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Environment Committee
Parliament Buildings
WELLINGTON

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Tēnā koutou,

TECHNICAL SUBMISSION ON THE NATURAL AND BUILT ENVIRONMENT BILL AND SPATIAL PLANNING BILL

1. The Dunedin City Council (DCC) thanks the Environment Select Committee (Select Committee) for the opportunity to submit on the Natural and Built Environment Bill (NBE) and Spatial Planning Bill (SPA).

Introduction

2. The DCC acknowledges that replacing the Resource Management Act 1991 (RMA) is a significant undertaking and has a keen interest in the RMA reform as it will fundamentally change the way in which local government delivers resource management functions in Aotearoa.
3. This technical submission has been prepared by DCC staff, principally from the resource consents team and city development team (policy planners, heritage and urban design) but also has comments from other areas of DCC including from DCC 3 Waters.
4. This submission relates primarily to the Government reform objective to *improve system efficiency and effectiveness and reduce complexity*. A large number of the comments are related to ensuring that:
 - Subjective language and tests are kept to a minimum or removed from the Bill to reduce the room for argument and uncertainty, and ultimately reducing the need for litigation (please note Appendix 1, which lists subjective terms identified by DCC's legal advisers. Some of these are discussed more fully in our submission below).
 - Notification and other time-consuming processes/ tests within the legislation are objective and less prone to challenge.
 - Transitional provisions are appropriate and simple and ensure that current applications and proceedings continue under the current law to their conclusion to avoid re-work and process cost.
 - The Bill does not adopt RMA terms or omissions that currently provide uncertainty, create issues and in turn slow down the consenting process.
 - The Bill uses plain, easy to understand language and simplifies the planning process for laypersons and practitioners alike.
5. The submission is set out on the order of provisions in the NBEA/SPA.

NATURAL AND BUILT ENVIRONMENT BILL

PART 1 – PURPOSE AND PRELIMINARY MATTERS

Section 5(c): System outcomes

6. One of the system outcomes in section 5(c) is “well functioning urban and rural areas that are responsive to the diverse and changing needs of people and communities in a way that promotes—...”.
7. It is noted that there is no definition of well-functioning. It is submitted that well-functioning should be defined to mean “environments that enable all people and communities to provide for their social, economic and cultural well-being, and for their health and safety, now and into the future”. This definition aligns with Objective 1 of the National Policy Statement on Urban Development 2020.
8. Notably missing from the list of matters in 5(c) that may contribute to these areas being well-functioning are any concepts related to amenity, character or design. While the removal of ‘amenity’ as a matter to be managed as part of resource management was signalled early in the reform process, the DCC retains its concern expressed in its earlier submissions that this reactionary response is inappropriate. There is a significant evidence-base that shows how poor design can harm well-being and conversely how good design can support it.
9. Beyond individual well-being, disregarding the potential effect of development on amenity puts at risk New Zealand’s tourism-based economy and ability to attract talent and investment. People come to New Zealand for its perceived quality of life, which for many is centred on the quality of the urban and natural environment and access to opportunities for outdoor recreation. One only has to look at parts of the United States to understand how unregulated development can destroy the amenity of places.
10. While it acknowledges the impediments that NIMBY submissions and appeals have created in the current system for delivering on housing and other important development, the DCC considers that removal of all consideration of amenity and character a step too far.
11. Instead, it seeks that the Committee directs that scope for considerations of amenity and character (with provisions to limit the risk of abuse) be included in the NBEA. In particular, the Act should provide for:
 - protection and enhancement of heritage character in identified heritage precincts,
 - requiring good urban design principles be applied to new housing and commercial developments
 - protection of the amenity of identified public places and viewshafts
 - the ability to restrict commercial advertising (hoardings etc) to protect public and open space amenity
 - the ability to protect pedestrian amenity in identified high pedestrian use areas, and
 - the ability to manage bulk and location of residential buildings for sunlight access and privacy.
12. As drafted, it appears that none of these matters, which have broad public support, are provided for under the Bill. To avoid aspects of NIMBYs, limitations on the scope of

submissions or involvement (noting that appeal rights have been largely removed already) could be required.

13. The DCC also seeks that the NBEA specifically promote good urban design (from the city to street scale) as a means of achieving greenhouse gas emissions reduction.

The DCC requests that:

- a. A definition of well-functioning be added, with a suggestion that this could be defined as “urban and rural environments that contribute to social, economic, cultural and environmental well-being”.
- b. That the Committee amend the list of matters in 5(c) that may contribute to these areas being well-functioning, concepts related to amenity, character and design as highlighted in our submission. In doing so we encourage the committee to direct that any other changes deemed necessary are made to ensure that these aspects are included only to the extent that they promote these positive public-good outcomes and avoid these concepts being mis-used to frustrate appropriate development to protect individual property interests.

Sections 5 and 7: System outcomes and Interpretation (in relation to heritage)

14. Overall, the DCC supports the new provisions of the NBE Bill relating to heritage considerations. In particular, the DCC supports the inclusion of ‘the conservation of cultural heritage’ as a system outcome in section 5(g) and the inclusion of cultural landscapes in the definition of cultural heritage in section 7.

The DCC requests that:

- a. Retain section 5(g) and the inclusion of cultural landscapes in the definition of cultural heritage in section 7.

Section 7: Interpretation – adverse effect

15. The Bill discusses ‘trivial effects’ within the definition of adverse effect, however, this term is not defined. The boundary between trivial and adverse effects may not be clear. There is potential for conflict between technical and layperson viewpoints around trivial effects.

The DCC requests:

- a. Define trivial effects in the Bill.

Section 7: Interpretation – cultural heritage

16. The definition of cultural heritage does not explicitly specify ‘built heritage’ or ‘building’. For clarity DCC consider that they should be included within the definition.

The DCC requests:

- a. Amend definition of cultural heritage to include the term ‘built heritage’ or ‘building’.

PART 2 – DUTIES AND RESTRICTIONS

Discharges (sections 22 and 118)

17. The proposed provisions do not allow water or contaminant discharges to water or to land in a way that may result in the contaminant entering water. While discharges entering water, may in most cases be undesirable, treated wastewater for the city, needs to be discharged somewhere. Securing adequate land to allow land disposal is not easy and may, in the long run, have greater environmental impacts than discharging wastewater treated to a high level a significant distance off-shore, where mixing minimises potential impacts on water quality.

The DCC requests that:

- a. Amendment to the provisions to allow for consideration of outcomes that achieve the best environmental outcome possible within the scope of possible options to facilitate discharge of community wastewater may be needed.
- b. Consideration should be given to the need for wastewater discharges that are essential for the health and wellbeing of communities.
- c. The provisions need to allow for consideration of community health and wellbeing from the services that are provided in the form of wastewater treatment and disposal.
- d. These factors should be considered when rules for permitted activities are made under section 118.

PART 3 - NATIONAL PLANNING FRAMEWORK:

Section 33: Purpose of national planning framework

18. Regarding (a)(ii) and (iii) – “desirable” is a very subjective term.

The DCC requests that:

- a. It would be better that the test is clearer and appropriately balances the role of central and local/regional government in planning.
- b. Suggest this should read matters for which national consistency is necessary to achieve limits or targets or nationally strategic objectives or otherwise where consistency will enable more efficient and effective plans and this benefit outweighs the need to enable local decision making.

Section 62(1): When effects management framework applies

19. The Bill proposes an ‘effects management framework’ (a policy setting built into the legislation), which applies to adverse effects on significant biodiversity areas and ‘specified cultural heritage’.
20. The DCC submits that this framework is potentially appropriate to all types of identified and scheduled cultural heritage not just ‘specified cultural heritage’ and seeks that this be promoted either through the NBEA or through the National Planning Framework, or at least

the that this setting being applied to 'specified cultural heritage' is clearly a minimum policy setting.

21. The DCC is concerned that the legislation relies largely on the HNZPT Category 1 requirements to identify specified cultural heritage. It is considered that highlighting specified cultural heritage will prioritise a few 'elite' examples. It omits the representative and/or collective heritage that defines our cities, towns, streetscapes, and rural areas.
22. The DCC is also concerned that the offsetting framework being applied to specified cultural heritage (section 63, as outlined in Schedule 5) may be inappropriate. While the use of offsetting in relation to biodiversity is understood, the DCC does not understand how the concept of offsetting can be applied to cultural heritage in a way that prioritises the protection of known heritage values. The management of built heritage relies on mitigating and minimising adverse effects on heritage values rather than allowing potentially adverse effects to occur which may be enabled by offsetting and result in adverse effects on heritage values.

The DCC requests that:

- a. Consider how to promote the effects management hierarchy to all scheduled heritage not just those that meet the current (limited) definition of 'specified cultural heritage'.
- b. Remove the offsetting framework for specified cultural heritage

Section 70: When regional planning committees directed to choose provisions from framework

23. Section 70 provides for provisions that the RPC must 'chose from', and to apply Schedule 7 (the ability to makes submissions). The DCC understand this clause to mean that the RPC only has the ability to choose from a limited set of provisions that they deem most relevant to local circumstances but not to decide the content of the provision set by the framework. It is noted that this scope limitation is not as clearly outlined in Schedule 7, for example it is not included in clause 38 of Schedule 7 with respect to the power to strike out submissions.
24. This type of 'paint by numbers' plan development approach has not been used in New Zealand before and the workability of it is still to be understood. The DCC cautions that this type of provision should not be used except after extensive consultation with local authorities as to the workability of the set of provisions.
25. It is also important that the use of standard content is only used for matters where local contextual differences are unlikely to be significant. For example, it could be appropriate for topics where NESs are currently operating (forestry provisions, network utility provisions as an alternative to a one-size-fits all NES), national infrastructure such as state highways or the rail network, or for issues such as hazardous substances or natural hazards. The DCC does not support standardised zoning provisions that do not appropriately provide the opportunity to manage site or locality specific issues, such as: slope, hazards, reverse sensitivity, port or airport noise, transportation networks constraints, other infrastructure constraints etc or strategic matters such as maintaining land (primarily rural but sometimes rural residential land) for productive purposes or other strategic considerations.

The DCC requests that:

- a. The Committee notes that caution should be applied in developing limited choice provisions, and the need for extensive consultation with local authorities on their development (including allowing for appropriate consultation processes and timeframes)

Section 79: Activity with significant adverse effects on environment must not be permitted activity

26. Whether an activity has significant effects is usually a factor of the scale, operation and location of the activity. The wording of this section appears to direct the use of activity statuses, but it would make sense to discuss the rule framework more broadly or at least make reference to the use of conditions or performance standards on permitted activities in ensuring this outcome.

The DCC requests that:

- a. This section might be more clearly expressed with regard to use of conditions, e.g. Plan rules, including use of appropriate activity status and conditions (standards) on activities, must be used to avoid activities having significant effects on the environment.

Sections 88 and 126: Allocation methods

27. The provisions propose inclusion of allocation methods or rules for taking/diverting/use of fresh water and capacity of freshwater to assimilate discharge of contaminants.
28. In determining what is appropriate, consideration may need to be given to the importance of some water takes or wastewater discharges where they are for the community benefit – i.e. water takes for community supply, or discharge of community wastewater by Territorial Authorities or their replacement entities. Both of these activities are important to support community health and wellbeing and should have priority over the same activities by other organisations or individuals.
29. Lack of allowance for community water fails to recognise Territorial Authorities are not the principal end user of communal water and therefore cannot directly allocate the community's usage for water. In this regard they are distinct from the majority of permit holders who are the end users of the water take and therefore are in full control of the water usage.

The DCC requests that:

- a. The Committee amend the legislation to give priority to the taking of fresh water by a public entity for community wellbeing, and the discharge of contaminants as part of wastewater services provided by a public entity for community wellbeing.

PART 4 - NATURAL AND BUILT ENVIRONMENT PLANS:

Section 102: What plans must include (and Schedule 10: Information required in application for resource consent)

30. NBE Plans should include as much practical information around making an application as possible and clearly identify what is required in a resource consent application for each

activity status. This will promote better access to information and ultimately facilitate high-quality applications.

31. The likelihood of more permitted activities under the new regime shifts the emphasis onto assessment, compliance, and monitoring. This shift will likely be more resource intensive for regulatory teams. As such, it is essential that the Bill and NBE Plans strike the right balance between requiring applicants to provide enough information to undertake an assessment and not requiring irrelevant information. For example, requiring applicants to assess an application with a controlled activity status against the objectives and policies of the Plan is unnecessary and more thought needs to be given to the information requirements under Schedule 10 of the NBE Bill.
32. Additionally, standardised application forms/ digital templates and a standardised national digital system for consent applications should form part of the reform package to accompany the NBE Plans. This would help ensure certification processes, assessment, and collection of data for monitoring is consistent nation-wide. Standardised application forms should be region or nation-wide (but also allow for additional local requirements) and have minimum application requirements within the application itself.

The DCC requests that:

- a. Natural and Built Environment Plans clearly identify what is required in a resource consent application for each activity status.
- b. Schedule 10 of the NBE is amended to address concerns raised above regarding information requirements.
- c. The Committee may consider ensuring that standardised application forms/digital templates, which are easy to use and insert information into, form part of the NBE Plans.
- d. The Committee may like to consider ensuring that a standardised national digital system for resource consent applications / Permitted Activity Notices is established contemporaneously to the NBE Plans to ensure the monitoring and collection of data on compliance is consistent across the country.

Sections 99, 102, 104 and 108 General considerations relevant to regional planning committee decisions vs what plans must include, plans must be consistent with regional spatial strategies, and matters that must be disregarded when preparing or changing plans

33. Section 99 requires that a Committee must consider **if** it is appropriate for conflicts to be resolved in plans, but section 102 requires plans to resolve conflict (s. 102(2)(e)). These sections appear to be in conflict.
34. Section 102(2)(i) requires that plans “ensure the integration of infrastructure with land use”. It is not possible for plans, on their own, to ensure this. A better word would be to ‘support’. The primary tool to assist this is the RSS.
35. Section 104 requires that plans must be consistent with RSS except in limited circumstances. As per its submission on the SPA, DCC is concerned that the role of the RSS in determining where development is appropriate is significant where the method for developing and testing RSSs does not reflect the importance of that role. DCC submits that either the process to develop the RSS (including the addition of robust testing through hearings and limited

rights of appeal as per NBEA plans) must be changed, or the content of the RSS must be appropriately retested through the NBEA plan. If the latter approach is chosen, then amendments to this section need to be included to be inconsistent with the RSS if it would be inconsistent with outcomes or other matters as per normal plan option evaluation considerations.

36. Regarding section 108, the DCC has 5 main concerns which are also relevant to section 223, section 512, Clause 19 of Schedule 6, and clause 126 of Schedule 7. The full details of those issues are set out in our submission relating to section 223, and then cross-referenced from the other occurrences. The principal issues are as follows:
- a. Potential confusion about whether effects on land transport assets that are not stopping places must be disregarded;
 - b. No definition of 'scenic views';
 - c. No definition of 'stopping places';
 - d. Potential confusion as to which adverse effects are to be disregarded with regard to people on low incomes, people with special housing needs, and people whose disabilities mean that they need support or supervision in their housing; and
 - e. No definition of 'low income'.

The DCC requests that:

- a. The inconsistency around whether plans must resolve conflicts should be addressed.
- b. Amend the wording of section 102(2)(i) to read 'support' rather than 'ensure'.
- c. Address the issue raised about the function of RSS and the process to develop them which does not reflect the importance and influence of these strategies.
- d. Regarding section 108 – see s.223 for requested changes.

Section 107: Considerations relevant to preparing and changing plans

37. The Regional Planning Committee must have regard to the 'relevant entries on the New Zealand Heritage List/ Rārangī Kōrero' in section 107(2). This section should be expanded to include any existing District Plan Heritage Schedules.

The DCC requests that:

- a. Amend section 107(2) to clarify what is meant by 'relevant entries on the New Zealand Heritage List/ Rārangī Kōrero'. It is assumed to mean 'all entries on the New Zealand Heritage List/ Rārangī Kōrero' within the region.
- b. Amend section 107(2) to include entries on any operative District Plan Heritage Schedules.

Section 125: Limitations applying to making rules relating to tree protection

38. Section 125(2) appears to remove the ability to manage trees even in areas identified as important for biodiversity. The Dunedin 2GP as part of their indigenous vegetation clearance performance standard currently controls removal of significant native trees (based on species) in rural zones, with these species identified due to their significance for biodiversity protection. The DCC suggests that this section be amended to only refer to limitations on rules in urban areas or where the protection is to manage amenity effects.

The DCC requests that:

- a. Section 125(2) is amended to only refer to limitations on generic tree protection provisions in urban areas or where the protection is to manage amenity effects.

Section 139: Land subjection to controls

39. What is 'reasonable use' is not clear. As arguments around what level of use should be provided are commonplace further clarification in this section is necessary. Does reasonable use mean if land is rural that a rural activity is profitable, does it mean that the right to establish a residential activity is provided? Both of these are often argued but ultimately the rules to which they are linked are necessary to achieve strategic outcomes in a plan (protection of highly productive land, protection of biodiversity). It may be advisable to reduce the ability to make reasonable use arguments where rules required to give effect to national direction or where the activity would conflict with limits and targets.

The DCC requests that:

- a. 'Reasonable use' is defined.

PARTS 5 AND 9 RESOURCE CONSENTING AND SUBDIVISION:

Consenting under the NBE per topic

Sections 181 – 184: Incomplete applications and further information

40. The DCC supports the new explicit ability to return long term suspended applications where no response is received to a further information request after a long period of time (section 181). Applications that linger in the system present financial and administrative burdens, as they may become live at any point having resource/staff planning implications. There are also issues with invoicing and the proper recovery of costs associated with long term suspended applications. As such, the DCC submit that this ability to return the application be extended to applications where written approval has been requested but no response is received for a long period of time.
41. The DCC generally supports the new further information request requirements in sections 183 to 186 of the NBE. However, the DCC is concerned the new duty in section 184 regarding consideration of certain matters required, before information requested, may add an administrative burden if it is required to be documented. Where documented, it may open the consideration to challenge. Amendment is sought to clarify that the consideration under section 184 need not be documented.

42. Further, section 184 only requires consideration of whether additional information is required to determine whether the application meets relevant *outcomes*. This appears to ignore the other types of provisions that will be enacted under the NBE Plans and that are relevant in determining compliance or consistency with the Plan. It should be noted that the reference only to outcomes is at odds with the information requirements under schedule 10 (largely carried over from Schedule 4 of the RMA) requiring applicants to assess the proposal against “any relevant outcomes, policies, or rules in the national planning framework, the relevant plan, and the relevant regional planning strategy” (Schedule 10(2)(a) of NBE Bill). Amendment is sought to incorporate consideration of other Plan provisions in determining whether additional information is required under section 184.

The DCC requests that:

- a. Section 181(5) be amended to add subsection 181(5)(c) as follows: the authority receives no response from the applicant to a request for written approvals within the time specified in this Act or prescribed in regulations under this Act, or agreed with the authority
- b. Section 184(a) which states “additional information is required to determine whether the application meets relevant outcomes” be amended to broaden scope of the provision to whether application meets “relevant outcomes, policies, or rules, or other appropriate terms referring to Plan provisions.
- c. Section 184 be amended as follows: “... Before requesting information under section 183, a consent authority must consider, but is not required to document its consideration under section 184, whether—...

Notification provisions under NBE

43. Overall, the DCC supports the emphasis on front-footing notification decisions within the NBE Plans or through default notification provisions in the NBE Bill. This will lead to improved system efficiency and greater clarity about notification of resource consent applications for users and decision makers alike.
44. However, the DCC opposes the novel criteria for determining who is an affected person in section 201(2) because this will lead to great uncertainty, causing longer processing times and ultimately, greater risk of unnecessary litigation. The criteria lack sufficient direction to facilitate clear, efficient, and consistent decision making. Further, under the future NBE Plans the emphasis appears to be on ‘effects’ as opposed to ‘outcomes’. The focus should not be on a threshold of effects, but rather on the meeting of outcomes. In addition, the criteria do not prioritise considerations. A balance should be better struck between allowing flexibility of relevant considerations and ensuring enough direction is given to facilitate efficient notification decisions on a case-by-case basis.
45. Further, the DCC seeks some clarification around what matters can be considered with respect to controlled activities and whether the permitted baseline can be considered. These matters should be explicit in the notification provisions to ensure clarity of considerations for the decision maker. If the use of the permitted baseline is to be prohibited, this should be stated to avoid confusion and potential litigation. The removal of the permitted baseline appears necessary for an outcome-focused plan as its current inclusion is prefaced on benchmarking activities based on having a similar level of adverse effect. Whereas an

outcome focused plan may manage activities with similar levels of adverse effects differently due to differing positive contributions to outcomes. The Dunedin 2GP takes this approach.

46. We note that where the notification criteria are retained in section 201. It is essential that the outcomes listed in the NBE Plans are clear, specific, and in order of priority to facilitate clear notification decisions under section 201.
47. Delete word “proposed” within section 201(2)(a) as this provision is intended to be used by the RPC (where any activity is only hypothetical) and by also decision makers, who may be consenting a retrospective activity. The use of ‘proposed’ adds no value to the sentence and may lead to an unintended outcome.
48. Clarify the meaning of ‘an interest greater than that of the general public’ in section 201(2)(c). This is too broad having regard to the aim of streamlining resource consent processing and could lead to inconsistency.
49. We support Taituarā's submission point that: the thresholds for notification outlined in sections 205 and 206 are important to set at the right level given that reaching them makes it mandatory to require public or limited notification. Getting this right will have a large impact on the efficiency of the new system. The drafting of these sections, however, creates uncertainty. For example, it is unclear what “sufficient uncertainty” means in section 205 and how the RPC or the Minister will determine whether there are “relevant concerns from the community”. We ask the Committee to assure itself that the tests for notification are set at the right level and that the sections provide clarity and certainty.

The DCC requests that:

- a. Section 201 be amended to clarify whether the permitted baseline can be considered in the determination of whether a person is an affected person or person from whom approval is required.
- b. Section 201 be amended to clarify whether the determination of whether a person is an affected person or person from whom approval is required is limited to just the matters of control.
- c. Section 205 be clarified with regard to the meaning of “sufficient uncertainty” and “relevant concerns from the community”.
- d. If section 201 is retained, amend as follows:
 - i. Clarify section 201(2)(a) wording to ensure the sentence cannot read as the positive effects on the person. Clarify the object of the positive effects e.g., “weigh the positive effects of the proposed activity on the environment against the adverse effects that the activity has on the person”
 - ii. Delete word “proposed” within section 201(2)(a)
 - iii. Clarify the meaning of ‘an interest greater than that of the general public’ in section 201(2)(c)
 - iv. Delete word ‘material’ from section 201(2)(d) or re-word subsection and remove subjective term

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| <ul style="list-style-type: none"> v. Provide more direction, including incorporating objective measures to inform a threshold for notification; vi. Provide more emphasis on Plan outcomes. |
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Sections 223 to 230 – decisions (also relevant for s108, s512, Cl. 19 Schedule 6, and Cl. 126 Schedule 7)

50. Overall DCC supports fewer activity categories and the simplification of the categorisation of resource consents generally. The activity categorisation should use universally understood terminology and denote a clear hierarchy.
51. While the DCC supports the inclusion of directive provisions asking the decision maker to disregard certain considerations, this needs to be as clear as possible and not use subjective terms or terms that are undefined, and people pay careful attention to sentence structure to avoid the potential for misinterpretation. Suggested amendments focus on unclear terms or general uncertainty. The following 5 issues also apply to s108, s512, Cl. 19 Schedule 6, and Cl. 126 Schedule 7.
52. Section 223(8)(c) is potentially confusing at it could be read as the exclusion of consideration of effects on land transport assets that are not stopping places. This may imply that it is not possible to consider transport safety or efficiency and clearly was not intended. An amendment to this clause is suggested to make it clear that it is only effects on scenic views that must be disregarded, and then only if they are from private properties, or from land transport assets that are not stopping places.
53. The DCC seeks clarification on the meaning of “stopping places” as used in section 223(8)(c) (see Appendix 1).
54. The DCC also seeks clarification on the meaning of "scenic view" as used in section 223(8)(c) (see Appendix 1).
55. Section 223 (8)(e) may cause confusion as at a first reading it may appear that it is limiting the consideration of any adverse effects created by (“arising from”) the use of land by people of low income, or with special housing needs, or whose disabilities mean that the need support or supervisions in their housing”. The intent presumably is not to disregard any real effects that might arise from these groups proposing to undertake new activities or new developments but rather to disregard any speculative or perceived effects of these groups occupying housing or being provided services nearby (e.g prejudicial assumption around different effects from an activity (such as housing) due to the type of occupants) As written, it seems to read that if a person has a low income (which is not defined) the effects on the environment (no matter how significant) from their use of the environment must be disregarded. Presumably it is not to enable people on low incomes to pollute or otherwise create adverse effects that are otherwise unacceptable.
56. As drafted the current list of types of people is very specific. In taking this approach it will be necessary to clearly define each group. For example, what ‘low income’ means or provide a simple methodology for determining who may be low income. Is below a living wage ‘low income’ or is below the minimum wage ‘low income’? Is an unemployed person considered low income?

57. It might be better to instead to focus on the presumed core issue (perception of effects due to 'type' of occupants or people accessing services) and use those grouping as non-exclusive examples to avoid legal debate about the exact definition of those specific groups and to recognise that other groups are subject to prejudice. For example, by expressing it as:

“the potential for real or perceived adverse effects to arise due to the occupation of land by, or use of land to provide services to, certain types of people, including but not limited to people on low incomes; or people with special housing needs; or people whose disabilities mean that they need support or supervisions in their housing.”

The DCC requests that:

- a. Section 223(8)(c) be amended as follows:
any effect on scenic views from either: private properties or from land transport assets that are not stopping places; or
- b. Section 223(8)(c) be amended to clarify the meaning of 'stopping places' or define the term in the NBE.
- c. Section 223(8)(c) be amended to clarify the meaning of "scenic view" to clarify its meaning or define it in the Interpretation section of the Bill.
- d. The Committee review the intent of the wording in sections 223(8)(e) (and s108, s512, Cl. 19(2) Schedule 6, and Cl. 126 Schedule 7). For example, it could be reworded as “the potential for real or perceived adverse effects to arise due to the occupation of land by, or use of land to provide services to, certain types of people, including but not limited to people on low incomes; or people with special housing needs; or people whose disabilities mean that they need support or supervisions in their housing.”
- e. Section 223(8)(e)(i) be amended to define what 'low income' means or provide a simple methodology for determining who may be low income.
- f. Section 223 - *consideration of resource consent application* be amended to clarify whether the permitted baseline can be used. If it is to be prohibited, explicitly state that.

Sections 258 to 276 - Commencement and duration of consents

58. The DCC seeks to ensure the new legislation is clear with respect to the commencement, duration, lapsing, and cancellation of resource consents. These issues often become relevant if the consent is later challenged. This is especially so if there are many component parts to an activity or the activity required consents from more than one consenting authority.
59. The DCC requests that where the Bill relies on case law to inform the meaning of a word or phrase, that the Committee is confident that case law is consistent. For example, with respect to the lapsing of consents in section 272, case law is not settled on the meaning of 'given effect to'. The *Goldfinch* case in Auckland, where the framing of a house was completed yet the consent was initially deemed to have lapsed but later overturned on appeal shows the inconsistency in case law and approach. The wording 'given effect to' is too ambiguous and has led to unclear case law on when resource consent lapses, or partially

lapses. Lapsing is complicated and when a consent involves several houses within a larger development, the Bill should provide for the partial lapsing of consent.

60. Section 272 can be clearer by amending it to reinstate RMA wording to avoid confusion between the duration of a consent and the time period prior to giving effect to a consent (the lapse period). The RMA refers to an application being made to “extend the period after which the consent lapses”, whereas the Bill refers to an application being made to “extend the duration of the consent.” This NBE Bill wording will create confusion and potentially lead to litigation.
61. The DCC recognise that one intention of the Bill is to allow more alignment between existing resource use that may be causing adverse effects on the environment, and the future environmental outcomes/new issues of national importance. The DCC submits that to achieve better alignment within the legislation with respect to cancellation of consents, the proposed period of five years is too long and does not allow control over activities that may be inconsistent with future environment (or outcomes expressed under future NPF). Where historical activities may have suspended works, the activity could recommence every five years to avoid cancellation. A theoretical example is consents for indigenous vegetation removal may not be meeting future outcomes, yet local authorities would have to wait five years prior to cancelling it. Reducing this timeframe to three years for cancellation will better allow for this alignment to occur within the legislation, including the new rules around permitted activity notices under this Bill.

The DCC requests that:

- a. Section 258(1)(c) is amended to ensure the commencement date can be from a measurable ‘event’ not just a commencement date stated in the consent, as a specific date cannot be determined at the issue of the resource consent e.g. Applicant must amalgamate title prior to consent commencing. Amend section 258(1)(c) as follows: ‘on a later date, at a later event, or on the completion of a task stated in the consent or any other date determined by the Environment Court.’
- b. Section 260 should clarify that where an objection is made, and the consent specifies a later date of commencement, it will commence at that time (and not the earlier date when the objection and any related appeal is resolved).
- c. Section 272 is amended it to reinstate RMA wording. To amend 272(2)(b) as follows: ‘an application is made to the consent authority to extend the duration of the consent period after which the consent lapses, and the consent authority decides to grant an extension after taking into account... .
- d. Section 272 is amended to provide better certainty as to when a consent has commenced. The wording ‘given effect to’ is too ambiguous and has led to unclear case law on when resource consent lapses, or partially lapses.
- e. Section 272 is amended to express an ability that a consent can be treated as lapsing in part.
- f. Amend section 273(1) as follows: ‘A consent authority may cancel a resource consent by written notice served on the consent holder if the resource consent has been exercised in the past but has not been exercised during the preceding 5 3 years.’

Sections 274 to 303 - Variation of consent conditions; certificates of compliance; existing use certificates and permitted activity notices

62. The DCC supports the new default activity status for variations in section 274, however notes that clarification is required in terms of the provision's interaction with the notification provisions.
63. Section 274(4) is amended to clarify whether section 201 would be used to determine affected parties and the scope of consideration in determining affected parties for a controlled activity. For example, if a major public facility wants to apply for a variation to change their construction hours, it is unclear under the Bill who would need to give their written approval.
64. The DCC seeks to amend sections 294 -298 referring to 'Certificates of Compliance' (CoC) to change the name of this process to a more meaningful/objectively understood name such as 'Permitted Development Certificate'. This will help to ensure it is distinguished from other Council processes (such as Certificates of Acceptance or Code of Compliance in Building Consents) and the name would better describe the actual process.
65. Generally, CoC are time-consuming and difficult to process where information is lacking. An increase in the number of permitted activities will likely see an increase in the number of CoC applications. This will not contribute to system efficiency and the DCC requests that the Committee consider this issue and provide a more efficient alternative to this process.
66. The DCC seeks to amend section 299. Existing uses should be recognised in other ways in the Bill. Section 299 has generally failed to expand this in any meaningful way for applicants. As with CoC, existing use certificates are time consuming and difficult to process.
67. The DCC seeks to amend section 302. The DCC supports the new categorisation of Permitted Activity Notices, however, requests the processing time be expanded from ten days. The regulatory teams will need increased processing resource to be able to accommodate the shorter working day timeframe. With the array of work a planner has, a ten day processing time compromises flexibility to juggle competing applications. More staffing is required, which will add costs to the process.
68. The DCC seeks amendment to section 303 to include a requirement that applicants notify Council when the activity authorised by the PAN has commenced. This will better achieve the Bill's objectives in monitoring new PANs and avoid confusion or uncertainty around commencement/lapsing of permitted activity notices, especially where a PAN activity has no on-site works or is a repetitive activity that stops and starts. Further, where a Plan change requires a PAN for an activity that is currently permitted, and the PAN has not commenced, the applicant could not claim existing use rights for the time between the consenting authority issuing the PAN and the commencement date, so it is helpful to require notification of PANs to avoid it leading to an unfair situation for applicants.
69. Section 275 proposes reducing the maximum duration for resource consents to 10 years for taking/using/damming/diverting water and discharges of water or contaminants to water, or discharge of contaminants to land in a way that may result in it entering water. While any direct impacts on the DCC's activities are likely to be low, as few consents expire prior to the anticipated transition to the new Water Entity, this timeframe could be of concern to water services infrastructure providers more generally.

70. Water permits for community water supplies require a sufficient duration to give certainty and enable continuity of water supply to communities to enable health and well-being, particularly given the significant financial investment in these supplies. Territorial Authorities have been accorded no additional recognition beyond their status as holders of existing consents, in the same manner as other permit holders. It may be more appropriate that consent duration is assessed on a case-by-case basis.
71. A long-term consent provides certainty of regulatory expectations over the life of the asset and allows the Territorial Authority to plan for future growth and invest in long-term infrastructure. Applying for and obtaining consents is a costly and resource intensive exercise that will need to be repeated more frequently under a short-term consenting framework.

The DCC requests that:

- a. Section 274(4) is amended to clarify whether section 201 would be used to determine affected parties and the scope of consideration in determining affected parties for a controlled activity.
- b. Section 274 would benefit from clarification on the provision's interaction with the notification provisions.
- c. Sections 294 -298 are amended to change the name of 'Certificates of Compliance' to a more meaningful/objectively understood name such as 'Permitted Development Certificate'.
- d. Section 299 is amended to recognise existing uses other ways in the Bill.
- e. Section 302 is amended to increase the processing time from ten days.
- f. Section 303 is amended as follows: add subsection (3): An activity is only considered to have commenced under subsection (2) of this section where the Territorial Authority has been informed in writing that the activity has commenced.
- g. The Committee consider the concerns raised above with respect to the reduced duration for resource consents for taking/using/damming/diverting water and discharges of water or contaminants to water, or discharge of contaminants to land in a way that may result in it entering water.

Section 316: Activities eligible for specified housing and infrastructure fast-track consenting process

72. It is unclear how the proposed environmental limits and targets to be set out in the NPF and NBE plans will affect waste infrastructure, such as landfills and discharges from waste and resource recovery infrastructure. Section 316 does not include resource recovery and waste disposal facilities as 'eligible activities'. Identifying these as 'eligible activities' will offer a clearer consenting pathway while still managing the effects of infrastructure development.

The DCC requests that:

- a. Section 316 be amended by adding resource recovery facilities and waste disposal facilities to the list of 'eligible activities'.

Subdivision and conditions

73. The DCC generally supports the new subdivision provisions but requests changes to ensure confusion between processes is minimised and that the provisions are explicit in terms of enabling current and future practice. The DCC is concerned that the new certificate/notice names do not accurately reflect their purpose, especially in a local government context where many applications/processes have similar names.
74. The Bill has reduced certainty with respect to the conditions that may be imposed on subdivisions through the removal of section 220 of the RMA. Sections 615 to 626 would benefit from amendment to ensure it reflects practice with respect to the conditions required for subdivision consents e.g. amalgamation, easements, etc. As drafted, these are not as explicit as in s220 of the RMA. More specificity will help ensure certainty when imposing conditions over matters of control with subdivisions.
75. Section 584 is expanded to include the requirement applying to the freehold subdivision of a building or part of a building as well. Amend provision to include ability to impose building code requirements for freehold subdivision. This will address circumstances where freehold land is subdivided into separate ownership, but Council has no ability to reassess fire rating or access of a building (but does have this ability for unit title and cross-lease subdivisions where the outcome on the ground is the same).
76. Section 586 would benefit from an amendment to ensure that, when an allotment is separated from an existing record of title because it complies with the requirement in the plan, any balance allotment is assessed as compliant with the plan as well. Otherwise, unsuitable pieces of land may be created, for example remaining allotments may have unsuitable access or be undersized.

The DCC requests that:

- a. Section 568 is amended to ensure confusion between processes is minimised. To change certificate names to reduce confusion between names/acronyms and reduce error as to purpose of certificate as follows:
 - Change Certificate of approval to Certificate of Survey Plan Approval;
 - Change Certificate of Code Compliance to Certificate of Building Code Compliance.
- b. Amend sections 615 to 626 to ensure it reflects practice with respect to the conditions required for subdivision consents.
- c. Amend section 575 to allow an ability to impose a condition on all types of subdivision that requires information demonstrating building code compliance.
- d. Amend section 584 to include the requirement applying to the freehold subdivision of a building or part of a building. Also, amend provision to include ability to impose building code requirements for freehold subdivision.
- e. Amend section 586 to ensure that, when an allotment is separated from an existing record of title because it complies with the requirement in the plan.

Submissions and Hearings

77. The DCC provides comment on the altered timeframes and process for hearings to ensure the sequence of events happens in the correct order and clarity of process for all parties is provided. The DCC submits that provisions to enable the narrowing of issues prior to a hearing allows the focus of hearing to be the issues of most contention, and ultimately saves time.
78. Generally, DCC supports the intention of section 222 to provide a technical review of the draft conditions provision. It partially codifies current practice of sending draft conditions to applicants, especially where they are extensive and complicated, to allow feedback on minor/technical details that may need correction. This provides an opportunity for feedback from applicants.
79. Section 222(4) is not adding value to the process and should be deleted. Minor and technical details of consent conditions should be limited to feedback from an applicant only within a specific timeframe to ensure no unnecessary delay. Alternatively, amend wording to better manage expectations of submitters and eliminate the risks raised above. Receiving comments from submitters on 'minor matters' is overall not anticipated to add value, will likely add time, and may raise expectations beyond what is achievable. If section 222(4) is retained, ensure wording between section 224(1) and section 224(4) is consistent.
80. Section 222(5) is open-ended and does not provide a maximum timeframe for the suspension of applications on technical review, nor a time limit on the applicant's response. The risk is the time period for technical reviews dragging on and holding up the decision being issued. Amend section 222(2)(b) as follows "...may be made only once by an applicant and (c) allows 15 working days only from the receipt of the draft conditions to provide feedback."
81. However, the DCC is concerned that the expectations of submitters may not be able to be managed. A better process would be to require, as matter of course, the Hearings Committee to issue an interim decision on the intended granting of consent, and then seek feedback from all parties on possible conditions. The feedback can be considered, and a final decision issued with largely agreed conditions.
82. Where submitters provide feedback prior to a decision being issued, but after a hearing has been held, the provision of draft conditions to submitters risks the re-debating of issues by submitters. An example where this could have been a highly time consuming for the 2013 *Betterways Advisory* Hotel proposal in Dunedin. Council received more than 500 submissions, mostly in opposition to the application. Whilst the decision was refused, having 500 submitters comment on perhaps 100 conditions of a contentious consent application would be a highly inefficient use of Council's resources and could also be subject to abuse, whereby submitters in opposition could stymie the process.
83. Further, the proposed technical review of conditions under section 222 must be initiated by the applicant. Applicants will be reluctant to request a technical review of conditions where they know submitters get to comment, whereas an interim decision built into the hearings process allows for due process and a more controlled environment for the receipt of comment on proposed conditions.

The DCC requests that:

- a. Amend section 221(2) to provide default timeframes, which can then be altered by regulations, to ensure sequence of exchange/process structure is retained. Timeframes can be set by way of Regulation, but a default timeframe would provide certainty and ensure that the sequence of events happens in the correct order.
- b. Amend section 221(4) to require both applicants and submitters to provide a written summary of the points they intend to raise at the hearing, irrespective of whether they are calling experts or not. This enables issues to be upfront and supports the objective to narrow the issues of hearing prior to the hearing, saving time overall and allowing the focus of hearing to be the issues of most contention.
- c. Amend section 216(3) as follows: 'The consent authority must give at least ~~10~~ 15 working days' notice of the commencement date and time, and the place, of a hearing of an application for a resource consent to... The 10 day minimum period for the hearing notification should be extended to 15 working days before hearing to better align with the timeframe for Council issuing its 's42 report'. This allows for better clarity of process.
- d. Section 222(4) should be deleted. Alternatively, amend wording to better manage expectations of submitters and eliminate the risks raised above. If section 222(4) is retained, ensure wording between section 224(1) and section 224(4) is consistent.
- e. Amend section 222(2)(b) to read "...may be made only once by an applicant and (c) allows 15 working days only from the receipt of the draft conditions to provide feedback."
- f. Section 222 is amended to clarify whether this section also applies to non-notified applications.

Sections 223 to 254 - Decisions, conditions and the new Alternative Dispute Resolution process

84. The DCC generally supports the new Alternative Dispute Resolution process to provide a less formal alternative to formal notified hearings. However, the DCC is concerned the process is not clear enough, and has questions around cost recovery, timeframes, process, and forms. The DCC submits that guidance/more detail is required to provide greater certainty to all parties and ensure administrative and procedural efficiency.
85. The DCC seeks some amendment with respect to applicant-imposed conditions and the adoption of material into council reports.

The DCC requests that:

- a. Sections 244 to 252 be amended to ensure more detail is provided around cost recovery, timeframes, process, and forms in relation to ADR.
- b. Section 249(1) be amended to clarify whether consent authority must agree to voluntary regional ADR.
- c. Section 251(2)(a) be amended in consideration of the pressure to resolve the ADR in one day and whether this will result in the best outcome.
- d. Section 241 be amended to require non-notified decisions to incorporate adopted material from the AEE and/or council report into decision report, as opposed to including

them by reference only. This ensures maximum accessibility to information and shortens timeframes as does not require finding another document when cross referred.

- e. Amend section 231(2)(a)(ii) to clarify whether there is an intentional narrowing of the scope of applicant-imposed conditions or is the 'and' between subsection (i) and (ii) intended or meant to be an 'or'?

Existing use rights (Section 26) and designations (Part 8) and other miscellaneous provisions

- 86. Overall, the primary existing use rights provision in section 26 does not deal with ever increasing activities. The DCC requests that the Committee may want to consider existing use rights in terms of how the new provisions may interact with new stronger environmental bottom lines under the new regime. Specific amendment is sought to the provisions to clarify how the new provisions will work in practice.
- 87. While the DCC generally supports the new designation process, the DCC has concerns that local authorities have no input into this process. The DCC supports the submission from Taituarā on this as follows: *The processing requirements to construct infrastructure are more aligned with the resource consenting process. Given consenting functions remain with local authorities; they should be responsible for authorising the works. It may be that because designations are ultimately included in NBE plans a potentially erroneous assumption has been made that all aspects of the designation process should sit with the RPC. While the initial spatial footprint work could be the more relevant aspect for the RPCs consideration or whether this too could be effectively and efficiently managed at the local level and fed into the RPC process.*
- 88. Additionally, clarification is sought with respect to when secondary CIPs are required and the DCC requests that secondary CIPs are not limited to building/construction matters only because designations may not contain conditions dealing with other matters on the site, such as scheduled trees.
- 89. Amend section 26 to clarify whether the new limb of existing use rights in section 26(1)(b)(ii) is divorced from the character and scale limb entirely. For example, could you be reducing the adverse effects on the environment or otherwise enhancing the environment. The provision could be clarified by linking the second limb to directions in Plan or NPF about effects that are of concern – linking (i) and (ii).
- 90. Amend section 26(1)(b)(i) to address the fact that the stated timeframe “before the rule became operative” and “the proposed plan was notified” can be two different dates. This should be amended/clarified as rules can change through the appeal period and an activity may alter through that timeframe. It could also be amended to make it clear that “the proposed plan was notified” part only applies to rules that have effect from the date of notification.
- 91. Amend section 27(3) to recognise the new six month existing use rights time period creates monitoring/tracking issues. Many activities have component parts that ensure some continuation over this timeframe (and retention of existing use rights) however, other activities such as annual tree clearance on a farm etc. Six months may be too short a time frame to maintain existing use rights. The Bill provides no recourse for these activities as applying for an extension within 2 years under section 27(3)(i) only refers to ‘buildings’. The DCC request that the Committee consider other possible existing use rights scenarios here.

92. Clarification is sought regarding the relationship between framework rules and designations where no primary CIP has been submitted. Section 92(3) of the NBE is similar to s43D(3) of the RMA, which has caused confusion when outline plans have been submitted for established designations where no outline plans have been previously processed. One argument is that the NES applies to the work in the outline plan. The other argument is that because the designation already exists and has been implemented, it overrides the NES. Amend the provision to address these concerns.
93. Amend the term "desirability of consistency" to define its meaning or clarify. The term "desirability of consistency" is not defined in the NBE but is used in the phrase "desirability of consistency with this Act" in sections that state what must be considered by Boards of Inquiry and the Minister when amending or preparing national directions during the transition period. The term appears in s 8 of the Sentencing Act 2002, but it is not defined. *Bay of Plenty Regional Council v Whitikau Holdings Ltd*, [2018] NZDC 3850 "the Sentencing Act requires a judge to take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offenders committing similar offences in similar circumstances, this principle is designed to address factual matters rather than matters of legal principle." The term appears in the following NBE Bill sections 6(3)(b); 6(3)(c); 6(4)(b); 6(4)(c); 44(a); 51(da); 52(a); 58E(aa).
94. Amend the term "location" to define its meaning or clarify. The term "location" is not defined in the Bill but is used in a number of sections that refer to the geographical location of an activity as a relevant consideration in various planning processes. Black's Law Dictionary defines "location" as, "1. The Specific place or position of a person or thing. 2. The act or process of locating. 3. Real estate. The designation of the boundaries of a particular piece of land, either on the record or on the land itself. 4. Mining law. The act of appropriating a mining claim. – Also termed mining location. 5. The claim so appropriated. 6. Civil law. A contract for the temporary use for hire; a leasing for hire." The term appears in sections 55; 64(2)(a); 64(2)(b); 64(2)(c); 65; 125(1); 125(2); 196(2); 245(1)(b); 261(b) and others of the NBE Bill.
95. The DCC submits that some terms used in the Bill are subjective and undefined. Clarification of the meaning of 'desirability of consistency' and 'location' and 'community' is sought, as well as other unclear terms within the Bill mentioned throughout this submission.
96. Amend the term "community" to define its meaning or clarify. The term "community" is not defined in NBE but is used widely throughout the bill in reference to "community outcomes", "local communities", and the "the well-being of people and communities". Under s 5 of the Local Government Act 2002, community means, subject to subsection (2), a community constituted under Schedule 6. Schedule 6 is about constitution of communities. Community in this context refers to specific community boards.
97. Regarding section 512, the DCC has 5 main concerns which are also relevant to section 108, section 223, clause 19 of Schedule 6, and clause 126 of Schedule 7. The full details of those issues are set out in our submission relating to section 223, and then cross-referenced from the other occurrences. The principal issues are as follows:
 - a. Potential confusion about whether effects on land transport assets that are not stopping places must be disregarded;
 - b. No definition of 'scenic views';

- c. No definition of 'stopping places';
- d. Potential confusion as which adverse effects are to be disregarded with regard to people on low incomes, people with special housing needs, and people whose disabilities mean that they need support or supervision in their housing; and
- e. No definition of 'low income'.

The DCC requests that:

- a. Section 26 is amended to address how existing use rights under the new regime will deal with ever increasing activities.
- b. Section 26 is amended to clarify whether the new limb of existing use rights in section 26(1)(b)(ii) is divorced from the character and scale limb entirely.
- c. Section 26(1)(b)(i) is amended to address the fact that the stated timeframe "before the rule became operative" and "the proposed plan was notified" can be two different dates. Also amend it to make it clear that the "the proposed plan was notified" part only applies to rules that have effect from the date of notification.
- d. Section 27(3) is amended to increase the six month existing use rights time period. The DCC request that the Committee consider other possible existing use rights scenarios here.
- e. Section 29(3)(ii) is amended to clarify whether 'the change' referred to in this section with regards to effects or in regard to the building consent amendment. Amend section to include missing word negation: 'the change is limited to reducing...' to 'the change is not limited to reducing...'
- f. The designation provisions are amended to address concerns around ensuring local authorities have input into this process.
- g. Section 504(5) is amended to provide further guidance as to when secondary CIPs are required.
- h. Section 504 is amended to ensure secondary CIPs are not limited to building/construction matters only.
- i. Section 512 (See S.223 for requested changes)
- j. Section 92(3) is amended to clarify the relationship between framework rules and designations where no primary CIP has been submitted.
- k. The term "desirability of consistency" is defined to clarify its meaning.
- l. The term "location" is defined to clarify its meaning.
- m. The term "community" is defined to clarify its meaning.

PART 6 – WATER AND CONTAMINATED LAND MANAGEMENT:

Contaminated Land

98. The DCC generally supports the new and stronger provisions with respect to the management of contaminated land. The Bill requires regional councils to have and maintain a HAIL/contamination database, and to make it publicly available. Better online access/a publicly available register for contaminated/ HAIL land will help to ensure the data collection is consistent and the public health information is readily available.

The DCC requests that:

- a. The provisions relating to contaminated land and its management are retained.

PART 10 - EXERCISE OF FUNCTIONS, POWERS, AND DUTIES UNDER THIS ACT:

Sections 642 and 647: Functions of regional planning committees, and role of local authorities to implement and administer plans and strategies

99. The Committee may consider providing the RPC with the ability to make declarations of interpretation with respect to rules within NBE Plans and Strategic Spatial Plans to account for the loss of integrated Planning Departments and the inhouse benefit that provides. Currently there is a working relationship between Planning regulatory and policy teams within local government, this aids day-to-day efficiency in processing applications, especially where clarification on points of interpretation or general assistance in Plan usage is required.
100. Having one interpretation of the Plan's contents will ensure less litigation/ more certainty of interpretation and fewer delays in processing applications and allow an easier route to address interpretation conflicts. Plan interpretation is never black and white no matter how well written a Plan may be; differing views are inevitable. Providing Councils with a way to resolve these issues in house will make for a smoother transition.

The DCC requests:

- a. Amend sections 642 and 647/associated provisions on the- Role of local authorities to implement and administer plans and strategies to address these concerns and in turn make it easier for local authorities to "implement and administer the committee's plan" by adding an interpretive function to the RPC functions.

Section 643: Functions of regional councils and unitary authorities

101. It seems incorrect that the integration of infrastructure with land use should be a regional council versus a territorial authority/water entity function. The most important infrastructure for growth is transport, 3 waters and recreation. 2 of the 3 are territorial authority functions. Public transportation is another function which currently sits with regional councils but arguably should sit with territorial authorities (at least where metro public transportation boundaries do not cross territorial authority boundaries significantly) more sensibly due to relationship with other transportation functions.

102. In general, the bill needs to be clearer on how the new water entities will fit with the system to ensure integration of land use and infrastructure planning.
103. Maintaining a well-functioning urban environment should be added to matters for territorial authorities.

The DCC requests that:

- a. It is made clearer how the new water entities will fit with the system to ensure integration of land use and infrastructure planning.
- b. “Maintaining a well-functioning urban environment” is added to matters for territorial authorities.

PART 11 - COMPLIANCE AND ENFORCEMENT:

Section 781: Cost recovery

104. The DCC supports section 781. The provision of a better mechanism to recover costs associated with monitoring and compliance is considered beneficial. Reducing the financial impact on the ratepayer presents the ability to make monitoring and compliance easier. This becomes more important when the NBE is focussed on better monitoring and compliance.

The DCC requests that:

- a. The mechanism for cost recovery under the NBE Bill is retained.

SCHEDULE 6 – PREPARATION, CHANGE AND REVIEW OF NATIONAL PLANNING FRAMEWORK

National Planning Framework

105. There have been significant issues with the quality of national guidance produced under the RMA in terms of clarity, workability, effectiveness and lack of integration across conflicting national direction. It is absolutely critical to the success of the reform process that adequate consultation is built into the development of this content (including allowing adequate time for experienced planning, legal and other experts to provide advice) as well as providing for a Board of Inquiry to hear submissions on the contents of the National Planning Framework.
106. DCC also has specific concerns about the risks of standardised planning rules. By way of example, concerns were highlighted in the DCC’s submission on the Resource Management (Enabling Housing Supply and other matters) Amendment Bill and the MDR standards contained within (see attached from paragraph 18). In that submission, the DCC raised concerns about the then proposed Medium Density Residential Standards and the inability (or difficulty) to consider the capacity of infrastructure networks before applying the MDRS and the potential impacts on downstream wastewater overflows. In its verbal submission to the Select Committee, the DCC discussed the importance of considering the MDRS in relation to the challenges of stormwater management and the need to include a precautionary impermeable surfaces limit to support appropriate management of that issue. To that end, the DCC supported the proposed impermeable surfaces limit, however, this was inexplicably

removed from the final standards with the result of the standards providing for 80% impermeable surfaces cover (based on the 20% landscaping requirement) which is far too high for areas that may have stormwater management challenges.

107. It is still the opinion of staff that the MDR provisions are poorly considered national standards that do not create a workable framework to manage risk from flooding due to lack of stormwater capacity, or other hazards risks, or the potential environmental effects from overloading wastewater infrastructure, amongst other matters. The increased risks from storm events as recently seen in Auckland and around the rest of the North Island, should trigger a review of this approach.
108. This relatively poor track record in national direction highlights the need for the cautious use of national standards and to have thorough engagement processes in developing standards that provide genuine and meaningful opportunities for feedback from planners and other experts from around New Zealand with on the ground experience in the management of resource management issues. As highlighted elsewhere the DCC supports the use of a Board of Inquiry for the National Planning Framework and seeks a more frequent review of the frameworks effectiveness.
109. Regarding clause 19(2), the DCC has 5 main concerns which are also relevant to section 108, section 223, section 512, and clause 126 of Schedule 7. The full details of those issues are set out in our submission relating to section 223, and then cross-referenced from the other occurrences. The principal issues are as follows:
 - a. Potential confusion about whether effects on land transport assets that are not stopping places must be disregarded
 - b. No definition of 'scenic views'
 - c. No definition of 'stopping places';
 - d. Potential confusion as which adverse effects are to be disregarded with regard to people on low incomes, people with special housing needs, and people whose disabilities mean that they need support or supervision in their housing; and
 - e. No definition of 'low income'.

The DCC requests that:

- a. With respect to clause 2(b), in addition to representativeness, significant experience and expertise in the matters of concern (from a local government perspective) should be a criteria.
- b. With respect to clause 9(3) nominations should also be sought from local authorities.
- c. With respect to clause 9(4) other expertise necessary should be plan preparation (including drafting).
- d. With respect to clause 19(2) – see s223 for requested changes.

Clause 27: National planning framework must be reviewed at least every 9 years

110. The national planning framework needs to have a robust plan effectiveness monitoring and review process. It is likely there will be problems in the first iterations of the framework due to the speed and pressures of the reform process and an early review should be required.
111. A 9-year review cycle is too long, the NPF should be subject to yearly framework effectiveness monitoring (including through surveys of RPC and local authorities) and reporting, and a three yearly review cycle to respond to that monitoring if required. A 9- or 10-year review may be appropriate for a full review where the full framework is open for submission irrespective of the findings of the Minister's review.

The DCC requests that:

- a. The requirements for monitoring and reviewing the NPF are adjusted to ensure its effectiveness.

SCHEDULE 7 – PREPARATION, CHANGE AND REVIEW OF NATURAL AND BUILT ENVIRONMENT PLANS

Clause 2: Overview of timeframes for development of first plans or full review

112. The timeframe for preparing a new plan replacing all plans in 2 years is an overly ambitious target. Most individual plans or significant reviews take more than 2 years. Issuing decisions in 2 years after notification is also likely to be unachievable. Hearing of submissions and evidence across all the content in these plans could take the whole two years based on current processes and significant new steps have been added to the plan-making process in the new system. Consideration needs to be given to providing a realistic time frame.
113. The efficiencies gained by staging plan reviews, and utilising (sector and organisationally) limited staff resources in an efficient manner through staging should not be underestimated.
114. The additional major regional issues step will take a significant amount of time and staff time spent on progressing this step will mean the same staff will be unavailable to progress the remaining part of the plan development.
115. The requirement to prepare engagement agreements, an engagement policy also needs time allocated.

The DCC requests that:

- a. Provision be included for the first plans to not be full reviews and have limited scope with any matters that have been considered in the last 5 years where there is no evidence that the issue has changed to be carried over if no substantive changes are being proposed or the only changes are required changes due to specific national direction requiring change.

Clause 29: Planning committee to report to chief executive on compliance with NPF

116. The clause 29 requirement to report on compliance with the NPF to the Chief Executive of MfE and Director General of Conservation, appears to be an additional step with little benefit

to creating a more efficient process. Instead, these elements should be required elements of the section 25 evaluation report because if changes are being made to give effect to national direction this is important explanatory information for other plan users or potential submitters and would be more logically be located in the same report as the rest of the evaluation.

The DCC requests that:

- a. Remove clause 29 requirement to report on compliance with the NPF and instead require the elements to be included in section 25 evaluation reports.

Clause 20: Enduring submissions

117. The explanatory information provided for the NBEA states that the goal of enduring submissions is to reduce complexity and repetition for participants. However, this new process is likely to add additional administrative complexity and slow the plan development process. It is unclear how differences between enduring submissions and primary submissions are to be addressed in submission summary reports. The summary of submission and presentation of staff analysis of suggestions provided through submissions (s42a) is the most time intensive part of hearing preparation. Adding complexity to this process is likely to slow the process. If greater efficiency is desirable the submission process should be more focused and streamlined: not be made more complex.
118. If additional steps are being considered a more useful step would be to require or encourage expert caucusing/ preliminary ADR processes where issues could be clarified so more useful staff advice could be provided to hearing panels. In many hearings staff revise recommendations after hearing evidence that they do not have available at the time submissions are received.

The DCC requests that:

- a. The Committee reconsiders the enduring submission process or make it a requirement of primary submissions to address relationships with any previous enduring submissions so that it is clear what the current submission point is.
- b. There is a requirement for the RPCs to use expert caucusing and pre-hearing ADR sessions to narrow issues ahead of hearings.

Clause 25: Contents of evaluation report on proposal for plan or plan change

119. The amendments to what was the s32 evaluation process are a positive and pragmatic step.

The DCC requests that:

- a. Clause 25 be retained.

Clause 34: Who may make primary submission

120. The wording of (2)(c) and its reference to clause (3) is unclear. 2(c) seems to imply that (3) is a limiting clause on persons that may make a submission, however, clause (3) relates to the form of a submission (not a qualifying matter to do with a person).

The DCC requests that:

- a. Clause (2)(c) be amended as follows: ‘any other person, ~~subject to subclause (3).~~

Clause 36: Certain persons may make secondary submissions

121. Similar to the RMA the NBEA has a number of clauses related to being ‘directly affected’. It is important the National Planning Framework and NBEA plans are able to provide direction on who may or may not be a directly affected person in respect to relevant clauses. With respect to Clause 36 to Schedule 7 of the bill, national direction on who is ‘directly affected’ may be necessary if there is an expectation that the number of secondary submissions are to be limited.

The DCC requests that:

- a. The term ‘directly affected’ is clarified with regard to which persons may make secondary submissions.

Clause 37: Planning committee may request further information and commission reports

122. A significant amount of hearing preparation time (reporting officer time) and hearing time is wasted on incomplete and unfocused submissions.

The DCC requests that:

- a. The Committee considers expanding this provision in a way that would more strongly encourage a RPC to utilise its powers to request amendments to submissions, or strike out submissions, that would:
 - i. Enable a lay submitter who has a valid matter to raise in their submission to correct a submission that has incomplete information to get it into the prescribed form with a focused request. Use of independent ‘friend of the submitter’ assistance should be promoted.
 - ii. Request a submitter to narrow or focus a submission that does not create a useful scope or does not appear to present a reasonable case for decision-making and therefore may create an inefficient process to consider in its current form.

Clause 38: Power to strike out submissions

123. The power to strike out submissions has not been implemented widely yet presents an important tool to speed up plan preparation processes if clearer direction and guidance is provided in the NBEA. The current drafting is largely a carry-over from the RMA, which has not worked well.

The DCC requests that the NBEA:

- a. Be amended to provide additional guidance on ‘in scope’ and ‘out of scope’ submissions and require (not just permit) strike out of out of scope submissions.
- b. Require Panels to exercise this step to ensure an efficient hearing process.

- c. Entrench criteria for in and out of scope. This should be those parts of the plan that are described as being under review and within a required 'scope of review' statement
- d. Require plan notification documentation to list provisions that are subject to review and the scope of that review.

Clause 41: When plan becomes operative

124. The DCC requests that the Committee takes into consideration the time-consuming nature of working through what rules have become operative with any Plan change, particularly full Plan changes. This is true not just for the status of rules, but also other plan provisions, such as objectives and policies. This process can lead to an uncertain period for applicants and consents staff. Clear rules within the Bill around when all parts of a Plan turn 'on' or 'off' are essential. Options to help resolve this uncertainty include:

- Providing more direction around processes for striking out submissions and allowing RPCs to request that submissions are clarified or made more focused. Large poorly focused submissions and associated appeals can delay plan provisions from becoming operative that are not subject to a serious or meaningful challenge. The limitations on appeal rights will help address this but will require a clarity in the degree to which provisions are affected by a RPC not accepting a recommendation and therefore those provisions being open to appeal.
- Requiring the regional planning committee to give notice of all rules unchallenged at the end of the submission period. This should have a specified timeframe. This could be at the same time as further submissions are called for (although only 10 working days seems to be specified for the summary in Clause 35(2) of Schedule 7, so this would need to be amended).
- Following the close of the appeal period, requiring a public notice identifying the provisions that haven't been appealed. This also needs a timeframe.

The DCC requests that:

- a. The Committee considers the suggestions above to ensure the Bill is clear around when Plan provisions switch on and off. Amend clause 41, Schedule 7 and/or all of Schedule 7 to address the concerns.
- b. Clause 2(5) is amended to clarify whether objectives and policies will continue, and whether they will endure under RMA Plans (and require ongoing consideration) when new NBE Plans come into effect. Clarify whether the whole RMA plan disappears or whether RMA plans still have some force while NBE Plans are finalised.

Clause 43: Correction and change of plans

125. This clause should also enable plans to be amended without the need for a plan change process to remove scheduled items that have been removed lawfully in accordance with a resource consent.

The DCC requests that:

- a. Clause 43 – Correction and change of plans, is amended to include scheduled items removed lawfully in accordance with a resource consent.

Clause 44: Application of proportionate process for plan changes

126. The restriction in Clause 44(4) that prevents this process from being used if strategic content is changed is considered to be too strict. In some cases relatively minor changes to strategic content are required as consequential changes to other plan content. It would be more appropriate to provide for Ministerial approval for use of this process in the case of changes that have limited changes to strategic content or RPC discretion with some type of objection process.

The DCC requests that:

- a. Clause 44(4) is amended to provide for Ministerial approval for consequential changes to strategic content or RPC discretion with an objection process.

Clause 59: Reports on recommendations

127. The ability for IHPs to make recommendations that are outside the scope of submissions that cannot be appealed appears to create a natural justice issue.

The DCC requests that:

- a. The natural justice issues of this clause are reviewed.

Clauses 61 and 66: Decisions of regional planning committee, and objection rights

128. It is not clear how clause 61(3)(b) which requires RPCs to not consider any other submission or evidence unless the commissioner has access to that submission or other evidence aligns with the right to object to a recommendation of a commissioner in clause 66. Further it does not seem feasible to get decisions on recommendations completed in 40 working days if there is a requirement to first allow objections and hold hearings on them.

The DCC requests that:

- a. The inconsistency between clause 61(3)(b) and clause 66 is addressed.
- b. At a minimum allow for the suspension of the clock if objections under 66 are lodged.

Clause 62: Decisions of regional planning committee

129. One of the key challenges in plan preparation is ensuring provisions are clear and workable. It may be worth considering allowing local authorities (who must administer plans) to review draft decisions for clarity of plan drafting and workability. This could avoid future minor corrective plan changes.

The DCC requests that:

- a. local authorities (who must administer plans) are allowed to review draft decisions for clarity of plan drafting and workability.

Clause 73: Grounds for rejecting request

130. There should be allowance for independent plan changes to be rejected if they are contrary to the strategic content of the plan.

The DCC requests that:

- b. Clause 73 be amended by adding 'an independent plan change that it is contrary to the strategic content of the plan' as grounds for rejecting an independent plan change request.

Clause 126: Matters that affect recommendations

131. Clause 126(2)(a) is potentially confusing at it could be read as the exclusion of consideration of effects on land transport assets that are not stopping places. This may imply that it is not possible to consider transport safety or efficiency and clearly was not intended. An amendment to this clause is suggested to make it clear that it is only effects on scenic views that must be disregarded, and then only if they are from private properties, or from land transport assets that are not stopping places.
132. The DCC seeks clarification on the meaning of "stopping places" as used in clause 126(2)(a) (see Appendix 1).
133. The DCC also seeks clarification on the meaning of "scenic view" as used in clause 126(2)(a) (see Appendix 1).
134. Clause 126(2)(a) may cause confusion as at a first reading it may appear that it is limiting the consideration of any adverse effects created by ("arising from") the use of land by people of low income, or with special housing needs, or whose disabilities mean that they need support or supervisions in their housing". The intent presumably is not to disregard any real effects that might arise from these groups proposing to undertake new activities or new developments but rather to disregard any speculative or perceived effects of these groups occupying housing or being provided services nearby (e.g. prejudicial assumption around different effects from an activity (such as housing) due to the type of occupants) As written, it seems to read that if a person has a low income (which is not defined) the effects on the environment (no matter how significant) from their use of the environment must be disregarded. Presumably it is not to enable people on low incomes to pollute or otherwise create adverse effects that are otherwise unacceptable.
135. As drafted the current list of types of people is very specific. In taking this approach it will be necessary to clearly define each group. For example, what 'low income' means or provide a simple methodology for determining who may be low income. Is below a living wage 'low income' or is below the minimum wage 'low income'? Is an unemployed person considered low income?
136. It might be better to instead to focus on the presumed core issue (perception of effects due to 'type' of occupants or people accessing services) and use those grouping as non-exclusive examples to avoid legal debate about the exact definition of those specific groups and to recognise that other groups are subject to prejudice. For example, by expressing it as:

"the potential for real or perceived adverse effects to arise due to the occupation of land by, or use of land to provide services to, certain types of people, including but not

limited to people on low incomes; or people with special housing needs; or people whose disabilities mean that they need support or supervisions in their housing.”

The DCC requests that:

- a. Clause 126(2)(a) be amended as follows:

any effect on scenic views from either: private properties or from land transport assets that are not stopping places; or
- b. Clause 126(2)(a) be amended to clarify the meaning of ‘stopping places’ or define the term in the NBE.
- c. Clause 126(2)(a) be amended to clarify the meaning of "scenic view" to clarify its meaning or define it in the Interpretation section of the Bill.
- d. The Committee review the intent of the wording in clause 126(2)(c) (and s108, s223, s512, and Cl. 19(2) Schedule 6). For example, it could be reworded as “the potential for real or perceived adverse effects to arise due to the occupation of land by, or use of land to provide services to, certain types of people, including but not limited to people on low incomes; or people with special housing needs; or people whose disabilities mean that they need support or supervisions in their housing.”
- e. Clause 126(2)(c) be amended to define what ‘low income’ means or provide a simple methodology for determining who may be low income.
- f. Clause 126 - *consideration of resource consent application* be amended to clarify whether the permitted baseline can be used. If it is to be prohibited, explicitly state that.

SCHEDULE 11 – PROVISIONS ABOUT ESPLANADE RESERVES AND STRIPS

137. The NBE Plans should be required to have overarching strategies about esplanade reserves and strips – clearly defining what you will take and what you will not take. This will ensure clarity and consistency with respect to the taking or leaving of these areas of land.

The DCC requests:

- a. The Committee should consider amending the Bill to require NBE Plans to have overarching strategies about esplanade reserves and strips – clearly defining what you will take and what you will not take.

Demolition by neglect

138. Heritage is at the heart of Dunedin with its exemplary collection of Victorian and Edwardian architecture. This heritage is critical, alongside its stunning natural environment, to making Dunedin a visitor destination and an attractive place to live, work and play. Arguably the majority of Dunedin heritage building owners are passionate about their buildings and do their best to maintain and restore them. However, this is not always the case.

139. Protection of heritage has to involve a two-pronged approach of 'carrots and sticks'. DCC supports investment in heritage buildings through a range of actions including investment in a substantial heritage fund (with membership from Heritage New Zealand and the Southern Heritage Trust) which provides grants for heritage building owners for restoration and earthquake strengthening and other projects. DCC also supports its commercial heritage precincts with investment in the quality of the public realm to make these attractive places for investment. Past revitalisation projects in the city, including the Warehouse Precinct, demonstrate the potential for historic parts of the city to become attractive residential, hospitality and business destinations using these investment tools.
140. However, regulation is also an important tool and the District Plan contains rules controlling demolition and alterations to scheduled Heritage Buildings and rules for other work in Heritage Precincts.
141. 'Demolition by neglect' is a term used to describe a sustained period where a lack of repair and maintenance compels the eventual demolition of the building. The process of 'demolition by neglect' may commence with an event that damages the building e.g. a fire, or more commonly a gradual decline that results in occupiers vacating the building. In time, a period which can span decades, the building becomes unsafe and/or uneconomic to repair and demolition of the building becomes the only viable outcome. There have been instances in Dunedin where buildings have partially collapsed due to neglect, requiring complete demolition to make the site safe. Demolition by neglect almost always affects historic buildings that require substantial financial investment to enable ongoing use; typically arising from code compliance requirements, earthquake strengthening, amenity upgrades, or repair and deferred maintenance.
142. 'Demolition by neglect' is not currently regulated under either the RMA or the Building Act (falling between the two).
143. There have been and continue to be several examples of demolition by neglect in Dunedin. In some cases, these are historic and may have resulted from a lack of viable opportunity to do better by past building owners but in some cases, it appears it may be a deliberate strategy to get around planning rules. For example, owners deliberately stopping basic maintenance of buildings and anecdotal stories of building owners ripping away roofing iron to allow water ingress into buildings. The DCC has also had several experiences of building owners not being willing to engage in conversations where financial support to address issues has been offered.
144. The DCC encourages the Committee to include provisions in the NBEA to explicitly enable the management of neglected heritage buildings where a lack of maintenance is having an adverse effect on the structural stability, weathertightness, or long-term retention of a scheduled heritage building (aka demolition by neglect). This is urgently necessary for DCC (and other territorial authorities) to take actions to save heritage buildings where neglect has not yet progressed to a point of no return.
145. Provisions should enable Territorial Authorities to take proportionate enforcement actions to compel maintenance or collect fines to allow maintenance work to be undertaken by Territorial Authorities if enforcement actions are not complied with.

146. Seeking consent for demolition or partial demolition could be an alternative option for building owners, this option should be discouraged with a preference for maintenance works to be undertaken by either the building owner or Territorial Authority.

The DCC requests:

- a. The NBEA include provisions which enable the management of 'demolition by neglect' of protected heritage assets

LANGUAGE/MINOR ERRORS

Section 63: Requirements when effects management framework applies

147. For clarity the word 'specified' could be added to section a before cultural heritage and in section b to ensure that the effects management framework only applies to specified biodiversity and specified cultural heritage.

The DCC requests:

- a. That Section 63 (a) and (b) be amended as follows:

- (a) *offsetting for adverse effects on specified biodiversity or specified cultural heritage must be undertaken in accordance with Schedule 3 or 5, whichever applies; and*
- (b) *enhancement to make up for adverse effects on specified biodiversity or specified cultural heritage must be undertaken in...*

Schedule 7, Clause 60: Matters that affect recommendations

148. There appear to be a cross-referencing error in this clause. There does not appear to be a Clause 44(9) in the bill, presumably this should refer to Clause 44(8).

SPATIAL PLANNING BILL

PART 2 – REGIONAL SPATIAL STRATEGIES:

Section 17 (c): Contents of regional spatial strategies: key matters

149. It is inappropriate to require the identification of "areas that are appropriate for urban development and change..." in an RSS as this process does not include a full planning assessment, quasi-judicial process for examining detailed evidence on appropriateness.
150. This should be changed to be worded to reflect this is a strategy not a plan (that a full planning assessment has not been undertaken).

151. The requested rewording below is to reflect that some plans may use 'transition' zones for future development where areas have been assessed as appropriate through a planning process, but land is awaiting infrastructure upgrades before transitioning and being opened up for development.

The DCC requests:

- a. That Section 17(1)(d) is reworded as "areas to be reserved for potential long term urban development and change" and "Areas identified as appropriate for urban development and change in NBA plans).

SCHEDULE 1 – TRANSITIONAL, SAVINGS, AND RELATED PROVISIONS:

Part 1, Clause 2 (1 & 5): Incorporation of information from RMA planning documents into regional spatial strategies

152. This clause states that RSSs may incorporate provisions from operative RMA planning documents, but clause 2(5) does not include FDSs. Operative FDSs are likely to be the most current spatial representation of the future land use needs for Dunedin City and will include relevant information that is directly applicable to the RSS.

The DCC requests:

- a. Amend clause 2(1) of the First Schedule to enable the incorporation of operative FDS content into RSSs.

Concluding remarks

153. Thank you for the opportunity to submit on the Natural and Built Environment Bill and Spatial Planning Bill.
154. If the committee would like to clarify any of the issues raised in the submission, please do not hesitate to get in touch.
155. The DCC looks forward to working with the Government, partner agencies, mana whenua, businesses and communities on this important transition.
156. The DCC wishes to speak to this submission.

Yours faithfully,



Jules Radich
Mayor of Dunedin

APPENDIX 1: UNDEFINED SUBJECTIVE TERMS FOR DUNEDIN CITY COUNCIL

Words that are unclear in the Natural and Built Environment Bill and that could result in litigation.

Terminology	Section	Definition/Commentary
Low income	<ul style="list-style-type: none"> • 19(2)(c)(i) • 108(d)(i) • 126(2)(c)(i) • 223(8)(e)(i) • 512(1)(c)(i) 	<ul style="list-style-type: none"> • "Low income" is not defined in the NBE but is used in a number of sections that decision-makers must disregard adverse effects arising from the use of land by people on incomes. • According to NZ Parliament, New Zealand does not have an official poverty measure. However, low-income thresholds or poverty lines can be used. The 'fixed line' measure anchors the poverty line in a reference year, then adjusts it each survey with the Consumer Price Index. The 'moving line' or 'relative' measure sets the poverty line as a proportion of the median income. • Ministry of Social Development confirmed that there is no general definition of 'low income' as it varies and depends on the circumstance, grants and application an individual is applying for. • TRA No 93/236 case: A farmer's income in 1992 year was \$77,642, more than low income entitlement limit. Entitlement ceases once assessable income of \$30,875.00 is earned under s 188, ss 50C and 50D of the Income Tax Act 1976. This section has been repealed and is now s 24(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008.
Scenic view	<ul style="list-style-type: none"> • 19(2)(a) • 108(b) • 126(2)(a) • 223(8)(c) • 512(1)(a) 	<ul style="list-style-type: none"> • The term "scenic view" is not defined in the NBE but is used in a number of sections that state that decision-makers must disregard any effects on scenic views from private properties or land transport assets that not stopping places. • <i>High Country Rosehip Orchards Ltd v Mac Kenzie District Council</i>, [2011] NZEnvC 387, gives us an idea that scenic viewing areas

		<p>are areas that enable views of the landscape to be obtained within and from those areas, under Rural Policy 3A2. In the district plan by the three factors which went into choosing the scenic viewing areas</p> <ul style="list-style-type: none"> ○ the "landscapes contained in these areas, ○ the views obtained from areas; and ○ the high number of visits. <p>The Court does not directly refer that a scenic viewing area is a scenic view.</p>
Stopping places	<ul style="list-style-type: none"> • 108 • 223 • 512 • 761 • 777 • Schedule 6, clause 19 • Schedule 7, clause 126. 	<ul style="list-style-type: none"> • The term "stopping places" is not defined in the NBE but is used in several section in relation to what must be disregarding by decision makers, in that effects on scenic views from land transport assets that are "not stopping places" must be disregarded. • The term appears in s 6.15 of the Land Transport (Road User) Rule 2004, but it is not defined. The land transport rules seem to use the terms "stopping place" and "stand" interchangeably. In the <i>Florov v Auckland City Council</i>, HC Auckland CRI-2010-404-97, 19 July 2010, The HC looked at an issue around parking at a bus stop. The Court does not directly state that a bus stop is a stopping place, but because its applied 6.15(1)(a) "reserves as stopping place or stand for a class or classes of vehicle", we can infer that it is. • <i>Pronto Shuttle Services Ltd v Wellington City Council</i>, HC Wellington CRI-2009-485-141, 3 March 2010 also suggests that a bus stop is a stopping place. • The term appears in schedule 4, s 1(1)(a), s 2(1)(b), s 3(b), schedule 6, chapter 2(1)(b), article 5(b) of the Civil Aviation Act 1990, but it is not defined.
Location	<ul style="list-style-type: none"> • 55 • 64(2)(a) • 64(2)(b) • 64(2)(c) 	<ul style="list-style-type: none"> • The term "location" is not defined in NBE but is used in a number of sections that refer to the geographical location of an

	<ul style="list-style-type: none"> • 65 • 125(1) • 125(2) • 196(2) • 245(1)(b) • 261(b) • 294 – 298 • 299 – 301) • 448 • 488(2)(b) • 504(5)(b) • 543(3)(a) • 560(1)(b) • 560(3) • 599(2)(b)(i) • 599(2)(b)(ii) • 606 • 626(b) • 646(e) • 816(4)(k) • 858(1)(g)(i) 	<p>activity as a relevant consideration in various planning processes.</p> <ul style="list-style-type: none"> • Black's Law Dictionary defines "location" as, "1. The Specific place or position of a person or thing. 2. The act or process of locating. 3. Real estate. The designation of the boundaries of a particular piece of land, either on the record or on the land itself. 4. Mining law. The act of appropriating a mining claim. – Also termed mining location. 5. The claim so appropriated. 6. Civil law. A contract for the temporary use for hire; a leasing for hire."
Relevant concerns	<ul style="list-style-type: none"> • 205 	<ul style="list-style-type: none"> • In relation to notification a consent must be publicly notified if there are "Relevant concerns" from the community.
Desirability of consistency	<ul style="list-style-type: none"> • 6(3)(b) • 6(3)(c) • 6(4)(b) • 6(4)(c) • 44(a) • 51(da) • 52(a) • 58E(aa) 	<ul style="list-style-type: none"> • The term "desirability of consistency" is not defined in NBE but is used in the phrase "desirability of consistency with this Act" in sections that state what must be considered by boards of inquiry and the Minister when amending or preparing national directions during the transition period. • The term appears in s 8 of the Sentencing Act 2002, but it is not defined. • <i>Bay of Plenty Regional Council v Whitikau Holdings Ltd</i>, [2018] NZDC 3850 "the Sentencing Act requires a judge to take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offenders committing similar offences in similar circumstances, this principle is designed to

		address factual matters rather than matters of legal principle."
Community	<ul style="list-style-type: none"> • 7(1)(a) • 7(f) • 14(3)(a) • 24(2)(a) • 77(4)(b) • 93(2)(f) • 107(1)(a) • 205(2)(c) • 276(3)(a) • 350(4)(a)(iv) • 374(6)(b) • 386(2)(b) • 391(2)(a) • 643(1)(b) • 643(2) • 645(1)(b) • 645(2) • 645(3) • 650(3)(c)(i) • 653(2) • 656(1)(b)(i) • 846(1)(b) 	<ul style="list-style-type: none"> • The term "community" is not defined in NBE but is used widely throughout the bill in reference to "community outcomes", "local communities", and the "the well-being of people and communities". • Under s 5 of the Local Government Act 2002, community means, subject to subsection (2), a community constituted under Schedule 6. Schedule 6 is about constitution of communities. Community in this context refers to specific community boards.

APPENDIX 2: DUNEDIN CITY COUNCIL SUBMISSION ON THE RESOURCE MANAGEMENT (ENABLING HOUSING SUPPLY AND OTHER MATTERS) AMENDMENT BILL, NOVEMBER 2021

16 November 2021

Committee Secretariat
Environment Committee
Parliament Buildings
Wellington

Tēnā koutou

DUNEDIN CITY COUNCIL SUBMISSION: RESOURCE MANAGEMENT (ENABLING HOUSING SUPPLY AND OTHER MATTERS) AMENDMENT BILL

INTRODUCTION

1. The Dunedin City Council (DCC) appreciates the opportunity to make this submission on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill.
2. The DCC appreciates that the intent behind the bill is to create a quick and ready tool to add a large amount of housing capacity into plans to enable increased supply.
3. The DCC is also committed to taking actions to ensure Dunedin has enough affordable quality housing for its community. Like many parts of New Zealand, Dunedin is experiencing a current shortfall in housing, largely as a result of a recent significant and unanticipated high rate of population growth. We also note that the attractiveness of housing as an investment has also contributed to house price growth in Dunedin over and above housing supply issues.
4. The current demand for housing in Dunedin is expected to continue as major redevelopments in the city, such as Otago University's capital works programme and the hospital rebuild, get underway.

BACKGROUND PLANNING CONTEXT IN DUNEDIN

5. In 2021, Dunedin released its Spatial Plan which set out strategic directions for growth in the city. The Plan promoted a compact urban form with resilient townships and settlements. These strategic directions were carried through to its Second Generation District Plan (2GP) which had clear outcomes around housing choice and supply, balanced with environmental and social outcomes for the city. These outcomes included protection of outstanding landscapes, biodiversity values, significant heritage, avoidance of significant risks from natural hazards, and other matters of national importance. The 2GP also promotes an urban form and well-designed urban growth that reduces car-dependency and promotes accessibility.
6. In Dunedin's experience it is possible to both promote housing supply and key environmental, cultural, economic and social outcomes and the DCC believes the District Plan will deliver on these outcomes collectively. However, there is a significant and unavoidable lag time between

planning for growth and the delivery of housing, due not only to the time it takes through the planning cycle, but also the significant time it takes to plan and deliver infrastructure and the time it takes for the development sector (builders, surveyors, tradespeople, supply chains etc) to gear up to deliver more housing. The unanticipated higher rates of growth in Dunedin in the pre-Covid period, coupled with delays due to Covid, has inevitably created a demand and supply lag.

7. However, Dunedin is making significant progress towards addressing the supply side lag created by the factors outlined above. DCC recently received subdivision consent applications for over 700 new lots in a single month and the number of dwellings granted a building consent is at a 29-year high.
8. Construction of new housing is occurring at a much slower rate than consenting of new homes, indicating that the key constraints are in construction rather than the availability of land. Feedback from the development sector is that issues with accessing building materials and skills shortages within the construction industry are contributing factors. There is no evidence to indicate that planning or land supply is a major contributor to housing supply and affordability issues in Dunedin.
9. The DCC's most recent housing capacity assessment indicated only a small shortfall in development capacity. With the plan changes already in progress, and mediation on 2GP appeal sites, it is anticipated that both short term and medium-term land capacity will increase within the next three to six months. Once these changes are in place, the supply of development capacity will be sufficient to meet short, medium, and long-term demand, as assessed under the NPS-UD.
10. The changes proposed in Variation 2 include several rule changes for most of suburban Dunedin that will enable greater density including:
 - Removal of the restrictions on who can live in family flats (or 'ancillary residential units')
 - Allowing smaller site sizes and providing for duplexes on all sites of 500m² or larger
 - Creating more flexibility for development through changes such as making it easier to average out site sizes in subdivisions
 - Providing a more enabling consenting pathway for social housing that exceeds density limits.
11. Variation 2 also includes zone changes for approximately 100 hectares of greenfield land and proposed medium-density rezoning for an additional 270 hectares of Dunedin's urban area.

CRITERIA FOR APPLYING MEDIUM DENSITY RESIDENTIAL STANDARDS TO TIER 2 COUNCILS

12. The DCC considers that the proposed criteria for the Minister to use in determining when to apply the Medium Density Residential Standards (MDRS) requirements to Tier 2 councils are flawed, particularly around the use of immediate affordability measures (rather than housing capacity assessment work). The DCC has a particular concern with the use of the median multiple measure.

13. The DCC is concerned that the principal indicator that the Minister must have regard to in determining whether cities have an acute housing need is an affordability indicator rather than demand and/or supply indicators. Housing affordability is impacted by a wide range of factors (such as interest rates, construction constraints, regulatory settings, etc.) as outlined above. It also does not consider the large lag time between planning for growth and houses or other buildings being built. The median multiple measure is more likely to reflect the planning situation from 5 years prior as opposed to the current situation. In the case of the current housing crisis, this measure most likely represents high population growth since 2013 coupled with significantly increased building costs and macro-economic drivers that caused significant investor demand for housing, resulting in demand outstripping supply.
14. The DCC would like to see the planning response triggered by measures contained within the housing capacity assessments required under the NPS-UD.
15. Furthermore, while median multiples are common due to their simplicity to calculate and explain, they are generally considered to be a poor indicator of housing need or affordability. Key issues include:
 - a. They only consider an 'average' household and ignore how housing issues are felt (or not) by different sectors of the population.
 - b. Median multiples are the result of a wide range of factors. For instance, interest rates can have a large impact on median multiples. If interest rates decrease, then this generally results in house prices increasing, as people can afford to pay a larger mortgage, resulting in median multiples increasing.
 - c. Median multiples are easily skewed by the demographics (or changes in demographics) within areas. For example, a higher proportion of retirees or one person households (both with lower average incomes) will result in a higher median multiple. This would include student households in Dunedin, as 22% of our population aged 15 years and over are in study (as of the 2018 census), compared with 12% for New Zealand as a whole.
 - d. Median multiples don't account for how households experience affordability, as they disregard factors like interest rates, the level of difficulty in raising a deposit, or transport costs resulting from housing location.
 - e. As transport costs are excluded from the assessment of median multiples, a city with significant sprawl might have lower median house prices (and consequently a lower median multiple) than a compact city, despite the former city being less affordable if their transport costs are considered alongside house prices.
 - f. Median multiple results generally show a lack of affordability in more attractive cities, which generally have higher house prices. This suggests that a poor median multiple may be (at least partially) caused by positive factors (attractiveness) rather than poor planning for housing.
 - g. Due to the wide range of other contributing factors, it is difficult (if not impossible) to draw conclusions about land supply from the median multiple. As a result, it is inappropriate to use it to drive decisions about enabling further capacity.
16. Using any headline quantified indicators to determine acute housing need is likely to be problematic and disregard a range of nuances, such as the impact of Dunedin's large student population. While we acknowledge that the Minister 'may have regard to' other information,

the elevation of median multiples as something that the Minister 'must have regard to' is problematic.

EROSION OF LOCAL GOVERNMENT AND LOCAL COMMUNITY DECISION-MAKING

17. The DCC considers the removal of input by local communities (or local governments) into the setting of density controls goes against democratic decision-making. Dunedin communities have had significant input into setting the strategic directions of Dunedin through consultation on the Dunedin Spatial Plan and Second Generation District Plan. As a result, these documents (as well as the upcoming Future Development Strategy) reflect community aspirations, which would be supplanted by any requirement to adopt the MDRS.

QUALIFYING MATTERS

18. The DCC submits that the inability (or difficulty) to consider the capacity of infrastructure networks before applying the MDRS could result in significant adverse effects, such as downstream wastewater overflows into waterbodies and in some case private properties (which is contrary to the NPS for Freshwater Management and presents a significant issue for public health).
19. The DCC, like other councils, has different levels of infrastructure modelling in different areas of the city. In some areas, it may not be possible to demonstrate whether there is an insufficiency of infrastructure capacity that would validate an exclusion from the MDRS.
20. For the collective qualifying matters, an unachievable amount of assessment would be required in considering how and where to apply the MDRS as the onus of proof would move to assessing where medium density provisions shouldn't apply rather than where they should apply.

INFRASTRUCTURE PLANNING

21. The DCC considers that applying the MDRS to all residential areas will lead, at least in some cities, to an inability to efficiently plan for infrastructure. The spatial extent of potential development capacity would make it too difficult to predict where growth would actually occur.
22. The inability to efficiently plan for infrastructure would result in additional cost, reduced levels of service, and environmental degradation.
23. Similar concerns are also likely to be relevant for key community services and other community and network infrastructure providers. It also fundamentally undermines the ability to do strategic spatial planning to encourage growth near where there is good accessibility to these services, facilities and infrastructure.
24. The DCC notes at the moment the bill does not seem to explicitly account for unreticulated areas that may not be zoned 'large lot'. This is potentially an oversight that needs correction. If it is intentional this could result in significant adverse effects on the environment and needs to be reconsidered.

EROSION OF SUSTAINABLE TRANSPORT POLICY

25. As discussed above, Dunedin like many other cities is seeking to promote sustainable transportation as part of its commitment to carbon reduction. As such it is promoting most housing to be located where there is currently good access to public transportation (or walking access to the central city or major centres) or where these services can be easily extended into the area of growth. The bill would effectively undermine that strategy by promoting housing everywhere, including areas that suffer from poor access to transportation options.

URBAN ENVIRONMENT AND HOUSING QUALITY

26. The inability to have design and character controls in areas where the MDRS are applied would result in negative effects on overall urban amenity and housing quality as there would be no ability to set any additional standards for these matters. It would also create a very high 'permitted baseline' that would make it difficult to manage these effects in other situations.
27. The DCC supports the proposed building coverage and impervious surfaces standards proposed. It notes though that the standards could go further to protect and promote urban biodiversity and consideration should be given to this matter.
28. The DCC has significant concerns with the Height in Relation to Boundary standard that will, if applied, have significant adverse effects for cities at low latitudes as it does not provide for solar access over much of the year. This will have impacts on human health and energy costs and ultimately increased drain on the electricity network. This is particularly an issue for cities with colder climates and where much of the existing housing is older single storey and poorly insulated (like Dunedin).

RECOMMENDATIONS

The DCC recommends that the following changes are made:


- Amend the indicators that the Minister must have regard to when determining whether to apply the MDRS requirements to Tier 2 councils.
- Require local authorities to prepare an evaluation report (using a process similar to section 32) which assesses the benefits with respect to addressing the problem (capacity shortfall) against the potential adverse effects of implementing the method, and in achieving strategic planning outcomes. If necessary, this report could be subject to review by the Ministry for the Environment.
- Amend the bill to make specific reference to infrastructure capacity, and allow for a precautionary approach in areas where infrastructure constraints and issues are known but there is incomplete information on what additional level of development may be appropriate.
- Reconsider the Height in Relation to Boundary Standard, if they were to be applied, for colder and lower latitude parts of New Zealand.

- Amend the bill to enable local authorities to add additional controls to ensure quality of housing and the built environment through a controlled activity status for these matters or use of appropriate performance standards.

CONCLUSION

29. Thank you for the opportunity to provide feedback on the bill. The DCC welcomes any further opportunity to provide input into the bill.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'David Benson-Pope', with a long horizontal flourish extending to the right.

Councillor David Benson-Pope

CHAIR OF PLANNING AND ENVIRONMENT COMMITTEE