SUBMISSION

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# Resource Legislation Amendment Bill

Local Government New Zealand's submission to Local Government and Environment Committee

14 March 2016

We are. LGNZ.

# Contents

# We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Lawrence Yule, President, Local Government New Zealand and Stephen Woodhead, Chair Regional Sector of Local Government New Zealand.

We would like to appear before the Local Government and Environment Committee to speak to matters raised in this submission.

# Introduction

Thank you for this opportunity to submit on the Resource Legislation Amendment Bill. This submission has been prepared on behalf of New Zealand's local authorities.

We support many aspects of the Bill, particularly the provisions that have the potential to remove "red tape" associated with activities that have few/no effects. We are also pleased that local authorities will have new planning tracks that are alternatives to Schedule 1.

We refer you to the work LGNZ initiated in 2015 on what a Fit-For-Purpose resource management regime could look like. We look forward to working with the Government as our project progresses.

LGNZ notes that there are a number of objectives for this Bill:

a. Improving national consistency and direction

b. Creating a responsive planning process

c. Supplying the consenting systems

d. Recognising the importance of affordable housing

e. Better alignment with other Acts

f. Other changes – mainly process issues.

LGNZ supports these objectives and we want to work with the Government to ensure they can be met. However our detailed analysis of the provisions of the Bill, leads us to believe that there may be some unintended outcomes. We would like to work with the Government and the Select Committee to resolve these concerns. We have identified also some new transactional costs for both local authorities and other participants in resource management processes. .

Local authorities remain concerned that the RMA is becoming ever more complex and that this inevitably impacts all parties. The challenge before us now is to deliver the core objectives of the RMA in an efficient and cost-effective manner.

A number of new "higher order tools" are proposed to provide direction from the Government. Our members have told us they are particularly concerned that together, the suite of proposals will create a planning framework that is too complex. National direction is supported, and LGNZ and our members have been clear on this. We suggest the Government already has a number of mechanisms to be involved in

local planning processes: directly submitting on plan and changes to plans, National Policy Statements, National Environmental Standards and Regulations. The Government could make greater use of these existing tools (and this would be welcomed), particularly when the process is concerned with giving effect to the Government's direction – through a National Policy Statement.

We support the more recent reforms to the RMA and ongoing changes to practice have made a difference to the timeliness of consenting decisions; some of the reforms are still bedding in. Changes include:

- Changes to the status of who is affected from "*de minimis*" to "minor";
- Discount Regulations; and
- Increased front loading of plans.

LGNZ wants to ensure the Bill's proposals support this previous direction of travel and avoid unintended consequences that will work against achieving the stated objectives of the reform.

For instance, to make some of the proposals workable some of the efforts to "frontload plans" including greater use of controlled activity status will be reversed. We also consider that the financial costs to local government and 'communities associated with implementing the proposals need to be fully addressed, the Regulatory Impact Statement is largely silent on these. Unless all costs and benefits are accurately identified and quantified, the merits of a proposal cannot be addressed. This approach is consistent with the 2013 recommendations of the Productivity Commission's review of regulation affecting local government. In that review, The Commission noted that invariably centrally imposed regulation often had large implementation costs at the local level that had not been anticipated as the regulations were progressed. We wish to work constructively with central government to minimise local implementation costs.

High level comments are made against each group of proposals by way of introduction. In the table that follows, we have undertaken a clause by clause analysis of the Bill (where LGNZ has comments); substantive comments are included and redrafting suggested in some cases. These are included in the table that follows.

# Regulation making powers, and delegated legislation

LGNZ wants to ensure that any new regulation making powers support local government's role and local democracy. We are concerned the new powers are far-reaching. We have received legal advice that as presently drafted they may run counter to the best practice adopted by Parliament for the use of regulation and secondary instruments. In particular:

(i) the extensive use of regulations and other secondary instruments to define and prescribe policy. This appears at odds with best practice and established guidelines;

(ii) the use of regulations imposed by central government to override rules made by local authorities under the authority of statutes;

(iii) the uncertainty as to what the regulations may contain; and

(iv) the uncertain status of Ministerial policy statements. While they are presented to the House, the ability of the House to address them is unclear.

The concerns are elaborated upon below; first at the level of principle, then with specific examples within the Bill.

LGNZ notes that our concerns about the nature of the proposed regulatory powers were recognised in the Departmental RIS on the Bill (see pp 17-19 regarding proposed section 360D and the concession that it is a Henry VIII clause).

The Legislation Advisory Committee's Guidelines on Process and Content of Legislation revised in 2014 is relevant.

Among the matters described in para 13.1 as "ideally (or in some cases can only) be addressed in primary legislation" (i.e. Acts, not Regulations) are:

- matters of significant policy; and
- procedural matters that go to the heart of the legislation scheme.

It is worth quoting the reverse situation in full; i.e. where delegated legislation is not appropriate from page 51 of the Legislation Advisory Committee Guidelines:

"*It **will not** be appropriate to authorise delegated legislation*:

- *to fill any gaps in primary legislation that may have occurred as a result of a rushed or unfinished policy development process;*
- *to avoid any full debate and scrutiny of politically contentious matters;*
- *solely to speed up its passage through Parliament;*
- *that simply follows past a practice of using delegated legislation."*

The position might be ameliorated if the delegated legislation were made available in a timely way so that this Committee could see what it was authorising.

The Legislation Design and Advisory Committee, as successor to the Legislation Advisory Committee has commented on:

> *"...the general importance of departments developing regulations in tandem with a Bill so that the public is aware of their detailed requirements and can make informed submissions."*

Regrettably, that has not occurred here despite the lengthy gestation period of the Bill although there is still an opportunity for this to occur in a similar manner to the development of draft regulations for the Building (Earthquake-prone Buildings) Amendment Bill.

We believe the Committee should request officials to provide at least an outline of the proposed content of the regulations before the Committee deliberates on this Bill. Ideally those outlines should be made public so that interested and affected parties can provide comment to MPs as the Bill passes through its stages.

Finally, a useful summary of the views of the Regulation Review Committee is found in the Regulations Review Committee Digest[1]. At page 24 it is noted:

> *"As discussed in Chapter 2, it is a well-established principle that statutes should set out the policy of a law, while regulations may provide the detail necessary for the implementation of that law. There are a number of examples of the Committee being referred regulation-making powers that seem to allow for the making of regulations dealing with matters of policy, and the Committee ultimately recommending that these powers either be amended or omitted altogether, particularly under Standing Order 315(2)(f).[2]"*

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1 Dr Ryan Malone & Others, 2013, NZ Centre for Public Law.

2 Now S.O. 319(2)(f).

Henry VIII clauses are of particular concern, and there have been several instances where the Regulations Review Committee has recommended against these clauses in the local government area. Those recommendations tend to be adopted.[3]

## National Policy Statements

National policy statements allow central government, at Ministerial level, to direct and constrain and limit the functioning of local government either throughout New Zealand, or by singling out specified regions or districts; clause 29; new section 45A.

Similarly, national planning templates enable the Government of the day to direct the structure format and even the content of regional policy statements and plans.

LGNZ understands the desire of central Government to have maximum flexibility but we are concerned that this approach carries some risk of instability and uncertainty in policy settings as these will be left to the discretion of the Minister of the day.

While existing processes can be used, it must be recognised that the proposed section 45A allows an NPS to be a very prescriptive document rather than a statement of objectives and policies for matters of national significance as is the case under the current section 45.

## Regulations prevailing over local rules

Local government is expressly empowered by Parliament to make rules at the local level controlling land use.

Well established procedures must be followed. They may well annoy those who want to move more quickly. To others, the right to participate and express a view is fundamental to democracy at a local level.

The proposed section 360D (clause 105) allows regulations to be made on Ministerial recommendation, after a process of notification and opportunity to comment that contains at every point a subjective assessment by the Minister as to its adequacy.

The regulations can be very far reaching. They can permit a specified land use; thus overturning local decisions on what communities consider to be orderly development.

Regulations can also prohibit local authorities from making specified rules or kinds of rules, or override rules and require their withdrawal.

The only ameliorating feature is that the power to make three kinds of these regulations expires one year after the first national planning template is gazetted. However, there is no certainty as to when that will be, and in any case actions taken under the regulations will remain valid and could have effects that last for decades.

For these reasons, and consistent with its support of the principle of subsidiarity, LGNZ is seeking to temper the degree to which the proposed regulations may override local rule-making.

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3 The Digest, at page 26 gives an example, which is very relevant to the situation here because it addresses the impact of these clauses on decision making processed of local government.

# National direction

## Management of risk associated with natural hazards

LGNZ supports the addition of a new matter – 'the management of significant risks from natural hazards' – into section 6 RMA as a matter of national importance that decision-makers must recognise and provide for. The associated changes proposed to s106 RMA also are supported.

## National Plan Template

The general concept of a National Plan Template (NPT) is supported as improving national consistency, but we have concerns about the potential scope of the Template with respect to its use for providing national policy direction. Existing NPS's and the new combined NPS/NES process are the appropriate mechanisms to provide national direction. We also have concerns about the scope of its mandatory content, and how it will be introduced and timed.

LGNZ is concerned that only two years is given to deliver the first NPT (two years) and then one year for local authorities to "publish" their plan(s), with recognition of the NPT. The ability for a council to meet prescribed timeframes and parameters with respect to "publishing" their plans needs to be fully understood before being prescribed in the Bill. Collaboration with the local government sector and other stakeholders is essential to effectively deliver the first and amendments to the NPT.

LGNZ has commissioned a redrafting of the provisions relating to the NPT and will submit this separately to the Local Government and Environment Committee.

## NPSs and NESs – content and processes

LGNZ supports the new combined NPS/NES process in terms of consistency; if the intention is for the new combined tool is to address a single, related issue (this is not clear from the drafting).

It is proposed that NPSs and NESs, or any provisions in them, may apply to a particular region, district or specified part of New Zealand. LGNZ questions the logic behind national policy instruments and national standards being limited to only one area or part of the country – this would be a fundamental inconsistency that would diminish the significance and status of the genuinely national policies and standards. The intent underpinning these proposed changes is not articulated in the Introduction to the Bill.

The new streamlined planning process could be used to work with a council to develop a suite of rules for a particular region/district. LGNZ is concerned about the proposed amendments to the contents of NPSs.

LGNZ supports a number of the specific amendments proposed to NPSs and NESs.

## Requirements on councils to provide for development capacity

LGNZ submits that the proposed changes to require regional and district councils to provide for sufficient development capacity are not required, given the proposed NPS for Urban Development will require local authorities to explicitly ensure there is adequate development capacity for the district/region.

# Plan making

LGNZ supports the principle of the alternative processes for plan making. However, there are two fundamental issues the local government sector has long identified as requiring "fixes" which are not addressed in this Bill.

1. plan making and changes to plans needs to be achieved in a timely manner. The new processes will not cater for the bulk of councils' plan making, resulting in cost and time for all participants and ultimately for business and communities.

2. the statutory integration between the RMA the Local Government Act and the Land Transport Management Act. The current requirements mean there is duplication of process and inadequate weighting between the statutes, resulting in cost and time for all participants and ultimately for business and communities.

LGNZ asks that attention be given urgently to provide councils with the tools they need to fulfil their functions under the RMA in a timely and cost effective way. LGNZ also seeks that a process for "quick fixes is provided to correct minor mistakes in District Plans (after they have been made operative) without engaging in a Schedule 1 process. It is proposed this remedy can be achieved through amending Clause 20A of Schedule 1 or Section 292 of the Act to facilitate this and to provide the Environment Court with the power to make a direction to Council to make corrections without requiring the First Schedule process (details are contained in the attached table).

## Limited notification for plan changes

The proposal for limited notification of plan changes is supported, and making the plan changes more aligned to the notification position for resource consents.

## Collaborative planning process

The new collaborative process is supported as an option for local authorities, amendments are sought, as detailed in the table that forms part of this submission.

## Streamlined planning process

The new streamlined planning process as a concept is supported but as proposed, gives too much discretion to the Minister. Amendments are sought, as detailed in the in the table that forms part of this submission.

A point worth making is that audits are currently underway of the bespoke processes for developing the Auckland Unitary Plan and the Christchurch District Plan. Bot h of these plans are being developed through truncated/streamlined processes that involve Independent Hearings Panels. The Streamlined Plan Process takes elements of these processes but rather than a role for an Independent Hearings Panel in the process, the Minister has this role. LGNZ suggests awaiting the result of this audit and using the findings to inform this new alternative process.

## Iwi Participation Arrangements

The proposal for Iwi Participation Arrangements (IPA) is supported in principle and some amendments are suggested to improve workability. Further thought needs to be given to this proposal and how it is to be resourced. It is unclear how the process will work where there is an existing arrangement between council and an iwi.

LGNZ also considers the Crown should resource iwi to participate in the processes to develop the iwi participation arrangement with council. Developing an iwi participation arrangement will take time and

investment and some iwi will want to develop arrangement across a number of councils. LGNZ's members will not support a cost shift to ratepayers of the Crown's obligations under the Treaty in order to fulfil this new requirement.

# Consenting

## New permitted activities (boundary activities and marginal/temporary non-compliance)

These new permitted activity categories are supported. The "boundary activities" proposal has already been adopted by some territorial authorities and the "temporary/marginal" non-compliance, as an optional process will be a useful tool.

## Fast track process

Councils are very concerned about the workability of the proposed new fast track process. LGNZ concurs and considers that significant amendments are required. As proposed, there will be perverse consequences and a rewinding of plans being "front loaded" with a greater use of controlled activity status. We support the principle of what is proposed but reconsideration is needed.

## Changes to notification and submissions processes

LGNZ notes the proposal to change the requirements for notification of consent applications. The system proposed under the new ss95A and 95B would establish an unnecessarily complicated process, which would be more limited than the existing RMA provisions, and would significantly constrain the ability to participate in RMA processes. A similar constraint is imposed under the proposed new ss95DA and 95E (which would restrict eligibility to be considered affected persons in relation to consent applications.

LGNZ is very concerned with the proposal that an authority **must** strike out submissions if criteria are met. We support the authority being given the option to strike out submissions. The changes as proposed are highly likely to result in consent hearings that are more adversarial – and so more costly and time-consuming rather than more efficient.

LGNZ is also concerned that opportunities for early-stage engagement in plan making processes are a far from adequate exchange for the proposed constraints on notification and eligibility of submitters and submissions in consents processes – particularly for a property owner trying to respond to an application for an activity they had not envisaged or anticipated.

## Changes to the scope of conditions

The proposals to amend section 108 to "clarify the legal scope of consent conditions" will serve to complicate the process – the attempt to define "applicable" will create litigation. LGNZ is concerned this provision will reinforce the criticisms levelled at the RMA.

## Fixing of fees

LGNZ opposes a prescriptive and mandatory regime for fixing fees for hearing commissioners. Councils need to use commissioners for a variety of reasons including conflicts, transparency, resourcing, or where specialist expertise is required. The mandatory fixing of fees is likely to discourage competent and experienced professionals from undertaking such roles. Councils currently are managing this adequately and do not need this new intervention to "assist," they need to be able to set their own fees based on their own circumstances and the local pool of commissioners and the degree of competition varies enormously across the country.

# Appeals and courts

LGNZ supports the majority of the reform proposals associated with appeals and courts.

## Objections heard by independent commissioner

LGNZ supports giving an applicant the right to choose whether an objection will be heard by an independent hearing commissioner but considers the powers already exist in the RMA.

# Process alignment and improvement

## Changes to Reserves Act to align with RMA

The proposal to make amendments to achieve alignment between RMA processes and Reserves Act processes is supported.

## New procedural requirement for decision makers

LGNZ supports the addition of a new s18A to the RMA, articulating procedural principles that are to be followed by those exercising powers and performing functions under the Act is supported in principle but LGNZ notes it is likely to be the subject of litigation. An amendment is sought to provide that the principles are not of themselves enforceable against any person and no person is liable to any other person for a breach of the principles (see existing section 17(2)).

## Streamlined and electronic public notification

The amendments proposed to align with advances in technology are supported.

## Enhanced council monitoring requirements

As described in the Bill this is an enormous task and expectations are unclear. Some parameters around it are required to focus on the functions and responsibilities that really matter. Collaboration with local government is essential as this is developed and regulations will need to be developed in consultation with local government, taking into account other obligations e.g under NPSFM.

## Removal of financial contributions

The proposal to remove financial contributions from the RMA is underpinned by the assumption there is duplication with development contributions (under the LGA02) and that the new development contributions regime under the LGA02 is sufficient for the purpose. That is not correct. Financial contributions and development contributions serve different purposes:

- Development contributions can only be used for capital expenditure.
- Development contributions cannot be applied to development undertaken by the Crown.
- Financial contributions can be charged to mitigate the ongoing effects of an activity (e.g wear and tear on rural roads associated with a quarry).
- Regional councils cannot take development contributions (e.g to offset the environmental effects of an activity).

The trigger for a requirement for a development contribution is some kind of authorisation (resource consent, building consent or service connection authorisation). A financial contribution can be charged without such an authorisation and can be applied to a permitted activity .

The LGA specifically states that a development contribution can only be charged if a resource consent, building consent or service connection is authorised. The issue is it is possible to charge a FC for an activity that does not require the issue of a new resource or building consent. DCs cannot deal with the ongoing cots of development. The removal of financial contributions will impact low/no growth areas particularly.

Financial contributions are also used to facilitate development of land where there are multiple land owners. A developer is able to enter an agreement with the council (often set up by way of a private plan change) and agrees to meet the upfront costs of development. Where there are multiple land owners, the developer is reliant on the council being able to charge financial contributions and passing these onto the developer who incurred the costs. The LGA does not appear to provide for this model of charging and passing on of development contributions to meet upfront costs; the wording refers to capital expenditure by the council (s106(2)(a)). If such a mechanism is not provided for in legislation, then developing land that is held in multiple ownership will be more difficult.

Consequently, after consultation with its members, LGNZ does not support the proposal to remove financial contributions.

## Amendments to the Public Works Act

LGNZ supports some amendments to the Public Work Act, including, in principle, an increase in the amount of the solatium to a reasonable level. However, some changes to the proposed provisions are sought.

## Recommendations

- **Withdraw** the regulation-making powers proposed or refer them to the Regulations Review Committee under SO 293 for its consideration under SO 318(3);
- **Withdraw** the proposals identified as being unworkable or creating unintended outcomes; and
- **Develop** the proposals supported by this submission and work with LGNZ on their implementation.

# Schedule of Amendments Resource Legislation Amendment Bill

## Part 1 Amendments to Resource Management Act 1991.

| Clause | Section | Commentary | Recommendation |
|---|---|---|---|
| **Subpart 1—Amendments that commence on day after Royal assent** | | | |
| | | *Amendments to Part 2 of principal Act* | |
| 5 | Section 6 amended (Matters of national importance) | The sector has sought the inclusion of this matter for some time | **Support** the amendment |
| | | ***Amendments to Part 3 of principal Act*** | |
| 6 | Section 12 amended (Restrictions on use of coastal marine area) | The intent of this amendment is very unclear. The presumption applying to section 12 activities in the CMA is that no person can do anything unless there is a regulation, rule, or consent authorising the activity. To say the section does not prohibit the removal of abandoned structures from the "marine and coastal area … unless those structures are permitted by a coastal consent" is a non-sequitur. | **Review** this provision; and<br><br>**Amend** to clarify purpose and intent. |
| 7 | Section 14 amended (Restrictions relating to water) | | **Support** the amendment |
| 8 | New section 18A Procedural principles | This provision is supported in principle but a subsection (2) to provide that the principles are not of themselves enforceable against any person and no person is liable to any other person for a breach of the principles (see existing section 17(2)).<br><br>The provision is, however, likely to be the subject of litigation. | **Support** in principle;<br><br>**Amend** to include<br>(2) <u>The duty referred to in subsection (1) is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty</u> |
| | | ***Amendments to Part 4 of principal Act*** | |
| 10 | Section 29 amended (Delegation of functions by Ministers) | Delegating to the chief executive the power to approve, change, replace, revoke the national planning template may be administratively expeditious, but we question whether this sits well constitutionally. It in effect confers regulation making power on a publically unaccountable civil servant rather than an Executive Order in Council. | **Delete** 29(1)(da) |

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| 11<br><br>12 | Section 30 amended (Functions of regional councils under this Act)<br><br>Section 31 amended (Functions of territorial authorities under this Act) | New sections 30 (1)(ba) and 31(1)(aa) (development capacity)<br>Consideration should be given to whether this provision and the corresponding s 31 provision is necessary, given the requirements of the LGA in relation to 30 year infrastructure strategies.<br><br>We note these new provisions are likely to be supported by a NPS for Urban Development (NPSUD) and we support this NPSUD; having a NPSUD raises the question as to whether these new section 30 and 3 functions are actually required.<br><br>The definition of "development capacity" in clause 30 (1)(ba) and **31(1)(aa)** should be wider than land capacity.<br><br>Repeal of section 30(1)(c)(v) and 31(1)(b)(ii) (Hazardous substances)<br>Our legal advice on these proposed amendments to the Act suggests that:<br>- the RLAB has not expressly addressed the provision as to GMOs<br>- the Bill's removal of regional council and territorial authority express functions in relation to hazardous substances leaves unclear the question as to the extent to which the scope of local authorities functions for controlling hazardous substances and new organisms may still be applicable and in what circumstances<br>- other provisions of the Act (section 59) potentially provide scope for local authorities to continue to broadly manage the use of hazardous substances when it is in order to achieve the purpose of the Act<br>- the Bill does not remove *all* instances of regional councils controlling the use or mitigating the effects of hazardous substances albeit implicitly (sections 20(1)(ca), 31(1)(iia) and 142<br>- the position on genetically modified organisms is unclear | New sections 30 (1)(ba) and 31(1)(aa)<br><br>**Delete** new sections 30 (1)(ba) and 31(1)(aa) because they are not required in light of the proposed new NPS for Urban Development. If this is not accepted in full, development capacity issues should be dealt with purely at RPS level.<br><br>**Amend** 30(1)(ba)(5) so that "development capacity" is wider than land capacity.<br><br>**Consider** the broader suite of provisions in the RMA relating to hazardous substances and genetically modified organisms and ensure alignment and that roles and functions for local authorities are clear. |

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| 16 | Section 34A amended (Delegation of powers and functions to employees and other persons) | It is assumed the accreditation requirements of section 39B(2) will apply to all hearings commissioners; LGNZ considers they should.<br><br>This section establishes a very cumbersome process as it applies to **all** hearings. It gives no credit to local authorities who already consider, as a matter of course, whether it is necessary to appoint a commissioner with an understanding of tikanga Māori.<br><br>Councils will struggle to meet the timetables for the commencement of hearings in many instances (eg multiple iwi).<br><br>A better mechanism is to require Iwi Participation Arrangements to include this matter. | **Delete** 34A(1A) as unnecessary; or<br><br>**Amend** subsection 341A(a) to state that contact must be made (but there is no obligation on iwi to respond).<br><br>**Consider** the role of Iwi Participation Arrangements to include this matter so consultation does not need to take place ahead of *all* hearings. |
| 17 | Section 34B | LGNZ does not support a prescriptive and mandatory regime for fixing fees for hearing commissioners – see comment on section 360E. Councils need to use commissioners for a variety of reasons including conflicts, transparency, resourcing, or where specialist expertise is required. The mandatory fixing of fees is likely to discourage competent and experienced professionals from undertaking such roles. | **Delete** section 34B(4). |
| 18 | Section 35 amended (Duty to gather information, monitor, and keep records) | This is an enormous task if carried out as described; expectations are unclear. Some parameters around it are required to focus on the functions and responsibilities that really matter.<br><br>Regulations need to be developed in consultation with local government and other obligations e.g under NPSFM for accounting need to be taken into account. | **Provide clarity** around the scope of the new provision. |
| 20 | Section 36 amended (Administrative charges) | LGNZ supports the rewrite of section 36, 36AAA, and 36AAB with the exception that fees are required to be set by special consultative procedure under the LGA or bylaw.<br><br>This is disproportionately onerous and ignores other checks and balances available. Section 219 of the Building Act is a much better model for local government and more in line with processes applicable to central government fee setting processes.<br><br>Being able to charge for time to effect the new process for boundary activities is supported. | **Support** rewrite of section 36, 36AAA and 36AAB;<br><br>**Support** principle of charging for permitted activities<br><br>**Delete** 36(3) requiring fees to be set using the section 150 of the Local Government Act 2002 and amend using the Building Act model. |

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| ***Amendments to Part 5 of principal Act*** | | | |
| 25 | Section 43 amended (Regulations prescribing national environmental standards) | Section 43(3) is opposed. The Minister already has the ability to be involved in local plan making by submitting on a proposed plan and new tools are proposed.<br><br>LGNZ does not support a new regulation-making power which applies to a specified district or region.<br><br>Further, the new streamlined planning process could be used to work with a council to develop a suite of rules for a particular region/district. | **Delete** section 43(3) |
| 26 | Section 43A amended (Contents of national environmental standards) | Section 43A(8)(a), empowers a local authority to charge for monitoring any permitted activities specified in a National Environmental Standard. This has been the subject of discussion in the development of the proposed NES for Plantation Forestry. | **Support** amendments to section 43A(8)(a) |
| 27 | Section 43B amended (Relationship between national environmental standards and rules or consents) | The amendments proposed to section 43B(3), which enable a rule or resource consent to be more lenient than a national environmental standard (so long as the standard expressly permits a rule or consent to be more lenient than the standard).<br><br>This has been discussed in relation to the proposed NES for Plantation Forestry because many regions identified that more consents would be required as a result of the proposed NESPF. | **Support** amendments to 43B(3) |
| 28 | Section 44 amended (Restriction on power to make national environmental standards) | This amendment is not supported and should be deleted as a consequential amendment to deleting the amendments proposed in clause 25 | **Delete** 44(2A) and (2) |
| 29 | New section 45A inserted (Contents of national policy statements) | At least some of these provisions have the potential to be onerous and costly for local authorities to give effect to. In particular, clauses 45A(2)(f) and (g) create a separate information and monitoring regime to that applicable to regional policy statements and plans generally.<br>And as per earlier comments, the concept of a NPS applying to a specific region/district is not supported. Existing tools are available to the Government to be involved in local decision-making. | **Reconsider** section 45A(2)(f) and (g)<br><br>**Delete** section 45A(3) |

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| 30 | Section 46A amended (Minister chooses process) | | **Delete** 46A(2A) as a consequential amendment |
| 31 | Section 48 amended (Public notification of proposed national policy statement and inquiry) | | **Delete** 48(1A) as a consequential amendment |
| 32 | Section 52 amended (Consideration of recommendations and approval or withdrawal of statement) | | **Delete** 52(4) as a consequential amendment |
| 34 | New section 55A inserted (Combined process for national policy statement and national environmental standard) | LGNZ is concerned about the potential for overlap between the NPS/NES with the National Plan Template. There is considerable complexity as how NPS/NES and national planning template processes will "mesh" together but it is difficult to reach any clear view on this in the absence of a "model" template.<br><br>LGNZ considers that NPS/NES are the appropriate tools for delivering national direction, not the National Plan Template.<br><br>The combined NPS/NES is supported as a new tool to provide national direction. | **Support** the combined process for NPS/NES. |
| 36 | Section 58 amended (Contents of New Zealand coastal policy statements) | LGNZ does not support a New Zealand coastal policy statement or any provisions applying to a *specified part* of the coastal environment for the reasons outlined above. | **Delete** section 58(3) |

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| | | ***National planning template*** | |
| 37 | New sections 58B to 58J | LGNZ supports the principle of a National Plan Template (NPT) because it will result in greater efficiencies. This is informed by the views provided to us by local authorities.<br><br>However, LGNZ is of the view that national direction on key issues of national importance should be delivered through National Policy Statements and National environmental Standards (as higher order documents), and not the National Plan Template itself. | LGNZ **supports** in principle the NPT but seeks amendments to sections 58 BC to 58J.<br><br>**Amend** the provisions to provide a process to address drafting mistakes with the NPT, and the issues raised in the commentary under the relevant section. |
| *37* | 58C Contents of national planning template | It is unclear how section 58B(b)(ii) relates to 58C(c) and (d).<br><br>Support is given to the concept of the NPT **if the scope for mandatory content is limited** to common definitions and terms, plan structure and format for overlays and possibly maps. LGNZ considers that policy statements and plans must continue to respond to local conditions and environmental issues of concern.<br><br>LGNZ supports other provisions being provided as optional content – "off the shelf" provisions e.g. for a standard low density zones. Councils would choose to use these and determine where they should apply.<br><br>*Electronic accessibility and functionality of policy statements and plans*<br>The provisions relating to electronic accessibility and functionality need to be carefully considered. The Regulatory Impact Statement is woefully silent on the cost implications of this and it is clear that a full picture of the current status of council plans with respect to electronic accessibility is not held.<br><br>The Bill is unclear what specifications for "searchability" – while local authorities are moving towards electronic delivery, searchability by property is not yet common. Uploading a plan as a pdf and being able to search by reference/rule is more common. This is an area that absolutely must neds to be developed with local government and understanding of the difference between regional plans and district plans needs to be understood.<br><br>Central support for delivery of e-plans via a centralised platform should be explored, it does not make sense for each local authority to invest separately in developing an e-plan, especially with a framework provided by a template. | **Amend** section 58C to restrict the scope of the NPT and make it clear the NPT can contain elements that are mandatory and elements that are optional. |

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| 37 | 58D Preparation of national planning template | LGNZ supports:<br>- a collaborative approach with local government and other stakeholders to prepare and amend a NPT and;<br>- a public process to prepare and amend a NPT | **Support** a collaborative and public process to prepare the NPT |
| 37 | 58F Publication of national planning template and other documents | This reflects the use of internet sites | **Support** |
| *37* | 58H Local authority recognition of national planning template | LGNZ does not support the requirement that some amendments to documents should be made using Schedule 1.<br><br>Making amendments to a Regional Policy Statement or plan will be very complex as there will be multiple, parallel processes underway at any one time to deal with:<br>- amendments that can be made directly<br>- amendments that must be made using Schedule 1<br>- amendments required by the NPT but that cover matters already subject to a plan process that are not yet operative<br>- developing/amending an online plan and identifying the various status<br><br>It is noted that it may not always be clear what is a consequential amendment. | **Oppose** the use of Schedule 1 for any amendments required to give effect to the NPT |
| 37 | 58I First national planning template to be made within 2 years and template to be kept in force at all times | LGNZ does not consider that two years is sufficient to make the first NPT, to work closely with local government and other stakeholders and to have adequate consultation.<br><br>A longer period of time will also give councils more time to consider how to provide (and fund) their online plan online. This is particularly important as the specifications around "searchability" have yet to be determined. | **Amend** to provide a time period greater than 2 years to provide the first national planning template |

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| 37 | 58J Obligation to publish planning documents | It is not clear what "searchable" means and this is still to be worked through.<br><br>Central government needs to work closely with local government to understand what the current functionality of online plans is across the sector and, therefore, what is reasonable to expect local government to resource and within what timeframe. Requirement on "searchable" will dictate lead in time required.<br><br>Before the national plan template can be given effect to and provided online in some form, existing plans need to be provided online.<br><br>To expedite this, and particularly given it is underpinned by a *national* plan template the role of central government to support the publishing of planning documents needs to be explored. | **Delete** this provision from the Bill and include requirements re publication in the NPT instead; work with local government to determine a feasible timeframe and to determine central government's role in supporting the publication of planning documents<br><br>**Consider** options around searchability and appraise the local government sector's ability to meet new requirements before developing specifications and the timeline to meet. |
| **Subpart 2—Iwi participation arrangements** | | | |
| 38 | Iwi participation arrangements and Proposed new clause 4A, Schedule 1 RMA | LGNZ supports the principle of iwi participation arrangements. Clarity is needed, and discussions with LGNZ regarding how this will be resourced by central government.<br><br>Clarification is required on how the proposed new iwi participation arrangements would fit alongside existing partnership agreements between councils and iwi. Councils would be extremely concerned if the new requirements resulted in established relationships being constrained or compromised, but we understand this is not the intention.<br><br>LGNZ supports the proposal (proposed new clause 4A, Schedule 1 RMA) that councils must provide the relevant iwi authority with a copy of a draft proposed policy statement or plan before it is notified, and must have particular regard to any advice received on that draft from the iwi authority. | **Support** in principle and clarify how iwi participation arrangements would fit alongside existing partnership agreements between councils and iwi<br><br>**Confirm** how developing iwi participation arrangements will be resourced (by Central Government) without recourse to ratepayer funding. |

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| *38* | 58L Local authorities to invite iwi to enter into iwi participation arrangement | The timeframe (30 days) is not sufficient as the default; some local authorities have multiple iwi to work with and some iwi have multiple local authorities to work with.<br><br>It is unclear what the mechanism will be to cover off 58L(3) "a local authority need not extend an invitation to an iwi authority if it has already agreed to an iwi participation arrangement with that iwi authority."<br><br>Clause 58L(3) is not clear with respect to the duration of an iwi participation arrangement.<br><br>New section 58L needs to be clearer that, in the event an iwi authority determines not to enter an IPA, that the preparation of a proposed policy statement or plan continues in accordance with Schedule 1 | **Amend** 58L(2) from 30 days to 60 days.<br><br>**Clarify** 58L(3) with respect to the duration of an iwi participation arrangement<br><br>**Clarify** the mechanism whereby a local authority need not extend an invitation to an iwi authority if it has already agreed to an iwi participation arrangement with that iwi authority."<br><br>**Clarify** 58L that, in the event an iwi authority determines not to enter an IPA, that the preparation of a proposed policy statement or plan continues in accordance with Schedule 1 |
| **Subpart 3 – Local authority policy statements and plans** | | | |
| 51 | Section 80 amended (Combined regional and district documents) | Because the territory of a unitary authority covers a single district that is the same as the region, the over-arching Regional Policy Statement should be optional. As the RMA stands, for unitary authorities, unnecessary duplication of regional policy statement provisions and district provisions is required; noting it is necessary to have a mechanism to identify within the combined plan, those provisions that have the status of a RPS provision. | **Amend** section 80 to provide that Regional Policy Statements are *optional* for unitary authorities; provide a mechanism so that provisions have the status of regional Policy Statement provisions |
| **Subpart 4—Collaborative planning process** | | | |
| 52 | New subparts 4 and 5 of Part 5 and new subpart 6 heading in Part 5 inserted | See detailed comments in Schedule. | LGNZ supports this new optional process in principle with amendments.<br>See detailed comments in Schedule. |

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| **Subpart 5—Streamlined planning process** | | | |
| | 80B Purpose, scope, and definitions | See detailed comments in Schedule relating to the Streamlined planning process. | LGNZ **supports** this new, optional process in principle.<br><br>See also, detailed comments in Schedule.<br><br>**Amend** 80B(1)(3) to clarify whether a *specific* direction is required. |
| **Subpart 6 – Miscellaneous matters** | | | |
| 54 | Section 85 amended (Compensation not payable in respect of controls on 15 land) | LGNZ notes the proposed changes (clause 54) to s85 RMA, providing a new option in relation to land where a plan or proposed plan renders that land incapable of reasonable use and places an unfair and unreasonable burden on a person with an interest in the land. As well as the existing powers to require changes to the plan, the Environment Court would be able to order a council to acquire such land (under the Public Works Act 1981).<br><br>LGNZ is concerned at some of the potential implications of this proposed new option and seeks further consideration of the implications of this provision. | **Delete** section 85(3A)(a) |
| **Subpart 7—Legal effect of rules** | | | |
| 58 | Section 86B amended (When rules in proposed plans and changes have legal effect) | LGNZ continues to make the case that the amendments introduced in 2009 add cost and complexity to the system.<br><br>To support the new section 6 provision relating to natural hazards, rules relating to natural hazards should have effect at the time of notification. | **Amend** section 86B to revert to the pre-2011 situation in relation to the legal effect of rules<br><br>**Amend** section 86B(3) to enable provisions for natural hazards to have legal effect at the time of notification |
| ***Amendments to Part 6 of principal Act*** | | | |
| 62 | Section 104 amended (Consideration of applications) | LGNZ supports the proposal to require a consenting authority to have regard to any measure proposed by an applicant intended to result in positive effects on the environment to offset adverse effects from an activity. This would allow advantageous flexibility, although guidance will be necessary to ensure that this new provision is interpreted and applied consistently by councils | **Support** reference to positive effects |

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| 64 | New section 108AA inserted (Requirements for conditions of resource consents) | It is common practice is for councils to circulate prosed conditions with applicant before confirming conditions; this is good practice and is working well. In addition for longer hearings, it is common place for draft conditions to be revised and discussed during the course of a hearing.<br><br>The interpretation of the existing section 108 is well established in case law (for a resource management purpose, fairly and reasonably relate to the development, and not be unreasonable) and there is little or no justification to placing further restrictions on the power to impose conditions. The narrowing of the power to impose conditions may in fact lead to some applications being declined because the restricted scope of conditions means that the purpose of the RMA is not achieved.<br><br>The proposed changes will create problems for regional consents particularly.<br>Clause 108AA(a) allows for *Augier* conditions. However, clause 108AA(b) definitely does narrow the scope of conditions ("directly connected"), it does not adequately reflect "offset" or environment compensation type conditions, and does not take into account the specialist nature of subdivision consent conditions (although some have a statutory basis).<br><br>New section 108AA will serve to complicate the process – the attempt to define "applicable" will create litigation. This provision will reinforce the criticisms levelled at the RMA. | **Delete** new section 108AA. If this is not accepted then amend section 108AA to reflect the matters raised in the commentary. |
| ***Amendments to Part 8 of principal Act*** | | | |
| 84 | Section 189 amended (Notice of requirement to territorial authority) | The removal of a body corporate as an applicant is supported. | Support |
| 86 | New sections 195B and 195C inserted | This provision seems reasonable. | Support |
| ***Amendments to Part 11 of principal Act*** | | | |
| 90 | Section 267 amended (Conferences) | This is a worthwhile improvement. | Support |

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| 91 | Section 268 replaced (Alternative dispute resolution) | This is a worthwhile improvement but there are no specific sanctions for not taking part – except perhaps costs/contempt proceedings. It may be appropriate to prevent a party from continuing to participate in a hearing if he or she fails to take part. | Support but seek amendment to include sanctions for not taking part. |
| 94 | Section 279 amended (Powers of Environment Judge sitting alone) | | Support |
| 95 | Section 280 amended (Powers of Environment Commissioner sitting without Environment Judge) | | Support |
| 96 | Section 281A replaced (Registrar may waive, reduce, or postpone payment 20 of fee) | | Support |
| 97 | Section 290A replaced (Environment Court to have regard to decision that 35 is subject of appeal or inquiry) | | Support |
| 103 | Section 360 amended (Regulations) | LGNZ supports the general direction of using regulations to exclude stock from water. | Support |

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| 105 | New sections 360D Regulations that permit or prohibit certain rules | These new provisions are a significant override of local decision-making. LGNZ opposes the new tools of national intervention and argues the focus should be on national direction and working with councils through the processes available now to help shape plans and local regulations.<br><br>The development of plans (including rules) goes through a rigorous process involving public notification, evaluation against 32 of the RMA and hearing by accredited commissioners.<br><br>The threshold test in section 360D(8) "necessary or desirable" are not an adequate threshold test given that the Regulations are largely an interim measure, and should be reconsidered.<br><br>The regulations could lead to a quite substantial short term interference with planning processes, either nationally or at a local/regional level, pending the gazettal of the first NPT; this will cause issues for all stakeholders involved in developing/using plans. | **Delete** section 360D<br><br>**Amend** 360D(8) to reconsider the threshold test in 360D "necessary or desirable" |
| 105 | New section 360E Regulations relating to administrative charges and other amounts | This section is contrary to the advice of the Productivity Commission – on what constitutes good regulatory practice. If the regulations do not set the fees correctly in terms of the amount, be consequence will be the general ratepayer will cover the applicant's costs. There are already sufficient safeguards/balances on the setting of administrative charges in the current section 36. There is also no statutory requirement for comment or consultation before making Regulations under section 360E. | **Delete** section 360E. |
| **Subpart 2—Amendments that commence 6 months after Royal assent** | | | |
| ***Amendments to Part 1 of principal Act*** | | | |
| 114 | New section 2AB inserted (Meaning of public notice) | 2AB Meaning of public notice<br>This provision is supported | Support |
| ***Amendments to Part 3 of principal Act*** | | | |
| 115 | Section 11 amended (Restrictions on subdivision of land) | The presumption against subdivision activity is largely historic, but has some logic given that permitted activity status is not really viable for this activity.<br><br>The lead in time will ensure plans can be redrafted where necessary otherwise some subdivisions may become permitted activities and plans deposited where this is not appropriate. | Support |

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| | | ***Amendments to Part 4 of principal Act*** | |
| 120 | New section 41D inserted (Striking out submissions) | LGNZ and member councils oppose this change. The amendment is too harsh and will affect lay people the most, particularly 2(b)(ii) requiring evidence to support a submission.<br><br>If an objection is filed under (4) what happens provision is needed for extending processing times.<br><br>41D(2)(iv)(iv) is problematic. This provision assumes the initial technical assessment of effects in relation to an application for resource consent will be accurate and will identify all effects. Local authorities will acknowledge that the assessment of effects will **not** always capture **all** of the potential effects. With regard to an application for resource consents, one of the benefits of notifying an application is to invite "local knowledge" into the process.<br><br>The suite of amendments around the initial identification of effects will essentially compound any omission with the initial assessment as is the platform for status of affected persons and also ties to conditions of resource consent.<br><br>This section will be very litigious as it determines status of parties and will likely have negative outcomes for the culture of council hearings in terms of creating a participatory environment. | **Delete** this provision; or (in the event the provision remains)<br><br>**Amend** to give the authority discretion to strike out a submission, instead of it being mandatory;<br><br>**Amend** to clarify who is the "*authority*";<br><br>**Amend** relevant provisions to provide for an objection being filed under (4) to extend processing times;<br><br>**Reconsider** the suite of provisions relating to the identification of effects, including (iv) it is unrelated to an activity's actual or likely adverse effects, if those effects were the reason for notifying the application or review |
| | | ***Amendments to Part 6 of principal Act*** | |
| 121 | New sections 87AAB 87AAB Meaning of boundary activity and related terms | This section is supported and it is noted that local authorities have sought such provisions for some time. | **Support** |
| 121 | New section 87AAC Meaning of fast-track application | The proposal as constructed will be unworkable for local authorities and is likely to create unintended consequences. This is feedback LGNZ has previously given in relation to this proposal.<br><br>Using "controlled activities" as a catch all does not reflect the array of applications that are controlled activities. Both regional plans and district plans have, as controlled activities matters that are technically complex. These include new buildings (district plans) and plantation forestry plantings in flow sensitive catchments. Complex assessments are required, even for controlled activities and often require input from | **Oppose** in part; and<br><br>**Amend** section 87AAC to provide for a process whereby central government sets a target that each local authority must meet (x% of applications for resource consent must be processed within 10 working days); or |

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| | | specialist advisers and sometimes from iwi. Controlled activities are not all "simple" and therefore suitable for "fast-track." In such instances it would be extremely difficult for councils to achieve compliance with the ten-day fast-track turnaround time. A consequence is that refund would be payable under the discount regulations.<br><br>Plans are increasingly "front loaded" – there is a move away from non complying activity status towards controlled activities. This provision will create a disincentive to frontload plans and careful thought will be given to the use of controlled activity status for complex applications – because they cannot all be processed within a 10 day timeframe.<br><br>Local authorities have also advised that for some councils this will create issues of resourcing because they will be required to "resource up" to ensure the 10 day timeframe can be met.<br><br>An alternative is proposed whereby central government sets a target that x% of a council's applications must be processed within 10 working days and councils must set their own policies to achieve this.<br><br>Clause 3 "to avoid doubt" is not needed and makes the whole clause more complicated.<br><br>Data from the National Monitoring System will provide a clear picture of timeliness for resource consents with respect to the proportion of decisions made in fewer than 10 working days and between 10 and 20 working days. | **Amend** clause 121 of the Bill to insert a third exclusion category in a new s87AAC(2)(c): 'a technical review is required'. |
| 122 | New section 87AAD Overview of application of this Part to boundary activities and fasttrack applications | These provisions are supported; the "boundary activities" proposal has already been adopted by some territorial authorities.<br><br>87AAD1(c) is supported (no right of appeal).<br><br>Consideration should be given to whether the drafting should make clear the activity status for a *boundary activity* excludes discretionary unrestricted and non complying activity status as these will require a full assessment of effects. | **Support** but;<br><br>**Amend** section 87AAD in relation to a *boundary activity* to exclude discretionary unrestricted and non complying activities |

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| 122 | New section 87BA Boundary activities approved by neighbours on affected boundaries are permitted activities | Amendments are sought to make this workable. The application should demonstrate compliance withy other permitted activity conditions – this should be made clear in this section.<br><br>The terminology needs to be aligned with other RMA provisions around written approvals (remove reference to owners and occupiers and replace with "persons").<br><br>The related amendments to section 36 – cost recovery – are supported. | Support with the following amendments:<br>Add (1)(a)(iii) *demonstrate compliance with all other permitted activity conditions*;<br>Align wording with other provisions of the RMA (owners or occupiers vs persons)<br><br>Support changes to section 36 – the ability to recover costs. |
| 121 | New section 87BB Activities meeting certain requirements are permitted activities | LGNZ supports the principle of this and supports that it is *discretionary*. It will be particularly useful for temporary activities.<br><br>It is noted that (3)(c), requiring a notice in writing which states the reasons for considering the activity meets the specified criteria are not dissimilar to those for a resource consent.<br><br>Accordingly, the mechanism proposed to recover costs is supported. | Support sections 87BA and 87BB and the ability to recover costs. |
| 125 | Section 95A Public notification of consent applications | LGNZ notes that the most recent changes to notification are still bedding in, these changes include a requirement to pre-circulate evidence.<br><br>Further, plans are increasingly frontloaded with activities *controlled* and *discretionary restricted*, with non-notification clauses. This provides certainty for parties and means the focus is on plan making rather than consenting.<br><br>The proposal to erode participatory rights is significant. Local authorities consider the current balance around participatory rights is about right, given the very low proportion of applications being publicly and limited notified.<br><br>There is concern that excluding parties who are affected by a proposal from participating in consent processes will undermine confidence in local government.<br><br>The threshold in 95(5)(b)(ii) is too high and should exclude discretionary activities. This will align with plan development and the increased use of *controlled* and *discretionary restricted* activity status. This recognises there is greater prospect generally of offsite/third party effects if an activity has been categorised as discretionary. | Support 95A(9)(b), providing the ability to limited notify an application in the event there are special circumstances<br><br>Delete the remainder of new sections 95 to 95B. In the event that new sections 95 to 95B are not deleted, the following amendments are needed:<br><br>Provide clarity on whether the transitional provisions cover existing notification clauses in plans.<br><br>Amend 95(5)(b)(ii) to read<br>b) the application is for a resource consent for 1 or more of the following, but no other, activities:<br>(i) a controlled activity: |

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| | | Clarification is required of sub-clause (6) – whether residential activity relates only to a *single* dwellinghouse on land?<br><br>The assessment of effects (7)(a)will ultimately determine the standing of people in terms of their ability to submit and participate in processes. As outlined earlier, this will exclude many lay people and create a more litigious culture around hearings. Further, if there is a question around the effects identified (e.g if parties consider there are shortcomings with a council's assessment of effects) there will be legal challenge.<br><br>As noted earlier, one of the reasons/benefits of public notification is to bring to the table input from others – technocrats will not always get it right and identify all the potential adverse effects. The importance of a robust notification decision is recognised by local authorities. These new provisions around identifying effects are likely to mean that local authorities will be even more risk averse, given this assessment determines standing for people to participate.<br><br>The process will be time consuming and, without doubt, litigious. | (ii) a restricted-discretionary ~~or discretionary activity~~, but only if the activity is a boundary activity, a subdivision of land, or a residential activity:<br><br>**Amend** sub-clause (6) to clarify that "residential activity" relates only to a *single* dwellinghouse on land<br><br>**Delete** clause 95A(7)(a) |
| 125 | **Sections 95 to 95B replaced Limited notification of consent applications** | Clause 125 proposes to change the requirements for notification of consent applications.<br><br>LGNZ considers that new ss95A and 95B would establish an unnecessarily complicated process, which would be more limited than the existing RMA provisions, and would significantly constrain citizens' participatory rights.<br><br>The existing limited notification processes seem to be working well as they are. New sections 95 to 95B are unnecessary and overly complex.<br><br>The application of 95C to limited notification is supported.<br><br>LGNZ proposes a further amendment, that the RMA enables plans to indicate that certain activities only require limited notification (currently a council mist determine whether an application should be publicly notified and then decide whether it should be fully or limited notified). | **Delete** new sections 95 to 95B.<br><br>**Support** 95B(10) and include a similar provision in existing provisions for limited notification.<br><br>**Support** application of 95C to limited notification.<br><br>**Amend** the RMA to enable a plan to state that an application can only be limited notified (not fully notified). |

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| 127 | Section 95D amended (Consent authority decides if adverse effects likely to be more than minor) | The new subclause 95D(2)(ca) leaves significant uncertainty for a local authority in terms of how objectives and policies (and particularly more general ones) should be applied. If objectives and policies discourage an effect, then it would seem odd to disregard that effect but subclause 95D(2)(ca) seems to suggest this is the position.<br><br>The existing notification test in the RMA is around potential effects **not** around objectives and policies; the permitted baseline is a sufficient enough of a test and is working well.<br><br>This new provision is likely to be very litigious as the interpretation will be very uncertain. As a result, it is likely that plans will need to be redrafted so objectives and polices are more prescriptive. | **Oppose** 95(2)(ca) but if it remains, support it being optional |
| 128 | New section 95DA inserted (Persons eligible to be considered affected persons for purpose of limited notification) | This is potentially a very complex legislative regime, for local authorities and for the public.<br><br>Very few applications overall are notified/limited notified, it is unclear what is driving these changes. Local authorities are experienced in identifying affected parties for the purposes of limited notification and this amendment is not necessary.<br>Limited notification provisions are already considered by councils to work well.<br><br>In relation to *designations*, the approval of a Requiring Authority is required anyway. This provisions is very enabling and there will be a particular impact where a designation was set under old provisions; new designations tend to be more prescriptive, less general; third party work on designated land. There are many examples where new work on designated land potentially has shading/traffic effects offsite and these provisions preclude parties being identified as affected.<br><br>In relation to *subdivision of land* these provisions are very restrictive and will exclude persons who will be affected by an application. Persons beyond adjacent lots are often affected by subdivision and will be unable to participate in a consent process.<br><br>An assumption seems to be made that detailed provisions are included in plan provisions (structure/master plans) at the time of rezoning; this is often not the case. | **Delete** section 95DA; but if this section remains,<br><br>**Amend** to reflect the following:<br>Where a ROW is shared, needs to be notified;<br>Provide for limited notification of affected parties in relation to designations;<br>Provide for notification of parties beyond adjacent sites where parties are affected;<br>*Watercourse* needs a definition; this could be a river |
| 129 | Section 95E replaced (Consent authority decides if person is affected person) | As per earlier commentary around the identification of effects in relation to objectives and policies. These provisions will be ripe for legal challenge.<br><br>There are some implications for plan drafting and a relatively short timeframe to achieve | **Delete** section 95E |

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| | | this. | |
| 133 | Section 106 amended (Consent authority may refuse subdivision consent 20 in certain circumstances) | Alignment with recent the BA 2004 provisions is needed. | Support |
| 135 | Section 120 amended (Right to appeal) | Removing appeal rights assumes the first part of the decision-making process has always worked well. Removing the right to appeal also applies to applicants.<br><br>LGNZ opposes, as a matter of principle, the proposed changes to appeal a decision on a resource consent. | Support section 120 (1A)(i)<br><br>Amend section 120(1A)(i) to extend to 87BB (Activities meeting certain requirements are permitted activities)<br><br>Delete section 120(1A)(ii); in the event section 120(1A)(ii) is not deleted:<br><br>Amend section 120(1A)(ii) to add discretionary activities;<br><br>Amend section (1A)(b)(iii) to remove discretionary activities. |
| ***Amendment to Part 9 of principal Act*** | | | |
| 140 | Section 204 amended (Public notification of application) | | Support |
| ***Amendments to Part 10 of principal Act*** | | | |
| 141 | Section 220 amended (Condition of subdivision consents) | | Support |

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| | | ***Amendments to Part 11 of principal Act*** | |
| | Section 292 Remedying defects in plans<br><br>Clause 20A Schedule 1 Correction of operative policy statement or plan | Additional amendment sought to either section 292 or to clause 20 of Schedule 1<br>To undergo a Plan Change process to correct mistakes is costly in time and in meeting statutory requirements in preparing Section 32 Evaluation Reports and documenting requirements listed in Sections 74 and 75.<br><br>A Council's reputation within its community is compromised by unnecessary costs where evidence can be provided that prove that an error has been made.<br><br>Providing amendments to either Clause 20A of the First Schedule of the Act or Section 292 would provide relief in respect of this matter and provide the Court with the ability to direct that corrections be made to a Plan, which may be more than minor, on the basis of the evidence and merits provided by a Council | Amend the RMA in relation to remedying defects in plans that might be deemed to be "more than minor by amending either<br><br>section 292 or clause 20A Schedule 1 to give the Environment Court the discretion to make a decision on a matter that might be deemed more than minor to make a direction to council to make corrections without using the Schedule process. |
| 142 | Section 352 amended (Service of documents) | Clause 352(1A) is welcome. | Support |
| 144 | New section 357AB inserted (Objection under section 357A(1)(f) or (g) may be considered by hearings commissioner) | LGNZ supports giving an applicant the right to choose whether an objection will be heard by a hearing commissioner who is not a member of the consent authority as long as the fee can be passed onto the applicant. | Support new section 357AB and section 357(2A) and mane consequential amendments to enable the fee to be passed onto the applicant. |
| 145 | Section 357C amended (Procedure for making and hearing objection under sections 357 to 357B) | | Delete, as consequential amendment t deleting new section 357AB and (2A) |

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| 146 | New Sec 357CA Commissioner powers relating to Objections | LGNZ questions why this new section for Commissioner powers relating to Objections is needed, for three reasons: 1) Consent Authorities already do appoint Commissioners to hear and determine Objections using the general provisions in Part 4 of the Act (Sections 39-41C), and we are not aware of any concerns that those powers are not adequate for the purpose of Objections. 2) the powers listed in subsection 357CA(2) for obtaining further information are broader than those provided in Part 4, but without the safeguards therein (ie, "require", compared to "request") with no explanation given as to why this difference in approach is needed, or the financial consequences for both applicants and Councils of giving Commissioners broader powers than the Consent Authority has itself. 3) subsection 357CA(1) suggests that these powers will only apply if a Commissioner is requested by the applicant for a resource consent – raising the question, which powers will apply if a Consent Authority decides to appoint a Commissioner on its own initiative. | **Delete** Sec 357CA<br>If considered necessary, add "including any Objections" to Section 39(1)(b) of the Act |
| 150 | Section 360E amended (Regulations relating to administrative charges and other amounts) | See earlier comments. | See earlier recommendations. |
| 151 | New sections 360F and 360G inserted | See earlier comments relating to fast-track applications. As per previous comments – fast-track process will not be straightforward if blanket approach is taken. | **Amend** to align with previous amendments sought. |
| 151 | New sections 360F and 360G inserted | There may be some advantage in having regulations which reduce uncertainty in making notification decisions, but it is difficult to comment further in the absence of draft regulations. | **Engage** with local government as regulations are developed |
| | | ***Amendment to Schedule 1 of principal Act*** | |
| 152 | Schedule 1 amended | Without data from the National Monitoring System to show the length of time plan changes currently take, the feasibility of setting a 2 year for a plan change cannot be determined.<br><br>The consequence of exceeding the 2 year maximum are unclear. | |

| Subpart 3—Amendments that commence 5 years after Royal assent | | | |
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| | | ***Amendments to Part 6 of principal Act*** | |
| 153 | Section 108 amended (Conditions of resource consents) | LGNZ opposes the proposal to repeal the use of financial contributions, unless amendments are made to the LGA02 to bridge the gap that will be left.<br><br>There are a number of problems with the proposal to remove financial contributions provisions:<br>(i) The Crown is not bound by the Part of the Local Government 2002 (LGA02) that contains the development contributions (DCs) provisions.<br><br>(ii) Only territorial authorities have the ability to take DCs.<br><br>(iii) The trigger for a requirement for DCs is some kind of authorisation (resource consent, building consent or service connection authorisation). Financial contributions (FCs) can be required for permitted activities which do not require a resource consent as a trigger.<br><br>(iv) Development contributions can only be used for capital expenditure<br><br>*Use of DCs and FCs*<br>A council must have a DCs policy that authorises the requirement for DCs. Some councils, foreseeing low growth, have recently made decisions to amend or adopt new DCs policies that state that the council will not take DCs, but maintaining the ability to take FCs.<br><br>The basis for DCs is that the effect of development is the requirement for new or additional assets etc, and the territorial authority incurs capital expenditure in providing new assets. The basis for requiring FCs is broadly that there will effects on the environment, which is broader than *effects on infrastructure*.<br><br>There are restrictions on the ability to take DCs for reserves in section 198A of the LGA 02 – in that it is limited to residential developments only. The LGA02 also provides narrow definitions of community infrastructure and network infrastructure.<br><br>FCs can be used for more purposes than DCs, including access to the coast and waterways, provision of carparking, maintenance or restoration of ecosystems, | **Delete** the proposal to remove financial contributions.<br><br>If financial contributions are to be removed, this should not be done unless appropriate amendments are made to the LGA02 to:<br>- refocus DCs so they can be required on *development* occurring, not growth per se, and widen the definition of development.<br>- enable regional councils to continue to require financial contributions<br>- ensure the Crown is bound by the LGA02 in relation to development contributions<br>- the ability to require an esplanade reserve or esplanade strip in accordance with section 230 is not lost |

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| | | communities and heritage. FCs are not restricted to capital expenditure. FCs can also be used for recreational facilities other than in relation to reserves.<br><br>FCs can also be used to address very immediate infrastructure requirements associated with a development where a DC does not apply or where its application would result in the wider development community effectively subsidising a particular development (eg to recover some of the actual costs of road frontage upgrading rather than having the average cost spread across the wider development community).<br><br>The policy requirements for a DC policy are much more prescriptive than for a FC policy; this includes that there are restrictions on the maximum amount of DCs that can be taken for reserves. It may also affect the ability to require roads to be vested.<br><br>*Technical Issues*<br>Section 108(9) defines a financial contribution as "land, including esplanade reserve or esplanade strips (other than in relation to a subdivision consent) …"It is important that the ability to require an esplanade reserve or esplanade strip in accordance with section 230 is not lost.<br><br>*Possible Solutions*<br>The taking of DCs needs to be premised on the basis of development occurring, not growth per se (on the basis that development encompasses growth), and widen the definition of development. The trigger for the requirement for DCs should be an event of development. This requires amendments to the LGA02. | |
| **Part 2 Amendments to Reserves Act 1977** | | | |
| 162 | Minister may authorise exchange of reserve land for other land | These provisions are supported | Support |
| **Part 3 Amendments to Public Works Act 1981** | | | |
| 168 | Section 4C amended (Delegation of Minister's powers) | Removes prohibition on delegation of Minister of Land Information's power to issue notice of desire under section 18, but retains prohibition on delegation of power to issue notice of intention under section 23 | **Neutral.** The amendment is not directly relevant to local authorities. |
| 169 | Section 24 amended | Aligns objection process for compulsory acquisition under PWA with RMA by allowing the Environment Court to accept evidence presented at a hearing under section 39(1) RMA, | **Support** the amendment |

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| | | or related inquiry or appeal, or to direct how evidence is to be given to the Court | |
| 170 | Section 59 amended (Interpretation) | Changes definition of owner to specifically exclude tenants under the Residential Tenancies Act 1986 from the compensation provisions. | **Support** the amendment |
| 171 | Section 72 amended (Additional compensation for acquisition of notified dwelling) | Amends provisions related to the payment of solatium to the owners of dwellings used as private residences and increases figure from $2,000 to a maximum of $50,000.<br><br>The increase in quantum may reflect inflation since the figure was first introduced, and *as a maximum* may be fair in the circumstances. | **Support** an increase in the amount of the solatium to a reasonable level in principle but subject to some changes to the proposed provisions. |
| 172 | New section 72A (Amount of Compensation to be paid under section 72) | Given the increase in the amount payable and the fact it will represent a reasonably significant amount, there needs to be more clarity around when it is likely to apply. There should not be a fixed minimum figure of $35,000. This sum should be no more than [$20,000] with a correspondingly larger discretionary element under section 72A(c). | **Clarify** what is meant by "willing party" for the purposes of the existing section 72(3)(d).<br><br>**Amend** section 72A(1)(a) to delete $35,000 and substitute [$20,000]. |
| 172 | New Section 72B (Definition of terms used in sections 72C and 72D) | Defines terms used in the relevant sections.<br><br>Note, the definition of "land" is different to the definition in section 4 and it is unclear why two definitions are necessary, or whether it is intended that the definition in section 4 will continue to apply, or whether "land" in this context will now exclude lesser interests in land. This is a particular issue of concern, because clause 72C(3) be and (5) both imply that the solatium is payable to parties with lesser interests. | **Delete** this provision from the Bill. LGNZ does not support the inclusion of the new solatium payment in clauses 72C-72D. |
| 172 | New Section 72C (Additional compensation for acquisition of notified land) | It is not clear why there is any need to extend the scope of when a solatium payment is required beyond the current circumstances.<br><br>Extension on the manner proposed means that a solatium will be likely to be payable for most acquisitions and may add a significant cost to Council's acquiring land.<br><br>In addition, the provision that deals with apportionment (clause 72C(4)) is uncertain. If it remains, it needs to be amended to clarify how any payment will be apportioned and who is required to make the apportionment (the notifying authority or the Owners). If a local authority enters into agreements with a number of separate parties to acquire their interests in land (for example, a fee simple owner, a lessee and a Grantee under an easement), then is it required to pay a separate solatium to each of them? | **Delete** this provision from the Bill on the basis that LGNZ does not support the extension of the solatium payment. |

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| | | If however a general solatium of this nature is to be payable, then it should be limited to the fee simple owner of the land, and the owner of a registered leasehold interest. | |
| 172 | New Section 72D (Circumstances in which compensation must not be paid under section 72C) | | **Delete** this provision from the Bill on the basis that LGNZ does not support the extension of the solatium payment |
| 172 | New Section 72E (Adjustment of compensation payable under section 72 or 72C) | This clause future proofs the solatium quantum by providing for it to be amended by the Governor-General by Order in Council on the recommendation of the Minister for Land Information.<br><br>The fact that the current solatium figure has remained unchanged since it was first introduced and cannot be changed other than by an Act of Parliament is not satisfactory and it is reasonable to provide for the ability to amend periodically. It is noted that there is no guidance on how the amounts should be reassessed. | **Support** in principle<br><br>**Amend** to apply to section 72 only on the basis that LGNZ does not support the extension of the solatium payment |
| 173 | Section 75 amended (Compensation for tenants of residential and business premises) | This is a consequential change that follows the change to the definition of "owner" excluding Residential Tenancies Act tenants that enables a discretionary payment to be made to such tenants. | **Support** the amendment. |

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| | | ***Amendments to Schedule 1 of Resource Management Act 1991*** | |
| | 4A Further pre-notification requirements concerning iwi authorities | The relationship between new clause 1A and clause 4A is not entirely clear. | **Amend** to clarify the relationship between new clause 1A and clause 4A |
| | 5A Option to give limited notification of proposed change | LGNZ supports giving the option of giving limited notification of a proposed change | **Support** |
| **New Parts 4 and 5** | | | |
| | | ***Part 4 Collaborative planning process*** | |
| | Collaborative planning process | LGNZ supports the collaborative planning process being provided as a optional process.<br><br>The Canterbury Region already has a close equivalent to the process proposed. The Canterbury framework involves Canterbury Water Management Zone Committees (CWMS Committees) and Regional Committee. The structure and membership of these is close to the proposed collaborative groups, but the matters that must be considered in a collaborative group's terms of reference differ slightly to those of the current CWMS Committees.<br><br>A key difference between the CWMS Committees and the proposed collaborative group process is that the CWMS committees are joint committees of both Environment Canterbury and the relevant territorial authorities for the relevant catchment zone. Those involved in the Canterbury framework advise that this cross-council, community based collaboration is critical to the effectiveness of the Committees.<br><br>However, the provisions in the proposed new Part 4 of Schedule 1 only refer to a *single* local authority as the initiator and facilitator of the collaborative process. LGNZ considers the experience of working with the collaborative process in Canterbury should be reflected in the new Part 4 of Schedule 1.<br><br>LGNZ also notes that it seems clear in the Bill that the proposed collaborative groups would not formally be Committees of any council – although the provision of indemnity via s43 LGA (clause 42(4)) is to apply 'as if the group were a committee of a local | **Support** the collaborative planning process and<br><br>**Amend** the provisions to provide for a collaborative planning process by more than one local authority<br><br>**Amend** to consider the applicability of the Local Authorities (Members' Interests) Act to the members of the proposed collaborative groups. |

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| | | authority'. We note the provision (proposed clause 40(6)) that the Local Government Official Information and Meetings Act 1987 (LGOIMA) would apply to a collaborative group, and the provisions (clauses 40(1)-(5)) for an appropriate mix of members to reflect a balanced range of the community's interests, values and investments in the relevant area. However it is not clear whether the conflict of interest provisions of the Local Authorities (Members' Interests) Act 1968 would also apply to the group's members.<br><br>It will be important for the credibility, mandate and effective operation of the proposed collaborative groups to ensure that their members are protected when considering matters in which they have an interest. One option would be to specifically exclude the operation of the Local Authorities (Members' Interests) Act in relation to members of the proposed collaborative groups. This would avoid complications but would still leave members in situations of interest vulnerable to challenge, which could undermine the work of the group. An alternative option would be to include the new collaborative groups in Schedule 1 to the Local Authorities (Members' Interests) Act to avoid risk of perceived conflict of interest. | |
| 37 | Considerations relevant to decision on choice of process | Clarify how this consideration would be complied with except by some form of public consultation process (except perhaps in some very narrow circumstances.) Given process risk, especially in terms of the decision making obligations under the Local Government Act 2002, some clarification is necessary as to the precise process to be followed. If it is not thought necessary (or alternatively unnecessary) to have a public consultation process, then this should be made explicit. | Support as an optional process<br><br>Clarify how this consideration would be complied |
| 38 | Notification of planning process | The withdrawal circumstances in clause 38(3) are too limited. They need to cover circumstances where the process is no longer viable or appropriate because the of the promulgation of new major order documents or regulations. | Amend clause 38(3). |
| 40 | Appointments | Clause 40(1) provides for various entities (iwi, authorities and customary marine title holders) to appoint representatives. It does not deal with the situation where there is disagreement upon who should be appointed. LGNZ considers that it should be able to choose the representative after consultation to break any deadlock in the appointment process. | Amend clause 40(1) as indicated in the commentary.<br><br>Amend clause 40(4) of the proposed new Part 4, Schedule 1 RMA to provide for |

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| | | LGNZ also notes the detail in clause 40(4) of the proposed new Part 4 of Schedule 1 RMA, that a collaborative group may include an elected member of a local authority. The current and future composition of Environment Canterbury's governance group, for example, comprises appointed members as well as (from October 2016) elected members. We note the potential for unreasonable constraints on the membership of a collaborative group by excluding any future appointed members of any New Zealand council from the opportunity to contribute to this process.<br><br>Clause 40(1)(d) does not seem to expressly allow the appointment of stakeholders as such. However clause 40(5) suggests that stakeholders can be appointed. This should be clarified. (They may be entitled to be approved in a more general capacity as long as they have requisite status etc.) | elected and appointed members from the relevant local authority or local authorities<br><br>**Clarify** whether 40(1)(d) expressly allows the appointment of stakeholders or not |
| 46 | Advice from iwi authorities | | Amend to give a timeframe (especially given the 2 year limit now set) |
| 64 | Membership of panel | For the Auckland Unitary Plan process, the Minister is required to consult Auckland Council in appointing the Independent Hearings Panel. LGNZ considers that there should be consultation with the local authority/authorities in appointing the panel members under clauses 64(6) and 64(7) for a collaborative process. | **Amend** to require the Minister to consult the Local Authority/Authorities in appointing relevant panel members. |
| **Part 5 Streamlined Planning Process** | | | |
| 74 - 93 | Streamlined Planning Process | LGNZ supports the proposal to introduce a new streamlined planning process as an optional process.<br><br>LGNZ has concerns at the level of decision making of the Minister, particularly the ability for the Minister to approve, modify or decline plan changes. The Minister should have an oversight role and only have the ability to intervene if the process has not been correctly followed or terms have not been met.<br><br>However, the Minister should not have a role in determining the content of such plan changes. This is another example of reduced local decision making in the Bill.<br><br>A more appropriate process is the PAUP process: the Minister appoints an independent hearings panel and chair, after seeking recommendations from Council; the panel makes recommendations to the Council; there are limited grounds for appeal to the | **Support** a streamlined planning process with amendments: |

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| | | Environment Court eg if council rejects panel recommendations. | |
| 92 | Operative date | The planning instrument that is approved by the responsible Minister under clause 84(1) and decided by the local authority under clause 85(3) becomes operative on and from the day after the date on which public notice is given in accordance with clause 91(2). | |
| 93 | Appeal rights | Following upon LGNZ's preference for a PAUP type process, it considers that there should be provision for appeals to the High Court on point of law only. Further the drafting of clause 93(2) is somewhat unclear. | **Amend** to add right of appeal on point of law only. |
| **Schedule 2 Amendments to Schedule 12 of Resource Management Act 1991 commencing on day after Royal assent** | | | |
| 14 | Transitional arrangements for early use of collaborative process | | **Support** the transitional arrangements |
| **Schedule 3 Consequential amendments commencing on day after Royal assent** | | | |
| | Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3) | This change is welcome in principle. | **Support** this provision |
| **Schedule 4 Amendments to Schedule 12 of Resource Management Act 1991 commencing 5 years after Royal assent** | | | |
| 18 | Local authorities must amend plans to remove financial contributions provisions | The repeal of financial contributions is not supported. | |

| Schedule 5 Consequential amendments commencing 5 years after Royal assent | | | |
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| ***Part 1 Amendments to Acts*** | | | |
| **Schedule 6 New Schedule 1AA of Public Works Act 1981 inserted**<br>**Schedule 1AA Transitional, savings, and related provisions** | | | |
| 2 | New rule on evidence does not apply to hearings that have begun | Section 24(6A) does not apply to any hearing of the Environment Court under section 24 that begins on or before the commencement date. | Support |
| 3 | Circumstances in which this Act applies as if unamended | Important to have these transitional arrangements | Support. |