Christchurch City Council

9 February 2023

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Hon Eugenie Sage MP
C/- Committee Secretariat
Environment Committee
Parliament Buildings
Wellington 6011

Email: en@parliament.govt.nz

Dear Eugenie,

Christchurch City Council submission on the Natural and Built Environment Bill

On behalf of the Christchurch City Council (the Council), thank you for the opportunity to make a submission on the Natural and Built Environment Bill (the Bill). The Council appreciates the opportunity to make this submission to your committee.

Introduction

The Council generally supports the need for a new resource management system and the intent of the reforms, including the proposed objectives of the new resource management system.

However, as the attached submission explains in more detail, we consider that the proposed legislation will not achieve these objectives nor provide a simpler, more efficient system that offers appropriate local input and involvement.

We are disappointed that the potential for genuine improvements to system efficiency and effectiveness does not appear to have been achieved through the provisions of this Bill. We see this as a lost opportunity to make it easier for the public and the people administering the Act.

Overview of Submission

The Council has prepared a detailed submission which further explains the reasoning for this view, centred on five key points:

- Retain local democratic input in the new system as per the objective of the reforms.
- Provide appropriate financial support to effectively operationalise the new system.
- Simplify the process to make it easier for the public and for persons administering the Act.
- Clarify transitional arrangements to provide more certainty and direction.
- Pause the second readings of the NBE and SP bills until the Climate Adaptation Bill has been introduced.

Christchurch City Council

Key Recommendations

The Council believes that there are some areas where the select committee could make changes or consider options that attempt to resolve this. We specifically recommend that your committee:

- Allow the Regional Planning Committee (RPC) to better reflect the different communities and environments within each region through specific provisions which support sub-committees to form around specific areas within a region, and have delegated decision-making on the plans for those areas within the region.
- Require membership on RPCs to be elected member only to ensure continued accountability to the communities represented by councils
- Make the mandatory composition of RPCs proportionate to the population in regions with multiple local authorities so that metropolitan councils are fairly represented on RPCs
- Require RPCs to 'give effect' to Statements of Community Outcomes and Statements of Regional Environmental Outcomes so that local communities have some guaranteed voice in the regional planning process.
- Define the Bill's purpose, outcomes and principles more clearly to address and avoid potential conflicts which may result in future litigation and judicial review.
- Require the first 'tranche' of the National Planning Framework to use the consolidation of existing national directions as an opportunity to undertake a regulatory review which identifies existing inconsistencies and addresses them through the drafting process.
- Clarify the mechanisms available to local government within the Bill to help cover the projected 11% cost increase, including clarification on how the costs of the RPC will be met (e.g. local council rates, regional rates, user fees, etc.).
- The Council supports the proposed compliance monitoring and enforcement provisions in the Bill to address historical concerns with powers in the current system.
- Request that the second readings of the NBE and SP bills are paused until the Climate Adaptation Bill has been introduced in the House.

Further to these changes, if your committee can inform implementation of the Bill, then the Council would like more clarity from MfE on the transitional arrangements for the period following enactment. This information is fundamental to supporting the development of councils forward work programmes and long-term planning in a way that ensures the smoothest possible transition. This lack of clarity poses a substantial risk to councils.

Conclusion

The Council strongly urges your committee to thoroughly consider the proposed legislation carefully. This Bill, and the accompanying Spatial Planning Bill, will have an enormous and long lasting impact on our country's future. While we support the intended outcomes, we believe that more work is needed on this legislation to improve its implementation and give voice to local communities.

Thank you again for the opportunity to provide this submission. Our Council staff have worked hard over the Christmas break to review this Bill and consider its impacts in a thoughtful and meaningful way to help you in your role reviewing this legislation. We are grateful for their hard work and advice in helping our Council consider this Bill within the short submission period over the Christmas holiday.

If your committee would like more information on our submission, or if you have any questions about the submission, then please contact Mark Stevenson, Manager Planning at the Christchurch City Council: mark.stevenson@ccc.govt.nz

Thank you for your consideration.

Yours sincerely,

Phil Mauger

Mayor of Christchurch

Christchurch City Council

Christchurch City Council submission on Natural and Built Environment Bill

1. Christchurch City Council (the Council) thanks the Select Committee for the opportunity to submit on the Natural and Built Environment (NBE) Bill.

Retaining local voice in a regionalised system remains a concern

We seek amendments to the proposed composition and governance arrangements for Regional Planning Committees

2. The introduction of Regional Planning Committees (RPCs) proposes a new governance arrangement for plan development, with local authorities no longer directly responsible for plan-making.

3. We believe that RPCs would introduce a layer of additional complexity and bureaucracy into the planning system. However, given that the Government has made an in-principle decision to centralise plan development and introduce the RPC model, this submission focuses on the composition and governance arrangements of RPCs.

4. Schedule 8 sets out provisions relating to membership, support, and operations of RPCs. We have several concerns in relation to these provisions:

    - We generally agree in principle with the processes established for RPCs. However, we are concerned that the significant degree of flexibility proposed would create its own challenges, which would be left to local government and iwi/hapū to resolve.

    - We consider that the NBE Bill should make population proportional compositional arrangements mandatory in regions with multiple local authorities. This would better ensure the delivery of outcomes for large centres, which have a greater number of resource management issues. Furthermore, being the largest city in the South Island, Christchurch City plays an important role in the Canterbury region. This needs to be reflective in the RPC composition to enable fair and appropriate representation. Schedule 8, clause 3(2)(d) as currently drafted does not provide enough certainty in this regard, only requiring 'consideration' of populations and the 'desirability' of applying some weighting. There is potential for inequitable outcomes and conflict between local authorities unless certainty is provided on composition in this circumstance. To enable fair representation on RPCs, we seek that this provision is strengthened.

    - Schedule 8, clause 2 gives local authorities discretion around who to appoint as their member on the RPC. In our submission on the NBE exposure draft we expressed that membership of RPCs should consist of elected members rather than council officers or independent experts. We continue to hold this view and recommend that this provision be amended to require RPCs to be made up only of elected members. We see this as necessary to ensure continued accountability to the communities represented by councils.

    - In a region like Canterbury, which covers a vast area, we see merit in the proposed provisions for subcommittees to be established (schedule 8, clause 32). However, we consider that there would be benefit in amending the provision to also enable the delegation of decision-making to these subcommittees. Delegated decision-making to a subcommittee would result in efficiencies. It would also give greater authority to the local voice when issues directly affect a specific area rather than the region as a whole. As we previously expressed in our submission on the NBE exposure draft, the Greater Christchurch sub-region is an example of where it could be advantageous for a subcommittee to be established and delegated decision-making.

Regionalisation of plan development has the potential to limit voice of local authorities

5. The establishment of RPCs will mean that councils are no longer directly responsible for plan-making. We remain concerned that moving to this regionalised governance structure without adequate protections in the legislation for local democratic input and the ability for councils to meaningfully influence plan-making, will have the effect of limiting the local voice.

6. One stated objective of the reforms is 'retaining appropriate local democratic input'. The limiting of the voice of local councils in decision-making fails to meet this objective. Our submission on the Spatial Planning Bill also considers this, particularly regarding the development of Regional Spatial Strategies.

7. We are pleased the Government has adopted the Local Government Steering Group's recommendation for the inclusion of Statements of Regional Environmental Outcomes (SREOs) and Statements of Community Outcomes (SCOs).

8. However, there is a risk that SCOs and SREOs will not be able influence the plan-making process in a meaningful way, hindering local input and outcomes for communities. The proposed weighting of the SCOs and SREOs is weak. RPCs are required to have only "particular regard" to SREOs and SCOs in preparing NBE plans (Clause 107), and only "have regard" to the SREOs and SCOs in identifying the major policy issues for a region (Schedule 7,Clause 14).

9. We consider that this weighting is insufficient. As one of the few mechanisms for local councils to have a voice in the plan-making processes, stronger direction is required for the plans to appropriately consider local input.

10. We seek that clause 107 and schedule 7(14) be changed so that RPCs are required to "give effect" to SCOs and SREOs, or any alternative to achieve the same objective of greater weighting of SCOs and SREOs.

Increase public participation

11. We are concerned with the lack of public participation opportunities provided for in the NBE Bill, particularly through plan-making. This again has the potential to limit local voice within the new planning system.

12. Public participation in the plan making process has been limited throughout the NBE Bill (schedule 7), including by:

    - the limited 2-year plan making period that will significantly limit public engagement at the start of the plan making process
    - initial plan engagement consultation being limited to major regional policy issues, as opposed to district or local issues
    - requiring evidence to be submitted with submissions, which will likely be an impossible task for most submitters given the scope of the combined plan

13. One of the stated objectives of the NBE Bill is to retain local democratic input. We consider that this has not been achieved and that the public should be provided with reasonable and genuine opportunities to engage in plan making. This is a fundamental democratic right that is supported by section 82 of the Local Government Act 2002.

14. It is our experience that not providing adequate engagement opportunities significantly reduces the quality of plans. Resource management issues by their nature are complex and affect people in different ways. The range of views the public bring to resource management issues in plan making processes is very helpful as it

provides different perspectives not necessarily available to staff and decision makers. This greatly enhances the ability to make well informed decisions.

15. We request changes to Schedule 7 to enable greater public participation in the plan making process, including:

    - Provide a 6-year plan making period to help ensure adequate community engagement.
    - Broaden the scope of the regional planning committee's engagement policy to include district and local issues.
    - Not require evidence to be submitted with submissions.

Funding and resource implications for councils

We are concerned that the proposed system will result in substantive costs to local government

16. The Ministry for the Environment (MfE) detailed in their Supplementary Analysis Report (SAR) released in September 2022 that on-going costs to local government would increase by 11 percent ($444m) when compared to the current system. It also identified that there would be one-off establishment costs to local government of $350m, which would be spread over the first ten years.

17. The new system proposes shifting costs from users to increased investment from taxpayers and ratepayers, largely through the front loading of the planning processes and reducing the costs and complexity of consents required. We have significant concerns about this shift and the additional costs for local government and consequently ratepayers under the new system. This was raised in our submission on the exposure draft of the Bill.

18. Local government is already operating in a fiscally constrained environment. The anticipated costs from the new Resource Management system will further exacerbate the fiscal pressures that local authorities face and force councils into difficult decisions around funding and potential rate increases.

19. We consider that it is unreasonable for the onus to be placed on local government to absorb the extent of costs anticipated from the new system, especially as these additional costs would be placed on ratepayers.

20. In addition to costs on local government, we are also concerned about the costs for users to fully participate in the planning process. This is of particular concern in regards to the plan-making process, which can often be of high-cost and timely for members of the public to participate in.

21. MfE does acknowledge in the SAR that the extent to which local government's share of costs may be subsidised by central government has not been determined. We urge Government to consider the implications of these additional costs on councils (and consequentially ratepayers) and provide appropriate financial support to operationalise the new system. For example, regional rating could be considered as a funding model to support the costs associated with the RPCs.

We would need additional resource to support the operation of the new system

22. In addition to the fiscal implications, we also are concerned about the need for additional resource to support the operation of the new system. The new system would impose additional requirements on local authorities, in the area of monitoring and compliance for example, which we consider will necessitate the application of additional resource to deliver.

23. As outlined above, we urge the Government to consider the added pressure the new system will place on already tight resources and provide the appropriate fiscal support to effectively deliver and operationalise the system.

The National Planning Framework is critical to the success of the proposed legislation

24. The effectiveness and efficiency of the proposed legislation will be highly dependent on the National Planning Framework (NPF).

25. Local government must be enabled to fully participate in the preparation of the NPF to ensure that it is informed by strong local input. Strong local-level involvement in the development of the NPF would ensure it endures and reduce the risk of unintended outcomes. While we support the Board of Inquiry process, detailed in Schedule 6, that would enable submissions on the proposed NPF, we also ask that MfE engage closely with us in the development of the NPF.

26. MfE has indicated that the NPF will be created in tranches through secondary legislation, with the first NPF being a consolidation of the functions and existing national regulatory instruments into a single framework.

27. We see this as a lost opportunity to address some of the constraints and conflicts with the existing national direction. We consider that the development of the first NPF should not simply be a consolidation of existing national direction but rather address the issues and conflicts apparent in the existing national direction. We seek amendments to the required content of the first NPF to ensure that it does not simply contain all of the inconsistencies, gaps and overlaps within the existing national framework.

Notwithstanding the above, NPF should not be relied on to reconcile the conflicts, overlaps and ambiguities in the Bill's purpose, outcomes and principles

28. Notwithstanding the above, we seek that the Bill be amended to address several conflicts to avoid lengthy litigation and costs. These are:

    - the inherent conflicts between the matters in the purpose (clause 3). For example how currently drafted the two arms of the purpose seemingly conflict with one another (Clause 3(a) and (b)).

    - the lack of prioritisation of the system outcomes in clause 5 and the conflicts arising from the differing outcomes sought. We see a lack of direction or guidance in the NBE bill about how competing priorities (and conflicts between and among outcomes such as clause 5(a) and clause 5(c)(ii)) will be managed. This is critical to achieving a balance between good outcomes for the natural environment and the growth and development of communities.

    - what is required to recognise and uphold te Oranga o te Taiao (clause 3(b) - the health and interconnectedness of all parts of the natural environment, and the relationship of iwi and hapu with it)

    - what is required to recognise and provide for the responsibility and mana of each iwi and hapū to protect and sustain the health and well-being of te taiao (clause 6(3)).

29. We consider that if clarity is not given in the legislation, these conflicts may be left to the NPF to reconcile. It would be difficult for the NPF and NBE plans to effectively resolve these conflicts.

30. We do not want to see a level of litigation and costs similar to those caused by conflicts associated with implementing the Resource Management Act. We therefore recommend the Bill is amended to address these conflicts and provide greater clarity and direction.

Disappointed by lack of reference to built environment and amenity in system outcomes

31. Additionally, we are disappointed about the lack of reference to the 'built environment' and 'amenity' within the system outcomes (clause 5). The need to maintain and enhance amenity as required by section 7 of the RMA has not been included in the proposed system outcomes and nothing in the bill promotes good urban design. While clause 5 uses the term 'well-functioning urban area', it is not itself defined and does not address urban design, or the quality and liveability of the built environment.

32. We acknowledge that there is a need for change in urban areas over time and that it is not always appropriate for existing character and amenity to be retained. However, it is important that the new system promotes good urban design outcomes that consider context, provide connections, encourage creativity, creates/enhances identity and character, and achieves a reasonable level of amenity.

33. We seek that clause 5 is amended to promote amenity and good urban design.

The proposed changes do not simplify the process

Lost opportunity to make consenting easier for the public and persons administering the Act

34. One of the stated objectives of the Resource Management reforms is to 'improve system efficiency and effectiveness and reduce complexity'. The provisions in the Bill for resource consenting do not reduce complexity of the proposed consenting system. The Bill therefore fails to meet one of the principle objectives of the reform.

35. The provisions in the NBE Bill have potential to bring additional complexity and further litigation, at a cost to both council (and therefore ratepayers) and users. The structure of the NBE Bill is convoluted in parts, with duplications and illogical placement of related provisions, meaning application is not as clear as it could be.

36. We are disappointed that the intended simplification has not occurred and see this as a lost opportunity to make it easier for the public and for persons administering the Act.

37. We have identified specific clauses (see Appendix 1) with operational or interpretation issues that need to be resolved. If unresolved, we are concerned they will result in increased litigation or more complex processes, at a cost to councils and users.

Proposed plan change process would not lead to simplification

38. We make a similar point concerning the intent to simplify the plan change process by providing for an "enduring submission" on an early regional issues statement to remain in place as a submission on a later proposed NBE Plan. This will cause uncertainties, inefficiencies and delays whenever there are substantive changes between the draft and the proposed NBE plan – which will be often. It will not save time for the submitter as the submitter will want to assess whether they have different views about what is in the proposed NBE plan. In addition this is likely to cause confusion for people considering supporting or opposing primary submissions on the proposed NBE plan if the content, clause numbering and other matters of the proposed NBE plan has changed.

39. Moreover, the Bill should provide a cut-off date for lodging "enduring submissions" in advance of notification of a proposed Plan, otherwise there will be unintended inefficiencies in the notifying authority being required to continually assess whether a submission warrants further changes to a proposed plan before notification.

Support the more robust compliance monitoring and enforcement provisions but consideration of operationalisation is necessary

40. It is widely accepted that existing compliance monitoring and enforcement provisions have often failed to deter non-compliance and have limited consequences for when non-compliance occurs. We support the more robust and rigorous compliance monitoring and enforcement provisions provided for in the NBE Bill.

41. We see the broader range of compliance and enforcement mechanisms proposed in the NBE Bill as beneficial to councils and their ability to take action on compliance matters. In particular, we support:

    - Clause 223(2)(f) requiring the consent authority to have regard to any prior non-compliance by the applicant and for which enforcement action has been taken under the Act
    - Clause 718 which enables applications for the Court to make a monetary benefit order
    - Clause 719 that provides for an application to the Court for a resource consent to be revoked or suspended for ongoing and severe non-compliance.

42. We support clause 723 enabling an NBE regulator to enter into an enforceable undertaking. However, we consider there is a need for a regulation prescribing the form of, or the information that must be contained in or accompany, an enforceable undertaking. This would provide clarity to NBE regulators as to the minimum information necessary in an enforceable undertaking. It will also address a current problem with the drafting, in which the fairly routine exercise of conditional discretion by enforcement officers could be deemed to be an "enforceable undertaking", when that was not the intent of the enforcement officer.

Uncertainty around the resourcing implications of CME provisions

43. There is potential that additional resources would be needed to implement the CME provisions proposed in the NBE. However, with the uncertainty around the content of NBE plans it is difficult to quantify the level at this stage. For example the volume of Permitted Activity Notices (PANs) that will require compliance monitoring and enforcement will be dependent on the NBE plans and what they deem to need PANs.

44. The Bill's intended improvement in CME will only be as effective as the ability of a local authority to resource and use the new provisions. If councils do not have the appropriate resource or operational guidance to support implementation, there will be significant risk in delivering this more robust CME system.

45. We ask that MfE work directly with councils on preparing guidance material for implementing the Act. This will help councils plan for resourcing these new provisions and would also enable local input into the development of any operational guidance.

Other matters

46. In relation to freshwater we support the reduced 10 year maximum duration of water take consents that are not for the specified community purposes (clause 275). This is an important additional protection for community needs, such as for community water consent needs for Otautahi.

47. The NBE Bill allows the Minister to direct time-limited exemptions to limits for ecological integrity if requested by an RPC (clause 44). We are concerned that giving this power to the Minister of the time has the potential to politicise environmental limits.

48. To address our concerns, we request clause 44 is amended to provide for a robust process for time-limited exemptions to limits for ecological integrity to be considered. We request that this process be undertaken by an impartial entity or body, as opposed to the Minister of the time.

49. We request that Schedule 15 is amended to include amendments to the Greater Christchurch Regeneration Act 2016, which has references to the Resource Management Act.

Greater clarity required on the transitional arrangements to provide certainty

50. We are concerned about the lack of certainty and clarity of information provided on the transitional arrangements. This lack of certainty makes it very difficult for councils to plan for upcoming work programmes, including budgets and resourcing.

51. We therefore seek guidance on transitional arrangements in moving to the new system and minimising unnecessary resourcing of work under the RMA.

52. Inefficiencies during the transition period could be reduced if:

    - RMA requirements to review/amend Plans and Regional Policy Statements during the transition period are removed, e.g. the review of the Canterbury Regional Policy Statement and the incorporation of the National Planning Standards in the Christchurch District Plan; and

    - Information from a wider range of existing statutory documents can be incorporated into the RSS, such as spatial plans and strategies prepared under the Local Government Act or Future Development Strategies prepared under the NPS-UD. Information from these other spatial plans and strategies should potentially be able to be incorporated.

53. The amendments to the RMA in Schedule 15 of the Bill ought to include a halt to the RMA requirement to review regional policy statements and regional and district plans (other than for the purposes of implementing the requirements of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021), and a bar on further private plan requests. These are of little value during the transition and would unnecessarily divert resources from transitioning to the new system. In the absence of that change there will be a further massive waste of Council and community time and resources on changing plans under the RMA that are about to be replaced under the SPA and NBE.

54. The proposed amendments to the Resource Management Act in Part 3 of Schedule 15 propose the insertion of a new subsection 2B in Section 58H, which enables the Minister to change a national planning standard to remove content if it would be more efficiently addressed through the process prescribed in the Natural and Built Environment Act (NBA) or Spatial Planning Act (SPA), or the content is redundant because of the transition from the RMA.

55. We request the Minister uses these powers at the earliest opportunity upon enactment of the NBA and SPA to avoid unnecessary resources being diverted from transitioning to the new system. In addition, Council requests the Minister to amend the National Planning Standards before enactment of the NBA and SPA to avoid inefficiencies and unnecessary costs in achieving consistency with those standards in the interim period.

The impact of the NBE Act on consenting under the RMA during the transition is uncertain.

56. There is a lack of clarity about how the new Act will interface with RMA processes during the transition; this is particularly apparent regarding consenting.

57. The NBE Bill provides that the plans prepared under the RMA, and the consenting requirements of them, will continue to apply until the RPC notifies its decisions on NBE Plans (Schedule 1 clause 2 – with specified exceptions for new rules impacting on existing use rights and allocation methods). This means that after the NBE Bill comes into force, resource consents will still be applied for under the RMA, and will be assessed against the relevant RMA provisions and existing district and regional plans.

58. However, there is no provision in Schedule 15 changing the RMA to confirm whether consenting or designation processes under the RMA during the transition should consider only RMA documents. It could be argued that section 104(1)(c) or 171(1)(d) will capture the NPF (or any operative RSS) as a matter the consent / territorial authority should consider as relevant and reasonably necessary to determine the application.

59. This could create confusion if the strategic direction in the NPF or RSS materially differs from RMA documents, and there is insufficient direction to guide decision-makers on how inconsistencies should be resolved (or about the weighting between the two regimes). Without an express direction on this issue, it could be left to local authorities to interpret how this works, which could lead to inconsistent application and potential litigation. This needs to be made clear, particularly given the long transitional timeframes before NBE plans are fully operative.

60. Moreover, clause 17, which is the provision that requires resource consent for breach of a rule in a proposed plan or in a national planning framework, does not come into force until the Governor-General makes an Order in Council on the recommendation of the Minister (clause 2). There is no certainty about when this will be. There should be greater certainty over that timeframe so that councils can plan their systems and their resourcing – and so as to minimise the period in which there will be an inefficient requirement to obtain resource consents under both the RMA and the NBE.

Need for alignment with other reform

Need to understand how other reforms fit into this new regionalised system

61. The RM Reform programme closely links with other reform and policy programmes of this Government. We consider it ill-advised to be proposing these changes now, when there is no information about how the proposed plan making framework will align and integrate with other significant programmes, such as the Future for Local Government review.

Need for Climate Adaptation Act to be released to fully understand how the new system will function

62. We support the Government's intention to develop a Climate Adaptation Act (CAA) as the third piece of legislation in the RM Reform programme, noting the urgent need to address pressing issues around climate mitigation and adaptation.

63. However, given that the CAA is on a slower track, we haven't been able to see all components of the new system and cannot fully understand how the new RM system will operate in its entirety. Given the interconnectedness between the three pieces of proposed legislation, we see that these need to be considered as an integrated package.

64. We are disappointed by the piecemeal approach and concerned it will lead to a lack of integration and coherency. For example, we have found it difficult to comment on the climate change provisions in the NBE (and also SP) without knowing how the CAA works in conjunction with these provisions.

65. We see that all parts of the RM system need to be considered holistically. To address our concerns, we request that the second readings of the NBE and SP bills are paused until the CAA has been introduced in the House.

Implications for management of climate change risks

66. Despite the content of the CAA being unknown, there some proposed provisions in the NBE with important implications for management of climate change risks. We seek the following changes to those provisions:

    - The problems arising from the failure to prioritise system outcomes in clause 5 are particularly acute regarding the conflict between the outcomes of (b), and a well-functioning urban environment in which land development is promoted (c). The Bill ought to specifically provide that avoidance of unacceptable climate change risks is prioritised over land development.

    - The National Planning Framework *may* expressly provide that plan rules that give effect to the NPF extinguish existing use rights (clause 26(2)). However, the open enabling provisions concerning the content of the NPF do not provide sufficient direction for the NPF to address such matters. The required content of the NPF should include provisions that mandate NPF direction on the circumstances in which existing use rights will be extinguished so as to avoid unacceptable risks of climate change. That national direction will enable greater certainty and clarity, sooner.

    - The Bill provides for a territorial consent authority and a regional consent authority to review resource consent conditions to change conditions and possibly cancel a consent. However, the regional authority can start that review regarding the effects of climate change if the regional authority considers it "necessary", whereas the territorial authority can do so only if there are "exceptional circumstances" (clause 277 (3) and (4)). That requirement for "exceptional circumstances" for the review by the territorial authorities should be deleted.

Conclusion

67. In conclusion, while we are generally supportive of the need for reform we have detailed our reservations with aspects of the proposed legislation. In particular, we are seeking:

    - to retain local democratic input in the new system as per the objective of the reforms

    - appropriate financial support to effectively operationalise the new system

    - simplification of the process to make it easier for the public and for persons administering the Act

    - clarity on transitional arrangements to provide more certainty and direction.

    - the second readings of the NBE and SP bills are paused until the CAA has been introduced in the House.

68. If you would like any further information or have any questions about our submission please contact Mark Stevenson, Planning Manager Christchurch City Council, mark.stevenson@ccc.govt.nz

Appendix 1 - Natural and Built Environment Bill

Clause no.	Clause	Submission
26	**Certain existing uses protected in relation to land**	The Council supports the ability for NPF and NBE Plans to protect and limit existing use rights. With regards to clause 26(1)(b)(ii), we request that the words "or otherwise enhances the environment" be deleted. We consider that this judgment is too subjective to be workable. This is likely to result in differing interpretations between landowners, neighbours and Council leading to conflict/frustration/delay.
108	**Disregarding adverse effects on some people**	The Council submits that the matters in clause 108(d)(i) and (ii) are vague, subjective and likely to result in significant differences of opinion between parties. We consider this could be seen as discriminatory. The Council submits that this is not an 'effect' to be discounted, and if this is to be retained it needs to be reframed away from "effects". The Council notes this concern also applies to clause 223 Preparation of Plans.
122	**Rules relating to contaminated land**	This clause duplicates clause 117(3)(e).
135	**When rules to be treated as operative**	This clause should be extended to specifying that the previous rule be treated as inoperative (refer s86F RMA).
157	**Consent authority may permit activity by waiving compliance with certain requirements, conditions, or permissions**	The Council supports the ability for a consent authority to permit a marginal or temporary non-compliance without the need for a resource consent.
159	**Description of type of activity to remain the same**	Under the RMA, when new provisions are beyond challenge the old activity no longer applies. This is appropriate, and we request that this be clearly stated in the new clause 159.
164	**Recovery of costs incurred in consultation and engagement**	There is a disconnect between the clause heading and content. The heading refers to consultation and engagement whereas the clause only refers to engagement. We submit that the heading is amended to read 'Recovery of costs incurred in ~~consultation and~~ engagement'.
174	**Incomplete applications**	The Council supports the inclusion of fee payment in the prescribed tests for completeness. We consider that the reference to "returning" an application is outdated terminology in the electronic age and submit that a more suitable term would be 'cancel' or "reject" the application.
175	**Deferral pending application for additional consents**	This clause is the same as RMA s91, and enables only the notification or hearing of an application to be deferred pending application for additional consents. We submit that this should be extended to enable the consent authority to defer any processing of the application, not just notification and hearings.

176	**Suspension of processing of notified application**	The Council submits that an addition to clause 176 to enable an applicant to request processing be suspended once the notification decision is made but before notification of the application would be useful.
181	**Return of non-notified application**	The Council supports the ability to return application when fees are not paid or further information not supplied, but note that this conflicts with clause 185(3)(a) which requires consideration under clause 223 if information is not provided.
185	**Responses to request [for further information, or agreement]**	This clause requires the consent authority to consider an application under clause 223 even if the requested information is not provided or the applicant does not respond or refuses to provide the information. As noted above this conflicts with clause 181(5) which allows the consent holder to return an application if information not provided. The Council submits that this inconsistency could be addressed by amending clause 185 to exclude applications returned under clause 181.
187	**Processing time frames**	The Council submits that provision should be made for a time frame for notifying an application after the notification decision is made. This is to enable time for an applicant to confirm that they wish to proceed with notification and for the consent authority to carry out the necessary administrative tasks to arrange notification. For example, the 60 working day overall timeframe for a limited or publicly notified application without a hearing comprises 20 working days to make the notification decision, 20 working days for submissions, and 20 working days for the notice of decision. This does not allow any time between the notification decision and the start of the submission period within which to arrange notification of the application.
188	**What can be excluded from consideration of time periods**	The Council supports the exclusion of time to review draft conditions, and requests that consideration be given to excluding the following additional matters: • time for a post-notification further information request to deal with matters raised in submissions. • time for applications to 'catch up' where a joint or combined hearing under clauses 218 or 219 is required. • time between notification decision and notification of application to allow for necessary administrative actions to be undertaken OR alternatively that provision be made for a timeframe to prepare an application for notification (refer to submission on clause 187 above). In addition we have identified two apparent typographical errors: • Clause 188(c) should read 'deferral of application pending application for additional ~~costs~~ **consents**' • Clause 188(f) should read 'suspension of notified **and non-notified** applications' as the cited clauses relate to both notified and non-notified applications.
198	**Purpose of notification**	Clause 198(a) states that a purpose of notification is 'to obtain further information about the application from individuals or members of the public'. We consider that individuals and members of the public are not in a position to provide information about 'the application' per se, as only the applicant can do this. We submit that this clause be

		amended to refer to the provision of information about the **potential effects or outcomes** of the application, or similar.
199	**Consent authority must comply with notification requirements or determine notification status**	Clause 199(3)(b) states that an application must not be notified if *inter alia* it 'is lodged with written approvals'. The Council submits that this clause be amended to also provide for written approvals to be supplied post-lodgement but before the notification decision.
200	**National planning framework or plans may set or provide for consent authority to determine notification requirements**	The Council supports the ability for the consent authority to determine the notification status of an activity, but submits that the relevant matters the consent authority needs to consider when making a decision about whether to notify an application should be set out in the legislation, noting that clauses 205 and 206 do not apply to a consent authority.
201	**Determination of whether person is affected person or person from whom approval required**	It appears that this clause is for the purposes of limited notification and written approvals for permitted activities only, given that clause 204 requires public notification of a discretionary activity unless otherwise specified in the plan/NPF. If this is the intent, we submit that this could be made clearer. The Council has concerns about matters (2)(b) and (2)(d) that the decision maker must consider when determining whether a person is affected or must provide written approval. They require some knowledge of what an affected person could bring to the table – which is generally the purpose of a submission. Consent authorities are not in a position to know 'whether a person has information necessary to understand the extent and nature of effects of contributions towards outcomes', or 'whether the person's involvement will result in information that has a material effect on the … decision'. This is the purpose of notification and seeking written approval. The weighting of positive overall effects vs adverse effects on an individual is difficult to do at notification stage without full information from that individual. We submit that this is better left to the substantive decision making stage. The Council submits that it will be difficult to undertake the required decision making exercise with these parameters and that this may increase challenges to decisions, with associated increase in legal costs and uncertainty for applicants.
204	**Public notification for discretionary activity**	This clause requires public notification of a discretionary activity unless a plan or NPF provisions require otherwise. The Council considers that this relies significantly on these documents being sufficiently comprehensive that they cover potential activity types. If an activity is omitted or not foreseen at the time the plan/NPF is prepared it will require public notification under this clause, which may not correspond with the potential effects/outcomes of the activity. The Council submits that additional parameters be added to allow for non-notification of discretionary activities not identified in a Plan or the NPF where this is appropriate.
205	**When to require public notification**	The Council submits that as this section relates to plan or NPF preparation subsection (2) be reworded to "A decision maker must <u>require a rule to</u> require public notification of an application for a resource consent if satisfied that 1 or

		more of the following apply". Alternatively, given the concerns raised about clause 200 above, this section could be expanded to also refer to a consent authority as a decision maker. The Council considers that the matters in (2) a-d would be very difficult to anticipate when drafting plan rules – applications can be very site and context specific. In particular, the Council is concerned as to the lack of clarity as to what would qualify as "relevant concerns from the community". The Council also notes that reference to "scale" of the proposed activity" in (d) implies large scale developments should be notified regardless of effects/outcomes. The Council submits that these matters should be revisited and more appropriately targeted.
206	**When to require limited notification**	The Council submits that it is unclear how far (a) extends, for example would it extend to interest groups, residents' associations, etc. This lack of certainty may lead (if this clause is amended to apply also to notification decisions by consent authorities) to challenges and more costs for consent authorities and applicants, with associated uncertainty. The Council reiterates its concern tying the scale of activity to a presumption to notify as set out in the s205 discussion above.
213, 216 etc	**Hearings**	There are inadequate provisions for how resource consent hearings are to be conducted. There is ambiguity as to whether the hearings provisions in Schedule 7 apply to resource consent hearings, as the resource consent hearing provisions in the Bill do not refer to Schedule 7, and the Schedule 7 Heading refers just to Plan Changes. The Council requests that this be clarified and the application of some clauses in Part 3 Subpart 3 of Schedule 7 to resource consent hearings be made clear.
215	**Hearings**	The Council notes under this section there is no obligation to hold a hearing if consent authority has sufficient information, regardless of whether applicant/submitter requests it. While it may have the potential to reduce time and costs, the exercise of this discretion is likely to be controversial and it may lead to judicial review of the decision not to hold a hearing, increasing uncertainty. This provision may not actually be used due to the disputes likely to arise from its use.
216	**Hearing date and notice**	This section requires that notice of hearing is required to be given only to submitters who wish to be heard, but clause 221 requires evidence circulation to all submitters. The Council submits that this should be amended so all submitters be given notice of hearing so they can make the choice to attend even if not wanting to be heard. The clause 216(3) 10 working day timeframe specified for notice of hearing should not be less than the timeframe for circulation of council evidence, as the logical order is to be informed of hearing date prior to the first evidence being circulated.
221	**Circulation of evidence**	Clause 221(2) states that the timeframe for circulating council evidence will be prescribed by regulations or otherwise as soon as practicable. However Schedule 7, clause 87-91 already provide for directions for circulation of evidence, including timeframes of at least 15 working days or 5 working days for council reports. If the Schedule is amended to more clearly apply to resource consents as requested in the discussion on clause 213 above, it does not

		appear necessary to prescribe regulations that would then override the schedule. The Council submits that timeframes should be prescribed in the legislation giving more certainty.
222	**Technical review of draft conditions**	The Council supports the intent of this provision, and the ability to suspend timeframe for this purpose, however we consider the proposed definition of 'technical review' is unnecessary and does not add any clarity to the provision. The section should specify that the technical review request should follow completion of the officers' recommendation report, and that the information provided to submitters and to the person undertaking the technical review is both the draft conditions and the officers' report, as review of the conditions will be incomplete if it is not informed by the recommendation report which explains why conditions are being recommended. The Council also notes the suspension timeframe must be agreed with applicant, including time for receipt of submitter feedback. This may be a deterrent to applicants providing input into draft conditions prior to a hearing, in order to not delay timeframes (due to having to circulate to and receive feedback from submitters).
223	**Consideration of resource consent application**	The Council notes that there appears to be an inconsistency with the information required to accompany a resource consent application in schedule 10, clause 223(2)(c) in terms of the requirement to assess consistency with outcomes versus a full assessment against provisions, and submits that these be amended to become better aligned. The Council supports the inclusion of (2)(e) 'likely state of future environment' as provided for in strategy/plans. The Council supports the addition in (2)(f) to be able to consider past conduct of the applicant with regard to enforcement. The Council submits that the matters in clause 223(8)(e)(i) and (ii) are vague, subjective and likely to result in significant differences of opinion between councils, applicants and submitters/neighbours. We consider this could be seen as discriminatory. The Council submits that this is not an 'effect' to be discounted, and if this is to be retained it needs to be reframed away from "effects". The Council notes this concern also applies to s108 Preparation of Plans). The Council supports the ability to decline an application due to insufficient information without first notifying it in clause 223(13).
226	**Consideration of activities affecting drinking water supply source water**	The Council suggests that this needs to be required to be a mandatory matter of control for controlled activities or condition on permitted activities, and the relevant cross referencing be made so the Plan rules can ensure this.
238(3)	**Refund of environmental contributions**	The Council submits that the reference to "that committee" – should be "the consent authority".
248	**Party who wishes to use regional ADR must give notice**	The Council notes that the Parties must give notice of wish to use ADR within 5 working days of close of submissions, but notes that submissions are not necessarily available immediately if received via mail or hand delivered to a Council service centre, and therefore submits that a longer timeframe be considered in recognition of this.

251	**Adjudication of dispute and effect of adjudicator's decision**	The Council notes that the effect of these clauses is that the appointed adjudicator will decide the consent application. Any accredited adjudicator would then require a relevant resource management qualification as well as dispute resolution expertise. The Council is concerned that there would only be a limited number of people with this expertise available to provide this service, and therefore it may not be available despite the legislation providing for it. In addition the Council submits that it is not clear what the role of the Council is in the adjudication process, or whether the Council is required to prepare a report and conditions to assist the adjudicator in the decision making process. The Council submits that the sections relating to the ADR process are not clear on who has standing to request ADR process (who is "a party") and requests that this be clarified. The Council submits that cost recovery for the ADR process needs to be clearly set out in the legislation as it does not appear to be in the bill.
261	**When resource consent commences: section 261(2) cases**	There is a typographical error in this section and its title, as there is no clause 261(2). The Council submits the reference be amended to clause 196(2) (consistent with s116(3) and s89 of RMA which are equivalent).
272	**Lapsing of consents**	The Council submits that the section be amended to clarify whether the application for extension and the decision must both be made prior to the lapse date, or just the application.
273	**Cancellation of consents**	The Council supports the ability to cancel consents that have not been exercised in over 5 years.
281	**Decision on review of conditions**	Clause 281(5) enables cancellation of a consent in certain situations, however the 277-281 headings and other references only refer to review of consent conditions. The Council submits it would be more accurate to refer instead to "review of consent" in the applicable section headings.
289	**Consent authority may prevent transfer under sections s286 to s288**	The Council supports this provision.
290	**Consent authority may order review of consent conditions**	The Councils supports this provision.
294 – 297	**Certificate of compliance**	The Council supports these provisions. The Council support the inclusion of a revocation clause where information inaccuracies are identified. But the drafting isn't sufficiently clear as to whether the certificate of compliance enables the activity described in it to be implemented if the activity is not permitted in a subsequent plan or proposed plan. That ambiguity is created by 297 stating that it is treated as a resource consent, but it still being subject to clause 26 about existing use rights, which means that the activity must be implemented to be lawful.

302(7), 303(2)	**Permitted activity notices Duration of PANs**	The Council notes that clause 302(7) is duplicated in clause 303(2) presumably in error and submits it may be more appropriate to combine clause 303 with clause 302.
316(m) to (q)	**Activities eligible for housing and infrastructure fast-track**	The Council submits that the activities in (m)-(q) should be confined to only central or local government assets – the sub-heading above (m) would imply that but it requires confirmation in the clause itself. The Council notes that educational facilities and health facilities in particular are often operated by non –governmental entities and assumes these are not intended to be covered by the fast-track process as suggested by the heading.
	Part 9 Subdivisions	The Council submits that this Part is not logically structured – for example those sections relating to completion certificates at the end of the Part, should be contained in the related earlier sections. The Council considers the use of similar terminology for different instruments i.e certificate of code compliance, certificate of compliance (land use clause 294 vs 582) certificate of completion (clause 627) is potentially confusing for users and submits that these be revisited.
504 and 508	**Primary and secondary CIPs and Secondary CIP notification, changes, and information requests**	The Council notes that the Secondary construction and implementation plan (CIP) is to be submitted to the Regional Planning committee. The Council submits that the appropriate level to be considering these is the consent authority (noting these are the outline plan equivalent).
510	**Application of resource consent hearing provisions**	The Council submits that the title of this section should be changed to "Application of resource consent process" to better reflect the cross references to the request for information and submission process.
572	**Approval of survey plans**	The Council submits this should not refer to "any person" but should instead be the land owner or their agent (noting that clause 572(4) refers to the owner). The Council notes the typographical errors in subsection 4 and submits that these be remedied by reference to the matters in subsection (3).
579 and 580	**Survey plans**	The Council submits that these clauses could be combined, or at least include a cross reference to 580 in 579 for deposit requirements. The Council notes the typographical error in clause 579(3) (reference to chief executive duplicated) and submits this be corrected.
582	**Certificate of compliance for subdivision consent conditions**	The Council submits that the reference to completion certificate in clause 582(4)(a)(i) should cross reference clause 627.
584	**Certificate of compliance with building code**	The Council notes that the need to lodge a building code compliance certificate before deposit of survey plan is more onerous than current clause 224(f) as full code compliance certificate may not be available. This has time and cost implications for consent holders. The provisions of the current clause 224(f) should be retained.

587 and 588	**Vesting of land**	The Council supports the provisions for land vesting as road or reserve free from all interests.
646(e)	**Matters for which TA responsible**	The Council notes the clause 646(e) provision for the protection of trees if the location and value of the trees justifies their protection but seeks more statutory guidance on what constitutes the "value" for the purpose of this section. The Council submits that in the absence of this guidance this provision may prove contentious.
653 (3)	**Delegations**	The Council notes the typographical error in clause 653(3) and submits that this be corrected to refer to a territorial authority or local authority.
821	Administrative charges and additional charges	The Council notes this section enables Council to fix charges, and the Regional Planning Committee to fix charges. The Council submits that subsection 2 should include construction and implementation plan (CIP) processing charges under s504 to enable the costs of these to be recovered. The Council also notes an omission in subsection (7): the words "or regional planning committee" should be added at the end of the subsection.
823	Other matters relating to administrative charges	The Council submits that the matters in clause 823(1)(b) and (c) are likely to cause difficulties in administration/interpretation and conflict with either consent holder or the community and submits that guidance within the Bill on their application is required.
846	**Requirements for waivers and extensions**	The Council notes that time extensions can only be for a maximum of twice the period for resource consents where the time period is imposed on a consent authority. The Council submits that this may affect the ability to achieve good outcomes if the timeframe cannot be extended further, even with applicant's agreement. The section should provide for longer extensions with the applicant's agreement.
855	**Regulations relating to administrative charges and other amounts**	Clause 855(2)(d) refers to the fixing of charges for the "receiving, processing and granting of consents". The Council submits that the reference to "and granting" be removed, as this doesn't include when consents are declined. The Council also notes that regulations need to be in place to allow the policy to be set and seeks to understand the timing of this, noting it needs to be in place prior to consents being processed under the new legislation.
	Schedule 7 Preparation, change and review of natural and built environment plans	The Council notes this schedule is titled "Preparation, change and review of natural and built environment plans" and Part 2 is "Other plan change processes" but it includes provisions relating to resource consents. The Council submits that the headings be amended to enable all of the provisions to be more easily located, and clarification of the applicable provisions in cross referencing as in earlier submission points (see clause 213 etc above).
	Schedule 10	The Council submits that the proportionality required by clause 1(1)(b) and 1(2) is not reflected in the clause 2 information requirements and clause 6 and 7. While the sub clause 7(2) states "subject to the provisions of any policy statement or plan", given the use of the word "must" in the matters that must be addressed/information required – there is a tension here that could be resolved by redrafting.

		The Council submits that Clause 2(2) is inconsistent with clause 223(2)(c) to (e) (required by (1)(f)) – clause 223 is have regard to contribution to outcomes etc and extent of inconsistency with policies and rules and NPF, but (2)(s) is assessment against these and any other relevant requirements, which expands the assessment required. This is confusing/inconsistent and could be simplified/streamlined.