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Committee Secretariat  
Environment Committee  
Parliament Buildings  
Wellington

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### **Kāpiti Coast District Council's Submission on the Natural and Built Environment Bill and the Spatial Planning Bill**

Thank you for the opportunity to submit on the Natural and Built Environment Bill and the Spatial Planning Bill. As noted in our previous submission on the exposure draft of the Natural and Built Environment Bill, Kāpiti Coast District Council is supportive of the overall objectives of the reforms, to:

- 1) Protect and restore the environment and its capacity to provide for the wellbeing of present and future generations.
- 2) Better enable development within natural environmental limits.
- 3) Give proper recognition to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori and mātauranga Māori.
- 4) Better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change.
- 5) Improve system efficiency and effectiveness and reduce complexity while retaining appropriate local democratic input.

However, Kāpiti Coast District Council is concerned that, having now seen the detail of both the NBEA and SPA Bills, that these objectives are unlikely to be achieved by the Bills as drafted. Our submission is broken into three parts:

- 1) Broad commentary on the Government's reform programme
- 2) High-level issues with the Bills and why we believe it is unlikely to achieve the overall outcomes (outlined below)
- 3) the attached table with specific technical/drafting commentary on the substance of the Bill.

## **Part 1. Commentary on the Government's reform programme**

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### *Central-Local Government Relationship*

The importance of a strong relationship between central and local government has been identified as a key foundation for effectively achieving outcomes in our communities, through various reviews including the Future for Local Government. In our view, the way in which the current package of reforms has been undertaken has not come from a place of partnership nor taken the opportunity to strengthen this connection.

Local government has been largely excluded from the legislative development process and have been forced into reactive submissions under significant time constraints set by central government. We are not being treated as partners, or acknowledged as the important component of government at local level. We would like to see stronger commitment from the Government to engage more closely with local government now. We believe that it isn't necessary to wait for the final Future for Local Government Review report to acknowledge this issue, and to take action immediately. Local government should be part of problem solving, and help to shape the solution.

### *Cost*

Our communities are facing a cost-of-living crisis, and a growing proportion of our community is increasingly unable to afford the rates required to maintain existing core functions and obligations. Rates, as our primary source of revenue, do not naturally scale to reflect the affordability of our rate payers, unlike, for example, income tax. It a very blunt tool, but it is the only real tool (presently) we have at our disposal to pay for the activities we are legislatively required to undertake.

Our rate payers cannot continue to foot the bill for the implementation of unfunded central government reform programmes. To be clear, it costs local government to engage, analyse, and contribute to the development of reforms and legislative change; not just to implement it. We anticipate that the Future for Local Government review panel's report to Cabinet will validate this view. We need to find a fair and enduring shared funding model that ensures that costs are shared between central and local government. Our communities should not have to continually shoulder the costs of system reform and transition.

### *Process*

We are concerned at the process that has been undertaken in developing the resource management Bills currently being considered, as well as the other reform legislation being progressed for three waters, and local government.

We are also concerned that there isn't a clearly defined problem that this package of reforms is trying to solve. It feels like we have jumped straight to solutions before fully understanding the problem, particularly how it plays out for our local communities.

We believe that there should be measurable goals placed alongside any proposed solution which outline how changes will address the problem, and to also identify any unintended consequence and to outline how they will be managed. For example, will the changes through reform simplify and streamline government efforts or complicate things further?

Our communities need to be informed about how the changes will impact on them. All this change is unsettling, and they need information and time to digest the changes. Talk with local government and ask us how to engage with our communities - and let's have a proper

discussion together - about co-governance, about resource management, about three waters, and about the future role of local government.

### *Implementation*

The true test for any legislation is in implementation, and a thorough transition plan that draws on the knowledge and experience of local government and system practitioners is going to be essential. We need to understand how this is going to fit together with both the existing system and that being proposed through the rest of the reform programme.

Ultimately, we all have a part to play in achieving the outcomes set out by these reforms. Local government is going to be reliant on the ongoing funding and commitment of local and central government partners (eg in providing vital infrastructure and public transport links) to ensure that local outcomes are able to be met.

We are concerned there are some wider impacts for our communities that have not been considered in the reform programme to date, including whether the new system will worsen inequalities. We expect it will become harder and more costly for our community to engage in these increasingly complex regionalised/nationalised processes, and it will become out of reach for many. We have not seen this issue addressed in the discussion to date, but there is a risk that increasingly only the wealthier parts of our communities will be able to have their views heard.

We would also like to see some wider consideration about the cumulative impacts that the current reform programme will have on the fundamental democratic processes that underpin our system of government. We have concerns that there are decreasing opportunities for our communities to hold decision-makers to account for decisions that will fundamentally impact on their lives and communities.

## **Part 2. Commentary on high-level issues in the Bills**

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**Objective 1: To protect and restore the environment and its capacity to provide for the wellbeing of present and future generations, and**

**Objective 2: To better enable development within natural environmental limits.**

Kāpiti Coast District Council is broadly supportive of the move to an outcomes-based approach to resource management and the setting of environmental limits. This provides a clear future-focus to resource management and one which seeks to ensure environmental bottom lines are maintained. Both of these changes are positive and, if implemented well, should result in an overall improvement in the way resources are managed over time.

However, the fundamental nature of the changes to the purpose and principles mean that some more consideration and guidance is needed to ensure that the NBEA is able to be implemented as intended. In particular, Council recommends further consideration of the definitions of a number of terms within Part 1 to clarify the intent (further details are provided in the attached table). Having practical examples would also be helpful to provide additional information to help Councils understand the intent of the new system and how to implement it.

The reforms move the emphasis away from the purpose and principles as set out in the Act (formerly Part 2 of the RMA). They instead place significant weight on the Act's implementation through the NPF and NBEA plans. These are to adequately give effect to the

outcomes but could result in a number of outcomes that are not in keeping with the overall intent of the reforms, through:

- 1) inconsistency in how these outcomes are interpreted across the country
- 2) increased litigation as the way these outcomes have been interpreted (and traded-off) in Regional Spatial Strategies and Natural and Built Environment plans, and whether these interpretations are considered to be appropriate, or are challenged through the Courts on a region-by-region basis.

We seek further clarification and guidance on how the directive for decision-makers to “actively promote the outcomes provided for under the Act” (clause 6(1)(b)) is to be implemented. We are concerned that the combination of this requirement with the precautionary principle set out in clause 6(2) may make it difficult to demonstrate an activity’s contribution to outcomes with an appropriate degree of certainty to support decision-making.

The Council requests that the Government provides clear and firm national direction where it is appropriate to do so through the National Planning Framework. We ask that the Government does not shy away from setting limits at a national level where it is possible and appropriate to do so.

### *Consenting System Changes*

Council supports the shift to a limits-based consenting system with market-based resource allocation. This is likely to incentivise innovations that reduce reliance on scarce natural resources such as water. However, we also expect that this move will create tensions for businesses who rely on consents to operate. In particular, we see two issues:

- 1) Businesses could be waiting up to 2 years to have their consent application heard as part of a collective allocation process, which may impact on their ability to operate effectively in the interim.
- 2) Combined with limits on consent duration, this process reduces the certainty a business has about its access to scarce resources. This uncertainty is likely to make it difficult for businesses to access the capital required for plant/upgrades. Financial institutions are unlikely to finance loans for activities if access to necessary resources is not guaranteed over time. If the terms of available finance are limited to the duration of the associated consents (to mitigate this risk) businesses may not be able to realistically service the loan. This could substantially limit the availability of capital for investment.

In response, we recommend that further guidance is provided on the way in which the collective allocation system is expected to work, to ensure the decision-making process (including the associated criteria) is clear and transparent.

Council is also concerned about the changes to the duration of water discharge consents. There is a significant amount of resourcing and cost involved in obtaining discharge consents. Our Council has outlaid over a million dollars so far on getting the Paraparaumu wastewater treatment plant consented. Having to go through this process every 10 years would place an unreasonable cost on ratepayers and does not provide certainty when it comes to long-term financial and growth planning. Current asset managers are looking at timeframes of at least 30 years (as required by the Local Government Act s.101B), but only having consents that

last for 10 years does not align with these timeframes and does not provide certainty when planning long term.

**Objective 3: To give proper recognition to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori and mātauranga Māori.**

Kāpiti Coast District Council is supportive of the objective for the system to give proper recognition to the principles of Te Tiriti and an enhanced role for Māori in our resource management system. We defer to the submissions of our iwi partners, Ātiawa ki Whakarongotai, Ngati Toa Rangatira, and Nga Hapu o Otaki (Ngati Raukawa) in commenting on the appropriateness of the proposed changes and whether they will meet the objectives from a Te Āo Māori perspective.

We would, however, like to emphasise the need for iwi to be supported and resourced appropriately so that they are able to take up an enhanced role in the new system. Our iwi partners are already stretched beyond capacity in a resource management system that requires them to engage with plan making and resource consent processes across multiple districts and regions. Despite the reduction in the number of plans, this pressure is unlikely to ease in the new system which will require unprecedented levels of engagement in plan-making processes for what will be large and complex plans, as well as involvement in other parts of the system – including monitoring and resource consents. As an example, the process to identify Māori appointing bodies and to appoint representatives to the regional planning committees (RPCs) is not funded for iwi. This could be a significant and resource intensive process and a lack of funding for this process could result in some parties being under-represented.

We are especially concerned that iwi that have not completed Te Tiriti o Waitangi settlements are at a huge disadvantage in terms of having the resources to be able to both engage in this consultation process and to take on the roles envisaged for them in the new system. Consideration needs to be given as to how these iwi are to be specifically supported while their settlement processes are completed.

We would also like to request that appropriate guidance is provided for RPCs and TAs as to appropriate ways to determine which iwi/hapū/whānau have standing as it relates to particular resource management issues/decisions. Interests can be overlapping and/or disputed between multiple parties, and Councils don't have the expertise to make those determinations. For example, whose tikanga/kawa take precedence when there is disagreement? While certainly imperfect, the current practice of engaging at the iwi level with specified iwi authorities provides a degree of certainty for Councils and avoids us being drawn into questions of standing. We request further guidance be provided on how Councils (and Regional Planning Committees) can practically meet the obligations for engagement with Māori proposed by the Bill.

**Objective 4: To better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change.**

It is difficult to know how the system is likely to give effect to this objective without seeing the Climate Adaptation Act and understand how the full system fits together. Therefore, we request that the Select Committee agrees to accept comments on the whole system (ie

relevant sections of the NBEA and SPA) for consequential amendments during consideration of the Climate Adaptation Act. This will allow comprehensive consideration of how the resource management system will manage climate change and natural hazard risks.

Looking at what is in the Bills currently before the committee, the system outcome regarding climate change, clause 5(b), requires plans to achieve:

1. the reduction of greenhouse gas emissions,
2. the removal of greenhouse gasses from the atmosphere, and
3. the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change.

Kāpiti Coast District Council is supportive of the overall outcomes being sought by clause 5(b) of the Bill. We agree that strong action is needed at all levels to respond to the risks presented by climate change and natural hazards. As a Council, we have committed to reducing emissions and transitioning our community towards to low carbon living through our District's growth strategy Te tupu pai: Growing Well. There is clearly a role for the resource management system in ensuring that our regulatory framework is encouraging behaviours and growth that will achieve our climate objectives. Encouraging compact urban form with walkable communities that provide easy access to employment and economic opportunities, health and education providers, and shared community spaces will make it easier for communities to adopt the behaviour changes that are necessary for a low-carbon future. In addition, developing a framework that strongly incentivises the use of emission minimisation plans for development projects would help achieve these outcomes. It is likely that the Regional Spatial Strategy will be a key part of this framework, as it will be able to consider issues such as public transport in addition to standard resource management planning matters.

While a strong response within the planning system will be necessary to achieve these goals, it will not be sufficient. Behaviour change in our communities is going to be required in order for our communities to fully achieve our goals relating to climate resilience. We are concerned that by requiring planning documents to *achieve* a reduction in greenhouse gas emissions and the removal of gasses from the atmosphere, clause 5(b) is setting an unachievable burden on the planning system. We consider that the directive for plans to "achieve" these outcomes could be interpreted as setting an unachievably high bar. We therefore request further clarification and guidance is provided about what the "achieve" directive means for councils, and how this could practically be achieved/implemented.

**Objective 5: To improve system efficiency and effectiveness and reduce complexity while retaining appropriate local democratic input.**

Perhaps our most significant concerns relate to the ability for the reforms to achieve objective 5 as it relates to efficiency and local democratic input. We consider that the package of reforms is unlikely to achieve the objective on either of these counts.

#### *Efficiency and Effectiveness*

While creating resource management plans at a regional level will reduce the number of plans, it is likely to increase the complexity of plans and plan-making processes. While

conceptually going through a single hearing and appeal process is more efficient than repeating plan making processes many times over across a region, plan-making processes for large plans can be unbelievably costly, time consuming, and difficult for the public to engage with (the experience of the Auckland Unitary Plan would also support these concerns). Taking the GWRC Proposed Natural Resources Plan (PNRP) as a local example of a regional-level plan:

- The PNRP was publicly notified in July 2015
- Hearings were held from 2015 – 2018
- Decisions were released in July 2019
- Appeals are still being resolved and the plan is not yet fully-operative (although we note that proposed changes to appeal rights under the NBE Bill will significantly reduce this step in future).

This timeframe is not a failing of the regional council, but an indication of the complexity of matters under consideration and the plan-making process that is required by the RMA (which this proposal does not appear to fundamentally change). Our own District Plan took more than 10 years to become operative. The proposed regional NBE plans will include all of the matters included in the PNRP as well as all of the issues managed in the district plans across a region. Adding more matters to the pile will not improve this already unwieldy and complex process, even if a single plan-making process is more efficient on paper. The process will be more complicated, especially with the additional layer of the RSS.

We do not believe that regional council boundaries are necessarily the most useful basis for undertaking all planning activities. Some will be better considered at a local level and others may be broader than a regional council area. In the Wellington region, we have been undertaking regional planning activities that have included Horowhenua District to the north through the Wellington Regional Growth Framework and Leadership Committee. The provisions for dealing with cross-boundary issues are unnecessarily complicated and will almost certainly act as a disincentive for Councils to work collaboratively across boundaries.

Similarly, we ask that the Government does not shy away from providing strong national direction through the National Planning Framework where it is appropriate to do so. There are significant efficiencies to be had by going through a single national level process rather than multiple regional processes where there is little benefit to be had from regional variation. Having national level limits may be appropriate in some cases (for example, air quality). Nationally directed methodologies are something that we also recommend exploring to prevent scientific advice having to be replicated and defended region-by-region. It might be possible to, for example, set a nationally accepted methodology for dealing with freeboard in flood hazard models (which have resulted in incredibly costly processes for Councils in the past as they have had to defend best-practice modelling repeatedly through hearings and the Environment Court). Another possible example could be standardising the methodology for calculating sea level rise projections. Often the costs incurred by Councils to defend scientific models through hearing and court processes would far outweigh any benefits that might be found in regional variation.

Finally, we believe there are missed opportunities within these Bills for creating efficiencies in processes. In particular, we would like to see:

- Secondary submissions removed from public processes. This process adds time and cost to processes without adding any substantive contribution to the quality of decisions being made.
- The removal of the need to publish notices in local newspapers. These notices are costly and provide limited benefits over electronic notification methods.

### *Retaining local democratic input*

We are concerned that the reforms do not do enough to retain local democratic input in resource management processes and do not align with the draft findings and direction of the future for local government review. Local knows local, and the removal of clear accountabilities back to local communities through their elected members is a real concern for our Council.

We are concerned that regional-level planning documents and the associated plan making processes are going to be too complicated and difficult to navigate for our community. This is likely to be a further barrier to community engaging on resource management issues, who are already often overwhelmed by the content of RMA plans at a local level. People have historically struggled to engage with the abstract rules set out in RMA plans, and this will be compounded when made at the regional level. Often people only react when they are faced with a specific planning matter in front of them – e.g. their neighbours plans to redevelop their site. The transaction cost of understanding the intricacies of a plan and how that could potentially impact on an individual are incredibly high. As a rule, people should not have to engage lawyers or planning consultants to be able to understand how the plan impacts on them and whether they should be participating in a planning process – but this is likely to become the case with regionalised planning.

Statements of Community Outcomes are unlikely to be an appropriate substitute for local participation in planning processes. RPCs are only required to have particular regard to local outcomes under the new structure. This is a loose accountability which is likely to result in local communities feeling ignored in regional processes with little recourse. Robust community consultation processes will be necessary to support local communities in their engagement in regional planning processes. Elected members are likely to be increasingly playing an advocacy role for their communities' interests through this process, but with very little direct influence over the outcomes. This is a loose accountability which is likely to result in local communities feeling ignored in regional processes with little recourse. Robust community consultation processes will be necessary to support local communities in their engagement in regional planning processes.

We are also concerned at the lack of democratic accountability for planning decisions under the new system. Decisions that will fundamentally impact on our communities will be made by a joint committee which has no accountability back to our communities. Our communities will also be responsible for funding priority projects through our LTP that have been identified and agreed at the regional level. Our democratically elected members will have little discretion on whether to fund these projects but will be held accountable for the resulting impacts on rates by our communities.

The Council has some concerns about the requirement for an elected member to be the council appointee to the Regional Planning Committee. While it is important for there to be representation for our community, we hold significant concerns about the practical workload



that will come from being appointed to this committee. It will likely affect their ability to undertake their other duties as an elected member, or indeed, to undertake their other paid employment. We recommend that Councils are given the discretion to appoint representatives that are not elected members to the regional planning committee. This would allow greater flexibility for Councils in making these appointments. Ensuring that appointees have appropriate skills and delegations could be managed through the terms of reference set in the establishment of the regional planning committee. Training programmes for appointees may also be required to ensure that all appointees have the required skills to undertake the role. The Making Good Decisions programme is unlikely to be sufficient (and will, in any case, need to be updated to reflect the new system).

### **Alignment with wider reforms**

Kāpiti Coast District Council is concerned at the lack of alignment between the resource management reforms and the wider reform programme being undertaken by Government. We would like to see and understand a clear vision for the wider reform programme affecting Local Government, so we can understand how the resource management reforms fit within that. In particular, the timing of these reforms and the future for local government review and three waters reform are particularly misaligned, and it is challenging to understand roles and responsibilities within this new system, when wider systemic change is lurking just beyond the horizon. The complexity being introduced into this system may also affect the ability to achieve desired outcomes in other parts of the reform programme.

Providing arrangements through NBEA to mimic possible LGA changes creates unnecessary additional complexity that could be avoided by better phasing the reform programme. It would be better to do it through LGA and be clear about intentions rather than setting up complicated systems through the resource management system as an interim measure.

We also seek a clearer understanding of how the three waters reforms will integrate into the new resource management system. Clear arrangements should be laid out for how water services entities (WSEs) will engage in RM planning processes and where responsibility will lie during the transition when capacity is likely to be limited at both WSEs and TAs.

### **Funding & Support**

Kāpiti Coast District Council would like clear funding arrangements to be in place for all parts of the resource management system, including transition and implementation. Transitional and implementation costs are likely to be high for Councils, as new planning documents are created and tested through the courts. It is our view that Central Government should shoulder a substantial share of the transitional and establishment costs of the new system and provide support to build capability within the sector to respond to the new requirements. As noted above, iwi are also likely to face significant costs to engage in the new system and to take on the new roles expected of them. It will be important that iwi are provided with appropriate support and funding to allow them to participate in the new system and to meaningfully give effect to the new roles they are being given.

The funding arrangements for the Regional Planning Committees are one place where we think some further clarification would be useful. The current proposal does not appear to provide for one Council to fund the RPC. Making this option available would allow a

Regional Council to fund the RPC on their own. This is a simplified model that avoids complex funding arrangements, but still ultimately results in the same group of ratepayers (ie those in the regional council area) funding the RPC through rates.

Implementing these reforms is also going to require resource management practitioners (both those working in Councils and those in private firms) to understand the new system and what that might mean for their work and their clients. Providing training and support for the resource management lawyers and planners, as well as others who interact with the system will be important to ensure that the system functions as intended. We recommend that the Government commits funding and resources to provide support and training for the professionals who will be implementing this new system. Communications with the general public about how the changes will impact on them and how they interact with system will also be important, and this should be undertaken at a national level.

### **Transition/implementation**

We appreciate the long timeframes for implementation of these reforms, which will allow for an amount of testing of various parts of the system as they get introduced. However, the next ten years or so will be very complex in the resource management system, as new documents and systems are introduced over top of existing plans and systems that still reflect the RMA. We will, for instance, have a new National Planning Framework and then Regional Spatial Strategies to provide support and information into as they develop, while our existing District Plans will still be in effect. There are going to be complexities about whether/how the cascade of new higher-level documents will interact with our existing plans that were made under different legislation.

We also seek guidance around how Councils should manage the transition between the two systems. Specifically, when should Councils stop working on updating/replacing our existing district plans and instead focus on implementing the new system? Resource management is resource intensive and it is going to stretch Councils (not to mention confuse our communities) if we are expected to juggle two systems simultaneously. At some point in time, we will have to shift our focus, and that will likely mean that some parts of our existing plans will not meet the statutory 10-year review timeframes set out in the RMA. Undertaking costly review processes to maintain plans that have an increasingly short lifespan (and relevancy) is not likely to be good use of our ratepayers' money or our scarce planning resources. Expectations around transition would be valuable to set out, alongside additional funding support for increased workloads for local government through this period.

### **Part 3: Technical Commentary**

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In addition to the above high-level analysis, please find attached comprehensive technical commentary on the proposed legislation. This provides specific drafting changes that we believe will make the legislation better able to meet the outcomes sought by the reforms, and better able to be effectively implemented by Councils over time.

Further to this, we feel it important to highlight that the analysis required to draft this submission took substantial time and effort, and the time provided to analyse nearly 900 pages of draft legislation and have this considered by our elected members was incredibly short. While we appreciate the additional time provided for our submission, it is still likely that we will not have appreciated the significance of some substantial issues until

implementation. In our view, high-speed legislative processes do not produce quality legislation; and this risk is much higher when the legislation in question is intended to create fundamental system change and when the implementation arm (ie Local Government) has largely been excluded from the development process. We are hopeful that the Government will consider this risk as the outcome of the policy work programme review is finalised by the new Prime Minister during February 2023.

Thank you again for the opportunity to provide comment on the proposed reform programme. We request the opportunity to speak to our submission before Select Committee.

Yours sincerely



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Kāpiti Coast District Council**



Janet Holborow  
**MAYOR, KĀPITI COAST DISTRICT**

Attachment: Detailed technical/drafting commentary on the Bills