Submission on the Natural and Built Environment Bill

Submission to the Environment Committee

19 February 2023

Submission by: Manawa Energy Ltd

To: Environment Select Committee

By email: en@parliament.govt.nz

EXECUTIVE SUMMARY

A. Manawa Energy Ltd ("Manawa") is a renewable electricity generator producing around 8% of Aotearoa New Zealand's existing hydro-electricity generation capacity. Manawa supports New Zealand's ambitious renewable electricity and climate change goals.

B. Manawa supports many aspects of the Natural and Built Environment Bill (the "NBE Bill" or "Bill"). It has material concerns with a range of other aspects. Critical issues with the Bill for Manawa include the following:

Key Issue One: short-term freshwater consents – achieving 100% renewables and ensuring a level playing field for distributed and grid connected generation[1]

C. The scope of potential exemptions to the mandatory short-term durations for water-related consents should be expanded to include applications for renewable electricity schemes that are connected to the local distribution network, not just national grid connected schemes. Under a 10 year water permit consent duration, there would be an additional 43 reconsent processes (over the next 35 years) for Manawa's existing hydro-electric power schemes. This places significant additional costs on Manawa as an applicant.

i. The Bill fails to meet its own key stated objective of enabling renewable electricity generation, through drawing an arbitrary distinction between renewable hydro-electricity generation which is grid connected versus that which is not. Further, it will do so while achieving very minimal, if any, environmental benefits.

ii. The hydro-electric power schemes which are impacted by the Bill cumulatively make a real contribution towards the government's 100% renewables target and provide resilience to their local communities. They are generally many decades old, some over 100 years old. Environmental impacts from construction have long since passed. Ongoing effects (for example impacts on flows, fish passage etc) are relatively minor and can be – and are being – mitigated.

[1] See section 10 of this submission.

iii. The provisions in the Bill will put distributed generation at a significant disadvantage compared to grid connected electricity generation which will continue to enjoy much longer consent durations. Manawa is seeking that the Bill treat all electricity generators equally.

iv. As highlighted by the Sapere Report (**Appendix C**), the nature of the connection does not determine the significance of hydro-electricity in meeting Natural and Built Environment Act ('NBEA') system outcomes.

v. If the Bill is not changed, Manawa and others will face new disincentives to invest in renewable generation, incurring not only significant uncertainty as to the future viability of their schemes, but also be forced into an unnecessary and repeated consenting cycle with associated time, costs and delays. This burden also falls on consenting authorities, iwi and communities, adding significant costs to the overall process and risks of ongoing, significant delays.

vi. As drafted, the legislation creates significant investment uncertainty for Manawa and the large segment of existing renewable generation which is not grid connected. This will likely impact proposed upgrades or enhancements of existing hydro-electricity put on hold for years.

vii. The scope of potential exemptions should be expanded to include water permit applications for hydro-electricity and other renewable electricity generation schemes which are not connected to the national grid, rather than arbitrarily favouring grid connected generation and creating a market imbalance. Parliament should avoid exempting individual establishments from the general law, as this Bill currently does.

viii. Practically, the legislative "fix" is simple and comes without any environmental drawbacks. Small wording changes to the Bill will demonstrate the Government and Parliament's commitment towards 100% renewable electricity generation and put distributed and grid-connected generators on a level playing field.

ix. This could be achieved by the following changes to the exemptions in cl 276 (3)(c):

(c) the construction, <u>operation</u>, upgrading, or maintenance of any of the following infrastructure activities:

…

(v) renewable electricity generation facilities that connect directly to the national grid ~~electricity transmission~~ or local distribution network.

Key Issue Two: stronger system outcomes recognition for infrastructure[2]

D. The critical need for safe and efficient infrastructure services must be appropriately recognised in the preliminary sections of the Bill, alongside other environmental protection/restoration imperatives. Manawa therefore seeks:

i. the system outcome relating to infrastructure in cl 5(i) be strengthened as follows;

(i) the ~~ongoing and timely provision~~ enablement and protection of infrastructure ~~services~~ in a timely manner to support the well-being of people and communities.

ii. that renewable electricity is explicitly included in system outcome cl 5(b)(i) as follows:

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

(i) the reduction of greenhouse gas emissions, including through increased generation, storage, transmission, and utilisation of renewable electricity, sufficient to enable New Zealand to meet the target set under s5Q of the Climate Change Response Act 2002, and emissions budgets and emissions reduction plans:

Key Issue Three: "pathways through" potential roadblocks for critical infrastructure

E. Several aspects of the Bill represent potential "showstoppers" for key infrastructure. These include **environmental limits and targets**,[3] and **places of national importance**[4] which – in the absence of appropriate pathways through – have the potential to pre-emptively foreclose appropriate projects, including for key infrastructure. It is critical that important infrastructure, such as hydro-electricity generation, is not inappropriately constrained. Appropriate exceptions and/or pathways through for key infrastructure are therefore needed to be enabled by the Bill.

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2 See section 5 of this submission.
3 See section 8 of this submission.
4 See section 11 of this submission.

1. INTRODUCTION

1.1. This submission is made on behalf of Manawa Energy Ltd ("Manawa"). Given the breadth of the proposed changes to the resource management system Manawa is a key stakeholder.

1.2. At a high level, Manawa supports the purpose of the Bill. Having said that we are concerned that as drafted it will not achieve what it intends to. It needs to be effective, workable, and not have unintended consequences. Manawa supports many features of the Bill. However, there are a number of important aspects of the Bill which Manawa does not support and considers should be amended or deleted.

1.3. This submission addresses Manawa's key concerns.

1.4. Manawa is part of the Electricity Sector Environment Group ("ESEG") and was involved with the preparation of, and supports the joint submission lodged by ESEG.

2. BACKGROUND TO MANAWA

2.1. Manawa is a renewable electricity generator producing around 8% of Aotearoa New Zealand's existing hydro-electricity generation capacity from 25 schemes throughout Aotearoa New Zealand. Manawa supports New Zealand's ambitious renewable electricity and climate change goals, with 100% renewable electricity generation a core objective.

2.2. Manawa is a publicly listed and predominantly a New Zealand owned company. Its origins are from the Tauranga Electric Power Board (established in 1924) which grew into Trustpower Limited that was formed as part of the deregulation of the electricity supply industry in the mid-1990's.

2.3. In 2022 Manawa was established following the sale of the mass market retail business (including the Trustpower brand) to another company. The remaining business, which is focused on electricity generation, was rebranded to Manawa Energy. Manawa employs over 200 people throughout Aotearoa New Zealand.

2.4. Manawa owns 487MW of hydro-electricity generation assets throughout Aotearoa New Zealand which consists of 38 hydro-electric power stations across 25 individual schemes (including schemes under the King Country Energy portfolio of which Manawa is a 75% shareholder and is responsible for the operation and maintenance of those schemes) (see

Appendix A). The installed capacity of Manawa's schemes varies from 1.4 to 86MW. The number of schemes (which are geographically spread), and the relatively modest installed capacity of many of its schemes, distinguishes Manawa from other large generators (as does the fact it no longer has mass market retail customers).

2.5. Cumulatively Manawa's hydro-electric power stations represent approximately 8% of Aotearoa New Zealand's installed hydro-electricity generation capacity. This is enough electricity to supply approximately 274,000 typical New Zealand households.

2.6. Manawa is a lifeline utility under the Civil Defence Emergency Management Act 2002. While our Matahina, Patea, Branch, Coleridge and part of the Waipori Manawa's hydro-electric power schemes ("HEPS") connect to the national grid, the majority of our schemes[5] are embedded into 10 different local electricity distribution networks providing resilience to those communities and in some cases the national grid. The importance of distributed generation is outlined in **Appendix C**, a report prepared by Sapere[6]. This portfolio of HEPS form a vital element in ensuring a sustainable, secure and affordable electricity supply within Aotearoa New Zealand.

2.7. The location and scale of Manawa's schemes, along with a commitment to local supply (to ensure that electricity is consumed as close as possible to where it is generated) is a key and somewhat unique feature of Manawa's generation portfolio.

2.8. As Manawa Energy is the majority shareholder of King Country Energy ("KCE") and operates and maintains those assets, this submission also covers more detailed aspects of interest to those KCE Schemes.

3. OUTLINE OF ISSUES AND STRUCTURE OF SUBMISSION

3.1. This submission focuses on the following key issues with the NBE Bill, which Manawa has identified, and which have generally been ordered to reflect the structure of the Bill.

3.2. The first two sections of out submission present our views on:

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[5] 61% of Manawa's schemes are connected into the local distribution network, totally 1153 GWh, out of a total of 1904GWh produced annually by Manawa.

[6] Sapere: The treatment of distributed generation in the Natural and Built Environment Bill, February 2023

(i) Themes (section 4) – where Manawa sets out some initial overarching comments which provide high-level context for its submission.

(ii) Purpose and preliminary matter (section 5) – which addresses the purpose of the Bill, and a range of preliminary matters, including seeking changes to key system outcomes, definitions, the precautionary approach, and a requirement to use best information. The changes sought by Manawa are intended to make these provisions workable in practice, having regard to Manawa's 'real world' experience in consenting significant projects.

3.3. An overview of those issues covered in the remainder of our submission, along with an 'at a glance' summary of Manawa's views on the current proposed arrangements is presented in the following table.

Section		Issue
Key:	We largely support, with minor amendments required We have some concerns We have significant concerns	
5		Purpose and preliminary matters
6		Existing Uses
7		National Planning Framework (NPF)
8		Environmental limits and targets
9		Effects Management Framework
10		Allocation – recognition of hydro-electricity and short term consents for freshwater (key issue)
11		Places of national importance
12		Natural and built environment plans ("NBE Plans")
13		Consenting processes:
		Activity status categories;
		Requests for further information
		Notification
		Consideration of applications

		Hearings
		Rights of objection and appeal
		Alternative consenting pathways
		Consent variations
		Review of consents
		Cancellation of consents
14		Designations
15		Compliance, monitoring and enforcement
16		Transition

3.4. Our submission is also accompanied with the following appendices:

Appendix A: Presents a map of Manawa's assets.

Appendix B: Presents an analysis of the impacts on Manawa of the proposed short term consenting timeframes.

Appendix C: Presents an expert report by Sapere Research Group ('Sapere') which maps the value of distributed generation against the outcomes sought by the NBE Bill.

4. THEMES

4.1. Manawa supports many aspects of the Bill. It also has material concerns with a range of other aspects. Before addressing those detailed matters, Manawa summarises below several broad themes which it has identified in the Bill, which provide high-level context for its submission.

(a) The reform is intended to deliver a **simpler, faster, and cheaper** resource management system and to achieve **transformational change**. Manawa supports these goals.[7] But important aspects of the Bill are no simpler than the Resource Management Act 1991 ("RMA"). In some cases, they are more complex,[8] create new consenting challenges and

[7] Manawa also supports clause 804 which requires that people exercising powers/functions must take all practicable steps to use timely, efficient, consistent, and cost-effective, and proportionate processes.

[8] For example, the notification provisions.

include new terms and/or tests which will introduce a period of uncertainty until these matters have been tested in court. Whether the reform will deliver the efficiencies it is intended to, for example around consenting timeframes, outcomes and costs, remains unclear. While Manawa does not consider that every aspect of the RMA was broken, the Bill misses the opportunity for positive transformational change.

(b) The Bill is characterised by significant **centralisation** of power and decision-making, including through the NPF and through the proliferation of Ministerial regulation-making powers for important environmental decisions. This, risks overly politicising important resource management decisions and enabling them to be readily changed by the Minister of the day. This is likely to create considerable uncertainty for Manawa.

(c) A key aspect of the Bill is its introduction of **system outcomes and environmental targets and limits.** This requires supporting legislative scaffolding - it is unclear whether this will deliver. The fundamental issue – as it is under the RMA – remains how to balance the often-competing considerations of environmental protection and enabling positive development, both of which are in the Bill's purpose.[9] Much of the difficult navigation of the required trade-offs is left to the Regional Spatial Strategies ("RSS"), NPF, and NBE Plans. Therefore, the reform's effectiveness will remain unknown for many years.

(d) The Bill is characterised by a significant erosion in the **certainty/permanence of resource consents and existing use rights**, including through increased scope for consents to be reviewed and cancelled and existing use rights to be extinguished. This is a material concern for Manawa and risks undermining investment certainty.

(e) The reform intends to **front-load** the planning system to minimise consenting time and cost. Whether this will retain necessary **flexibility/agility** in the system to appropriately respond to proposals on a case-by-case basis is questionable. Rigid pre-set limits risk foreclosing appropriate future development proposals. This approach can also be cumbersome in responding to changing circumstances.

[9] Cl 3.

(f) In several key places the Bill **"picks winners"** without a compelling basis. For example, exemptions and other benefits are provided for renewable electricity generation that connects to the national grid, at the expense of embedded generation that does not.[10]

(g) While the Bill appears more enabling of residential development, it introduces material uncertainties for the use and development of natural resources, particularly for infrastructure. Manawa is concerned that this will **stifle business confidence and delivery of necessary renewable electricity generation**.

(h) Finally, in many places the Bill contains **poor and/or puzzling drafting**. Some of this is inconsequential at this stage, for example minor typographical errors. But in many cases, it causes difficulties, including as to whether drafting is intentional or not (see footnote[11]).

5. PURPOSE AND PRELIMINARY MATTERS

Summary:

5.1. In terms of Part 1 (purpose and preliminary matters) of the Bill, Manawa:

(a) supports several system outcomes[12] and decision-making principles[13] which explicitly recognise the importance and positive effects of use/development;

(b) seeks the system outcome relating to infrastructure[14] be strengthened;

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10 Refer the Sapere Report **attached** at **Appendix C**.

11 For example:

(a) There appears to be a lack of integration in some sections, with sections appearing to have been drafted independently (as potentially indicated by some of the examples that follow);
(b) Defined terms are not used consistently (e.g. the defined term "renewable energy" appears to be used interchangeably with "renewable electricity"; and there are multiple references to "ADR" and "Alternative Dispute Resolution");
(c) The overall structure of the Bill is not always logical. For example, highly important aspects are "buried" deep into the Bill (for example HVBA are at cl 555);
(d) Cl 109 appears to simply be an erroneous "copy and paste" of cl 104;
(e) Cl 805 defines what a requirement to use the "best information available at the time" means, but the Bill does not use the term "best information";
(f) There are incorrect cross references (e.g. the effects management framework definition in cl 7 refers to the wrong section; and cl 512(8) has an incorrect cross reference to subsection (5) which should be to subsection (6));
(g) Despite the Bill's intention to do away with the permitted baseline concept, there still appears to be a single, potentially unintentional, reference to the permitted baseline in cl 372; and
(h) Incorrect/inconsistent wording is used (e.g. cl 425(a) uses the word "contaminated", which should be "contaminant"; the "avoid, remedy, and mitigate" language in Schedules 3 and 4 does not match the language in the definition of the effects management framework in cl 61 (whereas Schedule 5 does); and the introduction to Schedule 4 refers to "cultural heritage offsetting" whereas the title and the rest of the schedule is about "biodiversity redress").

12 Clauses 5(b)(i) (greenhouse gases); 5(c)(i) (use and development).

13 Clause 6(1)(c) (recognising the positive effects of use and development).

14 Cl 5(i).

(c) *supports that subjective "amenity values" are not included in the system outcomes or in the definition of "environment";*

(d) *seeks renewable electricity generation be explicitly included in the system outcomes in clause 5;*

(e) *seeks that the definition of infrastructure includes all electricity generation, transmission, distribution, and related facilities, not just those connected to the national grid; and*

(f) *supports the intent of excluding trivial effects from the definition of "adverse effect".*

5.2. The Bill's approach to the precautionary approach is:

(a) *uncertain (for example, what does the directive to "favour caution" require in practice?);*

(b) *inappropriately broad in its application (for example, it applies where there is any level of uncertainty); and*

(c) *inappropriately directive in its effect (for example, decision-makers must favour caution, with no express acknowledgment that there may be methods to appropriately deal with information uncertainty and/or gaps, including adaptive management approaches).*

5.3. Changes should be made to ensure the Bill's approach to the precautionary principle is more certain and proportionate, and that it provides for sufficient flexibility to achieve appropriate outcomes in the context of each case.

5.4. Requirements relating to use of the "best information" should be amended to align with the simple and tested provisions in the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 ("EEZ Act").[15]

Purpose

5.5. Clause 3 sets out the Bill's purpose. At a high level, Manawa considers that all the items identified in cl 3 makes sense.[16] However, Manawa is concerned with how inherent tensions/conflicts between the items included in the Bill's purpose are navigated in the more mechanical parts of the Bill that follow (i.e. how they practically "bite" for system users).[17]

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15 Section 61(5) of the EEZ Act.

16 Notwithstanding, Manawa is uncertain what some matters identified in the purpose of the Bill will require in practice, for example enabling use, development, and protection of the environment in a way that recognises and upholds te Oranga o te Taiao.

17 This is reinforced by the fact that cl 223(10)(a) addresses a key issue in the Court of Appeal decision in *Davidson (R J*

System outcomes and decision-making principles (general)

5.6. Clause 5 sets out the high-level outcomes that must be provided for by planning documents. It is critical that the positive effects which flow directly and indirectly from the use and development of the environment, and the critical need for safe and efficient infrastructure services, are appropriately recognised in the preliminary sections of the Bill alongside other environmental protection/restoration imperatives.

5.7. Manawa supports:

(a) The following system outcomes in cl 5:

(i) 5(b)(i): the reduction of greenhouse gas emissions; and

(ii) 5(c)(i): well-functioning urban and rural areas and promoting the use and development of land for a variety of activities, including business use;

(b) The deletion of "amenity values" from the system outcomes and the definition of "environment" in the Bill.[18] This will assist to prevent the stifling of development through the *"status quo bias"* that has predominated under the RMA[19]; and

(c) The decision-making principle in cl 6(1)(c), requiring that decision makers recognise the positive effects of using and developing the environment to achieve the outcomes.

5.8. However, given the non-hierarchical list of system outcomes, Manawa considers it is vital that the Bill's wording is sufficiently directive and that the development-focused outcomes are not interpreted to be subservient to those outcomes directive of environmental protection or restoration. The Bill's purpose expressly states that *"use, development, and protection of the environment"* are to be enabled. Therefore, while Manawa supports system outcome recognition for infrastructure in cl 5(i), it seeks that its wording is strengthened to more appropriately recognise infrastructure's critical role in achieving a wide range of environmental outcomes. Failure to strengthen the infrastructure outcome will mean that other more

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Davidson Family Trust v Marlborough District Council [2018] NZCA 316) and provides that for resource consents the consent authority *"may have regard to the purpose of this Act in relation to the matter only if, and to the extent that, the consent authority is satisfied that the national planning framework does not adequately deal with the matter"*.

[18] Manawa also supports the express prohibition on considering any effects on scenic views from private properties or land transport assets for plan making, the NPF, and decisions on resource consents and designations (cl 108(b) and Schedule 7 cl 126(2)(a); Schedule 6 cl 19(2)(a); cl 223(8)(c); and cl 512(1)(a) respectively).

[19] Under the RMA, "amenity values", as defined in s2, are included in s7(c) and in the definition of "environment" (s2).

directive outcomes are inevitably given priority, notwithstanding that the outcomes are intended to be non-hierarchical.[20]

5.9. In addition, the 2021 Exposure Draft[21] of the Bill and the related Inquiry Parliamentary Paper[22] included an "environmental outcome" specifically promoting increased utilisation of renewable energy. Manawa considers that there should be specific provision for renewable electricity generation in the system outcomes in cl 5. Explicit recognition of renewable electricity generation and its benefits is justified given its critical role in meeting the country's climate change commitments, goals and in the case of embedded generation, helping with the resilience of communities. This is notwithstanding that renewable energy considerations may come within other outcomes included in the Bill, for example those on climate change.[23]

5.10. Finally, Manawa is keenly interested in how the inherent conflicts between the outcomes are proposed to be reconciled in the more detailed provisions of the Bill, including as addressed below.

Changes sought

5.11. Manawa seeks that:

(a) the system outcome relating to infrastructure[24] be strengthened as follows; and

(i) the ~~ongoing and timely provision~~ enablement and protection of infrastructure ~~services~~ in a timely manner to support the well-being of people and communities.

(b) that renewable electricity is explicitly included in system outcome clause 5(b)(i) as follows:

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

(i) the reduction of greenhouse gas emissions, including through increased generation, storage, transmission, and utilisation of renewable electricity, sufficient to enable New Zealand to meet the target set under

20 As stated in the Explanatory Note to the Bill.
21 Cl 8(o)(ii).
22 Cl 14A(c)(i): Inquiry on the Natural and Built Environments Bill: Parliamentary Paper; Report of the Environment Committee.
23 Cl 5(b)(i).
24 Cl 5(i).

s5Q of the Climate Change Response Act 2002, and emissions budgets and emissions reduction plans:

Decision-making principles: precautionary approach

5.12. The precautionary approach is an established RMA concept, although the term is not used within the RMA itself.[25] The Bill codifies the precautionary approach by requiring – as one of its central "decision-making principles" – that decision-makers *must,* if the information available is "uncertain or inadequate", favour caution and a level of environmental protection that is proportionate to the risks and effects involved.[26]

5.13. Some level of scientific uncertainty applies in almost any context involving the environment, at least for proposals of any scale or complexity.[27] In almost every case involving more than one expert on a subject area, there will likely be some scientific disagreement between experts. It is not appropriate in every such case for the decision-maker to be required to "favour caution" (which is itself an uncertain direction)[28] without a contextual assessment, including of the merits of the arguments/evidence, the nature and degree of information uncertainty and/or inadequacy, the nature and scale of potential adverse effects and environmental risk, the importance of the proposal, and the availability of options to manage any uncertainty/inadequacy in information (for example through adaptive management).[29]

5.14. The Bill's approach to the precautionary approach is uncertain, overly simplistic, and unduly directive. It will likely be referenced by opponents to many proposals, possibly inappropriately, representing a significant and often unjustified expense and barrier to consenting.[30] It will almost certainly lead to unduly cautious decision-making.

5.15. The Bill should recognise that decision-makers need to exercise their discretion regarding whether – and how – to apply the precautionary approach in each case. This would align with

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25 *Sustain Our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 40. See also, for example, Policy 3 of the NZCPS: the "precautionary approach".

26 Cl 6(2). For completeness it is noted that s 61(5) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 includes similar wording.

27 This is acknowledged in cl 805 of the Bill, relating to "best information".

28 It is not clear to what extent "favouring caution" would require a proposal to be declined, or whether options to manage uncertainty or inadequacy of information can be utilised.

29 The Bill expressly provides for adaptive management in several contexts. The requirement to favour *"a level of environmental protection that is proportionate to the risks and effects involved"* is supported; but the blanket requirement to favour "caution" is not.

30 The Bill's proposed wording for the precautionary approach takes it well beyond the concept that as developed through the Courts under the RMA.

Supreme Court case law regarding the precautionary approach, and the New Zealand Coastal Policy Statement.

Changes sought

5.16. If the precautionary approach is to be codified in the NBE Bill, changes should be made to recognise the above, including that:

(a) the precautionary approach – and its concomitant requirements – are not triggered by every proposal involving *any* degree of information uncertainty/inadequacy;[31] and

(b) the precautionary approach does not necessarily require a proposal to be declined: there may be appropriate mechanisms to deal with information uncertainty or inadequacy short of declining a proposal, including adaptive management techniques.

Definition of "infrastructure"

5.17. The Bill overhauls the definition of infrastructure in the RMA,[32] proposing a definition that is somewhat cumbersome and duplicative.[33]

5.18. In addition, the RMA includes a broad definition for electricity generation and related facilities[34], whereas the Bill proposes a narrower definition that only covers *"renewable electricity generation facilities that connect directly to the national grid electricity transmission network"*. This carve-out, which represents a major policy shift, will have negative impacts for Manawa and others under the architecture of the Bill.[35]

5.19. The rationale for limiting the scope of exemptions to renewable electricity generation connecting to the national grid is unclear and unfounded in Manawa's view. Embedded schemes that connect to local distribution networks, such as most of Manawa's schemes, play a very important and valuable role in the overall electricity generation and transmission

31 As was held in *Sustain Our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 40, and Policy 3 of the NZCPS which provides that the precautionary approach applies where potential adverse effects are significant.

32 Cl 7 of the Bill compared with s2 of the RMA.

33 Many of the sub-clauses cross refer to definitions in other Acts, with some requiring multiple sub-sets of definitions to be worked through to determine whether something is "infrastructure" as defined. In addition, there is considerable overlap between certain sub-clauses, for example (a) relating to requiring authorities; (b) relating to network utility operators, and (e) cross-referencing the definition of "nationally significant infrastructure" in the Urban Development Act 2020.

34 s2(d).

35 Including those provisions that recognise and promote "infrastructure", such as the system outcome at cl 5(i).

system, including by increasing resilience for communities and reducing transmission losses. They are entirely consistent with the system outcomes in the Bill.[36]

5.20. The report by Sapere attached as **Appendix C** details the critical role that distributed generation plays in the wider electricity system. In particular, Sapere's report:

(a) demonstrates that distributed generation plays an imperative role in the security of the electricity system, including by ensuring supply needs can be meet during normal winter peaks and during dry years, and through provision of additional services where regionalised network issues arise;

(b) highlights that all hydro-electricity generation (whether grid connected or not) is vital for enabling New Zealand's 2050 net zero target to be meet;

(c) details the important role of distributed generation in investing in local communities; and

(d) concludes that any restrictions on the operations of existing electricity infrastructure will increase costs to electricity consumers.

5.21. Excluding distributed generation from the definition of infrastructure will hamper their important role in meeting the country's climate change challenges. It is inconsistent with the broad scope of other infrastructure types included in the Bill's definition.[37] It is also inconsistent with other national direction under the RMA. For example, the very recently updated NPS for Freshwater Management 2020 and the recently released NPS for Highly Productive Land 2022 include within the definition of "specified infrastructure" all infrastructure that *"generates electricity for distribution through a network..."*.[38]

Changes sought

5.22. Manawa therefore seeks that:

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36 Cl 5.

37 For example, infrastructure provided by a network utility operator (b); and eligible infrastructure under the Infrastructure Funding and Financing Act 2020.

38 The definitions of specified infrastructure include "*infrastructure that delivers a service operated by a lifeline utility...)"*. Under Schedule 1 of the Civil Defence Emergency Management Act 2002, lifeline utility includes *"[a]n entity that generates electricity for distribution through a network or distributes electricity through a network."*

(a) the definition of infrastructure be simplified/rationalised so that it is simpler/more user-friendly; and

(b) the definition of infrastructure in the Bill include all electricity generation, transmission, distribution, and related facilities, not just those connected to the national grid.[39]

Definition of "adverse effect"

5.23. Manawa supports the intention behind the definition of "adverse effect" in the Bill[40] not including a "trivial effect" but has reservations as to the meaning of "trivial" in practice.

Best information

5.24. Manawa supports:

(a) the requirement to use the "best information"[41] and

(b) that "best information" does not mean "perfect information", which appears to be acknowledged in the Bill (this relates to the submission point above on the precautionary approach).

5.25. However, as currently drafted, cl 805 (best information) defines what a requirement to use "the best information available at the time" means, but the Bill does not include any requirement to use the best information. The clause is also confusing, and the sub clauses do not link together logically.[42]

Changes sought

5.26. Manawa therefore seeks the following changes to cl 805, which reflect the simple approach in the EEZ Act:[43]

(1) <u>It is a</u> ~~A~~ requirement under this Act to use the best ~~information~~ available <u>information.</u>

~~at the time is a requirement to use, if practicable, complete and scientifically robust information.~~

39 Manawa acknowledges that the definition of infrastructure uses the word "includes" before the listed items and is therefore potentially intended not to be an exclusive list. However, Manawa considers it is important, including for clarity, that key infrastructure is explicitly included in the list.

40 Cl 2.

41 Cl 805.

42 For instance, it is unclear what "other sources" means in the context of subclauses (2) and (3).

43 Section 61(5).

[Delete subclauses (2)-(4)]

...

(x) Best available information means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

6. EXISTING USES

Summary:

6.1. *Manawa opposes the significant new "carve outs" to existing use rights whereby rights may be overridden by rules relating to the natural environment, natural hazards, climate change, or contaminated land. They will critically undermine certainty of investment for a range of important activities.*

6.2. Clauses 26 to 30 of the Bill address how changes to framework rules or plan rules affect uses and activities that are lawfully established before a change takes effect. The protection of existing lawfully established activities against subsequent changes in planning provisions is a fundamental tenet under the RMA and previous legislation. Ongoing protection of existing use rights is fundamental, including with respect to fairness and also certainty of investment.

6.3. Manawa therefore:

(a) Supports the protection of existing use rights in clauses 26 (land), 28 (surface of water) and 30 (regional rules) of the Bill, subject to the below.[44]

(b) Opposes the significant new "carve outs" to existing use rights whereby rights may be overridden by rules relating to the natural environment, natural hazards, climate change, or contaminated land.[45]

6.4. Manawa understands the rationale to reserve flexibility to require responses to important dynamic environmental issues. But this must be balanced against the need for certainty, especially for key infrastructure. Manawa considers the balance struck by the Bill misses the mark. It will critically undermine certainty of investment for a range of activities, many of which

[44] In summary, these clauses provide that a person may continue an activity/use in a way that contravenes a plan rule, if certain conditions are met.

[45] Cl 26(2).

are important contributors to positive environmental – including social and economic outcomes.

6.5. This is one example of a wider theme in the Bill, being the fundamental erosion of the certainty and permanency attaching to existing authorisations, which is addressed further in this submission below.[46]

Changes sought

6.6. Manawa seeks that the protection of existing use rights is strengthened in the Bill, through:

(a) deletion of the proposed existing use rights "carve outs" relating to the natural environment, natural hazards, climate change, or contaminated land;[47] OR

(b) making important infrastructure, such as hydro-electricity generation, exempt from the application of the existing use rights "carve outs"; OR

(c) reverting to the RMA's *status quo* framework and provisions[48] for existing use rights.

7. THE NPF

Summary:

7.1. *Manawa supports several aspects of the NPF purpose/content provisions, especially the requirements to include direction on infrastructure and renewable electricity generation. However, Manawa seeks that the mandatory NPF content clauses relating to "enabling" "infrastructure and development corridors" and "renewable electricity generation and transmission" (58(d) and (e)) be strengthened to be more directive by requiring direction on "protecting" existing and "enabling" new infrastructure and development corridors and renewable electricity generation. This would appropriately reflect the critical role of infrastructure and renewable electricity.*

46 Other examples include broadened powers to review and cancel consents, including reducing the duration of existing consents (addressed below).

47 Cl 26(2)-(4).

48 RMA sections 10-10B and 20A.

Purpose/content – resolving conflicts

7.2. A core purpose of the NPF, reflected in the NPF content requirements,[49] is to *"resolve conflicts about environmental matters, including those between or among system outcomes"*.[50] Manawa strongly supports this.

7.3. The NPF's effectiveness in resolving conflicts (i.e. the inevitable decisions on trade-offs that need to be made) depends on its content and will not be known until it takes effect. But identifying resolution of conflict as a core purpose of the NPF, with corresponding content requirements, is important and positive. A key drawback of the current national direction is that it includes a range of documents on various important matters but has struggled to effectively integrate them in a coherent and practical manner. For example, for a specific proposal how can both the NPS for Renewable Electricity Generation ("NPS-REG"), which promotes renewable electricity generation, and the NPS for Freshwater Management, be given effect to/reconciled?

Mandatory direction

Infrastructure and renewable electricity

7.4. Under the Bill, the NPF must contain certain matters and may contain others.

7.5. Manawa supports that the NPF must provide direction:

(a) for each system outcome[51] (addressed above), which includes the key outcomes on *use and development* and *infrastructure*;

(b) on the following specified key topics:[52]

(i) *"enabling infrastructure and development corridors";* and

(ii) "enabling renewable electricity generation and its transmission".

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49 Cl 33(b). This is mirrored in cl 102(2)(e) relating to NBE Plans. See also cl 99 in the context of regional planning committee decisions.

50 Cl 57(1)(b).

51 Cl 57(1).

52 Cl 58. Acknowledging that other matters (e.g. system outcomes) are required to be included in the NPF through other clauses, cl 58 does appear an odd grouping of matters (i.e. why have five matters been included but not others?).

7.6. Infrastructure provision and renewable electricity generation and transmission are critical national issues that deserve clear direction in the NPF. Their importance has tended to be "diluted" during the recent proliferation of national direction instruments, many of which focus on environmental protection. This is notwithstanding the NPS-REG in the case of renewable electricity generation, in large part because the NPS-REG is generally less directive than its environmental protection-oriented counterparts. Express mandatory direction will likely assist in maintaining infrastructure and renewable electricity at the forefront during the preparation of the NPF and the difficult trade-offs that will be required.

7.7. Notwithstanding the above, as identified in paragraph 5.8, the verb "enable" by itself is not sufficiently strong or directive. Manawa considers it should be replaced with stronger directive language, which is justified given the importance of infrastructure and renewable electricity. Manawa seeks that the NPF be required to provide direction on:

> *"protecting existing and enabling new infrastructure and development corridors"*

and:

> *"protecting existing and enabling new renewable electricity generation and its transmission"*

Monitoring

7.8. Manawa supports the requirement for the NPF to specify how its implementation and effectiveness will be monitored.[53] Recent experience, for example with the Freshwater NPS and NES 2020, has demonstrated that national direction can have major unanticipated and unintentional impacts. Robustly monitoring the impact of the NPF, and then making changes identified through that process, will be important.

Changes sought

7.9. Manawa seeks that the mandatory NPF content clauses relating to *"enabling"* "*infrastructure and development corridors*" and "*renewable electricity generation and transmission*" (58(d) and (e)) be strengthened to be more directive by requiring direction on "*protecting"* existing and *"enabling"* new infrastructure and development corridors and renewable electricity generation (see above).

[53] Cl 56(2).

8. ENVIRONMENTAL LIMITS AND TARGETS

Summary:

8.1. *While Manawa does not oppose environmental limits and targets in principle, it is important that use and development is not inappropriately constrained.*

8.2. *It is critical that environmental limits and targets are set at appropriate levels. Manawa considers the availability of exemptions is too narrow and will result in proposals being inappropriately and prematurely foreclosed. It seeks that exemptions to limits (and targets) are more widely available, including beyond the plan/RSS development stage, and at the request of parties other than Regional Planning Committees ("RPCs"). Exemptions should also be available at the national, not just regional, scale.*

8.3. The Bill introduces environmental limits and targets[54] to prevent further environmental degradation and to achieve environmental improvements.[55] Manawa supports the use of limits and targets but is concerned to ensure that they are workable and that the ability to achieve other outcomes, including use and development, is not inappropriately constrained or obstructed.

8.4. Limits and targets must be complied with and any activity that would breach a limit is prohibited.[56] Resource consents must not be granted if they are contrary to an environmental limit or target[57] or may be cancelled where there has been a breach of an environmental limit resulting in significant adverse effects on the environment.[58] It is therefore crucial that the process for setting environmental limits and targets is robust and ensures that they are set at appropriate levels, and that the breadth/scope of their application is carefully defined.

Exemptions from limits and targets

8.5. While Manawa supports the availability of pathways through environmental limits, the Bill provides for only limited exemptions for limits (and no exemptions for targets).[59] Exemptions

54 Part 3, subpart 2.

55 Limits and targets will be set by the Minister at a national level in the NPF, or the NPF shall prescribe the requirements for determining targets and limits locally in NBE Plans (Cl 39 (limits) and 49 (targets)).

56 Cl 154(4)(a).

57 Cl 223(11).

58 Cl 281(8).

59 Despite the fact that clause 223(11)(a)(i) requires that a consent application be declined if it is contrary to a target (or limit).

to limits are only available on request by a RPC during the preparation of NBE Plans or RSSs.[60] A range of prescribed "essential features" and prohibitions constrains the scope and nature of exemptions that may be granted.[61] The Minister then has discretion to direct an exemption in the NPF[62] which must be subject to a time limit and may be subject to conditions.[63] The Bill does not provide for exemptions to be applied for at any other time or by any other person or group.

8.6. It is not possible to anticipate every proposal that may require an exemption at the time a NBE Plan or RSS is being prepared. Where the need for an exemption is not identified in advance, development will not be able to proceed regardless of the public benefits or significance of the proposal. The combination of:

(a) the absolute "roadblock" represented by limits and targets; plus

(b) no ability for exemptions to be granted other than – for limits – through the NPF during plan or RSS preparation, coupled with the limited scope for exemptions substantively;

is likely to stifle investment. It will prematurely foreclose all proposals that would breach a limit (or be contrary to a target), in advance of a proposal's costs and benefits being known. This is unworkable and does not represent sound forward planning. It may have unintended consequences, especially for infrastructure.

Changes sought

8.7. For infrastructure, Manawa seeks that:

(a) exemptions to limits (and targets) be available not only at the plan/RSS development stage (for example they should be available in the NPF from the outset,[64] and at the consenting stage);

(b) the ability to seek exemptions should be extended to include parties beyond RPCs;

60 Cl 44.

61 Cl 45, and Cl 46 which prohibits exemptions where ecological integrity is currently unacceptably degraded, or an exemption would lead to irreversible loss of ecological integrity.

62 Cl 44.

63 Cl 45.

64 This would be similar to the specified infrastructure consenting pathway in the NPS/NES for Freshwater Management 2020.

(c) for infrastructure, the prohibition on exemptions where ecological integrity is unacceptably degraded should be removed;[65] and

(d) there should be an ability for exemptions to apply nationally, not just at the regional scale.

8.8. Manawa also supports the detailed changes sought to the environmental limits and targets provisions of the Bill in the ESEG submission.

9. EFFECTS MANAGEMENT FRAMEWORK

Summary:

9.1. Manawa supports aspects of the proposed effects management framework, including the inclusion of the "where practicable" test at each stage and the framework's limited mandatory application. However, Manawa has concerns with other aspects:

(a) Manawa seeks that the framework for exemptions to the mandatory application of the effects management framework be amended to:

(i) enable exemptions to also be set out in plans, not just the NPF; and

(ii) enlarge the scope of potential exemptions to explicitly include additional activities that can justifiably be subject to exemptions, such as renewable electricity generation.

(b) The definition of specified cultural heritage should be clarified.

(c) Schedules 3 and 4 (biodiversity offsetting and redress) should be removed from the Bill and left for development through the NPF where they can receive appropriate technical scientific scrutiny.

9.2. The Bill incorporates an effects management framework as a sequential methodology for managing effects.[66]

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65 Cl 46(a).

66 Cl 61-67. The effects management framework in the Bill is similar to the "effects management hierarchy" concept that is familiar to resource management plan users (see for example the National Policy Statement for Freshwater Management 2020).

9.3. Manawa supports several aspects of the effects management framework, including:

(a) The fact that the framework includes the qualification "where practicable" at each step.[67] This appropriately acknowledges that in some circumstances an absolute requirement to comply with one step in the framework (for example to avoid effects) is not workable. It recognises the practical realities for the development of – and management of effects for – infrastructure and major projects. [68]

(b) The fact that application of the effects management framework is only mandatory for significant biodiversity areas ("SBAs") and specified cultural heritage. It is appropriate for mandatory application of the effects management framework to be limited to important environmental aspects warranting careful management of effects.[69]

9.4. Manawa has significant concerns with other important aspects of the effects management framework:

(a) **Exemptions:** Only the Minister, through the NPF, can provide exemptions to the application of the effects management framework. In addition, the scope of potential exemptions is very limited, both in terms of the types of activities that can be subject to exemptions[70] and the tests that must be satisfied.[71] For example, very few activities could satisfy the requirement that they *"must be located, for functional or operational reasons, **in the particular place**..."*[72] It is also unclear how the Minister could usefully decide on exemptions at the NPF stage using the considerations listed, in advance of at least some detail of a specific proposal/project.[73] The concern is, at the time of preparing an NPF, that detail will simply not be known.

Notwithstanding this, Manawa supports the potential exemptions identified for:

(i) activities that will contribute to an outcome described in section 5(b) (relating to climate change and natural hazards);[74]

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67 Cl 61.

68 "Practicable" is a word which is currently used in the RMA, (refer the definition of "Best Practicable Option" in s2 of the RMA); national planning instruments (refer for example the definition of "effects management hierarchy". in clause 3.21(1) of the NPSFM 2020); and plans throughout the country. Its meaning is well understood and has been subject to court decisions which guide its interpretation (see for example the Environment Court decision in *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51).

69 Acknowledging that the effects management framework, or other potentially more stringent approaches, may be provided for in the NPF or plans (cl 62).

70 Cl 66.

71 Cl 64(2). See also cl 65.

72 Cl 64(2)(a). There will almost always be alternative *possible* locations for an activity.

73 Many of the consideration appear to be premised on the availability of a particular proposal/application.

74 Cl 66(1)(j).

(ii) infrastructure operated by a lifeline utility operator and any directly associated activity;[75] and

(iii) activities that will provide nationally significant benefits that outweigh any adverse effects of the activity.[76]

(b) **Uncertainty relating to specified cultural heritage:** Manawa supports the protection of cultural heritage. However, there are uncertainties regarding the definition of "specified cultural heritage" in the Bill. The Bill's definition of specified cultural heritage means cultural heritage that *"meets the criteria"* for inclusion in the New Zealand Heritage List/Rārani Kōrero (the "List") as a Category 1 historical place, historic area, wāhi tapu, wāhi tapu area, or wāhi tūpuna.[77] On the face of the definition, areas that may meet the relevant criteria constitute specified cultural heritage whether or not they are actually *identified* as such in the List. This raises uncertainties. Manawa considers the Bill should be clarified so that the effects management framework applies to *identified* specified cultural heritage, for example sites that are identified in the List.

(c) **Biodiversity offsetting/redress:** Schedules 3 and 4 contain principles for biodiversity offsetting and redress. They adopt an unduly cautious approach to offsetting which would majorly impact the consentability of most major applications.

The schedules contain technical scientific subject matter. It is appropriate that they are left to the NPF process where they can be scrutinised through a Board of Inquiry process, including by technical experts (as opposed to being included in the Bill).

9.5. Without derogating from the core concerns expressed above, there are also issues with the Bill's drafting relating to the effects management framework, for example:

(a) Schedules 3, 4 and 5 acknowledge that offsetting and redress are only required if there are "more than minor" residual adverse impacts. This should be reflected in the description of the effects management framework in clause 61.[78]

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75 Cl 66(1)(n).

76 Cl 66(1)(o).

77 Cl 7. The same applies with respect to the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna kōrero Tūturu

78 The "avoid, remedy, and mitigate" language in Schedules 3 and 4 also does not match the language in the definition of the effects management framework in cl 61 (whereas Schedule 5 does). The introduction to Schedule 4 also refers to "cultural heritage offsetting" whereas the title and the rest of the schedule is about "biodiversity redress".

(b) The mandatory requirement in Schedules 3 and 4 that offsetting and redress actions *"must be undertaken where this will result in the best ecological outcome..."* is unduly onerous, unworkable, and inconsistent with other principles in the Schedules.[79]

Changes sought

9.6. Manawa seeks that:

(a) Plans, not just the NPF, should also be able to specify exemptions to the application of the effects management framework based on the local/regional context.

(b) The scope of potential exemptions should be broadened, including so that any exemptions can appropriately reflect the circumstances in each case. In particular, Manawa considers that a specific potential exemption should be included for renewable electricity generation, which is critical to meet outcomes specified in the Bill[80].

(c) The definition of specified cultural heritage should be clarified.

(d) Schedules 3 and 4 (biodiversity offsetting and redress) should be removed from the Bill and left for development through the NPF.

9.7. Without derogating from the above, other changes to the definition of effects management framework and the related schedules should also be made (as set out above), including to clarify that biodiversity offsetting and redress are required only for *more than minor* residual adverse effects.

10. ALLOCATION

Summary:

General

10.1. *Manawa has major uncertainties and concerns with the freshwater allocation regime proposed in the Bill. Hydro-electricity generation is of such fundamental importance to the wellbeing of New Zealanders – and to meeting the nation's climate change goals – that it warrants*

[79] For example, "like for like" offsetting does not require it to be at the best possible site, which may or may not be owned by an applicant or be otherwise available or appropriate for offsetting activities. The same "best" language is used in Schedule 5 with respect to cultural heritage offsetting and redress.

[80] For example, the system outcomes relating to climate change in cl 5(b).

heightened recognition. Ultimately, existing hydro-electricity generation must be prioritised above certain other water uses (in a way that recognises and upholds te Oranga o te Taiao and Te Mana o te Wai). Leaving this to hydro-electricity generators to achieve that through NBE Plan development processes introduces unnecessary risk to Aotearoa New Zealand's electricity generation.

Key issue: short-term consents for freshwater (grid connected vs distributed generation)

10.2. *The scope of potential exemptions to the mandatory short-term durations for water-related consents should be expanded to include applications for renewable electricity schemes that are connected to the local distribution network, not just national grid connected schemes.*

10.3. *By drawing an arbitrary distinction between renewable hydro-electricity generation which is grid connected versus that which is not, the Bill will fail to meet one of its own key stated objectives of enabling renewable electricity generation. Further, it will do so while achieving very minimal environmental benefits.*

10.4. *The hydro-electric power schemes which are impacted by the Bill cumulatively make a material contribution towards the government's 100% renewables target and provide resilience to their local communities. They are generally many decades old, some over 100 years old. Environmental impacts from construction have long since passed. Ongoing effects (for example impacts on flows, fish passage etc) are relatively minor and can be – and are being – mitigated.*

10.5. *The provisions in the Bill will put distributed generation at a significant disadvantage compared to grid connected electricity generation which will continue to enjoy much longer consent durations. Manawa is seeking that the Bill treat all electricity generators equally thereby ensuring that the principle of competitive neutrality is upheld*

10.6. *As highlighted by the Sapere Report (**Appendix C**), the nature of the connection does not determine the significance of hydro-electricity in meeting NBEA system outcomes.*

10.7. *All hydro-electricity generation (regardless of connection status) has an important role to play in meeting NZ's 2050 net zero target. Likewise, all hydro-electricity generation has an important role to play in ensuring security of supply, particularly those with storage in dry years. This role will become more important over time as more intermittent renewable generation (such as wind and solar) is developed in New Zealand.*

10.8. *If the Bill is not changed, Manawa and others will incur not only significant uncertainty as to the future viability of their schemes, but also be forced into an unnecessary and repeated consenting cycle with associated time, costs and delays.*

Allocation: general

10.9. The Bill overhauls the allocation regime under the RMA, doing away with the "first in first served" approach. It introduces an enabling legislative framework for allocation, meaning the true impact of the proposed reform will largely depend on the content of the NPF and NBE Plans, including as informed by the Freshwater Working Group process and any allocation statements resulting from engagement between the Crown and iwi/hapū. A range of allocation methods will be available, with the resource allocation principles of "sustainability", "efficiency", and "equity" proposed to be key touchstones.

10.10. Notwithstanding that, Manawa is not wedded to the current "first in first served" system. While the Bill currently states that market-based allocation methods are not available for freshwater takes and diversions, Manawa has major uncertainties and concerns with the freshwater allocation regime proposed in the Bill. Absent appropriate recognition and priority being afforded to renewable electricity and/or hydro-electricity generation within the Bill, Manawa is concerned that hydro-electricity's essential role in the wellbeing of society will not be sufficiently considered and provided for.

Stronger recognition for hydro-electricity generation

10.11. Currently the Bill does not afford appropriate recognition and priority to hydro-electricity generation. This is a perverse outcome given the stated goals of the reform. Hydro-electricity is of such fundamental importance to the wellbeing of New Zealanders – and to meeting the nation's climate change goals – that it warrants heightened recognition in the Bill's allocation provisions. Ultimately, hydro-electricity must be prioritised above certain other water uses, and it should not be left to electricity generators to achieve that through NBE Plan development processes.

10.12. Appropriate recognition and priority for existing hydro-electricity can be achieved under the Bill in a way that recognises and upholds te Oranga o te Taiao and Te Mana o te Wai. Hydro-electricity is not inconsistent with te Oranga o te Taiao or Te Mana o te Wai. Among other things, unlike many other uses of water, hydro-electricity is generally non-consumptive. Water

stays in or is returned to waterbodies following its use for electricity generation, at which point it is available for other uses.

Provision for hydro-electricity generation in the Freshwater Working Group process

10.13. The way in which freshwater will be allocated will be heavily influenced by the Freshwater Working Group process and subsequent allocation statements between the Crown and iwi/hapū. Involvement of other parties in the Freshwater Working Group process is unclear and with little detail in the Bill as to what considerations will apply to the process. Manawa says that there should be an express requirement in the Bill for a meaningful process of engagement with key stakeholders, including hydro-electricity generators, as part of the Freshwater Working Group process. There should also be a requirement for the Freshwater Working Group report to record the positions of parties engaged with.

Changes sought

10.14. Manawa seeks:

(a) that the allocation provisions in the Bill are amended to strengthen the recognition for existing hydro-electricity generation and its relative priority with respect to other uses (in a manner that upholds te Oranga o te Taiao and Te Mana o te Wai); and

(b) that the Freshwater Working Group process be amended to expressly provide for engagement with (i.e. a "seat at the table" for) key stakeholders, including hydro-electricity generators (regardless of scale), and that there is a requirement for the Freshwater Working Group report to record the positions of parties engaged with.

Allocation: key issue – short-term consents for freshwater (grid connected vs distributed)

10.15. There are two reduced-term consent proposals for freshwater takes and discharges:

(a) **Shorter-term consents under the RMA:** Through proposed changes to the RMA, shorter-term consents will be required for freshwater activities during transition to the NBEA.[81] An "affected resource consent" (which includes a water permit for an activity that takes, uses, dams, or diverts water; and discharge permits) that is granted on or after the date that the NBEA comes into force expires three years after the date that

[81] NBE Bill, clause 861, which makes the "consequential" amendments set out in Schedule 15. Under clause 2(1)(3) of the NBE Bill, section 861 (as it will become) is proposed to come into force on a currently unknown date via regulation.

the first NBE Plan for the relevant region is notified. The relevant expiry dates will remain uncertain[82] for some time because they are dependent on future planning processes.[83]

There are limited potential exemptions provided for some renewable electricity generation and other infrastructure.[84] The majority of Manawa's schemes do not come within the scope of any of the potential exemptions, including because they are not included in the listed hydro-electric power schemes and are not connected directly to the national grid electricity transmission network.[85] Instead, they "distribute" electricity to the local communities they are close to through electricity distribution networks.[86]

(b) **Shorter-term consents under the NBEA:** Shorter-term water permit consents will also apply under the NBEA, unless an NBE Plan specifies otherwise once it has been updated, as informed by an resource allocation statement (if any) between the Crown and local iwi/hapū.[87] These consents will have maximum durations of ten years, as opposed to the standard 35 years.

Exemptions are equivalent to those noted above.[88] For the same reasons, most of Manawa's schemes do not qualify for the exemptions.[89]

10.16. The Bill's provisions imposing short-term water permit consents for distributed (non grid-connected) renewable electricity, with no opportunity for exemptions, are inappropriate because:

(a) They will **arbitrarily limit** the scope of exemptions to grid-connected renewable electricity, where there is no clear environmental rationale for doing so. Rather, grid-

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82 Expiry dates could be as late as **after 2035** (approximately), or much earlier (say **late 2020s**) if RSS and NBE Plan preparation is faster, especially for regions elected as model regions whose RSS and NBE Plan-making will be expedited. *(This is based on the RSS notification backstop of seven years after the enactment of the SPA (SP Bill, Schedule 1, clause 1); a nominal two years from notification to adoption of the RSS; the requirement for an NBE Plan to be notified within two years of a resolution by the regional planning committee to begin drafting a new plan (and the requirement that such resolution be made within 40 working days of a decision to adopt the applicable RSS) (NBE Bill, Schedule 7, clause 2(1)); and then the three year expiry period in clause 861 of the NBE Bill running from the date that the first NBE Plan for the relevant region is notified.)*

83 Affected resource consent applications that are for replacement consents must not be publicly notified, and appeal rights are curtailed (schedule 15 of the Bill relating to clause 41 and 42 of Schedule 12 of the RMA).

84 Schedule 15 of the relating to clause 40(3) of Schedule 12 of the RMA.

85 Schedule 15 of the Bill relating to clause 40(3)(b) and(c)(v) of Schedule 12 of the RMA. Manawa's Waipori, Patea, and Coleridge schemes are connected to the grid.

86 Including Powerco, Unison Networks, The Lines Company, Network Tasman, Marlborough Lines, Westpower, OtagoNet, Aurora Energy.

87 NBE Bill clause 275. Under clause 2(1)(3) of the NBE Bill, section 275 (as it will become) is proposed to come into force on a currently unknown date via regulation. Under clause 693 of the NBE Bill, the required plan updating must be completed by the earlier of (a) the date of the next review of the plan (required every nine years); or (b) the date that is five years after the relevant regional planning committee receives the allocation statement.

88 Cl 276

89 See in particular cl 276(3)(c)(v). Manawa's schemes that are grid-connected all have expiry dates beyond the NBA transitional timeframes.

connected generators are being given a significant regulatory and commercial advantage by being treated differently and given the opportunity for a 35 year consenting cycle (as opposed to the default maximum ten year cycle given to Manawa and other distributed generators under the Bill).

(b) They will lead to major **investment uncertainty** for the large segment of renewable electricity generation that is not grid-connected, with respect to both new development and the maintenance/enhancement of existing schemes. It will put developments "on hold" for years and/or in jeopardy.

(i) Certainty of investment, including sufficiently long consent durations, for all renewable electricity generation facilities is important to meet the country's climate change commitments/goals (not just for the listed major hydro-electric power schemes and renewable electricity generation that is connected to the grid). This is acknowledged in the preamble to the NPS for Electricity Generation 2011 which states: *"[t]he contribution of renewable electricity generation, regardless of scale, towards addressing the effects of climate change plays a vital role in the wellbeing of New Zealand, its people and the environment*." [90] In "picking winners" in the form of the five hydro-electric power schemes listed within the exemptions, the Bill is inconsistent with the NPS.

(ii) Hydro-electricity generation infrastructure is of a nature and scale which requires long term authorisations for effective investment planning. Manawa's existing schemes represent existing infrastructure with long past and future life spans. Manawa has invested heavily in its schemes, and the proposals will have major negative financial impacts for it and other generators with flow on effects to the communities they operate in For example, upgrades and enhancements provide direct benefits to local communities including opportunities for skilled employment.

(c) The provisions will therefore **discourage investment** in distributed generation, including existing hydro-electricity generation and ultimately lead to **reduced renewable generation output** than would otherwise be the case.

(d) They will impose a **significant new consenting burden** which will impact many existing renewable hydro-electricity generation schemes, including Manawa's. They will

[90] Policy B(a) also provides *"maintenance of the generation output of existing renewable electricity generation activities can require protection of the assets, operational capacity and continued availability of the renewable energy resource..."*

result in duplicate replacement consent processes within a short time frame which will bring significant costs and, based on Manawa's experience since the late 1990s reconsenting its schemes, likely progressively reduce renewable electricity generation. An example of the increased consenting cycles Manawa's schemes would undergo is demonstrated in **Appendix B**. Manawa is concerned that as the Bill's proposed processes for replacement consents are "substantive" in nature (even though the duration of consents is limited), there is a reasonable prospect of reduced generation and increased compliance costs as its schemes are subject to additional consenting processes.[91] That differs from the recent process adopted in Plan Change 7 to the Otago Regional Plan (Water) that was referred to the Environment Court by the Minister for the Environment where new and replacement water permits in the Otago Region were limited to seven years whilst Otago Regional Council put into place a fit for purpose planning framework. Plan Change 7 provides for resource consents to be effectively 'rolled-over'.

(i) Given the years it takes to consult on, prepare, submit, work through, potentially litigate, and obtain consents, the proposed regime will put distributed hydro-electricity generators into an unnecessary and repeated consenting cycle.

(ii) The proposed consenting cycle burden will also fall on consent authorities, iwi, and communities, who all face being part of the same "perpetual" process. Soon after the 10 year consent is approved, preparations will need to begin for next renewal application. This is at odds with the Bill's aims of reducing the number of unnecessary consents and reducing consent costs and timeframes.

(e) They are **inconsistent with a key intended outcome of the Bill** and its climate change and infrastructure system outcomes.[92] Rather than enhancing environmental and/or renewable electricity development outcomes, the primary outcome of the proposed provisions will be higher costs and significant uncertainty as to the future viability for a large number of existing renewable electricity schemes.

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91 Manawa's experience is the replacement consenting processes routinely result in the imposition of conditions that reduce generation.

92 Refer to the Explanatory Note of the Bill; and system outcomes at clause 5(b) (climate change) and 5(i) (infrastructure).

10.17. Manawa therefore considers it is appropriate for the scope of potential exemptions to be expanded to include applications for hydro-electric and other renewable electricity generation schemes that are not connected to the national grid.[93] This is appropriate, including because:

(a) It will unlock the potential of, and more equitably provide for, distributed renewable electricity generation not currently covered by the proposed exemptions, which has a critical part to play in the country's climate change response. As outlined, Manawa supports New Zealand's renewable electricity and climate change goals, with 100% renewable electricity generation a core objective. Manawa's schemes, which produce around 8% of Aotearoa New Zealand's existing hydro-electric generation capacity, and other hydro-electric generation schemes that connect to local distribution networks, cumulatively make a very important contribution towards achieving the nation's renewable electricity goals. They also play a valuable role in the in the wider electricity generation and transmission system, including by increasing resilience for communities and reducing transmission losses. The report by Sapere attached as **Appendix C** details the critical role that distributed generation plays in the wider electricity system, including in ensuring security of supply and affordability. New disincentives which undermine continued progress should be avoided.

(b) It is entirely consistent with a key intended outcome of the Bill and its climate change and infrastructure system outcomes.[94]

(c) The hydro-electric power schemes which are impacted by the Bill are generally many decades old, some over 100 years old. Environmental impacts from construction have long since passed. Ongoing effects, (for example impacts on flows, fish passage etc) are relatively minor and can be – and are being – mitigated. Consenting is, and will remain during the interim period, subject to the National Policy Statement for Freshwater Management, including the fundamental concept of Te Mana o te Wai.

(d) The same rationale for a longer consenting cycle for grid-connected hydro-electricity generation applies equally to distributed generation. It is reasonable that both types of generators/generation are treated the same, otherwise, as noted by Sapere, the principle of competitive neutrality will not be upheld within the resource management system.

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93 This is despite the fact that regulations could be made expanding the scope of infrastructure activities for which the exemption is available.

94 Refer to the Explanatory Note of the Bill; and system outcomes at clause 5(b) (climate change) and 5(i) (infrastructure).

(e) Manawa's proposed changes to exemptions are appropriately limited in scope. Limited expansion of the exemptions will not compromise the stated aims of the Bill's short-term consent proposals, being to "*create a greater opportunity for new allocation approaches to be effective*" and "*preserve future optionality for Māori rights and interests in freshwater*."[95]

(f) It is consistent with the matters in cl 329(3) of the Bill, which are the criteria the Minister must consider when determining whether a matter is a proposal of national significance, and which the Minister must consider when determining whether to recommend regulations specifying further infrastructure activities come within the exemptions.[96]

(g) The proposed change would not prevent a short-term consent duration being imposed in any given case. It would simply mean that for renewable electricity generation applications the appropriateness of an exemption being made to the mandatory short-term consent requirements could be assessed on a case-by-case basis.[97]

(h) Practically, the legislative "fix" is simple and comes without any environmental drawbacks. Small wording changes to the Bill will demonstrate the Government and Parliament's commitment towards 100% renewable electricity generation and put distributed and grid-connected generators on a level playing field. Changes will mean that the exemptions apply equally to all renewable electricity generation, not just those connected directly to Transpower's national grid.

10.18. The proposed mandatory short-term consents are essentially a stopgap measure until a new planning framework can be delivered under the new legislation and/or until an allocation statement is concluded. Consenting renewable electricity generation falling outside the scope of the exemptions (with appropriate consent durations to be determined on a case-by-case basis) should not be proscribed pending the new regime.

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95 "Supplementary Analysis Report: The new resource management system" 21 September 2022. Refer also the MfE Overview Document, page 39.

96 Schedule 15 (changes to RMA Schedule 12, cl 40(5)). See for example cl329(3)(j): *"whether it would assist in fulfilling New Zealand's international obligations in relation to the global environment."*

97 Many of Manawa's applications (for replacement consents or new proposals) are functionally integrated into wider schemes. The changes sought would better provide for consent durations to be aligned across schemes where appropriate, enabling an integrated management and assessment of schemes as a whole.

Changes sought

10.19. Manawa seeks that the scope of potential exemptions to the Bill's mandatory short term consent duration requirements for water-related consents is expanded to include applications for hydro-electricity and other renewable electricity generation schemes that are not connected to the national grid, not just grid-connected schemes. This could be achieved by the following changes to the exemptions:[98]

> *(c) the construction, operation, upgrading, or maintenance of any of the following infrastructure activities:*
>
> *…*
>
> *(v) renewable electricity generation facilities that connect directly to the national grid ~~electricity transmission~~ or local distribution network*:

11. PLACES OF NATIONAL IMPORTANCE

Summary:

11.1. *Manawa is concerned that the practical implication of the Bill's provisions on the protection of places of national importance and Highly Vulnerable Biodiversity Areas ("HVBAs") may have unintended and/or inappropriate consequences. Manawa's view is that these provisions will effectively prohibit most activities from occurring across potentially vast areas of New Zealand, without any real ability to 'test' an application for its appropriateness.*

11.2. *The detailed provisions around properly defining these areas/places, the level of effects that is acceptable, and the possible exemptions that apply, are all matters that should be carefully considered by Select Committee. Manawa's submission is that – to afford clarity and certainty – these matters should be objectively defined in the Bill in as much detail as practicable, rather than leaving these to be later defined in the NPF, by the Minister, or for the courts to interpret. It is critical that appropriate pathways through are provided, especially for infrastructure (including for both new development; and maintenance, upgrades, and enhancements to existing assets/activities).*

11.3. The Bill proposes a new system for protection of places of national importance, including places of significant biodiversity, and other features such as HVBA.[99] This establishes very strict

[98] Cl 276(3)(c)(v) and Schedule 15 of the Bill relating to clause 40(3)(c)(v) of Schedule 12 of the RMA.
[99] Part 8, subpart 3.

controls on activities which may take place in these places/areas, with extremely narrow exemptions. The provisions effectively amount to a prohibition.

Places of national importance including Significant Biodiversity Areas

11.4. While acknowledging that certain areas should be proactively protected the protections afforded in the Bill to places of national importance are, in general, overly restrictive, and some key provisions lack detail/certainty. The outcome is that these provisions will result in major uncertainty for infrastructure owners. Aspects of these provisions that require amendment are as follows:

11.4.1. The criteria to be established by the Minister in the NPF for identifying Significant Biodiversity Area's ('SBAs') are uncertain[100] and the considerations on which they are to be based are inappropriately broad.[101] There seems no good reason why these criteria cannot be set out in the Bill. Doing so would provide significantly greater certainty to all parties.

11.4.2. The implications of an area being identified as an SBA or other place of national importance are extremely significant. The Bill provides[102] that an activity *"that would have a more than trivial adverse effect on the attributes that make an area a place of national importance must not be allowed by a rule, resource consent, or designation"*, with only very limited exemptions (addressed below). A "place of national importance" is defined to include SBAs, as well as an area of the coastal environment, or a wetland, or lake, or river or its margins that has outstanding natural character; an outstanding natural feature or outstanding natural landscape; specified cultural heritage; or an area that provides public access to the coastal environment, or to a wetland, lake, or river or its margins.[103] Accordingly, the areas where activities may be effectively prohibited are potentially extremely widespread.

11.4.3. Protection of SBAs is not limited to areas identified in the NPF or a plan.[104] The ability for an area to be treated as an SBA *"even though the place was not assessed when*

100 Cl 557.
101 Cl 558. The considerations are: representativeness (except within the coastal marine area), diversity and pattern, rarity and distinctiveness, and ecological context.
102 Cl 559.
103 Cl 555.
104 Cl 561(1).

the plan was made"[105] introduces significant uncertainty, given the effective prohibition on activities with effects on SBAs.[106]

11.4.4. The introduction of the new test for activities with "more than trivial" adverse effects[107] is new and uncertain but it seems to be an extremely low bar. Pursuant to the RMA, a very significant body of caselaw has developed regarding management of effects in practice. It is unclear why established tests for the level or quantum of 'minor' effects is not used in the Bill. Using the new 'more than trivial' test will increase uncertainty, time and cost to all parties until this new descriptor is interpreted by the courts.

11.5. As a matter of policy, it is appropriate to afford protection to places of national importance. However, given the very broad and uncertain definition of those places in the Bill, and given the wholesale restriction of activities that may have effects on them, it is important to have clearly defined and workable exemptions (i.e. appropriate "pathways through") – particularly for important infrastructure. Setting an exhaustive list of types of activities for which exemptions can be made[108] is entirely inappropriate, and risks effectively prohibiting activities with potentially benign – but greater that "trivial" – effects and proposals that would generate significant community benefit.

11.6. Given Manawa's real-world experience of consenting, we are concerned that such a level of protectionism will be fatal to proposals that may otherwise be appropriate development. To take infrastructure as an example, there may be many examples of infrastructure proposals which are not *"operated by a lifeline utility operator as defined in the Civil Defence and Emergency Management Act 2002"*,[109] and may not *"provide nationally significant benefits that outweigh any adverse effects of the activity"* (albeit that the adverse effects may not be on the place of national importance),[110] and yet should be able to be considered in respect of their regional or local benefits, alongside any potential effects on a place of national importance. Protections for those places should not be inappropriately inflexible such that applications with genuine community benefits, and with potentially minor effects on those places, should be able to be considered (i.e. appropriately weighed and balanced).

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105 Cl 561(1)(c).

106 The requirement of cl 559(2) is acknowledged with respect to places of national importance, however issues of timing and certainty remain.

107 Cl 559.

108 Cl 66(1).

109 Cl 66(1)(n).

110 Cl 66(1)(o).

Changes sought

11.7. Manawa seeks that the provisions of the Bill relating to places of national importance, including SBAs, are amended in order to provide greater clarity and certainty as to the delineation of these areas, the activities affected (i.e. effectively prohibited), and to adopt an established and understood RMA descriptor for the threshold of acceptable effects. In addition, the range of possible exemptions to the effective prohibition represented by the Bill's provisions on places of national importance should be broadened, especially for infrastructure,[111] to recognise that it is difficult and inappropriate to prescriptively establish in advance the types of activity that do/do not qualify.

Highly Vulnerable Biodiversity Areas

11.8. The provisions relating to (HVBAs') are both broad in their application, and restrictive in their implications.

11.9. The criteria for identifying a HVBA are very broad and often subjective.[112] For instance, it is not clear precisely what is meant by: *"the area of 1 or more nationally critical species",*[113] *"critically endangered ecosystem",*[114] or *"naturally rare or threatened indigenous marine ecosystems, communities, or habitats".*[115] It is also unclear who is to make the determination whether an area is a HVBA; and whether (and where) they are required to be identified – it appears they are not required to be.[116]

11.10. The implications of an area being a HVBA are significant. Any activity which would have *"more than trivial adverse effect on the attributes that make an area a HVBA"* must not be allowed.[117] Exemptions from this prohibition are only available to extremely limited categories of activities,[118] and are to be specified in the NPF[119] by the Minister, after considering the very broad matters listed.[120]

111 Including for both new development; and maintenance, upgrades, and enhancements to existing assets/activities.
112 Cl 562.
113 Cl 562(1)(a).
114 Cl 562(1)(b).
115 Cl 562(1)(e).
116 Cl 562(2).
117 Cl 563. It is unclear exactly the relationship here with cl 559 relating to the protection of places of national importance.
118 Cl 565(b).
119 Cl 564, repeated in cl 565(a).
120 Cl 566.

11.11. Given the prohibition on most activities within HVBAs, with only limited exemptions, it is concerning that the criteria for defining – and requirements for identifying – HVBAs are not more precisely defined in the Bill. Similarly, it is a missed opportunity that the exemptions are not more precisely specified in the Bill, rather than being left to the discretion of the Minister.

Changes sought

11.12. Manawa seeks that the provisions of the Bill provide greater clarity and certainty around the criteria both for defining and identifying HVBAs; and the criteria for exemptions to activities within HVBAs, such that appropriate pathways through are provided for development, including infrastructure and renewable electricity generation.[121]

Power to declare critical habitat

11.13. The Bill provides that the Minister of Conservation may declare an area to be critical habitat.[122] The only fetter on the Minister's discretion is that the area must be the habitat of a nationally critical species.[123]

11.14. Particularly when read in conjunction with the definition of "critical habitat",[124] this discretion is too broad. There is potential that given the largely unfettered discretion of the Minister of Conservation, any area – including privately owned land – could be declared critical habitat. The potential extent of critical habitat is particularly concerning for some nationally critical species which have very large habitat areas that are geographically spread and often within productive land settings. It is therefore likely critical habitat areas for some species could cover extremely large areas.

11.15. The implications of an area being declared to be critical habitat are not clear. This needs to be clarified, and appropriate "pathways through" provided for development.

Changes sought

11.16. The critical habitat provisions should either be deleted, or appropriate parameters should be introduced such that the Minister is required to demonstrate consideration of appropriate

121 Including for both new development; and maintenance, upgrades, and enhancements to existing assets/activities.
122 Cl 567.
123 Such areas may be very large and uncertain.
124 Cl 555.The definition includes "areas that highly mobile animals rely on for an essential part of their life cycle".

criteria prior to making a declaration that an area is critical habitat.[125] Those criteria should include, but are not limited to, considerations regarding whether the declaration is necessary to manage effects on the species in question, ownership of the land and what it is currently used for, and possible alternative courses of action to making a declaration.

11.17. Further, the implications of an area being declared to be critical habitat need to be clarified in the Bill, and appropriate pathways through provided, especially for infrastructure.[126]

12. NBE PLANS

Summary:

12.1. *Manawa broadly supports the requirement for, purpose of, and scope/content requirements for, NBE Plans. In terms of NBE Plan processes, Manawa seeks changes to the draft Plan audit report scope, the evidence requirements for primary submissions, the scope for secondary submissions, and the enduring submission process, principally so that the plan-making process strikes an appropriate balance between public participation and efficiency*.

12.2. NBE Plans appear to be largely based on unitary plans under the current system, with a broadly similar purpose (to provide for integrated management) and scope, including the requirement to give effect to the NPF and be consistent with the RSS. To the extent that NBE Plans are therefore required to identify plan outcomes, policies and rules in the context of this purpose and scope, Manawa supports the requirement for NBE Plans.

General content of NBE Plans

12.3. In terms of the Bill's mandatory content[127] for NBE Plans, Manawa considers that many matters, such as managing the effects of using and developing the environment,[128] achieving environmental limits,[129] and providing for system outcomes,[130] are appropriate. Manawa also broadly supports the mandatory requirement for NBE Plans to ensure the integration of infrastructure with land use.[131]

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125 Receiving comment from relevant stakeholders may be an appropriate part of that process.
126 Including for both new development; and maintenance, upgrades, and enhancements to existing assets/activities.
127 Cl 102.
128 Cl 102(2)(b).
129 Cl 102(2)(c).
130 Cl 102(2)(d).
131 Cl 102(2)(i).

12.4. Other content requirements, for example to *"resolve conflicts relating to any aspect of the natural and built environment in the region"*[132] are laudable. However, including for the reasons outlined above any system to manage those conflicts must provide a framework with sufficient flexibility for decision-makers to do so having regard to particular facts and circumstances. Similarly, while Manawa acknowledges the perceived desirability in delineating areas and/or natural resources suitable for development, it considers that attempting to broadly identify areas and/or natural resources for which protection, or use or development, is a priority,[133] is challenging and potentially overly prescriptive. It is extremely difficult to know in advance, without information about the actual and potential effects associated with use or development, whether they are appropriate or not. Pre-emptively delineating areas for protection, for example, risks precluding appropriate proposals, with potentially beneficial outcomes which outweigh any adverse effects. It will be critical that plans strike the right balance.

NBE Plans – process issues

12.5. Manawa's comments regarding the process for developing NBE Plans are:

(a) Manawa has experience with numerous plans across New Zealand not meeting basic drafting requirements, including not giving effect to higher order documents. This unnecessarily places an obligation on submitters to raise such issues in submissions on proposed plans and appeals, and/or increases complexity (and risk/cost) to resource consent applicants due to poor plan drafting. Accordingly, Manawa supports in principle the requirement for a report (described in the Explanatory Note to the Bill as an 'audit report') to be submitted to MfE for review[134] before a draft plan is publicly notified.[135]

(b) The requirement that a primary submission on a proposed plan must include all the evidence that the submitter intends to submit in support of the submission[136] is unreasonable. While the aspiration behind this provision is supported (i.e. that all relevant information is provided at the outset and therefore available to all parties) it is simply not workable in practice and ignores the reality of iterative planning processes and litigation. Submitters cannot reasonably be required to foresee every issue and

132 Cl 102(2)(e).
133 Cl 102(2)(g).
134 Or the Department of Conservation, where the plan provisions relate to the coastal marine area.
135 Schedule 7, cl 29.
136 Schedule 7, cl 34(3)(c).

provide evidence on those issues before having heard from other parties. It will also be inefficient. Particularly in circumstances where there may or may not be a chance for submitters to file further evidence, this will lead to considerable uncertainty, and potentially submitters unnecessarily incurring the cost of providing evidence on an overly broad range of issues. Particularly where a RPC can request a submitter to provide further information,[137] this requirement is unnecessary and unreasonable.

(c) The limit on persons who may make secondary submissions to *"any person directly affected by the subject matter dealt with in an enduring or a primary submission"*[138] is too restrictive. There are numerous reasons why it may be appropriate for parties to have the opportunity to submit on third party submissions, not least that they might represent poor planning, and/or result in poor outcomes.

(d) Manawa supports RPCs having powers to request a submitter to provide further information relating to the person's submission,[139] and to strike out submissions.[140] The availability of these powers will assist RPCs to conduct an efficient process.

(e) The novel process for 'enduring submissions'[141] is unnecessary and is likely to significantly increase the administrative burden on local authorities and create unjustified complexity. The obligation on submitters to lodge a submission on a proposed plan or plan change is not unduly onerous. Beyond these practical concerns, the enduring submission process appears capable of abuse: it should be clarified that the power to strike out submissions[142] applies equally to enduring submissions.

(f) The simplified and streamlined requirements for an 'evaluation report' of a proposed plan or plan change[143] seem sensible and are supported.

Changes sought

12.6. Manawa seeks the following:

(a) Retain the requirement for an audit report for draft plans;[144] but extend the audit scope.

137 Schedule 7, cl 37.
138 Schedule 7, cl 35-36.
139 Schedule 7, cl 37.
140 Schedule 7, cl 38.
141 Schedule 7, cl 20-21.
142 Schedule 7, cl 38.
143 Schedule 7, cl 24-26.
144 Cl 29 of Schedule 7.

(b) Delete the requirement that a primary submission on a proposed plan must include all the evidence that the submitter intends to submit in support of the submission.[145]

(c) Broaden the scope of persons who may make secondary submissions.[146]

(d) Delete the enduring submission provisions. In the alternative, if the enduring submission process is retained in the Bill, clarify that the strike out powers of a RPC extend to enduring submissions.

13. CONSENTING PROCESSES

Summary:

13.1. *Regarding **categories of activity status**, Manawa supports the simplification of activity status categories down to four categories. However, Manawa seeks that there be no discretion to decline applications for controlled activities.*

13.2. *With regards to **permitted activities**, Manawa supports the introduction of Permitted Activity Notices ('PANs') but seeks that the lapse period for PANs is extended to five years. Manawa also supports introduction of a discretion for consent authorities to permit an activity by waiving compliance with certain requirements, conditions or permissions.*

13.3. *With respect to **notification**, Manawa supports the intention of the Bill to make notification processes simpler. It also supports certain aspects of the proposed notification provisions. However, Manawa has major concerns with a range of important aspects, including the following, which it seeks are rectified through drafting changes*:

(a) The vague and subjective tests for notification (where notification status is not prescribed in the plan or NPF) which will increase time, cost, and litigation associated with notification.

(b) The default position that discretionary activities must be publicly notified, which is unduly onerous and unjustified.

(c) The ability for notification decisions to be *substantively challenged via declaration in the Environment Court, which will increase litigation, uncertainty, costs, and delays.*

145 Cl 34(3)(c) of Schedule 7
146 Schedule 7, Cl 36(1).

13.4. *With regards to the consideration* ***of applications*****:**

(a) The Bill sets out certain matters which must be disregarded. This includes any effect on scenic views from private properties or land transport assets that are not stopping places. Manawa supports this being precluded from consideration.

(b) Manawa considers the permitted baseline is a useful tool for consent authorities and should be explicitly provided *for, including the consequence of "discounting" effects. Manawa further considers that the future environment should appropriately include unimplemented resource consents where they are likely to be given effect to.*

(c) Manawa seeks that cl 223 be amended to enable a consent authority to grant a replacement consent where environmental limits or targets may not be met if the proposal will not exacerbate the failure to meet the limit or target.

(d) Manawa supports that for consent replacement applications decision-makers must have regard to the value of the existing consent holder's investment.

(e) Manawa considers that an applicant should be able to request a hearing as a matter of natural justice.

13.5. *Manawa supports the retention of three* ***alternative consenting pathways.*** *In respect of the fast-track consenting pathway, Manawa seeks amendments to the eligibility provisions to better recognise and provide for the large-scale nature and national or regional importance of applicable projects, and an extension of the two-year lapse period.*

13.6. *Manawa supports the provisions of the Bill relating to* ***resource consent variations****. In particular, Manawa supports variations being a controlled activity and the "test" for when a variation can be sought.*

13.7. *Manawa considers that the broadened scope to* ***review consents*** *and the ability to review consent conditions relating to duration will be overly burdensome and represents an erosion of certainty which may affect investment decisions. Manawa seeks:*

(a) the deletion of the ability to require a review of entire classes of consents[147] *or alternatively amendment of the Bill*[148] *so that it clearly sets out the circumstances in which the NPF may direct a class of consents to be reviewed and provides a process by which individual consent holders may be exempt; and*

147 Cl 75(1).
148 Cl 75.

(b) the deletion of the ability for conditions relating to duration to be reviewed.[149]

13.8. *Manawa considers that the scope for **cancelling consents** in the Bill is unduly broad and will unreasonably undermine the integrity of a consent. Manawa seeks several amendments, including that the scope for cancelling a consent should be curtailed to more closely align with the RMA; and/or that the consent cancellation process involve a heightened level of rigour and oversight such that a consent can only be cancelled on application to the Environment Court.*

13.9. As a regular participant in the resource consenting process, often as an applicant (but also as a submitter), Manawa is very interested in the provisions of the Bill setting out the process for resource consents. Key issues are outlined below.

13.10. Many of the consenting processes that exist under the RMA are retained in the Bill. Manawa generally supports this approach.

Activity Status Categories

13.11. The Bill provides for activities to be categorised as one of four activity status categories: permitted, controlled, discretionary, or prohibited.[150] The RMA's restricted discretionary and non-complying activities are not retained.

13.12. Manawa supports the simplification of activity status categories down to four categories.

13.13. However, Manawa considers that – consistent with the RMA – a consenting authority should not have the ability to decline an application for a controlled activity. Where it is necessary for there to be discretion to decline consent, an activity should be categorised as discretionary. This is more appropriate, considering the RMA definitions of controlled and discretionary activities and will assist to avoid confusion as to activity status in the transition to the new regime.

Changes sought

13.14. Manawa seeks that controlled activity status is consistent with the current RMA requirements, in that an application cannot be declined, only granted subject to conditions relating to predetermined criteria.

149 Cl 75(2) and 277(7).
150 Cl 153.

Permitted Activity Notice

13.15. The Bill introduces permitted activity notices ("PANs") as a means of cost-effective compliance, monitoring and enforcement. The NPF or NBE Plans will identify certain 'permitted' activities for which a PAN is required prior to the commencement of the activity.[151]

13.16. A PAN lapses after three years, unless the activity to which it relates commences.[152] Manawa considers the lapse period for PANs should be extended to five years. This is consistent with the default lapse period for resource consents[153] and the lapse period for a waiver of compliance notice (discussed below).

13.17. Manawa otherwise supports the introduction of PANs.

Changes sought

13.18. Manawa seeks that the lapse period for PANs be extended to five years.

Waiver of compliance

13.19. The Bill gives consent authorities discretion to permit an activity by waiving compliance with certain requirements, conditions or permissions where:[154]

(a) an activity would otherwise be permitted, but for a marginal or temporary non-compliance; and

(b) the non-compliance does not give rise any adverse environmental effects that are greater than the activity would give rise to in the absence of the non-compliance; and

(c) any necessary written approvals have been obtained.

13.20. The consent authority need not wait for a resource consent application to be made for it to give notice of a waiver of compliance.[155] If a consent authority decides to waive a non-compliance, such waiver will lapse after five years if the activity has not been commenced.[156]

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151 Cl 302. A person proposing to undertake the activity must apply to the consent authority for a PAN. The consent authority has ten days to determine the application and may not seek further information (cl 302(4)). If a PAN is declined or revoked a resource consent will be required in respect of the activity (Cl 302).

152 Cl 302(7). We note that this subclause is replicated in cl 303(2).

153 Cl 272.

154 Cl 157(1).

155 Cl 157(2).

156 Cl 157(5).

13.21. Manawa supports this pragmatic approach to activities that would be permitted except for a marginal or temporary non-compliance.

Request for further information

13.22. The ability for a consent authority to request further information on a resource consent application has been retained in the Bill[157] on similar terms as the RMA.[158] However, the Bill also introduces a requirement that the consent authority consider certain matters before making a request for further information, including whether:[159]

(a) Additional information is needed to determine whether the relevant outcomes will be met;

(b) The effects can be adequately assessed on the information available; and

(c) The information being requested relates to effects or outcomes associated with the activity or is beyond the scope of the activity and is proportionate to the scale and significance of the activity.

13.23. Manawa considers this additional direction is useful and should result in requests from consent authorities for further information that are relevant, considered and focused. Manawa therefore supports its inclusion in the Bill.

Notification

13.24. The ability for parties to be meaningfully involved in resource consent applications that affect them is critical. The Bill overhauls the notification provisions in the RMA.[160]

13.25. Manawa supports several aspects of the Bill's notification provisions:

(a) Manawa supports the stated purpose of notification.[161]

(b) Manawa supports the intention to largely "front-load" notification decisions so that they are determined at the NPF or plan-making stage, providing increased certainty

157 Cl 183.
158 Section 92.
159 Cl 184.
160 Clauses 198-213.
161 Clause 198.

and reduced discretion.[162] This approach may work well for a range of simple activities where the effects and alignment with outcomes can be ascertained ahead of time. However, it is simply not practicable to prescribe notification status for many activities in advance of a specific proposal, especially for large or complex proposals.[163] Therefore, the substantive tests for public and limited notification, where not pre-determined at the planning stage, remain critical (see below).

(c) Manawa supports the default position that controlled activities must not be publicly notified.[164] Controlled activities should be of a nature and scale that public notification is not justified. Especially for replacement consents, effects are well understood, affected parties easily identifiable, and there is generally no justification for public notification.

(d) Manawa supports that the positive effects of a proposal are a relevant consideration for limited notification.[165]

(e) Manawa supports that the likely state of the future environment in the planning documents is relevant when setting notification status in the NPF and plans.[166] This better reflects the dynamic and forward-looking nature of planning and will avoid unduly favouring the *status quo* in notification decisions.

13.26. Manawa has concerns with a range of other important aspects of the notification provisions:

(a) For the key questions of whether public notification or limited notification should be required (where notification is not required or precluded in the NPF or plan), the Bill replaces the step-by-step process and the key effects-based threshold tests in the RMA with lists of considerations to be weighed[167] or tests to be applied.[168] For limited notification, there is no direction as to how the mosaic of often broad, subjective, and potentially competing factors should be interpreted and weighed or otherwise navigated. The result will be uncertain and subjective notification decisions that could "go either way" depending on the individual views of the decision-maker. Increased

162 Cl 199-200.

163 Whether a proposal should be notified will depend on a wide range of factors, including the nature and scale of effects and who they will be experienced by (if anyone).

164 Cl 203.

165 Cl 201(2).

166 Cl 200(3)(a). However, see above relating to unimplemented consents.

167 Cl 201(2) regarding whether a person is an "affected person" for the purposes of limited notification for a resource consent application. Manawa has not identified an equivalent provision for public notification.

168 Cl 205(2) and 206 regarding plans and the NPF. Many of the comments made in this submission regarding notification also apply to the issue of whether approval must be obtained for a permitted activity.

time, cost, and litigation are likely, which is the opposite of what the provisions aim to achieve. The proposed notification provisions purport to provide a simplified process, however Manawa does not consider this will result in practice. Highly problematic provisions include:

(i) The requirement that the NPF or plan must require an application be publicly notified if *"there are relevant concerns from the community"*.[169] This is an overbroad, entirely uncertain, and inappropriate test that will likely be satisfied for almost every proposal.

(ii) The requirement that the NPF or plan must require an application be limited notified if *"it is appropriate to notify any person who may represent public interest"*.[170] This overbroad, uncertain, and inappropriate test provides complete discretion to notify any "public interest" person/group irrespective of the likely effects on them or the effects of the application in general.

(b) Manawa opposes the default position that discretionary activities must be publicly notified.[171] Discretionary activities may be so varied in nature and scale (with equally varying levels of positive and/or adverse effects and alignment or otherwise with outcomes) that a presumption of public notification, with associated time and cost implications, is not justified.

(c) Manawa is concerned that the Bill's proposal for substantive challenges to notification decisions to be determined though declarations in the Environment Court[172] is likely to lead to a proliferation of notification litigation and inadvertently increase uncertainty, costs, and delays.[173]

Changes sought

13.27. Manawa seeks that the Bill:

169 Cl 205(2)(c).
170 Cl 206(a) which applies to regional planning committees for plans and the Minister for the NPF.
171 Cl 204.
172 Cl 696(g).
173 The RMA's provision for notification disputes to be determined *via* judicial review in the High Court (with the associated limits on how a decision may be challenged, as opposed to determining whether it was right or wrong on its merits) provides a barrier to "re-litigation" of notification decisions, including by challenges with little merit. Manawa's concerns in this regard are heightened given the broad and subjective proposed substantive notification provisions in the Bill (outlined above).

(a) Prescribe more certain and objective tests for notification where notification status is not set in the NPF or plan, and delete the uncertain and inappropriate tests for notification that have been proposed, including (without limitation) the requirements that the NPF/Plan must require:

(i) public notification if *"there are relevant concerns from the community"*;[174] and

(i) limited notification if *"it is appropriate to notify any person who may represent public interest"*.[175]

(b) Delete cl 204 and the presumption that discretionary activities must be publicly notified.

(c) Maintain the position that notification decisions can only be challenged through judicial review in the High Court.

Consideration of applications

Certain matters to be disregarded

13.28. The Bill sets out certain matters which must be disregarded when considering resource consents,[176] notices of requirement,[177] preparation of the NPF,[178] and plan making and plan changes.[179] This includes the following new matter which is not precluded from consideration under the RMA:

(a) any effect on scenic views from private properties or land transport assets that are not stopping places.[180]

13.29. Manawa supports this matter being precluded from consideration.

Removal of permitted baseline; and consideration of the future environment

13.30. The Bill removes a consent authority's discretion to consider the "permitted baseline". The RMA provides that a consent authority may disregard an adverse effect of an activity on the environment if a national environmental standard or the plan permits an activity with that

174 Cl 205(2)(c).
175 Cl 206(a).
176 Cl 223(8).
177 Cl 512(1).
178 Schedule 6, cl 19(2)(a).
179 Cl 108, and schedule 7, cl 126.
180 The Bill also removes "amenity" from the definition of "environment". The Bill's only reference to "amenity" is in relation to water conservation orders.

effect.[181] The Bill does, however, require consent authorities to have regard to the "likely state of the future environment" as specified in the NPF, a RSS or a NBE Plan,[182] although it is not clear how this consideration will be applied in practice and the listed matters do not include unimplemented consents.

13.31. Manawa considers the permitted baseline is a useful tool for consent authorities and should be explicitly provided for, including the consequence of "discounting" effects.

13.32. Manawa further considers that, in accordance with the large body of case law built up under the RMA, the future environment should appropriately include unimplemented consents where they are likely to be given effect to, in order to provide a 'real world' assessment. Otherwise, the future environment against which applications for resource consent are considered may be unrealistic.

Limits/targets in the context of replacement consents

13.33. The Bill prohibits the granting of a consent if it is contrary to an environmental limit or target.[183] Including to recognise the often significant investment in existing consents, clause 223 should be amended to enable a consent authority to grant a replacement consent where environmental limits or targets may not be met if the proposal will not exacerbate the failure to meet the limit or target beyond the *status quo*.[184]

Changes sought

13.34. Manawa seeks that the Bill includes:

(a) an express discretion to apply the permitted baseline when considering consent applications;

(b) a requirement to include certain existing unimplemented resource consents when considering the future environment against which resource consent applications are required to be assessed;[185] and

181 S 104(2).
182 Cl 223(2)(e).
183 Cl 223(11)(a)(i) (addressed above in the context of limits/targets).
184 Refer cl 223(11)(a)(i).
185 Cl 223(2)(e).

(c) an ability for a consent authority to grant a replacement consent where environmental limits or targets may not be met if the proposal will not exacerbate the failure to meet the limit or target.[186]

Value of existing investment

13.35. Manawa supports that for consent replacement applications decision-makers must have regard to the value of the existing consent holder's investment.[187] Manawa's activities represent significant existing investments, alongside providing a critical service to people and communities, and it is appropriate that this value is recognised in the decision-making process.

Hearings

Requirement to hold a hearing

13.36. The Bill provides discretion for consent authorities not to hold a hearing regardless of whether the applicant or a submitter wishes to be heard.[188] While Manawa supports that hearings are not mandatory in all cases, it considers there should be an ability for an applicant to request a hearing. The opportunity for an applicant to present its case to the decision maker is a fundamental principle of natural justice.

Changes sought

13.37. Manawa seeks that the Bill be amended to require a hearing to be held if requested by the applicant.

Rights of objection and appeal

Appeals

13.38. The Bill provides a right of appeal to the Environment Court in similar terms as the RMA,[189] except that there is no right of appeal where a voluntary regional ADR process has been used.[190] The procedure for appeal set out in the Bill reflects that in the RMA.[191]

186 Refer cl 223(11)(a)(i).
187 Cl 223(4)
188 Cl 215.
189 Cl 253.
190 Cl 244(2)(c) and cl 251(7)
191 Cl 254.

13.39. Manawa endorses this approach and considers it should be retained.

Objections

13.40. The Bill provides rights of objection against certain decisions.[192] These provisions, to a large degree, reflect the RMA. Similarly, the procedural requirements and timeframes for determining objections are the same as those in the RMA.[193]

13.41. The Bill also provides for a right of appeal to the Environment Court against a decision relating to an objection[194] on the same terms as currently set out in the RMA.

13.42. Manawa endorses this approach to objections and considers it should be retained.

Alternative consenting pathways – general

13.43. Manawa supports the retention of three alternative consenting pathways:

(a) Fast-track consenting (similar to the process under the current Covid-19 Recovery (Fast- track Consenting) Act 2002 ("FTCA"));

(b) Proposals of national significance; and

(c) Direct referrals.

Fast-track consenting

13.44. While Manawa supports the availability of the fast-track consenting pathway, it considers several changes should be made:

(a) **Eligibility scope:** The scope of eligible housing and infrastructure projects is very limited. Manawa strongly supports that hydro-electricity generation replacement applications can use the fast-track process.[195] However, we considers there is no compelling reason why applications for both existing and new hydro-electricity generation should not be eligible. This would be consistent with the approach for wind or solar electricity generation.[196] At the very least, applications for enhancements to

192 Cls 828, 829, and 831.
193 Cl 832.
194 Cl 835.
195 Cl 316(d).
196 Cl 316(e).

existing hydro-electric power schemes, which are not "renewals" (replacement consents) nor an entirely new development, should be eligible.[197]

(b) **Lapse period:** Consents obtained under the fast-track pathway lapse after two years.[198] This sole factor makes the fast-track pathway not viable for a range of major projects (even if they are effectively "shovel ready" as that term would apply in the context of those projects). While the rationale for the two-year lapse period was understandable in the context of the COVID-19 pandemic in which the fast-track pathway has its origins, Manawa considers there is no compelling basis to retain this limited lapse period. The default lapse provisions (5 years) of the NBE Bill should apply.[199]

Proposals of national significance

13.45. Manawa supports retention of the alternative consenting pathways in respect of proposals of national significance. Either in response to a request by an applicant or local authority, or at their own initiative, the Minister may "call in" a proposal of national significance by referring the matter to be considered by a board of inquiry, or directly to the Environment Court.[200] Manawa seeks this pathway is retained.

Direct referral to the Environment Court

13.46. The Bill retains the ability for a resource consent applicant to request that a notified application be referred to the Environment Court.[201] This can be a useful mechanism to avoid the duplication of time and cost of a two-stage hearing process. Manawa supports the retention of the ability for an applicant to request direct referral and supports the right of objection against a consent authority's decision on a request for direct referral. Manawa considers these provisions should be retained.

Changes sought

13.47. Manawa seeks retention of the alternative consenting pathways, in recognition of the special nature of applicable resource consent applications. In respect of the fast-track consenting pathway, Manawa seeks amendments to the eligibility provisions to better recognise and

197 Enhancements may include proposals such as upgrades to existing schemes through increased takes, new inputs/sources, and/or new or enlarges storage.
198 Cl 326(6)(a).
199 Including the default lapse period of five years (cl 272(1)).
200 Cl 329.
201 Cl 166.

provide for the large-scale nature and national or regional importance of applicable projects, and an extension of the two-year lapse period to at least 5 years.

Consent variations

13.48. Manawa supports resource consent variations being a controlled activity under the Bill.[202] This appropriately reflects the nature of variation applications.

13.49. The Bill includes necessary and appropriate safeguards on the permissible scope of when a consent can be varied, as opposed to when a new application for resource consent is required. A consent can be varied where the proposed change will *"not result in a materially different activity (than the activity for which consent was granted"*. This is a simple and appropriate test.

Changes sought

13.50. Manawa supports the provisions of the Bill relating to resource consent variations, and in particular their controlled activity status and the "test" for when a variation can be sought.

Review of consents

13.51. The Bill significantly expands the scope for review of consents, which will erode the permanence of consents and create significant uncertainty for consent holders, businesses, developers and investors. Manawa is concerned this will have implications for investment decisions, such as upgrades and improvements to existing assets. The current system depends on investment based on the (general) inviolability of resource consents, and the Bill proposes to fundamentally erode this.

13.52. When compared to the RMA,[203] the Bill introduces a fundamental shift to the nature and extent of a review of a resource consent. Manawa considers that some of those changes undermine the integrity and security of a resource consent; and unnecessarily place considerable costs on consent holders (especially where types of consents are reviewed irrespective of any particular concern with the consent holder's activities): for example, reviewing consent duration after investment decisions have been made and consents exercised.

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202 Cl 274.

203 Section 128 of the RMA provides for prescribed circumstances a consent authority may elect to review conditions of consent, together with a limited ability to subsequently cancel a resource consent.

13.53. Specific aspects of the review process which Manawa has concerns with are detailed below.

NPF and plan direction to review consents and permits

13.54. The NPF may direct consent authorities to review any or all classes of resource consents as soon practicable or within a specified time period.[204] A direction to review a particular class(es) of resource consents will be mandatory irrespective of any individual facts or circumstances which may mean a review is not warranted for an individual consent holder.

13.55. A mandatory review of *all* resource consents of a class will be administratively burdensome, costly and highly inefficient. Some consent authorities will have thousands of consents of a particular class. It is likely that consent authorities will attempt to mitigate the administrative burden of such reviews by dealing with them as a group.[205] While potentially efficient for a consent authority, individual consent holders will be required to participate in a grouped process which may be neither efficient nor cost effective to them; particularly as a hearing may be required.[206] Manawa considers circumstances that warrant an entire class of consents to be reviewed should be clear and contextualised and with a process for consents within the class to be exempt – for example, those consents that relate to infrastructure or provide for a public good.

13.56. A review of the duration of a class or classes of resource consents either required under the NPF or in a plan[207] represents a further erosion of certainty of a consent holder which in turn may affect investment decisions. As noted, considerable investment is often made, including in reliance on the certainty of obtaining and holding long-term resource consents. The risk that a review may subsequently override a long-term resource consent is inefficient and may result a significant reduction in, and potentially loss of investment – including with respect to maintaining, upgrading and renewing infrastructure. In addition, reviews not involving consent duration[208] will often be capable of appropriately addressing the matters set out in the Bill.

Changes sought

13.57. Manawa seeks:

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204 Cl 75.

205 This is envisaged by cl 277(6).

206 Cl 279.

207 Cl 75(2) and 277(7). Cl 277(7) covers exceptional circumstances relating to climate change/natural hazards or significant risk to human health, property, or the natural environment; compliance with limits/targets; or new information identifying significant harm or damage.

208 Cl 277(3) and (4).

(a) the deletion of the ability to require a review of entire classes of consents[209](and consequential changes); or alternatively

(b) amend the Bill[210] so that it clearly sets out the circumstances in which the NPF may direct a class of consents to be reviewed and provide a process by which individual consent holders may be exempt from that review process; and

(c) delete the ability for conditions relating to duration to be subject to review.[211]

Cancellation of consent

13.58. The Bill widens the circumstances in which a consent may be cancelled.[212] These additional powers are not appropriately defined. Given the very significant consequences of cancelling a consent that has already been exercised, Manawa considers these provisions require careful consideration and amendment.

13.59. The Bill provides for the cancellation of a land use consent in circumstances where an activity cannot comply with certain plan rules.[213] Given land use consents will have generally been granted for an unlimited period and 'run with the land', the Bill represents a significant departure from the approach to consenting activities prior to and under the RMA. Manawa considers the cancellation of a land use consent for the broad reasons set out in the Bill will unreasonably undermine the integrity of a consent. For instance, it is possible, even likely, that consents granted and implemented prior to the NPF will not be able to retroactively comply with plan rules that "*give effect to any part of the [NPF] relating to the natural environment*"[214] and to expect otherwise is unrealistic and unreasonable. The retrospective and broad nature of the analysis is problematic and will erode certainty for consent holders.

13.60. The Bill enables regional councils to cancel regional consents in more limited circumstances.[215] Whilst an improvement on the provisions relating to land use consents (addressed immediately above), these provisions still apply retrospectively to existing consents which breach (or are likely to breach) an environmental limit.

209 Cl 75(1).
210 Cl 75.
211 Cl 75(2) and 277(7).
212 Cl 281(6) and (7).
213 Cl 281(7).
214 Cl 281(7)(a).
215 Cl 281(8).

Changes sought

13.61. Manawa seeks:

(a) that a consent authority's ability to cancel a consent under cl 281 reflects the current regime under s132 of the RMA; that is, it may only cancel a consent where the information provided with the application contained inaccuracies which materially influenced the decision. Specifically, Manawa seeks that:

(i) Cl 281(6), (7), and (8) be deleted; or in the alternative

(ii) that cl 281(6)(b) be amended to read:

there are significant adverse effects on the environment resulting from the exercise of the consent <u>which were not anticipated at the time of granting the consent and which cannot otherwise be rectified through any consent condition</u>.

and

(iii) that Cl 281(7) (land use consents) and (8) (regional consents) include a requirement that the consent authority consider the consequences on the consent holder of cancelling a consent, including but not limited to, the level of investment by the consent holder.

(b) that the Bill be amended to expressly provide that an appeal to the Environment Court against a decision to cancel a consent acts as a stay to the decision until finally determined.

13.62. Especially if changes addressing the above concerns are not made, given the significance of the cancellation of an existing consent – especially for major infrastructure – Manawa also seeks that the process involve a heightened level of rigour and oversight such that a consent can only be cancelled on application by the consent authority to the Environment Court.

14. DESIGNATIONS

Summary:

14.1. *The designation process is important in that it gives special recognition of, and affords certain protections to, the provision and ongoing management of infrastructure. Manawa supports*:

(a) the broad retention of designation processes from the RMA; and

(b) the ability for the Minister to approve "additional utility operators".

14.2. Manawa is pleased that the Bill retains and, to an extent, strengthens the designation processes currently provided under the RMA.[216] The ability of requiring authorities to designate a project or work in order to give special recognition of, and afford certain protections to, that project or work is a fundamental aspect of the provision and ongoing management of infrastructure.

14.3. A particular aspect of the Bill relating to designations which represents a change to the RMA processes, and which Manawa supports as a system improvement, is the ability for "additional utility operators" to be approved as requiring authorities.[217]

14.4. Numerous issues with the Bill's designation provisions (and corresponding proposed amendments) are outlined in the submission by ESEG. Manawa generally supports the changes sought in the ESEG submission.

Changes sought

14.5. Manawa seeks:

(a) that the Bill retains the ability for "additional utility operators" to be approved as requiring authorities; and

(b) the detailed designation provision changes outlined in the ESEG submission.

[216] Subpart 1 of Part 8 in the RMA.
[217] Cl 500(4)-(6).

15. COMPLIANCE, MONITORING, AND ENFORCEMENT

Summary:

15.1. *The approach proposed in the Bill to compliance and enforcement represents a significant departure from the RMA and will likely have very considerable implications, particularly for business.*

15.2. *In a major shift from the RMA, the Bill proposes to introduce the ability to suspend or revoke consents for non-compliance, with opaque criteria as to the circumstances when this may occur. This is likely to significantly impact business confidence and investment decisions and should be deleted or amended.*

15.3. *Manawa also seeks that the Bill's prohibition on insurance for fines be deleted*.

15.4. The Bill's compliance, monitoring, and enforcement regime represents a significant departure from the RMA. Manawa wishes to clarify the potential implications of several key aspects of the Bill; importantly, the likely implications for business.

Power to revoke or suspend resource consents

15.5. The Bill contains a material and significant departure from the RMA in that it provides the Environment Court can revoke or suspend a resource consent for non-compliance.[218] It is unclear why the range of other compliance and enforcement options available in the Bill is not considered to be sufficient.

15.6. Given the extremely significant implications for consent holders, it is surprising that there is an absence of useful guidance as to the circumstances where a resource consent should be revoked or suspended.[219]

Changes sought

15.7. Manawa seeks that this provision is deleted from the Bill. In the alternative, if the provision is retained, clear criteria stipulating the circumstances where a resource consent can be revoked or suspended should be provided.

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218 Cl 719.

219 The matters in cl 719 are extremely broad.

Insurance prohibited

15.8. The Bill prohibits insurance to pay for fines,[220] whereas the RMA contains no prohibition on insurance. Insurance covering environmental offences, which include a range of strict liability offences,[221] is currently commonplace.

15.9. Prohibitions on insurance for fines have been enacted in other contexts in New Zealand.[222] However, Manawa is unaware of any compelling justification in the resource management context (which includes strict liability offences,[223] limited defences,[224] and significant penalties[225]) to change the *status quo* position on insurance under the RMA. Fines will remain a significant deterrent notwithstanding the potential for insurance cover, and insurance cover for fines does not equate to "contracting out" of environmental obligations. Insurance comes at significant cost to businesses and there are adverse implications for businesses where fines are imposed. Within this context, it's unclear what an prohibition on insurance will achieve. In addition, a range of other interventions/penalties proposed in the Bill would not be affected by the availability of insurance.[226]

Changes sought

15.10. Manawa seeks that the prohibition on insurance for fines be deleted from the Bill.

16. TRANSITION

Summary:

16.1. *The Bill's transitional provisions are incomplete, and uncertain and unworkable in places. Changes should be made to include important transitional provisions and timeframes in the Bill and to clarify the transitional provisions generally. This will increase certainty and help decision-making by those affected by the Bill's transitional regime.*

220 Cl 766.
221 Strict liability offences do not require an intention to commit the offence.
222 For example, s29 of the Health and Safety at Work Act 2015.
223 Cl 762 and 763 of the Bill.
224 Cl 762-764.
225 The Bill significantly increases potential penalties, including fines up to $1M for an individual, and $10M for companies (cl 765).
226 E.g. adverse publicity orders.

16.2. An efficient and orderly transition to the new system is essential. Unhelpfully, many important commencement, savings, and transitional provisions are not included in the Bill, although MfE has stated that government policy decisions on these provisions have been made.[227]

16.3. Essentially, Manawa understands that transition to the new resource management system is expected to take around ten years (until full implementation of the NBEA and Spatial Planning Act and the plans/strategies prepared under them), with parts of the NBEA coming into effect at different times to replace RMA provisions in stages.

16.4. However:

(a) the broad policy intentions expressed in the MfE documentation supporting the Bills bely the complexity and significant impacts of the transitional regime under the Bills;

(b) many important aspects of the Bill will have immediate or imminent impacts; and

(c) a range of key transitional provisions/timeframes are subject to future (currently unknown) regulations and are also subject to change *via* future regulations;[228]

(d) there are acknowledged material gaps in the transitional provisions; and

(e) important aspects of transitional framework set out in the Bill are unclear, uncertain, and/or unworkable.[229]

16.5. This makes it impossible to fully understand the transitional arrangements and to effectively plan decision-making and investment.

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227 MfE Overview Document, page 58; and "Supplementary Analysis Report: The new resource management system" 21 September 2022 at page 128. The Bill contains some transitional, savings, and related provisions including in Schedule 1 (as "imported" by cl 10).

228 The Bill provides that regulations may be made from time to time to provide transitional and savings provisions concerning the coming into force of the NBA that may be in addition to, or in substitution for, the NBA transitional provisions in Schedule 1 (clause 858(i)). Clauses 858(j)-(l) also provides a range of other regulation-making powers relating to transitional arrangements; and clause 82 provides that the NPF may include transitional provisions for any matter.

229 For example, the Bill appears to be missing a clause clearly clarifying that any resource consent application lodged before the Act comes into force must be determined as if the Act had not been enacted. Such a clause is commonplace for reform legislation. Also, the *Natural and Built Environment Bill - MfE (Initial briefing 3 - Attachment 8.2 - Fact sheet - Transition and Implementation)* acknowledges that the remaining in place of "many RMA processes" during the transition period (e.g. plan changes, consent processing provision etc.) is not addressed explicitly in the Bill. Further, NBE Bill Schedule 1, clause 8(2) is uncertain in its scope and application. It states that all proceedings pending or in progress in the Environment Court under the RMA immediately before Royal assent of the Bill must be continued, completed and enforced under the RMA. On the face of the provisions, it is unclear whether they relate to procedural and substantive RMA requirements.

Changes sought

16.6. Manawa seeks that commencement, savings, and transitional provisions:

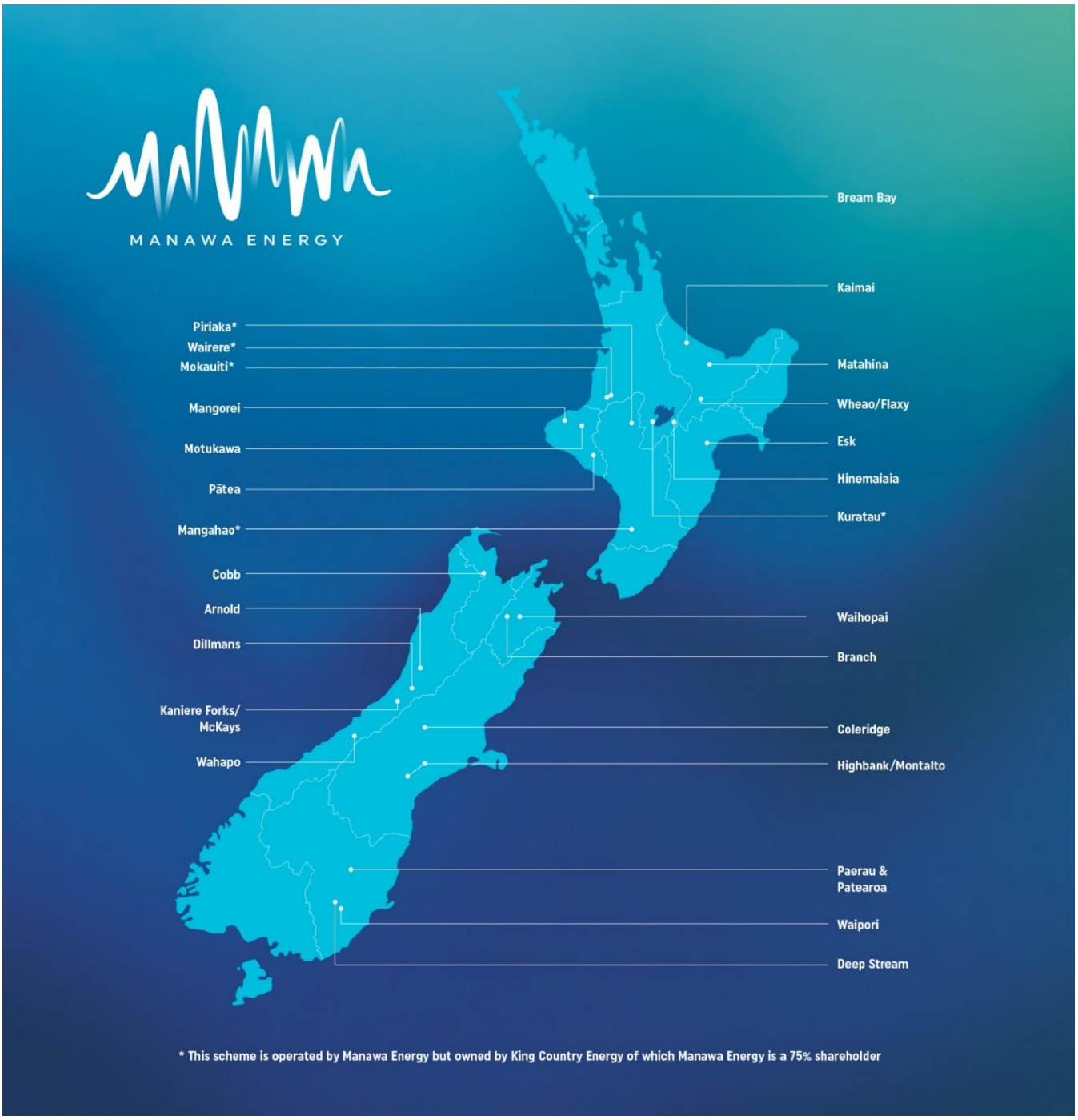
(a) are clearly set out in the Bill itself to the extent practicable, to plug current gaps, increase clarity and certainty for all system users, and aid planning and investment; and

(b) are amended to increase their clarity and workability.

17. CONCLUSION

17.1. Manawa thanks the Committee for the opportunity to submit on the Bill. Manawa would welcome an opportunity to present key parts of its submission to the Committee, and to respond to any queries the Committee might have.

APPENDIX A: MANAWA ENERGY'S ASSETS



APPENDIX B: MANAWA ENERGY'S CONSENTING TIMEFRAMES AS IMPACTED BY THE NBE BILL

The following tables highlight the increased consenting activity for Manawa Energy's Hydro-electric power schemes, s275 of the Bill would require. The first set of columns show Manawa's schemes current dates for re-consenting. The Mangorei and Motukawa schemes are currently being re-consented. This table assumes those two schemes would be granted with a 35 year consent duration and therefore, would next be due for re-consenting in 2058.

The second set of columns shows the repetition of re-consenting should a 10 year consent duration be imposed, as per s.275. These additional re-consents are shown in the orange cells. Under this proposal, the Mangorei and Motukawa schemes would be due for re-consent in 2033 (assuming they are granted consent in the latter half of 2023, after the NBEA comes into effect). Under a 10 year consent duration, there would be an additional 43 reconsent processes for Manawa.

The third set of columns shows the re-consents required should some schemes water permits issued during the NBEA transitional period would expire 3 years after the relevant NBEA plan is notified as per the 'affected resource consents' proposal[230]. Here, the Mangorei and Motukawa schemes would be due for re-consent sometime over the next 10 years, depending on when the Taranaki NBE plan is notified, after which they would move into a 10 year consent duration. All of these additional re-consents are assumed the relevant NBE plans are notified in 2029 and therefore would expire in 2032, and are shown in the orange cells. Under this scenario, there would be an additional 43 re-consent processes for Manawa.

Hydro-Electric Power Scheme and Current Consent Expiry Date (35 Years)	
Mangorei	1/06/2021
Motukawa	1/06/2022
Kaimai	1/10/2026
Wheao	1/10/2026
Kuratau	5/12/2026
Mangahao	14/12/2027
Piriaka	31/08/2030
Coleridge	19/12/2031
Mokauiti	31/12/2032

Hydro-Electric Power Schemes 10 years Consent Expiry Date	
Mangorei	1/06/2021
Motukawa	1/06/2022
Kaimai	1/10/2026
Wheao	1/10/2026
Kuratau	5/12/2026
Mangahao	14/12/2027
Piriaka	31/08/2030
Coleridge	19/12/2031
Mokauiti	31/12/2032

Taking into account the Sch 12 3 year expiry during 10 year transition	
Mangorei	1/06/2021
Motukawa	1/06/2022
Kaimai	1/10/2026
Wheao	1/10/2026
Kuratau	5/12/2026
Mangahao	14/12/2027
Piriaka	31/08/2030
Coleridge	19/12/2031
Mangorei	2032

[230] As discussed at section 10.14 of this submission

Wairere	31/12/2032
Arnold	5/02/2033
Paerau	1/01/2034
Branch	31/10/2035
Kumara	13/03/2036
Hinemaiaia	31/10/2036
Cobb	10/04/2038
Waipori	5/05/2038
Esk	28/05/2038
Waihopai	31/03/2039
Highbank	12/02/2040
Patea	1/06/2040
Wahapo	22/04/2044
McKays	26/07/2047
Kaniere	26/07/2047
Matahina	2048
Mangorei	2058
Motukawa	2058

Wairere	31/12/2032
Arnold	5/02/2033
Mangorei	2033
Motukawa	2033
Paerau	1/01/2034
Branch	31/10/2035
Kumara	13/03/2036
Kaimai	2036
Wheao	2036
Hinemaiaia	31/10/2036
Kuratau	2036
Mangahao	2037
Cobb	10/04/2038
Waipori	5/05/2038
Esk	28/05/2038
Waihopai	31/03/2039
Highbank	12/02/2040
Patea	1/06/2040
Piriaka	2040
Mokauiti	2042
Wairere	2042
Arnold	2043
Mangorei	2043
Motukawa	2043
Paerau	2044
Wahapo	22/04/2044
Kumara	2046
Kaimai	2046
Wheao	2046
Hinemaiaia	2046
Kuratau	2046
McKays	26/07/2047
Kaniere	26/07/2047
Mangahao	2047
Cobb	2048
Waipori	2048
Matahina	2048
Esk	2048
Waihopai	2049
Piriaka	2050
Highbank	2050
Mokauiti	2052
Wairere	2052

Motukawa	2032
Kaimai	2032
Wheao	2032
Kuratau	2032
Mangahao	2032
Mokauiti	31/12/2032
Wairere	31/12/2032
Arnold	5/02/2033
Paerau	1/01/2034
Branch	31/10/2035
Kumara	13/03/2036
Hinemaiaia	31/10/2036
Cobb	10/04/2038
Waipori	5/05/2038
Esk	28/05/2038
Waihopai	31/03/2039
Highbank	12/02/2040
Patea	1/06/2040
Piriaka	2040
Mangorei	2042
Motukawa	2042
Kaimai	2042
Wheao	2042
Kuratau	2042
Mangahao	2042
Mokauiti	2042
Wairere	2042
Arnold	2043
Wahapo	22/04/2044
Paerau	2044
Kumara	2046
Hinemaiaia	2046
McKays	26/07/2047
Kaniere	26/07/2047
Matahina	2048
Cobb	2048
Waipori	2048
Esk	2048
Waihopai	2049
Highbank	2050
Piriaka	2050
Mangorei	2052
Motukawa	2052

Arnold	2053
Mangorei	2053
Motukawa	2053
Paerau	2054
Wahapo	2054
Kumara	2056
Kaimai	2056
Wheao	2056
Hinemaiaia	2056
Kuratau	2056
McKays	2057
Kaniere	2057
Mangahao	2057
Cobb	2058
Waipori	2058
Esk	2058

Kaimai	2052
Wheao	2052
Kuratau	2052
Mangahao	2052
Mokauiti	2052
Wairere	2052
Arnold	2053
Paerau	2054
Wahapo	2054
Kumara	2056
Hinemaiaia	2056
McKays	2057
Kaniere	2057
Cobb	2058
Waipori	2058
Esk	2058

APPENDIX C: SAPERE REPORT

"THE TREATMENT OF DISTRIBUTED GENERATION IN THE NATURAL AND BUILT ENVIRONMENT BILL: MAPPING THE VALUE OF DISTRIBUTED GENERATION AGAINST NBEB SYSTEM OUTCOMES"

The treatment of distributed generation in the Natural and Built Environment Bill

Mapping the value of DG against NBEB system outcomes

February 9, 2023

Executive Summary

Hydro DG has a significant contribution to the Bill's system outcomes, and should be included in exemptions from new consent duration limits

- The draft Bill introduces a 10-year limit on resource consent duration for water permits, including those granted for hydro-electric distributed generation ("hydro DG").
- It provides exemption from this limit to renewable electricity generation that is directly connected to the national transmission grid.
- In this report we show that this exemption is arbitrary - **the nature of the connection to the grid does not determine the significance of hydro-electricity generation in meeting NBEB system outcomes.**
- We show that hydro DG has an equivalent role to grid-connected hydro-electricity in meeting the Bill's outcomes, by contributing to
  - energy security
  - energy affordability
  - reducing GHG emissions, and
  - the well-being of local communities.
- We also show that limiting the consent duration for hydro DG can exacerbate current consenting system inefficiencies.
- Lastly, we argue that excluding hydro DG plants from the 10-year limit exemption runs contrary to the principle of competitive neutrality within the resource management system. The limit provides competitive advantage to holders of long-term consents, despite short-term consent owners also being important for meeting NBEB system outcomes.

1. Key issues in the proposed NBEB

Proposed changes in draft NBEB

- Article 275 introduces **a 10-year limit on the consent duration** for certain activities. Such limits may be issued by a consent authority for activities including:
  - the taking, using, damming, or diverting water excluding open coastal water and geothermal water
  - the discharge of any contaminant or water into water.
- Article 276 proposes a list of activities that could be exempt from the 10-year limit. With respect to renewable generation, exemption could be provided for
  - renewable electricity generation facilities that connect directly to the national grid electricity transmission network.
- **Exemptions listed in Art. 276 do not include generation directly connected to the distribution network** (i.e. 'embedded' or 'distributed' generation)
- During the transitional period (until councils notify their new regional plans), resource consent duration could be limited to three years once a regional plan is notified.

Exemptions from the consent duration limit seem to be for nationally significant infrastructure

- Based on publicly available information, we have not been able to establish the reasoning behind the proposed list of exemptions – **an assessment of trade-offs from such limits and exemptions is missing**
- We have indication that exemptions have focused on infrastructure of national significance, on the premise that this infrastructure is critical for achieving resource management reform outcomes.

Focus on nationally significant infrastructure fails to recognise the importance of hydro DG in delivering the NBEB system outcomes

- The National Policy Statement on Urban Development 2020 attributes "national significance" to renewable electricity generation facilities that connect with the national grid
- Renewable electricity connected to local distribution network is of "regional significance" (e.g. Otago Region Council's partially operative Regional Policy Statement 2019)
- By these definitions, hydro DG plants are of "regional," and not of "national" significance. In this report, we argue that **the nature of the grid connection does not determine the significance of hydro-electricity generation in meeting NBEB system outcomes, and that exemptions on this basis are arbitrary.**

2. Resource allocation principles and system outcomes in draft NBEB

Under the new NBEB, three principles will guide the allocation of freshwater resources

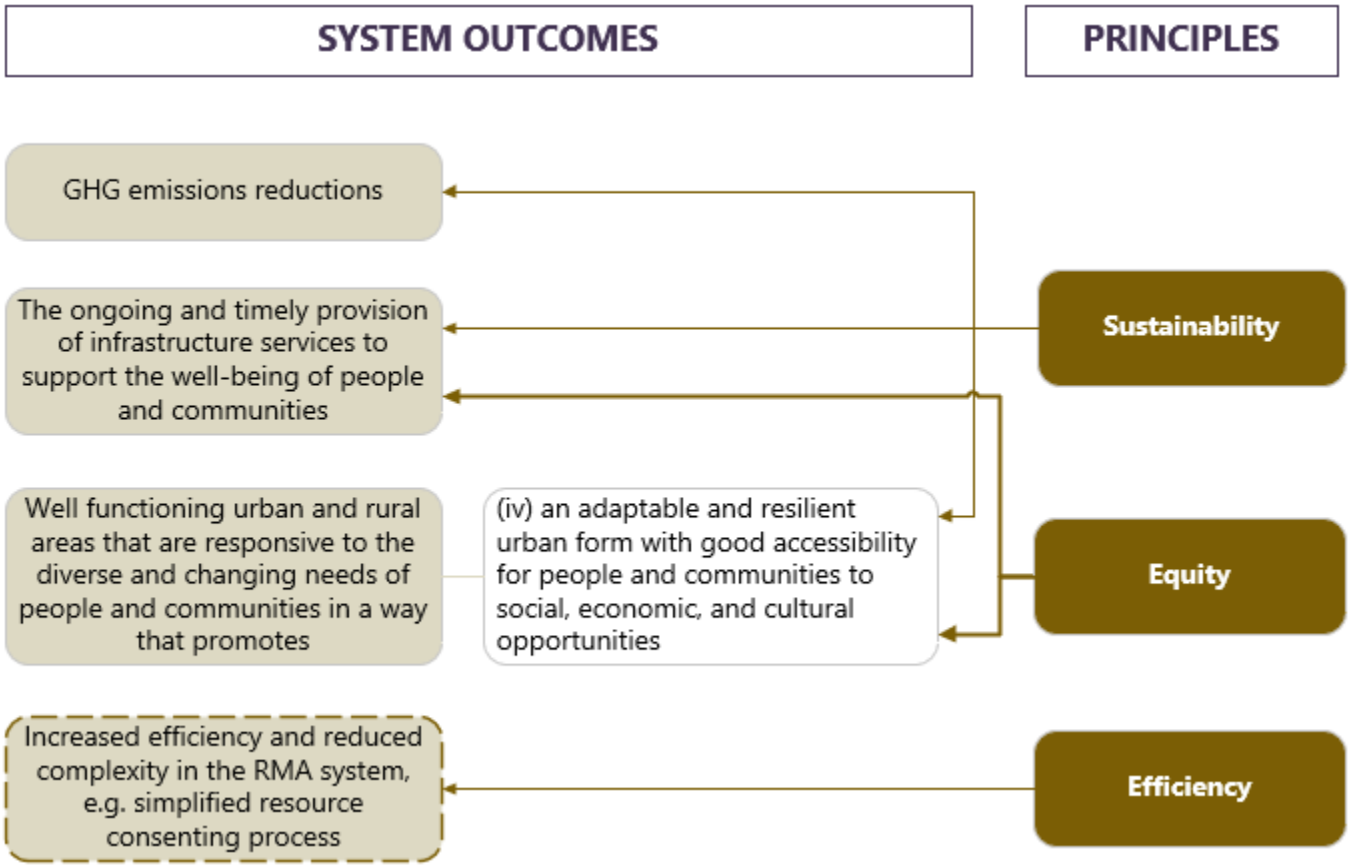
- "Three principles of **sustainability, equity, and efficiency** will guide the development of allocation methods in NBE plans for freshwater resources" (NBEB).
- "The policy intent is to ensure a more balanced approach is taken to allocation, rather than continue the current widespread practice of automatically adopting first in first served and prioritising existing users when issuing new consents" (RIS, p.55).
- The National Planning Framework may give further detail on the meaning of these principles.

NBEB system outcomes can be linked to resource allocation principles

- The NBEB also includes system outcomes expected from the RMA reform. We map resource allocation principles by NBEB system outcomes to identify sub-outcomes specific to hydro DG operation.
- For hydro DG, the following system outcomes from the draft NBEB are relevant:
  - In relation to climate change and natural hazards, **achieving the reduction of GHG emissions**
  - **Well functioning urban and rural areas** that are responsive to diverse and changing needs of people and communities in a way that promotes the use and development of land for a variety of activities, including for housing, business use, and primary production
  - The **ongoing and timely provision of infrastructure services** to support the well-being of people and communities
- The "efficiency" principle does not directly map to any system outcomes, as currently drafted in NBEB. Nevertheless, in the subsequent section we explicitly reflect reduced system complexity as a desired outcome of the RMA reform.

Mapping principles by system outcomes in draft NBEB

Figure 2



Note: The draft NBEB does not have a system outcome that can be directly linked to the RMA system efficiency principle. The rectangle with the dashed border is based on definitions of system efficiency as per Appendix 2 in Parliamentary Paper on the NBEB exposure draft. This is consistent with the outcome of "enabling administrative efficiency" linked to the efficiency principle (p. 82 in MOG 16)

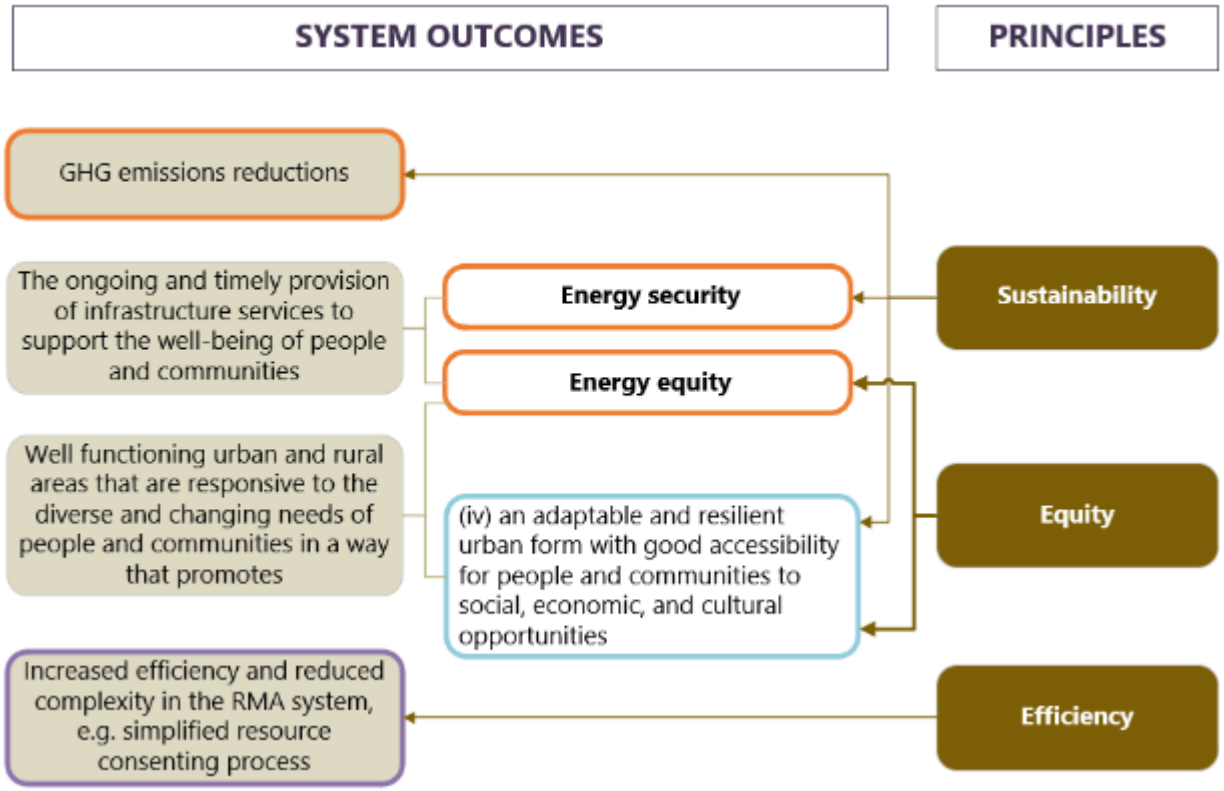
3. Mapping hydro DG to NBEB system outcomes

Mapping hydro DG to NBEB system outcomes

- In the figure on next slide, we further dis-aggregate system outcomes, and show the specific outcomes that hydro DG have a significant contribution to. A subsequent section discusses these outcomes in more detail.
- The figure shows that distributed hydro generation contributes to NBEB system outcomes through its role in:
  - Alleviating the Energy Trilemma, i.e. the trade-off between energy security, environmental sustainability and energy equity (see Figure 4)
  - Supporting the well-being of local communities through social investments.
- The figure also shows that the resource consenting settings for hydro DG are directly linked to the system efficiency principle under NBEB. We subsequently argue that reducing consent durations for hydro DG would further exacerbate current system inefficiencies due to increased frequency of consent renewals.

System outcomes delivered by hydro DG under current settings are shown in rectangles with bold borders

Figure 3



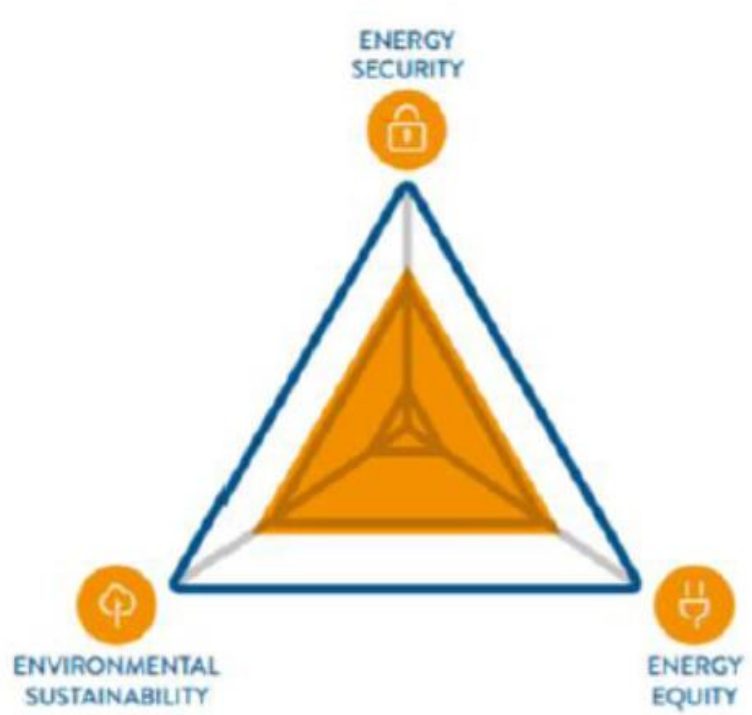
Notes:

- System outcomes with orange borders indicate outcomes within the Energy Trilemma (discussed later)
- System outcomes with blue borders indicate the role of DG in delivering local impacts
- System outcomes with purple borders indicate impact on system efficiency

The Energy Trilemma

- The Energy Trilemma framework provides a way of thinking about the policy demands placed on the energy system. The Trilemma involves a balance between policy goals of energy security (energy and resource adequacy), environmental sustainability and energy equity.
- In WEC's World Energy Trilemma Index, NZ ranks 10th out of 128 countries and is the only country outside Europe in the top 10.
- Hydro-electricity generation plays a key role in New Zealand's electricity system, both large-scale and embedded generation. We discuss this in the next section.

Figure 4: The Energy Trilemma



4. Description of hydro DG contribution to system outcomes

Distributed generation plays a significant role in New Zealand's electricity sector

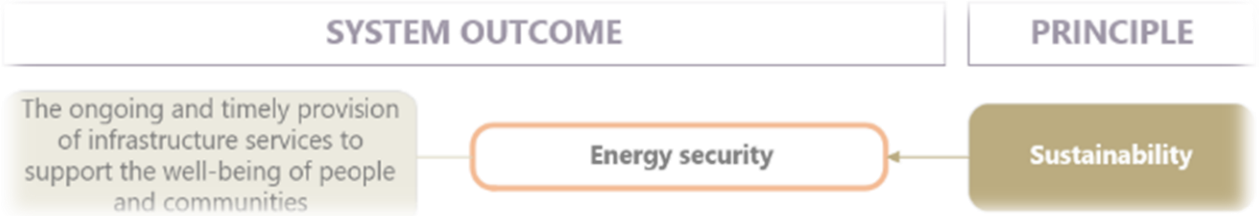
- Distributed generation refers to electricity generation and storage plants directly connected to a distribution rather than a transmission network.
- DG facilities are located across all NZ (see figure), and supply ~12% of total NZ demand (IEGA).
- DG supply over 20% of network demand in 9 networks and ~75% of electricity consumed on the West Coast (IEGA)
- In 2022, there were ~170 embedded generation plants of approx. 1.8 GW total capacity (all DG fuels, and incl. cogeneration). Of these, ~103 plants provided renewable generation, with a total capacity of 1.3 GW. Over 30% of renewable DG capacity is provided by DG hydro-electric schemes (EMI, Manawa Energy data).
- Manawa Energy's generation accounts for 5% of total NZ output, and 8% of NZ hydro-electric output (Manawa Energy data)
- In some regions in New Zealand, Manawa Energy's hydro DG schemes are the substantial generators
  - Tasman (Cobb hydro-electric scheme is the only generation source in that region)
  - the West Coast (there other a couple other small schemes, but no grid connected schemes)

Figure 1: DG plants across New Zealand

Source: IEGA

All hydro generation plays a significant role in ensuring NZ energy security

- Energy security ensures the ongoing and timely provision of electricity generation. The "ongoing" requirement is provided by **resource adequacy**, and the "timely" requirement is provided by **energy adequacy.** In particular, with respect to electricity generation:
  - Resource adequacy is the ability to store energy and shift it through time.
  - Energy adequacy is the electricity system's ability to reliably meet the different levels of demand at each point in time through the year.
- Electricity demand is expected to significantly increase between now and 2050 (by 53% in CCC forecasts, or 68% in Transpower forecasts). This is due to economic and population growth, but also due to the significant electrification of transport and industrial process heat. In combination, these two developments will place greater emphasis on the role hydro-electricity plays in the economy.



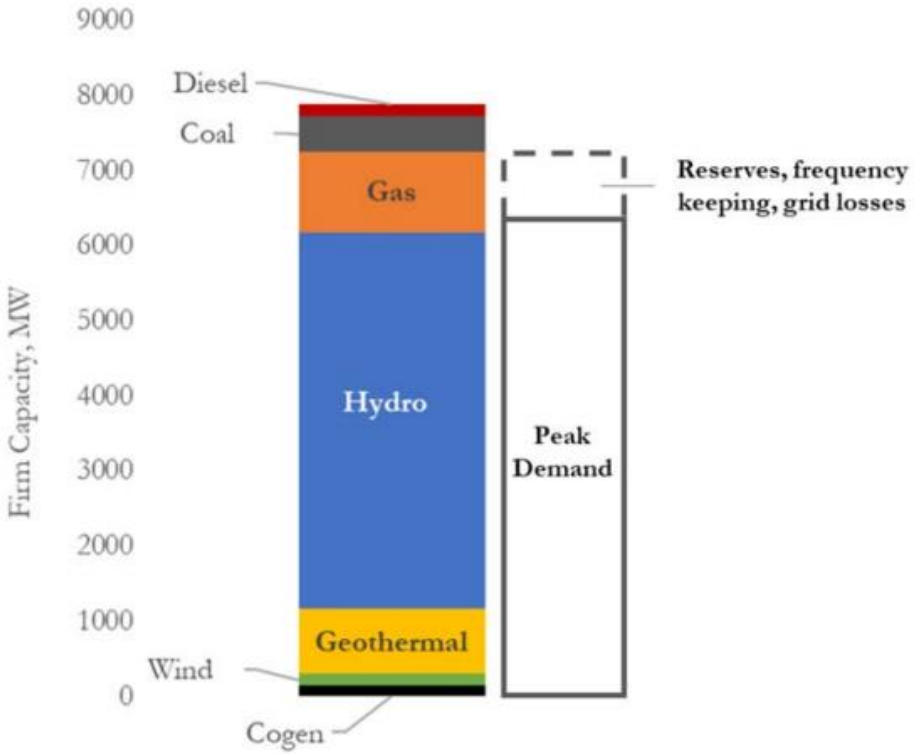
Hydro DG is important for ensuring resource adequacy in the NZ electricity market

- Hydro electricity is currently the only renewable energy source that has a storage component, so it is critical for resource adequacy in the electricity system.
- Geothermal is operated near-continuously at full capacity (baseload) so it doesn't contribute to resource adequacy – the ability to store energy and shift it through time. Wind and solar are not able to be stored in a meaningful (cost effective) way at present.
- MDAG estimates that the share of total supply from intermittent generation will rise from 6% in 2020 to 47% in 2050. In this context, it has noted that "the hydro generation base is expected to become much more important as a shock absorber, smoothing out many of the short-term fluctuations between intermittent renewable sources and varying demand" (p. 16 in MDAG 100RE Discussion Paper)
- Hydro capacity is not expected to be increased significantly, so resource adequacy with greater demand and relatively more supply from non-storable renewables becomes more challenging.
- **In a dry year, all volumes will be important to achieve a reliable electricity supply. This means that while large generation systems are valuable by virtue of their size, smaller systems with flexibility also have an equivalent value.**

Hydro DG is important for ensuring energy adequacy in the NZ electricity market (1/3)

- One major service that hydro provides to the operation of the electricity system is the ability to respond quickly to short-term changes in the electricity supply and demand balance.
- These changes arise from short term variability in demand, intermittent generation (e.g., wind and solar), or unexpected outages of other generation plant. This is especially true at peak demand, which tends to only last for a very short time (minutes). Hydro plays a significant role in meeting peak demand and instantaneous reserves (Fig 5).

Figure 5: The role of hydro in meeting peak demand



Source: Sapere based on Transpower data (2017)

Hydro DG is important for ensuring energy adequacy in the NZ electricity market (2/3)

- **Compared to other renewables, hydro has a stronger response to winter peak load.** Intermittent sources of renewable generation have a low contribution to peak adequacy, as wind is highly volatile, and the NZ system peak typically occurs on a winter's evening, when no solar is available. As more intermittent renewable generation is added to the energy mix, the pressure on the electricity system to meet reliability requirements will also increase.
- **Given the substantial increase expected for electricity demand, the significance of hydro DG in meeting peak load becomes even more poignant, especially at local levels.** Transpower's latest 2024 peak demand forecast is now ~200MW and ~150MW higher than last year in the North Island and South Island respectively.

Hydro DG is important for ensuring energy adequacy in the NZ electricity market (3/3)

- **Hydro DG is integral to ensuring energy adequacy. Because it is located closer to end users, and is by definition more dispersed than centralised generation, the effects of any one unexpected outage at a single generation plant, or constraint on a transmission line, can be reduced.**
- Examples of energy adequacy provided by hydro DG (IEGA):
  - DG at Auckland District Hospital Board's Grafton hospital provided emergency power when Vector's network was out
  - Transmission connection was lost to West Coast communities during the Fehi cyclone. Amethyst hydro station was used to black-start Hokitika's electricity supply and powered households and businesses in Hokitika and South Westland during the cyclone event

Hydro DG also provides ancillary services, which help ensure energy security

- **Hydro DG already provides flexibility services**
  - Inertia and voltage support, which includes absorbing reactive power. DG is a large source of flexibility services from proven technology, and can provide benefits without requiring complex lower voltage network monitoring
  - Some plants are contracted to supply black start
  - Hydro DG can respond quickly to network issues – it is not always restricted to a System Operator's dispatch cycle
  - Manawa Energy hydro DG provides voltage support services to Network Tasman, to maintain security and reliability on those local networks.

Hydro DG plays a significant role in meeting NZ's 2050 net zero target

- The modelling of New Zealand's energy future as carried out by multiple authors have assumed that hydro-electricity generation stays at least at its current levels through to 2050. Limits on consent durations for hydro DG operations creates uncertainty in the planning for low emissions electricity supply and the wider economy.
- As more intermittent and inflexible renewable generation is introduced into the grid (e.g. wind, solar), hydro-electricity will be relied on more and more to support system security. The alternative is investment in more thermal peaking plant, which runs counter to government's aspirations for higher levels of renewables and lower emissions. **Any erosion of hydro's ability to fill its energy security role will make the task harder, or will drive the need for more thermal peaking plant.**
- **Size of scheme is a poor proxy for hydro-electricity's role in the energy sector or contribution to GHG emissions reductions, and is therefore a poor criteria for determining exemptions from consent duration limits.** The impact of resource consent restrictions (e.g. duration) on the totality of hydro DG operations can be significant. By our estimates, if all hydro DG were replaced with gas-fired plant, an additional 317 ktCO2e would be emitted annually. In 2030, this would result in electricity emissions being over 16% higher than where they would need to be (relative to CCC's Demonstration Path scenario).

Manawa Energy is an important investor in community well-being

Manawa Energy invests ~$300k per year to support community well-being, through management / contribution to trusts, scholarships and other sponsorships . A list is provided below.

Environmental Enhancement Trusts

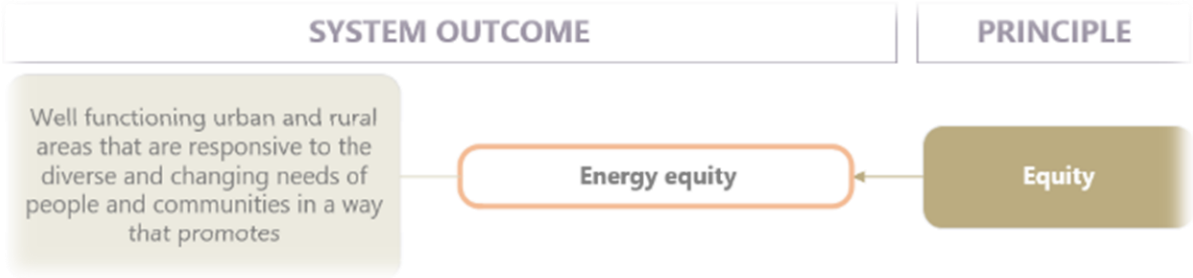
- Whakamatu Eel Management Trust (Coleridge)
- Coleridge Habitat Environmental Enhancement Trust (Coleridge)
- Rakaia Catchment Environmental Enhancement Society (Coleridge)
- Mahinerangi Catchment Environmental Enhancement Trust (was related to Wind Farm, trust now wrapped up)
- Rangitaiki River Environmental Enhancement Fund Trust (Matahina)
- Tasman Environment Trust (Cobb Mitigation Funding contribution paid to trust as part of Cobb consent obligation)

Educational Scholarships

- Opawa Rangitoto 2C Incorporation scholarship (Hinemaiaia scheme hapu)
- Rangitaiki hapu coalition scholarship (Matahina)
- Ngati Waewae MOU scholarship contribution (West Coast Schemes)
- Ngamanawa MOU Scholarship (Kaimai)

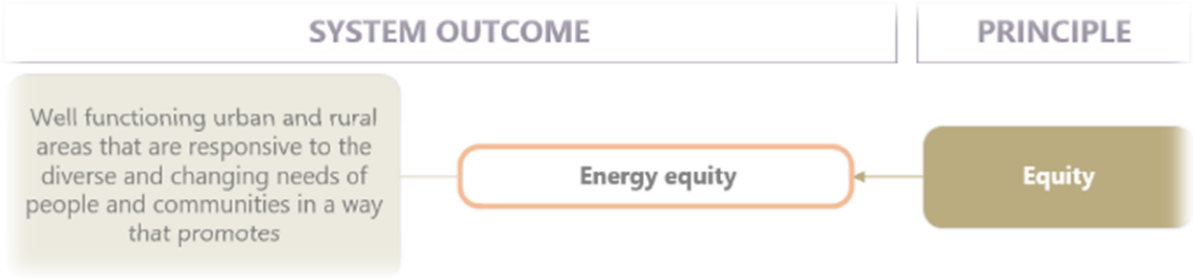
Stakeholder agreements / MOU's/Sponsorships

- Taranaki Tree Trust (Patea)
- Rangitane o Wairau (Branch / Waihopai)
- Waipori Weed fund/ORC annual contribution (Waipori)
- Waitangitaona Rating District (Wahapo)
- Hapua Management Fund Ecan (Coleridge)
- Fishery enhancement programme agreement with Fish and Game (Kaniere)
- F&G RWCO Agreement (Coleridge)
- Kamiai Canoe Club Sponsorship (Kaimai)



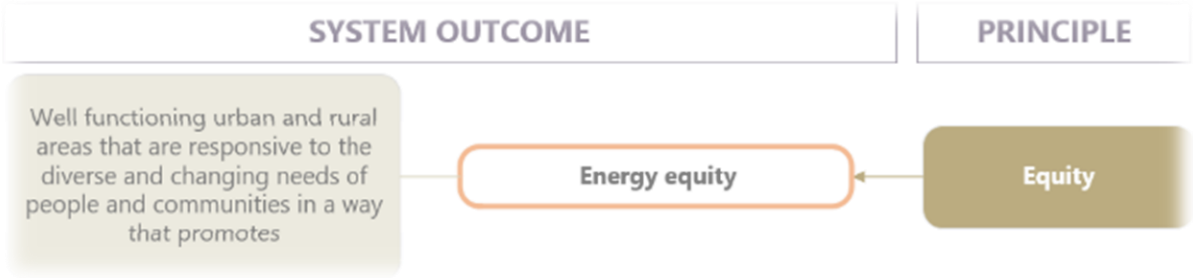
Hydro DG contributes to energy equity by avoiding electricity cost increases (1/3)

- **Restricting the operation of existing electricity infrastructure will increase electricity costs to consumers.** This is because (i) new generation investment would otherwise be required to fill in demand, (ii) hydro DG helps reduce line losses, and (iii) by helping avoid congestion and by providing peak output and ancillary services, hydro DG helps avoid or helps defer investment in distribution and transmission assets.
- The economics of hydro-electricity are that they require high upfront capital costs, occasionally significant capital refurbishment but generally have very low variable costs. Even these variable costs (mainly operations and maintenance) are not highly sensitive to reductions of hydro-electric output, meaning that any losses in hydro-electric output are losses of essentially free energy. If this zero-cost hydro-electricity at the margin is reduced and replaced with something else, then, unless that new generation has the same operating and economic characteristics as controlled hydro-electricity, it must increase costs to the electric power supply, and probably prices.



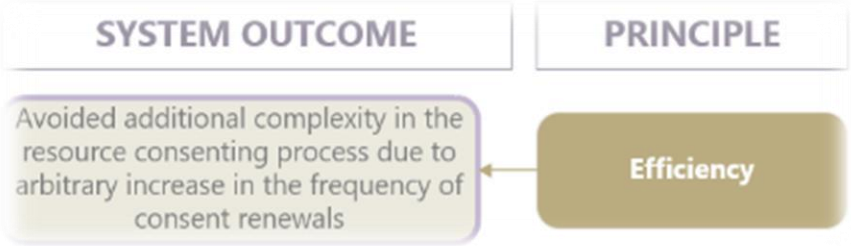
Hydro DG contributes to energy equity by avoiding electricity cost increases (2/3)

- By virtue of its proximity to load, hydro DG helps avoid network costs :
  - Distributed generation sometimes has the advantage of (relative to grid connected generation) being more closely located with load. This proximity can help reduce transmission and distribution losses, reduce constraints on lines that are at (or near) capacity, and potentially defer the need for new investment in constrained parts of the transmission or distribution network.
  - By contributing to peak output, hydro DG has also avoided or deferred capacity investment required in distribution and transmission assets to meet increasing peak demand.



Hydro DG contributes to energy equity by avoiding electricity cost increases (3/3)

- Excluding DG plants from the 10-year limit exemption **runs contrary to the principle of competitive advantage** within the RM system, as it puts short-term consent owners at a disadvantage compared to long-term consent owners.
  - At the community level, electrons generated by grid-connected or embedded plants cannot be distinguished – they provide the same service. More frequent reconsenting would imply higher costs for DG operators and ultimately for the end users.
  - Furthermore, the competitive disadvantage creates investment uncertainty, and reduces incentives for continuous asset maintenances. Both of these outcomes would affect energy security.



Limiting hydro DG resource consent duration will unnecessarily reduce the efficiency of the consenting system

- The consenting system is already overwhelmed, with significant delays observed in consenting processes. For all consent applications (not just infrastructure), the average time taken by authorities to make a decision has increased by 50% from 2014/15.
- **The burden on the consenting system will only grow given the significant increase expected in electricity generation**.
  - Approximately 1,020-1,250 GWh of new renewable generation will be required on average each year until 2050 (CCC DP - TP forecasts). By comparison, an average of 380 GWh of new renewable generation was commissioned annually in the 30 years to 2020. Furthermore, the future development rate will need to be even higher if existing renewable electricity stations' operating capabilities are reduced when current resource consents expire.
- Manawa Energy's electricity generation and maintenance activities operate within the constraints of over 430 resource consents. **Under the proposed 10-year limit, the number of Manawa Energy's resource consent applications through to 2058 would increase ~three-fold**.

5. Case study: Waipori

Summary

- The Waipori Power Scheme consists of four power stations (Waipori 1A, 2A, 3 and 4). Situated in a steep, rocky gorge, it was first commissioned to power Dunedin.
- Waipori is currently connected to both a 'distribution' network and the national 'grid' (or 'transmission' network). Waipori Power Stations 1a and 2a are connected to Aurora's distribution network, and Power Stations 3 and 4 are connected to Transpower's 110 kV line.
- From an engineering perspective, there is no clear distinction between these two types of networks. In fact, the two machines at station 2a can switch between them, which shows the challenge created in relying on an arbitrary delineation.
- The distinction is an artefact of the past when it was used to determine grid ownership. In particular, it served the purpose of identifying parties that contracted directly with Transpower – the 'grid' owner. After the Code was introduced in 2003, the distinction was retained because there was no compelling reason to change it – and it was also easier not to.
- Waipori was a 'grid' power station and was originally built to bring power, and was the only supply to Dunedin. **The current 'definition' of Waipori connections are an outcome of changes in the regulatory settings of the NZ power system, not of changes in the significance of services that Waipori provides.**
- Waipori provides critical services to both transmission and distribution in the Dunedin region. Regional stability and peak management will be critical services in facilitating the electrification of loads around Dunedin and South Otago, reducing the need for expensive transmission and distribution upgrades.

Waipori was built as a ‘grid’ level power station

- In the early days of electricity development, power stations were developed locally and there was no grid. As Otago had a proud history of hydroelectric pioneering, a group of businessmen started developing the Waipori power station to supply Dunedin. Most local supplies had been coal powered to this point, e.g. Auckland's King's Wharf.
- Dunedin City Council were concerned with their power supply being in private hands and purchased Waipori and commissioned the station for local supply by 1907. Waipori would be Dunedin's substantial source of electricity for around 30 years.
- When the New Zealand Government started building the national grid, it focused on the North Island and Canterbury region (from the Coleridge power station).
- With the construction of the Waitaki power station, the Government finally connected Dunedin and Invercargill to Canterbury (at 110kV) on the SI 'grid' just before World War 2. **Even with the Government's Waitaki and Coleridge power stations, Waipori (now with two power stations) were still 'grid' level power stations.**

Waipori continued to be a significant power scheme as the national grid was being built

- After World War 2 New Zealand suffered almost incessant power rationing until the 1960's and again in the 1970s. Over this period, two more power stations were added to Waipori, and every power station in the South Island was critical to grid supply.
- After World War 2 the Government started to build the 220kV network, but again focused on the North Island and Canterbury.
- **Over the 1960s and 70s** the Government built huge power schemes in both Islands and built the inter-island link (HVDC). However, Dunedin was still only supplied from the old 110kV, and **Waipori was still a significant power scheme.**
- Only with the construction of the 220kV loop to Dunedin (Three Mile Hill) **around 1980 would Waipori become considered to be a smaller power scheme.**

The distinction between transmission and distribution is an artefact of the past used to determine grid ownership

- By the 1920s, the Government had set the arrangements by which the delineation between transmission and distribution would be agreed. The Government would build the bulk of power stations and transmission. Power boards would build distribution. The point of supply that marked the boundary was agreed between the Government department and the local power boards. As such, many factors might apply in determining the point of supply. Therefore, **there is no clear engineering distinction between transmission and distribution**. **Transmission (the grid) in New Zealand is literally defined by ownership – Government owned before corporatisation and Transpower owned after.**

- This leads to a category of assets called sub-transmission which is above distribution level but not owned by Transpower. Generally, these assets are lower voltages than 'the grid' but this is not always the case. **Neither voltage nor capacity give clear guidance on whether an asset is owned by Transpower and is, therefore, 'the grid'.**

- **The reason an arbitrary distinction was continued in our modern arrangements is because the original wholesale electricity market was a voluntary arrangement under light-handed regulation.** This could only work because Transpower could require any party that transported energy across its network to belong to either the Metering And Reconciliation Industry Agreement (MARIA) or the Rules of the New Zealand Electricity Market (NZEM). Therefore, the original trading rules for 'the grid' could only apply to those parties who connected to, and had to contract with, Transpower. With reregulation in 2003, which mandates participation in the Code, there was no compelling reason to change the definitions. It was easier not to.

The ‘definition’ of Waipori network connections are an outcome of changes in the regulatory settings of the NZ power system, not of changes in the significance of services Waipori provides

- Power system connections are still based on what makes engineering sense, which often means that upgrading existing connections makes more sense than establishing new ones. For this reason, Waipori Power Station 1a remains connected to Aurora's sub-transmission at 33kV. It also made sense to connect the Mahinerangi wind farm and the two Deep Stream stations to the sub-transmission.

- For stations 3&4 it made sense to connect to Transpower's 110kV line, which is officially transmission. Waipori Power Station 2A was already connected into the sub-transmission, but two of its machines were also set up to connect to the transmission network. **The Waipori power scheme is connected to both Aurora's network (defined as distribution) and Transpower’s networks (defined as grid) and two machines at station 2a can switch between them, which shows the challenge created in relying on an arbitrary delineation.**

- Waipori was a 'grid' power station and was originally built to bring power, and was the only supply, to Dunedin. Its 'definition' has changed over the years as the power system grew under different ownership.

- Waipori provides critical services to both transmission and distribution in the Dunedin region. It offsets peak demand on Aurora's Halfway Bush connection assets. It provides stability in a relatively weak 110kV network that is also susceptible to constraints.

- Regional stability and peak management will be critical services in facilitating the electrification of loads around Dunedin and South Otago, reducing the need for expensive transmission and distribution upgrades.

6. Renewable electricity supply's role in legislated decarbonisation goals

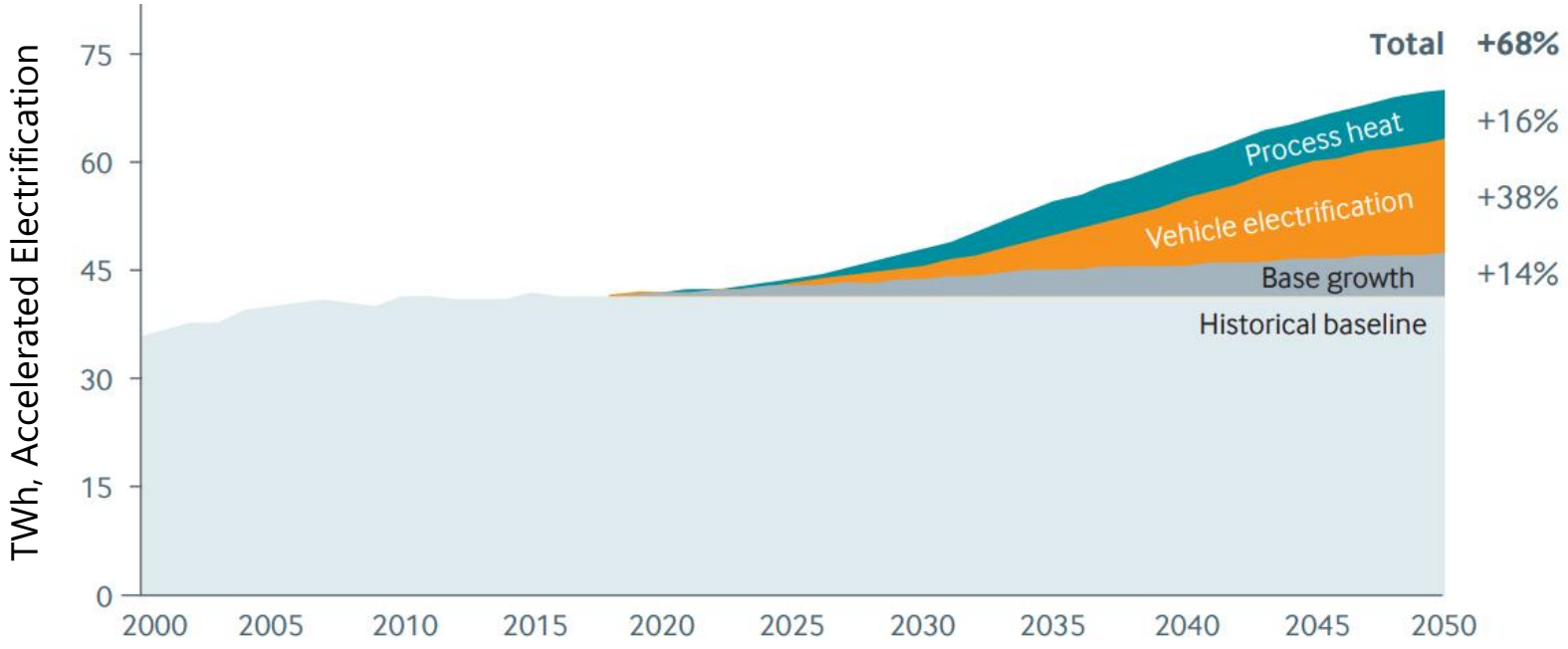
Generation development

- Since 2017 it has become clear that the meeting government's legislated carbon emissions goal and recently released Emissions Reduction Plan (ERP) rely on consumers large and small electrifying industrial processes, transport and any other uses being made of fossil fuels that can be switched. Modelling by Transpower and the Climate Change Commission showed demand will increase significantly as a result of electrification.
- In the ERP Government states its aspirational target of 100% renewable electricity by 2030. However, investment in new thermal generation, refurbishment of existing generation and development of thermal storage facilities froze as government made its intentions clear from 2017. On the other hand investors in renewable electricity generation can see the need and the opportunity but there are consenting issues, supply chain issues, labour issues and skills issues. Renewable electricity generation investment has, to date, largely brought only investment in intermittent generation into the system.

Energy demand growth

Whakamana i Te Mauri Hiko estimates a 68 per cent increase in required electricity generation by 2050. In the 2025–2030 period total energy demand increases by approximately 10 per cent from 44 to 48 TWh. The sustained, strong growth in electricity demand between 2025 and 2050 is driven primarily by transport electrification and the electrification of process heat.

Figure 6: Projections of electricity demand



Source: Transpower, Whakamana i Te Mauri Hiko – Empowering our energy future, March 2020

Problems for electricity supply

The challenges to investment in renewable electricity generation create two problems for electricity supply:

- **Security of supply.** Thermal generation plays a major role in providing security of supply. As it is replaced by renewable electricity generation, maintaining reliability and security of supply becomes more challenging. The Electricity Authority's advisory group (MDAG) estimated the share of annual average supply from intermittent generation such as wind and solar will rise from 6% in 2020 to 31% in 2035 and 47% in 2050.
- **Scale of investment.** The sheer scale of investment required to replace thermal energy, meet the accelerated demand and provide security of supply is massive. A recent report by BCG estimates the system will need a total of 4.8 GW of new utility-scale renewable electricity generation capacity in the 2020s i.e. more than a 50% increase on installed capacity in the system today.

In relation to the NBEB

- Maintaining hydro DG's contribution to renewable electricity supply is as essential as maintaining grid connected hydro's contribution. There is no logic to distinguish hydro DG's contribution from grid connected hydro. On the contrary, hampering hydro DG would undermine the system's ability to achieve the legislated goal of net zero carbon by 2050. The same logic applies to hydro DG's contribution to the system outcomes sought through the draft NBEB.