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Committee Secretariat
Environment Committee
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SUBMISSIONS ON THE NATURAL AND BUILT ENVIRONMENT BILL AND THE SPATIAL PLANNING BILL

(1) Introduction

1. Lawyers for Climate Action NZ Inc (**'LCANZI'**) is a non-profit group of over 500 lawyers. We advocate for legislation and policies to ensure Aotearoa New Zealand meets or exceeds its commitment under the Paris Agreement to achieve net zero carbon emissions as soon as possible and no later than 2050. More information about us can be found on our website: <https://www.lawyersforclimateaction.nz/>.
2. LCANZI welcomes the opportunity to make submissions on the Natural and Built Environment Bill 2022 (**'NBE Bill'**) and Spatial Planning Bill 2022 (**'SP Bill'**).
3. By way of introduction, following the release of the third Intergovernmental Panel on Climate Change (IPCC) on 4 April 2022, the UN Secretary-General said that:¹

“We are on a fast track to climate disaster. Major cities under water. Unprecedented heatwaves. Terrifying storms. Widespread water shortages. The extinction of a million species of plants and animals. This is not fiction or exaggeration. It is what science tells us will result from our current energy policies. We are on a pathway to global warming of more than double the 1.5°C limit agreed on in Paris. Some Government and business leaders are saying one thing but doing another. Simply put, they are lying. And the results will be catastrophic. This is a climate emergency.”

4. At COP27 on 8 November 2022, the UN Secretary-General followed this extraordinary statement above by then saying that: “We are on a highway to climate hell with our foot on the accelerator.”²
5. The New Zealand Parliament declared a climate change emergency in December 2020. Similar declarations have been made in many other jurisdictions. Parliament’s declaration includes recognition of: “the devastating impact that volatile and extreme weather will have on New Zealand and the wellbeing of New Zealanders, on our primary industries, water availability, and public health, through flooding, sea-level rise, and wildfire damage.” Parliament’s emergency declaration stated that “climate change is one of the greatest challenges of our time” and that “New Zealand has committed to taking urgent action on greenhouse gas mitigation and climate change adaptation.” Included in the declaration is a commitment to implement the policies required to meet the targets in the Climate Change Response (Zero Carbon) Amendment Act 2019, and to increase support for striving towards 100 percent renewable electricity generation, low carbon energy, and transport systems.³

¹ <https://www.un.org/sg/en/content/sg/statement/2022-04-04/secretary-generals-video-message-the-launch-of-the-third-ipcc-report-scroll-down-for-languages>

² <https://www.rnz.co.nz/news/world/478257/cop27-we-re-on-a-highway-to-climate-hell-un-boss>

³ https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20201202_20201202_08

6. In its Report *New Directions for Resource Management in New Zealand* (June 2020), the Resource Management Review Panel devoted an entire chapter to climate change and natural hazards. At the outset of Chapter 6 on climate change and natural hazards, the Review Panel observed:⁴

“Climate change is often described as the defining issue of our time. Limiting global warming to 1.5 degrees Celsius above pre-industrial levels will require rapid, far-reaching and unprecedented changes in all aspects of society. We are already experiencing the effects of climate change, including through flooding and coastal erosion that threaten our essential infrastructure and the safety of whole communities. We need to respond with urgency.”

7. As these Submissions were being written over Auckland Anniversary weekend 2023, disastrous climate change induced floods and slips wreaked havoc across the upper North Island. The Prime Minister Chris Hipkins acknowledged that a cause of these floods and slips was climate change.⁵ If ever there was a ‘wake-up call’ to turn the words of the New Zealand Parliament’s declaration of a climate change emergency into action, this has to be it.

(2) Summary of Submissions

8. In summary, LKANZI welcomes the provisions of the NBE Bill and SP Bill that have some focus on climate action.
9. However, in light of the existential threat climate change poses, the recognition of that threat by the New Zealand Parliament, and the evidence of the scale of the planning challenge graphically demonstrated by the disastrous climate change induced floods over Auckland Anniversary weekend, we urge the Select Committee to recommend that taking climate action be one of the central goals of these two Bills, rather than being only one of a number of system outcomes. All the other system outcomes along with the purpose of the Bill will be unachievable without giving climate action this priority.
10. Accordingly, although LKANZI welcomes the inclusion in clause 5(b) of the NBE Bill of system outcomes for: (i) the reduction of greenhouse gas emissions; (ii) the removal of greenhouse gases from the atmosphere; and (iii) the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change, we strongly recommend, in addition, that this system outcome be prioritised amongst all others and also that climate action be recognised as a key purpose of both Bills (ie in clause 4 of the NBE Bill and clause 3 of the SP Bill) because so much of what these Bills seek to achieve cannot be achieved if climate action is not prioritised.
11. We also have concerns that the NBE Bill does not go as far as ensuring that the climate change mitigation set out in the national planning framework is consistent with the emissions budgets, emissions reduction and adaption plans and emissions budgets made under the Climate Change Response Act 2002 (‘CCRA’) and in a way that aligns with and supports emissions pricing and reduces the risks from natural hazards and adverse effects of climate change. We recommend that the national planning framework includes content that provides this direction.
12. Turning to the SP Bill, LKANZI asks that it be made clear that climate action be a priority of this Bill by making climate action a specific subclause of clause 3 of the SP Bill. We also welcome the promotion of the integration of legislation in clause 3(b), though we recommend that the CCRA also be included amongst that legislation. This will also require a consequential amendment to clause 4. However, should our recommendations in this regard not be accepted, we recommend that Schedule 3 of the SP

⁴ Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 164.

⁵ <https://www.youtube.com/watch?v=NScyr2wglc>

Bill refer to the emissions reduction and national adaptation plans prepared under CCRA. These would then become matters to which a regional planning committee must have particular regard under clause 24 of the SP Bill when preparing a regional spatial strategy. Further, though we welcome clause 15 of the SP Bill, which provides for the scope of a regional spatial strategy, we recommend it also refer to the achievement of the climate action system outcomes. We also welcome clause 17, which sets out the key matters of strategic importance for regional spatial strategies, but again recommend these include identifying areas for sequestering carbon and renewable energy or align with clause 5(b) of the NBE Bill.

13. With regard to the functions and powers of both regional councils and territorial authorities, we ask that the wider functions and powers regarding climate action (eg the reduction of greenhouse gas emissions and climate change adaptation) be set out in Part 10, subpart 4 of the NBE Bill.
14. LCANZI also welcomes clause 86 of the NBE Bill which provides that the national planning framework may itself state that a plan direct the use of an adaptive management approach.
15. With regard to the modification of established land uses, we welcome clause 26 which provides that although certain existing uses are protected in relation to land, an existing use must comply with any plan rules that gives effect to the national planning framework as it relates to climate action and the risks associated with natural hazards and climate change.
16. Though we believe a Climate Adaptation Bill should already have been introduced and passed by Parliament to provide direction for the NBE Bill and SP Bill, LCANZI looks forward to the introduction of this Bill to address the complex issues associated with managed retreat as quickly as possible.
17. We are concerned that the NBE Bill provides for a fast track planning process without an assessment whether any fast track proposals meet our climate action commitments or, for example, prioritise cycleways and pedestrian infrastructure.
18. Finally, there is clear evidence that urban tree protection as well as growing more trees is crucial in taking climate action as well as combating the effects of climate change and mitigating the negative impacts of urbanisation. The provision of shade and reduction of heat island effects in built-up areas through urban trees is of utmost importance, as well as their role in carbon sequestration. Based on our analysis, clause 125 of the proposed legislation is complex and falls well short of meeting the objectives of urban tree protection and may even create barriers that surpass those currently present in sections 76(4A), (4B), (4C), and (4D) of the Resource Management Act ('RMA'). Given that climate change is here, we strongly recommend that the power for local councils to implement general tree protection regulations in their plans be reinstated. This will ensure that urban trees receive the protection they deserve and provide opportunities to grow more trees, so that they can play their full role in mitigating climate change and supporting adaptation to the impacts.

***(3) Resource Management Act 1991
and the Report of the Resource Management Review Panel***

19. Chapter 6 of the Report of the Resource Management Review Panel on climate change and natural hazards traverses the history of the climate change provisions of the RMA and the associated case-law. At the outset of our submission, we believe it is important to set out some of that history and the current provisions of the RMA to consider whether the NBE Bill and the SP Bill actually advance our resource management response to climate change.

Climate change and the RMA

20. Although reducing greenhouse gas emissions was identified as an important policy goal in the 1990s, New Zealand has still not developed comprehensive policy tools to support emissions reduction goals.⁶
21. The recent changes to the CCRA have now resulted in legally binding targets to reduce greenhouse gas emissions. The Emissions Trading Scheme ('ETS') now aligns with these targets through caps on emissions that reduce over time. However, as the Review Panel noted in its Report, a broad range of policy tools will be needed if New Zealand is to become a low-emissions economy over the next decade and meet the ambitious targets set under the CCRA.⁷
22. The Review Panel observed that although the RMA was New Zealand's pre-eminent resource management legislation, it had been deliberately constrained from taking an appropriate role in addressing climate change. Amendments introduced by the Resource Management (Energy and Climate) Amendment Act 2004 to sections 70A and 104E of the RMA removed the ability of local authorities to consider discharges of greenhouse gas emissions, unless a national environmental standard was developed.⁸ Disappointingly, central government never developed such a standard.
23. The Review Panel also noted that the Supreme Court had interpreted this statutory bar on considering greenhouse gas emissions under the 2004 amendments as also precluding local authorities from considering greenhouse gases which result indirectly from activities under the RMA.⁹ This was to be the case except when the use and development of renewable energy enabled a reduction in the discharge of greenhouse gases into air. The Court's interpretation of the renewable energy exemption also limited its scope.¹⁰ An observation of the Review Panel was that the net effect of the Court's interpretation and its impact on the perceptions and practices of councils and resource management practitioners was arguably more restrictive than Parliament's original intent.¹¹
24. As a consequence, the 2004 amendments to the RMA removed the direct control of greenhouse gas emissions from regional councils. At that time, the Government made a number of arguments supporting the conclusion that the RMA was not a useful policy tool for addressing climate change

⁶ Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 168.

⁷ Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 168.

⁸ Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 166.

⁹ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 166, ft 206: "The majority found, with the Chief Justice dissenting, that the legislative scheme under which climate change arguments are excluded in relation to the use of a power station would be subverted if the same arguments could be deployed in relation to its zoning. Such an outcome, the Court found, would subvert the whole scheme of the RMA as amended in 2004. The majority in Buller was satisfied that in s 104(1)(a) the words "actual or potential effects on the environment" in relation to an activity which is under consideration by a local authority do not extend to the impact on climate change or the discharge into air of greenhouse gases that result indirectly from that activity. See *West Coast ENT Incorporated v Buller Coal Ltd* [2013] NZSC 87 at [168] – [175]."

¹⁰ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 166, ft 207: The majority found, with the Chief Justice dissenting, that this exception only applies to applications involving the use and development of renewable energy. It is not open to local authorities to consider the dis-benefits of non-renewable energy, in other applications, outside of this explicit exception. See *Greenpeace New Zealand Inc v Genesis Power Ltd* [2008] NZSC 112 at [62].

¹¹ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 166.

mitigation.¹² When those arguments were made, it was anticipated a carbon tax would shortly be introduced in 2007. However, as the Review Panel noted, notwithstanding recent positive moves by the Government, an effective and comprehensive emissions pricing scheme is yet to be established and still appears some years away.¹³

25. In hindsight, said the Review Panel, while the arguments made in favour of emissions pricing rather than a regulatory approach in the early 2000s had some merit, focusing almost exclusively on developing a pricing approach to reduce carbon emissions may have been a mistake.¹⁴
26. The Review Panel concluded that a future system of environmental and land use planning and regulation had the potential to play an important role alongside emissions pricing.¹⁵
27. To be efficient, the Review Panel was also of the view that the approach developed would need to address the arguments made in the early 2000s. It would also need to work alongside any pricing mechanism in place under the ETS. Nonetheless, the Review Panel held to a view that land use planning also has an important role to play in enabling and supporting the land use change and infrastructure needed for a transition to a low-emissions economy. This, said the Panel, was likely to include significant afforestation, further development of wind and other renewable electricity generation, changes in the way transport networks operate to reduce reliance on fossil fuels, and more efficient use of existing urban infrastructure, among other things. All of these matters intersect with resource management plans and consents and will need to be provided in resource management regulation.¹⁶
28. At the time of writing their report, the Review Panel noted that the Resource Management Amendment Bill 2020 was still before Parliament. The Panel supported the proposals in that Bill to remove the statutory barriers to RMA consideration of greenhouse gas emissions. The Bill was enacted and made several important changes to the current RMA provisions addressing climate change.

¹² This included that: - Climate change is an international issue and should be dealt with consistently at a national level. As greenhouse gas emissions have the same effect irrespective of where they occur, it would be inappropriate to have different emission standards in different regions. A price on carbon would provide a uniform incentive across the whole country to reduce emissions where that could be done at least cost; - the national instruments available under the RMA, including national policy statements and national environmental standards, are unlikely to be cost-effective for controlling greenhouse gases because of the time and expense of developing and implementing them (particularly given the current RMA process); - Rules in regional and district plans under the RMA do not in themselves encourage best practice activities; rather they identify the thresholds above which a consent is required. This means that rules in plans are generally ineffective in encouraging best practice although, for those activities requiring a resource consent, best-practice outcomes could be achieved through a consent condition; - It can be argued that, under the RMA, climate change effects of a particular activity seeking consent are de minimis and/or are part of the existing or permitted baseline.; - There is some uncertainty as to the ability of councils to impose consent conditions related to effects on climate change. For example, it is uncertain whether a council can consider 'effects' outside the boundary of the region and impose conditions requiring third-party involvement. See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), pages 168-169.

¹³ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 169.

¹⁴ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 169. "Even if New Zealand were to achieve a comprehensive price on greenhouse gas emissions, a single price alone is unlikely to be an efficient or effective way to deliver the broad change required for New Zealand to transition to a low-carbon economy. As argued by the Productivity Commission and others, "a single emissions price cannot ... reflect the varying range of co-benefits and co-harms associated with different land uses". Additional incentives or regulation to secure benefits or avoid harms are required. Others believe that plan rules and/or consents for activities which emit substantial quantities of greenhouse gases should consider the climate change effects in order to prevent additional damage or to agree a time-limited transition."

¹⁵ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 169.

¹⁶ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 169.

Current RMA provisions on climate change

29. Currently, the purpose and principles of the RMA (Part 2) require persons exercising functions and powers under the Act to specifically recognise and provide for ‘the management of significant risks from natural hazards’ and to have particular regard to ‘the efficiency of the end use of energy’, ‘the effects of climate change’ and ‘the benefits to be derived from the use and development of renewable energy (sections 6 – ‘Matters of national importance’ and 7 – ‘Other matters’):¹⁷

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (h) the management of significant risks from natural resources

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to — ...

- (ba) the efficiency of the end use of energy: ...

- (i) the effects of climate change:

- (j) the benefits to be derived from the use and development of renewable energy.

30. However, as the Review Panel noted, a weakness remains in that those exercising such functions and powers must only ‘have particular regard to’ the effects of climate change, as an ‘other matter’ in Part 2.¹⁸

31. The RMA also provides for definitions of ‘climate change’, ‘greenhouse gas’ and ‘renewable energy’ in section 2:

climate change means a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods

greenhouse gas has the meaning given to it in section 4(1) of the Climate Change Response Act 2002

renewable energy means energy produced from solar, wind, hydro, geothermal, biomass, tidal, wave, and ocean current sources

32. Through policy statements and plans, regional councils set objectives, policies and methods for controlling the use of land to avoid or mitigate natural hazards. In district plans, territorial authorities control the effects of land use to avoid or mitigate natural hazards through zones or overlays, rules and

¹⁷ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 166.

¹⁸ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 171.

performance standards for land use and subdivision. However, there are no explicit functions for councils in sections 30 and 31 with respect to climate action or climate change adaptation.¹⁹

33. As noted above, the Resource Management Amendment Act 2020 ('**RMAA2020**') reintroduced specific consideration of climate change.²⁰
34. In particular, the RMAA2020 provided that Councils must have regard to emissions reduction plans and national adaptation plans under the CCRA (as amended by the Climate Change Response (Zero Carbon) Amendment Act 2019) when making and amending regional policy statements, regional plans and district plans (sections 61, 66, 74 RMA).

61 Matters to be considered by regional council (policy statements)

... when preparing or changing a regional policy statement, the regional council shall have regard to—

(d) any emissions reduction plan made in accordance with section 5ZI of the Climate Change Response Act 2002; and

(e) any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002.

66 Matters to be considered by regional council (plans)

... when preparing or changing a regional plan, the regional council shall have regard to—

(d) any emissions reduction plan made in accordance with section 5ZI of the Climate Change Response Act 2002; and

(e) any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002.

74 Matters to be considered by territorial authority

... when preparing or changing a district plan, a territorial authority shall have regard to—

(d) any emissions reduction plan made in accordance with section 5ZI of the Climate Change Response Act 2002; and

(e) any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002.

35. In addition, Councils may consider discharges to air of greenhouse gas emissions, as the sections prohibiting councils from considering these discharges have now been repealed (that is, the previous sections 70A, 70B, 104E and 104F).

~~**70A Application to climate change of rules relating to discharge of greenhouse gases**
Despite section 68(3), when making a rule to control the discharge into air of greenhouse gases under its functions under section 30(1)(d)(iv) or (f), a regional council must not have regard to the effects of such a discharge on climate change, except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases, either—~~

¹⁹ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 166.

²⁰ Although it should be noted that the Review Panel did support the Resource Management Amendment Act 2020 Bill that was before Parliament and the proposal to remove the statutory barriers to RMA consideration of greenhouse gas emissions. See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 178.

- ~~(a) in absolute terms; or~~
~~(b) relative to the use and development of non-renewable energy.~~

~~**70B Implementation of regulations made under section 43**~~

~~If regulations are made under section 43 to control the effects on climate change of the discharge into air of greenhouse gases, a regional council may make rules that are necessary to implement the regulations, provided the rules are no more or less restrictive than the regulations.~~

~~**104E Applications relating to discharge of greenhouse gases**~~

~~When considering an application for a discharge permit or coastal permit to do something that would otherwise contravene section 15 or section 15B relating to the discharge into air of greenhouse gases, a consent authority must not have regard to the effects of such a discharge on climate change, except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases, either —~~

- ~~(a) in absolute terms; or~~
~~(b) relative to the use and development of non-renewable energy.~~

~~**104F Implementation of regulations made under section 43**~~

~~If regulations are made under section 43 to control the effects on climate change of the discharge into air of greenhouse gases, a consent authority, when considering an application for a discharge permit or coastal permit to do something that would otherwise contravene section 15 or section 15B, —~~

- ~~(a) may grant the application, with or without conditions, or decline it, as necessary to implement the regulations; but~~
~~(b) in making its determination, must be no more or less restrictive than is necessary to implement the regulations.~~

36. Further, a Board of Inquiry or the Environment Court must take into account climate change when a matter is called in as a matter of national significance on the basis of its greenhouse gas emissions.²¹

Resource Management Review Panel recommendations

37. In addition to traversing the history of the climate change provisions of the RMA and the associated case-law, Chapter 6 of the Report of the Resource Management Review Panel also identified several issues with the way the RMA addressed climate change and natural hazards. These were:²²

- insufficient focus on reducing greenhouse gas emissions and planning for a low emissions economy (mitigation);
- insufficient focus on addressing the effects of climate change (adaptation) and the risks from natural hazards;
- poor integration across the system, in particular between the RMA and the CCRA; and
- capacity, capability and funding barriers.

38. The Review Panel 'Issues and Options' paper had suggested several options in relation to climate change (both mitigation and adaptation) and natural hazards.²³ The Panel received a broad range of

²¹ MfE, *Overview of changes introduced by the Resource Management Amendment Act 2020* (2021). See section 142, RMA.

²² See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), Chapter 6.

²³ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 176. These included: • Maintain the current focus on the ETS as the main policy tool to address climate change mitigation. • Add reference to climate change mitigation to Part 2 of the RMA. • Develop national direction to encourage the types of activities needed to facilitate New Zealand's transition to a low carbon economy. This includes renewable energy, carbon capture and storage, uptake of low emissions technologies and efficient urban form. • Use spatial planning for land use and infrastructure as a tool for addressing climate change mitigation. • Develop a national environmental standard with controls on greenhouse gas emissions under the RMA. This might be targeted at particular emissions-intensive activities for which emissions pricing is unlikely to be effective. • Require the Minister for the Environment to develop or amend national direction under the RMA in response to the carbon budgets determined by the CCRA. • Develop national

feedback on these options and further suggestions for reform from submitters and stakeholders. The Panel identified a full range of options as follows:²⁴

- using the Natural and Built Environment Act ('NBE Act') to reduce greenhouse gas emissions and plan for a low-emissions-economy;
- improving the planning framework for climate change adaptation and natural hazards;
- increasing integration across the resource management system;
- addressing managed retreat under the proposed Natural and Built Environments Act; and
- new legislation, funding and implementation support for climate change adaptation and managed retreat to reduce risks from natural hazards.

39. Finally, the Review Panel made seven key recommendations in relation to climate change (both mitigation and adaptation) and natural hazards:²⁵

1. Outcomes should be introduced for the following matters in the purpose and principles of the proposed NBE Act: (i) reduction of risks from natural hazards; (ii) improved resilience to the effects of climate change, including through adaptation; (iii) reduction of greenhouse gas emissions; (iv) promotion of activities that mitigate emissions or sequester carbon; (v) increased use of renewable energy.
2. Mandatory national direction should be required for: (i) climate change mitigation consistent with the emissions reduction plan under the CCRA and in a way that aligns with and supports emissions pricing (ii) climate change adaptation and reduction of risks from natural hazards consistent with the national climate change risk assessment and national adaptation plan under the CCRA.
3. Regional spatial strategies developed under the proposed Strategic Planning Act should be used to address at a strategic level: (i) climate change mitigation, informed by the emissions reduction plan under the CCRA; (ii) climate change adaptation and natural hazard risk reduction, informed by the national adaptation plan under the CCRA.
4. Reducing greenhouse gas emissions, climate change adaptation and reducing risks from natural hazards should be included in the functions and powers of both regional councils and territorial authorities under the proposed Natural and Built Environments Act.
5. Combined plans should be used to regulate land and resource use to give effect to the national direction and implement spatial strategies. This would include provisions under the proposed Natural and Built Environments Act to allow for adaptive planning measures.
6. Powers under the NBE Act to modify established land uses should be clarified to address climate change adaptation and reduction of risks from natural hazards.
7. A Managed Retreat and Climate Change Adaptation Act should be introduced to: (i) provide for managed retreat, powers to change established land uses and to address liability and

direction to provide clearer planning restrictions for development in high-risk areas. • Use spatial planning processes to identify future adaptation responses (in the context of the national adaptation plan) that connect with regulation, infrastructure provision and adaptation funding. • Improve implementation of risk assessments. • Clarify what changes might be needed to existing use rights in the context of managed retreat. • Introduce new planning tools such as 'dynamic adaptive policy pathways' and other measures. • Require the Minister for the Environment to develop or amend national direction under the RMA in response to the national adaptation plan developed under the CCRA.

²⁴ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), Chapter 6.

²⁵ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 191.

options for potential compensation; (ii) establish an adaptation fund to enable central and local government to support necessary steps to address climate change adaptation and reduction of risks from natural hazards.

(4) Submissions on the Natural and Built Environment Bill and the Spatial Planning Bill

40. Overall, we agree with the conclusions of the Review Panel that a future system of environmental and land use planning and regulation should play an important role alongside emissions pricing.²⁶ However, in light of the disastrous climate change induced flooding and slips over Auckland Anniversary weekend and the commitments Parliamentary made in its declaration of a climate emergency, we would go further and urge the Select Committee to recommend that taking climate action must now be at the front and centre of these two Bills, rather than being only one of a number of system outcomes. As we have experienced over Auckland Anniversary weekend, poor land use planning decisions that did not prioritise the risk of impacts of climate change over use and development of land have resulted in flooded homes, businesses and loss of life.
41. Taking a lead from the seven key recommendations of the Review Panel, LCANZI makes the following submissions on the NBE Bill and SP Bill.

(4A) Outcomes in the purpose and principles of the proposed Natural and Built Environment Act

42. As to whether the future NBE Act should include measures to address climate change, the Review Panel concluded that greater policy coherence and effectiveness would be achieved if a future NBE Act included a focus on reducing greenhouse gas emissions and planning for a low-emissions economy.²⁷
43. We agree.
44. However, the Review Panel also cautioned that the way national direction and plans should be used to reduce greenhouse gas emissions in a future system would need to be carefully considered. They saw two distinct roles: • imposing direct controls on activities to prevent greenhouse gas emissions in certain limited and nationally prescribed circumstances; and • planning for the land use change and infrastructure to enable a transition to a low emissions economy.²⁸ On the latter, the Review Panel observed that:

“There is also a role for plans to consider the indirect impacts that decisions about land use and infrastructure will have on emissions and to ensure they promote a transition to a low-emissions economy. This includes planning for renewable energy infrastructure, urban intensification, afforestation, and changes in the way transport networks move people and freight (including through the uptake of electric vehicles and ride-sharing technology), among other things. An emissions price set through the ETS is not a matter to be addressed by the central and local government decision-makers with responsibilities for land use and infrastructure, but rather by businesses and consumers downstream. This suggests the need for a clear obligation for planning decisions to take full account of these downstream emissions impacts.”

45. As a consequence, the first key recommendation of the Review Panel was that:

²⁶ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 169.

²⁷ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 178.

²⁸ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 178.

1. Outcomes should be introduced for the following matters in the purpose and principles of the proposed NBE Act: (i) reduction of risks from natural hazards; (ii) improved resilience to the effects of climate change, including through adaptation; (iii) reduction of greenhouse gas emissions; (iv) promotion of activities that mitigate emissions or sequester carbon; (v) increased use of renewable energy.

46. The Report of the Review Panel also suggested indicative drafting of the purpose and principles and definitions for the NBE Act, which were:²⁹

To assist in achieving the purpose of this Act, those exercising functions and powers under it must provide for the following outcomes:

Natural hazards and climate change

- (q) reduction of risks from natural hazards;
- (r) improved resilience to the effects of climate change including through adaptation;
- (s) reduction of greenhouse gas emissions;
- (t) promotion of activities that mitigate emissions or sequester carbon; and
- (u) increased use of renewable energy.

47. Turning to the NBE Bill, we note that those recommendations have been largely carried forward into clause 5 of the NBE Bill (albeit with different drafting).

5 System Outcomes

To assist in achieving the purpose of the Act, the national planning framework and all plans must provide for the following system outcomes:

(b) in relation to climate change and natural hazards, achieving—

- (i) the reduction of greenhouse gas emissions;
- (ii) the removal of greenhouse gases from the atmosphere;
- (iii) the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change;

48. We especially welcome the inclusion of clause 5(b) in the NBE Bill.

49. Although we expect that the suggestion of the Review Panel that the outcomes for the “promotion of activities that mitigate emissions or sequester carbon” and ‘increased use of renewable energy’ were intended to be captured by clause 5(b)(i), we would prefer these two suggestions of the Review Panel remain clear in the drafting of the clause. Again, although we expect that the suggestion of the Review Panel that the outcome for the “promotion of activities that sequester carbon” was intended to be captured by clause 5(b)(ii), again we would prefer this suggestion remain clear in the drafting. Further, although the suggestion of the Review Panel that the outcomes include ‘improved resilience to the effects of climate change including through adaptation’ was intended to be captured by clause 5(b)(iii), we would prefer the suggestion of the Review Panel remain clear.

50. We also hold concerns there is no clear prioritisation of reducing greenhouse gases over the removal of greenhouse gases from the atmosphere in clause 5(b). Nor is there any indication of the urgency and magnitude of the reductions required to meet New Zealand’s emissions reduction commitments. Furthermore, there is no relationship set out between those aspects of the clause concerning

²⁹ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 484.

reductions and removals, nor any requirement to address mitigation and adaptation in an integrated way to avoid poor outcomes. In our view, reductions should be the priority and removals should be made in addition to and not in substitution for reductions to avoid the ‘netting out fallacy’. There is also no clear protective element in clause 5(b) for the natural environment as opposed to the built environment in response to the risks and effects of climate change. For example, as currently drafted, the need to improve the resilience of the “environment” to climate change risks (which includes the built environment) could be used to justify the construction of seawalls, rather than enabling managed retreat and the preservation of coastal margins and their habitats. Finally, there is no mention of requirements for fair, equitable and inclusive approaches to emissions removal, reduction or the reduction of risks from climate change.³⁰

51. These concerns might be achieved by redrafting clause 5(b) as follows:

5 System Outcomes

(b) in relation to climate change and natural hazards, achieving, [in an equitable and integrated way](#) —

- (i) [as a priority](#), the reduction of greenhouse gas emissions [consistent with New Zealand’s emissions budgets as set under the Climate Change Response Act 2002 \(including through activities that mitigate emissions and increased use of renewable energy\)](#); and then
- (ii) the removal of greenhouse gases from the atmosphere [consistent with New Zealand’s emissions budgets as set under the Climate Change Response Act 2002 \(including through the promotion of activities that sequester carbon, especially in the long term\)](#); and
- (iii) [the avoidance and](#) reduction of risks arising from, and better resilience of the [natural environment \(as a priority over the built environment\)](#) to, natural hazards and the effects of climate change [\(including through adaptation\)](#):

52. While we accept that including climate action as one of a number of unprioritised system outcomes was the position of the Review Panel in June 2020 and this is reflected in the NBE Bill, in light of the existential threat that climate change now poses and the evidence of the scale of the planning challenge graphically demonstrated by the disastrous climate change induced floods over Auckland Anniversary weekend,³¹ we would go further than the Review Panel and suggest that this climate action now justifies clause 5(b) being a pre-eminent system outcome and that tackling climate change should become one of the purposes of the Act. On the latter, we suggest the following changes:

3 Purpose of this Act

The purpose of this Act is to—

- (a) enable the use, development, and protection of the environment in a way that:
 - (i) supports the well-being of present generations without compromising the well-being of future generations; and
 - (ii) promotes outcomes for the benefit of the environment; and
 - (iii) complies with environmental limits and their associated targets; and
 - (iv) manages adverse effects; and
- (b) recognise and uphold te Oranga o te Taiao; and

³⁰ See *te hau mārohi ki anamata: Towards and productive, sustainable and inclusive economy, Aotearoa New Zealand’s First Emissions Reduction Plan (2022)*

³¹ https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20201202_20201202_08

(c) [in relation to climate change and natural hazards, achieve in an equitable and integrated way -](#)

[\(i\) the reduction of greenhouse gas emissions;](#)

[\(iii\) the removal greenhouse gases from the atmosphere; and](#)

[\(iii\) the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change.](#)

Conflicts between system outcomes

53. We are concerned that, as currently set out in the NBE Bill, the extent to which the climate change-related system outcomes are advanced by the NBE Act will depend in large part on how priorities or conflicts are resolved between these and other system outcomes. The Review Panel recommended that, to simplify the Act, there be no hierarchy among the outcomes specified. Any conflict between or doubt about the application of the matters specified is required to be reconciled and clarified through national direction and plans.³²
54. We have concerns that this approach will lead to the reintroduction of the ‘overall broad judgment’ approach to decision-making, which was criticised by the Review Panel as enabling local government and the courts to interpret sustainable management in a way that avoided addressing difficult resource management challenges, led to poor decisions and insufficient change.³³
55. For example, amongst the system outcomes in clause 5, there would already appear to be conflicts between or doubt about the prioritisation of the climate changes outcomes in clause 5(b) and the urbanisation/housing outcomes in clause 5(c). Indeed, we are seeing this play out starkly, following the disastrous climate change induced flooding over Auckland Anniversary weekend, where urbanisation/housing outcomes were previously prioritised over the avoidance or reduction of risks arising from climate change. This has resulted flooding and the ‘red stickering’ of many homes which, if the avoidance of these risks had been prioritised, would most likely not have been built. We now have climate refugees without homes in our own country because of these poor land use planning decisions to develop housing ahead of avoiding the risks of flooding.

Definitions and Phrases

56. The Report of the Review Panel also suggested indicative drafting for a number of definitions related to natural hazards and climate change. The suggestions were for the retention of the definitions of climate change, natural hazard, renewable energy from the RMA and the introduction of a definition of risk to align with the definition in section 4 of the Civil Defence Emergency Management Act 2002.³⁴
57. We welcome the inclusion of those definitions.
58. We also welcome the inclusion of the definition of “greenhouse gas”, which has the meaning given in section 4(1) of the CCRA.³⁵ We also welcome the way in which this definition may be amended over

³² See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), including page 76. See, for example, sections 33(b), 57, 99, 102.

³³ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 60.

³⁴ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), pages 488-489.

³⁵ Section 4(1) of the Climate Change Response Act 2002 states that greenhouse gas means - (a) carbon dioxide (CO₂): (b) methane (CH₄): (c) nitrous oxide (N₂O): (d) any hydrofluorocarbon: (e) any perfluorocarbon: (f) sulphur hexafluoride (SF₆).

time by Order in Council through the operation of section 4AA of the CCRA. We also welcome the definitions of “emissions reduction plan” and “national adaptation plan”.³⁶

59. We note that the Report of the Review Panel also suggested a definition of “precautionary approach” to mean undertaking a careful evaluation of the risks and favouring caution and the protection of the environment. We also note that there was a definition of precautionary approach in the Exposure Draft of the NBE Bill.³⁷ Further, taking a precautionary approach is a legal mechanism used internationally regarding climate change and sustainable management more generally. While no definition of precautionary approach or a use of that term is included in the NBE Bill, we note that clause 6(2) ‘Decision-making principles’ does include a principle relating to taking a cautionary approach.³⁸ However, the drafting of clause 6(2) includes the phrase ‘a level proportionate with the risks and effects involved’. Adding these words appears to make the assessment circular because if there is inadequate or uncertain information, then it is going to be difficult to evaluate the level of risks and effects involved. We are concerned that the NBE Bill appears to be watering down the precautionary principle.

60. In this regard, we note that section 61(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, which provides that: “If, in relation to making a decision under this Act, the information available is uncertain or inadequate, the marine consent authority must favour caution and environmental protection.”

61. We ask that clause 6(2) of the NBE Bill be changed as follows:

(2) If, in relation to making a decision under this Act, the information available is uncertain or inadequate, all persons exercising functions, duties, and powers under this Act must favour—

(a) [precaution and environmental protection](#); and
~~(b) a level of environmental protection that is proportionate to the risks and effects involved.~~

62. On another matter, we note that at times through the NBE Bill and SP Bill the phrase ‘natural hazards or climate change’ is used and at other times only the phrase ‘natural hazards’. Our understanding of the clauses where reference is made to only ‘natural hazards’ is that, in fact, both natural hazards and the effects of climate change are intended to be addressed. We ask that these clauses be appropriately amended to refer to climate change or the effects of climate change.³⁹

³⁶ See section 7, NBE Bill. “Emissions reduction plan” means the emissions reduction plan or national adaptation plan prepared under the Climate Change Response Act 2000. “National adaptation plan” means the national adaptation plan prepared under the Climate Change Response Act 2000.

³⁷ Exposure Draft, Natural and Built Environments Bill. “Precautionary approach” was defined as “an approach that, in order to protect the natural environment if there are threats of serious or irreversible harm to the environment, favours taking action to prevent those adverse effects rather than postponing action on the ground that there is a lack of full scientific certainty.

³⁸ “If, in relation to making a decision under this Act, the information available is uncertain or inadequate, all persons exercising functions, duties, and powers under this Act must favour - (a) caution; and (b) a level of environmental protection that is proportionate to the risks and effects involved.”

³⁹ For example, clauses 228 (consent authority may refuse subdivision in certain circumstances), 277 (circumstances when consent conditions can be reviewed), 281 (decisions on review of consent conditions), 604 (purposes of esplanade reserves and esplanade strips), 625 (requirement for protection against natural hazards), 644 (matters for which regional councils and unitary authorities are responsible), 646 (matters for which territorial authorities or unitary authority responsible), 682 (content of Mana Whakahono ā Rohe), 816 (Duty to gather information and keep records), sch10, cl7 (matters that must be addressed by assessment of environmental effects).

(4B) National direction

63. To ensure consistency in the approach taken to the climate change outcomes and in light of climate change being a global issue, the Review Panel recommended mandatory national direction be used to prescribe and guide the approach taken in plans. To address concerns about duplication of regulatory methods, the view of the Review Panel was that national direction for the direct control of activities with greenhouse gas emissions should be: • aligned with and complementary to the CCRA, including the emissions reduction plan and the ETS; • targeted at activities in which emissions pricing was considered insufficient or too slow-moving to deliver the desired transition; and • implemented through clear provisions that would not require a case-by-case assessment of the emissions impact of an activity in resource consents.⁴⁰
64. We agree.
65. As noted above, the second key recommendation of the Review Panel was that:
2. Mandatory national direction should be required for: (i) climate change mitigation consistent with the emissions reduction plan under the CCRA and in a way that aligns with and supports emissions pricing (ii) climate change adaptation and reduction of risks from natural hazards consistent with the national climate change risk assessment and national adaptation plan under the CCRA.
66. Turning to the NBE Bill, we note that those recommendations have been broadly carried forward into the NBE Bill.
67. Part 3 of the NBE Bill provides for the National Planning Framework. Clause 57 of the Bill provides that the national planning framework must include content that provides direction for each system outcome and for the resolution of conflicts between or among the system outcomes. As a consequence, the national planning framework must include content that provides direction for: (i) the reduction of greenhouse gas emissions; (ii) the removal of greenhouse gases from the atmosphere; and (iii) the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change.
68. We agree with the inclusion in the national planning framework of these matters.
69. However, we do have concerns that the NBE Bill does not go as far as ensuring that the climate change mitigation set out in the national planning framework is consistent with the emissions reduction and adaption plans made under the CCRA and in a way that aligns with and supports emissions pricing, emissions budgets and reduces the risks from natural hazards.
70. We recommend that the national planning framework include content that provides direction on the emissions reduction and adaption plans made under the CCRA and gives effect to the emissions budgets set under the CCRA.

Environmental limits and targets

71. Part 3, subpart 2 of the NBE Bill provides for environmental limits and targets. Although environmental limits and targets must be set in relation to “air”, as there is no definition of air in the Bill, it is unclear whether environmental limits and targets must be set in relation to greenhouse gas emissions (which prior to the RMA amendments in 2004 were considered a discharge affecting the air). To clarify this

⁴⁰ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 179.

matter, we suggest the following change to clause 38 to ensure that environmental limits can be set for greenhouse gas emissions:

38 Environmental limits

(1) Environmental limits must be set in relation to the following aspects of the natural environment:

(a) air ([including greenhouse gas emissions consistent with New Zealand's emissions budgets as set under the Climate Change Response Act 2002](#)):

(b) indigenous biodiversity;

(c) coastal water;

(d) estuaries;

(e) freshwater;

(f) soil.

(2) Environmental limits may be set for any other aspect of the natural environment in accordance with the purpose of setting environmental limits.

72. We also believe regional limits can be set in relation to greenhouse gases emissions, which could be managed like the reduction of air pollutants emissions in Air Quality national environmental standards airsheds. We recommend provisions be drafted to ensure this occurs.

(4C) Regional spatial strategies

73. The Review Panel proposed a new Strategic Planning Act as a way to address climate change mitigation, adaptation and natural hazards. An important aspect of the proposed Strategic Planning Act would also be to integrate the provisions of the CCRA with regional combined plans under the Natural and Built Environments Act.⁴¹
74. For mitigation, the Review Panel expected regional spatial strategies to be informed by emissions reduction budgets set under the CCRA so that long-term decision-making about land use and infrastructure would be aligned with goals to reduce greenhouse gas emissions. In particular, this was intended to ensure future transport and energy infrastructure supported the transition to a low-carbon economy. Regional spatial strategies would then inform detailed planning for land use and infrastructure.⁴²
75. For adaptation, the Review Panel expected regional spatial strategies to provide for the national adaptation plan developed by central government under the CCRA to be translated into regional-level decisions. Regional spatial strategies were expected to allow a long-term and risk-informed lens to be used for climate change adaptation and natural hazards. This might include identification of areas where residential land use would no longer be possible in coming decades or where alternative servicing infrastructure would be needed. It might also include ensuring new habitats were available to support biodiversity in response to evolving ecosystems. In addition, the Review Panel envisaged that regional risk assessments consistent with the national risk assessment methodology under the CCRA would form an important aspect of regional spatial strategies and regional combined plans in a future system.⁴³
76. We agree.

⁴¹ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 184.

⁴² See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 184.

⁴³ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), pages 184-185.

77. As noted above, the second key recommendation of the Review Panel was that:

3. Regional spatial strategies developed under the proposed Strategic Planning Act should be used to address at a strategic level: (i) climate change mitigation, informed by the emissions reduction plan under the CCRA; (ii) climate change adaptation and natural hazard risk reduction, informed by the national adaptation plan under the CCRA.

78. The Review Panel's recommendation for a new Strategic Planning Act has been advanced through the SP Bill.

79. Turning to the SP Bill, we note that the second key recommendation has been broadly carried forward into the SP Bill.

80. Clause 3 of the SP Bill sets out the purposes of that Act, which is to provide for regional spatial strategies that assist in achieving the system outcomes set out in the NBE Act (which includes climate action), as we said earlier, in light of the existential threat that climate change now poses and the evidence of the scale of the planning challenge graphically demonstrated by the disastrous climate change induced floods over Auckland Anniversary weekend,⁴⁴ we would go further than the Review Panel and suggest that climate action now justifies it being a pre-eminent system outcome and that tackling climate change should become one of the key purposes of the SP Bill.

81. Although we also welcome clause 3(b) of the SP Bill, which is to promote integration in the performance of functions under the Natural and Built Environment Act 2022, the Land Transport Management Act 2003 ('LTMA'), and the Local Government Act 2002 ('LGA'), having regard to the Review Panel's recommendation that regional spatial strategies should be used to address at a strategic level climate change mitigation and adaptation plans made under the CCRA, we would have expected the CCRA to be included as legislation for which integration was being promoted. That is not the case.

82. We note in this regard that the Review Panel stated that in their issues and options paper, that they asked how the RMA should be amended to align with the CCRA. The New Zealand Planning Institute and some councils suggested formal links should be established between the RMA and CCRA, but also with the LGA and LTMA, to ensure that land use planning was consistent with infrastructure investment. The Panel agreed there should be better alignment between the CCRA and a reformed RMA. The Panel also considered that future national direction on climate mitigation and adaptation developed under the NBE Act should be informed by the emissions reduction and national adaptation plans under the CCRA. This would ensure combined plans work towards the national climate change goals.⁴⁵

83. As a consequence, we recommend that climate action become a purpose of the SP Bill and that the Climate Change Response Act 2002 be included alongside the LTMA and LGA.

3 Purpose

The purpose of this Act is to provide for regional spatial strategies that—

(a) assist in achieving—

(i) the purpose of the **Natural and Built Environment Act 2022**, including by recognising and upholding te Oranga o te Taiao; and

(ii) the system outcomes set out in that Act; and

[\(b\) in relation to climate change and natural hazards, achieve in an equitable and integrated way -](#)

⁴⁴ https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20201202_20201202_08

⁴⁵ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 185.

- [\(i\) the reduction of greenhouse gas emissions;](#)
- [\(iii\) the removal greenhouse gases from the atmosphere; and](#)
- [\(iii\) the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change; and](#)
- [\(c\) promote integration in the performance of functions under the **Natural and Built Environment Act 2022**, the Land Transport Management Act 2003, ~~and~~ the Local Government Act 2002 and the \[Climate Change Response Act 2002\]\(#\).](#)

84. As a further consequence, we recommend that the CCRA also be referred to in clause 4 of the SP Bill:

4 How regional spatial strategies promote integration

(1) A regional spatial strategy achieves the purpose described in **section 3(b)** by having effect under the following legislation, as follows and to the extent provided for in that legislation:

Natural and Built Environment Act 2022

(a) a natural and built environment plan under the **Natural and Built Environment Act 2022** must be consistent with the relevant regional spatial strategy (*see section 97(b)* of that Act):

Land Transport Management Act 2003

(b) a regional transport committee under the Land Transport Management Act 2003 (the **LTMA**) must be satisfied that its regional land transport plan is consistent with the relevant regional spatial strategy (*see section 14(a)(iii)* of the LTMA):

(c) the Minister under the LTMA must take into account any relevant regional spatial strategy when preparing or reviewing a Government policy statement on land transport (*see section 67(1)(b)(iii)* of the LTMA):

Local Government Act 2002

(d) a long-term plan under the Local Government Act 2002 (the **LGA**) must set out steps to implement the priority actions for which the local authority is responsible under the relevant regional spatial strategy (*see clause 1A of Schedule 10* of the LGA):

(e) an annual report under the LGA must include a statement on the local authority's progress in implementing those priority actions (*see clause 26A of Schedule 10* of the LGA).

Climate Change Response Act 2002

[\(f\) an emissions reduction plan prepared under Climate Change Response Act 2002](#)

[\(g\) a national adaptation plan prepared under Climate Change Response Act 2002](#)

(2) This section is a guide only to the general scheme and effect of other legislation that provides for the effect of regional spatial strategies.

85. However, should our recommendations in this regard not be accepted, we recommend that Schedule 3 of the SP Bill refer to the emissions reduction and national adaptation plans prepared under CCRA. These are matters to which a regional planning committee must have particular regard under clause 24 of the SP Bill when preparing a regional spatial plan.

Schedule 3 Government policy statements

s 24

Name or topic of Government policy statement

Government policy statement on health

Empowering legislation

Pae Ora (Healthy Futures) Act 2022, s 34

Government policy statement on housing
 and urban development

Government policy statement on land
 transport

Government policy statement on water
 services

[Emissions reduction plan](#)

[National adaptation plan](#)

Kāinga Ora—Homes and
 Communities Act 2019, s 22

Land Transport Management Act
 2003, s 66

Water Services Entities Act
 2022, s 129

[Climate Change Response Act
 2002, s 5ZG](#)

[Climate Change Response Act
 2002, s 5ZS](#)

86. We also welcome clause 15 of the SP Bill, which provides the scope of a regional spatial strategy. However, we note that clause 15 does not refer to the system outcomes, which are to be achieved as a purpose under Clause 3 of the SP Bill. As a consequence, we recommend the following change to clause 15:

15 Scope of regional spatial strategies

(1) A regional spatial strategy must—

(a) set the strategic direction for the use, development, protection, restoration, and enhancement of the environment of the region for a time-span of not less than 30 years; and

(b) provide for the integrated management of the environment, including by providing strategic direction for the instruments in the planning system that are referred to in **section 4**; and

(c) support the efficient and effective management of the environment; and

(d) give effect to the national planning framework to the extent that the framework directs; and

[\(e\) assist in achieving the system outcomes set out in the Natural and Built Environment Act 2022;](#)
 and

(e) otherwise be consistent with the national planning framework.

(2) In meeting the requirements of this section and **section 16**, a regional spatial strategy must support a co-ordinated approach to infrastructure funding and investment by central government, local authorities, and other infrastructure providers.

87. We also welcome clause 17 of the SP Bill, which sets out the key matters of strategic importance for regional spatial strategies. These matters include: ... (i) areas that are vulnerable to significant risks arising from natural hazards, and measures for reducing those risks and increasing resilience: and (j) areas that are vulnerable to the effects of climate change both now and in the future, and measures for addressing those effects and increasing resilience in the region, including indicative locations for - (i) major new infrastructure that would help to address the effects of climate change in the region; and (ii) areas that are suitable for land use changes that would promote climate change mitigation and adaptation.

88. However, we would prefer that the drafting aligns more closely with the Review Panel’s suggestions for system outcomes for climate change and natural hazards (for example, identifying areas for sequestering carbon and use of renewable energy) or clause 5(b) of the NBE Bill.

89. We also hold concerns that the matters in clause 17 (g) of the SP Bill - major existing, planned, or potential infrastructure or major infrastructure corridors, networks, or sites (including existing designations) that are required to meet current and future needs do not appear to require a climate assessment - despite the NBE Bill providing that all regional plans (which replace existing district and regional plans), must be consistent with the Regional Spatial Strategy (clause 104, NBE Bill). Further, the NBE Bill will also provide that if infrastructure has been identified in the Regional Spatial Strategy, when a designation is applied for, the regional planning committee will not be able to consider alternatives, and must assume the infrastructure meets national and regional objectives and must focus on the mitigation of effects.

90. Further, clause 512 of the NBE Bill specifically provides:

"(3) If the infrastructure concerned has been spatially identified in a regional spatial strategy, the planning committee must not consider whether adequate consideration has been given to alternatives.

(4) If the infrastructure concerned has been identified in a regional spatial strategy, the planning committee must not consider whether the work and designation are reasonably necessary for achieving national planning framework outcomes or the regional spatial strategy's vision and objectives for the region's development or any change or strategic outcomes in plans."

91. We ask instead that the matters in clause 17 (g) of the SP Bill - major existing, planned, or potential infrastructure or major infrastructure corridors, networks, or sites (including existing designations) that are required to meet current and future needs are required to have a climate assessment.

(4D) Functions and powers of both regional councils and territorial authorities

92. The Review Panel suggested that an important aspect of improving the planning framework for climate change adaptation and natural hazards was to clarify the roles and responsibilities of regional councils and territorial authorities. The Panel considered limiting responsibility for these issues to regional councils only, as matters of regional significance. However, its preference was to: • assign responsibility for policy for climate change adaptation and reducing risks from natural hazards to both regional councils and territorial authorities (in the combined plan development process), given the broad implications of the issues for both levels of local government; and to • clarify the current role of territorial authorities in implementing land use controls as they relate to these issues (their approach to this division of responsibilities was discussed further in Chapter 8 of the Report on the policy and planning framework).⁴⁶

93. The Review Panel also acknowledged that joint functions in the current sections 30 and 31 of the RMA had led to some confusion, but decided that this was best addressed through development of regional spatial strategies and regional combined plans. The Review Panel believed that these processes would ensure agreement on policy was reached among the relevant decision-makers. It was also addressed by the Review Panel clarifying that implementation of land use controls was the responsibility of territorial authorities alone, rather than a joint function. The Review Panel also considered climate change and natural hazard risk management responsibilities should be made explicit in the Local Government Act ('LGA') through requirements to plan for these matters in long-term plans (to ensure infrastructure and transport plans were integrated with climate change adaptation and natural hazard risk reduction planning).⁴⁷

94. As noted above, the fourth key recommendation of the Review Panel was that:

4. Reducing greenhouse gas emissions, climate change adaptation and reducing risks from natural hazards should be included in the functions and powers of both regional councils and territorial authorities under the proposed Natural and Built Environments Act.

95. Part 10, subpart 4 of the NBE Bill sets out the matters for which local authorities are responsible. Although the functions and powers regarding natural hazards as between local authorities are set out, we are concerned that the wider functions and powers regarding the reduction of greenhouse gas emissions and climate change adaptation are not set out.

96. We ask that the wider functions and powers regarding the reduction of greenhouse gas emissions and climate change adaptation be set out in Part 10, subpart 4 of the NBE Bill.

⁴⁶ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 183.

⁴⁷ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 183.

(4E) Natural and Built Environment Plans and Adaptive planning

97. The Review Panel observed that within the context of national direction, the planning framework for climate change adaptation and natural hazards could also be improved through better enabling and supporting the use of adaptive planning techniques. Adaptive planning, as explained by the Panel, involves the use of scenarios with specified thresholds, signals and triggers which are used to determine when a change in policy response within a predetermined pathway is required. Once an adaptation pathway has been approved for an area, a less involved process would be required to undertake the actual works in the future, as long as they were within the approved parameters. Building adaptive management into plans could, observed the Panel, make the resource management system more responsive by allowing response pathways to be embedded in plans as they are developed, instead of requiring multiple subsequent plan change processes.⁴⁸

98. As noted above, the fifth key recommendation of the Review Panel was that:

5. Combined plans should be used to regulate land and resource use to give effect to the national direction and implement spatial strategies. This would include provisions under the proposed Natural and Built Environments Act to allow for adaptive planning measures.

99. The NBE Bill provides for Natural and Built Environment Plans in Part 4. Although plans must provide for system outcomes, in light of the climate emergency, we consider that clauses 97 and 104 of the NBE Bill should require plans to give effect to emissions budgets, and the emissions reduction and national adaptation plans made under the CCRA. While climate change mitigation is referred to as an outcome in cl 5 (among many others and not in hierarchy), we believe the relationship between CCRA instruments and NBE Bill instruments (the NPF, plans and consents) is very weak. As noted by the Environmental Defence Society in their Submission (as currently drafted), plans must not be “inconsistent with” an emissions reduction plan under cl 21(3)(b) of schedule 6. This integration should be much stronger using the “give effect to” standard. Further, CCRA instruments are not mentioned specifically in the Bill’s consenting provisions (where there should be a requirement to refuse applications that are contrary to emissions budgets, an emissions reduction plan or national adaptation plan).⁴⁹

100. Clause 86 of the NBE Bill provides that the national planning framework may itself state that a plan direct the use of an adaptive management approach. Clause 110 provides further for the use of an adaptive management approach in a plan, while clause 233 provides that a consent authority may grant a resource consent that includes a condition that requires or forms an adaptive management approach.

101. We support the inclusion in the NBE Bill for taking an adaptive management approach.

(4F) Modification of established land uses

102. The Review Panel noted that developing a strategy for managed retreat would require consideration of a spectrum of possible changes to established uses. This would include imposing conditions on the use of land, such as requirements to adapt residential uses through relocatable housing. It would also include decreasing the intensity of land use, for example, to replace commercial and residential uses with temporary and other activities which are less vulnerable. And it would include consideration of

⁴⁸ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 182.

⁴⁹ Environmental Defence Society, *Draft Environmental Defence Society submission on the Natural and Built Environment Bill and Spatial Planning Bill* (2 February 2023), page 87

different land tenure mechanisms, such as sunset clauses to provide for transition periods. There was no clear pathway for developing these types of options under current RMA provisions.⁵⁰

103. To ensure central and local government had the necessary powers, the Panel's view was that the following tools should be available under the NBE Act:

- National direction should have power to modify or extinguish existing use protections and consented activities in circumstances relating to climate change adaptation and natural hazard risks (this would enable central government to address these issues when a centrally driven solution was thought necessary);
- regional councils should also have a role in setting policy for the avoidance or mitigation of natural hazards and for climate change adaptation;
- territorial authorities should also be able to modify or extinguish established land uses in these circumstances; and
- the operation of section 85 of the RMA (or its replacement in the Natural and Built Environments Act) should be addressed in proposed separate legislation for managed retreat.⁵¹

104. As noted above, the sixth key recommendation of the Review Panel was that:

6. Powers under the Natural and Built Environments Act to modify established land uses should be clarified to address climate change adaptation and reduction of risks from natural hazards.

105. Clause 26 of the NBE Bill provides that certain existing uses are protected in relation to land. However, despite this clause 26(2) provides (among other matters) that an existing use of land must comply with the plan rules that give effect to the national planning framework as it relates to the reduction or mitigation of, or adaptation to, risks associated with natural hazards and climate change.

106. We welcome the inclusion of clause 26(2).

107. However, in practice this may be hampered by a requirement in clauses 139-141 that plans do not render land incapable of reasonable use. The relationship between cl 26 and cl 139 is not clear. In this regard we acknowledge the Submission of the Environmental Defence Society who conclude: "Much more clarity is required as to how clauses 26 and 139-141 are intended to operate in the context of climate change adaptation. We get the sense that it will not operate properly without other key pieces

⁵⁰ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 186. For example, there is no power at the territorial authority level to modify or extinguish existing activities or consents through use of a district land use rule. This can frustrate the ability to manage activities that are no longer considered appropriate in a particular location. Addressing this requires an extension of the current powers of territorial authorities and an associated amendment to the protections for existing land uses provided under section 10 of the current RMA. The Panel's view was that this was warranted in these limited circumstances if territorial authorities are to have responsibilities for land use regulation for climate change adaptation and natural hazards.

⁵¹ The Panel noted that section 85 of the RMA would also require clarification. Under section 85, provisions in plans can be challenged on the basis they would make land 'incapable of reasonable use' and place 'an unfair and unreasonable burden' on a person who has an interest in the land. Conditions that may lead to the need for managed retreat, such as inundation from sea level rise, are inherently uncertain in magnitude and timing even if the eventual outcome is inevitable. The current section 85 creates what has been termed a "timing conundrum" as, in the absence of a risk reaching a certain level, it may not be possible to act proactively through imposing planning provisions. And yet when the risk is realised the opportunity to take proactive (and more cost-effective) action has passed. In chapter 5 of its Report, the Panel noted that section 85 should be reviewed more generally, but in the specific context of managed retreat, the operation of section 85 (or its replacement in the Natural and Built Environments Act) should be addressed in the proposed separate legislation for managed retreat.

of the puzzle (eg funding mechanisms for compensation and a common approach to where and when managed retreat occurs) under separate adaptation legislation.”⁵²

(4G) Managed Retreat and Climate Change Adaptation Act

108. The Review Panel noted that many complex matters need to be addressed in cases of managed retreat. These include those relating to funding, land acquisition, compensation, liability, and insurance, both for land owners and local authorities. There was also a need to consider the obligations on local government to maintain infrastructure services in areas under threat. The Panel believed territorial authorities should also be able to modify or extinguish established land uses in these circumstances. While the Panel believed the changes it proposed to land use planning would assist, it considered that discrete legislation was required to specifically address managed retreat where it was required for climate change adaptation or to reduce risks from natural hazards. The Panel suggested this be called the Managed Retreat and Climate Change Adaptation Act.⁵³

109. As noted above, the sixth key recommendation of the Review Panel was that:

7. A Managed Retreat and Climate Change Adaptation Act should be introduced to: (i) provide for managed retreat, powers to change established land uses and to address liability and options for potential compensation; (ii) establish an adaptation fund to enable central and local government to support necessary steps to address climate change adaptation and reduction of risks from natural hazards.

110. As the Explanatory Note to the NBE Bill states, a Climate Adaptation Bill will be introduced later to address complex issues associated with managed retreat. Though we believe a Climate Adaptation Bill should already have been introduced and passed by Parliament, LCA NZ looks forward to the introduction of this Bill as quickly as possible to address the complex issues associated with managed retreat.

(4H) Fast Track Process for Infrastructure

111. Although the Review Panel acknowledged that the COVID-19 pandemic and resulting economic fallout necessitated the rapid large-scale development of infrastructure, housing and other projects (so as to boost economic activity in the short-term) and the Government legislated for new fast-track resource consent processes under the RMA, the Panel cautioned against this remaining a feature on the long term.⁵⁴

112. Despite this caution, the NBE Bill provides a fast track planning process (similar to the Covid fast-track process) for any "state highway network, local roads, or rapid transit services" - and anything ancillary to them in clause 316. Application must be made to the Minister who decides whether the fast track process is appropriate or the usual consenting processes should be followed.

⁵² Environmental Defence Society, *Draft Environmental Defence Society submission on the Natural and Built Environment Bill and Spatial Planning Bill* (2 February 2023).

⁵³ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), page 187.

⁵⁴ See Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), pages 29-30 and 460. First, as the Government has acknowledged, these are extraordinary times. New processes, including reduced opportunities for public input, are warranted in the short term, but our proposals are intended to provide an enduring solution for the longer term beyond the current crisis. Second, it is important to ensure that short-term measures to address the current crisis meet environmental standards and do not compromise the ability to achieve our longer-term goals of enhancing the quality of the natural and built environments or the ability to meet agreed targets to address climate change.

113. If there is to be greater use of the fast track process, cl 318 should be amended to require an assessment that the proposals advance the system outcomes for climate before fast tracking is approved.

114. In addition, cl 316 should include a specific reference to cycleways and pedestrian infrastructure as eligible activities for the fast-track process. Cycle and pedestrian ways that result in mode shift are important climate mitigation, but they are not always ancillary to other projects and so should be specifically referred to. In addition, coastal protection works are important for climate adaptation and also need to be added. By way of example, the Ara Tupua path in Wellington went through the Covid fast-track process and is primarily a cycleway and secondarily had some coastal protection elements.⁵⁵

(4) Tree Protection

115. Part 4 of the Bill provides for natural and built environment plans, with subpart 3 providing for the types of rules that may be included in these plans.⁵⁶ Territorial and unitary authorities are responsible for the protection of trees and may make rules in plans in this regard. However, clause 125 applies limitations to the making of tree protection rules as follows.

125 Limitations applying to making rules relating to tree protection

(1) Subject to direction by the national planning framework, a plan may identify and protect any individual tree or group of trees in a specified location set out in a schedule to the plan if the location or value of the tree justifies its protection, so long as,—

(a) in the case of an individual tree, the tree is described and the allotment identified by address or legal description or both; or

(b) in the case of a group of trees, the group is described and the allotment identified by street address or legal description or both.

(2) Unless directed to do so by the national planning framework, a plan must not impose tree protection provisions where trees are identified only by species, height, or girth but in undefined areas, regardless of their location or value.

(3) In this section, **group of trees** means 2 or more trees in a cluster, grove, or line on a single allotment or adjoining allotments.

116. In considering the likely effect of clause 125, a number of features stand out.

117. Though unclear, it appears that under clause 125(1), there must be a direction in the national planning framework before a plan may identify and protect any individual tree or group of trees. It is also unclear how the Bill manages the transitional period between enactment and the adoption of the national planning framework (for example, whether councils may continue to schedule trees before adoption of the national planning framework).

118. This approach differs from sections 76(4A), (4B), (4C), and (4D) of the RMA in that the discretion in clause 125(1) of the Bill is to achieve an outcome, which is to protect any individual tree or group of trees. By contrast, the discretion in sections 76(4A), (4B), (4C), and (4D) of the RMA is to provide for a rule related to effects that could prohibit or restrict the felling, trimming, damaging, or removal of a tree or trees.

⁵⁵ https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Te-Ara-Tupua/Te_Ara_Tupua_Decision_with_Minor_corrections_8_March_2021.pdf

⁵⁶ Section 646 of the Bill provides for the matters for which a territorial authority or unitary authority is responsible and includes at 646(1)(e), the protection of trees if the location and value of the trees justifies their protection.

119. The word “protect” is not defined in the NBE Bill and as a consequence, it is unclear whether some felling, trimming, damaging, or removal of a tree or trees is envisaged for a protected individual tree or group of trees.
120. The phrase “specified location” used in clause 125(1) is not defined, but nonetheless, in the case of an individual tree or group of trees, the tree(s) must be described and the allotment identified by address or legal description or both.
121. Unlike sections 76(4A), (4B), (4C), and (4D) of the RMA, where the restriction is limited to an urban environment allotment (or allotment), such as one no greater than 4 000m², it appears that clause 125 applies to any allotment irrespective of whether it is in an urban environment or rural environment or other environment (such as a reserve or road). This is important as it appears to remove the ability of councils to apply general tree protection rules for trees in rural locations, on reserves (or open space zones) and on roads. The word allotment is defined in section 570.
122. While it would appear that the word allotment is defined in a way to include reserves (or open space zones) and roads, the tree or group of trees must be described and the allotment identified by address or legal description. It is unclear whether the address or legal description of the reserve or road allotment must be identified specifically (for example, by including in the Schedule the specific legal description of the reserve or road) or generally (for example, by including in the Schedule a general legal description for all reserves or roads). A conservative view would suggest the description would need to be specific. If that is the case, it would be a significant imposition on councils compared with the current approach under the RMA.
123. Clause 125 of the NBE Bill uses the phrase “legal description” whereas sections 76(4A), (4B), (4C), and (4D) of the RMA use the phrase “legal description of the land”. It is unclear whether this difference is intended and, if so, what the intention is. It may be the case that a tree or group of trees can be legally described other than in relation to land.
124. Further, under clause 125(2), unless directed to do so by the national planning framework, a plan must not impose tree protection provisions where trees are identified only by species, height, or girth but in undefined areas, regardless of their location or value. Clause 125(2) tends to reinforce a conservative view that any description of a tree or trees would need to be specific to a tree or group of trees.
125. Of further note is clause 232, regarding particular conditions that may be included in a resource consent, which specifically includes “the protection, planting, or replanting of any tree”.⁵⁷ This appears to carry over a similar existing requirement in the RMA. In addition, there is also clause 700, regarding the scope of an enforcement order, which includes at clause 700(4), that an enforcement order may require the planting or replanting of any tree.⁵⁸ This too, appears to carry over a similar existing requirement in the RMA.
126. In summary, these provisions create a complicated regime for rules around trees, with a number of uncertainties.
127. The Review Panel did not make recommendations on urban tree protection.⁵⁹

⁵⁷ Of note is that section 108 of the RMA, regarding conditions that may be included in a resource consent, specifically includes “the protection, planting, or replanting of any tree”.

⁵⁸ Also of note, is that section 314, regarding the scope of an enforcement order, includes at section 314(4), that an enforcement order may require the planting or replanting of any tree.

⁵⁹ The Review Panel noted instead that Cabinet had agreed to consider the issues of urban tree protection and climate change resilience (both mitigation and adaptation) as part of a subsequent more comprehensive review of the resource management system. Resource Management Review Panel, *New Directions for Resource Management in New Zealand – Report of the Resource Management Review Panel* (June 2020), pg 501 (footnote 1). See Cabinet Minute of Decision, Proposed Resource Management Amendment Bill, CAB-18-MIN-0485.01.

128. From 2009 the ability of councils to include general tree protection rules in plans was removed and from 2012 existing rules were made redundant. The rationale was reducing transaction costs for individual homeowners.⁶⁰ The climate emergency and need for urgent intervention for communities to take measures to mitigate flooding, and absorb carbon, impose much higher costs on all homeowners – as communities throughout NZ are increasingly discovering. There are indications that tree loss under the existing regime is accelerating.⁶¹

129. There is ample evidence that urban tree protection is crucial in mitigating the negative impacts of urbanisation and combating the effects of climate change. Flood prevention, land stability, the provision of shade and reduction of heat island effects in built-up areas through urban trees are of utmost importance, as well as the role of trees in carbon sequestration.⁶²

130. Accordingly, we are disappointed to see such a retrograde policy, so at odds with our current emergency, and so contrary to many of the system outcomes set out in the NBE, carried forward in part 4 of the NBE.

131. It is our recommendation that the general ability of planning authorities to implement general tree protection regulations in their plans should be reinstated. This will ensure that both existing urban trees receive protection, but also new trees can be grown so they can play their full role in mitigating the impacts of climate change and promoting sustainability. On the basis, cl 125 in Part 4 should simply be removed.

(4) Conclusion

132. In conclusion, LCANZI welcomes the opportunity to make these submissions on the NBE Bill and the SP Bill and looks forward to the opportunity to speak to its submission.



Dr Grant Hewison
Committee Member and Chair of the Local Government Sub-Committee
LCANZI

⁶⁰ <https://environment.govt.nz/publications/tree-protection-in-urban-environments/background-to-tree-protection-under-the-rma/>

⁶¹ Waitemata Local Board tree loss between 2006-2016 has found that a minimum of 12,879 trees, or 61.23ha of tree canopy: <https://ourauckland.aucklandcouncil.govt.nz/news/2018/10/study-measures-urban-tree-loss/>

⁶² Report of the Environment Committee, *Inquiry on the Natural and Built Environments Bill: Parliamentary Paper (November 2021)*.
https://www.parliament.nz/resource/en-NZ/SCR_116599/0935c4f14c63608e55c528b75167a69daee92254