

Consultation: Natural and Built Environment Act and Spatial Planning Act Submission
Environment Select Committee
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Western Bay of Plenty District Council Submission on Natural and Built Environment Bill and Spatial Planning Bill

Introduction and key points

1. Western Bay of Plenty District Council (WBOPDC) welcomes the opportunity to provide feedback on the Natural and Built Environment Bill (NBEA) and Spatial Planning Bill (SPA), and appreciates the granted extension for submission lodgement (to 19 February 2023).
2. WBOPDC generally supports the reform of the resource management system. We recognise the drivers for resource management reform and appreciate the opportunities to improve the existing system; enable a more effective role for Māori, improve environmental outcomes, particularly in the face of climate change, reduce time delays and improve consistency across the board through greater national direction. However, there are several key areas of the NBEA and SPA that need greater consideration.
3. In order for reform to be successful, timeframes should enable meaningful and effective engagement to address potential implementation challenges to be identified and resolved. In our view, this reform programme is being undertaken too quickly and as a result effective implementation is at risk. We believe that this is a view generally shared by local government, tangata whenua and wider resource management stakeholders.
4. The pace of reform is especially concerning given it coincides with two other significant reform and review processes – Three Waters reform and the Future for Local Government review. It appears these processes, whilst concurrent, have been progressed in relative isolation from each other, and there are gaps and inconsistencies in the proposed arrangements and processes. The pace and scope of these concurrent reforms have placed significant pressure on local authorities, tangata whenua and other interested stakeholders to understand and respond in a meaningful way. Timing of submission processes have occurred directly after local elections and over the Christmas period with short timeframes. This has

presented challenges in ensuring elected members can effectively engage in the reform process, as well as staff resourcing and availability of tangata whenua, lawyers and others involved in the planning profession.

5. It should be noted that WBOPDC generally supports the submission prepared by LGNZ and in particular endorses and supports the section entitled “local government’s main concerns.” For completeness, the excerpt is set out below:

- The loss of local voice in the new regional planning system. We’re concerned that councils’ (and ultimately communities’) ability to influence critical planning documents and decisions that affect their unique places will be significantly reduced.
- That councils will continue to be responsible for implementing plans that they have limited input into or influence over. This creates accountability challenges.
- That the proposed arrangements for supporting Regional Planning Committees (RPCs) are complex and present funding and resourcing challenges for councils.
- That new clauses in the bills will generate costs for councils and communities in testing their meanings in court. While we broadly support the purpose and principles of Natural and Built Environment Bill and Spatial Planning Bill, we have some concerns around interpretation and implementation.
- The need for central government to invest significantly more in its RM Reform programme, so that the costs don’t fall exclusively to local government. Transformational reform requires transformational resourcing by central government. This includes funding and resourcing to support iwi/Māori to participate meaningfully in the new system.
- The potential for misalignment both between the three pieces of RM Reform legislation themselves and with other major reforms, in particular Three Waters Reform and the Review into the Future for Local Government.
- That the Government’s work on the proposed Climate Adaptation Act is on a significantly slower track. This is despite the climate change adaptation challenges facing councils and their communities, and the need for this piece of legislation to integrate with the NBEA, the SPA and the proposed National Planning Framework.
- The lack of clarity around arrangements for transition to and implementation of the new system. This is making it difficult for councils to plan.

Where LGNZ’s submission points encapsulates WBOPDC’s views entirely this will be noted within our submission.

6. WBOPDC does not wish to be heard by the Select Committee.

Part 1 - Key themes across NBEA and SPA

Loss of local voice and planning functions in local government

7. WBOPDC has significant concern over the loss of local decision making and local community representation in plan making. As identified in the LGNZ submission, under the reforms, the Minister for the Environment and Regional Planning Committee (RPC) are authorised to lead the preparation, assessment, and decision-making in relation to the new environmental management framework. They will be able to do this largely independent of local government and communities. This centralisation represents significant changes to the current functions of local government, and it is our overall view that change to the way that local government carries out one of its core functions needs much greater consideration and consultation with the sector.

8. In our view, the proposed centralisation of plan making will result in loss of local engagement and ownership in plan making processes. People need to feel empowered to shape their communities. Local government (or indeed a new RPC or independent hearing panel) are not qualified to tell a community what is right for them. The community need to have ownership over the planning process to work towards making their place unique to them. Community engagement in local decision-making leads to a greater sense of place and builds community connections. The centralised system as proposed does nothing to empower communities.
9. In summary there is a disconnect between accountability and responsibility and a disconnection from other local government functions (particularly LGA functions) and necessary expertise, communities and local place-making.

Community outcomes statements

10. Council has the opportunity to prepare Statements of Community Outcomes (SCOs). We note that these are not mandatory and there is no prescribed process to follow to develop SCOs, including any requirements for consultation with mana whenua or the wider community. Given SCOs seem to be one of the key mechanisms to reflect local voice at the Regional Planning Committee table, it seems questionable that there is no requirement to develop these in partnership with mana whenua and the wider community.
11. As with community outcomes promulgated under the Local Government Act, territorial authorities are often not the sole agency with a responsibility to deliver services contributing to community outcomes or to have an interest in the realisation of community outcomes. Therefore it seems questionable that territorial authorities could develop SCOs without engaging with other key organisations or agencies in its communities, given the criticality of the role of SCOs in both the RSS and NBE plan processes. We submit that the preparation of SCOs should be mandatory, and the legislation (or regulations) should set out a process for SCOs preparation that provides clarity on the involvement of mana whenua, the wider community and other agencies. It should also be clear on how regularly SCOs should be reviewed or the circumstances which would necessitate a review.
12. We also note that the scope of SCOs appears to be broader than statements of regional environmental outcomes (SREOs) which are environmentally focused. We query the merit in SCOs having a broader scope than SREOs, given the role of the Regional Planning Committee in terms of preparing RSS and NBE plans. There also appears to be no dispute resolution process in relation to consideration of SCOs and SREOs at the Regional Planning Committee. We also query how the legislation will ensure that significant issues for rural and provincial areas will not be overlooked where these conflict with priorities for larger urban areas – such as greenfield land supply for urban areas versus protection of productive land for rural areas.
13. Community outcomes are a component of the LGA and also may be considered through the locality planning process (Pae Ora (Healthy Futures) Act 2022). We seek clarity on whether these sets of outcomes promulgated under the different legislation are intended to be one and the same, or different ones developed for different legislative purposes. We are concerned that there is quite a broad scope and required application if one set of outcomes is

required across all three legislative processes. If there are to be different sets of outcomes then it is likely there could be complexity in reconciling inconsistencies. We also seek clarity to better understand how the system outcomes in s5 of the NBEA are to be reconciled against SCOs.

14. Pursuant to NBEA s645(5), SCOs do not have to comply with national direction, regulation or other planning documents. We query how the RPC will usefully consider SCOs that are inconsistent with national direction. For example, if a community in an area subject to flooding seeks to grow significantly or increase density.

Capacity and capability

15. The success of the proposed changes depends on the capacity and capability of the people who must implement it. The Randerson report identifies that one of the key failures of the RMA has been the failure to provide sufficient resources and build capability of people. Nationally, there is already existing resourcing shortages across the resource management system. This will be further strained as a result of reform. It is strongly recommended that due consideration be given to building the long-term capacity and capability in the fields of planning, project managers, scientists, Mātauranga Māori, transport, communication, engagement, and governance.
16. The Future for Local Government (FFLG) draft report identifies the need for capability and capacity building across many areas of local government. This requirement is closely tied to the need to adequately fund capability and capacity building in local government. Over the years there have been new requirements placed on local government which have not been adequately funded, which leads to funding challenges and may impact on the efficacy of implementation.

Communication

17. Another key matter for consideration is the need for clear communication for the general public on reform so they know what is happening at a high level. Key points on why the system is being reformed, timeframes and what the reform does and does not cover are critical.
18. During the Three Waters reform there was a lack of effective central government communication, which meant that a lot of alternative information or misinformation circulated in the community. 'Once in a generation' reforms that redistribute functions and responsibilities and/or include new or contentious concepts need a change management campaign or similar with the community to build understanding and awareness to reduce misinformation.
19. Education resources for councils to use to share with their communities would be welcomed. It would be useful if central government engaged with local government to understand the types of resources that would be useful to provide. Resources should be suitable to be provided electronically and cover key topics that people want to understand e.g., timeframes, new plans, how we will work with other councils, what it means to give effect to Te Tiriti o Waitangi and how this reform integrates with other key pieces of reform (in particular Three Waters and Future for Local Government).

Alignment with other reform

20. It is of paramount importance that alignment between key pieces of legislation occurs. Time and consideration needs to be given to ensure that the NBEA, SPA and future CAA will all work together.
21. Three Waters reform, the Future for Local Government (FFLG) review and the RMA reform all impact the other. As LGNZ has pointed out in its submission it is a lost opportunity that the FFLG report and completion of the review are happening concurrently with RMA reform. WBOPDC requests that the RM reform is slowed down to allow for the FFLG review to be completed.
22. The Future for Local Government review is fundamental to RMA reform, providing the foundation for successful policy and planning implementation. Proceeding with RMA reform without first undertaking a complete review of the way in which local government operates has resulted in complicated arrangements for strategy and policy making e.g., the Regional Planning Committee.
23. Additionally the premise of centralising or regionalising of territorial authority functions is at odds with the findings of the FFLG review, which places importance on localism and the principle of subsidiarity. It seems illogical that these processes, whilst concurrent, are so at odds in their fundamental approach to structure and function.
24. At the Taituarā conference in November 2022, Minister Mahuta responded to questions about the structural changes envisaged through the RMA and Three Waters reform, and how these align with FFLG review. It was indicated it would be the role of FFLG to consider the implications across the reform processes and bring this all together. This is concerning given that the FFLG review is simply that – a review. It will be up to the Government of the day to take up recommendations in this regard and promulgate any legislation to give effect to those recommendations. This is a risky approach in that recommendations to align the reform processes may not eventuate. It is also concerning that a ministerial oversight group has only recently been set up to address matters across the different reform programmes, when each of these processes have been underway for some time.
25. The timing for the RMA reform is critical, if the legislation is rushed it will be a lost opportunity. Without taking the time to get the new system right none of the drivers for change will be able to be adequately realised.
26. As identified in the Taituarā submission on the NBEA and SPA, because of the timing of the RMA reform and Three Waters, there is a concern regarding the ability of the new Water Services Entity's ability to be involved in early tranches of RSS and NBE plans due to the transition state they will be in. There also appears to be no consideration on the membership of the new Water Services Entities in the Regional Planning Committee, despite the fundamental importance of three waters infrastructure within spatial planning processes.
27. As identified in the LGNZ submission there is a need for the government to make a number of amendments to the NBEA Bill to clarify the relationship between Regional Planning

Committees and the proposed new Water Services Entities.

Part 2 - Pathway forward – transition and timeframes

28. Of critical importance to WBOPDC is understanding when and how the transition from the RMA to the NBEA will take place. There is currently a great deal of uncertainty how existing RMA requirements should be treated in the lead up to the transition. This makes workload and resourcing planning very difficult. WBOPDC's District Plan is due to be reviewed, and Council has commenced pre-engagement with the community. It has been previously advised that councils should continue to review significant resource management matters. This is now dependent on the timing and process for when the NPF, RSS and NBE Plans in each region are developed, and whether or not Bay of Plenty is one of the first model regions under the new system. WBOPDC requests detailed information on the expected timing for implementation of the new system for each region and as well clear guidance to councils who are due to review their district / city plans between now and the development of the NPF, RSS and NBE plans.
29. WBOPDC needs clarity on what weighting to give different planning documents particularly when it comes to decision making in consenting. For example, when the National Planning Framework is notified, what impact will this notification have on relevant sections of the RMA and consequentially the District Plan when it comes to consenting. Guidance is needed on what decision-making criteria will be relevant.
30. WBOPDC requests that written guidance is provided on proposed transition and timing for each council / region.

Part 3 - Funding and Resourcing

31. The RPC will be responsible for the plan-making process. This is a fundamental shift in local government planning in New Zealand. As identified in the LGNZ submission, with no strong local government voice in the plan-making processes, and without adequate funding from central government to support the RPC and secretariat roles or iwi/hāpu involvement, councils face an unfunded mandate to implement the new resource management system.
32. As identified in the LGNZ submission 'Part 4 Funding and Resourcing' with regard to Regional Planning Committees and their functions it is not reasonable to expect ratepayers to fund a largely undemocratic plan making process. Regional Planning Committees will make decisions that councils will be left to implement and enforce. Fundamentally there is a lack of transparency in this process.
33. There is significant concern regarding the requirement for councils to fund the implementation of plans over which they have had limited involvement in developing. As identified by LGNZ Central government has developed, and is imposing, the new centralised system and therefore should fund the system rather than pass the costs to local ratepayers. The proposed model also means that staff in the secretariat or new plan making roles under the RPC will technically be employed by a council but managed by the RPC or host council.
34. WBOPDC agrees with the recommendation by LGNZ that proposes a 50/50 split funding model for funding the RPC's and secretariats.

35. Funding the RPCs and secretariats requires further clarification. Working together in 'good faith' will not endure political tensions and disagreement in approach between councils. Reasons regarding apportionment of funding may be made based on population and densification. Guidance and certainty in approach is needed. As identified in the LGNZ submission it would be practical to link funding with the composition of the RPC.
36. As identified in the LGNZ submission as RPCs have separate legal standing from the councils, there may be instances where councils end up in the position of taking an appeal against RPC decisions. As RPCs include representatives from each of the councils, the council taking the appeal will end up paying for the appeal from both sides.
37. Regarding Independent Hearing Panels (IHPs) the NBEA Bill does not identify how these will be funded and by who, and this needs to be clarified.
38. The Bills have not identified any funding mechanisms for the work of the RPCs. If existing mechanisms continue to apply, e.g., as specified in the LGA, councils will need to determine whether or not the funds provided to the RPC will meet the necessary criteria in the LGA regarding the community being served. As identified in the LGNZ submission it appears that the LGA will need to be amended if councils are going to be funding the work of RPCs.
39. We encourage the Select Committee to explore additional funding mechanisms that local government could utilise. Significant additional funding that is likely to be required from local government to implement the new system, which we assume will be from existing funding sources. We note that this is a focus area for the Future for Local Government review, and request alignment of the findings within the final NBEA and SPA.

Funding for iwi/hapū

40. Funding the increased role of iwi/hapū in the new system falls to local government. It would be useful to understand what if any commitment central government has to increasing resourcing and building capability for iwi/ hapū. Imposing this cost on local government will mean that the role that iwi/hapū need to have in the new system will be critically underfunded in some councils. This will mean that an integral part of the new planning system will not be realised. This is further discussed in Part 5 of our submission.

Funding implementation

41. Council wish to emphasis significant concern over the potential to have to fund a process that it is not responsible for. As identified in the LGNZ submission with no strong local government voice in the plan-making processes, and without adequate funding from central government to support the RPC and secretariat roles or iwi/hāpu involvement, councils face an unfunded mandate to implement the new resource management system. Central government has developed, and is imposing a centralised system and should therefore fund the system rather than pass the costs to local ratepayers.
42. We support Simpson Grierson's view that the key issue identified with the proposed framework is that the RPC may become highly influential in making strategic decisions regarding provision of infrastructure or areas that may require protection, restoration or

enhancement. Given the link between RSS and long-term plans this could have implications for the allocation of council funds without those decisions going through a meaningful LGA process. Furthermore, as the RPC is not directly accountable to communities for making what may be funding decisions, we can see that this approach could have issues moving forward.

43. Further, the effect of the proposed amendment to the LGA will be that the RPCs (through RSS) will influence the provision of council infrastructure. We support Simpson Grierson's view that it is important for this influence to work in both directions, as the feasibility of councils' ability to provide infrastructure to service growth is an important relevant consideration for regional spatial planning. This is particularly important as, through the RSS, it appears that the RPC may identify provision of strategic infrastructure in an RSS that has not been considered in accordance with the LGA. This may create issues between councils and communities, as councils will remain responsible for funding and delivering the local authority projects that the RPC identifies.

Part 4 - Climate change

44. WBOPDC is supportive of the Government's intention to develop a Climate Adaptation Act (CAA). However, we are concerned about the timing of the CAA. Firstly, this is because of the need for the NBEA, SPA and CAA to be aligned. Secondly the effects of climate change are becoming increasingly more frequent and intense.

45. As identified in the LGNZ submission there is a need for councils and communities to have much greater clarity around how to build resilience and adapt to climate change.

46. It's difficult to comment on whether the new RM system will meet reform requirements without a key component of the new system drafted. To meet the Government's reform objectives, the NBEA, SPA and CAA (and the proposed NPF) must align. Government will need to make considerable progress on the CAA before the end of this parliamentary term. Like LGNZ, WBOPDC proposes that central government should partner with local government in developing the CAA. Councils have vital on-the-ground experience working with communities to build their resilience and support them to adapt to the impacts of climate change.

47. The three system outcomes within Clause 5 (b) of the NBEA in relation to; climate change and natural hazards; reduce emissions, removing gases and risk and resilience (as well as those related to protection and restoration of the natural environment), create tension with other system outcomes, such as "the ample supply of land for development...". Clear guidance must be provided on how to balance desired system outcomes in situations where these types of conflicts exist. These policy tensions are incredibly difficult for a growth region like the Western Bay of Plenty to reconcile. A contemporary example is the tension between the NPS-UD (providing land for housing) versus the NPS-FM and the need to protect and maintain marginal wetlands.

48. System outcome 5b(ii) Removal of greenhouse gas emissions from the atmosphere would be more aligned to the outcomes under 5a if it were to emphasise nature-based over engineered, chemical, and/or mechanical solutions due to the co-benefits of enhanced biodiversity and resilience.

Part 5 - Māori involvement and participation

49. WBOPDC supports the increased involvement of Māori and participation outlined in the Bills. However, the proposed funding arrangements are insufficient to ensure that Tangata Whenua are empowered to participate in the new system actively and effectively. Capacity to effectively participate is a matter that plagues the current RM system.

Regional Planning Committees

50. One of the key areas for Māori participation within the new system is through the Regional Planning Committee. The RPC is to be composed of iwi and hapū and local authority representatives which will be responsible for plan and strategy making for the Bay of Plenty region.

51. The Bill proposes that iwi and hapū within a region would form an iwi and hapū committee which will be responsible for:

- Leading the process to determine one or more Māori Appointing Bodies;
- Agreeing with local authorities' composition arrangements for the region;
- Engaging with iwi and hapū and other Māori groups with interests in the region before agreeing the Māori Appointing Bodies or the composition arrangements for the region; and
- Keeping records of such engagement.

Māori Appointing Bodies

52. It is proposed that the iwi and hapū committee will identify Māori Appointing Bodies who will then be responsible for making appointments to the Regional Planning Committee. It is unclear why the appointments are not made by the iwi and hapū committee directly.

53. The additional step of the Māori appointing bodies complicates the process and adds an additional layer of administration, resource and funding for Tangata Whenua and local authorities.

Funding and Resource

54. The responsibilities of the iwi and hapū committee, and Māori participation generally, will require significant resource and funding to ensure effectiveness in the initial implementation stages, and in the long-term.

55. Funding and resourcing of the increasing role of Tangata Whenua within the new system cannot fall solely on local government. There will need to be significant investment to build capacity and capability amongst iwi and hapū members to enable Tangata Whenua to effectively participate and partner within the new system which will require support and funding commitment from central government.

Proposed Governance Approach

56. The Bay of Plenty Region consists of five district Councils and one city Council, as well as the Bay of Plenty Regional Council (7 local authorities in total). Within the same area there are 39 iwi groups and 260 hapū.

57. While composition arrangements for the RPC are to be agreed between local authorities and the iwi and hapū committee, the arrangements are unlikely to be too dissimilar to the minimums set out within the NBEA Bill (one member from each local authority and two from at least one Māori Appointing Body). These composition arrangements will not effectively represent the diversity of Tangata Whenua across the region and as such will not reflect true partnership. With an emphasis on the NBEA on giving effect to the principles of Te Tiriti o Waitangi, we are perplexed as to how the proposed partnership approach honours these principles.

SmartGrowth Governance Approach

58. Local authorities, Tangata Whenua and central government agencies have been planning at a sub-regional level in the western Bay of Plenty through the SmartGrowth strategy for almost 20 years.

59. The structure for SmartGrowth provides for four Tangata Whenua representatives on the leadership group committee (two from each territorial authority area), working alongside three representatives from each of the local authorities, Ministers, and representatives of central government agencies. A combined Tangata Whenua forum of representatives supports the work of the leadership group, providing direction and advice on key issues for Tangata Whenua which helps inform and guide decision-making and sub-regional priorities.

60. The SmartGrowth structure allows for Tangata Whenua to have a powerful voice around the decision-making table, and more broadly, for iwi and hapū to effectively participate and influence decision-making. A structure like SmartGrowth, but at a regional level, should be considered as the minimum composition arrangement for the RPC.

Mātauranga Māori

61. WBOPDC supports the increased recognition of Mātauranga Māori and tikanga within the resource management system and the requirement for any members of the Limit and Targets review panel to have at least a foundational knowledge of Mātauranga Māori.

National Māori Entity

62. WBOPDC supports the establishment of a National Māori Entity and the appointment process for members. The Entity has the potential to be a powerful body for ensuring that obligations to Tangata Whenua and Te Tiriti o Waitangi are met. The funding and resourcing on the Entity will be key to ensuring that it is able to fulfil its functions, powers, and duties adequately and effectively.

Freshwater Allocation

63. It is encouraging to see a new regime for the allocation of freshwater and other natural resources being proposed. WBOPDC has heard from Tangata Whenua several times their concerns around the current “first in first served” model of freshwater allocation and how this negatively impacts the development of whenua Māori and subsequently the aspirations of Tangata Whenua.

New definition – Te Ao Māori

64. New definitions and terms relating to the increased involvement of Māori and Māori concepts are proposed.
65. Clause 3 of the NBEA Bill provides a dual purpose including recognising and upholding te Oranga o te Taiao. Te Oranga o te Taiao is defined in Clause 7 to mean:
- (a) The health of the natural environment
 - (b) The essential relationship between the health of the natural environment and its capacity to sustain life; and
 - (c) The interconnectedness of all parts of the environment; and
 - (d) The intrinsic relationship between iwi and hapū and te Taiao
66. The NBEA Bill provides for Te Oranga o te Taiao statements to be prepared by iwi or hapū and provided to RPC's
67. Further guidance and direction is needed on how this new purpose is to be applied. A non-statutory guidance document would be helpful to explain each of the four concepts described above.
68. The remainder of Clause 3 states that the purpose of the Act is to enable the use, development and protection of the environment in a way that:
- (i) Supports the well-being of present generations without compromising the well-being of future generations;
69. It would be helpful to clarify whether there is any hierarchy in the purpose of the NBEA within Clause 3.
70. How does Te Oranga o te Taiao integrate with the concept of Te Mana o te Wai (which is integral to Three Waters Reform and the freshwater reforms)? It is not clear that the two key purposes within the NBEA are compatible: to recognise and uphold te Oranga o te Taiao and to enable the use, development and protection of the environment.

Part 6 - National Planning Framework

71. It is very difficult to provide thorough feedback on the proposed new system while a key component of the new system, being the National Planning Framework (NPF), has not been drafted. Council requests that a draft National Planning Framework is prepared, and sufficient consultation is carried out. The NPF is the anchor of the new resource management system and without seeing this drafted it is difficult to provide accurate feedback on how the new system may be implemented.
72. From what has been described of the proposed NPF, it appears that it will hold significant weighting in terms of setting overall policy direction. It has the potential to set rigid policies that will impact local government planning and decision making, like the medium density residential standards (MDRS) and the wetland policies under the National Policy Statement for Freshwater Management. New national direction on infrastructure is proposed through the NPF. It is not clear whether this will be provided as a draft for local government to provide input on. Western Bay requests that the NPF is developed in partnership with the LG

sector, or, at the very least we request the opportunity to provide feedback on any new national direction that is provided by the NPF.

73. The NPF is supported in principle in terms of its intent to provide direction on environmental matters and the creation of RSS and NBE plans. However, a key concern is that the Minister can provide this direction (including environmental limits and targets) without the involvement of local government, iwi/hapū or the wider community.
74. While national direction will provide consistency, it may not necessarily be helpful in some cases. For example, if there are flaws in the drafting of those provisions which make implementation difficult or if the provisions (such as limits/targets) fail to consider the issues and opportunities facing a particular area or environment.
75. Providing the chance for those mentioned to have meaningful involvement in the creation of the NPF should be provided for. This would ideally be in the form of a working group and include a number of experienced resource management practitioners from regional and city/district councils (with experience in plan writing and implementation). This would more likely ensure that the direction and specific wording of the NPF is as clear as possible in the first instance and that any need for regional or local variations to limits or targets are addressed in the NPF either directly or enabled in plan-making. Otherwise, each local authority will need to encounter and address any problems individually at implementation stage, which is likely to lead to different interpretations and solutions and ultimately a lack of consistency.
76. The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act is an example of this happening recently. The amendments were made without the involvement of the affected territorial authorities, and each reached their own conclusions about what the legislation meant, including the nationally consistent mandatory provisions. On the other hand, the National Planning Standards were consulted on in stages and there was the chance for more meaningful input which resulted in significant improvements before implementation.
77. At this stage, it is unclear how many of the proposals in the NPF will work, in particular what the environmental limits and targets will look like and how they will operate. It would be beneficial that further thought is given to this before committing these to legislation. Council would like to understand further how a review panel may work and who will be responsible for gathering expert information and how this information will be kept up to date and relevant. Further information on how the environmental limits and targets work will be implemented is required.
78. While Section 37 states that the purpose of limits and targets is “to prevent the ecological integrity of the natural environment from degrading”, section 40 (2) (b) then allows a certain amount of “harm or stress to the natural environment”. These appear to be at odds with each other and clarification is needed.
79. The NPF will be developed by the Minister. Local government and communities are for the most part excluded from its development. Western Bay submits that local government and communities must be able to fully participate in the development of the NPF, including the setting of limits. Council would like to understand as a priority any further detail on any pre-notification engagement which may occur with iwi and local government.

80. Council understands that the NPF will be notified within 6 months of the NBEA's royal assent. Council would like to understand where we are in the order of implementing the NBEA and SPA, i.e., proposed timeframes for each region to begin implementing the new system.

Part 7 - Environmental limits

81. Environmental limits are an important aspect of the NPF. There is a clear intention to “hold the line”, protect human health, and prevent further degradation of the natural environment’s ecological integrity.

82. Targets are set as environmental goals to assist in improving the environment. These need to be measured and achieved in a specific timeframe with discretionary targets set where relevant to achieving system and planning outcomes.

83. Both environmental limits and targets are to be an important part of NBE Plans and will be outlined in the NPF. Until the NPF is provided there is no clear information on how these limits and targets will be framed and will operate, making it difficult at this time to understand their practicability.

84. The environmental limits and targets in the NPF will be related to “management units.” Management units can be comprised of different areas depending on the limit and/or target it relates to and a management unit can relate to more than one environmental limit or target. While this makes sense logically, it could prove to add complexity between the NPF, RSS and NBE Plans. Particularly as NBE Plans are regionally based documents which may end up attempting to reconcile limits and targets relating to management units that are on a whole national level and others on a multi-catchment level or cross regionally. However, without a complete NPF to fully understand the relationship between environmental limits and targets with management units it’s difficult to fully identify how these will work together in practice.

85. In relation to both limits and targets, there will be a requirement for monitoring and reporting. Again, it is challenging to provide feedback on the workability of the reporting requirements until an NPF is available. Further information is needed to understand the level of resourcing and funding that will be required. It is not clear how this will be managed practically between councils and the RPC and Secretariat.

86. Additionally, in the interpretation for environmental limit the use of the word “of” rather than “and” is noted; *“environmental limit means a limit set for ecological integrity of human health...”*. This appears to be a minor drafting error that should be addressed to avoid confusion.

Part 8 – NBEA

Purpose of the Natural and Built Environment Bill (NBE) Part 1, Clause 3

87. Western Bay of Plenty District Council generally supports the purpose of the NBEA. The dual purpose, or cross over of the definition of Te Oranga o te Taiao and the first part of the

purpose will likely create interpretation and implementation issues. Conflict exists within the purpose of the Act (3(a)) “enable the use, development, and protection of the environment in a way that..” Protecting the environment and enabling the use and enabling development is very difficult to reconcile.

88. The incorporation of Te Oranga o te Taiao is supported. However, the incorporation of a Māori principle into legislation is going to come with many interpretation and litigation challenges. The requirement to recognise and uphold Te Oranga o te Taiao sitting within the purpose of the Bill is positive, however it appears at odds with the first line of the purpose ‘enabling the use, development of the environment’. Guidance on upholding Te Oranga o te Taiao will be welcomed. Iwi and hapū need to develop this guidance with support from MfE.
89. It should be clarified what the intention is regarding only being able to have regard to the purpose of the NBEA if the NPF doesn’t adequately cover a matter. For example when would it be appropriate to only take direction from the NPF and disregard the purpose of the NBEA. It should be clarified to help provide guidance to planners and decision makers.

Part 1 - Clause 4 – Te Tiriti o Waitangi

90. The RMA currently requires people exercising powers and performing functions and duties under the Act to take in to account the principles of the Treaty of Waitangi. The NBEA uses stronger language and requires all persons exercising powers and performing functions and duties under it to “give effect” to the principles of te Tiriti o Waitangi.
91. The requirement to give effect is a higher threshold than the requirement to merely take into account. This threshold is the same as that used under the Conservation Act. The Bill also makes reference to the principles of te Tiriti o Waitangi which is a shift away from the current reference to “the Treaty”.
92. Council generally supports the higher threshold of “giving effect to” the principles of te Tiriti o Waitangi. The principles of te Tiriti are not defined within the Bills but there are Waitangi Tribunal decisions and case law which outlines those principles. However, it may be difficult for those exercising powers and performing functions and duties in this space to give effect to the principles if there is not more guidance and clarity. In turn, it may also make it difficult to hold people accountable for giving effect to the principles.
93. A provision within the Acts allowing for the iwi and hapū committee to define the applicable principles of te Tiriti at a regional level could be an effective way for Tangata Whenua to exercise rangatiratanga within the new resource management system.

Part 1 - Clause 5 – systems outcomes

94. Council supports the change from effects management to outcomes. The shift from an effects focused system to a regime that is geared to deliver certain outcomes and/or achieve specific environmental limits or targets is positive.
95. Clause 5 provides 18 separate system outcomes that must be provided for, “to assist in achieving”, the NBEA Bill’s purpose. The outcomes themselves will not directly be considered when a resource consent is processed but they must be provided for in the National Planning

Framework, and the Natural and Built Environment Plans as below. The Bill does not prioritise or rank the system outcomes and it is expected that all outcomes will be actively promoted at the same time. There is a tension between all of these outcomes and how they could be achieved simultaneously.

96. As identified in Taituarā's submission, the term 'must provide' seems to be the equivalent of 'recognise and provide' in the RMA. If this is the case, in order to avoid unnecessary litigation, it would be practical to use the existing terminology.
97. There is no outcome focused around built form or urban design. The RMA reform is being described as making it "easier and more affordable to deliver housing in the places, people need, while protecting the natural environment". Regional spatial strategies are said to align infrastructure and land use planning to support well-functioning urban areas. Without a focus on urban design and well functioning urban areas within Clause 5 it is uncertain how this will be prioritised in urban development.
98. The NPF will become critical in determining resource management priorities and therefore the role of local government, iwi and hapū in the development of the NPF is of paramount importance. We request consideration of this within the NPF development process.

Part 9 - Regional Planning Committees

99. The NBEA Bill requires RPCs to be established in each region. They will act as stewards of Regional Spatial Strategies (RSS) and Natural and Built Environment Plans (NBE plans). Local Government will be responsible for implementing the plans.
100. As previously outlined the proposed Regional Planning Committee (RPC) will create a significant change to the function of planning in local government. Planning will be undertaken by the RPC however local government will remain responsible for implementation. This will likely result in a disconnected and fragmented system. As identified in the Taituarā submission "disconnecting planning functions from contributing functions such as science, consenting, compliance, infrastructure, and community development diminishes the prospect of integrated management and increases the possibility of duplication of effort."
101. WBOPDC is concerned that councils will be responsible for implementing plans over which they have limited influence. There is also a great deal of concern in relation to loss of community voice as a result of this new system. This is covered in Part 1 of this submission. There must be strong accountability mechanisms between RPCs and councils.
102. One of the primary drivers of this new RPC model appears to be to reduce the number of plans from 100 RMA plans to 15 NBE plans. The driver to reduce down the number of plans from over 100 to 15 is centered around simplicity and efficiency, however simplicity is not easily able to be achieved when it comes to implementation and management of the complexities of environmental protection and urban development.

103. Whilst the RSS must have particular regard to relevant Government policy statements and have regard to the Government's response to the New Zealand Infrastructure Strategy, we seek clarity on how Government will commit to funding required infrastructure agreed through the RSS process. In our existing spatial planning processes, we have had involvement with a range of government departments and agencies. Despite participating in the process and endorsing the final spatial plan, funding has not been committed as anticipated which has had significant effects on the delivery of growth areas. We understand that the RSS is intended to address schools and hospitals. Section 24 of the SPA links to the GPS for housing, transport, water and health, but makes no reference to education? Whilst there may not be a GPS for education, there needs to be clarity on how the Ministry of Education's priorities are interacting with the RSS.

RPC Funding

104. As identified in Part 3 of this submission, it is not clear how RPCs will be funded. WBOPDC does not support having to fund an independent body to carry out work over which Council will have very limited input. It is not appropriate to leave funding and financing as a discretionary matter to be agreed between Councils and the new committee.

105. There are multiple matters of concern regarding funding for the RPC, including;

- Funding for independent hearing panels
- Payment of staff seconded to secretariat roles
- Payment of RPC committee members
- Funding of appeals against RPC decisions
- How will RPC seek further funding and financing if required.

RPC Structure and Governance

106. As outlined in Schedule 9, clause 2 and 3, the RPC has the flexibility to establish its own structure. There is a minimum of at least 6 members but there is no upper limit. It should be noted that within some regions a minimum of two Māori representatives will be insufficient where there are multiple iwi and hapū groups.

107. A limit on the committee structure over all in terms of 'good governance' should be considered. Currently as it stands there is no limit overall and there is a risk that the committee becomes unable to achieve good decision making. Local authorities and Māori appointing bodies need to reach agreement. If it's not possible there is a dispute resolution process via the Minister. There is concern over the possible frequency of needing to use the Minister for dispute resolution processes and how realistic and feasible this is likely to be given workload and broader priorities.

108. It is unclear whether elected members will represent councils on the RPCs, if this is the case, elected members will be required to focus region wide although they will be representing their city or district council. There is a very real risk of a natural bias and 'patch protection'/parochialism playing out. In addition, it should be recognised that elected members will have existing workloads that will still need to be carried out and the practicalities of being able to work for both Council and a RPC. Council recommends the use of an independent chair to assist in fair and reasonable decision making.

109. We note the intention for there to be one representative appointed to the RPC for RSS

preparation that is an 'all of government representative.' We query how effective this will be given the breadth of government agency involvement required to effectively plan spatially. We note that this is also a lesser level of involvement and representation than we currently have as part of our sub-regional growth planning partnership (SmartGrowth), which currently includes the Minister of Local Government, Minister of Housing and senior representatives from Waka Kotahi, Kainga Ora and MHUD.

Secretariat and Director of RPC

110. The host local authority is the legal employer of the director and the secretariat. Existing council planning staff will become employed by the Secretariat. This may create a resourcing issue for other planning work at councils as well as development of NBE plans and Regional Spatial Strategies.

111. The Director can appoint staff to the secretariat which are paid for by councils. If the host council is the legal employer of the staff this raises employment concerns for councils. It is recommended that information is provided on how this may impact legal employment arrangements. It may be more practical that the Director and Secretariat be employed by the host council. This should be investigated and clarified for local government.

112. The future of planning in New Zealand will be shaped by this reform. The role of planners will change. There is the potential that planners may be in a job where they are not exercising as much judgement. It would be good to understand further the role of planners in the secretariat function and how this impacts workload and resourcing of planners left at councils for other planning work like private plan change requests.

RPC Implementation Agreements

113. As RPCs will operate independently of councils, this may complicate the relationship between strategic planning and infrastructure provision. Implementation plans may provide the opportunity for practical consideration as to how the RSS will be implemented, as well as consideration to the appropriate timing and funding. Implementation plans seek to identify the person responsible for delivery, but it is unclear how implementation plans and agreements will align with priorities for other agencies e.g., health and education. This means that the implementation plans and agreements are unlikely to resolve any of the implementation issues currently experienced through existing sub-regional or regional planning initiatives, where different agencies have competing priorities. Implementation agreements are not enforceable. This may be further exacerbated through the addition of Water Services Entities as additional 'persons' responsible for delivery.

Part 10 - Schedule 7: Preparation, Change and review of Natural and Built Environment Plans

NBE Plan Development

114. The Bill proposes the development of NBE plans – one per region to replace the multiple district and regional plans and policy statements. Where district councils are currently

charged with the plan making process and required to have a District Plan in place, that responsibility now falls to the new Regional Planning Committee (RPC). A new NBE plan will not be in place until the NPF is established, RPC is appointed, and the RSS is developed.

115. WBOPDC raised concern with the exposure draft around the potential to lose the local voice in this plan making system. This was a common issue raised in submissions to the select committee and resulted in further consideration to address the concern. Our concern in this regard prevails and is discussed earlier in our submission.

116. As a result, the NBEA Bill explanatory note states councils' ability to directly input 'local voice' into the NBE plan is through the voluntary Statement of Community Outcomes (SCO) or Statement of Regional Environmental Outcomes (SREO) instruments. The RPC is required to have regard to the SCO and SREO in their decision making. While the preparation of these instruments is at Councils discretion, it would seem remiss of a Council to choose not to prepare an instrument where it helps inform the development of NBE plans and ensures that 'local voice' is not lost. Given the importance and significance these instruments could have on decision making, further clarification and information on the content and development of these instruments, including consultation and the specific detail necessary is required.

117. It's noted the SCO relates to the functions of district councils, while SREO's are functions of regional and unitary authorities. SREO's have the purpose of recording a summary of the significant resource management issues of the region, or of a district, or local community within the region. Particularly where those regional environmental outcomes relate to a district or local community, it is considered there needs to be provision to enable the involvement from that district council in the preparation of an SREO.

NBE Policy Development

118. WBOPDC supports the changes to evaluation reports where they are succinctly and plainly expressed making them more useful and cost-effective.

119. The Bill provides a system for policy development from local councils through to the RPC. There is clarity on the process types (standard, proportionate and urgent). RPCs will determine whether a standard or proportionate process is required. The criteria set to determine this is not clear. It would seem appropriate that criteria is nationally set rather than left to the discretion of individual RPCs.

120. Independent and proportionate plan change processes cannot change the strategic content of NBE Plans. Only the RPC and constituent local authorities may initiate a change to the strategic content (Schedule 7 Clause 5(2)). Section 102 sets out what plans must include, the NBEA Bill states in 102(1) "A plan must have strategic content that reflects the major policy issues of a region and its constituent districts." Careful development and consideration of what constitutes a change of strategic content will be important. It is preferential that criteria is set so that the determination of strategic content is clear for all parties to understand and does not unduly limit plan change processes, or open up drawn out disagreements and litigation to reach a consensus.

121. The NBEA Bill continues to provide a pathway for private plan changes (independent plan changes). While greater certainty on the pathway and cycle for policy development is supported, overall the system is not responsive enough.

122. All councils are required to provide three yearly work programmes. to the RPC. The RPC then has two years to develop and notify the change. The RPC may choose to develop and notify similar plan changes together, which could alter the local council's expectation of delivery for a community within its three year work programme. There does not appear to be a process to allow responsive plan changes by Council. In fact, it appears that there is greater ability for private (now known as independent) plan changes to be more responsive than those initiated by Council.
123. WBOPDC has over the past 10 years progressed a number of plan changes that responded to an immediate need in our communities. An ability to act responsively at a local level is important. It is not clear these types of local issue plan changes would fit within the 'urgent' criteria set within the NBEA. It would seem they would otherwise need to be included and anticipated within a three yearly planning cycle and proceed via a proportionate process. We consider further consideration should be given to more responsive local plan making processes that are not anticipated through three yearly work programmes.

Part 11 - Regional Spatial Strategies (RSS)

124. RSS set the strategic direction for the use, development, protection, restoration, and enhancement of the environment over a long-term period (30 years). RSS are required to provide for integrated management and support the effective management of the environment and in addition give effect to the NPF under *clause 15*.
125. WBOPDC is generally supportive of the RSS approach. In particular, WBOPDC is supportive of mandatory spatial planning to help support integrated management of the natural and built environment. As already outlined WBOPDC has participated in long term spatial planning through SmartGrowth for at least 20 years and see the positive benefits that working closely with stakeholders and partners can bring.
126. Further clarity is needed on coordinated funding arrangements between local authorities.
127. As identified in the Taituarā submission, RSS will be prepared by RPCs. The process for preparing RSS must be adopted by the RPC. The process must encourage participation by the public and those who may be involved in implementing the RSS according to *clause 32*. WBOPDC is supportive of the need to provide for local communities to input into matters that affect them. However, the drafting of this clause could be strengthened to require engagement with infrastructure providers.
128. Engagement agreements, as outlined in Clauses 37-41, provide a mechanism for the RPC to outline how Māori will participate in the development of RSS and how this participation will be funded. WBOPDC requests that further information on funding for resourcing to enable participation. As identified in the Taituarā submission:

“central government should fund, resource and support Māori participation, including the development of iwi and hapū capacity and capability and the development of engagement agreements. Because central government has constructed RPCs as independent of local

authorities it should be expected to fund contributions. Local authorities on the other hand, should not be expected to fund an agreement they are not party to. The level of funding and resource is likely to be significant, especially during the first iteration, due to the complexity of these arrangements. The number of Māori groups that need to be invited will be large in many regions. For example, the Bay of Plenty has 39 iwi and treaty settlement entities and places within it such as Tauranga are hapū-centric. We are also concerned that there is no provision for mediation (or any other dispute resolution mechanism) if an agreement cannot be reached after best endeavours. This may be critical as funding is likely to be an issue.”

RSS preparation

129. As identified in the Taituara submission, the RPC must have particular regard to Government policy statements, SREOs and SCOs, and iwi planning documents when preparing a RSS. In addition, the RPC must have regard to any strategies, plans, or other instruments made under other legislation or for the purpose of complying with New Zealand’s international obligations, and the Government statements responding to reports provided under *part 2, subpart 3 of the New Zealand Infrastructure Commission/Te Waihanga Act 2019*. Furthermore, the RPC must recognise and provide for planning documents prepared by customary marine title groups (*clause 26*) and protected Māori land (*clause 27*).

130. It is questionable whether or not the terms ‘particular regard’ or ‘regard’ offer enough certainty that the above planning documents will be given adequate consideration. Considerable work has already been undertaken in regional spatial planning and this work should be carried forward and incorporated in the new regional spatial strategy.

131. As identified by Taituarā, *Clause 25 (3)* directs the RPC to disregard effects on scenic views from private properties or land transport assets and the effect on the visibility of commercial signage or advertising. Council agrees that this Clause needs some further consideration. The Clause removes the protection for views that maintain, or enhance the relationship of Māori with their ancestral land, water sites, and waahi tapu, and other taonga. The removal of protection of views also has the potential to impact the tourism industry (view shafts from walking and cycling tracks, look out points in particular).

132. Regarding the preparation of RSS, WBOPDC requests that there is an ability for the constituent councils and iwi to review the draft RSS before notification and then be able to provide further comment if required. Consultation and engagement of the draft is particularly important given that there is no requirement to hold a hearing and no appeals proposed. Council supports proposed Step 4 within Schedule 4 to provide opportunity for further comment on the draft regional spatial strategy in certain circumstances however request that this is not only for the instance where the strategy is materially different from when the draft is first notified. Council recommends that is a requirement to seek further comments from stakeholders who are materially impacted by the RSS, e.g., tangata whenua, local government and landowners.

Part 12 - Compliance, monitoring and enforcement

133. Council supports the s.277 provision to provide for a review of resource consent conditions.

The additional provisions that are included in section (3) are supported. The RMA section 128 was limited in that it did not provide for exceptional circumstances for review. Councils have struggled to address matters that need to be reviewed in older/existing consents, especially where there is non-compliance with current rules and requirements. Addressing these matters where a consent is in place have been legally frustrating where no review provisions were included in the original consent decision. This change will provide greater opportunity to address exceptional environmental and wider effects of existing consents.

Part 12 Compliance and enforcement

134. The provisions in this part of the Bill provide consistent and robust tools for addressing compliance matters. The re-statement of the enforcement processes from those in the RMA provide an established framework for Officers, community and the Courts to address matters of non-compliance.
135. Overall Council supports the broadening of cost recovery provisions set out for compliance monitoring and enforcement of permitted activities and investigations of non-compliant activities.
136. However, the monitoring of permitted activities as currently drafted does not specify which permitted activities must be monitored or to what extent they must be monitored. Clause 783(1) to monitor “*permitted activities that have effect in the region or district*” could be interpreted to mean that all permitted activities that have effect in the district will need to be monitored. To do this would require significant resourcing for Council especially given that the number of permitted activities is proposed to increase under this legislation. This needs to be clarified. It would be useful to understand the intention and benefit of monitoring permitted activities. There needs to be a clear demonstrable benefit to the community to justify the implications of increased levels of monitoring.
137. For many permitted activities it may be a more balanced approach for Councils to have discretion to fulfil monitoring obligations as they see fit, where there could be reliant on the public to report complaints for certain activities. This clarification becomes even more important when considering cost recovery. It is anticipated that there is potential for a negative reaction from the community if they have been sent an invoice for permitted activity monitoring especially if they have seen no benefit from this monitoring. As identified previously national level communication is important to set expectations around the importance of environmental protection.
138. The connection between the two cost recovery regimes in clause 781 and 821 is unclear. The extent to which a Council can use its discretionary power under clause 781 outside of the administrative charges imposed under clause 821 is not obvious. Clarity on the relationship between these two clauses would help Councils to have certainty regarding when and how additional costs for monitoring an activity can be applied.
139. Drafting attention needs to be applied to specific provisions in the NBEA e.g., s.708 and s.781, these sections provide for persons to avoid, remedy or mitigate effects. In other sections e.g., s.718 there is a requirement to avoid, minimise, remedy, offset or provide for redress.

140. Council is supportive of the overall strengthening and widening of enforcement powers available. Although, it is noted that the responsibility for compliance monitoring and enforcement will remain with Councils who have not set the rules.
141. The use of Adverse Publicity Orders is seen as a useful deterrent for corporations to remain compliant as reputation can be a strong driver for compliance.
142. The increase in fines is supported and as is the reduction in prison terms. The reduction in prison terms means the option for a defendant to elect trial by jury is removed, which is often used to delay the hearing and remove the control of the prosecution from the Council to the Crown Prosecutor.
143. Monetary Benefit Orders (MBO) are a useful addition to the enforcement options. As these orders can be made outside of criminal proceedings Council would have a more efficient way to recover money that has been acquired by breaching rules. However, it is noted that there is no limitation period set out for an MBO being made. This uncertainty should be addressed.
144. Enforceable Undertakings (EU) need to be further clarified. While an offender must admit to offending, pay compensation and undertake to rectify non-compliance, the limitation periods surrounding enforcement of the undertaking is unclear. Does the limitation period begin when Council has knowledge of the original offence or does it begin when knowledge of the non-compliance with the undertaking has occurred. As EUs already exist in New Zealand legislation under the Health and Safety at Work Act 2015 which expressly extends the limitation period, a similar approach in the NBEA would provide certainty in the matter.
145. The new section 708(1)(c) provides an additional compliance tool, by including a specific clause for an abatement notice for unreasonable noise and 709(2) provides for seizure for non-compliance with an abatement notice. This provision is supported, Council enforcement for noise matters not related to business activities, and of a long standing or repeated nature has been difficult and the ongoing noise has resulted in negative community effects. This will provide an additional avenue to address non-compliance as opposed to taking matters direct to the Environment Court, or the short-term provisions provided for excessive noise matters.
146. Cost recovery provisions included in s.781 are supported. Those persons where it can be clearly demonstrated are non-complying with the Act should carry the costs of the enforcement agency/regulator. The costs of compliance functions undertaken by Councils are predominantly ratepayer funded. Complaints are increasing, this is reflective of the community changes where it is quicker and less confrontational to address complaints to Council rather than talk to the other party direct. As a result, compliance volumes and community expectations are higher than when the RMA came into effect. This has resulted in increasing costs to Councils and increasing costs of compliance and monitoring impact on ratepayers, with little to no opportunity/lever to recover any costs. It is noted that the recovery of costs for non-compliant activities will be likely to be poorly received and will carry a higher probability of default or non-payment.
147. Section 782 provides for Regulations to be promulgated for compliance and monitoring activities. The introduction of Regulations is supported. This will provide consistency and transparency in the delivery of these activities nationally.
148. Section 783 provides for Local Authorities to undertake "state of the environment

monitoring” a new subsection (5) requires that Local authorities provide iwi and hapū with opportunities to be involved in the development and implementation of monitoring methods and approaches and development of policy and guidance on the regional monitoring strategy and carry out monitoring where agreed with the Local Authority. This is supported noting that the means for recovery of respective parties’ time to input into the development of policy and supporting documentation will be necessary.

149. The requirement in clause 783(1)(g) to monitor “*permitted activities that have effect in the region or district*” could significantly increase workloads for local authorities. As currently drafted, the provision does not qualify which permitted activities must be monitored or what adequate monitoring involves. On its face, the provision requires local authorities to monitor all permitted activities, no matter what the activity is. It is unrealistic for local authorities to do so, and there should be a proportionate monitoring requirement depending on the potential effect/impact of the activity, and in some cases to monitor only based on complaint. It would be useful to acknowledge that local authorities have a discretion to carry out their monitoring obligations.

150. In addition to the regular monitoring, compliance and enforcement completed by Council, there is the additional requirement to report every three years on the efficiency and effectiveness of plans, fund and implement a monitoring and reporting strategy and develop and implement a compliance and enforcement strategy. These new requirements will require additional resourcing and funding and therefore any gains in the efficiency of the system made in other areas has the potential to be lost. Council will need sufficient funding from central government to fulfil all its significant implementation roles in the new system.

151. The monitoring and reporting strategy is prepared by the RPC. While the committee must ask Council to provide input to the strategy there is no requirement for the RPC to include this input or provide a reason for not including it. This should be a requirement.

Part 13 - Financial Contributions – Environmental Contributions

152. The NBEA bill proposes the replacement of financial contributions with a new term ‘environmental contributions’ WBOPDC supports the continued inclusion of these provisions within new legislation. Western Bay operates under a financial contributions model without the reliance of development contributions under the LGA. Continuing to provide a mechanism with increased specificity within s112 (including the consideration of how environmental contributions may be applied differently in different districts) can enable local councils to continue with developed systems and processes for these contributions. It also appears to provide flexibility for Councils to utilise a development contributions policy for a certain purpose alongside environmental contribution rules (for another separate purpose – not ‘double dipping’) where deemed appropriate.

Part 14 – Consenting and Designations

153. As identified in NBEA Part 8 (subpart 1) the process for designations has changed. An initial notice of requirement to identify and protect a spatial footprint as well as a Construction and Implementation Plan (CIP) is generally supported. It should be clarified whether or not the

proposed designation process requires a resource consent, and if it does, whether or not this is a duplication in roles between the consenting authority and the RPC. As identified in the Taituarā submission, if there is now no longer a need to obtain a resource consent and the CIP is the mechanism for enabling work to be carried out, then this should be undertaken by local government. The processing requirements to construct infrastructure are more aligned with the resource consent process in local government (than the RPC).

154. The number of activity classes available for resource consents has been reduced, with the removal of 'non-complying' (Clause 153). Controlled activities can now be refused, making them more like restricted discretionary activities. As identified in the LGNZ and Taituarā submissions, this change to the controlled activity category will reduce certainty to applicants and narrows the ability for local government to 'control' activities that have limited effects.

155. The removal of non-complying activities will likely increase the amount of prohibited activities needed to be listed. Clarification on how to manage previous non-complying activities is needed.

156. NBEA Clause 156 sets out activities that may be permitted with or without requirements. The National Planning Framework or a plan may identify a permitted activity, subject to compliance with conditions or requirements specified in the NPF or an NBE Plan. It should be clarified that there will need to be consistency between the NPF and the NBE Plan to ensure consistency.

157. As identified in the Taituarā submission Clause 223 outlines the considerations for consent authorities when processing an application for resource consent. As drafted, if an application is contrary to an environmental limit or target, then the processing planner will require a great deal of information to be able to determine whether or not an environmental limit or target will not be exceeded. Alternatively, NBE plans could deal with issues upfront by prohibiting activities that will exceed environmental limits or targets. Irrespective of the above environmental limits or targets will need to be clearly and accurately defined. However, this is not always practicable and variation can sometimes be required.

158. NBEA clause 302 introduces permitted activity notices (PANs), which are required to be produced in 10 days. There is concern that PANs will increase workloads considerably and that the 10-day period may be unrealistic. As identified in the Taituarā submission, this is of concern as the value of PANs is not clear. Law abiding citizens will want to receive PANs for insurance purposes and sale, much like certificate of compliance. Those who have less regard to the law are unlikely to apply for them, regardless of any requirement in the NPF - particularly as they can be used to target and recover monitoring costs. Council requests that the purpose of PANs and the value they add be clarified.

WBOPDC are pleased to have had the opportunity to provide further feedback on the two bills and look forward to the upcoming release of the Climate Change Adaptation Act.

We welcome the opportunity to discuss guidance material needed for the local government sector and also the development of tools needed to implement the new resource management system.

We look forward to the Select Committee's consideration of the recommendations WBOPDC makes through this submission.

Yours sincerely,



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