



19<sup>th</sup> February 2023

Submission on the Natural and Built Environment Bill

To the Environment Committee  
c/-Secretariat  
Environment Committee  
Select Committee Services  
Parliament Buildings  
WELLINGTON 6160

**NAME OF SUBMITTER: HISTORIC PLACES AOTEAROA INCORPORATED / ICOMOS NZ JOINT SUBMISSION**

Historic Places Aotearoa wishes to appear before the Committee to speak to this submission.  
ICOMOS NZ has made a separate submission and will speak to that submission.

### **Submission**

Tēnā koe

### **Introduction**

This submission is a joint submission on behalf of two organisations - *Historic Places Aotearoa* (HPA) and *ICOMOS New Zealand /Te Mana O Nga Pouwhenua O Te Ao* (ICOMOS NZ).

#### **Historic Places Aotearoa**

Historic Places Aotearoa (HPA) was formed in 2013 to be a strong and independent organisation representing heritage interests nationally. Before the Heritage New Zealand Pouhere Taonga Act 2014 was enacted, New Zealand Historic Places Trust had 23 local branch committees. This Act saw the trust replaced by a Crown entity, Heritage New Zealand Pouhere Taonga, and the regional branch committees abolished.

HPA now represents many of the former branch committees.

Its aims are to:

- be the lead non-statutory, independent national voice for heritage
- help preserve historic places in Aotearoa NZ for the benefit of present and future generations
- lift awareness and appreciation of heritage values
- help regional heritage groups promote heritage in their areas.

HPA works with its heritage organisations to advocate for heritage regionally or locally. In return, these member organisations support HPA on national issues.

HPA currently has 10 affiliated regional societies and 2 associate member groups.

Where possible, HPA works cooperatively with local councils, Heritage New Zealand Pouhere Taonga and other like-minded organisations concerned with the preservation of historic heritage in New Zealand.

#### **ICOMOS New Zealand /Te Mana O Nga Pouwhenua O Te Ao**

ICOMOS is an international non-governmental organisation of heritage professionals dedicated to the conservation of the world's historic monuments and sites. The organisation was founded in 1965 as a result of the international adoption of the Charter for the Conservation and Restoration of Monuments and Sites in Venice in the previous year. ICOMOS is UNESCO's principal advisor in matters concerning the conservation and protection of historic monuments and sites. The New Zealand National Committee was established in 1987 and incorporated in 1990.

ICOMOS New Zealand (ICOMOS NZ) has 155 members made up of professionals with a particular interest and expertise in heritage issues, including architects, engineers, heritage advisers, archaeologists, lawyers, and planners.

In 1993 ICOMOS NZ published the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value. A revised ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value was approved in September 2010 and is available on the ICOMOS New Zealand website.

The heritage conservation principles outlined in the Charter are based on a fundamental respect for significant heritage fabric and the intangible values of heritage places.

## Context of this submission

We (HPA and ICOMOS NZ) welcome the opportunity to engage with government on the proposed reform of the resource management system and provide feedback on the Natural and Built Environments Bill.

Members from both organisations formed a larger working group to discuss and produce a formal written submission to this bill.

ICOMOS NZ and HPA issued an EOI to their membership seeking those who would be interested in joining the working group and contributing knowledge in respect to their area of expertise.

The group established weekly meetings to discuss the issues of common interest, primarily the matter of working with and protecting Aotearoa New Zealand's cultural heritage for present and future generations. We collectively believe that cultural heritage in its many formats (archaeological, landscape, built, object) provides an understanding of our country's development, which contributes to the well-being of our peoples.

## Executive Summary

1. The Resource Management Act 1991 (RMA) is not fit-for-purpose from an environmental standpoint and has allowed the natural environment to be degraded over the past 30 years. We support the need for reform and consider there is a clear case for change.
2. In general, HPA and ICOMOS NZ supports the need to replace the current Resource Management Act (RMA) with a legislation that takes a spatial planning approach to environmental management.
3. With targeted amendments, the Bill in conjunction with other proposed Bills would represent an improvement on the RMA. However, we do not support the Bill in its current form as we found the Bill to be more complex and more confusing than the RMA it is intended to streamline.
4. We support the Te Tiriti O Waitangi clause, which is a significant improvement on the equivalent clause in the RMA.
5. We support what appears to be the increased protection of cultural heritage protection and particularly:-
  - 'specified cultural heritage' and places of national importance,
  - the effects management framework, and
  - heritage protection order changes.
6. We support the new definition for "cultural heritage", and we recommend a specific definition of 'cultural landscapes' be provided.
7. We support in principle the new mechanisms for 'specified cultural heritage' management. We are concerned they do not comprise a coherent and simplified overall system for heritage protection as a whole and reinforces the current two-tier system of heritage.
8. We are very concerned about how locally significant heritage, that often is unique and critical to the identity of local communities, is to be managed under the proposed bill. In particular, we are currently at a loss as to knowing what is intended for the many places already protected on District Plan Schedules: essentially, we would need much more information about this. We do not want to lose the proposed additional protection for 'Specified cultural heritage' but also do not want to lose heritage that is of importance to local communities and their social well-being.
9. The formation of Regional Planning Committees will see the amalgamation of district planning areas, which will allow for the reduction in the number of District Plans and simplify the management of the Natural Environment. This risks creating a "vanilla" built environment where the identities of local areas are not recognised and reinforced. What is important to one committee may not be of importance to another.
10. We support the concept of Schedule 5, but believe that it should apply to all cultural heritage items and not just significant biodiversity and specified cultural heritage as proposed under section 63.
11. We are concerned about Section 36 with respect to the resource allocation principles and in particular the use of the words 'efficiency' and 'equity'. These can be very dangerous concepts when discussing the natural and cultural environment when compared to someone's desire to undertake a development. We do not see how this is transferred into the Bill.
12. We are concerned about archaeological sites and their protection. While many archaeological sites are often wāhi tapu/taonga/tūpuna, many others represent vestigial history of other groups and themes for example Europeans, Chinese, whalers, maritime and industrial stories and histories. Archaeological sites are included in the definition of cultural heritage which we support. The HNZPT Act 2014 defines an archaeological site. Heritage New Zealand Pouhere Taonga (HNZPT) manages the damage or destruction of archaeological sites through the authority process, whether they are recorded or not, including whether they are known or unknown, therefore there is a requirement to avoid damaging unknown archaeological sites. Despite the opportunity in the proposed NBE bill to protect archaeological sites in Regional Plans the current legislative framework excludes local authorities from protecting archaeological sites listed on their heritage schedules or identified on their GIS maps. Instead, local authorities refer all matters associated with archaeological sites to HNZPT which manages the damage to archaeological sites and rarely protects them. There is a need for the protection of archaeological sites to be integrated into the proposed NBE bill or the legislation linked in some way

to enable the proposed regional plans to protect archaeological sites which often have significant cultural values to Maori.

13. We oppose clause 31 of schedule 6, which states that: 'the first national planning framework must be prepared on the basis of the RMA national direction' as there is no RMA national direction with respect to cultural heritage. We recommend the Bill state that the initial national planning frameworks must include the 'conservation of cultural heritage'.
14. We oppose the omission of Crown entities from the groups that must be consulted during plan preparation under schedule 7, Sections 15(3) and 48(5).  
While government departments and ministries must be consulted, there is no mandatory requirement to consult Crown entities such as Heritage New Zealand Pouhere Taonga.  
Similarly, Heritage New Zealand Pouhere Taonga should be added to the list of parties under sch 7, section 22(1)
15. We note that "historic heritage" is mentioned in Section 19 (1)(g) and Section 644 (e) (ii). We believe that this should read as "cultural heritage".
16. Schedule 13 provides relevant changes required to other Acts. Many note that the definition of "historic heritage" will be as per the "section 7 of the Natural and Built Environment Act 2022". Section 7 does not have a definition of "historic heritage" as such it is wrapped up within the definition of "cultural heritage", which we support. To aid clarity for those that need to cross reference the definition of "historic heritage" from other Acts there needs to be a definition of "historic heritage" that refers readers to "cultural heritage".

Given our specific heritage related remit and interests, the clauses that we have chosen to focus our submission on are ones that have particular implications for the effective ongoing management and protection of cultural heritage in New Zealand. A detailed analysis of these is contained in **Appendix 1**.

HPA and ICOMOS NZ trusts that the matters raised in our submission will assist the Committee's inquiry into the Bill. To reinforce these, we would like an opportunity to make a further oral presentation to the Committee. Further, given the significant size, scale and transformative nature of the N&BE and SP Bills we would also urge the Committee to devote the time and level of inquiry necessary to ensure they adequately satisfy the objectives sought by the reform process and are appropriately 'equipped' to deliver the system outcomes identified. However, HPA and ICOMOS NZ consider that given the scale of the current national disaster unfolding across the North Island it would be appropriate for the NBE Bill to be paused and the reform process reconsidered until the recovery has been effected

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# Natural & Built Environment Bill – Draft Submission Table

Note: Recommended text to be included is underlined, with that to be deleted ~~struck-out~~

Topic	Sub-topic	Section	Support	Support in part	Opposed	Reason/s	Recommendation
<b>Purpose &amp; Preliminary Matters</b>	Purpose	3	Yes				
	Te Tiriti o Waitangi	4	Support			We support the greater emphasis on Te Tiriti o Waitangi, including the requirement to "give effect" to the principles of Te Tiriti, and providing a more strategic role for iwi/p/Māori in the RM system.	Retain strengthened recognition of Te Tiriti o Waitangi.
	System outcomes	5		Support in part		<p>The shift to a requirement to promote outcomes for the natural and built environments is supported in principle. However, there is no priority or hierarchy between the 18 listed outcomes.</p> <p>Uncertainty of the priority or hierarchy of system outcomes and relevant interpretations risks matters being contested (including through the courts). This generates inefficiencies and ineffectiveness, making it harder to achieve the RM reform objectives. It also has significant cost implications for councils and communities.</p> <p>section 5, (c), Agree with the inclusion of (c) 'well-functioning urban and rural areas' and (iii) 'adaptable and resilient urban form'. In order to ensure that 'well-functioning urban and rural areas' and 'adaptable and resilient urban form' are created.</p> <p>section 5, (g) - Agree with the inclusion of the '(g) conservation of cultural heritage' as a defined System Outcome.</p>	<p>Having direction or guidance in the NBE bill about how competing priorities, and conflicts between and among outcomes, will be managed is critical to achieving a balance between good outcomes for the natural environment and the growth and development of communities. Guidance at the national level is critical and this is best achieved by including cultural heritage within the proposed National Planning Framework (or the NBEA itself), to ensure that Cultural Heritage is protected and that the retention of that Cultural Heritage is well managed and maintained.</p> <p>We also recommend an NPF Urban Design document is produced to ensure that quality urban design outcomes are delivered. This NPF Urban Design document could be based on the principles included in the current Urban Design Protocol (2005) and should promote (among other urban design issues) the retention and protection of cultural heritage.</p> <p>Note that there is a typo in cl 5, (c) - there are two sub-items that are both identified as (ii).</p>
	Definitions	7	Support definition of Cultural Heritage	In part the definition of <b>Specified</b> Cultural Heritage		<p>Amendment of heritage related terminology in the Bill from 'historic heritage' to 'cultural heritage' is supported as the current term inadequately reflects the breadth of our current and evolving heritage – this includes pre-historic places and more recent places such as post war/early modernist buildings.</p> <p>Equally, the proposed definition of 'cultural heritage' is generally supported, noting that it is largely a roll-over of the current definition of 'historic heritage' in the RMA. However, we note that two related terms in the proposed definition are currently undefined: 'surroundings' and 'cultural landscapes'. Given the potential interpretive and administrative implications in terms of certainty and efficiency this void creates we consider that associated definitions of these terms should also be included in cl.7.</p> <p>The definition of specified cultural heritage is limited to items listed by HNZPT as category 1 places, or national landmarks, or listed as wahi tapu. This is a very limited definition of cultural heritage places and there is a concern</p>	<ol style="list-style-type: none"> <li>1. Include a definition of 'surroundings' as follows (based on the definition of 'setting' in the <a href="#">ICOMOS New Zealand Charter</a>): <ol style="list-style-type: none"> <li>a. <u>'means the area around and/or adjacent to a place of cultural heritage value that is integral to its function, meaning, and relationships; and</u></li> <li>b. <u>includes -</u> <ol style="list-style-type: none"> <li>a. <u>the structures, outbuildings, features, gardens, curtilage, airspace, and accessways forming the spatial context of the place or used in association with the place; and</u></li> <li>b. <u>cultural landscapes, townscapes, and streetscapes; perspectives, views, and viewshafts to and from a place; and relationships with other places which contribute to the cultural heritage value of the place</u></li> </ol> </li> <li>c. <u>may extend beyond the area defined by legal title, and may include a buffer zone necessary for the long term protection of the cultural heritage value of the place'</u></li> </ol> </li> <li>2. Include a definition of 'cultural landscapes' as follows (based on the definition of 'cultural landscapes' in the <a href="#">ICOMOS New Zealand Charter</a>):</li> </ol>

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National Planning Framework (NPF)						that the Regional Plan committees will overlook all the other places of cultural heritage value to communities, particularly as it remains unknown within this bill what is intended for places currently scheduled by district councils.	<ul style="list-style-type: none"> <li>a. <u>'means an area possessing cultural heritage value arising from the relationships between people and the environment; and</u></li> <li>b. <u>includes –</u></li> <li>i. <u>cultural landscapes that may have been designed, such as gardens, or have evolved from human settlement and land use over time, resulting in a diversity of distinctive landscapes in different areas; and</u></li> <li><u>associative cultural landscapes, such as sacred mountains, that may lack tangible cultural elements but have strong intangible cultural or spiritual associations</u></li> </ul>
	Purpose	cl.33		Support in part		<p>Inclusion of a specific provision that sets out the purpose of the NPF is broadly supported as it sets the context for what the framework is anticipated to cover/contain. Although we note the primary role of the NPF is to 'further the purpose of the Act' we would also suggest that an equally important function is to progress achievement of the proposed system outcomes, particularly given that this is expressly directed in cls.5 and 57. In light of this we consider that more explicit recognition of this should be included in cl.33.</p> <p>Additionally, reference is made in this clause to providing direction on 'matters of national significance', noting that the term 'national significance' has no corresponding definition in cl.7. This, in turn, creates ambiguity concerning matters that come within the sphere of being considered 'nationally significant', particularly in the absence of any direction to help inform the exercise of ministerial discretion as to what these might be.</p> <p>Given that the NPF is yet to be developed, it is difficult to comment further and understand all the potential implications related to how the NPF will protect Cultural Heritage.</p>	<ul style="list-style-type: none"> <li>1. Amend the introductory content of cl.33 as follows: 'The purpose of the national planning framework is to further the purpose <u>and system outcomes</u> of this Act by—'</li> <li>2. Either: <ul style="list-style-type: none"> <li>a. Include specific criteria to inform what constitutes a 'matter of national significance' (noting that this could be based on the criteria in s.45(2) RMA for determining whether national direction is desirable), OR</li> <li>b. Include a definition of 'national significance' in cl.7 - Interpretation,</li> </ul> </li> <li>AND</li> <li>c. Include 'Cultural Heritage' be identified as a 'matter of national significance' (cl 33, (a), (i)).</li> </ul> <p>As a minimum, we recommend that an NPF 'Cultural Heritage' document is produced which gives national direction on protecting, managing and maintaining our nation's cultural heritage. We would support stronger protections for cultural heritage being implemented, through the NPF, than currently exist in the RMA.</p>
	Resource allocation principles	cl. 36		Support in part		<p>This clause needs clearer definition and direction on how and where it is to be applied (ie. is it a holistic, overarching approach to the NPF, or is it specifically related to particular items or issues?). Sustainability, efficiency and equity all apply to the retention of cultural heritage by building on existing assets, retaining cultural marker points in society, and ensuring all periods of our history are treated with equal importance.</p>	Readdress this clause and provide a direct link back to the National Planning Framework and Specified Outcomes in order for its relevance to be considered effective.
Targets	cls.47-52		Support in part		<p>Specific provision for setting targets is supported, particularly as these are intended to act as a key mechanism to driving improvement in the state of the natural and built environment, including cultural heritage.</p> <p>Given that targets are intended to be designed to assist in achieving the system outcomes outlined in cl.5 we would strongly support their development and application as part of national direction in the NPF centred on the conservation of cultural heritage. These could, for example, included targets geared towards reducing instances of 'demolition by neglect'.</p>	<ul style="list-style-type: none"> <li>1. Explore the application of targets as part of developing cultural heritage related national direction in the NPF</li> <li>2. Review and revise the provisions relating to targets to increase clarity and certainty regarding compliance and associated activity settings</li> </ul>	

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						<p>Regardless, we note that the draft provisions relating to 'targets' could end up having unintended consequences. For example:</p> <ul style="list-style-type: none"> <li>• While consent authorities cannot grant consent contrary to a limit or target, it is unclear what compliance with a target entails since it is inherently about achieving something in the future</li> </ul> <p>While any activity that breaches a limit would be treated as a prohibited activity (cl.154(4)), there is no parallel in relation to targets. In practical terms this could potentially mean that where an environment is significantly degraded and is slowly improved over time to meet a minimum level target, an activity that could result in a reversal is not prohibited unless it would make it worse than at the date the Bill is enacted</p>	
	Content	cl.60	Support			Confirmation of the general content that can be covered by the NPF is supported as it provides a level of certainty regarding the intended framework parameters. We are also supportive of the discretion available within the framework to state methods (e.g. cultural heritage assessment methodologies) and direct inclusion of specific provisions in RSSs and NBE plans as this has the potential to increase consistency across regions and reduce costly and time consuming litigation.	Retain as proposed
	Effects management framework	cls.61-67 & Sched. 5	Support			<p>Inclusion of a management framework that sets out how environmental effects on significant biodiversity areas and significant cultural heritage are to be managed, including principles to inform offsetting for adverse effects, is strongly supported. Although there is provision for exemptions we note that the circumstances applying to these are quite limited including, in the case of a specified cultural heritage place, 'activities required to ensure that the place and its cultural heritage values endure' (cl.66(1)(p)).</p> <p>Regardless, we have serious reservations concerning the inclusion of sub-clause (e) in cl.61. As proposed this sub-clause provides a further redress 'out-clause' in the event that adverse effects are unable to be avoided, minimised, remedied or offset, noting that this is intended as a form of compensation to remedy 'more than 1 minor residual adverse impacts' of an activity.</p> <p>However, we note that the purpose typically applied to the concept of 'offsetting' is to counter-balance unavoidable impacts development activities have on the environment - a way of ensuring that development causes no net loss by enhancing the state of the environment elsewhere. Given the breadth of this concept and the underlying principles set out in Sched.5, cls.1 – 11, we strongly question the necessity of retaining cl.61(e), particularly as the preceding offset sub-clause offers adequate scope to address the circumstances to which sub-clause (e) potentially applies. In this regard we also curiously note the absence of a</p>	<ol style="list-style-type: none"> <li>1. Delete cl.61(e) and cls.12 – 20 and 22 -24 in Sched.5</li> <li>2. Include a definition of 'offset/offsetting' in cl.7 – Interpretation</li> </ol>

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						definition of 'offset' or 'offsetting' in cl.7. In light of the relative importance of this concept in the proposed effects management framework we consider it would be highly advisable that a corresponding definition is included in the Bill.	
	<i>Development &amp; decision making process</i>	Sched.6, cl.2		Support in part		Provision for pre-notification engagement on an NPF proposal is broadly supported. However, we note that aside from the National Māori Entity, iwi authorities and groups that represent hapū on the proposal and individuals or organisations representative of the local government sector that the Minister is able to exercise wide discretion as to who else they engage with. As representation from relevant sectors aside from local government will be invaluable in helping to constructively shape the direction and content of specific NPF proposals (e.g. ICOMOS NZ/Heritage NZ in relation to cultural heritage) we strongly consider that provision should be made for the scope of mandatory engagement to be extended to include individuals or organisations that are representative of the sector to which a proposal applies.	1. Amend Sched.6, cl.2(b) by including the following: <u>'individuals or organisations that are representative of the sector to which the proposal applies.'</u>
		Sched.6, cls.9/15/20		Support in part		Inclusion of a requirement for a Board of Inquiry (BoI) to be appointed to hear and consider the NPF proposal (and any subsequent changes/ additions) and make recommendations to the Minister is strongly supported, particularly as currently proposed this is the only formal opportunity in the Bill, aside from a general pre-notification engagement requirement, for organisations such as HPA or ICOMOS NZ to shape the direction and content of the NPF. However, this does seem to be a mandatory requirement, and disagreement of decisions may occur if proper consultation does not occur, despite an organisation's place on the list.	2. Amend Sched.6, cl.9/15/20 by including the following: <u>'individuals or organisations that are present on the 'Engagement Register' must be notified and given an adequate period of time to provide a response. The time allocation will be relative to the processing time for a given type of application.'</u>
		Sched. 6, cl. 21			Oppose	Provision is made for ultimate decision-making responsibility on a NPF proposal to rest with the Minister. Although we understand the rationale for this we are deeply concerned that there is no further recourse on the merits of the proposal in the event that recommendations of the BoI are rejected. We note that this stands in sharp contrast with the decision-making framework around NBE plans, where any Independent Hearing Panel (IHP) recommendations rejected by a RPC are able to be appealed to the Environment Court, and strongly consider that similar provision to that in cl.132 should be included in relation to the NPF.	1. Include a new clause after Sched.6, cl.22 as follows: <b><u>Right of appeal to Environment Court if the Minister rejects BoI recommendation and makes alternative decision</u></b> 1. <u>This clause applies if—</u> (a) <u>the Minister rejects a BoI recommendation on the NPF proposal; and</u> (b) <u>the Minister makes an alternative decision to that recommended by the BoI; and</u> (c) <u>any person made a submission in respect of the provision or matter recommended by the BoI.</u> 2. <u>Once the Minister notifies their decisions on the NPF proposal proposed plan, the person may appeal to the Environment Court in respect of the differences between the alternative decision and the recommendation.</u> 3. <u>The appeal is limited to the effect of the differences between the alternative decision and the recommendation.</u>
<b>NBE Plan Making</b>	<i>Content &amp; regional policy issues</i>	cls.102/107/ Sched.7, cl.14		Support in part		Identification of the matters to be included in NBE plans is supported as it sets out the scope of parameters to be addressed in the plan making process. Although we are generally comfortable with the list of matters proposed we have particular concerns regarding 2 of those listed: provide	1. Include new cl.107(1) as follows: <u>(1) In preparing or changing a plan a regional planning committee must ensure, to the extent relevant, that the plan or change is consistent with -</u> (a) <u>a statement of community outcomes prepared by a territorial authority or unitary authority; and</u>

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						<p>for system outcomes and resolve regional conflicts relating to any aspect of the natural and built environment.</p> <p>We note that the intent under cl.57 is that the NPF will provide direction relating to each of the system outcomes set out in cl.5 along with direction on resolving environmental conflicts, including those between or among the system outcomes. Although the inclusion of these mandatory directives is strongly supported we are highly uncertain as to what form they will take and the corresponding level of detail that is to be provided (noting that this only needs to be as much as appropriate). In the absence of sufficient detail and direction to properly inform plan content these matters are likely to be highly contested during the plan making process – an outcome that would be both unintended and contrary to the objectives of the system review.</p> <p>Inclusion of a requirement for RPCs to have ‘particular regard’ to statements of community outcomes and regional environmental outcomes in preparing plans and ‘regard’ to them in identifying major regional policy issues is also supported. However, as these are one of the few avenues available in the Bill to enable matters of local importance to inform the content of NBE plans and plan changes we strongly consider that they need to be accorded greater weight where they have been prepared and adopted. This, in turn, could also act to incentivise their development, noting that these instruments are not mandatorily required by either this Bill or the companion SPB.</p>	<p>(b) <u>a statement of regional environmental outcomes prepared by a regional council</u></p> <p>2. Amend Sched.7, cl.14(3) as follows: ‘In identifying the major regional policy issues, the regional planning committee must have <u>particular</u> regard to—‘</p>
	<i>Places of national importance</i>	cls.555/556/559		Support in part		<p>Inclusion of provisions to identify and protect places of national importance is strongly supported, particularly the firm directive that any activities likely to have ‘a more than trivial adverse effect on the attributes of a place of national importance identified in the NPF, a plan/proposed plan or heritage place on a closed register’ are to be disallowed by a rule, resource consent or designation (subject to some minor exceptions). This, in turn, should help to facilitate more certain and effective protection of ‘specified cultural heritage’ as it would reduce the extent to which relevant rules can be contested in plan making and consenting processes.</p> <p>Regardless, the absence of a definition or parameters around what constitutes a ‘trivial adverse effect’ is of concern as it is likely to give rise to unintended and costly interpretive debates and associated litigation. Additionally, we are highly concerned about the ‘ring fencing’ of cultural heritage solely to those places that are ‘specified’ (i.e. New Zealand Heritage List Category 1; National Historic Landmarks), particularly as:</p> <ul style="list-style-type: none"> <li>the current breadth of places covered by these lists is somewhat limited (e.g. only 1 National Historic Landmark - Te Pitowhenua/Waitangi Treaty</li> </ul>	<p>1. Include a definition of ‘trivial adverse effect’ in cl.7 – Interpretation</p> <p>2. Extend the definition of ‘specified cultural heritage’ in cl.7 – Interpretation to include Category 1 or equivalent places scheduled in NBE plans</p>



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						<p>Grounds) and unrepresentative of places of valued local/regional significance currently scheduled in plans</p> <ul style="list-style-type: none"> <li>there is insufficient consideration given to Māori heritage and the values framework that underlies recognition of cultural heritage at an iwi/hapu level</li> </ul> <p>there is a significant backlog of places nominated for inclusion on the New Zealand Heritage List that are yet to be assessed by Heritage NZ, with this unlikely to be materially addressed in the absence of adequate funding/resourcing and prioritisation of places currently on the nominations list</p>	
	<i>Closed registers</i>	cl.560	Support			Provision for cultural heritage to be identified in a closed register is supported, particularly as it recognises and codifies what generally already occurs in practice in several parts of the country.	1. Retain as proposed
	<i>Heritage protection orders (HPOs)</i>	cls.541-554	Support			<p>Retention of heritage protection order (HPO) provisions is broadly supported. However, we note that there are a number of material changes proposed to the existing provisions in ss.187 – 198 of the RMA, some of which may have unintended consequences in relation to the long-term protection of places subject to an order. Of particular concern is the proposal that an HPO ceases to have effect once the place to which it relates is included in the relevant NBE plan.</p> <p>Currently, HPOs provide an elevated level of ongoing heritage protection as they 'run with the land' and can only be extinguished via an application by the relevant Heritage Protection Authority (HPA) (s.196 RMA) or in response to an order from the Court (s.198 RMA). By contrast, although an elevated level of 'interim protection'<sup>1</sup> will be offered to places subject to an order under the proposed HPO regime, certainty relating to the long-term protection of these places will be largely dependent on the outcome of the associated plan change processes and any appeals arising. This could, in turn, result in these places being offered either no or a sub-optimal level of protection and ongoing management in a plan – something which is grossly at odds with the 'conservation of historic heritage' outcome sought in cl.5.</p> <p>Although it is acknowledged that the proposed HPO regime creates a potentially more attractive and responsive avenue relative to the status quo to pursue the short-term protection of cultural heritage, particularly places that are endangered or subject to development pressures, this needs to be weighed against the diminished longer term protective benefit and certainty the mechanism affords.</p> <p>Further, although cl.549 signals what can occur where land subject to a HPO is already subject to a HPO under the RMA the Bill is silent as to how existing HPOs are to be</p>	<ol style="list-style-type: none"> <li>Review and refine cls.543 – 548 to achieve a more effective balance between the short vs long term protective outcomes offered by HPOs</li> <li>Amend cl.549 to clarify how existing HPOs are to be treated under the proposed HPO regime</li> </ol>

<sup>1</sup> Refer definition of 'heritage protection order' in cl.7

Topic	Sub-topic	Section	Support	Support in part	Opposed	Reason/s	Recommendation
						treated under the proposed regime (e.g. automatic 'roll over' into relevant NBE plans; subject to a retrospective proportionate plan change process). We strongly consider that a consequential change is required to this clause to address this apparent gap.	
	Development process	Sched.8, cl.32		Support in part		Inclusion of the ability for sub-committees to be established to provide advice to RPCs is supported, particularly as it has the potential to act as a practical and meaningful mechanism to enhance local input into the plan making process. However, we have reservations concerning the effectiveness of this clause as establishment of sub-committees is at the discretion of RPCs rather than mandatory and their intended role and functions is unduly restricted.	<ol style="list-style-type: none"> <li>1. Consider the mandatory establishment of RPC sub-committees</li> <li>2. Broaden the role and functions of sub-committees to enable more effective and constructive input into NBE plan making (e.g. preparation of sub-regional chapters such as cultural heritage)</li> </ol>
		Sched.7, cls.15-17	Support			Inclusion of provisions requiring RPCs to establish and maintain an engagement register for the purpose of identifying anyone interested in being consulted during the plan making process is supported, particularly given the 'arm's length' nature of plan development and the potential disconnect between these committees and local communities of interest.	<ol style="list-style-type: none"> <li>1. Retain as proposed</li> </ol>
		Sched.7, cls.20/34/36		Support in part		<p>The requirement to include all the relevant evidence supporting an enduring, primary or secondary submission is supported, particularly as it could help to increase process transparency, efficiency and fairness. Although it may act to deter lay submitters from participating in the plan making process due to the additional cost and effort involved (e.g. preparation of expert evidence), it is also likely to reduce the incidence of vexatious or unsubstantiated submissions being made.</p> <p>We note however that there is currently a lack of clarity within these clauses as to the quality, nature and scope of 'evidence' to be supplied in support of a submission and consider that expectations concerning the standard of evidence submitted should be clearly articulated in the Bill, including any variance based on the type of submission being made (e.g. primary vs enduring).</p>	<ol style="list-style-type: none"> <li>1. Include in Sched.7, cls.20, 34 and 36 further content that clarifies the quality, nature and scope of evidence to be supplied in support of enduring, primary and secondary submissions</li> </ol>
		Sched.7 cls.93 - 103		Support in part		<p>Oversight of the establishment of Independent Hearing Panels (IHPs) and appointment of members by the Chief Environment Court Judge is supported and should ensure an appropriate level of specialist knowledge and rigour is applied to this process. We consider that this is particularly important given proposed limitations on the scope of matters eligible to be further appealed to the Environment Court (i.e. RPC rejection of an IHP recommendation and making an alternative determination; RPC acceptance of an IHP recommendation that extends beyond the scope of submissions).</p> <p>The requirement that all panel members need to be accredited is also supported, noting that approval of relevant qualifications rests with the Minister. However, given the open-ended nature of this remit we consider it</p>	<ol style="list-style-type: none"> <li>1. Either: <ol style="list-style-type: none"> <li>(a) List the range of matters in Sched.7, cl.97 that the Minister needs to consider in approving the qualifications establishing a panel members accreditation</li> <li>(b) Introduce supporting regulation that sets out the matters for consideration</li> </ol> </li> </ol>

Topic	Sub-topic	Section	Support	Support in part	Opposed	Reason/s	Recommendation
Consenting	Decisions	cl.223	Support			would be advisable for further clarity to be provided to illustrate how this discretion is intended to be exercised.	1. Include new cl.223(2) as follows: (2) <u>The consent authority must have particular regard to -</u> (a) <u>whether, and the extent to which, the activity gives effect to any relevant outcomes, limits, targets, and policies in:</u> <u>(i) a plan</u> <u>(ii) a regional spatial strategy</u> <u>(iii) the national planning framework</u>
						This clause replaces current s.104 RMA and requires consent authorities to 'have regard to' any actual and potential effects on the environment of allowing an activity, and to 'have regard to' whether, and the extent to which, it contributes to any relevant outcomes, limits, targets, and policies. We note however that given the intent to elevate the significance of outcomes in the new system the direction to consider these relative to effects needs to be strengthened.  Inclusion of the requirement to 'have regard' to prior non-compliance resulting in enforcement action being taken is strongly supported as it could usefully act to incentivise compliance with consent conditions, thereby reducing reliance on enforcement. Consideration of positive effects and contributions to outcomes is also supported.	
Compliance & Enforcement	Court orders	cls.718/719/723-730/ 732-750/776	Support			Inclusion of additional compliance options such as monetary benefit orders, consent revocation/suspension and enforceable undertakings is strongly supported and should act to usefully supplement the current range of compliance actions on offer (e.g. enforcement orders, abatement notices, infringement notices). The ability to apply to the Environment Court to: <ul style="list-style-type: none"> <li>• Revoke or suspend a resource consent where it is satisfied that ongoing and severe non-compliance has occurred</li> <li>• Order a person to pay an amount not exceeding the amount that it is satisfied, on the 'balance of probabilities', represents the amount of any monetary benefits acquired by the person, or accrued or accruing to the person, because of an offence or contravention</li> <li>• Pay a pecuniary penalty to the Crown or any other person it specifies if it is satisfied that a party has failed to comply with a statutory requirement are also particularly welcome additions.</li> </ul>	1. Retain as proposed
						Financial penalties	cls.765 - 766