Attachment 1: Key submission points on the Planning Bill and Natural Environment Bill

High level view of the policy intent

- Council provides general support to the proposed new resource management system providing greater national direction and national standardisation through the national instruments. This will provide consistency and efficiency in the new system.
- The system relies heavily on secondary legislation through national instruments. It appears that a significant level of detail will be provided through the secondary legislation and it is where conflicts will be resolved. It is critical that these are delivered to avoid the very issue the RMA has been criticised for – that implementation was stymied because the required national direction was not provided at the outset.
- There is a cumulative effect of local government reforms that places pressure on councils. The timeframes to finalise the design of these reforms, including considering the interrelationships between them, and the subsequent implementation need to be carefully considered. The Council supports replacement of the RMA, with subsequent implement proceeding in parallel with other reform initiatives where it is practical and efficient to do so.
- There are sections that appear to be duplicated and the wording of some sections are confusing or create uncertainty. The TCC submission will propose amendments to improve wording and remove duplication.
- The Bills are designed to address and apply to separate domains. The 'environment' that each Bill considers and the attempt to define distinct subsets of the broader 'environment' is likely to create significant workability issues in practice, and potential for legal challenge. The issue for local government is that it is councils who will have to bear the cost of the litigation that will ensue as the new regime beds in and some of these matters are settled.
- Council provide general support for a planning tribunal in the new resource management system.

Comments on any shared provisions in the Bills

Purpose and Goals
Summary of Purpose and Goals: PB Purpose: To establish a framework for planning and regulating the use, development, and enjoyment of land. NEB Purpose: To establish a framework for the use, protection, and enhancement of the natural environment. The goals in each of the Bills define the outcomes that the planning system (PB) and environmental management system (NEB) is trying to achieve. They will be particularised through National Policy Direction, which directs how the goals must be achieved. All persons exercising or performing functions, duties or powers under each Bill must seek to achieve the goals listed in clause 11 of each Bill. There are nine goals in the PB and six goals in the NEB. The goals cannot be relitigated at lower levels of the system. The PB goals move away from 'sustainable management' and instead reflects matters that emphasise the Government's priorities of enabling housing and business growth and delivering infrastructure. In comparison to the RMA, some 'matters of national importance' from section 6 (RMA) have been included with amendments, while many of the 'other relevant matters' from section 7 (RMA) have been excluded, such as maintenance and enhancement of amenity values, renewable energy and kaitiakitanga. There is no hierarchy between the listed goals, nor is there any hierarchy between the two Bills. This means there is no explicit ranking of one goal over the other. We understand that the reconciliation of tensions between goals is to play out in the national direction. When designing national direction, the Minister must have regard to the following principles: • Achieving compatibility between the goals is to be preferred over achieving one goal at the expense of another; • Not all goals need to be achieved in all places at all times; and • Any conflicts within the proposed national instrument should be resolved in that document as far as reasonably practicable. **Recommended Council Position:** • Seek that the purpose explicitly provides for current and future generations. • General support for the goals set out the NEB and PB, subject to amendments to improve implementation. • Seek amendment to the vague wording used in the goals where the meaning is unclear. For example, clause (a) "….unreasonably affect others…." and clause (d) "….by making land available…". • Seek that key terms within the goals are defined such as "well-functioning urban and rural areas" and "infrastructure". • Seek that 'soft' infrastructure, such as open space and community facilities, are provided for in the goals.

- Seek that a goal includes the benefits to be derived from the use and development of renewable energy.

National Instruments

Summary of National Instruments:

The goals of the PB and the NEB are to be implemented through national instruments.

National instruments:

- Will comprise of National Policy Direction and national standards;
- Are set by central government and implemented by local government through spatial plans, land use plans and natural environment plans;
- Will set out detailed objectives, policies and standardised approaches for addressing national and regional priorities;
- Will be publicly notified, allowing for participation in their development.

There will be one National Policy Direction for each Bill. This is intended to be a short document that will provide objectives, policies and directives on the goals of each Bill, including how to manage conflicts between goals.

The National Policy Direction will be implemented through national standards (such as standardised planning provisions, rules and methodologies), making sure policies are applied consistently across the country for things like regulating land-use and environmental management. Other kinds of national standards will have direct effect on activities 'on the ground', without having to be first incorporated into the land use plan or natural environment plan.

National standards include standardised zones. This will make rules the same across the country where it makes sense. For example, there will be a common approach to residential, commercial or industrial buildings, and rules around height, access to daylight, site coverage, noise and vibration. However, there is the ability to have bespoke provisions in certain situations to respond to local matters.

The first set of national instruments will be released in two suites. The first, which includes National Policy Direction and national standards is due in March 2027. The second, which includes standardised zones, is due in December 2027.

Recommended Council Position:

- General support for clear and timely national instruments, including standardised zones.
- Request that certain national standards be released as part of the first suite in March 2027, this is particularly important to inform the development of the Regional Spatial Plan.
- Seek greater integration between the PB and NEB when formulating national instruments.

Treaty Matters

Summary of Treaty Matters:

The PB and NEB largely carry forward the overall approach of the RMA. However, there are several important changes, particularly in how tangata whenua interests and obligations under Te Tiriti o Waitangi / the Treaty of Waitangi are recognised.

One key change is a shift in wording. Under the RMA, decision-makers were required to "take into account" the principles of Te Tiriti o Waitangi / the Treaty of Waitangi. The new Bills instead refer to recognising the Crown's responsibilities in relation to Te Tiriti o Waitangi / the Treaty of Waitangi.

The PB and NEB include more explicit requirements for engagement with tangata whenua. One of the goals of the Bills requires Māori "participation", using a more active term than "engagement", in the development of national instruments, spatial planning, land use plans and natural environment plans. Tangata whenua must also be consulted at multiple stages by territorial authorities, Spatial Plan Committees, and the Minister. These provisions increase the level of tangata whenua involvement in planning processes. The goals of the PB and NEB further require the identification and protection of sites of significance and Māori land, providing greater certainty than under the RMA.

Recommended Council Position:

- Seek amendment to section 8 of the NEB and PB, which currently states, "To recognise the Crown's responsibilities in relation to the Treaty of Waitangi…". This clause departs from the RMA's substantive requirement that decision-makers "take into account" the principles of the Treaty of Waitangi, replacing it with a largely descriptive statement of Crown responsibilities. This shift significantly reduces the relevance, consideration, and weight of Treaty principles in resource management decision-making and is likely to result in materially different and weaker planning outcomes compared to those required under the RMA.
- Seek amendment to clause 11 of the PB and NEB, which narrows Māori interests to the identification and protection of "sites of significance to Māori". This departs from section 6(e) of the RMA and risks excluding wider cultural landscapes and relationships, including culturally significant viewshafts between marae and sites of significance such as Mauao. Clarification or broader wording is sought to ensure these relationships can continue to be protected.
- Seek amendment to Section 69 of the PB should require the Spatial Plan Committee to include a suitably qualified person with an understanding of, and experience in, tikanga Māori.
- Council recognises that Te Tiriti o Waitangi / The Treaty of Waitangi is the founding document of Aotearoa and TCC will continue to uphold the Treaty principles which are important for ongoing relationship between TCC and tangata whenua.

Functions, Powers, and Responsibilities of Local Authorities

Summary of Functions:

The resource management reform provides a clear separation in functions for territorial authorities and regional councils to avoid duplication and confusing overlapping responsibilities. Under the PB territorial authorities are to prepare the land use plan for planning and regulating the use, development, and enjoyment of land, including subdivision and activities on the surface of water bodies - with a focus on the built environment; while under the NEB regional councils are to prepare the natural environment plan for the use, protection and enhancement of the natural environment within the region.

Under the PB, district councils continue with the same RMA responsibilities for land use, subdivision and activities on the surface of water bodies. However, they are no longer required to maintain indigenous biodiversity (as only regional councils must regulate and manage indigenous biodiversity), nor will they be the sole regulator for the control of noise emissions on land, as the responsibility for noise emissions becomes shared between local authorities, national regulators, and individual noise

makers. Territorial authorities are still able to have noise rules in their plan and provide noise mitigation conditions on planning consents; and will continue to monitor noise emission compliance and enforcement, while recognising there is a general duty applying to all "noise makers" to act reasonably.

Under the NEB, regional councils remain responsible for the quality and quantity of water, and geothermal resources, discharges to land, air and water, managing natural resources, and the bed of any water body, soil conservation, and the coastal marine area, as well as controlling effects of aquaculture activities on fishing and fisheries resources. They are, however, no longer specifically responsible for:

- Achieving integrated management of the natural and physical resources of the region (which includes structures as well as the natural resources)
- Managing the use, development, or protection of land which is of regional significance
- Ensuring that there is sufficient development capacity for housing and business land to meet the expected demands of the region
- Addressing the strategic integration of infrastructure with land use.

Under the PB and NEB, there are a number of shared responsibilities for territorial authorities and regional councils, particularly for regulating and managing contaminated land, and natural hazards, as follows:

- Territorial authorities will continue to regulate and manage contaminated land, particularly through consents for subdivision, use and development of land; while regional councils will address soil contamination through natural resource permits;
- Territorial authorities are to manage the effects of natural hazards as they relate to land use through the land use plan; while regional councils are to manage natural hazard risks as they relate to natural resources through the natural environment plan; and

Recommended Council Position:

- Support how the territorial authorities (under the PB) address effects on the built environment, while regional councils (under the NEB) address effects on the natural environment.
- General support for the PB functions for territorial authorities and regional council functions under the NEB.
- General support for territorial authorities no longer maintaining indigenous biodiversity, however, seek clarification on the process where indigenous biodiversity is identified for protection when identified through a structure plan process for urban development. There appears to be unintended consequences where a territorial authority seeks to rezone the land through a land use plan, but rely on a regional council to protect identified indigenous biodiversity through a natural environment plan. Seek better alignment of the responsibilities between local authorities where changes to plans are proposed for the purpose of increasing development capacity of land for housing and business and indigenous biodiversity has been identified for protection.
- General support for territorial authorities no longer being the sole regulator for the control of noise emissions on land and surface of water; however, seek clarification on where the functions sit between local authorities and central government.
- Support regional councils no longer addressing integrated management of natural and physical resources, nor the integration of infrastructure with land use, nor ensuring there is sufficient development capacity for housing and business land to meet future demand, nor managing land of regional significance.
- Support the shared responsibilities set out under both Bills with separate requirements for territorial authorities and regional councils to regulate and manage contaminated land, and natural hazards (including climate change) in relation to the built environment and natural environment, respectively.

- Seek clarity and consistency for certain terms used when referring to the 'environment' in PB and NEB, and for necessary definitions to be provided under PB and NEB, including 'water bodies', 'river' and 'climate change' – in relation to the local authority functions.

Regulatory Relief

Summary of Regulatory Relief:

The RMA currently includes provision for people to challenge regulatory takings through s85. An application is made to the Environment Court, who makes a direction on whether land has been rendered 'incapable of reasonable use'. The phrase 'incapable of reasonable use' is similar to the proposed wording in the regulatory relief provisions of the PB.

The concept of regulatory relief was first introduced as 'regulatory takings' by the Expert Advisory Group in the Blueprint for RMA Reform to further the enjoyment of private property rights. The purpose of regulatory relief is to compensate landowners that cannot develop their land due to planning rules that have a 'significant impact on the reasonable use of land'. Regulatory relief can be sought where land is significantly impacted by rules on the following topics only:

- Outstanding natural features and landscapes.
- Areas of high character.
- Sites of significance to Māori.
- Significant historic heritage.
- Indigenous biodiversity.

The PB provides for a suite of relief options that council choose from including monetary payment, waiving fees, granting additional development rights, land swaps and giving access to grants and mitigation options.

Eligibility for regulatory relief is restricted to a set of criteria which seeks to avoid 'double-dipping' by landowners.

Recommended Council Position:

- Strongly oppose the proposed approach to regulatory relief as currently drafted for the following reasons:
    - The goals and national instruments in the PB and NEB require councils to protect, outstanding natural features, areas of hight character, sits of significance to Māori, historic heritage and indigenous biodiversity, yet the regulatory relief provisions place a burden on councils to pay for the cost of those planning rules.
    - The NEB and PB embed tension between the protection of specified topics and the pressure, both legislative and community-based, to reduce rates and council spending.
    - Wider local government reform, particularly rates capping further constrains a council's ability to bear the cost of regulatory relief.
    - The inclusion of sites of significance to Māori in the specified topics could put councils and iwi in a difficult position whereby the protection that iwi seek could result in significant financial impact on local authorities.
    - The eligibility criteria could result in significant re-litigation of specified topics in terms of who is eligible to receive relief under the current planning system.
- If retained in the NEB and PB, then Council seek significant amendments, where regulatory relief can only be considered where bespoke provisions apply.

Transition Requirements

Summary of Transitional Requirements:

The PB sets out the transitional requirements into the new resource management system which are summarised as follows:

- **9 months after Royal assent:** the first National Policy Direction under the NEB and PB must be issued and the first set of national standards setting the evidence base supporting combined plans (estimated second quarter 2027).
- **15 months after Royal assent:** a draft Regional Spatial Plan is notified for region (estimated last quarter 2027).
- **6 months from Regional Spatial Plan notification:** a decision must be made on the Regional Spatial Plan (estimated second quarter 2028).
- **18 months after Royal assent:** the second suite of national direction is issued (estimated last quarter 2027).
- **9 months after a regional spatial plan is decided:** each territorial authority must notify a land use plan and natural environment plans (late 2028).

With the prescribed timeframes, it is expected that by late 2028 all of the components of the combined regional plans would have been notified across the country. Should the Minister be satisfied with these plans as notified, the Order in Council will be made to specify a transition date, at which point the 'transition period' is over.

For the preparation of the first land use plans and environmental plans, the relevant local authorities must jointly appoint one independent hearing panel for the region.

During the transition period, a transitional consenting framework will be used. The framework will allow new national instruments and the proposed changes in scope to apply sooner, while councils go through the process of preparing their plans in the new system. RMA plans will stay in place until the new system takes over (the 'transition period' is over). Ten-year reviews and national planning standards under the RMA will remain on hold during the transition. Changes to RMA plans won't go ahead unless they've been approved to continue.

Recommended Council Position:

- Support the transitional provisions that require a sequenced approach to implement the new system to ensure that regional spatial plans implement nation instruments and land use plans implement regional spatial plans and national instruments.
- Oppose the tight transitional timeframes to implement the new system for the following reasons:
    - Risk that the timeframes are unworkable and setting the new system up to fail;
    - Insufficient capability and capacity of resource management system across the country to prepare the Regional Spatial Plan, land use plans and natural environment all at the same time;
    - Insufficient timeframes for councils to give effect to national direction to inform the Regional Spatial Plan and insufficient time to complete each step of the process for the Regional Spatial Plan, land use plans and natural environment plans;
    - Inadequate time provided for meaningful engagement, including with iwi authorities, customary marine title groups, infrastructure providers, central government agencies and other key stakeholders;
    - A land use plan and natural environment plan can use more up to date information which is highly likely to happen given the lack of time to prepare a spatial plan, which would result in misalignment between the regional spatial plan and land use plan;

- Unclear how environmental limits will be prepared for the Regional Spatial Plan and what happens in the absence of environmental limits;
- Lack of time for council to prepare funding to prepare plans (particularly the Regional Spatial Plan) given timing of long term plan processes;
- Lack of integration with timing and implications of other reforms, such as local waters done well and local government reform which will impact the regional spatial plan process.

- Seek realistic timeframes to improve plan quality, reduce litigation and increase the chance for the new system to deliver on intended outcomes.
- Seek clarification on what national standards will be included in the first and second suit of national instruments.
- Oppose the requirement for a joint IHP across a region for the first land use plans and natural environment plan. Hearings for one plan by one council is likely to take weeks so there is risk that months of hearings would be required within a region when the legislation only provides councils with 12 months to complete the land use plan and natural environment plan process.
- Seek amendment to the transitional consenting system, where a consent authority must not have regard effects of internal and external layout, effects on landscape, views from properties. These effects are broad and open to interpretation on what rules would apply or not, increasing the risk of litigation.

Existing Use Rights

Summary of Existing Use Rights

Under the RMA, the Regional Council has the ability to progress a Plan Change to introduce rules which remove existing use rights for natural hazard management. The PB and NEB do not carry this approach forward, meaning existing use rights could persist in high-risk natural hazard areas without a process to remove those existing use rights.

Recommended Council Position:

- Amend to allow territorial authorities to limit or extinguish existing use rights where hazards pose serious risk, aligning with Goal 11(1)(h) of the PB and ensuring effective hazard management.

Comments Specific to the Planning Bill

Regional Spatial Plan

Summary of Regional Spatial Plan:
 	
The PB requires every region to have a Regional Spatial Plan which will set the strategic direction for growth over a 30+ year period. Growth patterns, sequencing, and infrastructure alignment will be provided through the Regional Spatial Plan. The Regional Spatial Plan must implement national instruments and council long-term plans must set out steps to implement or progress Regional Spatial Plan actions. The spatial planning process is intended to support integrated decision making between the PB and NEB.
 	
The land use and natural environment plans must implement any relevant provision of the Regional Spatial Plan. The Regional Spatial Plan, the land use plan and the natural environment plan form the combined regional plan.
 	
Each region establishes a spatial plan committee. The process allows the Minister to appoint one member to a spatial plan committee, with the ability to appoint additional members if all local authorities in the region agree. Minister-appointed members have full voting rights unless the Minister specifies in writing that they are non-voting or may vote only on specified matters.
 	
The spatial plan committee are required to consult with iwi authorities and customary marine title groups in the region in preparing the draft Regional Spatial Plan. The committee must also work with others who have a strong interest in spatial planning for that region, including core infrastructure operators, development and community sector groups, and neighbouring local authorities during preparation. The committee must recommend the draft Regional Spatial Plan to the region's local authorities for approval to notify it for public submissions.
 	
Local authorities must establish an independent hearings panel to hear public submissions on the draft spatial plan and make recommended changes. Local authorities must either accept independent hearings panel recommendations or decide an alternative solution that is consistent with the requirements of the PB. The Minister and designating authorities also have a decision-making role in certain circumstances. Points of law appeals, and limited merits appeals are available.
 	
The PB includes a disputes resolution process for Regional Spatial Plan's. If the chairperson of the spatial plan committee determines that the committee is unable to achieve a consensus, they must follow the prescribed dispute resolution process. If consensus cannot be reached and the dispute resolution process fails the parties must advise the Minister, who may either review and determine the matter or appoint an independent person to review and determine the matter. The determination is binding.
 	
Recommended Council Position:
 	
• General support for the requirement to prepare a Regional Spatial Plan and the proposed process, subject to the submission points made below.
  ○ Support the weight provided to Regional Spatial Plan's in the PB and that they must be implemented in the land use plan and natural environment plan.
  ○ While the PB provides flexibility for local authorities to collaboratively prepare a Regional Spatial Plan, Council seek that the PB expressly allows for the creation of sub-regional spatial plans, which would be integrated with other sub-regional plans to form part of a Regional Spatial Plan. This would promote efficiency by tailoring planning to sub-regional priorities and key issues affecting local communities.
  ○ Seek the inclusion of a further submission process to ensure people have the ability to support or oppose an original submissions, and respond to new issues or evidence raised through submissions.

- Support Ministerial involvement in the Regional Spatial Plan process, given the partnership and investment required from central government to deliver regional outcomes.
- Oppose merit appeal rights to the Environment Court on a decision to reject the independent hearings panel recommendation relating to infrastructure and seek that appeals are limited to Crown entities, infrastructure providers, local authorities and landowners directly affected by a decision.
- Seek to amend the coordination document process to require that local authorities adopt a coordination document rather than just the spatial plan committee. While the coordination document content is not set out in the PB it could bind local authorities to processes, actions and projects that they have not agreed to.

Combined Plan (Land Use Plan)

Summary of Land Use Plan:

Land use plans established under the PB will replace district/city plans and retain a similar purpose. Land use plans must implement the regional spatial plan and national instruments and will be limited in its ability to revisit decisions already made in these higher order documents. Land use plans will enable the use and development of land while regulating adverse effects on the 'built environment' that are within scope of the PB. Land use plans will be subject to a public notification and hearing process by an independent hearings panel.

The key differences between the proposed land use plans under the PB and the district/city plans under the RMA are:

- The requirement to use standardised zones that will be created by central government as part of the national instruments. The RMA allowed councils to create their own zones and provisions.
- Simplified evaluation and reporting requirements to prepare a land use plan review or change.
- The ability to have temporary provisions that are replaced by future provisions once requirements are met, such as infrastructure performance standards, or funding agreements. While similar approaches have been used in plans under the RMA, this approach provides certainty and consistency including it in legislation.
- Ability to change the spatial application of zones in the land use plan via planning consent where it involves applying standardised plan provisions (currently a separate private plan change process is required).
- Appeal rights are limited when a land use plan includes standardised zones/provisions.

Recommended Council Position:

- General support for greater use of standardised zones and provisions for efficient plan-making process.
- General support for the ability to create bespoke zones and provisions when it can be justified that a departure from a standardised zone/provisions are necessary.
- General support for the ability to use 'temporary' and 'future provisions' to enable change in zoning over time without requiring a full plan change process.
- General support for the process to establish land use plans, particularly the requirement to implement regional spatial plans and other national instruments.

- Seek clarity of evaluation report requirements to ensure the plan-making process is based on an appropriate robust evidence base and integrated with plans and policies under other legislation.
- Seek amendments to the process for changing the land use plan via consent, to ensure the process relies on a robust evidence base and entry threshold to uphold the strategic outcomes of the land use plan and regional spatial plan.
- Seek amendments to ensure appeal rights on merits are available to Environment Court for decisions that include or exclude standardised zone/provisions and bespoke zone/provisions.

Scope of Effects and Threshold of Effects

Summary of Scope of Effects and Threshold of Effects:

The PB significantly narrows the scope of effects and raises the threshold of effects that can be considered in plan-making and consenting to create a more permissive land use system.

The PB proposes to exclude a wide range of effects from being considered in the system based on the economic concept of managing 'externalities.' An externality is a cost or benefit resulting from a party's activity that falls on an uninvolved third party. This approach seeks to remove effects that are borne solely by the party undertaking the activity from the system. The specific matters that are excluded are listed in Section 14 of the PB, including:

- The internal and external layout of buildings on site (i.e. private outdoor living areas, outlook, views)
- Trade competition
- Retail distribution (a planning concept that considers the significant effects on public amenity/well-being caused by reductions in the viability or vitality of commercial centres that arise as a consequence of trade competition).
- Landscape and visual amenity effects that currently preserve urban/rural character and notable trees are also excluded, except to protect identified outstanding natural landscapes and features, significant historic heritage, sites of significance to Māori, and areas of high natural character within the coastal environment, and wetlands, lakes, rivers and their margins.

The PB prevents decision-makers from considering 'less than minor' effects, unless they contribute to a cumulative effect. This raises the threshold of effects compared to the RMA which allowed for 'less than minor' effects to be considered and managed.

The new system will also:

- Introduce a meaning of 'less than minor adverse effect' into legislation as being 'acceptable and reasonable in the receiving environment with any change being slight or barely noticeable'.
- Allow effects to be avoided, minimised, or remedied where practicable, and offset and compensated for where appropriate.
- Enable national instruments to set out how effects should be managed in certain situations.

Recommended Council Position:

- Seek amendments to ensure the system appropriately manages the quality of the built environment and creates well-functioning urban and rural areas by allowing the following matters in Section 14(1) to remain in scope:
    - (a) the external layout of buildings on a site
    - (c) retail distribution effects
    - (e) visual amenity of a use, development, or building in relation to its character, appearance, aesthetic qualities, or other physical feature.
    - (h) the effect on landscape
    - (i) the effect of setting a precedent
- Seek amendments to establish a clear hierarchy for managing effects by only allowing offset and compensation where the effects cannot be appropriately avoided, remedied or minimised.

Consenting

Summary of Consenting:

Planning consents are required under the PB for activities that are not expressly permitted by a plan rule or regulation. The requirement for planning consents will be reduced in the new system and is intended to be more streamlined through:

a) More permitted activities under the standardised land use plan framework, particularly those with less-than-minor adverse effects. This may increase monitoring requirements and require increased resourcing for enforcement.

b) Reduction from six to four activity categories, removing controlled and non-complying activities. Permitted, restricted discretionary, discretionary and prohibited activities will remain.

c) Limiting the scope of effects that can be considered when making decisions on a planning consent. This means a reduction in the types of effects that Council can consider and subsequently a reduction in the types of reasons why a planning consent may be notified.

d) Consent processing timeframes will be a statutory window, rather than a specific number of days, and the ability for local authorities to waive or extend timeframes are narrowed.

e) Information requests and the commissioning of expert reports must be justifiable, and the scope of peer reviews are limited.

f) The threshold of notification and being identified as an affected person is raised to instances where effects are ‘more than minor’ instead of ‘minor’. Public notification of a planning consent (that is not mandatory) would only occur when all affected parties cannot be identified.

g) The increase in the effects threshold to ‘minor’ effects from ‘less than minor’ for deemed permitted marginal or temporary activities.

h) The intent of notification of a planning consent is focused on gathering information, so consent authorities are better informed about the potential adverse effects of the activity on the built environment and on people directly affected. Any notified consents must be decided by at least one independent commissioner who is not a member of the consent authority (i.e. not staff or an elected member).

i) Introduces a new pathway for planning consents to authorise a change to the plan provisions.

Recommended Council Position:

- General support for the intent to simplify and streamline the consenting process to reduce the number of consents required and increase certainty for consent authorities and applicants.
- Oppose the compensation requirements for esplanade reserves when it is wider than the required 20 metres width on an allotment less than 4 hectares. The PB entitles the landowner to compensation for the whole area of land taken for the reserve, instead of only the area in exceed of the required 20 metres width. This could potentially have financial implications on Council if compensation is required to be paid for the full width of the reserve.
- Seek clarity on the timeframes prescribed in regulations relating to consent processing timeframes and procedures and how the regulation may impact the timeframes prescribed in the PB. The regulations are currently unknown and without the relevant regulation, it is not clear under what circumstances waivers, extensions and holds to the prescribed timeframes will apply and what the consequences (e.g. financial implications) may be for Council if those timeframes are exceeded. For example, will there be a discount policy for applications processed beyond the prescribed timeframes resulting in not being able to recover full costs.
- Seek amendments to remove gaps in provisions relating to permitted activities, deemed permitted marginal or temporary activities, and certificates of compliance in the new system that could increase administrative costs and could be confusing and inefficient for Council staff and result in increased community frustration.
- Oppose increasing the threshold above effects that are less than minor in relation to deemed permitted activities. The intent of deemed permitted activities is to enable consent authorities to consider genuine 'marginal' or 'temporary' non-compliances and increasing the threshold above effects that are less than minor is not consistent with this intent and is not appropriate.

Monitoring, Enforcement and Compliance

Summary of Monitoring, Enforcement and Compliance:

The NEB and PB have largely replicated existing RMA provisions, but propose a new suite of enforcement tools:

- Financial assurances – a proactive tool to be imposed as a consent condition or while the activity is being undertaken, through a bond (existing), a form of insurance or other form specified;
- Enforceable undertakings - written commitments from a person to take specific actions to remedy, compensate or avoid adverse effects arising from non-compliance. These can include payment of compensation, or other remedial measures;
- Monetary benefit order – court ordered payment to local authority of monetary benefits acquired by the person, or accrued/accruing to the person, as a result of the commission of the offence;
- Pecuniary penalty regime – civil regime for offending with a lower standard of proof than with criminal proceedings.

While the NEB and PB seek to reduce the number of resource consents by classifying more activities as permitted, a registration process will be required, together with monitoring to ensure that the activity meets the permitted activity requirements.

Additional reporting tools are included in the NEB and PB:

- A publicly accessible summary of the written complaints received in the preceding 5 years on alleged breaches of the Act or a plan and how each complaint was dealt with.

- Preparation of a compliance and enforcement strategy (detail is to be provided through secondary legislation).

Recommended Council Position:

- General support for new enforcement tools.
- Seek clarity on new monitoring requirements for the permitted activity regime, as the Bills lack detail about what type of activities are proposed to be permitted, and when/how monitoring is undertaken. This regime may impose weighty requirements on council's existing monitoring resources.
- Seek clarity on requirements for the compliance and enforcement strategy.
- Seek assurances around cost recovery for monitoring activity, to ensure that councils are sufficiently able to recover costs.

Designations

Summary of Designations:

The designation process in the PB is largely the same as the RMA. In addition, the PB also seeks to enable designations through the Regional Spatial Plan process, if at least one of the following apply:

- The project is nationally or regionally significant;
- The project will have regionally significant benefits; and
- The project will cross territorial authority boundaries.

Recommended Council Position:

- Support the introduction of a proactive pathway, allowing major infrastructure to be designated through the Regional Spatial Plan process to ensure early and strategic alignment between infrastructure and policy planning.
- Seek definitions in the PB to clearly identify projects that are 'nationally or regionally significant', or have 'regionally significant benefits', or further requirements are added to relevant clauses. This will ensure there is consistent interpretation of what is constituted as 'nationally or regionally significant' and having 'regionally significant benefits'.

Comments Specific to the Natural Environment Bill

Natural Resource Permits
Summary of Consenting under NEB – Natural Resource Permits: The requirements for natural resource permits are set out under Part 4 of the NEB, and the types of permits include: • **a coastal permit** – which is relevant for any TCC structures or discharges (stormwater, treated wastewater) within the CMA / coastal waters – i.e. coastal permits include activities relating to the coastal marine area, coastal water, discharges, dumping and incineration of waste. Note that there are prohibitions under s24 NEB relating to radioactive waste / matter and toxic or hazardous waste in the CMA. • **a discharge permit** – which is relevant for TCC's wastewater and stormwater runoff management – i.e. for discharges of water / contaminants into water; or to discharge a contaminant from any industrial or trade premises into air or onto or into land. • **a land use permit** – which is necessary for development and infrastructure related earthworks, geotechnical, and soil related aspects (contamination and conservation); as well as for activities in the bed of a river or lake (which includes TCC's pipelines, stormwater management structures, or maintenance works). • **a water permit** - which is necessary for TCC's municipal water supply takes, and water permits also cover any works required for damming, diverting, using and taking water, heat and energy. A natural resource permit may include a wildlife approval – which relates to works affecting protected native wildlife, and are relevant to construction works for housing, roads, and infrastructure, and/or conservation work like pest control. Natural resource permits are not required where an activity is expressly allowed by an instrument under the NEB, which includes a national rule, a rule in a plan and any rule in a proposed plan that has legal effect, or a water services standard; or the activity has existing use rights under s25 NEB. All the information required in application for a natural resource permit is set out in Schedule 2 NEB and requires an assessment of effects on the natural environment against the relevant provisions in the natural environment plan, national rules and any other key instruments identified as necessary. The effects assessed include positive effects, and the effects on natural resources including air, water (freshwater, geothermal and coastal), land and soils, and indigenous biodiversity, as well as addressing the effects of natural hazards associated with the use or protection of natural resources. Effects regulated under the PB must not be considered. **Recommended Council Position:** • Support the four main types of natural resource permits (coastal, discharge, land use, and water permits) as well as the provision to include wildlife approvals as necessary. • Support in principle the NEB requirements set out for the respective permit applications and assessment of effects on the natural environment.