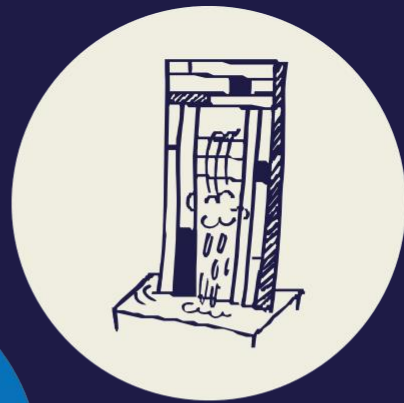


HAMILTON CITY COUNCIL SUBMISSION

Natural and Built Environment Bill

Parliament's Environment Committee



17 February 2023



**Hamilton
City Council**
Te kaunihera o Kirikiriroa

Improving the Wellbeing of Hamiltonians

Hamilton City Council is focused on improving the wellbeing of Hamiltonians through delivering to our five priorities of shaping:

- **A city that's easy to live in**
- **A city where our people thrive**
- **A central city where our people love to be**
- **A fun city with lots to do**
- **A green city**

The topic of this submission is aligned to all of Hamilton City Council's five priorities.

Council Approval and Reference

This submission was approved under the Mayor of Hamilton's delegated authority on 17 February 2023.

Hamilton City Council Reference D-4514324 - Submission # 724

Introduction

1. Hamilton City Council appreciate the opportunity to make a submission to the **Natural and Built Environment Bill**.

Key Submission Points

2. Hamilton City Council **opposes** the passing of the Natural and Built Environment Bill (Bill) in its current form. While we support the intent of Reforms and its original objectives, we do not consider that the proposed replacement legislation will achieve those objectives and instead, represents a step backwards from current Resource Management practices and processes in Aotearoa New Zealand.
3. The Bill contains a fundamental flaw in that it establishes the roles, functions and responsibilities of Territorial Authorities in relation to environmental management, but through its provisions, particularly Part 3 and Schedules 7 and 8, it will make it impossible for Hamilton City Council to effectively perform those roles, functions and responsibilities. Put simply, it sets Hamilton City Council up for failure. (Flaw 1)
4. In addition to this fundamental flaw, the Bill suffers from the additional following flaws:
 - a) Lack of integration with other sector reforms such as Three Waters and the structure of local government. As a result, it lacks coherence across the board and embeds structures within the 'new regime', which are or will become redundant and not fit for purpose. This affects Hamilton City Council's ability to perform its functions and deliver on the purpose of the Bill. (Flaw 2)
 - b) The new resource management regime is complex and costly to implement and operate. These complexities and cost will create delay and will frustrate Hamilton City Council's ability to deliver the environmental outcomes sought. (Flaw 3)
 - c) The Bill is an unnecessarily extreme response to resolving the areas of concern under the current RMA regime, representing change, but not improvement. (Flaw 4)
5. Each of these flaws is summarised in the section below, and more fully explained thereafter.

Introduction

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Key Submission Points

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11. The new resource management regime is complex and costly to implement and operate. These complexities and cost will create delay and will frustrate Hamilton City Council's ability to deliver the environmental outcomes sought. (Flaw 3)
12. The Bill is an unnecessarily extreme response to resolving the areas of concern under the current RMA regime, representing change, but not improvement. (Flaw 4)
13. Each of these flaws is summarised in the section below, and more fully explained thereafter.

Summary of Flaws in the Bill

Flaw One

14. The Bill establishing the roles, functions and responsibilities of Hamilton City Council, and then through the practical impacts of Part 3 and Schedules 7 and 8 of the Bill, makes it impossible for Hamilton City Council to effectively perform its roles, functions and responsibilities. Hamilton City Council's local voice is lost.

Explanation

15. Under s646 of the Bill, Hamilton City Council is responsible for controlling the effects of the use, development or protection of land within the City. Under clause 645(1) of the Bill, Hamilton City Council must participate with the Regional Planning Committee in reviewing and developing the Natural and Built Environment Plan (**Plan**) and under clause 645(5) Hamilton City Council must implement and administer the Plan.
16. Part 3 of the Bill establishes the mandatory requirement for a National Planning Framework which sets out certain matters of national significance, matters for which national consistency is desirable, resolves environmental conflicts, and sets environmental limits and strategic directions. The National Planning Framework must be given effect to at a local level.
17. This form of 'top down' environmental directive is acceptable to Hamilton City Council in-part, provided the framework properly enables Hamilton City Council as a local decision-maker to determine how to implement and reflect these directives at a local level.
18. The framework for that local decision-making, set out in Schedules 7 and 8 of the Bill, destroys Hamilton City Council's ability to make timely, cost-effective, democratically accountable decisions. The Regional Planning Committee Plan making process is unwieldy, costly, time consuming, undemocratic, reliant on territorial and regional boundaries which are irrelevant and unreflective of communities of interest, unrepresentative, and lacks political accountability. Hamilton City Council's ability to make local decisions affecting its ratepayers is diluted and placed into the hands of other decision-makers who have no relevant link or accountability to the ratepayers of Hamilton. Hamilton City Council's ability to discharge its responsibility to effectively control the effects of land use in the City will be lost under the proposed Regional Planning Committee architecture. The Bill's Plan making framework at the local level requires a complete redesign if it is to enable Hamilton City Council to effectively perform its role, function and responsibilities under the Bill.

Solutions

- a) Schedules 7 and 8 require substantial amendment to the structure and function of Regional Planning Committees (RPC).
- b) RPCs should be structured to ensure they are representative of the population within participating territories (recognising that a committee of more than 10-12 members is unworkable, unless sub-committee structures, with decision-making authority, are implemented).
- c) Council representatives on RPCs must be elected members.
- d) The requirements to develop and status of SCOs should be strengthened.
- e) RPC decision-making on NBEA Plans must be led and principally determined by those committee members who represent that particular territorial authority. Unless those committee members support the decision, it cannot be ratified by the RPC. Sub-committee structures could assist to deliver this outcome.
- f) Providing appeal rights for a Territorial Authority against decisions of the RPC affecting its territory.

Flaw Two

19. There is a lack of integration between the Bill and other sector reforms, which results in the embedding of redundant and not fit for purpose structures into the 'new regime'.

Explanation

20. There is a very significant wave of reform coming within the local government sector, yet it is occurring in a piecemeal manner, which leads to a lack of integration and coherency. The clearest illustration of this is the delay in formulating the Climate Adaptation Act, which is touted as the third pillar in these reforms, sitting alongside the Bill and the Spatial Planning Bill. The Climate Change Adaptation Act should be an integral part of the reforms by setting the direction of future planning, yet the reforms are not ready to be considered as an integrated package.
21. The Water Services Entities Act 2022 (WSEA) was passed in December 2022 and heralds wholesale reform of the governance and control of three waters infrastructure, yet there are few linkages between the Bill and the WSEA.
22. Further reform within the sector is ongoing, with the Government's announcement in April 2021 of an independent review of local government and how it needs to evolve over the next 30 years. The draft report dated October 2022 establishes that central government has added significant additional responsibilities and expectations on local government over the last two decades ranging from meeting new national freshwater management standards, which will cost a significant amount of money, to achieving more sustainable, liveable cities that require massive investments to cater for growth and reshaping the current urban form.
23. In light of these factors, councils are currently struggling to meet and fund their legislative requirements and community expectations, and structural change is required coupled with additional funding capacity, to deliver on the legislative mandates from central government.
24. Despite the acknowledged need for change, the Bill embeds the current structures, particularly in terms of the Regional Planning Committees, and forces an uncomfortable 'marriage' between the new environmental regime and the old structures. The failure to properly integrate the reforms across the sector will deliver inefficiencies, delays, and a lack of accountability. This will lead to poor outcomes.
25. Resource management reform should be implemented holistically, so that land and resource use planning is integrated with infrastructure planning and is flexible enough to mould to a reformed local government sector.

Solutions

- a) Delay introducing the Bill into the House for the final reading until the Climate Adaption Bill has been drafted and circulated for stakeholder feedback.
- b) Undertake a review of the Bill and overall package of reform to enhance its integration with the Three Waters Reform programme and associated legislation.
- c) Amend the Bill to ensure flexibility and adaptability to respond to local government sector reforms, including structures relating to NBE Plan making and RPCs.

Flaw Three

26. The Bill Introduces a costly and complex regime which will create delay and frustration for all stakeholders.

Explanation

27. The Bill does not achieve the objective of reducing complexity. The Bill contains language which is ambiguous and open to challenge. As an example, the definition of “environment” includes the concept of “as the context requires”. Another example is contained within the purpose clause 3, which is to “uphold te Oranga o te Taiao”. Without clear definitions or explanation, these ambiguities, and the many others set out in this submission, will force councils to test their meaning in Court, at considerable expense.
28. The provisions relating to the establishment and operation of the Regional Planning Committees are complex (as explained under Flaw 1) and create very significant funding and resourcing challenges for councils. These processes establish a very significant role for Maaori, yet there is no supporting funding mechanism to enable effective participation from Iwi compared to what funding currently occurs – which is inadequate. The result will be delay, ineffective consultation and frustration for resource users and stakeholders.
29. Transitional provisions are unclear and will give rise to inefficiencies. There is little clarity over existing plans and their influence over new NBE Plans. Significant work, consultation and investment will be lost. There is no mechanism for current plan development work (e.g., freshwater planning and the intensification planning instrument processes) to be integrated into the Plans. Statements of Community Outcomes could be a vehicle for this integration, but the opportunity has not been seized.

Solutions

- a) Provide greater clarity on the core purpose of the Bill.
- b) Review all critical clauses and words referred to within this submission and provide greater clarity and precision in terms of definitions, so as to minimise the risk of contested interpretations.
- c) As the direct Treaty Partner, the Crown must ensure that Maaori are properly resourced to participate in the new system. This cost should not fall solely on councils. Central government must commit sufficient funding to ensure resourcing is in place to support the participation of Maaori in the new system, including building local government capacity and capability to support Iwi/Maaori participation.

Flaw Four

30. The Bill is an unnecessarily extreme response to resolving the areas of concern under the current RMA regime, representing change, but not improvement.

Explanation

31. The Bill's objectives, stated in the Bill's explanatory notes are to:
- a) Deliver intergenerational protection of the natural environment;
 - b) Enable development within environmental biophysical limits, including improved housing supply, affordability and choice, and timely provision of infrastructure;
 - c) Give effect to the principles of te Tiriti o Waitangi and provide greater recognition of te ao Maaori, including maatauranga Maaori;
 - d) Prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions;
 - e) Improve system efficiency and effectiveness and reduce complexity, while retaining local democratic input.
32. The Bill is introduced at a time when the Resource Management (Enabling Housing Supply and other Matters) Amendment Act 2021 is being implemented and its results are not yet known. It is premature to abandon these reforms before determining their efficacy in terms of housing supply.
33. The use of the RMA by the government as a legislative tool to manage the environment and activities within it has evolved at pace in recent years with the use of NPSs, NESs and the national planning standards. NPSs and NESs have provided much needed national direction which the RMA has been lacking since its inception. This new national direction provides the guardrails in the form of environmental bottom-lines. These factors, in combination with well evolved third and fourth generation plans under the RMA, mean many of the weaknesses in the RMA are being addressed.
34. Consistency of plans as directed by the use of NPSs and NESs and the national planning standards will create greater consistency across plans at a national level. Wholesale reform is not needed to achieve this outcome.
35. The 'system outcomes' sought by the Bill attempt to shift from an 'effects based' system to an 'outcomes based' system. Existing plans already stipulate objectives for which they seek to achieve. These objectives are generally future focused statements regarding outcomes. An effects assessment is then required when a proposal does not align with those outcomes sought by the rules, objectives and policies. Clause 233 concerning consideration of resource consent applications still requires an effects assessment in addition to outcomes, limits, targets and polices in a plan, and the future state of the environment. Practically, this assessment is considered very similar to assessments that currently occur under Section 104 of the RMA, if not more demanding of consent offices and decision-makers. As such, the intention to reduce the complexity of consent decision-making does not appear to be reflected in the legislation.

Solutions

- a) Reconsider wholesale reform of the RMA and reflect on whether further "top down" directives in the form of National Policy Statements, National Environmental Standards, and National Planning Standards can deliver on the stated objectives.
- b) Await the implementation of the RMA Housing Enabling amendments to bed in and produce results.
- c) Enhance environmental monitoring, which is currently enabled under the RMA, but not prioritised.

Previous Submissions on Resource Management Reform

36. Hamilton City Council takes a considerable interest in matters regarding resource management reform and has made a number of submissions in this space in recent years - for example:
- Hamilton City Council's 24 February 2022 submission to **Transforming Aotearoa New Zealand's Resource Management System - Our Future Resource Management System - Materials for Discussion - November 2021 Discussion Document** - [refer here](#)
 - Hamilton City Council's 16 November 2021 submission to **the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill** - [refer here](#)
 - Hamilton City Council's 4 August 2021 submission to the **Inquiry on the Parliamentary Paper on the Exposure Draft - Natural and Built Environments Bill** - [refer here](#)
 - Hamilton City Council's 3 August 2021 submission to the **Government Policy Statement on Housing and Urban Development (GPS-HUD)** - June 2021 Discussion Document - [refer here](#)
 - Hamilton City Council's 2 July 2021 submission to the New Zealand Infrastructure Commission's May 2021 Discussion Document **Infrastructure for a Better Future Aotearoa New Zealand Infrastructure Strategy** - [refer here](#)
 - Hamilton City Council 21 May 2021 staff feedback to the Ministry for the Environment's **Early Engagement on Resource Management Reform - Opportunities to Improve System Efficiency** - [refer here](#)
 - Hamilton City Council's 13 February 2020 submission to the **Urban Development Bill**
 - Hamilton City Council's 17 October 2019 submission to the June 2021 Discussion Document **Proposed National Policy Statement for Urban Development (NPS-UD)**
37. All submissions made by Hamilton City Council can be [accessed here](#)

Flaw One – Roles, Functions and Responsibilities

- 38. *Flaw 1:*** *The Bill establishing the roles, functions and responsibilities of Hamilton City Council and then through the practical impacts of Part 3 and Schedules 7 and 8 of the Bill, makes it impossible for Hamilton City Council to effectively perform its roles, functions and responsibilities. Hamilton City Council's local voice is lost.*

Regionalisation

- 39.** Hamilton City Council opposes a 'one-size-fits-all' regional approach to planning in New Zealand. As a Tier 1 growth Council, Hamilton and its Future Proof partner councils face unique metrocentric growth-related challenges. Any reform to the spatial scales of planning and the institutional arrangements required for implementation must reflect this and align geographically to the issues being faced. Adopting the existing regional boundaries, originally based on water catchments, as the basis for all planning does not reflect the issues faced within these boundaries. The Waikato Region, spanning two water catchments, is vast and the issues that affect it are equally so, spatially distributed across the region. Planning is most effective in responding to resource management issues when undertaken in a multi-scalar manner where resource management issues are dealt with at the appropriate scale and with the appropriate boundaries. A hierarchical layer of plans is commonly created to capture the most appropriate level of detail for each scale from the national to local levels. The body of theory and practice supporting this approach is well documented. Shifting to a one-size fits all regional planning approach in the Waikato, as proposed under the NBE, to address all resource management issues removed the local scale and is a step backwards for the New Zealand planning system and is out-of-step with international best practice. Land use planning boundaries, for example, ought to be modelled on appropriate economic geographies, existing functional boundaries (rather than administrative boundaries), and wider political aspirations such as the 'Golden Triangle' in the Waikato.
- 40.** Whether delineation occurs through creating new RPC boundaries or geographic subsets within RSSs and NBEA Plans, some form of delineation will be required to make the plan development process manageable and to ensure local resource management issues are captured and responded to in a timely and efficient manner. If the new system through RPCs is not sufficiently agile to respond to local resource management issues, then this will be a step backwards for the new system.
- 41.** As depicted in Figure 1 below, the Waikato contains a vast area and variety of natural and built environments. Hamilton and the surrounding metro area is the only city within the Waikato Region. This metro area holds fundamentally different resource management matters to other parts of the region such as Thames-Coromandel or South Waikato. This is particularly apparent when regional borders were determined by water catchments for regional council functions. Hamilton City Council questions the practicality, appropriateness and effectiveness and having one NBE plan and RSS for such a region given the detail that these plans will be required to contain for that entire region.

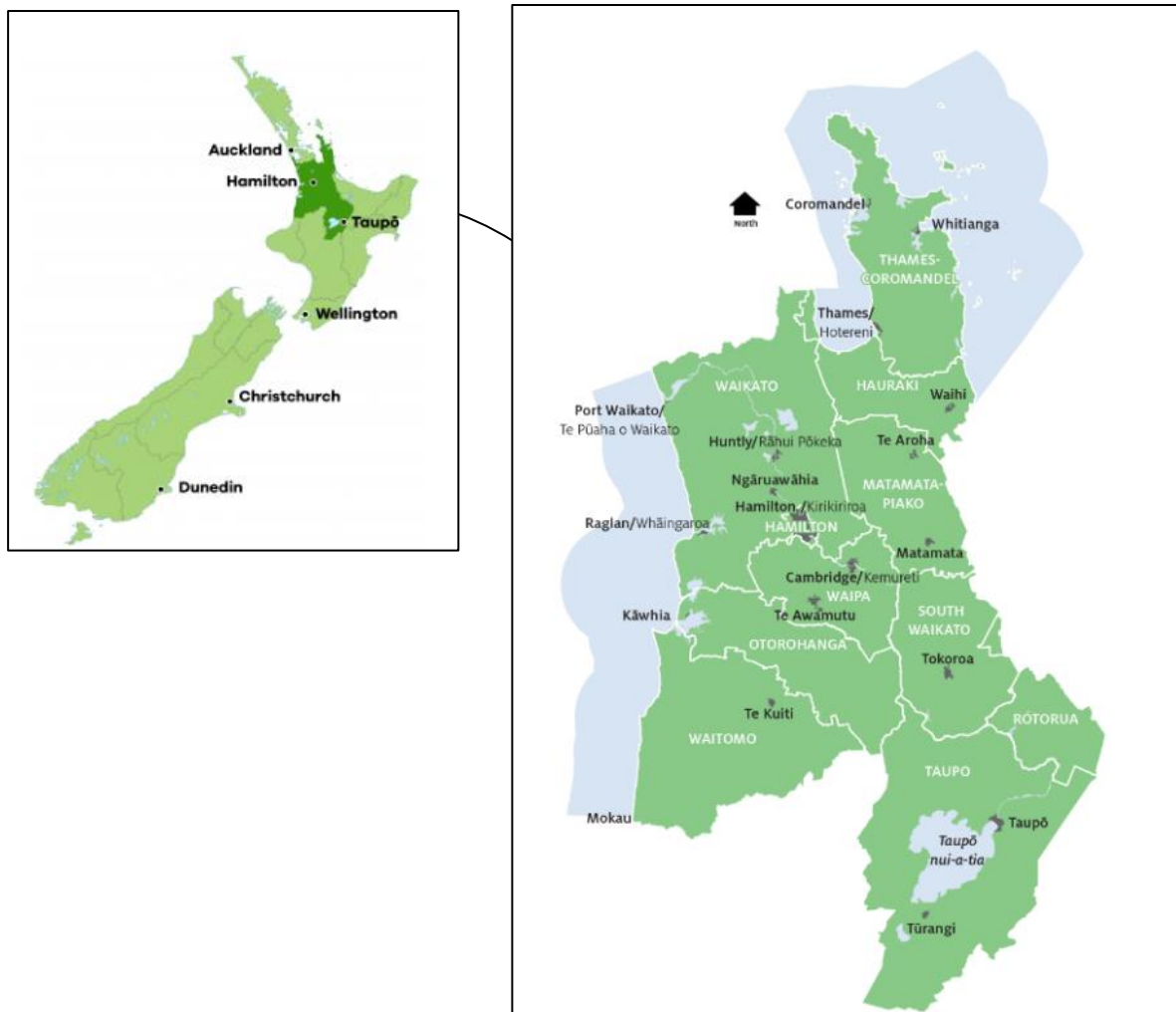


Figure 1: The Waikato Region and constitute districts¹

42. In the case of the Waikato, the NBE would see the reduction of 14 plans into one. This represents a significant task, across 11 territorial authorities. In Auckland, when a similar task was undertaken, it followed local government reform which smoothed the way for plan integration to occur. Listed below are all plans that would be combined to create a NBE plan for the region:

- Hamilton City District Plan
- Waikato District Plan
- Thames-Coromandel District Plan
- Hauraki District Plan
- Matamata-Piako District Plan
- Waipa District Plan
- South Waikato District Plan
- Otorohanga District Plan
- Waitomo District Plan
- Rotorua District Plan
- Taupo District Plan
- Waikato Regional Coastal Plan
- Waikato Regional Policy Statement
- Waikato Regional Plan

¹ WRC. About the Waikato Region. <https://www.waikatoregion.govt.nz/community/about-the-waikato-region/>.

43. Plan amalgamation is intended to provide consistency of zones and standards, and ease for users who work across these plans. Much of this could be provided via strengthening the National Planning Standards. Nevertheless, within the context of the Waikato, it is unclear if amalgamation of plans will in fact alter any of the on-the-ground outcomes. Moreover, the size and complexity of a combined plan for the Waikato Region in terms of useability risks outweighing any of its benefits.
44. Significant investment into RMA plans has occurred. Each of the Waikato's 14 plans have been through an average of three reviews, not including plan changes and variations in the intervening periods. Therefore, these plans have had significant financial investment in them by local authorities under the RMA, and represents significant time, resource and evidence.
45. The task of plan integration alone will come at huge cost to the respective local authorities. In Hamilton alone, recent plan changes including for urban expansion (Plan Change 5 and 7), heritage and natural environment protection (Plan Change 9) and urban intensification (Plan Change 12) have cost the Council \$4.3M over the last three financial years. These are not whole plan changes, but amendments to sections of the District Plan. We also note that the last yearly operating budget for Future Proof was \$1.088M, which does include the cost of the latest plan, but merely the operating costs of the partnership and its relevant functions and projects from the last year. A future NBE and RSS Plan for the Waikato will need to combine the planning matters for 11 district plans, a regional policy statement, regional plan and coastal plan, while addressing the new planning requirements of NPFs and the Spatial Planning Bill. The Cost-Benefit Analysis provided by MfE estimates a total cost to local government to develop NBE Plans and Spatial Strategies to be \$269M². We question if these costs have been underestimated based on our own plan change expenses. Nevertheless, divided to a population head count, using the MfE numbers we estimate the cost to complete first generation NBE plans to be circa \$25-35M per region, paid for between the constituent authorities. We urge caution before requiring all regions to develop new unified NBE plans. There must be a high degree of confidence that these new plans will deliver the outcomes which are being sought. At present, we are not convinced that this confidence exists.
46. Overall, we question the value in the case of the Waikato sub-region, and more particularly Hamilton, in having a combined plan. Any benefits are likely to be outweighed by the loss of local context and nuance, increased complexity, and cost of developing, navigating, and using a regional plan. Whether change is made to regional boundaries or not, the policy frameworks which apply to Hamilton City and its metro area will need to remain unique to Hamilton, the Hamilton City environments, and issues for which they relate. This is especially so given Hamilton is the only city within the Waikato Region.

² Ministry for the Environment. November 2022. "Supplementary Analysis Report: The new resource management system". <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/supplementary-analysis-report-nba-and-spa/>.

Recommendations

47. We do not believe regional boundaries best align to some of the unique place-specific issues for which the resource management system is tasked with managing. These boundaries make sense for resource management matters relating to water catchments; however, their relevance is diminished when considering the full remit of environmental management matters. We seek either:
- a) That the regional boundaries are reconsidered to smaller spatial areas aligned to the placed-based issues. RPCs will be unwieldy and unworkable on the current boundaries of the Waikato Region both in terms of breadth of the resource management issues to address and the organisational challenges the membership encompassing existing regional boundaries would give rise to.
 - b) Alternatively, the NBE plans and RSSs comprise distinct segments (provided for in legislation) which address specific localities and issues, similar to the current Waikato Regional Policy Statement (WRPS). These distinct segments could be split by distinct locality, e.g., Hamilton-Waikato metropolitan area, Greater Taupō, Thames-Coromandel, and so on.

Regional Planning Committees

Composition and Representation

48. Hamilton City Council has concerns that the establishment of RPCs, as proposed, removes RM issues away from directly elected local members' responsibility.
49. While not perfect, currently, there is a clear relationship between local authority management, elected members, and the public, including key stakeholders. This results in resource management issues being raised, reprioritisation of work programmes occurring where necessary, and elected members holding management to account to resolve them. In turn, stakeholders and the public hold the elected members to account. This is enabled due to organisational design; the lines of democratic and organisational accountability are clear. This is supported by planning teams being domiciled in or close to their local communities and having a deep understanding of the local context. We note that under the NBE Plans and RPC structures, these clear linkages are likely to be lost, which will mean the system is less responsive than it otherwise might be.
50. As proposed, the appointment of RPC members must be consistent with the LGA purpose and principles. This infers that RPCs shall be comprised of elected members from the participating local authorities, however, this is not abundantly clear and needs further clarification. We support local representation on RPCs, however, we note that this would come into conflict with the whole-of-region approach RPC members shall be tasked with. As such, there is concern around committee members representative responsibilities and constituencies that the Bill overlooks.
51. Clause 17 and 18 of Schedule 8 suggest the independence of RPCs from their appointing bodies. These provisions on the face of it seek for members to conduct themselves in the interests of the region, rather than the district they were appointed from. This will enable members from districts to be making decisions on behalf of other districts. This oversteps the responsibility of those members, is not democratic and will inevitably create tension for those committee members between the RPC's whole of region task and the interests of their appointing body. Elected members will always represent those communities who elected them, regardless of the requirement to be independent. This has been evident in the Future Proof process.
52. The proposed governance structure of RPCs presents a complete separation of responsibility and accountability from the public. Under the existing system, all decisions are made with direct democratic accountability. The proposed system strips democratic accountability away by creating RPCs that operate independently from their appointing bodies and which are the new resource management decision-makers.

53. Significant decisions are to be made by RPCs that will have implications on growth and development outcomes, LTPs and infrastructure funding. Given the potential composition arrangements and proposed decision-making process, there is a risk that these decisions will not have the buy-in of the respective territorial local authorities, their wider elected representatives, and constituents.
54. This serves to illustrate that resource management reform, in the absence of local government reform, is flawed and will create significant local and regional democratic accountability issues. It would be more appropriate to see RPCs operate in a similar fashion to a joint committee such as Future Proof by where all final decisions are devolved down to the participating authorities for final approval. This ensures those local authorities have the buy-in of the plan.
55. Hamilton City Council notes that within clause 3 (2)(d) of Schedule 8, the extent of proportional representation when RPCs are formed requires “consideration” of the “desirability” of applying weighting to different local authority populations.
56. A loss in proportional representation on RPCs risks the dilution of metro voices in RM decision-making. RPCs will make decisions on NBE Plans and Spatial Plans. A dilution or absence of metro voices during such processes would be a significant loss for the development of effective strategic thinking for those regions and districts, and a step backwards in comparison to existing metro planning arrangements, particularly in the Waikato. This also raises issues regarding the capability of decision-making on an RPC whereby participates from rural areas might not be suited in making decisions for urban areas and vice versa.
57. It is noted that the proposed legislation does not set a maximum number of representatives on RPCs. In the case of the Waikato Region, a potential RPC could comprise of a minimum 15 members if proportional membership was not taken into account, and only two Maaori members are appointed. For an efficient decision-making process, a maximum number of representatives should be required within the legislation. If no maximum number of seats is stipulated and no set process for determining RPCs is established, this shall create an incredibly complex and contentious process for establishing RPCs that might lead to a membership size that does not lend itself to efficient decision-making.
58. An alternative model would be proportional voting - to give votes made by RPC members the weight that their territorial authority represents population wise. This would result in Hamilton City getting around 31% of voting rights compared to 2% for Waitomo, which would not likely be acceptable for Waitomo and other smaller councils. The disparity between district populations within the Waikato Region can be seen in Figure 2 below. This will inevitably create ‘winners’ and ‘losers’. This same issue was considered by the Royal Commission of Inquiry into Auckland Governance in 2008 and the pros and cons of at large councillors versus ward-based councillors. Again, this all highlights why the RPC approach along current regional council boundaries and current local government council entities is inappropriate.

Waikato Population Proportion by District, 2022

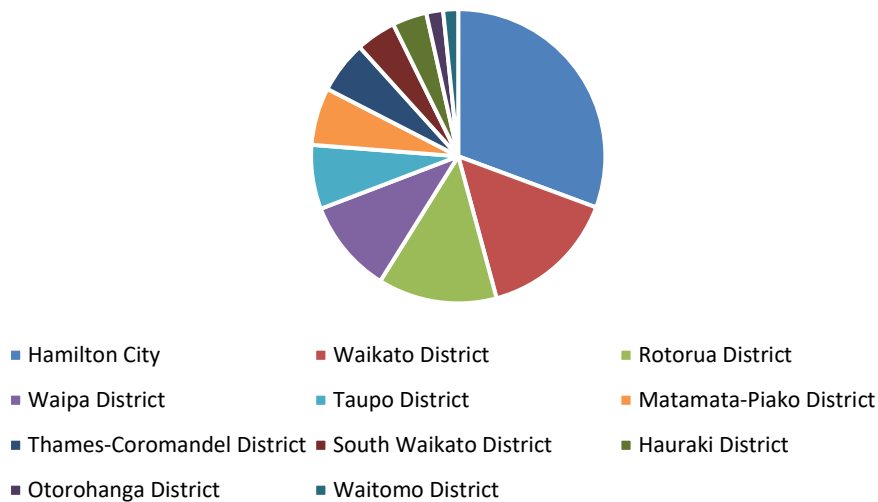


Figure 2: Waikato Region Population Proportion by District ³

59. Any effort to reduce the number of members created by a purely proportional model would immediately create disproportionate representation that would presumably result in smaller populated territorial authorities having a greater weight than their population ratio in that region.
60. In addition, while there is flexibility around the number of mana whenua representatives on RPCs, a minimum of two Maaori appointed representatives are required. A minimum number of two may be perceived as an acceptable target when in fact it is an inadequate number in relation to the number of different Maaori voices a region may have. As such, this might present challenges in many regions where there are multiple Maaori groups who ought to have representation in resource management decision-making. The Waikato Region is such an area where there are many iwi and hapuu groups, some of whom have Treaty settlements while others do not.
61. Furthermore, the single appointed Crown representative is a challenge in and of itself. Without further clarification on the mandate that the single appointee shall have other than the explanatory note – “this member will need to communicate the governments priorities for the region”, a presumption is that that representative shall give the voice of all central government bodies. This is an impractical if not impossible task given the already disjointed messaging local government receives from different central government organisations such Kainga Ora, Waka Kotahi, Ministry of Education, Department of Conservation, and Heritage New Zealand to name a few. This brings into question how effective a single Crown representative and their input will be.
62. With regards to Schedule 8 clause 21(1), Hamilton City Council seeks that the chairperson of the committee must be an independent chair. From experience with Future Proof and the Waikato Plan in the Waikato, independent chairs are critical to the success of joint committees where there are often competing positions.

³ Based off Stats NZ TA population estimates last updated on 25th October 2022.

63. There is a substantial risk that these committees will become overly political – parochial politics are likely to prevail which will result in ‘horse trading’ between respective local agendas. This will dilute the robustness of these plans. For example, trading off between infrastructure priorities across districts. It will also mean the ‘difficult decisions’ will be avoided, and outcomes proportionally allocated across the region. This shall dilute the time and focus on major metro planning matters that Hamilton City Council spends on these now, as a Tier One authority, particularly when other territorial authorities’ members are not elected to focus on metro issues. This arrangement could potentially lead to unintended or poor planning outcomes in a major urban environment.
64. The entire proposed RPC composition and arrangement structure presents a process that will be drawn out and involve numerous disputes (anticipated by the Bill) between parties who wish to participate on the RPC – given the power they shall have over resource management in that region, and which only further emphasises the need to reform local government alongside any major resource management reform.

Recommendations

65. Schedules 7 and 8 require substantial amendment to structure and function of RPCs. RPCs should be structured to ensure they are representative of the population within participating territories (recognising that a committee of more than 10-12 members is unworkable, unless sub-committee structures, with decision making authority, are implemented).
66. Council representatives on RPCs must be elected members from participating territorial authorities.
67. RPC decision-making on NBE Plans must be led and principally determined by those committee members who represent that particular territorial authority. Unless those committee members support the decision, it cannot be ratified by the RPC. Sub-committee structures could assist to deliver this outcome.
68. The role and responsibilities of the Crown appointed representative needs to be stated to provide clarity on who they shall be representing on behalf of the Crown and all its government agencies.
69. We seek that the chair of an RPC is independent and follows a similar model to that of Future Proof in the Waikato.
70. Provide appeal rights for a territorial authority against decisions of the RPC affecting its territory.

RPC Funding

71. From experience with combined planning processes in the Waikato between local authorities, resourcing and management is a key constraint that will likely affect RPCs. The supporting secretariats are likely to become unwieldy, expensive, inefficient and with blurred lines of accountability between RPCs, the secretariat director, the host authority and constituent local authorities.
72. The funding of RPCs is set out in clause 36 of Schedule 8 and contains aspects which we seek change. It is incumbent on the local authorities to jointly fund and resource the RPC “in good faith”. We believe far greater clarity in law is required regarding the funding of these new bodies given the quantum of resourcing that will be required to produce the first generation NBE plans, the RSS and then to maintain the ongoing operation of the RPCs and their secretariats.
73. Secondly, the Bill stipulates those local authorities must not direct the RPC to use the funding in any particular way, nor may they alter the amount of funding without the consent of the RPC. As previously mentioned, the funding of RPCs shall be contentious and complex, dependant on the representational model agreed to.
74. Funding will not follow unless those determining the funding are having a say and their interests are being served. This is the operational model of Future Proof in the Waikato sub-region.

75. Partner local authorities rightly become sceptical when large sums of money are being contributed to arm's length agencies for which they have little to no influence over and limited visibility of the how their money is being spent. These types of arrangements are inherently expensive to run, create accountability issues and lead to inefficient spending. This leads to discontent, lack of buy-in at a staff level and ultimately poor political buy-in among civic leaders whose role it is to champion the implementation of these plans. The proposal that RPCs should be autonomous further worsens this situation and heightens the likelihood of implementation failure and flaws of the proposed RPCs.

Recommendations

76. Aligning the RPC members with the decision-making related to their respective districts will improve the line of accountability and buy-in of RPC decisions.

Secretariat and Supporting Staff

77. There are several issues in respect of the host council and secretariat arrangements, including their roles, functions, operation and linkages with one another, the RPC and constituent local authorities.
78. With respect to Part 3 of Schedule 8 – “Hosting and support of the planning committee”, Hamilton City Council seeks that the Bill makes clear the terms of the host authority under clause 35. We also note that clause 36(1) is the only clause that directs the funding and resourcing of the RPC secretariat, despite this being fundamental to the success of the new system. The functions, duties and powers (cl 33(1)) for a region of the size of the Waikato should not be downplayed. Hamilton City Council seeks greater detail regarding the thinking which has been done regarding how this transition from the existing system to the new system will occur in practice. For example, expected timeframes for the creation of RPCs, appointment of directors and staffing and the development of first generation NBE plans. Hamilton City Council caution that if clear direction is not provided, the RPC secretariats will morph into entities of their own right given the level of resourcing which will be required for them to function and undertake plan-making. This will require careful workforce planning to ensure a) the existing territorial local authorities and regional councils are not hallowed out in terms of planning capability and capacity, and b) that the new secretariats have adequate resourcing and leadership to ensure their success.
79. The director of the secretariat is appointed by the RPC to provide technical advice and administrative support to the RPCs. This director can unilaterally make appointments to the secretariat, even though the costs of remunerating the new employees will fall on councils and the host council will be the legal employer. This raises numerous, significant issues in relation to expenditure and control over public money, as well as employment matters.
80. The RPC has all the rights, powers and duties of an employer in relation to the director of the secretariat and secretariat staff, but the host local authority is the legal employer of the director and the secretariat, while the director has all the rights, powers, and duties of an employer in relation to secretariat staff, however, the staff shall be treated as employees of the host authority. This is a murky relationship.
81. Furthermore, councils are responsible for "ensuring" the director's legal obligations are met. We have significant concerns about imposing a requirement like this on councils when control over the director and secretariat rests with the RPC. Councils, using public money, become the insurer for the director over whom they have no control. Such arrangements also appear to raise significant employment law and improper expenditure of public money implications. If (like the RPC) the director and secretariat are expected to be "independent", this raises more potential accountability and employment law issues.

82. We are concerned that the resourcing plan for staffing the secretariat is required to be prepared by the director of the secretariat in consultation with the RPC, not constituent local authorities where the majority of future staff are expected to come from. Aligning local government reform with resource management reform would address some of these issues. If this does not occur, we seek the requirement that RPCs are required to consult with their local authorities when developing a resource plan. We would also urge resource planning occur immediately so that certainty is provided to the sector and skills and staff capability is retained in the new system. If capability and capacity is lost due to uncertainty, this will affect the implementation of the new planning frameworks and likely increase costs to ratepayers as consultants will have to be relied on more.
83. These abovementioned points represent the ambiguity of RPCs and raises questions around the function, responsibility capability that RPCs should have, emphasising the need for alignment of resource management reforms with local government reforms.

Recommendations

84. If RPCs are to be pursued and existing regional boundaries carried through, then these RPCs should also assume the functions and powers under s104 and 105 of the Land Transport Management Act.
85. Resourcing of RPCs should commence as soon as possible to ensure capacity and capability of those committees is sufficient to undertake the proposed Reforms.
86. RPC secretariat staff should be topic based at 'Centres of Excellence' within that region where institutional knowledge and skills are best fit to that topic.

The Role of the Minister

NPF Creation

87. The reforms shift significant powers to the Minister and the NPF creation process, which offers limited input for local authorities to inform decisions. The full implications of the Bill are difficult to assess in the absence of the NPF, which is intended to be the primary direction setting documents for all future resource management plans and strategies. While the Bill sets the framework, the important trade-offs will be left to the NPF and the Minister of the day - of which we have no insight on.
88. As per clause 2 of Schedule 6, during the creation of the NPF, the Minister must "engage" with "individuals or organisations that the Minister considers representative of the local government sector". This does not guarantee an appropriate level of input from local authorities, which is concerning given the significant accumulation of industry knowledge it has to offer.
89. In addition, given the increased power and responsibility of the Minister and Ministry for the Environment, we question whether they shall have the capacity and capability to perform these new roles and functions effectively without significant investment.
90. Where integration of competing outcomes is left to NBE plans, there is a risk that those plans will become even more complex unless a 'resolution by consent' method is chosen – which is not the intent of Reforms. Without a deliberate cascade of policy resolution, then issues will continue to trickle down to the consenting level resulting in variability and poor integration.
91. The judicial system (e.g., the Environment Court) is the better arbitrator of disputes and not the Minister of the day. The Minister of the day is subject to political interference – meaning their decision-making can be easily influenced by political whims and lobby groups.
92. An independent body with oversight over the NPF could be a more appropriate method of ensuring an effective NPF that does not become a tool for political advantage by the Minister of the day when the NPF is intended to surpass the political cycle. This is particularly pertinent for environmental limit and target creation.

NBE Creation and Process

93. Clause 22 of Schedule 7 lists the Ministers who the RPC must consult with during the preparation of an NBE plan. Inclusive to this list are the Ministers of the Environment, Conservation, and other Crown ministers that may be affected. The extent and purpose of such “consultation” is unclear noting that the nature of consultation can be very broad. Except for RSS development where there is justification, it is of some concern that these Ministers are given equal weight to local authorities and iwi authorities of that region when developing a NBE Plan. Given Ministers have already been involved in the NPF making process and RSS development, it is not considered appropriate for additional influence and input that is equal to constituent local authorities and iwi. This would simply add delay to NBE plan development, and further erode the contextual integrity of those plans. Based on experience with the National Policy Statements and lower order regional and district plans, the legal hierarchy of plans is sufficient to ensure vertical alignment without the need for ministerial intervention in local plan making.
94. Clause 205(2)(c) requires an RPC or Minister to publicly notify a consent where there is “relevant concern from the community”. This is considered subjective and allows opportunity for community concern to interfere with the decision-making on any given application.
95. In addition, clauses 205-207 refer to the “decision maker” as the Minister or RPC. Does the Bill contemplate decision-making functions of the Minister being devolved to the RPC, or shared? In addition, we do not consider it appropriate that these two persons/groups have power over all possible consenting notifications when it is the local authority who shall be the day-to-day consenting authority. There is no control as to what sort of consents may be brought to the Minister or RPCs, or how they are brought to them. For example, clause 206 allows the ‘decision maker’ to publicly notify a person who “represents the public interest”. How does this process work? How are applications brought to the attention of these decision-makers? Who defines ‘public interest(s)’?
96. Under section 21 of schedule 5, the Minister is afforded a great deal of decision-making scope following the final recommendations by the board of inquiry. We seek that the decision-making scope under s21(2) and (4)(a) is more tightly confined.

Recommendations

97. Hamilton City Council seeks more specific requirement under clause 2(1)(b) for the Minister to engage with the local authorities on the relevant aspects of the NPF which relate to their environment. We seek that a more formal pre-notification process is stipulated to provide transparency.
98. Establish an independent environmental regulator who will be tasked with monitoring and enforcement of the NPF as well as NBE Plans and RPC responsibilities.
99. The scope of “relevant concern” in clause 205 must be defined and the Minister’s ability to notify a consent should be limited accordingly to this. We believe “relevant concern” must relate back to resource management matters.
100. We seek that the decision-making scope under clause 21(2) and (4)(a) concerning decision-making of the Minister is more tightly confined to ensure a more independent, transparent and robust process is achieved.

Te Ture Whaimana

101. Hamilton City Council is pleased to see the inclusion of Te Ture Whaimana as the primary direction-setting document for the Waikato and Waipā Rivers and activities within their catchments affecting the rivers within clause 35. Te Ture Whaimana prevails over any inconsistent provisions in the NPF and those plans made under NBE Bill must give effect to Te Ture Whaimana.
102. Given Hamilton City Council's requirement to give effect to Te Ture Whaimana, it must be noted that this will likely come into conflict with several system outcomes of clause 5 and other parts of the Bill, in the same way that system outcomes within clause 5 conflict with each other, as discussed further on.

Plan Making

Local Voice

103. Representing local voices is a fundamental function and responsibility of local government and which ensures democratic governance and oversight of matters affecting local communities. Representing local voice is an elemental responsibility that underpins the core role and purpose of local government domestically, and internationally. As such, how local voices, aspirations, priorities and concerns are then able to be reflected and enabled within plans across regional geographies is imperative and must be given due consideration. Legislation, as proposed, does not reflect the integral relationship between local communities and plan making and we seek that this is addressed further by the select committee.
104. Local input is key to a stable and sustainable system that has democratic legitimacy in the eyes of those with whom those entities are established to serve. It is critical to put in place well thought out and workable processes through which local voice can be considered in plan making.
105. Buy-in of planning decisions and thus the successful implementation of plans and strategies is at risk given the governance structures of RPCs proposed and the respective points raised above. Clause 645 requires local authorities to implement and administer the RPCs plan and RSSs. As discussed above, Hamilton City Council does not consider there to be an appropriate level input required from local authorities into the plan making process of both NBE plans and the NPF. The successful implementation and administration of these plan will hinge on the level of satisfaction each authority has towards their respective plan.
106. In addition to RPCs being disconnected from local issues, as per clause 645, the ability for local aspirations to be documented via the proposed Statements of Community Outcomes (SCO) and Statements of Regional Environmental Outcomes (SREOs) is optional, and when plans are made, the RPC "must have particular regard" to any SCOs that exist. This language is considered weak and affords limited weight to such documents when compared to language such as "give effect". The status and weight given to SCOs needs to be strengthened to reflect a more bottom-up approach to planning.
107. Noting the above comments, the scope of SCOs is broad and does not need to comply with any national direction, regulation, or other planning document under the NBE or Spatial Planning Bills. With limited indication as to what SCOs should contain, there is the potential that high-level statements are produced, and which do not lend themselves to clear planning related matters. Given our request that SCOs receive greater weight, the process under which SCOs are developed needs to be further defined and developed to reflect a stronger legal status.

108. Given the lack of weight afforded to SCOs and the lack of democratic voice on RPCs, there is concern community voices will be lost, not reflected, or take too long to materialise in terms of on-the-ground outcomes. This also raises fundamental questions around self-determination of local communities, and the ability, or lack thereof, of the NBE Bill to empower local communities to determine their desired future for their locality. This runs the risk of further disenfranchising an already weary community from the plan making process, and which increases the likelihood of poor decision-making that lacks legitimacy, transparency, and inclusion.
109. Clause 15 of Schedule 7 establishes rules requiring an RPC to establish and maintain an engagement register. However, clause 15(2) states that the “planning committee is not obliged to consult the persons identified in the register.” This clause removes all and any requirements of the RPC to consult with local views.
110. Furthermore, clause 32 of the Spatial Planning Bill seeks to encourage participation by the public and all interested parties, “particularly those who may be involved in implementing the regional spatial strategy.” Clause 15 of Schedule 7 in the NBE Bill is directly contradictory to clause 32 in the Spatial Planning Bill as the NBE Bill excludes public participation by not including any requirements of the RPC to consult with anyone outside of central government, local government, iwi authorities and customary marine title groups. Consistently is needed between these two Bills.
111. Smaller scale planning exercises such as neighbourhood and town centre planning should not be lost. These help to translate community aspirations for their place into tangible planning outcomes which in turn informs future district plans and funding decisions. These are key ‘non-statutory’ planning tools and processes which provide significant voice and local insight to these communities which in turn inform the plan making process.

Recommendations

112. We seek that SCOs and SREOs are given greater legal weight by RPCs within clause 14 of Schedule 7 when NBE Plans are being formulated. This could be caveated that the NPF takes primacy over the SCO and SREOs when there is misalignment. We believe this will help rebalance the proposed planning system, providing greater local input and voice which is currently lacking.
113. The community outcomes within SCOs must have clear links to spatial planning and land use issues to ensure the relevance and usefulness of such documents. Setting out a more formal process for the creation, development and adoption of SCOs and SREOs is needed in order to reflect a stronger legal status.
114. We seek that the NBE Bill specifically recognise local area planning processes, as plans which the RPC “must have regard to” within Clause 223.

Flaw Two – Integration

115. **Flaw 2:** *There is a lack of integration between the Bill and other sector reforms which results in the embedding of redundant and not fit for purpose structures into the ‘new regime’.*
116. Resource management reform must be considered holistically. Specifically, by ensuring that organisational structures and entities, such as the regional committees enable planning in a democratically accountable manner. As proposed under the NBE, this will not occur. The risk of local communities being disenfranchised and excluded from the plan making process will be heightened.
117. The proposed resource management reforms do not integrate with the reforms which are currently before the local government sector. Three Waters Reform, and any ongoing reorganisation of local government must be integrated with the resource management framework. The proposed resource management reforms must be flexible and able to reflect the evolving local government environment.

- 118.** Hamilton City Council is particularly concerned that the creation of RPCs, coupled with Three Waters Reform, will create siloed entities where land use planning, infrastructure planning and delivery, and service provision are carried out separately, and spread across different spatial scales. This will lead to a lack of integrated outcomes, increased organisational costs and heightened complexity. As a Tier One authority and only city within the Waikato Region, we are particularly concerned that under these siloed and regional-based planning entities, there will be a loss of focus on urban growth issues and its necessary attention and investment.
- 119.** Without detail on how local government reform may take shape, there is a concern that legislation is creating additional and unnecessary bureaucratic entities (through RPCs and a new secretariat), which will lead to wastage and blurring of accountability. We seek that implementation does not extend beyond the NPF to RSSs or NBA plans until the Future for Local Government Review is decided and changes affected. We urge the committee to look at the learnings from the 1989 local government amalgamation which was then followed by new plans under the RMA post 1991, and the Auckland local government amalgamation of 2010, which was followed by a new regional spatial plan in 2012, in turn followed by a new unitary RMA plan.
- 120.** Currently, the three pillars of integrated land use planning in New Zealand comprise the LGA, LTMA and the RMA. The addition of the Water Services Entity Bill, the NBE Bill, the SSP Bill and the forthcoming Climate Adaptation Act will create a highly complex planning environment which will not be conducive to a) simplifying and streamlining the resource management reform system b) integrated environmental management and c) supporting better urban development decision-making. RPCs, NBE plans, and RSSs must be aligned with the NPF, proposed Climate Adaptation Act, national adaptation and emissions reduction plans, and Three Waters legislation and entities. It is difficult to provide comprehensive feedback on proposed reforms when only two out of a three Bill reform is available, and the NPF content yet to be revealed.
- 121.** We seek explicit linkages under the RPCs to incorporate Three Waters entity representation. This is fundamental in achieving integrated management and planning of environmental outcomes. The absence of integration with these matters, particularly three waters, will result in a total disjoint between vital planning inputs and failure to achieve integrated management. An example of this poor integration currently exists between the LTMA, RMA and the LGA.
- 122.** Whilst the Climate Adaptation Act is promised to deal with adaptation, it has not been identified as means to address mitigation and whilst the reduction of greenhouse emissions is clearly stated as an outcome in the NBE Bill, there are significant gaps to address how the reduction of greenhouse emissions will be prioritised and managed. There must be a clear direction set in the NPF and policies and plans to address how emissions will be managed to assist in meeting the National Emissions Budgets and the National Emissions Reduction Plan.
- 123.** Without clear direction in the NPF, decision-makers will not have the knowledge or expertise to understand the significance or consequence that local decisions will contribute on a national scale. Local government does not have the time or resource to re-invent this at each locality. RPCs will be left with the challenge to determine and implement their own standards and expectations amongst the complexity of a changing system. There is a high risk that important decisions relating to emissions reductions will put off or diminished under the weight of the large amount of reform.
- 124.** The ongoing reform of the local government sector will have a significant impact on how these proposals will play out, noting that the future form and function of local government is highly likely to change. A joined-up and holistic approach to the role and functions of local government, including resource management reform, is favoured over the current ad-hoc approach. At the heart of this must be clear issues for which any review and consequential institutional and legislative redesign is trying to overcome.

Recommendations

- 125.** Undertake a review of the Bill and overall package of reform to enhance its integration with the Three Waters Reform programme and associated legislation.
- 126.** Delay introducing the Bill into the House for the final reading until the Climate Adaption Act has been drafted and circulated for stakeholder feedback, and for the local government sector to respond to the reforms.
- 127.** Noting our request for a local, multi-scalar sub-committee model, RPCs themselves should include Regional Transport Committee representation, utility operations, and Three Waters Entities within the committee structure. For the desired integrated management of the ‘environment’ to be achieved, resource management planning cannot operate siloed from other interdependent entities and institutions at a governance level. The consequences of land use planning, for example, are inextricably linked to transport, three waters, health, education, and conservation planning and their exclusion from planning risks the creation of conflicting planning agendas and regimes for the same geographic boundaries. Further, RPC secretariat staff should be based out of ‘Centres of Excellence’ for each plan related topic within a region at the most relevant Territorial Authority e.g., Urban, rural, coastal. This will help retain institutional and intellectual knowledge of those council’s staff members who are best suited to specific planning matters, further improving their capacity and capabilities to plan for those topics”
- 128.** We suggest the following addition and amendments to the RPC structure as visualised below in Figure 3.

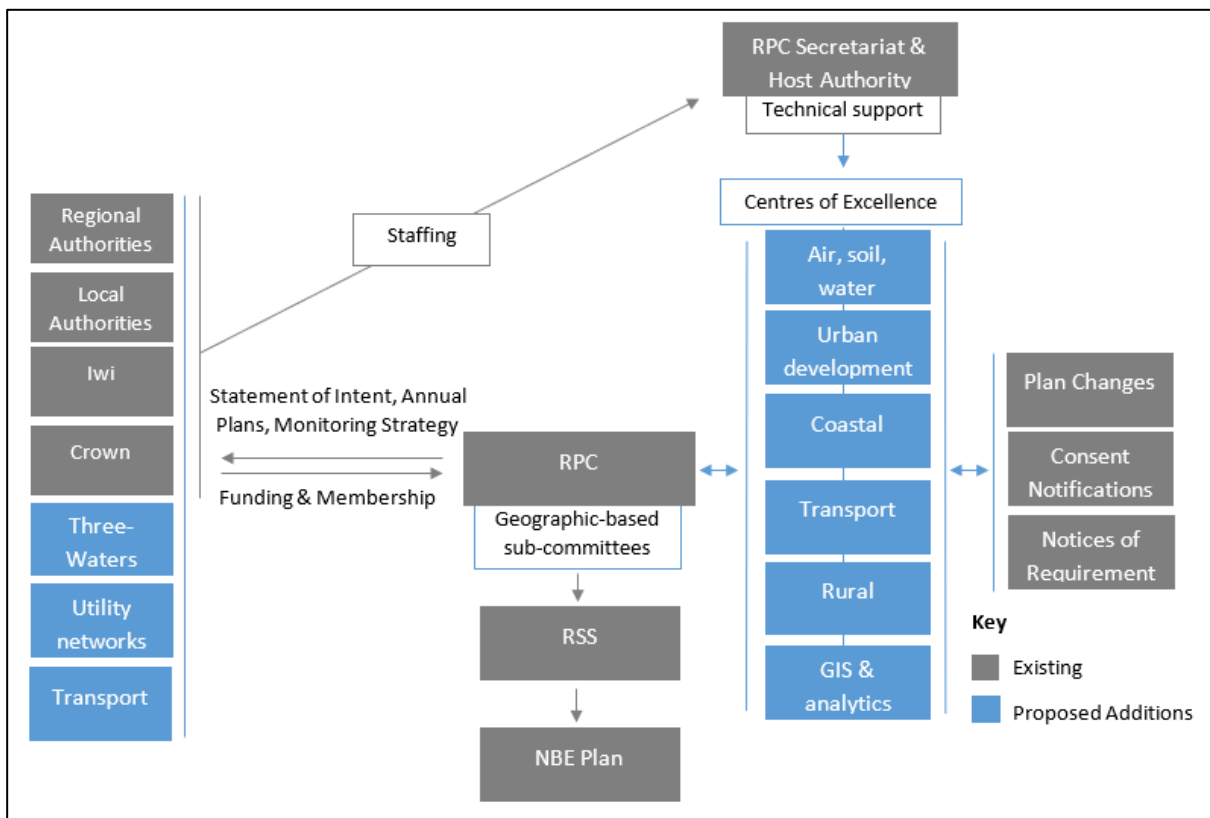


Figure 3: Proposed additions to RPC structure

Flaw Three – Complexity

- 129. *Flaw 3:*** *The Bill Introduces a costly and complex regime which will create delay and frustration for all stakeholders.*
- 130.** Hamilton City Council is supportive of the intent to reduce complexity within the resource management system but caution that, based on our view, the NBA Bill and SP Bills will increase complexity and create more bureaucracy, in turn adding more cost, not less, to local government. Despite the intent of resource management reform to reduce complexity, cost and timeframes, while improving environmental outcomes, those aspects of resource management in the Bill do not appear to have changed substantially from the current RMA system, most notably in the consenting sections of the Bill.
- 131.** From the two Bills, the efficiencies and reduced complexity are not apparent. In fact, the layers of regulatory planning appear to increase and create a more complex system than the current regime. For example, while the NBE aims to make more activities permitted status, there are a limited number of activities that planners can be certain about potential effects. As such, more activities are likely to receive the discretionary status which does not reduce the number of applications, as well as processing timeframe for consents. Additionally, if monitoring and compliance are to occur based on complaints, rather than proactive monitoring as more activities are permitted, non-compliances may not be picked up which does not promote efficiencies.
- 132.** The overall resource management reform replaces one piece of legislation with three. A key aim of the reform is to reduce complexity and provide greater certainty to those participating in and engaging within the sector. Of the two Bills presented thus far, there is no evidence that the new legislation put forward will either reduce complexity or provide greater certainty. The additional 427 sections and three schedules over 807 pages that the NBE Bill contains compared to the RMA evidences this point. The RMA when released contained 433 sections and 9 schedules covering 382 pages.
- 133.** Based on our experience with Future Proof and the Waikato Plan, the RPCs and their secretariats are likely to create significant bureaucracies in and of themselves in order to fulfil their duties and functions. As has been discussed in this submission, the mandate of RPC members is likely to create conflicts of interest when a regional response is required, but appointment is made by local authorities. These RPCs will be costly and inefficient to run, and risk being treated with contempt by the local authorities and ratepayers in the region who are forced to fund them without sufficient checks and balances. It is widely accepted that larger units, be they government departments or private sector enterprises, are rarely more efficient, nimble and innovative the larger they become. Yet, two of the objectives of reform is about a more responsive and efficient system of resource management. It is our view that planning under RPCs will cost more than under the current RM system, be less collaborative and have less democratic accountability.
- 134.** What is unhelpful and which we are opposed to, is the use of novel and untested new terms and concepts that have been introduced unnecessarily when existing concepts could have been carried forward. This will create confusion in the planning processes and not lead to efficiency.
- 135.** We also have concerns regarding the structure of the legislation. It does not lend itself to easy reading or interpretation. Put simply, it is hard to navigate to relevant provisions. As a result, there is a lack of connection within the Bill between related and interdependent parts. A prime example are the decision-making principles located throughout the Bill, and the “Exercise of functions, powers, and duties” being in Part 10 rather than at the front end of the Bill.

Definitions

- 136.** Language used in the Bill remains ambiguous, open to broad interpretation, and inconsistent. A prominent example includes the definition of “environment” within clause 7 which is open ended through the inclusion of wording “as the context requires”.
- 137.** The proposed legislation contains numerous new terms and concepts that have never been applied or tested before. Without providing solid definitions or guidance within the NBE Bill, there is a risk of numerous, lengthy and costly litigation in the Courts, replicating a feature of current resource management that reform objectives seek to avoid. Hamilton City Council does not oppose all new terms and concepts; however, we do challenge the need and benefit of many of the introduced terms and concepts. A new resource management system will be more efficient, faster to implement, and save costs, if known and defined concepts and terms are rolled over from the existing framework the new.
- 138.** A non-exhaustive list of new concepts and terms in the proposed legislation is provided below noting that Hamilton City Council does not oppose all of these terms, however, seeks to indicate the numerous additional terms that either need further clarification or litigation:

Term/Concept	Location
Give effect to Te Tiriti	Cl 4
‘Recognise’ and ‘uphold’ ‘te Oranga o te Taiao’.	Cl 3
Kawa	Cl 5, 6
Area of interest	Cl 6, 7
Resource allocation principles	Cl 36
Consensus	Cl 7 (under ‘allocation method’)
Taonga tuku iho	Cl 498
Ecological integrity	Cl 5, 7, 37, 40-46
Well-functioning urban and rural areas	Cl 5
‘Ample’ supply of land	Cl 5
‘Avoid inflated’ land prices	Cl 5
‘Availability’ of highly productive land	Cl 5
Cultural heritage	Cl 5, 7
Environment	Cl 7, entire Bill
Natural environment	Cl 7, entire Bill
Urban form	Cl 5, 7

- 139.** Wording concerns include language in clause 3 concerning “upholding” Te Oranga o te Taiao”, “without compromising” and “promote outcomes” – what do these mean in a practical sense? What is the relationship between clause 3 (a) and (b)? If the purpose is to streamline decision-making, there must be certainty of meaning and intent.
- 140.** Hamilton City Council is concerned that the use of the word “resources” when describing the listed aspects of the “natural environment” within clause 7 is unnecessary and suggests a focus on use as opposed to preservation. The definition would work effectively by simply removing the word “resources”. This would align more naturally with the concept of Te Oranga o te Taiao.

141. As well as concerns for the use of words, there appears to be misalignment between wording within and throughout the legislation when compared to existing policy direction. If the intentions of reform are to simplify and reduce complexity of resource management, the legislation should stick to known, defined and tested concepts, except where there is need for deviation or new content.
142. Notably, there is an unclear relationship between the use of the term “urban form” in clause 5, “urban environment” defined under the NPS-UD, and “built environment” used in the definition of the “environment” in clause 7 and “urban areas” within clause 5. These differences and relationships need to be clarified to achieve consistent direction for the plan making process.
143. Another example of clarification needed between existing NPS documents and the NBE Bill is the term “well-functioning urban and rural areas” within clause 5. As noted, the NPD-UD defines “well-functioning urban environments”. The addition of ‘rural areas’ in the NBE Bill, which is also undefined, is conflicting as urban and rural areas are fundamentally different in nature and need. This also introduces the need to define coastal environments. We consider there to be much more that encompasses well-functioning urban areas than what is provided in the system outcomes of clause 5 which are heavily market orientated. How “urban areas”, “environments” and their “well-functioning” state are defined is highly relevant given the current policy interpretation and implementation of the NPS-UD. It is important that the new system does not invalidate this work which has taken up substantial time and resource of planning teams across the country.
144. Noting the above points, Hamilton City Council considers that the definition of “urban form” requires refinement to better reflect what ‘urban form’ truly encompasses. Urban form is greater than the sum of its parts. We suggest that the individual elements listed (shape, size, density, and configuration) are considered together, with specific reference to how they all contribute, and relate to each other and the natural environment, thus resulting in ‘urban form’.
145. Clause 5(g) refers to *cultural heritage*. We support heritage being a key outcome but oppose the terminology – we think this is misleading to the layperson. We submit that it should be referred to as simply *heritage*. The definition provided in clause 7 then articulates the breadth of heritage types and characteristics.
146. The definition of “business land” should be adjusted to acknowledge that business land occurs outside urban areas.
147. We have concerns regarding the narrow definition of “development infrastructure” when included in the definition of “development capacity” in clause 7. The definition of development infrastructure only includes three waters and land transport services but no other services such as utility networks, parks and other community infrastructure, which is integral to creating good urban outcomes. It is considered more appropriate to use the wider definition of “infrastructure” provided as development capacity of land and its surrounding environment is not solely dependent on three waters and transport networks.
148. Concerning the wider definition of infrastructure, we consider it appropriate that specific reference is made to parks and reserves (community infrastructure). Parks and other public open spaces are an integral aspect in achieving good urban outcomes.

149. The definition for “public work” references construction of “eligible infrastructure” – which in turn relates only to section 8 of the Infrastructure Funding and Financing Act 2020. That definition does not include waste and resource recovery infrastructure, even though waste and resource recovery infrastructure has been included in the broader definition of ‘infrastructure’ in clause 7 of this Bill. The narrower definition of “eligible infrastructure” means that local authorities will not be able to designate facilities such as resource recovery centres. These facilities can involve substantial investment and provide a critical service in the pathway towards a circular economy. In our intensifying cities we think it important that space for resource recovery is prioritised as a public good.
150. It is noted in clause 104 that NBE Plans must be consistent with RSSs “unless there is a significant change in circumstances or in the physical environment since the regional spatial strategy was developed (for example, a major environmental or economic event)”. Who and what defines a ‘major economic event’ needs further clarification. Without clarification, RSSs including their coordinated and integrated growth strategies and environmental protection risk being undermined whenever an economic event occurs.

Recommendations

151. Provide greater clarity on the core purpose of the Bill.
152. We seek guidance as to how RPCs and local authorities are to “Give effect” to Te Tiriti.
153. Language in clause 3 concerning “upholding”, “without compromising” and “promote outcomes” needs further definition or clarity to avoid misinterpretation.
- The definition of “natural environment” should be amended as follows;
The ~~resources~~ of land, water, air, soil, minerals, energy, and all forms of plants, animals, and other living organisms (whether native to New Zealand or introduced) and their habitats, and ecosystems and their constituent parts
154. Consistent use of language used in the NPS-UD and NBE Bill is sought concerning “well-functioning urban and rural areas” “urban form” and the “built environment” in clause 5, versus “urban environment” and “well-functioning urban environment” in the NPS-UD.
155. Council would support the following definition of “urban form” to replace that in clause 7:
Urban form - the arrangement, physical and natural characteristics, and relationship between the various elements that make up urban areas. This includes buildings, street patterns and blocks, land parcels, open space and land-use activities. It includes the shape, size and density of settlements and can be considered at different scales from regional to urban, neighbourhood and street level. An areas urban form is subject to continual change in response to social, environmental, economic and technological changes.
156. We seek that the term “cultural heritage” in clause 5(g) and 7 is amended and simply referred to as “heritage” which better reflects the definition provided.
157. The definition of business land should be amended as follows: “business land means land that is zoned for business use in an urban area, including...”.
158. Amend the definition of “development capacity” in clause 7 to simply refer to “infrastructure” rather than “development infrastructure”.
159. In addition, we seek that the definition of “infrastructure” in clause 7 be expanded to include community infrastructure, specifically public parks.
160. A definition of “major economic event” needs to be provided regarding clause 104 when plans do not need to be consistent with an RSS, otherwise this provision should be removed from the Bill.
161. The definition of “eligible infrastructure” in clause 7 should be expanded to include resource recovery centres.

162. The Bill does not have any legal ability to require the ongoing and timely provision of “infrastructure services” but it can enable the delivery of “infrastructure”. As such we seek 5(i) be redrafted as follows:

the ongoing and timely ~~provision~~ enablement of infrastructure services to support land use activities, and the well-being of people and communities.

Flaw Four – Change Versus Improvement

163. **Flaw 4:** *The Bill is an unnecessarily extreme response to resolving the areas of concern under the current RMA regime, representing change, but not improvement.*

164. We believe a key principle of any new planning system must be subsidiarity. While national direction is helpful, and at times critical, the balance of the planning system, centralised versus devolved, must err on devolution. As such, the system should be centred around a bottom-up collaborative approach to planning, with central government direction where necessary, as opposed to a top-down system. Any planning system must maintain democratic accountability.

165. From Hamilton City Council’s engagement in the process of resource management reform to date, we observe that the objectives of reform have become blurred and unclear. As per the Resource Management Review Panel’s Report dated June 2020, key concerns that prompted a review included the pressure the natural environment is under, population growth exceeding urban growth, the need to reduce carbon emissions and adapt to climate change, the need to ensure Maaori and have an effective role in resource management that is consistent with Te Tiriti, and the need to improve system efficiency and effectiveness⁴. The specific aim of the review was to “improve environmental outcomes and better enable urban and other development within environmental limits” and which achieved the following objectives¹:

- A system that protects and enhances ecosystems and the natural environment.
- A system that enables productive development of the natural and built environments and effective provision of public goods, within ecosystem limits.
- A system that sets clear direction to guide decision-making.
- A system that establishes long term, strategic and integrated planning for development and the environment.
- A system that provides greater recognition of the Te Tiriti o Waitangi and te ao Maaori throughout.
- A system that is responsive to change, risk and evidence.
- A system where functions and processes are efficient, effective and proportionate.
- A system where decision-makers in the system are accountable, well advised and incentivised to achieve the system’s purpose.

166. On the 10th of February 2021 the Minister announced that the RMA would be repealed and replaced. “The new laws will improve the natural environment, enable more development within environmental limits, provide an effective role for Māori, and improve housing supply and affordability. Planning processes will be simplified and costs and times reduced,” he said ⁵.

167. We are of the view that the proposed reforms will not deliver on these objectives. Moreover, we question whether wholesale change is the most effective way to achieve the objectives in the first place in light of the scale of change that has occurred in the past eight years to the RMA.

⁴ MFE. June 2020. New Directions for Resource Management in New Zealand.

<https://environment.govt.nz/publications/new-directions-for-resource-management-in-new-zealand/>

⁵ Beehive. February 10, 2021. “RMA to be repealed and replaced”. <https://www.beehive.govt.nz/release/rma-be-repealed-and-replaced> .

- 168.** Hamilton City Council considers that the recent National Policy Statements (NPSs) should be given time to establish before wholesale legislative reform is introduced. The 2021 amendments to the RMA alone are very substantial and have required an immediate implementation response from local government. These changes, coupled with recent NPSs, will meet a range of the stated objectives of resource management reform. The sector should be given the opportunity to respond to the changes, allow them set in, and time and investment should be made by the Ministry for the Environment reviewing and monitoring the efficacy of these changes.
- 169.** The proposed resource management reforms will introduce three new Acts, replacing one single Act. We oppose this approach; the various elements of the environment are inextricably linked and should be addressed holistically under one Act – we see limited rationale for creating three separate Acts. Currently, we only have visibility of two of three Bills. If an integrated resource management system is one of the aims of the Committee, then at the very least the three Bills should be introduced and developed in parallel. In addition, much of the content that proposed plans will be required to contain shall be determined by the National Planning Framework of which we have very little visibility and certainty on due to the discretion given to the Minister.
- 170.** The use of the RMA by the government as a legislative tool to manage the environment and activities within it has evolved at pace in recent years with the use of NPSs, NESs and the national planning standards. NPSs and NESs have provided much needed national direction which the RMA has been lacking since its inception. This new national direction provides the guardrails in the form of environmental bottom-lines.
- 171.** As a piece of legislation which seeks to holistically manage the environment, we do not believe that the RMA is as broken or fatally flawed as its critics argue. We do however believe that its implementation has let it down in part due to poor plan making, a lack of national direction, and iterative amendments that add new bespoke or alternative consenting pathways and exceptions to the rules. Now that we are entering a period of third and fourth generation plans under the RMA many of the past failings of early generation plans have been resolved as the capability and understanding of the planning sector has matured. This planning evolution has been coupled with urban growth partnerships, such as Future Proof and Smart Growth in key metro areas across the country. Consistency of plans as directed by the national planning standards will help provide greater consistency across plans, while the use of NPSs and NESs provide national direction and set environmental bottom-lines. For example, if consistency of plans is the issue, the Minister could provide greater direction in this space through the release of further standards.
- 172.** It is our view that from an urban growth point of view, the underlying issues of the planning system rest in the integration and alignment between the Local Government Act (LGA) (2002), the Land Transport Management Act (LTMA) (2003), the RMA and central government agency decision-making and funding. The NBE and SP Bills do not address transport and have weak linkages to the funding under the LGA. The RSSs under the SP Bill do not bind central government agencies strongly enough to delivering on the stated outcomes. Until this occurs, integrated city planning will struggle as is being seen in Auckland under their new governance arrangements.
- 173.** The recent proliferation of national directives/NPSs have introduced environmental bottom-lines by another name. As such, Hamilton City Council perceive the final significant remaining issue within the current resource management reform, putting the broader point of integration noted above to one side, is regarding environmental monitoring and enforcement. Wholesale reform to the resource management system is not required to achieve this. A reorganisation of regional council's monitoring and enforcement functions could be one solution. This could be in the form of a nationally run and funded, locally based environmental monitoring and enforcement agency.

- 174.** Hamilton City Council supports the shift to an outcomes focused resource management system, but caveats this with the fact that a) many plans are outcomes focused already through their objectives and b) the replacement of an ‘effects based’ test with an environmental ‘bottom-line test’ when the outcomes are at risk of not being met appear very similar in nature. Greater explanation and justification are required to demonstrate how this proposed change is going to bring about discernible improvement in how the resource management system operates and how this is different to the current plans.
- 175.** We recognise the issues a ‘process heavy’ planning system has created in terms of useability, efficiency and responsiveness in delivering the outcomes desired by Government and local communities. The balancing of private property rights and environmental outcomes is not simple, it is inherently complex and highly contested, accordingly the prescription of process within legislation is critical. The new NBE Bill sets out how the new planning system will work; its length is comparable to the RMA which is to be expected given the breadth of functions for which it needs to anticipate and prescribe process for. It is intended by the reforms to front-load processes of resource management during the plan making phase; however, we see many of the processes for everyday resource management users under the NBE being not too dissimilar to those which currently exist under the RMA. This raises the question as to the justification for wholesale resource management reform.
- 176.** The legalistic interpretation of resource management terms and concepts is a necessity to avoid ambiguity and misinterpretations. Direction and guidance from legislators up-front is helpful and the implementation of the RMA would have benefited from this. The proposed legislation is at real risk of repeating previous mistakes if language in the Bills is not amended, and the NPF does not provide clarity of direction from the outset of the Reform’s implementation.

Recommendations

- 177.** Reconsider wholesale reform of the RMA and reflect on whether further “top down” directives in the form of National Policy Statements, National Environmental standards, and National Planning Standards can deliver on the stated objectives.
- 178.** Await the implementation of the RMA Housing Enabling amendments to bed-in and produce results.
- 179.** Enhance environmental monitoring which is currently enabled under the RMA should be prioritised. This could be in the form of a nationally run and funded, locally based environmental monitoring and enforcement agency. This agency needs to have increased powers to bring about enforcement action to stop activities and fine the individuals and entities causing them. This agency also needs to report to the Minister regarding their monitoring programme and where environmental bottom-lines are being breached or are at risk of breach. This reporting would then signal to the Minister where more stringent national policy direction is required to re-set environmental bottom-lines or direct local authorities, through national policy statements to strengthen their relevant plans.

System Outcomes

- 180.** The ‘system outcomes’ sought by the Bill within clause 5 attempt to shift the resource management system from an ‘effects based’ system to an ‘outcomes based’ system. It is noted, however, that plans already stipulate objectives for which they seek to achieve. These objectives are generally future focused statements regarding outcomes. An effects assessment is then required when a proposal does not align with those outcomes sought by the rules, objectives and policies. Clause 233 concerning consideration of resource consent applications still requires an effects assessment in addition to outcomes, limits, targets and polices in a plan, and future state of the environment. Practically, this assessment is considered very similar to assessments that currently occur under Section 104 of the RMA, if not more demanding of consent offices and decision-makers. As such, the intention to reduce complexity of consent decision making does not appear to be reflected in the legislation.
- 181.** The proposed system outcomes are non-hierarchical and must be given equal provision. This is impracticable and will lead to conflicts between competing outcomes. A hierarchical list of outcomes like the NPS-FW would greatly improve the consistent and effective interpretation and implementation of the legislation. Without hierarchy or distinction between priorities, risks the return to an overall broad judgement approach where economic considerations can be prioritised over environmental protections. A Bill designed to protect the environment should not be exposing itself so openly to a situation where environmental wellbeing is outweighed by short-term economic gains.
- 182.** Examples of conflicting outcomes within clause 5 include the provision of “ample supply of land for development” and the “availability of highly productive land for land-based” purposes. Similarly, the inclusion of infrastructure services in the NBE system outcomes and NPF has conflicts with other system outcomes included. We suggest that these outcomes are removed or redrafted, specific outcomes of this nature are better articulated in lower order plans and policy direction given their subjectivity.
- 183.** We believe “ample” should be changed to “sufficient”, and the current tests under the NPS:UD retained. This provides continuity of terminology and methodology. Simply supplying zone enabled land does not guarantee more supply. Land needs to be zoned, feasible, serviced and in market-attractive areas for development to occur. We oppose the insinuation that the supply of land alone has led to inflated land prices. The Treasury’s *Assessment of the Housing System: with insights from the Hamilton-Waikato Area*⁶ evidences the point that there are complex drivers behind house prices shifts. Factors identified in the report include global interest rates, tax settings and investment incentives, immigration levels, construction costs, and the barriers to allowing more development such as infrastructure funding and delivery, and environmental constraints.
- 184.** In addition, we believe that stronger incorporation of positive system outcomes that relate to environmental wellbeing is required. The need for nature-based solutions in the form of greenspace/blue infrastructure is overdue, highlighted by the recent Auckland floods and Cyclone Gabrielle. Outcomes that reflect the shift required to these types of development choices are not as visible as they should be and are not adequately provided for by the terms “resilient” and “adaptive”.

⁶ The Treasury. August 2022. “Assessment of the Housing System: with insights from the Hamilton-Waikato Area”. <https://www.treasury.govt.nz/publications/information-release/assessment-housing-system-insights-hamilton-waikato-area#:~:text=1.05%20MB-,Assessment%20of%20the%20Housing%20System%3A%20with%20insights%20from%20the%20Hamilton,rest%20of%20Aotearoa%20New%20Zealand> .

185. Concerning clause 5 (c), we also seek greater focus on creating quality urban environments. With the majority of people living in urban areas, such as Hamilton, a greater focus on quality urban environments is necessary. Current drafting focuses heavily on delivery of development and the supply of housing with little consideration given to the nature of development occurring. This is despite the built environment often outlasting short-term market cycles, further emphasising the need for quality considerations in the urban environment. The system outcomes should include provisions that ensure plans promote positive community creation and development, and the integration of features and processes which address socio-environmental challenges within urban areas.
186. Notwithstanding the desire for hierarchical outcomes, strong direction within the NPF will be needed to guide how plans are expected to reconcile these conflicts. Limited indication is given to how conflicts between system outcomes will be resolved by the NPF. It is not appropriate for significant policy decisions to be left to secondary legislation. This leaves great discretion to the minister when developing the NPF to determine contents and their extent.
187. However, not all conflicts between policies can be anticipated in law. Reconciliation is often best left to the courts because there will be unique circumstances related to each real-world example. The law should set the framework.
188. Within clause 5 there is a requirement to ‘protect, or if degraded, restore’. What is defined as a ‘degraded’ state needs to be clarified as there will be many different interpretations and processes that could be used to determine this. It is considered that this wording does not do enough to require continual improvements to the natural environment and those matters listed in clause 5(a).
189. Hamilton City Council supports the inclusion of outcomes related to the reduction and removal of greenhouse gas emissions; however, it will be meaningless without clear direction such as standards and hierarchy which must be set out in future NPFs. It will be important for the NPF to give direction on the role spatial planning and land-use planning has in this space. In order to deliver on emission reduction plans, decisions towards a low carbon future at local level must be addressed through the NBE Bill.
190. There is an expectation under the resource management reforms that more activities shall fall under a permitted activity status and thus, not require resource consent. Having more activities under a permitted activity status assumes that the envelope of effects generated by those activities can be anticipated by the plan, managed appropriately by blanket conditions and are, therefore, acceptable to be permitted. This presents a potential shift in cumulative effects if such permitted activities are not sufficiently assessed, controlled or monitored. Without robust prior analysis to quantify the impacts of increased permitted rights risks, over time, a high degree of cumulative environmental effects occurring and being legalised to occur. Where effects are unknown, we strongly support the continued use of a precautionary principle.

Recommendations

191. If a definition and quantification of “ample” and of “availability” within clause 5 (c) is not provided, we suggest that these outcomes are removed, or redrafted as follows:
- ii) the ~~ample supply of land~~ sufficient supply of serviced land for development, to avoid inflated urban land prices*

- 192.** In addition, clause 5(c) ([numbering requires correcting] “adaptable and resilient urban form” requires clarification as does “good accessibility”. In addition, we seek that nature-based solutions and well as community outcomes are prioritised. Provided these are defined, we seek that this outcome is split into:
- iii) an adaptable and resilient urban form, that is naturally responsive; and*
- iv) the creation of social, economic, environmental, and cultural opportunities; and*
- v) good accessibility for people and communities to social, economic, environmental, and cultural opportunities*
- 193.** We seek explicit recognition in clause 5 (c) of the need to plan for quality urban environments based on universally recognised urban design principles.
- 194.** We seek an additional outcome centred on integrated land-use outcomes as follows:
- land use decisions are based on the availability and ability to deliver infrastructure to support the well-being of people, communities, business, and the natural environment.*
- 195.** The NBE Bill should explicitly state the steps required by the Minister to formulate an NPF to ensure consistency, certainty, clarity and the adequate protection of the natural environment.
- 196.** Several conflicting national directions already exist under the NPS framework. How existing national direction shall apply under the NPF this needs to be communicated early to avoid repetitious work programs.
- 197.** We seek the assurance that the NPF will provide direction on how NBE plans are expected manage greenhouse gas emissions. An evidence base which shows the long run impacts NBE decisions shall have on GHGs should be developed. Those areas which have the greatest long run impacts should be the focus of the NPF, for example city form. As such, it would be appropriate for clause 5(c) to include urban form that manages, adapts and is resilient to climate change and its effects.
- 198.** Other measures the NBE Bill could include to improve emissions reduction objectives are:
- Protecting land that currently acts as a carbon sink.
 - Set standards for housing developments to increase mode shift to cycling and public transport and away from car dependency.
 - Prioritise nature-based solutions.
- 199.** We seek the rewording of clause 6 2(a) to change from caution to a precautionary approach. This will strengthen the intent of this section.

The NPF, Environmental Limits Scope and Purpose

- 200.** Hamilton City Council supports the move to create a single, integrated NPF. A criticism of the current RMA system is the ad-hoc approach to NPS and NES creation which is also not mandatory at present. National direction is a positive change that should provide certainty and avoid the confusion that has occurred in the past under the current system which has seen to the staggered release of separate pieces of national direction. However, several concerns remain regarding the proposed NPF process which are outlined below.

- 201.** The NBE Bill and NPF are light on provisions that relate to urban and built environments. This is of concern given importance such environments have to the majority of the population. One criticism of the current resource management system is its lack of attention paid to the urban environment and outcomes. The NBE Bill appears at risk of repeating this. The NPF should not be limited to bio-physical issues. The NPF should reflect the Bill's name and provide direction on the built environment concerning urban form, community creation and development, and the integration of features and processes which address socio-environmental challenges within urban areas.
- 202.** The NPF should be required to provide direction on urban design and quality. It is well documented the impact that built form has on those that live in urban environments. Documents such as the New Zealand Urban Design Protocol (if not updated), should be used to inform the NPF in setting outcomes on the urban environment for local implementation. New Zealand lags behind other developed nations which recognise the importance of universal design and urban outcomes. Given the focus on urban intensification and growing importance of our cities, it is time for New Zealand to increase its focus on these issues.
- 203.** Within the greater focus on built environment matters, we consider that the NPF, as the direction setting document for both NBE Plans and RSSs, should also provide direction for waste outcomes. Currently the existing planning framework can only address waste activities through adverse environmental or amenity effects but do not necessarily address preference for activities higher up the waste hierarchy such as landfilling and incineration. Alignment with the National Infrastructure Strategy and New Zealand Waste Strategy should be sought.
- 204.** Hamilton City Council supports the formal identification of limits and targets within the proposed legislation; however, Council has several concerns on the proposed framework. Much of this concern relates to the terminology used that does not reflect an ideal limits and targets system but rather, a weak framework that does not assure positive progress towards environmental improvements.
- 205.** Clause 37(a) states that the purpose of setting limits is to "to prevent the ecological integrity of the natural environment from degrading from the state it was in at the commencement of this Part". As such, the current state of 'ecological integrity' is treated as the limit when that might not be the optimal setting to protect the environmental health of the natural environment in question. It is acknowledged that some aspects of the environment will get worse before they improve due to their environmental or chemical traits. However, by allowing limits to be set at these degraded levels enables further degradation in the future. Instead, it should be recognised that while an environment gets worse, the set operational limit remains at a higher level to ensure long-term improvement for current resource users.
- 206.** Under clause 102 of NBE plan development, plans must "achieve" environmental limits and targets. It is considered that this wording is counterintuitive in that environmental limits should not be achieved but avoided, and that targets are achieved. Wording to that effect would better reflect the intent of environmental limits as bottom-lines rather than acceptable operational levels.
- 207.** The above point is made more relevant by wording in clause 50 concerning minimum level targets where the Minister must set a minimum level target if satisfied the associated limit is "set at a level that represents unacceptable degradation of the natural environment". Despite clause 50(2), there is a risk that minimum level targets shall be set at untenably low levels and that targets will not be as aspirational as reforms intend.

- 208.** A system of limits should represent the minimum acceptable state of the environment. However, based on how limits are currently worded, they can be set at existing states or more degraded states at the time of the Bill’s commencement. Many environments are likely to have breached their tipping points by the time of the Bill’s commencement. The framework, as currently worded, risks a race to the bottom by working to worse than bottom-line ‘limits’ and is counter to clause 5 (a) which seeks protection and restoration of the natural environment.
- 209.** An alternative arrangement would be to create ‘current environmental state’ measurements in addition to the truer-to-cause natural environmental limits that are likely to be at a high bar from the current state. A greater emphasis should also be placed on achieving targets.
- 210.** The determination of limits modelling is expected to be underpinned by evidence that is ‘inclusive, transparent, and accessible’ (clause 3, schedule 6). This shall require modelling exercises where there is a lack of comprehensive data for environmental matters. We seek a precautionary approach is adopted here to avoid inadvertently permitting environmental degradation to occur. As the Supplementally Analysis Report for the NBEA states,
- There is a risk that limits or targets may be set at a level that does not protect human health or ecological integrity, or that policies to implement the limits and targets are not effective. This will be addressed by assembling better scientific evidence, more robust monitoring and feedback loops to determine effectiveness in achieving outcomes and to be responsive when shortcomings become apparent.⁷*
- 211.** In order to achieve the above, greater funding and resourcing will be required to determine, gather and analyse the necessary evidence to support both quantitative and qualitative limits proposed. The NPF may set limits or the process to be followed. If the NPF is to provide a process to be followed, the capacity and capability of the enforcing authorities to achieve these steps needs to be considered. This calls for the need for an independent environmental regulator who will be tasked with monitoring which is not susceptible to local influence – i.e., a standalone national entity.
- 212.** Hamilton City Council supports the intent in allowing environmental limits for different management units within clause 54 and 55 to allow contextual flexibility. However, we note that while limits and targets may be set for particular management units, not regions, both an RSS and an NBE Plan will be produced for regions. This presents a situation where the provisions within an NBE Plan (and the consenting regime) will need to be highly tailored, to take into account different activities, different attributes, targets and limits, and the fact that these apply within management units, rather than on a region-wide basis. It is unlikely that this will result in a user-friendly plan.
- 213.** Clauses 81-83 include matters that the NPF “may” include. Such matters in clause 81 include framework outcomes and policies relating to how decision makers must recognise and provide for protection of customary rights, prescribe the form and content of resource consents, the identification of harmful substances, and identification of any waste or other matter to be toxic or hazardous waste. In addition, clause 82 states that the NPF “may” include transition transitional provisions “for any other matter”. The inclusion of transitional provisions as well as those in clause 81 in the NPF will be fundamental. Given the importance of the matters in all of these clauses, “must” is considered more appropriate.

⁷ Ministry for the Environment. November 2022. “Supplementary Analysis Report: The new resource management system”. <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/supplementary-analysis-report-nba-and-spa/> .

Resource Allocation

- 214.** The NBE Bill proposes more than one method of allocation within clause 126. This is a significant change from the status quo 'first in first served' approach to resource allocation. This appears to allow a merit-based system. How this is devised and implemented will need to be transparent and fair. The measures of merit may be subjective and thus, any system that decides upon using a merit-based allocation method needs to have clear direction from the NPF or NBEA as to what matters may be considered in such applications.
- 215.** Clauses 87 and 88 do not prescribe the NPF to contain direction on allocation methods and the use of market-based allocation methods. This is concerning given the use of allocation principals in clause 36 are new. It is considered necessary the NPF "must" provide direction on allocation methods in the first NPF round to ensure RPCs have the proper support to develop sustainable, equitable, and efficient allocation approaches and which achieve the intended resource management reform outcomes.
- 216.** A market-based allocation method is provided within clause 88 which allows auction, tender and competing offer methods. Without further clarification in the definition of market-based allocation, it seems possible to have methods based on monetary offers for allocation matters such as discharge of contaminants into freshwater. Ignoring the question of how a 'tender' process would work for water discharge allocation, the proposed process does not appear to be in the spirit of a fair and equitable RM system, and risks giving resource allocation rights to the highest bidder and greatest polluter. This would be an unacceptable outcome and must be addressed before the Bill is passed.

Recommendations

- 217.** We seek that the NPF is required to provide direction on urban design and form matters within its scope and purpose, including urban growth agendas and strategies. The NPF needs greater focus on built environment matters including community and development creation, and integration of natural features and processes within urban environments.
- 218.** Urban design and form could be addressed by a national-wide design panel or committee. Consistency is required at a national level to provide independent expert advice on significant projects. Similar examples are the New South Wales state design review panel, as well as Victorian Design Review Panel. The Australian model focuses on having a government architect as the state's design champion which sets the standard. It is time to New Zealand to shift in this direction.
- 219.** The NPF should provide direction concerning the preference for waste related activities including landfill, incineration and recycling centres. Alignment with the National Infrastructure Strategy and New Zealand Waste Strategy should be sought.
- 220.** The clauses relating to limits and targets should be re-drafted to better reflect the concept of limits as bottom-line limits to environment health, not existing states of the environment, and greater focus on achieving the targets of an NPF. An 'existing environmental state' limit could be introduced to create a 'starting point' for monitoring.
- 221.** Clause 102 (2)(c) should be amended as follows:
Achieve Avoid environmental limits (including interim limits) and targets
- 222.** We seek a precautionary approach is adopted when determining limits for those environmental matters that do not have conclusive modelling and monitoring. An independent environmental regulator would assist with this.
- 223.** Hamilton City Council believe it is critically important that the knowledge and expertise of the review panel concerning limits and targets of the NPF includes specific urban planning expertise under clause 3(3) of Schedule 6.
- 224.** We seek amendment to clauses 81-83 in that these "must" be provided in an NPF rather than 'may.

225. In addition, concerning clause 87 and 88, the NPF “must” provide direction on allocation methods in the first NPF round, with the concept of market-based allocation requiring further work to avoid inequitable environmental resourcing outcomes.

Implementation

Funding and Resourcing

- 226.** Hamilton City Council supports the move to guarantee tangata whenua rights of participation in resource management and in particular, early engagement and participation during plan development and decision-making. Hamilton City Council has joint management agreements with iwi and recognises the importance and value of working alongside mana whenua on resource management issues. Capacity and resourcing support for mana whenua, iwi, hapuu, and local government, however, will need to be addressed to ensure all groups can collaborate effectively and meaningfully.
- 227.** Funding support for local government, iwi and hapuu is needed to ensure a successful transition and ongoing implementation of the proposed system. Funding for partner support is already inadequate to ensure meaningful participation and engagement. Barriers, such as funding and capacity, for Maaori authorities will limit the reflection of Maaori values in NBE Plans – signifying a repeated missed opportunity given the increased input Maaori shall have in the proposed resource management system. Local government’s capacity to fund the proposed reforms is very limited and central government support will be required.
- 228.** Funding and capacity of local government have been an issue which has hindered successful resource management practices in Aotearoa New Zealand. This has been repeatedly noted in research since 1999 by Planning Under a Co-operative Mandate research program (PUCM). The proposed reforms offer no fundamental change to resource management resourcing and the capacity and capability of all local government and resource management partners to perform their functions successfully.
- 229.** In addition, funding support from central government is needed to support councils with compliance, monitoring and enforcement. Otherwise, there is a risk of an unfunded mandate. This means councils will be required to fund plans and processes (such as delivering on an RPC’s compliance and enforcement strategy) but have limited involvement in the development of them. Central government funding to support councils to perform these functions will be critical.
- 230.** Without adequate funding from central government, the RPC processes (including the secretariat) will be under-resourced. Councils have no control over RPC budgets, and we have serious concerns about being held responsible for funding the RPC without control of how that money is spent.
- 231.** We support the use of environmental contributions under clause 112. However, we oppose clause 112(3)(a) which enables differential arrangements between districts within a region. This can lead to perverse market behaviour and unintended land use outcomes.
- 232.** We seek the addition of a specific environmental contribution: ‘value capture’. We seek the use of this tool to offset the price effects of speculation of land in the market. On the periphery of urban areas in anticipation of eventual urbanisation land values are often higher. These peripheral land values are artificially inflated on the expectation that they will one day be urbanised. This inflation often occurs in the absence of any tangible land improvement being provided by the owner to support their ultimate urbanisation. This effect leads to land banking.

233. Alternative financing options for local government need to be explored. Value capture tax instruments must be considered. In the absence of value capture instruments, it risks increased development rights being conferred at no cost to the property owner. These new rights can then be traded or realised often for significant financial gain. This often occurs at the cost to the ratepayer or taxpayer who then has to fund the associated infrastructure and services which the new development creates by way of demand. The most recent example of this occurring has been through the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (2021) where significant additional development rights are in the process of being conferred through new district plan rules but without any costs to the property owner or developer.

Recommendations

- 234.** Capacity and resourcing support for mana whenua, iwi, hapuu, and local government needs to be addressed to ensure all groups can collaborate effectively and meaningfully.
- 235.** Funding support from central government is needed to support councils with compliance, monitoring and enforcement.
- 236.** Additional and alternative financing options for local government need to be explored, such as ‘value capture’ for environmental contributions.

Urban Trees

237. Hamilton City Council supports the provision of responsibility to protect trees. However, Council considers that the limitations to tree protection given by clause 125 are too restrictive and will not allow adequate protection of urban trees. The protection of urban trees is of increasing importance with a significant loss of existing urban trees forecast from urban intensification directed for by central government. As shown in Figure 4, Hamilton City Council modelling expects a decline in tree canopies across the City’s suburbs as a result of incoming intensification plan changes directed by the NPS-UD and amendments to the RMA. This is despite the Hamilton Plan Change (PC12) including additional provisions for trees where the MDRS standards did not⁸.

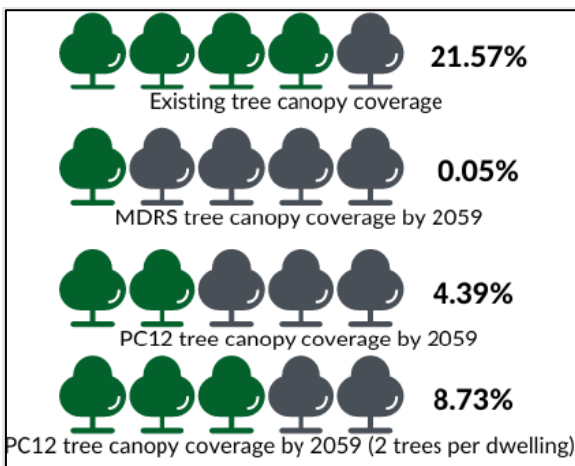


Figure 4: Tree canopy modelling – Hillcrest Case Study, Hamilton

Recommendation

238. We seek greater inclusion of urban tree and vegetation protection and enhancement in future NPF direction and NBE plans, and a wider category for protecting trees that does not require individual identification.

⁸ Hamilton City Council Green Policy Analysis for Plan Change 12

Consenting and Process

- 239.** Concerning Permitted Activity Notices (PANs), this should only be a tool used where rules and standards are difficult to determine outright, such as when a technical assessment is required to determine compliance with a permitted standard. If that standard cannot be achieved, then the application in question should be directed through the consenting process.
- 240.** Hamilton City Council welcomes the proposed wider powers to refuse or impose conditions on a subdivision consent on the basis that it is necessary to reduce risks from current or future natural hazards. The precautionary approach from the current significant risk consideration is a positive step to creating a safer environment. As provided in clause 228, this provision should also apply to land use consents.
- 241.** Hamilton City Council supports the proposed enforcement provisions of the NBE Bill. Harsher penalties for infringements are long overdue and will ensure more proportionate consequences when charging offenders.
- 242.** It is noted that within clause 383, public notice of water conservation order applications is required in the newspapers of Auckland, Wellington, Christchurch and Dunedin. The exclusion of Hamilton and other similar metropolitan cities from this list, whether purposeful or mistaken, seems an erroneous omission. This is especially so given Hamilton is the fourth largest city in the country and is within the Waikato Region, which is home to several nationally significant water bodies including the Waikato Awa and Taupō-nui-a-Tia (Lake Taupō).
- 243.** Hamilton City Council supports clause 215 which allows consent authorities control over whether a hearing is held on a resource consent. In particular, Hamilton City Council supports the ability to not hold a hearing if sufficient information has been provided. This allows opportunity to reduce potentially unnecessary hearings when considering a resource consent application, saving both time and money for all parties involved.
- 244.** We support the principles for heritage offsetting and redress under schedule 5. However, in an urban context, we are unclear how a development pathway can be found if offsetting and redress is inappropriate on the basis that “the effects on the cultural heritage are uncertain, unknown, or little understood, but potential effects are significantly adverse”. We believe this is contradictory. If cultural heritage is “uncertain, unknown, or little understood” then how can the effects be deemed “significantly adverse”?
- 245.** Clause 275 sets a maximum consent duration for water take and discharge at 10 years. While we appreciate the intent of this rule giving the consenting authority greater consideration to changing environments and standards, we have concerns on what a shorter consent duration might mean for large infrastructure projects and services such as water takes and discharges for municipal authorities. Water treatment plants for fresh and wastewater have both significant operation and set-up costs. The timeframe that a consent is likely to be given influences detailed business cases for such operations and a shorter consent risks investment outcomes not being achieved.

- 246.** Similarly, inline with the above point, Hamilton City Council consider it necessary that priority is given to municipal water authorities applying for water take and discharge consents for the purpose of municipal water activities. Further, consented volumes for municipal water authorities ought to account for the population growth that a municipal water authority expects over the consent duration as a minimum. This is opposed to the status quo, where municipal water authorities are challenged to secure resource consents for water take and discharge that follow an expected population growth trajectory, consequently, limiting the municipal water authority's ability to enable further population growth. Municipal water authorities should be focused on the planning and provision of appropriate and adequate infrastructure for the future, delivering water services to required standards and reducing water demand (both quality and allocation) as far as practicable. This is difficult when authorities have to be concerned about competing for water resources and involvement in protracted and expensive court proceedings, with other better resourced water users. Many other water users also use water for profit making activities, which in a cost-benefit type approach to assessing the water allocation issues, authorities will always struggle to compete and adequately quantify the social and economic benefits of water they provide to their communities and economies. If the Bill wishes to see 'a responsive urban environment' then legislation needs to ensure that provision is made to guarantee, subject to prudent water demand management, that the water required by municipal water authorities is available.
- 247.** Clause 130 (4) concerning rules that have immediate legal effect during a plan change process include a similar list of issues that currently are in the RMA such as the protection of water, air, soil and indigenous vegetation. We consider that this would be appropriate and necessary for rules that relate to natural hazards and climate change be included in this list. The nature of natural hazards and climate change are real-time issues threatening both health and safety, as well as public and private property.
- 248.** Hamilton City Council supports the process for independent plan changes (formerly private plan change requests under the RMA) under sub-part 2 of Schedule 7. However, we are surprised that the request for an independent plan change is made to the relevant local authority whereas designations by a requiring authority are made to the RPC under clause 503. We believe both should follow the same process and be processed by the local authority initially, before a recommendation is made to the RPC, as independent plan changes are proposed to be.
- 249.** In addition, we note that within clause 506(1) the Minister of the Crown, a requiring authority, or a local authority may give notice of a requirement. However, clause 506 (2) concerning withdrawing a requirement only mentions a requiring authority. We seek an explanation as to why a Minister of the Crown or local authority has not been included in clause 506(2), otherwise we seek that clause 506(2) is amended to include these two other parties.
- 250.** Hamilton City Council support the identification of the powers to acquire land under clause 142. We support the scope provided for under sub-clause 1(a) and (b).
- 251.** Hamilton City Council support the exemption of the need to consult on matters related to an NBE which have been consulted within 36 months before the public notice under other legislation. It makes sense to avoid duplication of consultation for matters recently addressed under RMA plan making processes. However, we question in practice how useful this will be given the lag between Royal Assent of the Bill, the development, consultation, and ministerial approval of the NPF, establishment of RPCs and eventually the development and notification of NBE plans. These provisions appear transitional in nature. We seek similar transitional provisions to be inserted under clause 14 of Schedule 7 regarding carrying over the draft zoning for the region (2(a)(ii)), carrying over the major regional policy issues from existing RMA plans under clause 14(3,) and which allow a more appropriate time frame of inclusion given the implementation period that reforms are expected to take.

Recommendations

252. Cause 228 should be amended to include the power to refuse or impose conditions of consent to reduce risks from natural hazards on land-use consents, not just subdivision.
253. Clause 383 should list Hamilton and other similar metropolitan centres in addition to those already listed for water conservation order notification.
254. We seek assurance in the Bill that consents for large infrastructure provided by public authorities have a consent duration of no less 20 years.
255. Legislation should ensure priority is given to municipal water authorities applying for water take and discharge consents for the purpose of municipal water activities, and that these consents take into consideration population growth expectations over the consent duration as a minimum.
256. Clause 130 (4) should include rules relating to natural hazards and climate change that can have legal effect when an NBE plan is publicly notified.
257. The process of assessing notices of requirement under clause 503 and independent plan changes under sup-part 2 of Schedule 7 should be the same and follow the independent plan change process by going to the effected local authority for assessment first, before the RPC providing final recommendations and decisions.
258. We seek that independent plan change requests are limited to matters of where certain zones are applied and are not allowed to seek changes to the policy and rule frameworks.
259. We seek that clause 506(2) is amended to include a Minister of the Crown and local **authorities in the process of withdrawing a notice of requirement.**
260. We seek transitional provisions inserted in clause 14 of Schedule 7 concerning the identification of major regional policy issues which can be determined by carrying over the major regional policy issues from existing RMA with an inclusion time limit that reflects the expected implementation timeline which shall likely be more than 36 months.

Independent Hearing Panels

261. Hamilton City Council supports the use of Independent Hearings Panels and their functions, which include hearing submissions and making recommendations to the RPC. Given the complexity of resource management issues that these panels need to preside over, their in-depth experience and expertise is paramount in order to achieve good outcomes.
262. We also support provisions around the membership of IHPs, including each region establishing a pool of suitably qualified IHP candidates which includes candidates nominated by local authorities, iwi, and hapuu of a region. It is critical that these candidates have the pre-requisite skills and experience and are not conflicted in any way.

Further Information and Hearings

- 263.** Should Parliament's Environment Committee require clarification of this submission from Hamilton City Council, or additional information, please contact **Blair Bowcott** (General Manager Growth), phone 07 838 6742 or 021 775 640, email blair.bowcott@hcc.govt.nz in the first instance.
- 264.** Hamilton City Council representatives **do wish to speak** at the Environment Committee hearings in support of this submission.

Yours faithfully



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