process. The scope of the proposed Ministerial powers in these clauses is concerning. In the Law Society's view, these provisions divest too much power in one Minister to disrupt plans that have been lawfully promulgated following the standard statutory process.	
cl 310(5)	It is not clear what the reference to "the committee" refers to.	Change "the committee" to "the regional council".
cls 313 and 314	Clause 313 allows the Minister to recommend that levies be paid for allocation of natural resources under clause 223 of the Bill for the purpose of: (a) funding resolution of issues arising from over allocation of natural resources; (b) providing efficient use of natural resources; or (c) recovering costs of central government and regional council to undertake functions under the Bill. The discretion is not absolute; it is constrained by the purposes set out in subclause (2). This power is also constrained by additional requirements that are set out in clause 314. These include following the process set out in clause 70 (consulting with certain groups, giving notice to the public of the proposal and considering the relation of the levies to the goals), only setting the levies for certain purposes, and ensuring that the levies collected do not exceed certain costs incurred.	Clauses 313 and 314 should be strengthened (for example, by providing mechanisms for transparency/public oversight).

	However, even with these limitations, the power remains relatively broad. The purpose for which levies can be set include the efficient use of resources which is very broad and open to interpretation. The clause allows for wide Ministerial discretion in determining what and how resources are to be managed and paid for. It is also unclear what public oversight there will be to ensure that the conditions on the exercise of the power set out in clause 314, particularly the cost-based limitations on the levies, are complied with. Further, while the uses of the money collected from the levies are restricted to those set out in clause 334, it is not clear what mechanism there is for public oversight to ensure the money is being used for those purposes.	
cl 313(2)	Adding the word "and" at the end of clause 313(2)(a)(ii) would make it clearer that clause 313(2)(a) and (b) are alternatives. There is a typo in the chapeau of subclause (2).	Add the word "and" at the end of clause 313(2)(a)(ii). Amend the chapeau by including "of" between "making" and "regulations."
Subpart 4—Miscellaneous		
cl 317(1)	The words "he or she" should be replaced by "the Minister" or "they", in accordance with gender-neutral legislative drafting practice.	Replace the words "he or she" with "the Minister" or "they".
cl 331	Clause 331 proposes a significant change, by providing that matters may be determined by arbitration. If parties disagree about any matter in respect of which any person has a right of appeal and all parties agree, a direction to arbitration can be sought from the Environment Court (except in respect of any matter relating to a proposed natural environment plan).	Delete clause 331.

	The arbitrator then has the same powers as the permit authority which made the decision The necessity of this proposed approach is doubted. We understand that the Environment Court mediation service has a high record of success (believed to be around 75–80 per cent) in resolving disputed issues. In addition to Environment Court facilitated mediation, party-to-party "direct discussion" without a facilitator is increasingly common. Use of a privately-appointed mediator, instead of or prior to Environment Court mediation, is another option. We incline to the view that this initiative is not necessary, given the comparatively low-cost, quick and expert mediation service which the Court already provides.	
cl 331(5)	If clause 331 is retained, read literally, the provision in clause 331(5) ("Except as otherwise expressly provided, nothing in this section limits the right of any persons to refer to arbitration any disputed matter arising under this Act") would appear to mean that it is unnecessary to apply to the Environment Court even where clause 331(1) applies, as clause 331(1) does not expressly provide that it limits the right to refer a matter to which they apply to arbitration. Clause 331(2) also does not expressly limit the ability of persons to refer a matter to arbitration, as it only restricts the ability to apply to the Environment Court. This would render these subclauses pointless and presumably cannot be intended, so matters that these subclauses apply to should be excluded from the scope of clause 331(5). While the wording in the Bill reflects existing wording in the RMA, the interaction	Add the words "or where subclauses (1) or (2) apply" after the words "Except as otherwise expressly provided" in clause 331(5), if the clause is retained.

	between these provisions does not appear to have been fully considered when they were enacted.	
Schedule 1: Transitional, savings and related provisions		
	This Schedule provides that Schedule 1 of the Planning Act 2025 applies.	See comments provided below on the PB, Schedule 1.
Schedule 2: Information required in application for natural resource permit		
cl 5	Schedule 2, cl 5 sets out specific information that is required for an assessment of environmental effects (**AEE**). There is a material new qualification on AEE requirements: information included "need only address a matter to the extent that the information is relevant to the provisions of a plan or proposed plan or national rule."	Consider whether the substantive requirement to assess effects (clause 156(1)(a) and (b)) should be qualified in a similar way, such as requiring that effects be directly connected to a plan or national rule (note that this reflects an understanding that the intention of the legislation is for plans and national standards to be more directive and reduce the scope for broad discretion at the consenting stage). Without a similar qualification, there is a disconnect between the AEE requirements (which only require information relevant to a plan or national rule) and the substantive assessment when it comes to *effects*. The remoteness issues relating to "end use" effects considered by the Supreme Court in the *Otakiri Springs* case remain matter of concern to some practitioners. Alternatively, it may be sufficient to address the remoteness issue indirectly through the proposed requirement that any condition imposed must be directly connected to an applicable provision in a rule, as is currently proposed in clause 168(2)(b).

Schedule 3: Coastal matters		
cl 48(1)(b)	Schedule 3, cl 48(1)(b)(i) and (ii) refer to "the negotiator", in relation to aquaculture agreements and aquaculture compensation declarations. Schedule 3, cl 48(1)(b)(i) also refers to section 186ZEA(2) of the Fisheries Act 1996. Section 186ZEA previously contained provisions relating to negotiators in respect of aquaculture area decisions, but has now been repealed. Other provisions in the Fisheries Act relating to negotiators (ss 186ZNA, 186ZO, 186ZP and 186ZQ) have also been either repealed or amended to remove the references to negotiators.	Change the references to "the negotiator" to refer to "the chief executive", as the latter is currently responsible for notifying the consent authority about aquaculture agreements or compensation declarations: RMA, s 116A(5).
cl 64(3)	The Law Society has recommended that a general definition of "adaptive management approach" be included in clause 3. If this is done, a separate definition of adaptive management approach would not be needed in Schedule 3, cl 64(3) unless the general definition was considered unsuitable for the purposes of clause 64.	If a general definition of "adaptive management approach" is included in clause 3, remove the definition of "adaptive management approach" in Schedule 3, cl 64(3), unless it is considered that a different definition is needed for the purposes of this clause.
Missing clause	The Bill does not contain a clause requiring regional councils to update plans when new aquaculture settlement areas are gazetted or the boundaries of existing aquaculture settlement areas are altered, as is required by section 85AA of the RMA. The Law Society understands that officials have identified the omission of such a clause as an error. This requirement is important to ensure that permit applications for activities that are incompatible with an aquaculture settlement area are not	Include a clause based on section 85AA of the RMA.

	made by persons who are unaware that the area is an aquaculture settlement area.	
Schedule 4: Water conservation orders		
cl 8	Schedule 4, cl 8(4) allows a submitter to request that a water conservation order be made over a different water body within the same catchment, or to protect different features and qualities from those applied for. However, there is no "further submission" right and accordingly there may be parties who are affected but were not notified of the proposed change and accordingly did not participate in the hearing process. This is contrary to the principles of natural justice.	Either delete clause 8(4) or provide for a further advertising and submission process so that potentially affected parties are notified of any such proposed changes to a proposed water conservation order and so that such affected parties have an opportunity to submit and be heard on those proposed changes.
Schedule 5: Freshwater farm plans		
cl 5(1)(f)	"Dairy Supply Number" is undefined.	Define a "Dairy Supply Number".
cl 7(b)	Schedule 5, cl 7(b) requires a freshwater farm plan to specify requirements that "are appropriate" for the purpose of managing effects, however there is no guidance as to what may be "appropriate". Likewise, offset and compensation measures may be included "when appropriate".	Either provide more guidance as to what is considered "appropriate", or delete the word.

Table 2: Planning Bill

Clause	Comment	Recommendation
Part 1: Preliminary provisions		
cl 3 "best practicable option"	The focus of the definition of "best practicable option" on effects on the built environment is problematic, particularly its application in rural environments, because it omits any consideration of the effects of noise (including vibration) on animals, including livestock.	Amend the definition to delete "built" in the two places it appears.
cl 3 "infrastructure"	The definition of "infrastructure" is limited to the designation context, raising the question of what facilities qualify as infrastructure outside that context. The recently gazetted NPS for Infrastructure provides a useful reference point.	Insert a general definition of "infrastructure" that is consistent with the National Policy Statement for Infrastructure 2025.
cl 3 "natural hazard"	As defined in clause 3, natural hazard: (a) means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment; and (b) includes the effects of climate change on any of those occurrences.	Include a separate definition of climate change as presently defined in the RMA: "**climate change** means a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods".

	It would assist clarity and continuity if the reference to climate change in this definition were supplemented by a separate definition of climate change, as presently provided in section 2 of the RMA. This would assist in addressing uncertainty and reducing the prospects of litigation in relation to what the "effects of climate change" is intended to cover.	
cl 3 "qualifying resident"	The Bill includes a definition for a "qualifying resident". The first three criteria (a) to (c) refer to persons that live, pay rates or provide infrastructure within a region. The definition also includes in (d) persons (other than natural persons) that have an office or operate in a *district*. The reference to "district" in para (d) of the definition should be changed to "region" to align with the other paragraphs and the introductory words of the definition.	Change the reference to "district" in para (d) of the definition to "region" to align with the other paragraphs and the introductory words of the definition.
cl 3 "renewable energy activity"	Like the NEB, this Bill includes a definition for "renewable energy activity". The definition incorporates some but not all elements of the definition of renewable electricity generation activities in the NPS-REG. If the intention is that subparagraph (b) (which refers to subsidiary activities) would capture those activities it would be clearer to expressly refer to those activities. In the absence of such a reference, it is unclear what the scope of a subsidiary activity is. Further, the definition refers to "a supporting *and* subsidiary activity" in relation to an activity described in (a). It is unclear how an activity can be both a supporting and a subsidiary	Align the definition with the NPS-REG and/or provide clarification as to the meaning of "supporting and subsidiary activity".

	activity, and whether it is intended that an activity must meet both requirements to fall under the definition in (b).	
cl 3 "significant non-compliance"	Like the NEB, this Bill includes a definition of "significant non-compliance", which includes reference to any such non-compliance being "substantial not minor or technical". It is not clear whether "substantial" in this context is the same as "significant" or would also encompass something less than "significant". Clarification would be useful. Additionally, the definition refers to harm/potential harm that is "serious enough to warrant further attention and further action". The use of the term "serious enough" is subjective and no guidance is provided as to what might qualify. Again, some clarification would be useful.	Clarify the meaning of the terms "substantial" and "serious enough" if they are to remain in the definition.
cl 3 "successor"	The definition provides that "**successor** includes, in the case of a person that is a body that is not incorporated, *the successor* a body of persons which is incorporated and composed of substantially the same members". The italicised words "the successor" appear to have been erroneously included; alternatively, revise the draft for sense and grammar.	Remove the words "the successor".
cl 3 "prescribed manner" undefined	The term "prescribed manner" is used extensively in the Bill. It would be useful to define it for clarity. It appears to refer to a manner prescribed in regulations, but without a definition there could be uncertainty about whether such matters could be prescribed in national instruments as well. "Prescribed form" is defined as "a form prescribed by regulations made	Include a definition of "prescribed manner".

	under this Act and containing and having attached such information and documents as those regulations may require", but there is no definition for "prescribed manner".	
cl 3 "prescribed information" undefined	The term "prescribed information" is used in various places in the Bill. It would be useful to define it for clarity. It appears to refer to information prescribed in regulations, but without a definition there could be uncertainty about whether such information could be prescribed in national instruments as well. "Prescribed form" is defined as "a form prescribed by regulations made under this Act and containing and having attached such information and documents as those regulations may require", but there is no definition for "prescribed information".	Include a definition of "prescribed information".
cl 3 "prescribed dispute resolution process" undefined	The Bill contains several references to the "prescribed dispute resolution process", but does not define it. It appears that this is intended to refer to a dispute resolution process prescribed in regulations, but this should made clear by a definition.	Include a definition of "prescribed dispute resolution process".
cl 4	The purpose is stated as being to establish a framework for planning and regulating the use, development and enjoyment of land. The inclusion of the word "enjoyment" appears to be intended to link to how people use land. If it is a subcategory of use, then it may not be required. Further, the way the sentence reads at present, it could be interpreted as meaning the way people enjoy land is to be regulated.	Suggest deleting reference to enjoyment of land.

cl 8	The submission's front section has commented on the approach to clause 8. The Law Society recommends changes in clauses 8, 9 and 11 of both Bills, and the PB, Schedule 3, cl 3. If the recommendations relating to clauses 9, 11 and the PB, Schedule 3, cl 3 are progressed, clause 8 would require consequential amendment, specifically: (a) clause 8(a)(i), which limits the scope of Māori participation to certain planning and national guidance processes. This is discussed further under clause 11 below. (b) clause 8(d)(ii), which currently reflects the current provision in Schedule 3, cl 3 of the PB by referring to "existing or initiated" Mana Whakahono ā Rohe, not allowing for any new agreements. The Law Society considers that both these proposals could be progressed even if the select committee does not adopt its recommendation of retaining an overarching Treaty clause in the legislation comparable to section 8 of the RMA.	Amend clause 8(a)(i) and 8(d)(ii), reflecting changes proposed below to clause 11(1)(i)(i) and Schedule 3, cl 3 to: (a) provide a role for Māori to participate in permitting processes, and recognise that Māori hold mātauranga which will be relevant to all aspects of the new system; and (b) enable consideration of new Mana Whakahono ā Rohe by local authorities preparing or changing their plans (also reinserting relevant provisions in Schedule 3 relating to making Mana Whakahono ā Rohe agreements).
cl 9	Clause 9 (as earlier noted in regard to the NEB) provides for the Crown to work with PSGEs to seek agreement on how their Treaty settlement redress can operate with the same or equivalent effect to "the greatest extent possible" under the two new Acts. The Law Society is concerned that aspects of this clause are unworkable. The reference to "the greatest extent possible" is subjective and introduces uncertainty into the provision since what one party	Delete reference to "the greatest extent possible" from the clause. Amend the clause by: (a) deleting cl 9(2) and (3), thereby removing the two-year deadline; or (b) extending the two-year timeframe; or

	considers possible may differ from the other. The phrase also does not appear necessary, given there is already a degree of flexibility provided in the clause through reference to "equivalent" arrangements. Secondly, the clause imposes a two-year timeframe for such agreements to be made, with a limited provision for the Crown to continue discussions or enter agreements after that time. Given the number of Treaty settlements, there is potential that such discussions/agreements may not be concluded with all parties (we note here the view from the RIS, at page 22, that "[c]onsiderable work is required to ensure that Treaty settlement agreements and other arrangements are upheld in the new system"). There is considerable potential for disagreement between iwi and the Crown over what is required in order to provide equivalent settlement redress or arrangements. Given the potential for disagreements and the number of iwi with whom it will be necessary for the Crown to negotiate, a two-year timeframe for negotiations appears unrealistic. If the Crown is unable to complete such agreements within two years, its obligation to negotiate should not cease. That would be unfair to iwi and inconsistent with the Treaty's principles. A Treaty settlement entity should also not be prejudiced due to the Crown's delay or failure to engage within the proposed 2-year timeframe. While potential prejudice is mitigated to an extent by clause 10 (which requires Treaty redress/arrangements to be given the same or equivalent effect to the greatest extent possible until an agreement is reached), it	(c) clarifying that the two-year timeframe starts to run from the date that engagement starts with a Treaty settlement entity. Add provisions for dispute resolution.

	relies on a decision maker (rather than a PSGE and the Crown) determining what that means. To address these concerns, consideration should be given to either removing the timeframe, extending the timeframe or to amending the clause so that the timeframe does not run until engagement starts with a particular Treaty settlement entity. There is also no provision for dispute resolution or a binding determination of disagreements between the Crown and iwi over what comprises equivalent redress or arrangements. Providing for this is recommended.	
cl 10	Again as earlier noted (clause 9 above, and equivalent NEB clauses), this clause includes the same qualifier: "to the greatest extent possible". This phrase should be deleted for the reasons noted above under clause 9.	Delete reference to "the greatest extent possible".
Part 2: Foundations		
cl 11	Clause 11 sets out the goals that those exercising functions under the Bill must achieve. The chapeau of the clause includes the wording "must seek to achieve". The inclusion of the words "must seek to" is inconsistent with the direction in clause 69(2)(b) that not all goals need to be achieved in all places at all times, and is unnecessary. It is inherent in a 'goal' that decision makers have it as their objective without being required to achieve it. In subclause (1)(g)(iii), the word "of" is missing in the phrase "sites significant historical heritage".	Consider amending: (a) the chapeau of the clause to delete the words "seek to", replacing them with "All persons exercising or performing functions, duties, or powers under this Act must, subject to sections 12 and 16, have the following goals:". (b) Subclause (1)(g)(iii) to insert the word "of" between the words "sites" and "significant". (c) Subclause (1)(i) to:

	Subclause (1)(i) seeks to provide for Māori interests. However, it limits those interests to three discrete areas (development of instruments/plans, identification/protection of sites of significance, and development/protection of Māori land). Māori hold mātauranga which will be relevant to all aspects of the new system, including permitting, and it is submitted that the goal statement should recognise this. As noted in earlier comments on the NEB: as currently drafted, Māori would only be able to participate in permitting (as opposed to planning) processes if they were able to establish they were a qualifying resident or affected person. This creates a barrier to Māori participation and shifts the onus, and associated time and costs, to Māori to establish that they qualify. It also risks a decision-maker not having all relevant information before them if Māori do not or are not enabled to participate in these processes. Such a limitation does not sit comfortably with the provisions of the Treaty and Treaty settlements. Subclause (1)(i) also refers to Māori interests rather than tangata whenua interests. However, it is the iwi or hapū of a particular area that hold the mana and the mātauranga for that particular area. Without qualifying the reference to "Māori", there is a risk that a goal could be said to have been achieved if for example some Māori have been consulted even where they have no actual link to or knowledge about the area. In respect of subclause (1)(i)(ii) ("the identification and protection of sites of significance to Māori (including wāhi tapu, water bodies, or sites in or on the coastal marine area)"), we note that the Expert Advisory Group (**EAG**) chose a slightly different form of words that may be preferable, to better	i. include reference to Māori participation in all aspects of the new system, including permitting, which is not presently captured in subclause (1)(i)(i); and ii. make it clear that it is tangata whenua interests within an area rather than "Māori" which are to be provided for. (d) Subclause (1)(i)(ii) to align more closely with the formulation recommended by the EAG, by providing for "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga, the protection of protected customary rights and kaitiakitanga" — in addition to the identification and protection of certain sites.

	capture the relational importance and cultural significance of such sites. We consider that the language from the EAG report referring to "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga, the protection of protected customary rights and kaitiakitanga" could be adapted for the purposes of subclause (1)(i)(ii).	
cl 11	It is unclear whether "infrastructure" as used within clause 11 is restricted to designations, given the definition of "infrastructure" cross-refers to the definition in Schedule 5. It is anticipated that a broader concept is intended in the context of clause 11 and that should be clarified, including through potential rationalisation of the various infrastructure-related definitions within the Bill.	Rationalise various infrastructure-related definitions used throughout the Bills.
cl 12(2)(a)	While national standards are intended to give effect to national policy direction, there is potential for matters to be addressed in the latter that are not expanded on or clarified in national standards. In that situation, the instruction to implement the instrument listed directly above it might mean that a spatial plan failed to capture all aspects of national direction. Similarly, a spatial plan will not necessarily implement all aspects of national direction, because its role is to set strategic direction. Put another way, if a spatial plan in fact addressed all matters of detail, land use plans sitting below it would probably be superfluous.	Consider how this direction is framed and whether it ensures an appropriate cascade down the planning framework.

cl 12(3)(a)	Clause 12 addresses the relationship between key instruments in decision-making. However, clause 12(3)(a) references a "consent". This should refer to a "planning consent".	Amend clause 12(3)(a) to read: (3) A person exercising or performing a function, duty, or power under this Act in relation to a matter— (a) must consider the relevant provisions of the key instrument that directly affects the matter (for example, a spatial plan in the case of a land use plan or a land use plan in the case of a *planning* consent); and
cl 13(a)	As noted in comments on the NEB, this clause requires documents to be succinct and use plain language "readily understood by the public". As the understanding of the public may differ from person to person, this drafting introduces an element of subjectivity and uncertainty. Further qualification beyond the reference to succinctness and plain language appears unnecessary.	Delete the words "readily understood by the public".
cl 13(e)	As noted in comments on the NEB, this subclause refers to acting in an "enabling manner". It is unclear what acting in an enabling matter and being solution-focused means in practice. Adding in the requirement for this to be consistent with other principles adds to the confusion. It is assumed that the requirement to act in an "enabling manner" relates to procedural matters as opposed to substantive considerations. However, to avoid any uncertainty, it would be useful to clarify this in the clause.	Either: (a) clarify what the requirement to act in an enabling manner relates to; or (b) delete this provision.
cl 14(1) and (2)	Subclauses (1) and (2) of clause 14 limit consideration of adverse effects including "effect on landscape" and "any matter	Clarify.

	where the land use effects of an activity are dealt with under other legislation": subclause (1)(j). It is unclear if this list excludes consideration of matters affecting mitigation, such as vegetation clearance in areas that are not outstanding. It is also unclear whether subclause (1)(j) could relate to the CCRA.	
cl 14(1)(a)	Disregarding the external layout of buildings has the potential to exclude consideration of effects on adjacent neighbours that would be considered externalities and that the Law Society understands are intended to remain relevant, e.g. buildings of excessive height on or close to a boundary that shade their neighbours.	Clarify what aspects of external layout are intended to be disregarded so as to ensure effects on neighbouring properties are able to be considered.
cl 14(1)(e)	The concluding words "or other physical feature" are unclear. If, as assumed, it means a physical feature of the use, development or building on the site, that should be made clearer. More generally, excluding all consideration of visual amenity will make the goal of having well-functioning urban environments difficult if not impossible to achieve. For example, there would be no constraint on urban slums establishing, and there will be impacts on communities like Queenstown that have maintained the quality of their urban environment and its attractiveness to domestic and international tourists by rigorous adherence to height limits and design requirements that would not be justifiable in other urban environments.	Clarify what the reference to "other physical feature" means. Consider whether some minimum design standard is required, as an exception to the direction provided in this subclause. Consider whether this subclause will achieve the government's policy objectives in discrete areas where maintenance of visual amenity is important to the regional and national economy.
cl 14(2)(a)	Typo.	Change "rives" to "rivers".

cl 15(2)(b)	Clause 15(2)(b) also provides that a national instrument may specify "… when it is practicable for adverse effects to be avoided, minimised or remedied". Such an approach confers significant discretion on the author of a national instrument to disregard certain adverse effects on the environment because they consider it would not be "practicable" to avoid, minimise or remedy these effects. It is an inappropriate reservation of discretion, in the Law Society's view. This discretion is particularly broad because "practicable" is not defined in the Act and thus remains subjective. What is practicable is a question of fact which should be determined in the circumstances of each case.	Consider whether this clause should be reframed and/or subclause (2)(b) deleted.
cl 15(4)	The final words "with any change being slight or barely noticeable" make the initial description of effects that are "acceptable and reasonable in the receiving environment" superfluous. Slight or barely noticeable effects will presumably be acceptable and reasonable, but the reverse is not necessarily the case. Tests of acceptability and reasonableness are also subjective and open to challenge.	Focus the subclause solely on whether effects are slight or barely noticeable.
cl 20(1), 20(1)(a)(i) and 20(2)	The concepts of a "permitted activity", "planning consent" and "designation" have meanings that are specific to the Bill. This clause needs to recognise permitted activities, planning (land use) consents, and designations under the RMA and its predecessors.	Provide more clearly for existing lawful activities that predate the Bill.
cl 23	This clause raises the same issues as clause 20.	Provide more clearly for existing lawful activities that predate the Bill.

cl 25(1)	Unlike previous references to minimising adverse effects, this clause does not qualify the obligation by reference to what is practicable. On the face of the matter, it would apply irrespective of cost.	Consider defining "minimise" to relate to a reduction to the lowest practicable extent, so that this would apply in this and other clauses where the term is used.
cl 27(1)	Typo in first line of discussion of national standards. In saying that a purpose of national policy direction is to "help resolve conflicts between the goals in section 11 of this Act and the goals in section 11 of the Natural Environment Act 2025", it is not clear whether the conflict must be between a goal in the Planning Act and a goal in the Natural Environment Act, or whether it can be between two goals in the same Act. The latter interpretation appears to make more sense.	Replace "1 ore more" with "1 or more". Clarify the wording.
cl 28	The heading of this clause refers to rules, but the body of the clause does not explain what a rule is, it just advises what instruments may contain rules.	Insert a new subclause that cross references clause 30.
cl 28(2) and (3)	The definitions of "method" and "policy" fail to clearly distinguish them from each other. Methods would seem likely to often involve a course of action and could therefore also come within the definition of a policy.	Clarify these definitions.
cl 29(1)(a)	The word "may" is unnecessarily duplicated in clause 29(1)(a); it is already in the introductory words of clause 29(1), so "may" appears consecutively, twice.	Delete "may" in clause 29(1)(a).
cl 32(1)	The provision would be clearer if the "and" in clause 31(1)(iv) were removed. It is not included in the equivalent provision in the NEB, cl 32(1)(d). It is also unclear why Romanette (little	Change "and" to "or" in clause 31(1)(iv).

	roman) numerals are used for the paragraphs in this subsection, but not the paragraphs in the other subsections (or in the equivalent provision in the NEB). For consistency, lowercase lettering should be used for the paragraphs in clause 31(1), i.e. (a), (b), (c), (d), (e).	Change the number style of the paragraphs in clauses 31(1) from Romanette (little roman) numerals to lowercase letters (a), (b), (c), (d), (e).
cl 38	We query the necessity for all permitted activities that are subject to conditions (except for those relating to a matter described in clause 151) to be registered. Typically, RMA plans have provided for a wide range of activities as permitted activities that lay people would not realise were even regulated. That is also likely to be the position under the Planning Act. Making registration a prerequisite is likely to result in serial non-compliance with the new Act and impose a significant administrative burden and therefore cost on local authorities. It is suggested that registration be required only for permitted activities where the local authority has determined that the particular activity warrants that step and provided for it in the relevant plan. The cross references to section 151 appear to be an error. That section relates to conditions on planning consents, not to matters that might not require registration.	Consider whether this degree of regulation is workable or warranted. Review cross references in subclause (1) and (2).
cl 43	Bylaws are made under other enactments and generally for different purposes than rules in resource management instruments. For instance, bylaws may be made for the purpose of protecting public health and safety or to prevent nuisances or offensive behaviour. A broad provision that prevents bylaws from being more restrictive than national rules under the Planning Act unless this is expressly allowed by the national	Delete this clause.

	rule could lead to unintended consequences and prevent bylaws that are necessary for protecting matters such as public health and safety.	
cl 44(1)(a)	It would be advisable to provide greater direction on when standardised approaches are appropriate. The merits of standardised approaches when different local authorities are dealing with essentially the same issue are obvious. The problem will arise when the context within which those approaches have to be applied is different (e.g. what works in urban Auckland may not be suitable for Westport).	Expand subclause (a) to identify when standardised approaches are appropriate.
cl 45(5)	We suggest providing greater direction as to what might be considered 'new' (new compared to what?). In particular, is a national instrument substantially duplicating national direction under the RMA providing 'new' content?	Clarify the intended meaning.
cl 46	Clause 46(1)(b) and (2)(b) reserve discretion to the Minister to set timeframes for consultation on a national instrument that they consider to be adequate. This includes consultation with iwi authorities. The proposed approach risks timeframes being set that are not appropriate in the circumstances and which fail to provide adequate time for meaningful input, which will impact the quality of the decision-making process. This assumes particular importance when reflecting on the role of national instruments in the planning framework proposed under the Bills.	Amend clause 46(1)(b) and (2)(b) to provide for an objective standard by deleting the words "what the Minister considers to be".
cl 46(2)(a)(iv)	The cross reference to section 55 appears to be incorrect. That clause does not provide for preparation of a report.	Check and correct cross reference.

cl 46(3)	Subclauses (1) and (2) already provide for consultation on a proposal. Presumably the intention is to provide the Minister with the option of consulting outside those parameters. We recommend that this be clarified.	Explain the difference between the consultation contemplated in (3) from that required in (1) and (2).
cl 47(4)(b)	The words "unless the national instrument specifies otherwise" in clause 47(4)(b) are unnecessary, since those words are already contained in the introductory part of clause 47(4).	Delete the words "unless the national instrument specifies otherwise" in clause 47(4)(b).
cl 53	Clause 53 requires that there must always be national policy direction. However, the first national policy direction will not be in place until some time after the Act comes into force, as reflected in Schedule 1.	Clarify that this clause is subject to Schedule 1.
cl 54(1)(a)	Stating that the purpose of national policy direction is to direct how goals "must" be achieved conflicts with clause 45(2)(b) which recognises that not all goals need to be achieved in all places at all times. It also fails to recognise that some goals are beyond the power of local authorities to achieve.	Revise the language of this subclause to align it with clause 45(2)(b).
cl 54(1)(b)	In saying that the purposes of national policy direction include "to help resolve conflicts between the goals in section 11 of this Act and the goals in section 11 of the Natural Environment Act 2025", it is not clear whether the conflict must be between a goal in the Planning Act and a goal in the Natural Environment Act, or whether it can be between two goals in the same Act. The latter interpretation appears to make more sense.	Clarify the wording.

cl 54(4)	Missing word.	Amend clause 54(4) to say: "Before making national policy direction, *the* Minister must be satisfied that the proposed national policy direction achieves its purpose".
cl 55(2)(a)	Local authorities provide a framework within which activities may occur. They can incentivise particular outcomes (refer clause 86). They cannot generally ensure that those outcomes occur.	Either delete reference to outcomes that must be achieved, or qualify it to relate only to procedural outcomes, e.g. x per cent of urban areas zoned for intensive development.
cl 56	National policy direction may restrict how clause 11 goals may be achieved. Before making such national policy direction, the Minister must be satisfied that doing so will "not result in severe and irreversible adverse effects to the built environment". National direction of this kind could limit how planning documents deal with climate issues and limit what can be done by councils. The only proposed control is that severe and irreversible adverse effects to the *built* environment are avoided. It is unclear why the built environment should be singled out, and whether leaving open the prospect of severe and irreversible adverse effects to the *natural* environment aligns with, for example, clause 11(1)(c) or (h).	Query whether the restriction to the built environment was intended and is consistent with other parts of the statutory scheme.
cl 56(1)	Both subclauses purport to state ways in which goals are achieved. This fails to take account of the language of clause 11 which talks of seeking to achieve goals, reflecting the fact that some goals are outside the power of regulatory authorities to achieve. Others might be achieved despite regulatory controls, not because of them.	Align the language with clause 11.

cl 58	Clause 58 requires that there must always be national standards. However, the first national standards will not be in place until some time after the Act comes into force, as reflected in Schedule 1.	Clarify that this clause is subject to Schedule 1.
cl 61	Clause 61 addresses national rules and clause 61(2) outlines that national rules may be, but do not need to be, included in land use plans. As one of the purposes of the new framework is to be more user-friendly, it would seem sensible to have all relevant rules within a land use plan, rather than expecting plan users to also be aware of national rules.	Amend clause 61(2) to be clear that national rules must be included within land use plans.
cl 62(1)(c)	The reference to "national adaptation plan" needs clarification.	Add reference to the CCRA, following the style as drafted in the NEB, cl 97, and clause 80 below.
Part 3: Combined plan		
Subpart 1—Requirement for regional spatial plans		
cl 63	Clause 63 requires that there must always be a regional combined plan. However, the first regional combined plan will not be in place until some time after the Act comes into force, as reflected in Schedule 1.	Clarify that this clause is subject to Schedule 1.
cl 67	Clause 67 states the purpose of regional spatial plans. It sets out five goals, including to "set the strategic direction for development and public investment priorities in a region for a time frame of not less than 30 years". The proposed new clause differs from the Spatial Planning Act 2023, s 17(1), in making no reference to matters relating	Reconsider adapting and including aspects of section 17 of the Spatial Planning Act relevant to climate adaptation and mitigation.

	to climate change mitigation. However, parts of that now-repealed provision do appear potentially consistent with provisions now included in the Bills, particularly elements of paras (h)–(j). Provided here as an example, they are: (h) matters relating to climate change mitigation, including— (i) indicative locations for infrastructure that is or may be required to support the production of renewable energy or other measures to reduce greenhouse gas emissions: (ii) areas that are suitable for land use change that would support reductions in greenhouse gas emissions: (i) matters relating to risks arising from natural hazards and the effects of climate change, including— (i) areas that are or will be vulnerable to those risks: (ii) indicative locations for infrastructure that is or may be required to reduce those risks or increase resilience to them: (iii) areas that are suitable for land use change that would reduce those risks or increase resilience to them: (iv) other measures to reduce those risks or increase resilience to them: (j) areas where any development or change in use needs to be carefully managed because the areas are subject to constraints (other than those described in paragraph (i)(i)).	

	Text from section 17 would need to be adapted, but contains the main elements for consideration, and wording that could be drawn upon to improve clause 67. In clause 75, there is a similar gap in respect of providing for the consideration of climate matters in land use plans. However, in the context of land use plans, clause 80 will be applicable (see further below).	
cl 69(1) and (3)	Directing that local authorities "must agree" does not mean that will happen.	Provide a default if unanimity is not achieved (e.g. decision of the majority).
cl 70(2)	The clause as drafted provides no assurance that iwi authorities and customary marine title groups will be given sufficient time to consider the matter and provide feedback. It is an example of how condensed timeframes will impact on iwi and hapū, with very restricted timeframes to have input into a plan which is critical to the new planning framework.	Insert an additional requirement to ensure sufficient time is allowed for consultation.
cl 71(1)	Directing that local authorities "work together" does not mean they will agree.	Provide a default if unanimity is not achieved (e.g. decision of the majority).
cl 72(1)(b)	If the intention is that all of the local authorities in a region must agree, suggest the clause say that.	Clarify intention.
Subpart 2—Land use plans		
cl 75(a)	The suggested purpose of land use plans ("enable and regulate") is not consistent with the purpose of the Bill ("plan and regulate").	Align the purpose of land use plans with the purpose of the Bill.

cl 78(2)(b)	This subclause is unnecessary. If a national instrument provides alternative standardised options, the corollary is that the local authority has a choice which one to adopt.	Delete subclause.
cl 80	Clause 80 sets out the core obligations that apply when a territorial authority is preparing and deciding a land use plan. These include a requirement to have regard to any adaptation plan prepared under the CCRA: clause 80(4)(c)(iv). One practical point is whether such adaptation plans will have been prepared in advance of preparing the first round of natural environment plans to inform the approach and ensure alignment and consistency. In addition, under the RMA councils are required to consider both the adaptation plan and emission reduction plan when preparing policy statements and plans. However, the provisions contain reference to an 'adaptation plan' only and are silent on the emissions reduction plan. This is likely to lead to uncertainty and potential for legal challenge, given references are made to some components of climate mitigation measures in the Bills (for example, renewable energy generation).	Consider inserting an additional subparagraph, requiring regard to be had to any emissions reduction plan prepared and published under section 5ZG of the CCRA.
cl 80(2)	The requirement that a territorial authority make decisions so that the resulting plan implements, for example, national direction is inconsistent with the directions in clause 12(3)(b).	Align this subclause with clause 12(3).
cl 87(1)(b)	The requirement that any applicable national direction be evaluated appears to be inconsistent with the directions in clause 12(3)(b).	Align this subclause more clearly with clause 12(3).

cl 89(2)(c)	It is unclear whether quantified assessments should be obtained if practicable, and we would recommend such a requirement. Experience of the implementation of section 32 of the RMA suggests that qualitative assessments are frequently of little value, and in any event, clause 89(2)(b) already appears to provide for a qualitative assessment (requiring as it does a description of positive and negative impacts).	Consider requiring quantitative assessments if practicable.
cl 89(3)	Requiring analysis of individual provisions has the potential to be an onerous obligation. We suggest that provisions are able to be grouped for this purpose.	Allow analysis of groups of provisions addressing the same matter.
cl 101(1)	Reference is made to a "dispute" but there is no indication as to who may initiate a dispute and what the process is for doing so.	Clarify the provision — for instance, by stating that the dispute can be between any person or body referred to in clause 101(2), and the process for initiating a dispute.
cl 102	The presumption that this clause applies would presumably only arise once the Schedule 3 process has been completed. It is suggested the clause should say that.	Amend to indicate when such a claim might be made.
cl 105	Clause 105 gives the Environment Court the power to give directions (including to pay compensation, offer alternative land packages, etc) to the regional council relating to a provision in a proposed plan, if the provision would: (a) severely impair the reasonable use of land; and (b) place an unfair and unreasonable burden on any person who has an interest in the land. There is no comparable direction on what the powers of the council are at first instance considering the matter. It seems	Address the apparent gap in the process for considering such challenges at first instance. Provide that whether the reasonable use of land would be severely impaired should be assessed on the basis of all available reasonable uses of the land, not each reasonable use individually.

	also that there are wide-ranging implications, given landowners will be able to challenge provisions that were in a plan (and proposed plan). The process may involve some retrospectivity, given that there will be a new set of plans with existing restrictions being carried over in some cases into the new plans and, in consequence, available for scrutiny. A landowner can also challenge existing provisions through a plan change. The flow-on implications for local authorities of enabling such wide grounds of challenge and retrospective challenge are significant. It is also not clear whether, in assessing if a provision "would severely impair the reasonable use of land", each reasonable use of land should be considered individually or in the light of other reasonable and available land uses. If one reasonable use of land is severely impaired but others remain open to the landowner, would this constitute a severe impairment of the reasonable use of land? Overseas jurisprudence on takings, for instance in the United States, would suggest not. Environmental considerations may mean that particular land uses are inappropriate in a given location, but there are other available reasonable uses.	
cl 105(5)(a)(i)	It is suggested that the reference to provisions "first" notified should be amended to include reference to previous plans, including under the RMA. More generally, the logic of this provision is to prevent landowners who purchase property subject to regulatory constraints at a price that reflects those constraints from making a windfall gain through this process. We query whether	Consider whether: (a) the list of relevant provisions should be expanded to include prior plans; and (b) the same approach should be taken to other monetary relief a landowner might seek.

	the same logic applies equally to the relief provided in subclauses (4)(b)–(f).	
cl 105(9)	The definition of "reasonable use" would appear to preclude any consideration of natural hazard risk. Landowners could therefore seek compensation for their inability to develop land because of an underlying natural hazard risk. Likewise, a landowner that owns land subject to a restriction based on the NPS-HPL (or NEB equivalent) might also seek compensation. Is that intended?	Consider excluding development of hazard-prone land and NPS-HPL qualifying land as a reasonable use for the purposes of this clause. This is also relevant to natural hazards arising from or exacerbated by climate change. Current wording would make restrictions relating to such hazards compensable.
cl 106(2)(a)	The word "and" appears to be missing in the phrase "designation a proposed designation" between the words "designation" and "a".	Add the word "and" so that the phrase reads "designation and a proposed designation".
Part 4: Planning consents		
Subpart 2—Applying for planning consent		
cl 109	An application must include all information required by Schedule 6, at a level of detail proportionate to the scale and significance of the matter to which the application relates. There is a potential disconnect with Schedule 6, which requires information included with an application to be "sufficiently detailed and adequate" to enable assessment of an application and proportionate to the scale and significance. The reason for different language is unclear and could give rise to interpretation issues.	Recommend aligning the language used in clause 109 with Schedule 6, cl 1 (i.e. information required must be "sufficiently detailed and adequate to enable the consent authority to undertake its assessment" and "be proportionate to the scale and significance of the activity").

cl 119 and 120	The clauses set out a new test for further information requests and reports which is different to the very recent additions to section 92 of the RMA (October 2025). The authority must be satisfied that the information requested "does not relate to an effect that is outside the scope of this Act" and that "obtaining the information will ensure that the consent authority has enough information to understand the implications of its decision" after considering the cost and feasibility of obtaining the information and the scale and significance of the matter to which the decision relates. The recent RMA wording requires the authority to consider "whether it needs the information for the purpose of section 104" and that any information is "proportionate to the scale and significance of the effects that the activity may have on the environment". The requirement that the information must not "relate to" an effect that is outside the scope of the Act is presumably intended to ensure that effects governed by the NEB are not addressed. However, this is problematic for the reasons discussed in relation to clause 14 of the NEB (regarding dual functions) and also due to the word "relate". Relationships are broad, and effects governed under the PB are likely to "relate" in some way to effects governed under the NEB, given that built environments interact with the natural environment. The test of whether obtaining the information will ensure there is enough information to understand the implications of the decision appears misguided. The outcome of a single information request is unlikely to satisfy the test of having enough information to understand the implications of the	Suggested amendments: (2)(a) the information requested ~~does not~~**is directly** relate**d** to an effect that is **within**~~outside~~ the scope of this Act (2)(b) obtaining the information **is necessary to enable**~~will ensure that~~ the consent authority **to determine the application**~~has enough information to understand the implications of its decision~~, after considering— … (ii) the cost and feasibility of obtaining the information; and the scale and significance of the matter to which the decision relates.

	decision. Only consideration of the totality of the information and evidence available (including that obtained through a hearing) will enable such understanding. The mischief that the amendments seek to address at this stage of the decision-making process is whether the information is relevant and proportionate to the assessment of the application (more akin to the recent RMA amendment). Amendments are proposed, with language reflecting other sections of the PB such as clause 178(3).	
cl 122	Grammatical corrections.	In subclause (1), insert "that" after "A consent authority may determine". In subclause (1)(a)(i), delete the words "to provide".
Subpart 3—Notification, submissions, and hearings		
cl 125	Clause 125 sets out notification requirements if clause 124 does not apply (i.e. there has not been mandatory public notification). The drafting of the clause is convoluted. To address this, we recommend consideration is given to including a flowchart or similar guide. There is a substantive difference between the test for public notification under the PB (the RMA test of more than minor, here relating to effects on the built environment) and the NEB, requiring significant adverse effects on natural resources or people (both have the additional new requirement that there are no affected persons or those persons cannot be "identified"). The policy intent in proposing different tests is unclear, given that the natural environment is generally valued	Include a flowchart to assist with steps. Clarify the intended meaning of "identified" (e.g. does it mean identify a person's name based on ascertaining a category of affected people, or does it mean physically locating them / ascertaining their address for notification purposes). Reconsidering the test is suggested, to allow for public notification solely based on whether there are significant effects on the natural environment or people (i.e. remove the requirement that there must also be no affected or identifiable parties). Align the thresholds for public notification for the NEB and the PA to be "more than minor".

	by the commons and therefore public input would likely be valuable in the decision-making process around effects on common resources, whereas effects on the built environment are more commonly felt by parties directly affected. Such a view would indicate that the test should be lowered for the natural environment. In subclause (5), it is not clear what "identified" means. It appears to be different from ascertaining who is affected, and instead to relate to whether they can be physically located (subclause (3) separates out the assessment of whether there are affected persons, which presumably involves "identifying" at least a category of person, and whether they can be "identified", which presumably means their identity can be ascertained, but it could also mean whether they can be physically located for notification purposes). We recommend that this is clarified. As noted above in regard to comparable provisions of the NEB, the proposed approach is potentially problematic by tying effects on people to effects on the wider environment. There will be no public notification if people are affected, unless they cannot be identified, but this presumes that the affected people will represent the wider environmental issues. It is possible that affected people will be unable, unwilling or simply not well-equipped to raise issues impacting the wider environment, making it more difficult for consent authorities to make sound, evidence-based decisions. Alternatively, land use plans (which can provide for public notification) will be required to make provision for a general public notification	

	category to deal with significant environmental effects to ensure mandatory public notification under clause 145. The approach may have the perverse outcome of more public notification through blanket plan categories rather than allowing for case-by-case assessment at the consent stage.	
cl 127(3)	When assessing whether adverse effects are likely to be more than minor, the consent authority "may consider whether any adverse effects of the proposed activity are consistent with the character, intensity, or scale of the adverse effects anticipated by the land use plan or the regional spatial plan." "Anticipated by" is not defined and requires a degree of speculation. If it is confined to permitted activities, that would be sensible and reflect current law, but if it relates to "planned activities" (i.e. activities which would require a restricted discretionary or discretionary consent process) then the outcome is speculative and would be contrary to High Court authority (*Wallace v Auckland Council*).	Define "anticipated activities" to mean activities that are permitted by a plan rule or national rule.
cl 132(2)(a)	A submission may be treated as invalid even if not struck out in accordance with clause 133. There is no right to review a decision to treat a submission as invalid. This power is unreasonable and should be removed.	Remove the power to treat a submission as invalid even if it has not been struck out.
cl 134(2)	A consent authority can "refer" a person to mediation (compare: "invite or require" a person to attend a conference in clause 134(1)). It is unclear whether a reference to mediation is compulsory. Generally, mediation is a voluntary process	Clarify that a party may only be encouraged to attend mediation but not required, unless directed by a commissioner appointed to hear the application under clause 136.

	without a court direction, according to the Environment Court's practice note. This should be clarified.	
Subpart 4—Consideration of application and decision		
cl 138(4)	The list of matters to be disregarded also applies when considering "submissions". It is unclear why this addition is needed, given that consideration of submissions is part of the process of determining a substantive application (which is what this subpart addresses, and there are separate provisions relating to considerations when striking out submissions: clause 152(4)). Retaining the apparently redundant provision may cause confusion.	Remove reference to consideration of submissions in clause 138(4).
cl 139(3)	Clause 139 lists matters to which a consent authority must have regard when considering submissions or substantive applications. For the reasons suggested above (clause 138(4)), the reference to submissions in clause 139(3) may be redundant.	Remove reference to consideration of submissions in clause 139(3).
cl 144	This is a new provision, which enables a consent authority to grant a planning consent which has the effect of authorising a change to a plan without having to go through a Schedule 3 public process, where the consent would apply "standardised plan provisions" and the consent authority is satisfied that "if the change to the plan provisions were to occur" (through implementation of the consent) it "would provide a significant benefit to the provision of [housing, employment or infrastructure]" in the district.	We recommend that the select committee takes further advice on this clause.

	The proposed approach, as we understand it, is concerning, as it effectively requires a consent authority to take on the role of a planning authority. These are two different roles which are managed differently within councils and staff have different skills and experience. It does not appear that the cost-benefit analysis that is required in order to implement plan provisions (currently section 32 of the RMA) would be undertaken. Further, there is no apparent requirement for the boundaries affected by the consent to be owned by the consent holder, nor ability for the directly affected community who would be subject to it to comment. This raises natural justice and fairness issues.	
cl 146	Clause 146 (which provides that a planning consent may be refused or granted with conditions if there is a significant risk from natural hazards) provides an exception in subclause (4) for infrastructure and primary production activities. Such a blanket exemption for primary production appears too broad and could significantly reduce the ability to manage natural hazard risk. While the policy justification behind the exemption for infrastructure is perhaps clearer (given infrastructure provides a critical support function), it is also subject to natural hazard risk and therefore it would appear sensible to enable a consent authority to impose conditions on a consent to manage such risks.	Rather than a blanket exclusion for primary production activities, consider an additional criterion where the land use is primary production (such as the impact on the primary production activity) or excluding primary production only where a land use plan or national policy direction requires. Consider restricting the exemption for infrastructure to the ability to decline consent, but retain the ability to impose conditions to manage natural hazard risk(s).
cl 149	Clause 149 codifies an adaptive management approach (see also NEB, cl 167). This generally appears sensible and workable subject to the following suggestions.	Insert the bold text in clause 149(2): (b) must require **adequate** baseline information for … monitoring and reporting; and setting triggers and limits

	We recommend including a qualification that the baseline to be provided by an applicant should be "adequate", to avoid the likelihood of applicants otherwise asserting that any baseline information is sufficient. The word "adequate" is used elsewhere in the Bill where provision of information is required. A requirement to assess the "importance" of the activity is uncertain and subjective, and may be used as a reason for not adopting an adaptive management approach where it might otherwise be appropriate.	(other than an environmental limit) for the purpose of monitoring and reporting; … Amend clause 149(3) as shown in the following strikethrough and bold text: In determining the use of an adaptive management approach, the permit authority must consider … (c) ~~the importance of the activity for which the consent relates~~ **the positive effects or benefits of the activity for which the consent relates and whether they might be impacted by the proposed adaptive management approach**; and …
Subpart 5—Conditions and other requirements relating to decisions		
cl 150	Clause 150 reflects the RMA except for a new proviso added to the *Augier* concept (clause 150(2)(a): formerly RMA, s 108AA(1)(a)), which requires not only that the applicant agrees to the condition but that it must also contain measures to generate positive effects or manage adverse effects. The RMA provision requiring a condition to be "directly connected" to an adverse effect of the activity has been removed (or at least reworded to require only that a condition "contains measures in order to"). The policy basis for these changes is unclear and may give rise to litigation, given both former tests (the *Augier* and *Newbury* tests) are part of long-established RMA case law. The *Augier* principle is an equitable concept recognising that a consent holder who has volunteered a condition which is otherwise ultra vires should not be entitled to resile from it later. While it	Revert, in clause 150(2), to the structure of section 108AA of the RMA, which separately addresses the *Augier* and *Newbury* principles, as follows: A permit authority must not include a condition unless— (a) the applicant has agreed to the condition**; or**~~and~~ **(b)** the condition **is directly connected to** ~~contains measures in order to—~~ (i) ~~give rise to positive effects ; or~~ ~~(ii) avoid, minimise, remedy, offset, or provide compensation for, any~~ **a positive or** adverse effect~~s~~ **of the activity;** ~~or~~ ~~(b) the condition is directly connected to—~~ ~~(i)~~

	is difficult to conceive of an example where an *Augier* condition would not relate to a positive or adverse effect, this proviso may give rise to litigation around its meaning and whether it is intended to depart from the *Augier* principle. Similarly, the requirement that a condition must have a direct connection to the particular development and be for a resource management purpose rather than an ulterior purpose (the *Newbury* tests) were codified under the RMA through the two direct connection requirements in section 108AA(1)(b)(i) and (ii), i.e. that there must be a direct connection to an adverse effect or a rule or standard (respectively). The merging of the two case law principles in the current clause is confusing and the intent is unclear.	(ii) an applicable provision in the natural environment plan or national rule; or (iii) a water services standard; or (c) the condition relates to administrative matters that are essential for the efficient implementation of the natural resource permit.
cl 151(1)(g)	The cross reference to clause 145 relating to an applicant's compliance history also includes people other than the applicant (e.g. directors). The reference in clause 151(1)(g) should clarify whether it is intended to relate to the applicant only. Reference to section 121 RMA as the comparative RMA provision appears to be an error. Presumably it should be section 108.	Clarify whether the cross reference to an applicant's compliance history in clause 145 is intended to relate to an applicant's conduct only, or whether it can include other persons concerned in direction or management also referred to in clause 145. Amend the comparative RMA reference to refer to the correct section of the RMA.
cl 152(7)	Clause 152(7) enables an applicant to raise "technical or minor" matters when commenting on draft conditions. "Technical" in this context is presumably intended to relate to non-substantive matters (i.e. technicalities), but could be interpreted to mean relating to an area of specialty, e.g. planning matters, which generally raise matters of substance.	Amend to read "technical errors or minor matters". Alternatively, clause 152(7) could reflect the wording used in NEB, cl 90(1)(f): "matters that are minor in effect, required to correct errors, or similar technical alterations".

Subpart 6—Nature of consents, commencement, duration and review		
cl 156(4)(b)	The words “as if” should be added to clause 156(4)(b), just as they are included in clause 156(4)(a). The provision otherwise does not make grammatical sense.	Add the words “as if” to clause 156(4)(b).
Subpart 7—Miscellaneous		
cl 178	There is no timeframe for issuing a certificate of compliance (compare the RMA process, which is 20 working days). The authority must issue the certificate in accordance with any other prescribed requirements, so it is possible that a timeframe is intended to be prescribed in regulations.	Provide a timeframe for issuing a certificate of compliance.
cl 180	A consent authority “*must* determine, on the information provided, whether the permitted activity rule will be met”. It may not be possible for the authority to determine the application on the information available and there is no provision for further information to be requested. It is also not clear the application can be declined for lack of information.	Include provision for requesting further information (such as for existing use certificates, e.g. “[t]he consent authority may require the person to provide any further information that the authority considers it needs to determine whether the permitted activity rule will be met”) and/or providing that an application can be returned if there is insufficient information to determine whether the rule has been met.
cl 181	Typo in clause 181(2)(d)(iv).	Replace "costal" with "coastal".

Part 5: Key roles		
Subpart 1—Functions and powers of central and local government		
cl 182(a) and (b)	Clause 182(a) and (b) state functions of the Minister as recommending the "issue" of national direction under section 50, and the "making" of national standards. National direction and national standards fall within the definition of "national instrument". The "approval" (rather than issuing or making) of national instruments is addressed by section 50. We note that the language is correct in the corresponding NEB, cl 215(a).	Amend clause 182(a) to state "recommending the approval of a national instrument under section 50". Delete clause 182(b) as it is superfluous.
cl 183	Clause 183 and the corresponding NEB, cl 220 address the Minister of Conservation's powers with respect to listed islands, for the surrounding CMA and for the islands themselves. The corresponding NEB, cl 220 is drafted more clearly than clause 183 and in the Law Society's submission should be preferred, but: (a) neither are adequately drafted; (b) the content of the two clauses does not align and (c) neither clause appears to be complete. Both clauses confer the regional council powers for the CMA on the Minister of Conservation. However, with respect to the islands themselves, PB, cl 183 confers the regional council	Amend the structure of clause 182 to reflect the structure of NEB, cl 220. Clarify the correct conferring of regional council and territorial authority powers with respect to the CMA and the islands in each Bill, and model this clause on a revised version of the NEB, cl 220.

	powers and NEB, cl 220 confers the territorial authority powers. It is unclear whether: (a) these powers have been conferred in the incorrect Bills (such that the territorial authority powers should be conferred in clause 183 and the regional council powers — for the CMA and the islands — should be conferred in NEB, cl 220); or (b) the two provisions should be identical; or (c) all of the powers should be conferred in PB, cl 183 and a simple cross reference included in NEB, cl 220.	
cl 183(1)	Drafting clarification.	Clarify that "section 222(4)" is of the NEB.
cl 184	Clause 184(1) requires every territorial authority to "enable and regulate" the use and development of land. However: (a) clause 184(2) requires that in undertaking these responsibilities the territorial authority must "regulate and manage" listed matters; (b) clause 185(1)(d) states that a territorial authority has the function of "regulating and managing effects"; (c) clause 4 states that the purpose of the PB is to establish a framework for "planning and regulating" the use, development and enjoyment of land; and	Clarify and use consistent language in describing the responsibilities of territorial authorities.

	(d) clause 75(a) states that the purpose of a land use plan is to "enable and regulate" the use and development of land. It is unclear why the different provisions use different language. Consistent language aligned with the purpose of the Bill should be used in describing the responsibilities of territorial authorities.	
cl 184(2)(a)	Typo.	Delete "the".
cl 184(3) and (4)	If the intention of clause 184(4) is that the matters described in clause 184(2)(c) and (h) should be the responsibility of the regional council, this could be more clearly expressed by deleting clause 184(4) and adding the parenthetical words "(except paragraphs (c) and (h)) after the words "subsection (2)" in clause 184(3). Otherwise, the interaction of clause 184(3) and (4) is potentially confusing.	Delete clause 184(4) and add the parenthetical words "(except paragraphs (c) and (h))" after the words "subsection (2)" in clause 184(3).
cl 185(1)(a)	Clause 185(1)(a) relates to the territorial authority's function of "making and maintaining" a land use plan. In light of clause 99, which relates to review of land use plans, it is suggested that clause 185(1)(a) should be amended to "making and reviewing" a land use plan.	Amend "making and maintaining" to "making and reviewing".
cl 185(1)(b)(iii)	Incorrect term.	Replace "regulatory plan" with "land use plan".
cl 185(1)(d)	Clause 185(1)(d) states that a territorial authority has the function of "regulating and managing effects".	Clarify and use consistent language in describing the responsibilities of territorial authorities.

	As above for clause 184(1), consistent language should be used in describing the responsibilities of territorial authorities.	
cl 185(2)	Under clause 185(2) "… territorial authorities have the responsibility to monitor compliance with standards, rules, and permits and responding *proportionately, consistently, and reasonably* to non-compliance using the functions and powers available to them under this Act, so as to promote compliance in a way that gives effect to the purpose, goals, and procedural principles of this Act". This is the same wording and style of clause used under clause 222 of the NEB. As explained in relation to that clause, the proposed requirement on regional councils to monitor compliance "proportionately, consistently and reasonably" is subjective. Though regulatory authorities, as a general principle, must already act accordingly, it potentially undermines the enforcement role of councils by creating a legislative obligation that brings with it legal uncertainty and litigation risk. It is likely to lead to increased numbers of collateral challenges to enforcement action based on lack of proportionality. Given the risk of efficiency to the system and the courts, this simply does not need to be said. The discretion to take enforcement action should sit with the regulator, based on the facts and the exercise of judgment in the circumstances. These principles are also already embedded into many local authority enforcement policies to inform regulatory decision making, which is the appropriate approach. Grammatically the word "responding" should be "respond".	Delete the words "proportionately, consistently, and reasonably". Change "responding" to "respond".

cl 186(3)(a)	Incorrect term.	Replace “regional plan” with “land use plan”.
cl 186(3)(b)	Clause 186(3)(b) relates to monitoring the exercise of functions and responsibilities under the plan or delegated or transferred by the territorial authority. References to delegation and transfer in clause 186(3)(b) should mirror the drafting of clause 186(3)(c) for greater clarity.	Replace “… or delegated or transferred by the territorial authority” with “… (including those delegated or transferred by the territorial authority)”.
cl 186(4)	Clause 186(4) addresses the obligation to take appropriate action if monitoring shows that action is needed. The drafting of clause 186(4) and the corresponding NEB, cl 227(4) is not consistent.	Amend clause 186(4) or the corresponding NEB, cl 227(4) for consistency.
cl 187(2)	This clause requires a territorial authority to keep a copy of certain information “in reasonably accessible form” at all of its offices. It is not clear whether a hard copy is required or whether the reasonably accessible form requirement could be met by providing electronic access to plans. It may assist to clarify this.	Consider clarifying the meaning of “reasonably accessible form”.
cl 187(3)(d)	Clause 187(3)(d) requires a territorial authority to keep at all of its offices copies of the operative and proposed plans for the other territorial authorities in the region. It is unclear why a territorial authority should be required to keep copies of plans for other districts within the region. Nothing in clause 187(2) indicates a purpose for that requirement. Requiring each territorial authority to keep	Delete clause 187(3)(d).

	copies of its own plans (as required by clause 187(3)(a)) may be preferable.	
cl 187(3)(f)(ii)	Typo.	Delete “to 130”.
cl 188(1)(d)	Suggested drafting improvement.	Clarify and replace “region” with either “district” or alternatively “region of which the district is a part”.
cl 188(4)	Typo.	Replace “though” with “through”.
cl 188(6)	Clause 188 provides a duty on territorial authorities to keep records about iwi and hapū, including contact details and planning documents. Under subclause (6), “Information kept and maintained by a territorial authority under this section must not be used by the council except for the purposes of this Act.” The reference to “council” is incorrect and should be replaced by “territorial authority”. While acknowledging that the RMA currently has a comparable provision, we query whether the prohibition on information kept and maintained under this section being “used by the council” except for the purposes of the PB may be over-broad. It is unclear, for example, whether the prohibition is still intended to allow information to be provided in response to requests under the Local Government Official Information and Meetings Act. Iwi and hapū with working relationships with councils may also, presumably, be contacted by council staff from time to time for a range of purposes, not always confined to matters under the PB. The committee may wish to consider and seek	Replace “council” with “territorial authority”. Consider and seek advice on whether clause 188(6) is broader than necessary.

	advice on whether the broad drafting of the provision captures matters that were not intended.	
cl 190(5)	Incorrect term.	Replace “permit” with “consent”.
cl 193	Clause 193 and the corresponding NEB, cl 232 address transfer of powers. Clause 193 does not include the transitional arrangements addressed in NEB, cl 232. NEB, cl 232 does not include the obligations of authorities to whom powers are transferred addressed in PB, cl 193(4).	Amend clause 193 and the corresponding NEB, cl 232 for consistency.
cl 193(2)	An iwi authority should be included in the definition of “public authority” for the purposes of transfer of regional council functions, as it is under section 33(2) of the RMA. The ability to transfer functions to iwi authorities supports partnership and tino rangatiratanga, consistently with the Treaty and the principles of the Treaty.	Add “an iwi authority” to the definition of “public authority”.
cl 194(1)	Clause 194(1) provides for delegation by a territorial authority to a committee of the council but omits provision for delegation to community boards (see corresponding NEB, cl 233).	Include a power of delegation by a territorial authority to a community board.
cl 195	The reference to delegations under “this section” should be references to delegations under section 194. The matters that are covered in clauses 194 and 195 were in one section in the RMA, and the wording has not been adjusted to reflect that they have been split into two clauses in this Bill.	Change the words “this section” in each of the three subclauses to the words “section 194”.

cl 196	Clause 196 deals with delegation of functions to employees and others. There are drafting inconsistencies between clause 196 and the corresponding NEB, cl 235: (a) NEB, cl 235(2), which contains considerations relating to appointment of hearings commissioners, is missing from clause 196. (b) Clause 196(4) providing a cross reference to presumptions applying to delegations (PB, cl 195) is missing from NEB, cl 235.	Clarify and amend clause 196 and NEB, cl 235 to achieve consistency.
cl 196(2)(b)	Incorrect term.	Replace "resource consent" with "planning consent".
Subpart 2—Ministerial intervention		
cl 201	Incorrect term.	Replace "local authority" with "territorial authority".
cl 203(4)(b)	Clause 203(1) and (2) provide that the Minister must not direct a territorial authority to prepare planning documents unless the Minister has first investigated the territorial authority's performance and made recommendations to the territorial authority in relation to the issue. This is carried over from the RMA, s 25A. Clause 203(3) introduces an exception to this procedural requirement if the Minister has "reasonable evidence" that a territorial authority is not exercising or performing the relevant functions, powers or duties. "Reasonable evidence" is defined in clause 203(4)(b) to include evidence of the territorial authority's failure to comply with statutory timeframes. This provides some check on the exercise of the power, but the assessment of reasonableness will remain with	Consider deleting clause 203(4)(b), which relates to evidence of the regional council's failure to comply with statutory time frames.

	the Minister, and the power can be triggered readily around failure to meet timeframes. Clause 203(4)(b) provides insufficient guardrails on this Ministerial power which could be triggered by an isolated, erroneous or inconsequential non-compliance, or a non-compliance entirely unrelated to the issue of the direction.	
cl 204	Clause 204 introduces a new power for the Minister to direct a territorial authority "to take any action that the Minister considers necessary to achieve an outcome specified by the Minister in the direction". This is a significant and, in the Law Society's view, overly-wide new power. As for clause 203 above, clause 204 includes an exception to the requirements for the Ministerial investigation and recommendation steps if the Minister has "reasonable evidence" that a territorial authority is not exercising or performing the relevant functions, powers or duties, defining "reasonable evidence" in clause 204(4)(b) to include evidence of the territorial authority's failure to comply with statutory timeframes under the PB. As above for clause 203, clause 204(4)(b) provides insufficient guardrails on this Ministerial power which could be triggered by an isolated, erroneous or inconsequential non-compliance, or a non-compliance entirely unrelated to the issue of the direction. See further NEB, cl 217.	As above: cl 203 and NEB, cl 217.

cl 206(2)	Clause 206(2) provides that if the Minister makes a direction under clause 204, the Minister must require the territorial authority to respond within 20 working days. The legislation should allow for circumstances in which a mandatory 20 working-day deadline for a territorial authority response is unreasonable and may not provide sufficient time for a territorial authority to respond, in light of the wide Ministerial direction power and in the case of circumstances where no investigation or recommendations were made prior to the direction.	If the direction power in clause 204 is retained, amend clause 206(2) to provide a reasonable response deadline or discretion for the Minister to increase the 20 working-day deadline.
cl 207	Incorrect term.	Replace "local authority" with "territorial authority".
cl 209(1)(b)	Incorrect term.	Replace "making" with "approval".
Subpart 3—System performance		
cl 212(2)(c)(i) and (ii)	Incorrect terms.	Correct references to "regional councils" and "environmental limits" (which relate to the NEB not the PB).
cl 213(5)(b)	Clause 213 relates to a strategic review undertaken by the chief executive. Clause 213(5)(b) requires the chief executive to make the review publicly available if, following consultation with relevant iwi and hapū, the chief executive considers that publication is in the interest of supporting learning and continuous improvement. It is unclear: (a) Why strategic reviews, unlike independent reviews and system performance reports, are not automatically	Remove the words "if the chief executive considers, following consultation described in subsection (3) that it is in the interest of supporting learning and continuous improvement" from clause 213(5)(b).

	required to be made publicly available. The criterion of whether making the strategic review publicly available would be "in the interest of supporting learning and continuous improvement" is vague. Making strategic reviews publicly available would support transparency and the sharing of useful information, and it is difficult to see any reason why making them publicly available would be problematic. (b) Why it is necessary to refer to the consultation with relevant iwi and hapū again in this clause, given it is required under subclause (3). It also appears inconsistent to refer to that consultation but not also to the responses of the chief executives referred to in subclause (4). Deletion would improve clarity.	
Subpart 4—Environment Court and Planning Tribunal		
cl 215	Typo.	Replace "the Planning Act 2025" with "this Act".
cl 216	Typo.	Replace "the Planning Act 2025" with "this Act".
cl 227(6)	The word "subpart" is missing after the word "This". The equivalent provision in the RMA, s 309(4) provides: "This Part does not apply to a protected customary right." In this case the relevant part includes subparts that deal with matters other than enforcement, so subpart is the relevant word that should be included in this provision.	Add the word "subpart" after the word "This".

Part 6: Enforcement and other matters		
Subpart 1—Enforcement		
cl 232(1)(k)	The phrase "actual or reasonable costs" should be "actual *and* reasonable costs". The latter is an established legal concept, is used elsewhere in this clause (cl 232(1)(d) and cl 232(2)), elsewhere in the Planning Bill, and is used throughout the RMA.	Change "or" to "and", so that "actual or reasonable costs" reads "actual and reasonable costs".
cl 246(2)	The phrase "actual or reasonable costs" should be "actual *and* reasonable costs". The latter is an established legal concept, is used elsewhere in the Planning Bill, and is used throughout the RMA.	Change "or" to "and", so that "actual or reasonable costs" reads "actual and reasonable costs".
cl 252(1)	The word "who" after the parenthetical words (regarding section 3 of the Search and Surveillance Act 2012) is unnecessary and ungrammatical. The words "reasonable ground to believe" (or "believing") are repeated in the introductory part of clause 252(1) and in clause 252(1)(b) and (c). The latter are unnecessary. "Reasonable ground" should read "reasonable grounds". This is the established legal term, which is used elsewhere in the Bill and in other legislation such as the Search and Surveillance Act.	Remove the word "who". Remove the words "reasonable ground to believe" in clause 252(1)(b) and (c). Change "reasonable ground" in the introductory part of clause 252(1) to "reasonable grounds".
cl 257(4)	It is difficult to see how the defence in clause 257(4) could ever apply when an offence would otherwise have been committed by a principal. If a principal authorised or consented to the act constituting the offence or knew the offence was, or was to be, committed and failed to take all reasonable steps to prevent or stop it (as clause 257(2) requires for liability by a principal),	Remove clause 257(4) as unnecessary.

	then it cannot be the case that the principal did not know and could not reasonably be expected to have known that the offence was to be or was being committed or that the principal took all reasonable steps to prevent the commission of the offence (as clause 257(4) requires for the defence to apply).	
cls 262–263	Clauses 262 and 263 are both headed "infringement offences". The same title for two different (and adjacent) sections is confusing.	Fix duplication.
Subpart 2—Emergency works		
cl 275(3)	The reference to "paragraphs (d) to (f) of subsection (1)" is incorrect. It should be "paragraphs (e) to (g) of subsection (1)".	Change "paragraphs (d) to (f) of subsection (1)" to "paragraphs (e) to (g) of subsection (1)".
cl 275(4)	The reference to "subsection (4)" should be a reference to "subsection (6)". The equivalent provision in the RMA, s 330(3A), refers to "subsection (3)", but in cl 275 of the Planning Bill the equivalent provision is subsection (6).	Change "subsection (4)" to "subsection (6)".
cl 278(1)	Incorrect cross reference: the definition of "actual and reasonable costs" is in clause 232(2), not clause 232(1)(d)).	Change the words "(as defined in section 232(1)(d))" to "(as defined in section 232(2))".
Clause 287(d)	Clause 287(d) refers to "emailing it to the person at an email address", whereas other provisions of the Bill (including within this clause) refer to sending notices to "an electronic address" (see cls 268(1)(e) and (2)(b) and 287(7)(b)).	Change the wording of cl 287(1)(d) to "sending it to the person at an electronic address that is used by the person".

Subpart 3—Regulations		
cl 281(1)(n)	Regulations can be made "prescribing transitional and savings provisions relating to the coming into force of this Act, which may be in addition to or *in place of* any of the provisions of Schedule 1". As earlier identified (NEB, cl 307), this is a Henry VIII power, allowing any or all of the transitional and savings provisions enacted by Parliament to be replaced or altered.	Delete subclause (1)(n), or limit its scope to providing for additional transitional or savings provisions (not provisions "in place of").
cl 282(3)(a)	It is difficult to see why different consent processing timeframes and procedures should apply to different regions. This would seem to defeat the point of national standardisation by region, so it is unclear why the provision that the regulations can apply generally throughout New Zealand or specifically to 1 or more districts or regions has been included.	Delete cl 282(3(a).
cl 283	Clause 283(1) allows the Minister to recommend that levies be paid for: (a) development or review of new national directions; or (b) preparing or maintaining the system performance network. The discretion is not absolute; it is constrained by the purposes set out in subclause (2), and further requirements, which include following the process set out in clause 46, as if the recommendation were for a proposed national direction. However, the safeguards provided in this clause appear fewer than those for the NEB, cl 313. As we commented in regard to	Additional safeguards and transparency measures are needed. Align the drafting of this clause with the NEB, cls 313 and 314 (which we have also recommended should be strengthened).

	the latter clause, in spite of additional requirements under clause 314 of the NEB, the power remains broad. Under clause 183, it is even less constrained, allowing for wide Ministerial discretion. The uses of the money collected from the levies are restricted to those set out in clause 183, but it is not clear what mechanism there is for public oversight to ensure the money is being used for those purposes.	
cl 283(2)(a)	The reference to "national directions" should be to "national direction". Customarily no plural is used when referring to national direction as a whole (as opposed to particular national direction instruments) and a plural is not used elsewhere in the Bill and explanatory note when referring to national direction in this context.	Remove the "s" in "national directions", so it reads "national direction".
Subpart 4—Miscellaneous matters		
cl 290	Clause 290 proposes a significant change by providing for matters to be referred to arbitration. If parties disagree about any matter in respect of which any person has a right of appeal, and all parties agree, a direction to arbitration can be sought from the Environment Court (except in respect of designations or a proposed land use plan). The arbitrator then has the same powers as the permit authority which made the decision The necessity of this proposed approach is doubted. We understand that the Environment Court mediation service has a high record of success (believed to be around 75–80 per cent) in resolving disputed issues. In addition to Environment Court	Delete clause 290.

	facilitated mediation, party-to-party "direct discussion" without a facilitator is increasingly common. Use of a privately-appointed mediator, instead of or prior to Environment Court mediation, is another option. We incline to the view that this initiative is not necessary, given the comparatively low-cost, quick and expert mediation service which the Court already provides.	
cl 290(5)	If clause 290 is retained, read literally, the provision in clause 290(5) ("Except as otherwise expressly provided, nothing in this section limits the right of any persons to refer to arbitration any disputed matter arising under this Act") would appear to mean that it is unnecessary to apply to the Environment Court even where clause 290(1) applies, as clause 290(1) does not expressly provide that it limits the right to refer a matter to which they apply to arbitration. Clause 290(2) also does not expressly limit the ability of persons to refer a matter to arbitration, as it only restricts the ability to apply to the Environment Court. This would render these subclauses pointless and presumably cannot be intended, so matters that these subclauses apply to should be excluded from the scope of clause 290(5). While the wording in the Bill reflects existing wording in the RMA, the interaction between these provisions does not appear to have been fully considered when they were enacted.	Add the words "or where subclauses (1) or (2) apply" after the words "Except as otherwise expressly provided" in clause 290(5), if the clause is retained.
cls 292–293	The Bill "encourages" local authorities to work together to prepare, implement and administer planning documents. Under clause 292, each local authority "must" from time to time consider whether preparing joint documents would have	Consider relocating these provisions.

	the benefits in clause 292(2). The clause also sets out requirements for joint regional and district planning documents. Although this is a sensible initiative, it is difficult to understand why it is located in this part of the Bill instead of Parts 2 or 3.	
cl 294(2)	Incorrect cross reference.	Replace the cross reference in clause 294(2) to "clause 34(1)" with "clause 31(1)".
Schedule 1: Transitional, savings and related provisions		
cl 2	Schedule 1, cl 2 is a guide explaining the approach to transition from the RMA to the PB and NEB. There is potential for confusion about a staged end to transition using more than one Order in Council to enable transition region by region. Interpretation of clause 4 relies on a combination of clause 4(1)(b) (Order in Council for one or more regions) and clause 4(5)(b) and 4(7) (a "final Order in Council"). It would assist in the interpretation of this critical ending of the transition period if a further subclause was added to clause 2 to clarify that either: (a) a single Order in Council will be made specifying the end of the transition period for all regions; or (b) *two or more* Orders in Council will be made specifying the end of the transition period for specified regions (with the last of those completing transition).	Add subclause (3A) to clause 2 as follows or an amendment to similar effect: (3A) There will either be a single Order in Council ending the transition period for all regions at the same time; or two or more Orders in Council ending the transition period for particular regions (with the last of those completing transition).

cl 5(3)	Incorrect cross references. Subclause (3) contains cross references to "section 6.5(a), (b), and (d)", "section 6.5(c)" and "section 6.8(1)(b)" — note the periods in the section numbers.	Correct the cross references.
cl 5(4)	Schedule 1, cl 5(4) specifies time limits for notification of and decisions on draft regional spatial plans in all regions. Effective time limits of 6 months to notify and 6 months to decide are ambitious. This is particularly so when regional and district councils within each region will need to comprehend a new suite of national direction, undertake prescriptive collaboration requirements, and appoint hearing panels. The period of 6 months from notification to decision contains mandatory steps, each with their own timeframes: (a) 20 working days for submissions; (b) 40 working days from close of hearing for the hearing panel to produce their report; (c) 40 working days from the hearing panel's report to notify the decision A 6-month period contains a maximum of 130 working days (if the six months includes Christmas and Easter it could be as few as 112 working days). 100 of those working days are allocated to prescribed timeframes, leaving insufficient time for a hearing panel to schedule exchange of evidence and hold a hearing.	Extend timeframes for the period between notification and decision by a minimum of an additional 30 working days to allow a hearing to be convened and interested parties be given a proper opportunity to be heard. Clarify whether the draft regional spatial plan must be publicly notified within the earlier or the later of the two dates specified in clause 5(4)(a).

	These issues are compounded by the same spatial plan work being undertaken simultaneously on the same timetable nationwide when: (a) there are limited technical experts in many disciplines available to assist councils and submitters; (b) there are limited experienced hearings commissioners (particularly in technical disciplines) available to sit on the hearing panels; and (c) submitters with an interest in more than one region or district (or nationwide) will be required to engage in multiple spatial plan processes (submissions and hearings) all occurring simultaneously. Clause 5(4)(a) also does not specify whether the draft regional spatial plan must be publicly notified within the earlier or the later of the two dates specified.	
cl 5(4)(b)	Incorrect cross references to NEB section numbers.	Correct cross references to sections 22 and 23.
cl 5(5)	Schedule 1, cl 5(5) specifies a time limit of 9 months from decision on a regional spatial plan for notification of land use plans and natural environment plans. Similar issues as identified above for regional spatial plans arise with respect to notification of a wave of land use plans and natural environment plans nationwide close in time.	Consider expanding timeframes to provide a more realistic starting point.
cl 6	Schedule 1, cl 6 provides for an extension to timeframes specified in clause 5 by Order in Council.	Consider expanding timeframes to provide a more realistic starting point.

	While provision has been made for extensions: (a) obtaining a recommendation for extension from the Minister is likely to be onerous; and (b) it is more efficient to provide sufficient and reasonable timeframes in the legislation.	
cl 6	Schedule 1, cl 6 refers to extension of specified timeframes for "a planning instrument" described in clause 5. There does not appear to be a definition of "planning instrument" (although there is one in Schedule 1 for "RMA planning instrument").	Consider defining "planning instrument".
cl 7(3)(a)	Schedule 1, cl 7(3)(a) excludes the statutory requirement to provide a draft of the first national instruments to iwi authorities. It is unclear why iwi authorities would be denied the opportunity to review the draft national instruments and the opportunity to consider and provide advice. This may be an oversight, however such an approach (if intended) is inconsistent with the current process for preparing national direction under the RMA, and does not sit comfortably with the Crown's obligations under the Treaty.	Clarify.
cl 7(3)	Typo.	Correct subclause numbering error (no subclause 2).
cl 8(3)	Schedule 1, cl 8(3) provides for one hearing panel to hear both the first land use plan for each district in a region and the first natural environment plan for the region. The qualifications, skills and experience appropriate to hear a land use plan differs compared to a natural environment plan	Review policy on this point and redraft.

	(for example expertise in noise, transportation or urban development for a land use plan versus air quality or water quality for a natural environment plan). Accordingly, it may be necessary for the panels to be composed of different members/skillsets.	
cl 12(1)(b)	Typo.	Replace “application notice” with “application or notice”.
cl 12(2)	Typo.	Replace “Schedule 9” with “Schedule 11”.
cls 11(b) and 14(2)(a)	Schedule 1, cl 11(b) states that an application under the RMA lodged before the transition period and determined before the specified transition date is treated as granted under the RMA. This appears to conflict with clause 14(2)(a), which states that a consent granted before or during the transition period is treated on the specified transition date as a consent granted under the PB. If the intention is that the consent is treated as granted under the RMA *until the specified transition date* and from that date is deemed a consent under the PB, this should be clarified.	Clarify whether consents granted before the specified transition date remain as RMA consents only until the specified transition date and are then deemed PB consents.
cls 14 and 15	Schedule 1, cls 14 and 15 address how district and regional resource consents respectively are treated on the specified transition date. It is unclear why the two clauses are drafted differently, including differences in headings, reference to deemed consents in clause 14 but not clause 15, and a reference to expiry in clause 14 but not clause 15.	Clarify and amend for consistency.

cl 17(2)	Schedule 1, cl 17 provides that the duration of any resource consent due to expire in the period between Royal assent and 24 months after the specified transition date is extended to the date that is 24 months after the specified transition date. This clause creates an unspecified and uncertain duration for any consent due to expire from the date of Royal assent, because the specified transition date baseline for the replacement expiry date will be unknown for approximately 30 months after Royal assent (i.e. until combined plans are notified). Further, if the specified transition date never occurs due to legislative change, any affected consents would have no expiry date (except water permits which are limited to 35 years). The clause appears to function as a deeming provision at least until 3 months after the specified transition date, given that there is no requirement for councils to update the consent with the extended expiry date until then. Clause 17(2) should specify that the consent is "deemed" to be extended.	Substitute a fixed date for resource consent expiry, with provision for extension by Order in Council if the specified transition date is delayed. Amend clause 17(2) to reflect that consents are "deemed to be" extended.
cl 17(3)	Schedule 1, cl 17(3) says that a resource consent relating to water cannot have a total duration exceeding 35 years, but does not spell out what happens if an extension under Schedule 1, cl 17(2) would breach this 35-year limit. Presumably, the answer is that the resource consent is extended to the date 35 years from its commencement, but this should be made clear.	Provide that the "total" is from the date the consent commenced, if that is what is intended.

cl 17(5)	Schedule 1, cl 17(5) requires councils to update a resource consent to record a (deemed) extended expiry date no later than 3 months after the specified transition date. As noted above for clause 17(2), these consents would have uncertain expiry dates until the specified transition date occurred, and as such the councils could not record the extended expiry dates in the interim. It is however not desirable for there to be no record of large numbers of (deemed) extended consents for several years, including for monitoring and enforcement purposes. Councils should be able to compile a record of all consents due to expire after Royal assent. A reasonable interim measure could therefore be to require councils to take all reasonable steps to maintain a register of consents with (deemed) extended expiry dates from Royal assent until the requirement to update the resource consents is engaged.	Amend clause 17(5) to require councils to take all reasonable steps to maintain a register of consents subject to (deemed) extended expiry dates from Royal assent until the consent is updated to record the extended expiry date.
cl 24(5)	Typo.	Replace “clause 12” with “clause 15”.
cl 25(1)	Typo. There is a missing space in “(2)are”.	Add a space between “(2)” and “are”.
cl 29(1)	Typo.	Replace “Schedule 6” with “Schedule 7”.
cl 29(2)	Typo.	Replace “Schedule 6” with “Schedule 7”.
cl 30	Schedule 1, cl 30, which deals with the continuation of the Environment Court, is expressed as “commencement of this clause” rather than Royal assent, although section 2(1) appears	Clarify.

	to specify that the entirety of Schedule 1 commences on Royal assent.	
cl 31(1)	Schedule 1, cl 31 deals with the transitional jurisdiction of the Planning Tribunal. Commencement of Part 2 of Schedule 11 (RMA amendments relating to the Planning Tribunal) is unnecessarily complex to interpret. It is not listed in clause 2(1)(a) or (b) of the PB and therefore the presumption under clause 2(1) is that it commences on Royal assent. However, Schedule 1, cl 31(1) defers coming into force for Part 2 of Schedule 11 until a date specified by Order in Council, and this sequencing is also referenced in clause 294 (amendments to other legislation). This potentially conflicts with section 2.	Clarify intended commencement and make corrections.
cl 31(2)	Schedule 1, cl 31(2) refers to "review of a specified decision" by the Planning Tribunal. "Specified decision" is not defined but is inferred to be a council decision under the (defined) specified sections.	Clarify.
cl 31(2)(c)	Typo.	Replace "decision for the Planning Tribunal" with "decision of the Planning Tribunal".
cl 31(5)	Schedule 1, cl 31(5) provides that selected RMA objection provisions (the "specified sections" listed in clause 31(5)) are replaced with a right of review to the Planning Tribunal during the transition period.	Clarify.

	It is unclear what if any transitional arrangements are in place for the remaining RMA objection provisions (for example, a section 357(2) objection to strike out a submission).	
General comment	Schedule 1 is unclear as to the status of RMA plan changes and private plan changes during the transition period.	Clarify the status of RMA plan changes and private plan changes during the transition period.
Schedule 2: Spatial plans		
cl 2(2)	Schedule 2, cl 2(2) requires a regional spatial plan be consistent with environmental limits, which are set either by the Minister in national standards or by a regional council in its natural environment plan (see NEB, cl 47). Limits fixed by the Minister do not need separate reference. National standards are national instruments that subclause (b) requires consistency with. For environmental limits fixed in the natural environment plan, clause 12(2) requires that a natural environment plan be consistent with the regional spatial plan, not the other way round. Further, in both the PB and NEB, clause 12(2) only requires a regional spatial plan be consistent with national policy direction if the latter requires that.	Amend to be consistent with clause 12(2) of both Bills.
cl 5(2)	Schedule 2, cl 5(2) contains a paragraph (a), but no paragraph (b), or any other paragraphs. The subparagraphs (i), (ii), (iii), etc can therefore be turned into paragraphs, with the words "have regard to" moved to the introductory part of the clause.	Turn the subparagraphs into paragraphs and move the words "have regard to" to the introductory part of clause 5(2).
cl 5(2)(ix) and (x)	Requiring that a regional spatial plan have regard to natural environment and land use plans is inconsistent with the	Amend to be consistent with clause 12(1) of both Bills.

	hierarchy in clause 12(1) of both Bills. In addition, when the first regional spatial plan is prepared, there will not be a natural environment or land use plan to consider.	
cl 5(4)	The reference to "subclause (2)(b)(ii)", which does not exist, is incorrect. The correct cross reference is to subclause (2)(a)(xiv)(B), but if the rearrangement suggested above is carried out the correct reference would be to "subclause 2(n)(ii)".	Change "subclause (2)(b)(ii)" to "subclause (2)(a)(xiv)(B)" or, if the rearrangement suggested above is carried out, "subclause 2(n)(ii)".
cl 5(5)	The reference to "subclause 2(a)(iii)" is incorrect. The correct cross reference appears to be to subclause 2(a)(v). If the rearrangement suggested above is carried out the correct reference would be to "subclause 2(e)".	Change "subclause 2(a)(iii)" to "subclause 2(a)(v)" or, if the rearrangement suggested above is carried out, to "subclause 2(e)".
cl 6(1)	The power to incorporate material from an operative natural environment or land use plan assumes that there is one.	Insert the word "any" to reflect the fact that when the first regional spatial plan is prepared, there will not be a natural environment or land use plan to consider.
cl 17(6)	Imposing an arbitrary deadline of 40 working days after the close of hearings fails to take account of the likelihood that 40 days is not sufficient time for a properly considered and documented recommendation to be made, particularly for the first such plan in the region. Councils will find it difficult to find qualified panel members prepared to serve if the timeframe is seen to be insufficient.	Amend to impose a more realistic timeframe and provide a power to extend time from it where required.
cl 21(3)	Imposing an arbitrary deadline of 12 months from notification fails to take account of the likelihood that this timeframe may not be sufficient time for a properly considered and	Amend to impose a more realistic timeframe and provide a power to extend time where required.

	documented decision to be made, particularly for the first such plan in the region.	
cl 22	It is not clear whether the obligation to do all things reasonably practicable to achieve consensus in their decision-making applies within a local authority; in other words, can a council approve a regional spatial plan by a simple majority vote of elected members? Based on Schedule 2, cl 22(3), which refers only to "2 or more local authorities" being unable to achieve a consensus, it appears that individual local authorities are intended to be able to make decisions by a simple majority vote and it is consensus between local authorities (and within the spatial plan committee) that the clause is concerned with. But this should be made explicit (or the opposite should be if that is what is intended). See also earlier comments on clauses 69 and 71 in Part 3.	Clarify wording.
cls 22 and 23	Schedule 2, cls 22 and 23 refer to "the prescribed dispute resolution process", but do not define it. It appears that this is intended to refer to a dispute resolution process prescribed in regulations, but this should made clear.	Clarify.
Schedule 3: Further provisions relating to plans		
cl 3	Schedule 3, cl 3 provides that a local authority must prepare or change its plan in accordance with "any existing or initiated Mana Whakahono ā Rohe". As earlier noted under clause 8, and in the introduction: the reference to "any existing or initiated Mana Whakahono ā Rohe" does not allow for any new Mana Whakahono ā Rohe.	Add provisions to Schedule 3 based on subpart 2 of part 5 of the RMA (Mana Whakahono a Rohe: iwi participation arrangements).

	Mana Whakahono ā Rohe agreements are an important means of enabling iwi to exercise their kaitiaki responsibilities and participate in resource management processes, consistent with the Treaty's principles and the rights of iwi under article 2. In the Law Society's view, limiting the recognition of Mana Whakahono ā Rohe to "existing or initiated" agreements would properly have been among the matters considered when undertaking a full Treaty impact analysis. As noted in the RIS, however, the analysis was limited in its scope.	
cl 12	Schedule 3, cl 12 provides that the relevant chief executive can decide whether they agree with the regional council's proposed rule in a plan that controls fishing in an area. Unlike the equivalent provisions in the RMA (Schedule 1, cl 4B), the clause does not state what test the chief executive should apply in making this decision. Currently the test is whether the rule would have an undue adverse effect on fishing: RMA, Schedule 1, cl 4B(3)(a). Under Schedule 3, cl 12, the decision-making power conferred on the chief executive is not constrained by any factors which they are required to consider, or ability for review if the council disagrees with their assessment. There is also no test to apply in decision making, which is to come through regulations. The proposed approach lacks certainty, and inappropriately leaves an important threshold test to secondary legislation. The clause also omits the current requirement for the chief executive to consult Te Ohu Kaimoana: RMA, Schedule 1, cl 4B(3)(b). Given Te Ohu Kaimoana's statutory role regarding Māori fisheries and the need to ensure that the Fisheries	Add provisions to Schedule 3, cl 12 stating that the chief executive must consult Te Ohu Kaimoana and approve the rule only if they are satisfied that it will not have an undue adverse effect on fishing (see Schedule 1, cl 4B(3) of the RMA for the current statutory wording). Otherwise, if an alternative test is intended, that should be set out.

	Settlement is upheld, it would be desirable for Schedule 3, cl 12 to continue to require the chief executive to consult Te Ohu Kaimoana.	
cl 13(3)(a)(i) and (ii)	Consideration of consistency with national policy direction and national standards needs to take clause 12(2) of both Bills into account.	Insert on the end of each subclause, "to the extent required by section 12(2)".
cl 24(1)	It is suggested that provision might more clearly be made for independent hearing panels to convene hearings on a limited range of issues and/or a limited range of submissions.	Provide for limited hearings.
cl 25(1)	The reference to prescribed requirements needs clarification: prescribed by whom, and in what instrument(s)?	Clarify intent and include these additional details.
cl 26(7)	Imposing an arbitrary deadline of 5 months from publication of a summary of submissions and further submissions for independent hearing panels to make recommendations effectively precludes a hearing being convened and may not be sufficient even if no hearing is held. Councils will find it difficult to find qualified panel members prepared to serve if the timeframe is seen to be insufficient.	Impose a realistic timeframe that enables hearings to occur where required. Provide for extensions of the specified time where required.
cl 58(2)(b)	Query why rules protecting outstanding natural landscapes and features are not among the matters listed.	Consider whether rules protecting outstanding natural landscapes and features should have immediate legal effect.
Part 4	The provisions in this Part refer repeatedly to reasonable use of land.	Insert a statement that "reasonable use" is used in the sense defined in clause 105(9) of the PB.

cl 66(2)(a)(iv)	Case law under the RMA has consistently declined to have regard to effects on land value because it is inherently subjective and separation of different impacts on land value is problematic (among other things). Its use in this context is likely to promote litigation. If the reference to land value is retained in this context, it is suggested that it be amended to: (a) relate only to negative effects on land value; and (b) explain what the counterfactual should be — effects on land value compared to what?	Consider whether reference to land value is helpful. If it is retained, clarify how it should be approached, as per comments.
cl 68(7)	The way this subclause is framed implies that a person would not be entitled to relief if any of the specified conditions are not met. Presumably, that is not the intention.	Amend the subclause to state that a person is not ineligible for relief in the circumstances specified in (a)–(d).
cl 69	The drafting of this clause leaves open for future debate (and litigation) as to whether a relief framework must be designed to achieve an approximate equivalence in value between the scale of restriction and the relief. In other words, is this a process to mitigate effects, or to fully compensate for those effects?	Clarify intention.
Schedule 4: Independent hearings panels		
General comment	Throughout the Bill, there are references both to "independent hearing panels" and "independent hearings panels" (as in the title for Schedule 4). Some of these have initial capitals; others do not.	Address inconsistency.

	Similarly (again throughout the Bill), "tribunal" sometimes is given a capital T, and sometimes not.	
cl 1(5)	Typos.	For definition of "central government member", replace "clause 57" with "clause 5". For definition of "local authority member", replace "clause 58" and "clause 59" with "clause 6" and replace "clause 60" with "clause 7".
cl 3(1)(b)(ii)	Typo.	Replace "experience and qualifications levels" with "skills, experience or qualifications", to better reflect clause 2(a).
cl 3(1)(b)(ii)	Schedule 4, cl 3(1)(b)(ii) requires local authorities to appoint a regional spatial plan panel whose membership "meets the experience and qualifications levels directed under clause 2". Clause 2 provides that the Minister *may* issue a direction on the required collective skills, experience or qualifications of members of any independent hearings panel. Clause 3(1)(b)(ii) should be amended to reflect that a direction may not have been made, as for clause 4(1).	Amend clause 3(1)(b)(ii) to reflect clause 4(1): "collectively meets the requirements of any applicable direction under clause 2".
cl 3(2)(a)	Schedule 4, cl 3(2)(a), relating to regional spatial plans, requires local authorities to advise the Minister of the names of members appointed to the independent hearing panel. It is unclear why local authorities must advise the Minister of the appointments. Unlike proposed plans or private plan changes (clause 5), there is no power for the Minister to	Delete clause 3(2)(a).

	appoint central government members to a regional spatial plan panel.	
cl 4(1)	Schedule 4, cl 4(1), relating to proposed plans and private plan changes, requires local authorities to appoint an independent hearings panel whose members collectively meet the requirements of any applicable Ministerial direction under clause 2. Clause 3(1)(b) contains an additional requirement that panel membership must collectively "reflect the expertise required for the matters being considered, informed by the goals of this Act and the Natural Environment Act 2025". Mirroring this requirement in clause 4(1) would ensure that, where no Ministerial direction had been made, strategic guidance nonetheless applies to panel appointments.	Amend clause 4(1) to reflect clause 3(1)(b)(i).
cl 4(3)	Schedule 4, cl 4(3), relating to proposed plans and private plan changes, requires local authorities to advise the Minister of the names of members appointed to an independent hearings panel. It is unclear why local authorities must advise the Minister of the appointments. If it is linked to the clause 5 power for the Minister to appoint central government members to a panel, this should be clarified.	Delete clause 4(3) or amend to clarify that its purpose is to assist the Minister to consider whether to exercise the clause 5 power to appoint central government members.
cl 5	Schedule 4, cl 5, relating to proposed plans and private plan changes, provides a power for the Minister to appoint 1 or more central government members to sit on any panel assigned to a proposed plan change.	The select committee may wish to seek advice on these issues.

	This is a novel power, currently reserved for the streamlined planning process in the RMA. Clause 5 reverses the presumption in the RMA that (other than limited circumstances of Ministerial direction) parties apply to opt in to the prospect of Ministerial appointment of panel members (by applying to use the streamlined planning process). It is unclear why a universal Ministerial appointment power is considered necessary, particularly in light of the clause 2 power for the Minister to issue a direction on the skills, experience or qualifications that members of any independent hearings panel must collectively hold. Clause 5(3) provides that the number of central government members must not exceed the number of local authority members. Ministerial appointments can therefore double the size of a panel and may lead to duplication of skills, qualifications and experience. Clause 5(2) provides 20 working days from notice of formation of the panel to make appointments. Councils will not have prior notice (as they do under streamlined planning process directions) that the Minister intends to appoint members when appointing their own panel members and deciding on the appropriate total number of members. The size of a panel has implications for the cost of funding the panel and hearings, as noted under clause 8.	
cl 8(3)	Schedule 4, cl 8(3) provides that local authorities are responsible for the remuneration and expenses of any panel members appointed by the Minister, the administrative costs of	As above, the select committee may wish to seek advice from officials on these operational points.

	hearings, and the costs of administrative and secretarial support service to the panel. For the reasons stated above with respect to clause 5, local authorities would not have prior knowledge that the Minister may appoint panel members (or how many members) and therefore cannot budget for the additional panel costs. Remuneration and expenses costs for additional panel members could more than double (and may involve additional expenses if the Minister appoints out-of-region panel members who require travel and accommodation expenses). Hearing administration costs also increase to support a larger panel, and larger hearing venues may be required to accommodate the larger panel and may incur greater costs (such as hiring commercial spaces if council venues are no longer large enough). From a practical level too, a larger panel increases the challenges of finding time that all panel members are available, which may then impact ability to meet timeframes and/or require the panel to sit in divisions.	
Schedule 5: Designations		
cl 1	Schedule 5, cl 1 provides various definitions. There are a range of definitions related to infrastructure. Rationalisation of these definitions is recommended. This includes that infrastructure is defined in this clause for the purpose of designations, but it is not clear whether this definition also applies to the goals in clause 11 of the Bill.	Rationalise various infrastructure-related definitions used throughout the Bills.

cl 9(k)	Typo: a missing space in “afire”.	Change “afire” to “a fire”.
cl 13	Schedule 5, cl 13 outlines the requirements of a notice of proposed designation. However, there is a potential disconnect between clause 13(2)(e), which requires an assessment of the strategic need for a project, with the exclusion of consideration of demand or viability in clause 14(1)(d) of the Bill.	Clarify that the exclusion in clause 14(1)(d) does not prevent a designating authority from seeking to rely on such matters.
cl 21(2)	Schedule 5, cl 21(2) does not make grammatical sense: it is a run-on sentence. It may be intended to say: “However, sections 119, 120, and 121 do not apply if the territorial authority is the designating authority responsible for the proposed designation.”	Amend the subclause so that it makes grammatical sense, for instance so that it states: “However, sections 119, 120, and 121 do not apply if the territorial authority is the designating authority responsible for the proposed designation.”
cl 33	Schedule 5, cl 33 addresses the circumstances where a Spatial Plan Committee may accept an application for a designation. The test includes a threshold of "national or regional significance". It is unclear why this additional threshold has been introduced.	Clarify whether this is intended to create an additional threshold for designations, particularly given that terms such as core infrastructure are used elsewhere.
cl 42	Schedule 5, cl 42 addresses the approval process for a person to use land subject to a designation. Clause 42(3) provides a 40 working-day timeframe after receiving the application for the designating authority to respond, and clause 42(4) provides that if a response is not provided the request is deemed to be approved without conditions. Given the significant implications of a failure to respond, greater clarity should be provided as to how a request is to be made, and how clause 287 regarding service of documents might apply (for example, whether a request can be sent to anyone within the organisation, or each	Provide clarity about what constitutes receipt of an application.

	designating authority needs to provide a specific email address for requests).	
cl 43	Schedule 5, cl 43 addresses the approval process for a later designating authority to use land subject to an earlier designation. Clause 43(2) provides a 40 working-day timeframe after receiving the application for the designating authority to respond and clause 43(4) provides that if a response is not provided the request is deemed to be approved without conditions. Given the significant implications of a failure to respond, greater clarity should be provided as to how a request is to be made, and how clause 287 regarding service of documents might apply (for example, whether a request can be sent to anyone within the organisation, or each designating authority needs to provide a specific email address for requests).	Provide clarity about what constitutes receipt of an application.
cl 51	Schedule 5, cl 51 enables a designating authority to temporarily transfer a designation to another designating authority. It is anticipated that this is intended to address the situation where the relocation of other infrastructure is required to facilitate an infrastructure project, and respond to case law regarding the limits on a notice of requirement covering works for third-party infrastructure. However, it is unclear whether this will fully address that issue, given that there may be issues that then arise as to whether the relocation of third-party infrastructure could be within the scope of a designation, and also how much flexibility is provided as to the relocation of that infrastructure.	Clarify that relocation of other designating authority infrastructure can be covered by a designation, and the scope of the relocation enabled by this clause.

Schedule 6: Information required in applications for consent		
cl 6	As noted in regard to the NEB, Schedule 2, cl 5, clause 6 sets out specific information that is required for an AEE. There is a material new qualification: information included "need only address a matter to the extent that the information is relevant to the provisions of a land use plan or proposed land use plan or national rule".	Consider whether the substantive requirement to assess effects should be qualified in a similar way, e.g. include a requirement that *effects* must be directly connected to a plan or national rule (note: this reflects an understanding that the intention of the legislation is for plans and national standards to be more directive and reduce the scope for broad discretion at the consenting stage). Without a similar qualification, there is a disconnect between the AEE requirements (which only require information relevant to a plan or national rule) and the substantive assessment when it comes to effects. The remoteness issues relating to "end use" effects considered by the Supreme Court in the *Otakiri Springs* case remain a matter of concern to some practitioners. Alternatively, it may be sufficient to address the remoteness issue indirectly through the proposed requirement that any condition imposed must be directly connected to an applicable provision in a rule, as is currently proposed in the NEB, cl 168(2)(b).
Schedule 7: Further provision relating to subdivision and reclamation		
cl 21(5)	There is an incorrect cross reference in this subclause to "section 3.4".	Correct the cross reference.
cl 28	There is an opportunity to address current issues arising from road vesting on subdivisions, as earlier discussed (front section of submission from 7.1).	Redraft clause 28(2) as follows: (2) The persons who must give written consent are—

		(a) in the case of land subject to the Land Transfer Act 2017: (i) in relation to land to vest as road, every registered owner of that land, and every mortgagee and encumbrancee registered against the record of title for that land; and (ii) in relation to land to vest as a reserve, every registered owner of an interest in the land except for the registered owner of a specified interest in the land which the territorial authority has certified, on the survey plan, shall remain with the land, under clause 33(3); or (b) in the case of land not subject to that Act, every registered owner with an interest in the land, including any encumbrance, as evidence by an instrument registered under the Deed Registration Act 1908.
cl 35	Schedule 7, cl 35 relates to the variation or cancellation of a consent notice. According to clause 35(3), clauses 109–148 and 158(3)–163 apply, but there is no activity status allocated to the application.	Make it clear whether applications are discretionary activities or not.
cl 39	Esplanade reserves and esplanade strips can be granted for protection of "conservation values", which is not defined. An open list of the type of things included is provided.	A clear definition of conservation values should be provided to avoid uncertainty.
cl 54	Variation of an easement for an access strip can be granted by a local authority with agreement by the landowner, but without reference to Property Law Act provisions.	Clarify whether, and if so how, the Property Law Act provisions relating to variation of easements apply.

cl 54(3)	It is unclear what appeals are being referred to, as there is no other reference to appeals in this clause.	Clarify/correct.
Schedule 8: Enforcement matters		
cl 20	In clause 20, providing for "adverse publicity orders", the phrase "take any specified action to publicise" in subclause (2)(a) is overly broad and potentially onerous. For example, does this extend to TV advertising, skywriting, etc? Further, there is no indication on who bears the cost of publication (presumably the respondent). There is also a tension with clause 20(6). On issues of non-compliance, the clause purports to make the standard for the adverse publicity order "balance of probabilities". While the qualifying enforcement action might be one only subject to the civil standard (for example, an application for a pecuniary penalty), that will not invariably be the case.	The standard in clause 20(6) should be indexed to the main proceeding. If an offence is charged, then that offence must be proven beyond a reasonable doubt before it can be the subject of an adverse publicity order. If a civil/quasi-civil proceeding is initiated, then the lower standard of proof (balance of probabilities) would suffice.
cl 29	This clause, relating to "monetary benefit orders", raises an issue of how to take account of the "monetary benefit order" at sentencing. To illustrate: if a hypothetical offender is found to have benefitted by $200,000 by reason of offending, and the Court is satisfied of that amount on the balance of probabilities, then an order can be made (subject to financial capacity) to pay $200,000 to the prosecuting agency. Such payment is not, however, the sentence. In fixing the sentence, the Sentencing Act 2002 only recognises financial	Explicitly provide how any monetary benefit order will be factored in if there is also a sentence to be imposed (i.e. View 1 or View 2), and add in wording accordingly.

	capacity and reparation (which is a different order, under the Sentencing Act). On one view (View 1), paying back a "benefit" reaped from environmental offending is restorative. On this view, an offender could get credit for that (i.e. a reduction in sentence). On another view (View 2), the benefit was never legitimately the offender's anyway — they never should have had it, but for their offending. To give away something that was not yours in the first place is not a true detriment, so the offender should not receive credit. The Bills do not address this issue. We recommend that it is addressed, because it involves a policy decision that it would be preferable not to leave sentencing judges to resolve. We note that one argument in favour of View 2 is that it is consistent with the proceeds of crime regime. In addition, if View 1 is applied, then it can lead to perverse outcomes — because if greater benefits are reaped from more serious offending, the bigger the discount received on sentencing when the benefit is required to be repaid.	
Schedule 9: Environment Court		
cl 8	Schedule 9, cl 8 relates to the appointment of Environment Court judges. The corresponding section 250(5) of the RMA required the Attorney-General to publish information explaining the process for seeking expressions of interest for the appointment of Environment Court judges and for nominating appointees. This	Consider whether the Bill should contain a clause or subclause equivalent to RMA, s 250(5).

	requirement is absent from clause 8 and does not appear to be elsewhere in the Bill.	
cl 12(3)	Schedule 9, cl 12 deals with restrictions on Environment Court judges: (a) practising as lawyers; and (b) undertaking other employment or holding other offices. Clause 12(3) provides that the Chief Judge may approve other employment or another office. To be consistent with clause 12(1) this should be expressly limited in clause 12(3) as not extending to approval to practise as a lawyer.	Clarify.
cl 29	The heading format of clause 29 should mirror clause 30 heading format.	Replace "Powers conferred by Chief …" with "Powers conferred *on Environment Commissioner* by Chief …".
cl 44	Schedule 9, cl 44 states that the court and judges have the District Court's civil jurisdiction powers. Clause 44 has not carried over the specific power from section 278(1) and (1A) of the RMA with respect to commissioning an independent expert. It is uncertain whether this is intended to be implicit in clause 45(1) conferring the same powers as the original decision maker, given that the local authority has the power to commission reports (PB, cl 120).	Consider and, if needed, clarify.
cl 49(1)(a) and (b)	There are cross-referencing errors to clause 83 and/or inversion of "submission" and "request" cross references.	In clause 49(1)(a)(i) replace "83(1)(a)" with "83(1)(b)". In clause 49(1)(a)(ii) replace "83(2)(a)" with "83(1)(a)". In clause 49(1)(b) replace "83(1)(b)" with "83(1)(c)".

cl 53(4)	Schedule 9, cl 53(4) relates to limitations on the right to become a party to proceedings on the basis of an interest greater than the general public "subject to any statutory limitations placed on a person's options to oppose trade competition". Compared to the RMA, the PB and NEB have dispersed provisions setting out those statutory limitations. It would assist interpretation of the PB and NEB to include explanatory cross references to those provisions in clause 53(4).	Add cross references to PB and NEB provisions setting out the statutory limitations (likely to be PB, cls 14(1)(b) and 138(1)(a) and NEB, cls 148(2)(d) and 155(1)(d)).
cl 59(4)	Schedule 9, cl 59(4) requires those participating in ADR to comply with the "prescribed process (if there is one)". The prescribed process for ADR under the RMA was previously in part specified under the RMA, s 268A and in part set out in the Practice Note. Is it intended that the "prescribed process" is now set in regulations and/or a new Practice Note?	Clarify.
cl 64(4)	Typo.	Replace "spoken inte reo" with "spoken in te reo".
cl 70	Schedule 9, cl 70 specifies who may take an affidavit or statutory declaration to be used in the Environment Court. The clause repeats clause 33 and clause 40 with respect to Environment Commissioners and the Registrar.	Clarify duplication.
cl 72	Typo.	Replace "appealed against" with "appealed".
cl 74(1)(b)	Schedule 9, cl 74(1)(b) deals with restrictions on other reviews of decisions where there is a right of appeal to the Environment	Amend clause 74(1)(b) to add reference to the Planning Tribunal.

	Court. Reference to appeal from the Planning Tribunal has been omitted.	
cls 76 and 4	Schedule 9, cl 76 relates to judicial notice of sealed documents. Clause 76 and clause 4 both relate to the seal of the Environment Court. These matters were previously addressed in a single section (RMA, s 298). It is suggested that it would be preferable to relocate clause 76 and merge it with clause 4. The wording in the corresponding clause 3 of Schedule 10, with respect to applying the seal physically or electronically, should also be replicated in Schedule 9 for consistency.	Relocate clause 76 and merge with clause 4. Amend to mirror the wording in Schedule 10, cl 3 with respect to applying the seal physically or electronically.
cl 77	Schedule 9, cl 77 addresses appeal rights from the Environment Court to the High Court. It does not record the exclusion of appeal rights where the Environment Court has made a decision on appeal from the Tribunal, found in the corresponding clause 34(4) of Schedule 10. Clause 28(1) of Schedule 2 and clause 39(1) of Schedule 3 state that with respect to decisions on regional spatial plans and land use plans respectively, appeals are from the Environment Court direct to the Court of Appeal.	Record in clause 77 the exclusion of appeal rights where the Environment Court has made a decision on appeal from the Tribunal. Amend relevant provisions as needed to clarify appeal pathways.
cl 87(2)(a)	Schedule 9, cl 87 deals with applications for waivers and directions. Clause 87(2)(a) is missing words, as it refers to "in relation to a waiver, that" but (2)(b) then states "for any *other* waiver". (The	Clarify clause 87(2)(a) missing words. Add an explicit power for waiver applications to be made in advance of filing.

	precursor section 281(3) of the RMA applied the same tests to waivers of time for lodging with the court.) Clause 87 could be clarified to provide explicitly for waiver applications to be made in advance of filing an appeal. This would reflect the current practice of the court in considering waivers for matters prior to filing for large or complex matters, such as waiving the requirement to attach a copy of a large council decision where it is available online and alternative service arrangements such as council website hosting copies of all appeals rather than serving on parties.	
cl 89(4) to (6)	Schedule 9, cl 89(4) to (6) deal with presumptions and considerations relevant to costs awards. These clauses are duplicative and confusing.	Amend clause 89(4)(a)(ii) to delete reference to (1)(d), as (4) should only apply to clause 89(1)(a) and (b). Merge clause 89(5) and (6) by replicating the structure of clause 89(4) to apply to (1)(d).
cl 93(1)	Typo.	Amend to make cl 93(1)(a) and (b) consistent with respect to "20 or more" and "at least 2".
Schedule 10: Planning Tribunal		
cl 3	Schedule 10, cl 3 relates to the Planning Tribunal sealing documents. The heading of clause 3 says "Planning Tribunal to use seal of the Environment Court" but clause 3(1) says the Tribunal is to have a seal.	Clarify.

cl 4(1)	Schedule 10, cl 4(1) states that the chairperson of the Planning Tribunal may be appointed by the Governor-General on the recommendation of the Minister. We acknowledge that the drafting of Schedule 10 has been drawn from the provisions governing the Copyright Tribunal in the Copyright Act. The Planning Tribunal is however stated to be a division of the Environment Court (clause 2(2)). We query whether it is appropriate that the chairperson of a division of a court is a Ministerial appointment. Environment Court judges and Environment Commissioners are appointed on the recommendation of the Attorney-General (see Schedule 9, cls 8 and 22) with Environment Commissioners deemed to be adjudicators in the Planning Tribunal (clause 7(3)).	Amend to mirror Schedule 9, cl 22(2)(a) with appointment by the Governor-General on the recommendation of the Attorney-General.
cl 4(2)	Schedule 10, cl 4(2) requires the Minister to consult with the Minister of Justice (and may consult any other Minister they think necessary) before recommending the appointment of a chairperson. The corresponding Environment Court provision, Schedule 9, cl 22(2)(b), requires the Attorney-General to consult the Minister for the Environment and the Minister for Māori Development.	Amend to mirror Schedule 9, cl 22(2)(b) with a requirement for the Attorney-General to consult the Minister [for the Environment] and the Minister for Māori Development.
cl 4(5)	Schedule 10, cl 4(5) provides that a chairperson is appointed for a term of 5 years but may be reappointed. The corresponding Environment Court provision, Schedule 9, cl 22(3)(b), provides for reappointment "any number of times".	Amend to mirror Schedule 9, cl 22(3)(b) by clarifying that the chairperson may be re-appointed "any number of times" or clarify otherwise.

cl 5	This clause contains a note stating “Compare:” at the bottom of it, but no cross reference to a section in previous legislation is included.	Add a cross reference to previous legislation or remove the “Compare:”.
cl 5(2)	Schedule 10, cl 5(2) deals with conditions for delegation from the chairperson to an adjudicator. It would be desirable for clause 5(2) to more closely mirror section 209A of the Copyright Act with the addition of further qualitative criteria.	Amend to mirror section 209A of the Copyright Act. After “an adjudicator who would be eligible to be appointed as the chairperson”, add “… and the chairperson is satisfied has the necessary capability, skills and experience to perform or exercise those functions, duties and powers”.
cl 5(3)(a)	Schedule 10, cl 5(3)(a) relates to the functions of the chairperson with respect to conducting the business of the Tribunal. The phrase “overseeing, liaising, and advising on the rostering and performance of adjudicators” is unclear. Is it intended that the chairperson is overseeing the performance of adjudicators, and liaising with and advising the Chief Environment Court Judge on the rostering of adjudicators?	Clarify.
cl 5(3)(d)	Schedule 10, cl 5(3)(d) relates to the functions of the chairperson with respect to liaising with “other parties”. It is unclear which “other parties” the chairperson would “liaise” with, including with reference to the phrase “(including complaints)” which is presumably intended either to say “complainants” or “about complaints”.	Clarify.

cl 7(1)	Schedule 10, cl 7(1) states that adjudicators of the Tribunal may be appointed by the Governor-General on the recommendation of the Minister. Comments as for Schedule 10, cl 4(1).	As for clause 4(1), amend to mirror Schedule 9, cl 22(2)(a) with appointment by the Governor-General on the recommendation of the Attorney-General.
cl 7(2)	Schedule 10, cl 7(2) requires the Minister to consult with the Minister of Justice (and enables them to consult any other Minister they think necessary) before recommending the appointment of an adjudicator. Comments as for Schedule 10, cl 4(2).	As for clause 4(2), amend to mirror Schedule 9, cl 22(2)(b) with a requirement for the Attorney-General to consult the Minister [for the Environment] and the Minister for Māori Development.
cl 7(4)(b)	Schedule 10, cl 7(4)(b) refers to "the relevant skills and experience in 1 or more of the following areas of practice". The use of the definite article at the beginning of this phrase makes it seem like the skills and experience that are relevant are set out elsewhere, which they do not appear to be. Omitting the definite article at the beginning of this phrase would make this subclause clearer. Clause 7(4)(b)(viii) provides that persons recommended to adjudicators must have relevant skills and experience in 1 or more areas of practice including "matters relating to Māori interests". The corresponding Environment Court provision, Schedule 9, cl 24(2)(f), is phrased as "matters relating to te Tiriti o Waitangi / the Treaty of Waitangi and kaupapa Māori". As the Tribunal is a division of the court, the Planning Tribunal and Environment Court provisions should be consistent.	Omit the word "the" before "relevant". Replace the phrase "matters relating to Māori interests" with the text from Schedule 9, cl 24(2)(f) "matters relating to te Tiriti o Waitangi / the Treaty of Waitangi and kaupapa Māori".

cl 7(6)(a)	Schedule 10, cl 7(6)(a) provides that an adjudicator may be reappointed. The corresponding provision in section 207(3A) of the Copyright Act addresses completion of proceedings by a Tribunal member after the expiry of their term, and PB, cl 25(2) of Schedule 9 addresses continuing in office until a successor is appointed.	As above proposed for clause 4(4), amend this clause to mirror Schedule 9, cl 22(3)(b) by clarifying that an adjudicator may be reappointed "any number of times" or clarify otherwise. Amend to mirror the Copyright Act, s 207(3A) and PB, cl 25(2) of Schedule 9 with respect to continuation in office.
cl 7	Schedule 10, cl 7 does not specify whether adjudicators can work part time and whether they can hold other office (except for the explicit role of Environment Commissioners as deemed adjudicators) or continue to work as lawyers or resource management practitioners while appointed as an adjudicator. Schedule 9 addresses provision for and restrictions on Environment Court judges holding other office or other employment, including a specific restriction on practising as a lawyer (clause 12), but does not specify whether Environment Commissioners can hold other office or undertake other employment. This compares with the Copyright Act, which specifies that Tribunal members may concurrently hold any other office (s 207). It would be desirable to clarify whether Tribunal members are intended to be precluded from undertaking other legal or resource management work, particularly as the likely candidates for adjudicator appointment are RMA hearings	Clarify.

	commissioners, only a few of whom work full time as commissioners.	
cl 8	Schedule 10, cl 8 deals with removal from office of the chairperson or an adjudicator. Clause 8 does not address resignation, which is dealt with in the corresponding provisions of section 208 of the Copyright Act and PB, Schedule 9, cl 34.	Amend to address resignation and mirror section 208 of the Copyright Act and PB, Schedule 9, cl 34.
cl 10	Suggested drafting improvement.	In light of the opening words "Whether or not a hearing is required", replace "to hear and determine" with "to determine".
cl 12	Suggested drafting improvement.	Delete "under this Act" or widen to "or the Natural Environment Act".
cl 13(1)	Suggested drafting improvement.	Replace "primarily authorised" with "authorised".
cl 13(1)(a)	Schedule 10, cl 13(1)(a)(ii) needs a "for" at the beginning of it to make sense. As clause 13(1)(a)(i) already as a "for" at the beginning of it, the word "for" can be moved to the end of the introductory part of clause 13(1)(a) to apply to both subparagraphs.	Move the word "for" to the end of the introductory part of clause 13(1)(a).
cl 13(3)	Schedule 10, cl 13(3) deals with applications to a local authority to review or reconsider a matter within the Tribunal's jurisdiction. The opening words of clause 13(3) "Without limiting the ability of a person to make an informal approach to a local authority on a matter of concern" are uncertain and unnecessary, as the	Delete "Without limiting the ability of a person to make an informal approach to a local authority on a matter of concern".

	restriction in the subclause is on making an application, not making an informal approach.	
cl 14(d)	Schedule 10, cl 14 lists the local authority decisions that are eligible for review by the Tribunal. Clause 14(d) relates to a decision not to notify "if there are reasonable grounds for the view that other permits or consents will be required for the proposal". This phrasing, while reflecting section 91 of the RMA, is confusing in this context which focuses on the type of decision eligible for review. Whether or not reasonable grounds are made out is part of that review.	Replace "if there are reasonable grounds for the view that" with "on the grounds that".
cl 15(2)(b)	Suggested drafting improvement.	Replace "requests for further information in relation to a private plan change" with "applications for a private plan change" for consistency with (a) and (c).
cl 16(1)	Schedule 10, cl 16 outlines the process for notification decisions to be challenged. Subclause (1) provides that this is available to any person who qualifies as an applicant. However, the current drafting does not provide for the person applying for the resource consent or designation to challenge a notification decision — for example, if the council decided to publicly notify the application and the applicant disagreed. Subclause (1) also provides timeframes for applications for review to be made. These timeframes are based on the date of notification of the decision; however, subclause (1)(a) refers to notification of an application that was not publicly notified to the applicant, whereas subclause (1)(b) refers to notification of	Consider whether an applicant for a consent, permit or designation should also be able to challenge a notification decision. Consider workability of timeframes within subclause (1). Clarify what "that decision" is intended to refer to.

	a publicly notified application to the person who made the application. In these subclauses: (a) Subclause (1)(a) presumably should refer to the person seeking a consent, permit or designation to match the language in subclause (1)(b), particularly as a substantive decision would not be notified to other persons. (b) It is not clear how a person who was not notified would become aware of the decision and therefore it is not clear whether the timeframes in subclause (1) are workable. (c) It is not clear in subclause (1) what "that decision" refers to.	
cl 16(2)(b)	Schedule 10, cl 16(2)(b) precludes review by the Tribunal of a notification decision if a rule (in a national standard or plan) "specifies that notification is required or precluded". Clause 16(2)(b) requires clarification that review by the Tribunal is only precluded where the notification decision accords with the rule. Otherwise, review would be precluded in circumstances where an applicant considers that a council has made a notification decision contrary to such a rule.	Amend by adding "… and the notification decision accords with that rule."
cl 16(3)	Suggested drafting improvement.	Replace "make an order" with "make an order or orders".
cl 16(3)	Schedule 10, cl 16(3) lists the orders that the Tribunal may make after reviewing a notification decision.	Add an additional order confirming the local authority's notification decision, or clarify that the Tribunal would

	The list excludes an order confirming the local authority's notification decision.	address such circumstances by declining to make the order/s sought.
cl 16(4)	Suggested drafting improvement.	Replace "applicant for permit or consent" with "person seeking a consent, permit or designation" for consistency with cl 16(1)(b).
cl 16(1)	Suggested drafting improvement.	Replace "applicant" with "review applicant" for clarity and to avoid confusion.
cl 16(4)	Schedule 10, cl 16(4) deals with the applicable statutory timeframe if the Tribunal replaces the council's decision not to notify with a decision to notify. Clarify that the requirement to comply with the applicable statutory timeframe commences from the date of the Tribunal decision.	Clarify.
cl 16(5)	Schedule 10, cl 16(5) deals with the timeframe for processing an application where the Tribunal overturns a decision to notify. Clause 16(5) should be split to address two distinct scenarios: (a) The Tribunal overturns a decision to notify and replaces it with a decision not to notify. (b) The Tribunal overturns a decision to publicly notify and replaces it with a decision to limited notify, or vice versa. It appears that clause 16(5) is intended to address (a), but there is no applicable provision addressing (b).	Split clause 16(5) to address scenarios (a) and (b).

cl 16(7)	Suggested drafting improvement.	Replace "within the statutory time frame and the consent holder is entitled to exercise the resulting permit or consent" with "within the statutory time frame and, *if the permit or consent has been granted,* the consent holder is entitled to exercise the resulting permit or consent".
cl 16(8)	Suggested drafting improvement.	Replace "applicant" with "review applicant" for clarity and to avoid confusion.
cl 16(8)	Schedule 10, cl 16(8) states that to qualify as an applicant, a person must be a "qualifying resident (within the meaning (if any) in this Act". This phrase contains a typo: a missing closing bracket. This clause also contains a note stating "Compare:" at the bottom of it, but no cross reference to a section in previous legislation is included. For the Law Society's further comments on the proposed definition of a "qualifying resident", see above, clause 3 of both Bills. The reasons why this Schedule would not simply rely on the primary definition are unclear.	Insert closing bracket. Add a cross reference to previous legislation or remove the "Compare:". Consider removing the separate definition in this clause, and/or review the consistency of the definitions.
cl 17	Schedule 10, cl 17 addresses review by the Tribunal where an application has not been progressed by the council within a statutory timeframe. It is unclear whether clause 17 is only intended to apply where the application has not yet been determined by the council. This should be clarified in clause 17(2) or (3).	If clause 17 is only intended to apply where the application has not yet been determined, specify this in clause 17(2). If not, amend cl 17(3) by adding opening words "If the local authority has not already issued its decision on the application, and …".

cl 18	Schedule 10, cl 18 deals with the Tribunal's power to refer the parties to alternative dispute resolution. It is unclear whether the parties can decline ADR. It may unreasonably extend the Tribunal process, which is intended to be fast. We also query, as with clause 20 below, whether this clause could or should be relocated to the part of Schedule 10 dealing with procedural matters (currently intermingled with types of review).	Clarify parties' ability to decline ADR. Consider relocation of this clause.
cl 19(1)	Schedule 10, cl 19(1) deals with review of council decisions to extend a statutory timeframe for permit and consent applications. It is unclear if clause 19(1) should also apply to designations.	Clarify.
cl 19(2)	Schedule 10, cl 19(2) specifies that the Tribunal may review a decision to extend a statutory timeframe "if the extension was made on the basis of special circumstances". It is unclear whether clause 19 review is *only* available for extensions made on the basis of special circumstances.	Clarify.
cl 20	As above with clause 18, consider whether this clause should be relocated to part of Schedule 10 dealing with procedural matters (currently intermingled with types of review).	Consider relocation.
cl 22(1)	Suggested drafting improvement.	Replace "interpretation of the conditions of a permit or consent" with "interpretation of a condition or conditions of a permit or consent".

cl 23	Suggested drafting improvement.	In the heading, replace “granting regulatory relief” with “considering regulatory relief”.
cl 23	Typo. Note that there is no clause 23(2).	Correct reference.
cl 23(3)	Schedule 10, cl 23(3) addresses the Tribunal’s “primary considerations” in undertaking the review. If there are stated “primary considerations”, it is unclear whether there are also other considerations, or whether clause 23(3) should be drafted more directly.	Replace “In undertaking such a review, the Tribunal’s primary considerations are whether …” with “The purpose of the review is to determine whether …”.
cl 23(4)(b)	Suggested drafting improvement.	Replace “consider whether an alternative relief mechanism would …” with “consider whether an alternative relief mechanism *in the relief framework* would …” for consistency with clause 23(5).
cl 24(1) and (2)	Schedule 10, cl 24(1) and (2) state that review of a local authority decision by the Tribunal “applies only if” the application was dealt with non-notified, or was limited or publicly notified but no submissions were filed by a third party. Clause 24(1) and (2) appear to define limited eligibility for all applications for review by the Tribunal (as this is consistent with the Explanatory Note). If that is the intent, clause 24 should be moved up as a primary clause to avoid confusion.	If clause 22 defines eligibility for review, relocate as a primary clause in the schedule for clarity.
cl 25(1)	Schedule 10, cl 25(1) deals with the Tribunal’s procedures.	Review drafting language.

	We query whether it is appropriate that the Tribunal's power to regulate its own procedure is expressed as subject to being "directed" by its own practice note. The Environment Court's practice note is expressly stated to be a "guide" to court procedures. The Copyright Act states that its Tribunal will regulate its procedure subject to practice notes but also says that practice notes are for guidance: ss 214(5) and 224(2).	
cl 27(4)	Schedule 10, cl 27(4) deals with requests to accept applications for review of notification decisions out of time. It may be preferable to relocate clause 27(4) to a separate section, to reflect that it is a power of the chairperson rather than relating (as all other subclauses do) to steps that review applicants must take.	Relocate.
cl 28(2)	Schedule 10, cl 28(2) deals with circumstances in which the presumption that applications will be determined without a hearing will be reversed and a hearing held. As drafted clause 28(2) is conjunctive, requiring both: (a) a finding by the chairperson that a hearing is required in the interests of justice; and (b) a request by a party for a hearing agreed by the adjudicator. There may be circumstances where the parties have not requested a hearing but the adjudicator and chairperson agree that one is required. It would be useful to clarify whether it was intended that a party request for a hearing agreed by the	Clarify, and either make it clear that a hearing occurs only if both (a) and (b) apply, or redraft as "or".

	adjudicator would be sufficient (such that (a) and (b) should be expressed disjunctively as "or"). A disjunctive approach is consistent with the corresponding section 122L(1) of the Copyright Act.	
cl 28(3) to (6)	Schedule 10, cl 28(3) to (6) state that the chairperson may order a rehearing in the Tribunal if required in the interests of justice. The corresponding provision, clause 73 in Schedule 9, states that rehearing is only available to address new evidence or a change in circumstances. The provisions for the two divisions of the court should align unless there is reason for the difference. Schedule 10, cl 28 also contains a note stating "Compare:" at the bottom of it, but no cross reference to a section in previous legislation is included.	Consider alignment of Schedule 10, cl 28 with Schedule 9, cl 73. Add a cross reference to previous legislation or remove the "Compare:".
cl 29	Schedule 10, cl 29 deals with legal representation at hearings which may be "permitted" by the adjudicator if required in the interests of justice or because the matter requires a level of expertise that the parties do not have. In cases requiring expertise, merely "permitting" legal representation will not ensure that it is engaged and there is not currently provision in Schedule 10 for appointment of counsel to assist the Tribunal (as there is in section 214(2) of the Copyright Act). If there is intended to be a presumption that legal representation is precluded except by direction of an	Consider amending to provide for legal representation.

	adjudicator (as in section 122M of the Copyright Act), clause 29 should be clarified. We note, however, that it is currently common practice for RMA objections to be prepared, lodged and progressed by lawyers or planners. There is a risk that, if there is intended to be a presumption against legal representation at hearings, few applicants will have the skills and experience to engage with the complex issues and obtain a fair hearing without expert assistance or legal representation. This is particularly so for review of notification decisions which are currently progressed by judicial review to the High Court (not by objection to the council), but are now to be brought down to review by the Tribunal. The law on notification decisions is complex and the consequences of a review decision are serious for the parties (such as determining the right to be a party to the substantive application and any later appeal). The right to a fair hearing will be particularly undermined for review of notification decisions if there is a presumption against legal representation. Given the presumption against hearings, it is suggested that legal representation should be permitted where hearings do occur without the requirement for leave from the adjudicator.	
cl 30	Schedule 10, cl 30 deals with orders to protect sensitive information. The proposed draft is inconsistent with the clause 295 grounds for an order to protect sensitive information by only referring to some information and omitting reference to tikanga Māori and wāhi tapu.	Amend to cross-refer to clause 295 or mirror the language of clause 17 of Schedule 9.

cl 31(1)	Schedule 10, cl 31 provides for applications to strike out proceedings or conditions of a permit or consent. It is suggested that clause 31 should be split so that it only addresses strike out of proceedings, consistent with the clause heading and subclause (2). Strike out of conditions of a permit or consent should be moved to a new clause. We note that the Explanatory Note groups strike out of conditions with other reviews or challenges to local authority decisions.	Split clause 31(1) and relocate strike out of conditions.
cl 31(2)	Schedule 10, cl 31(2) sets out the grounds for striking out an application for review. The language of clause 31(2) should be consistent with the corresponding clause 18 of Schedule 9.	Amend for consistency with clause 31(2) of Schedule 9.
cl 32	Schedule 10, cl 32 addresses orders for costs. Clause 32 provides for a variety of costs orders in several different circumstances. As drafted the clause is confusing and inconsistent with the corresponding cl 89 of Schedule 9 and section 222 of the Copyright Act. Clause 32(2)(a) and (b) as drafted refer to knowledge and intent which will be difficult to establish. The clause should be redrafted to be more clear, concise and consistent. A suggested redraft is provided.	Redraft clause 32 as follows: **32 Planning Tribunal may order costs** (1) If, in the opinion of the Tribunal, a proceeding or a party's conduct falls into one of the categories in **subclause (2)** the Tribunal may order the payment of costs and expenses, or part of costs and expenses, in accordance with **subclause (3)**. (2) The categories are: (a) The proceeding is frivolous or vexatious;

		(b) Not withdrawing a proceeding after being advised by the Registrar that the proceeding is not within the Tribunal's jurisdiction; (c) Failing to comply with an order given by the Tribunal; (d) Failing to give adequate notice that the matter is to be abandoned or delayed; (e) Prolonging the proceedings unnecessarily. (3) The Tribunal may make the following orders for the payment of costs and expenses that the Tribunal considers reasonably incurred: (a) With respect to any category in **subclause 2**, an order requiring a party to pay to another party the costs and expenses incurred by the other party. (b) With respect to categories (c), (d) or (e) in **subclause 2**, an order requiring a party to pay to the Crown the costs and expenses incurred by the Crown. (c) With respect to category (a) in **subclause 2**, an order requiring the applicant to pay to a consent authority or local authority the costs and expenses incurred by the consent authority or local authority in assisting the Tribunal in relation to any report required by the Tribunal in respect of the matter before it.

cl 33(1)	Schedule 10, cl 33(1) allows the chairperson of the Tribunal to "make an order to transfer a proceeding to the Environment Court or other court of competent jurisdiction if", among other things, "the matter is more appropriate to the jurisdiction of the Environment Court". Logically, proceedings that are more appropriate for the Environment Court to determine should only be transferred to the Environment Court, not to another court of competent jurisdiction. The subclause as written would allow the tribunal to transfer such proceedings to another court of competent jurisdiction. If the intention is also to provide an ability to refer matters which are more appropriately determined by another court, such as the Māori Land Court (where the issue concerns Māori land), then this should be made clear, and the subheading would require amendment to reflect this.	Clarify that proceedings transferred under clause 33(1)(c) can only be transferred to the Environment Court, where the matter falls within their jurisdiction. Also clarify whether this clause is intended to enable issues outside the jurisdiction of the Environment Court to be referred to a court of competent jurisdiction.
cl 34(2) and (3)	Schedule 10, cl 34(2) and (3) are duplicates.	Fix duplication.
cl 34(4)	Schedule 10, cl 34(4) addresses further appeal rights where the Environment Court has made a decision on appeal from the Tribunal. Clause 34(4) cross-refers to clause 74 of Schedule 9, however that clause deals with restrictions on other reviews of decisions where there is a right of appeal *to* the Environment Court, not appeals *from* the Environment Court. It is clause 77 of Schedule 9 that addresses appeal rights *from* the Environment Court, and it does not record the exclusion of	Correct the incorrect cross reference to clause 74 of Schedule 9. Record in clause 77 of Schedule 9 the exclusion of appeal rights where the Environment Court has made a decision on appeal from the Tribunal.

	appeal rights where the Environment Court has made a decision on appeal from the Tribunal.	
Schedule 11: Amendments to other legislation		
Part 1, section 18B(2)(e)	This provision is confusingly worded. It is unclear what acting in an enabling manner and being solution-focused means in practice. Adding in the requirement for this to be consistent with other principles adds to the confusion.	As above for the NEB, cl 13(e): either clarify the intended scope of "acting in an enabling manner", or delete this provision.
Part 1, section 334	"Reasonable ground" should read "reasonable grounds". This is the established legal term, which is used elsewhere in the Bill and in other legislation such as the Search and Surveillance Act 2012.	Change "reasonable ground" to "reasonable grounds".
Part 2	Incorrect cross reference.	Replace cross reference in the heading for Part 2 of Schedule 11 to "Schedule 1 cl 34(1)" with "Schedule 1 cl 31(1)".

Nāku noa, nā

Frazer Barton
President