Inquiry on the Natural and Built Environments Bill: Parliamentary Paper

Report of the Environment Committee

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Presented to the House of Representatives

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Inquiry on the Natural and Built Environments Bill: Parliamentary Paper

Summary of recommendations

The Environment Committee has conducted an inquiry on the Natural and Built Environments Bill: Parliamentary Paper.

We make the following recommendations by majority to the Government:

Recommendations regarding the NBA

The development of the NBA

1. That the Government proceed with the development of the Natural and Built Environments Bill.
2. That the Government adopt our proposed redrafting of certain provisions of the exposure draft of the Natural and Built Environments Bill.

The concept of Te Oranga o te Taiao

3. That the concept of Te Oranga o te Taiao be included in the purpose of the NBA, and that work be carried out with national iwi and Māori groups to further develop the concept to:
    a. improve its effectiveness by defining Te Oranga o te Taiao clearly and describing how different aspects of the legislation will support upholding Te Oranga o te Taiao
    b. ensure that, in addition to the relationships that iwi and Māori have with te taiao, it is clear that all New Zealanders have relationships with, and responsibilities to look after, the natural environment
    c. consider the extent to which the Te Mana o te Wai hierarchy could be incorporated within the purpose clause.

Clarifying aspects of the purpose clause

4. That the purpose clause and other provisions be amended to better reflect that:
    a. environmental limits have priority in the system, and are not subject to other goals related to well-being
    b. there are dual goals, within the parameters of environmental limits, to both protect and restore the natural environment, and to better enable development
    c. the intention that protection and restoration of the natural environment be achieved overall through the NPF and NBE plans, rather than as a requirement of every consent.
5. That the purpose clause give more prominence to the built environment, so that the purpose of the NBA is more clearly linked to the outcomes for housing, infrastructure, and cultural heritage in relation to the built environment.

6. That the purpose clause be reviewed so that the structure and concepts minimise uncertainty and, therefore, legal risk in a way consistent with the objectives of the reform.
7. That the purpose clause use more directive language to require the protection of the natural environment.
8. That, in regard to adverse effects on the environment:
    a. the NBA require the NPF to provide high-level and overarching direction on the effects management hierarchy
    b. offsets and compensation not be part of the definition of "mitigate" in clause 3, and the term be redrafted.

Definitions in the interpretation clause

9. That, where appropriate, the bill carry over relevant definitions already defined under the RMA, to ensure existing case law is retained in the new system, unless the policy intent changes in a way that justifies a corresponding change to a definition.

Te Tiriti o Waitangi

10. That the bill include further direction on how the principles of Te Tiriti o Waitangi are to be given effect to, including, but not limited to, local government's role in the Treaty partnership.
11. That consideration be given to what role the NPF could have in giving additional expression to the principles of Te Tiriti o Waitangi through both the NPF's processes and substantive content, and, in doing so, provide clarity about how persons operating under it can give effect to the principles.

Purpose of environmental limits

12. That the bill clarify that limits could only be set for the purposes of protecting the ecological integrity of the natural environment, and/or human health.

Matters for which environmental limits must be set

13. That the bill state that the Minister may set environmental limits that integrate the mandatory matters in clause 13 for which environmental limits must be prescribed, which would be consistent with the NPF's aim of promoting integrated direction.
14. That the bill require the NPF to set environmental limits for "indigenous biodiversity" rather than "biodiversity, habitats and ecosystems", and that the setting of any limits for non-indigenous biodiversity in the NPF be at the discretion of the Minister.

Responsibility for setting environmental limits

15. That the bill require the Minister to set environmental limits in the NPF on the matters listed in the NBA for which it is mandatory to have limits, and that it remain optional for the NPF to set limits for other matters, or direct that NBE plans set limits for other matters.

Formulation of environmental limits

16. That the bill proceed with two formulations by which environmental limits may be expressed: either the minimum biophysical state, or the maximum amount of harm or stress that may be permitted.

Allowing for transitional limits to be set

17. That in cases where current environmental conditions are below an agreed future environmental limit, the NPF could specify a transition pathway towards achieving the environmental limit by setting transitional limits. Transitional limits should be required to have a specific end point or end date.

Duty for persons to comply with environmental limits

18. That the bill include provisions that require persons exercising powers and functions under the NBA to comply with limits, in a manner appropriate to their specific regulatory role.

Clarifying terms used in outcomes statements

19. That the environmental outcomes be clearly drafted with consistent verbs wherever possible and appropriate.

Proposed environmental outcomes

20. That the NBA include our revised and consolidated list of environmental outcomes.

NPF and NBE plans are not limited to addressing the identified outcomes

21. That the bill state that the NPF should include mandatory content on all environmental outcomes in the NBA.
22. That the bill clarify that the NPF and NBE plans are not limited to addressing the identified outcomes, and can also cover a broader range of matters to help achieve the purpose of the NBA.

Resolving conflicts between outcomes

23. That the bill provide further direction on how conflicts between outcomes are to be resolved including:
    a. by specifying that there is no hierarchy among the outcomes
    b. by specifying that policies that achieve synergies between outcomes are to be preferred over those that achieve one at the expense of another, so as to avoid conflicts in the first place
    c. by providing procedural and substantive requirements to assist decision-makers in resolving conflicts
    d. through links with the Climate Change Response Act 2002.

Environmental targets in relation to outcomes

24. That, in relation to the discretionary power to set targets in the NPF, “target” be defined as a measurable direction to support the achievement of an outcome, including a time by which it must be reached.

Purpose of the NPF

25. That the purpose of the NPF (as set out in clause 10) be expanded to include:
    a. furthering the purpose of the NBA by providing direction on the integrated management of matters of national significance and matters for which national or sub-national consistency is desirable

b. helping to resolve conflicts between environmental matters (clause 13)
c. setting environmental limits and strategic direction (clause 14).

NPF as secondary legislation

26. That further policy work be undertaken to establish what regulations should be contained in the NPF, and we suggest that:
    a. the NPF include the types of provisions and functions currently provided for by national policy statements and national environmental standards under the RMA
    b. the NPF include all types of provisions that are to be used in NBE plans and regional spatial strategies
    c. the term "goals" be removed from clause 11.

Considerations and content in the NPF

27. That the NBA include relevant considerations that decision-makers must have regard to when setting environmental limits.
28. That clause 13 in the bill should be drafted to:
    a. provide that the NPF should have mandatory content on all outcomes listed in the NBA, but we note that this may be influenced by our earlier recommendation for changes to the wording of the outcomes
    b. clarify that the level of detail provided on each outcome can differ.
29. That the conflict resolution provision in clause 13 be strengthened by requiring the Minister to have regard to the extent to which it is appropriate for conflicts to be resolved at a national level by the NPF, or at a regional level by NBE plans.

Strategic directions in NPF provisions

30. That, in setting strategic directions, the NPF must:
    a. provide direction on how to achieve the environmental outcomes
    b. provide direction on how the well-being of present and future generations is to be provided for, within environmental limits
    c. address key long-term issues and priorities.

Preparation of the NPF

31. That the process for preparing the NPF ensure:
    a. a robust evidence-based process involving mātauranga Māori, other technical expertise and scientific advice
    b. application of the precautionary approach
    c. consideration of the potential for cumulative effects
    d. early engagement and a partnership approach with iwi, hapū, and Māori
    e. early engagement with local councils
    f. effective public consultation and input.

Implementation principles

32. That further work be carried out to determine whether and, if so, how the NBA should include implementation principles, in addition to other principles.

Purpose of NBE plans

33. That the purpose statement for NBE plans be reviewed for clarity and to reflect any refinements to the NBA's overall purpose.

Role of local authorities and communities in NBE plan-making

34. That clause 21 and Schedule 2 clearly set out a substantial role for local authorities in place-based planning, and how the planning committee and local authorities could engage with communities when preparing the plan.

Planning committees

35. That further work be undertaken on planning committees, including representation, how they work and make decisions, and the role of the secretariat.
36. That the bill state that planning committees must have regard to mātauranga Māori and technical advice.

Recommendations for improving system efficiencies

37. That the Government consider the ideas in our report for improving system efficiencies.

1 Overview of the inquiry

Structure of the report

On 1 July 2021, the Environment Committee commenced an inquiry into the parliamentary paper on the Natural and Built Environments Bill, which included an exposure draft of some provisions for the bill.

Our report is broken down into four chapters and two appendices. This chapter provides an overview of the inquiry. The second chapter summarises our consideration of the exposure draft and parliamentary paper. The third chapter discusses ideas to make the new system more efficient. The fourth chapter gives our concluding remarks. The appendices set out our committee procedure (Appendix A) and some proposed revised provisions for the bill (Appendix B).

Background to the proposed new legislative framework

In 2019, the Government appointed an independent Resource Management Review Panel to provide advice on issues with the current resource management system. The panel, chaired by Hon Tony Randerson QC, reported to the Government in June 2020.[1]

In early 2021, the Government announced its intention to repeal the Resource Management Act 1991 (RMA) and replace it with three new pieces of legislation:

- The **Natural and Built Environments Bill (NBA)** will seek to protect and restore the environment while better enabling development. It would be the primary replacement for the RMA.
- The **Strategic Planning Bill (SPA)** will seek to coordinate and integrate decisions made under relevant legislation by requiring the development of long-term regional spatial strategies.
- The **Climate Adaptation Bill (CAA)** will seek to address complex issues associated with managed retreat from climate change effects.

The three bills are at various stages of development prior to their introduction to the House. The Government has indicated that it intends to have the NBA receive Royal assent by the end of the current parliamentary term (although we note this does not mean the legislation is expected to come into force by that time).

To facilitate the development of the NBA, the Government prepared a parliamentary paper containing explanatory material and an exposure draft of the bill. The parliamentary paper

[1] Report of the Resource Management Review Panel, *New directions for resource management in New Zealand*, June 2020.

was tabled in the House on 29 June 2021, and an updated parliamentary paper was tabled on 2 July 2021.[2]

Hon David Parker, the Minister for the Environment, moved a motion in the House of Representatives on 29 June 2021 referring the parliamentary paper on the exposure draft to the Environment Committee for the purposes of an inquiry. The motion was agreed unanimously.

[2] Ministry for the Environment Manatū Mō Te Taiao, *Natural and Built Environments Bill: Parliamentary paper on the exposure draft*, Updated C.32, 2 July 2021.

The inquiry's terms of reference as referred by the House

In the motion in the House of Representatives, the Minister for the Environment set out the following terms of reference for the select committee inquiry:

1. The purpose of the inquiry is to provide feedback on the extent to which the provisions in the exposure draft of the Natural and Built Environments Bill will support the resource management reform objectives, to:
    a. protect, and where necessary, restore the natural environment, including its capacity to provide for the well-being of present and future generations
    b. better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure
    c. give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori
    d. better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change
    e. improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.
2. The select committee is asked to pay particular attention to objective (e) when providing their feedback on point 1.
3. The select committee is also asked to collate a list of ideas (including considering the examples in the parliamentary paper) for making the new system more efficient, more proportionate to the scale and/or risks associated with given activities, more affordable for the end user, and less complex, compared to the current system.
4. For the avoidance of doubt, the scope of the inquiry is limited to the following:
    a. feedback on the exposure draft
    b. feedback on the material in the parliamentary paper that provides rationale for the clauses in the exposure draft
    c. collating a list of ideas for point 3 above.

Glossary of abbreviations used in this report

Abbreviation	Meaning
RMA	Resource Management Act 1991
NBA	Natural and Built Environments Bill (or Act, depending on the context in which it is used)
NPF	National Planning Framework
NBE plans	Natural and built environments plans. The NBA would require these be prepared for each region by respective planning committees.
Minister	References to the Minister are to the Minister responsible for the administration of the NBA. This is expected to be the Minister for the Environment.
SPA	Strategic Planning Bill (or Act)
CAA	Climate Adaptation Bill (or Act)
RSS	Regional spatial strategies, required for each region under the SPA

2 Our feedback on the exposure draft and parliamentary paper

The development of the NBA should proceed

The majority of us consider that the development of the Natural and Built Environments Bill should proceed, and that the full bill be introduced to the House of Representatives. We also consider that some of the provisions in the exposure draft should be redrafted to better reflect reform objectives.

We have reached our recommendations by majority, and our report should be read in this way.

Recommendations 1 and 2

That the Government proceed with the development of the Natural and Built Environments Bill.

That the Government adopt our proposed redrafting of certain provisions of the exposure draft of the Natural and Built Environments Bill.

In the following section of our report, we comment on the provisions of the Natural and Built Environments Bill in the exposure draft, and associated material in the parliamentary paper. We set out our recommendations for improvements to the clauses in the exposure draft.

NBA's purpose and related provisions

The purpose of the NBA is set out in clause 5 of the exposure draft. The purpose would be to enable:

- Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment
- people and communities to use the environment in a way that supports the well-being of present generations without compromising the well-being of future generations.

To achieve the purpose of the NBA, clause 5(2) notes that:

- the use of the environment must comply with environmental limits
- environmental outcomes must be promoted
- adverse effects on the environment must be avoided, remedied, or mitigated.

We are generally supportive of the purpose clause, and propose some refinements to better achieve its intent. We discuss possible refinements below.

An objective of the reform is to provide greater recognition of te ao Māori. In doing so, caution must be exercised when incorporating tikanga-based or tikanga-sourced concepts and terms into legislative frameworks. We note that the Government developed the purpose clause in consultation with national iwi and Māori groups, especially in regard to developing the concept of Te Oranga o te Taiao. Work to improve the purpose clause should continue on that basis before the full bill is introduced to the House.

The concept of Te Oranga o te Taiao

In the exposure draft, the concept of Te Oranga o te Taiao is explained at clause 5(3) as incorporating all of the following:

- the health of the natural environment
- the intrinsic relationship between iwi and hapū and te taiao
- the interconnectedness of all parts of the natural environment
- the essential relationship between the health of the natural environment and its capacity to sustain all life.

The concept of Te Oranga o te Taiao has not been defined in legislation before. It is intended as an intergenerational environment ethic for New Zealanders. We considered whether related concepts—such as the Te Mana o te Wai hierarchy in the National Policy Statement for Freshwater Management 2020—should be considered in place of, or as part of, the definition.

There was broad support for the concept of Te Oranga o te Taiao from submitters and a desire for more clarity and legal certainty on what is required to implement it. We consider that more detail about aspects of Te Oranga o te Taiao needs to be integrated throughout the NBA and related subordinate instruments, such as regulations, rather than the concept being confined to the purpose clause. We suggest that further provisions setting out what would be required to uphold Te Oranga o te Taiao be included throughout the NBA.

We think the definition needs to state clearly that everyone has relationships with the natural environment, and responsibilities and obligations to look after it. The majority of us support the use of more directive language in relation to the protection and restoration of the natural environment, such as “require” rather than “enable” Te Oranga o te Taiao to be upheld.

We support the inclusion of Te Oranga o te Taiao and recommend that work continues to better define and provide for the intention of the concept in the bill. This should include further engagement with national iwi and Māori groups.

Recommendation 3

That the concept of Te Oranga o te Taiao be included in the purpose of the NBA, and that work be carried out with national iwi and Māori groups to further develop the concept to:

a. improve its effectiveness by defining Te Oranga o te Taiao clearly and describing how different aspects of the legislation will support upholding Te Oranga o te Taiao

b. ensure that, in addition to the relationships that iwi and Māori have with te taiao, it is clear that all New Zealanders have relationships with, and responsibilities to look after, the natural environment

c. consider the extent to which the Te Mana o te Wai hierarchy could be incorporated within the purpose clause.[3]

Clarifying aspects of the purpose clause

The objectives for environmental protection and development, in the context of environmental limits

Environmental limits are intended to be prioritised in the new system. Without going beyond those limits, the new system seeks to optimise overall gains for both environmental protection and development.

Some submitters were concerned that environmental limits were not adequately prioritised in the purpose clause. They believed that the absence of a hierarchy and sufficiently directive language in the purpose risked a recurrence of an "overall broad judgement" approach in which the benefits of environmental protection and development are weighed against each other, leading to environmental degradation. The intention is that the two objectives can be achieved in an integrated way, while acknowledging that it will not always be possible to achieve both in every case. We consider that the purpose statement could be amended to better reflect this general ambition, although we note that further work may conclude that more detailed provisions are required elsewhere in the bill to reflect how the system is intended to operate.

The Resource Management Review Panel was clear that the purpose statement should not be intended to be used as a basis for determining individual development applications. The purpose statement should be drafted to provide the appropriate framing for more detailed policy and planning instruments under the NPF and NBE plans. Those instruments are intended to provide more direction, clarity, and consistency than existing instruments, so that there is more certainty around decisions on future consent applications.

Recommendation 4

That the purpose clause and other provisions be amended to better reflect that:

a. environmental limits have priority in the system, and are not subject to other goals related to well-being

b. there are dual goals, within the parameters of environmental limits, to both protect and restore the natural environment, and to better enable development

c. the intention that protection and restoration of the natural environment be achieved overall through the NPF and NBE plans, rather than as a requirement of every consent.[4]

[3] The issues that Recommendation 3 seeks to address are summarised in the departmental report at page 19.

[4] The issues that Recommendation 4 seeks to address are summarised in the departmental report at pages 18 to 20.

The built environment

The built environment is not expressly mentioned in the purpose clause, which refers to people and communities using the environment in a way that supports well-being. The environmental outcomes listed in clause 8 of the exposure draft (which we discuss later), also have direct connections to the built environment. We expect that the operative provisions in the full bill will heavily reflect the role the NBA must have for improving the built environment. We agree with many submitters that the development and protection of the built environment is not adequately reflected in the draft purpose clause, and should be expressly referred to given its importance.

Recommendation 5

That the purpose clause give more prominence to the built environment, so that the purpose of the NBA is more clearly linked to the outcomes for housing, infrastructure, and cultural heritage in relation to the built environment.[5]

Simplifying the purpose statement and using established terms and concepts where possible

We note that submissions stated that the purpose statement is overly complex and that this could lead to uncertainty and an increased likelihood of litigation. We consider that using concepts established by existing resource management law, wherever appropriate, could create a clearer law and an effective transition. The purpose statement should be reviewed with this in mind.

Recommendation 6

That the purpose clause be reviewed so that the structure and concepts minimise uncertainty and, therefore, legal risk in a way consistent with the objectives of the reform.[6]

Using more directive language about the natural environment

We considered the strength of the language used in the purpose statement. For example, it states that the NBA aims to “enable” environmental protection and development, and that the outcomes are to be “promoted”. However, the intention is to require protection and restoration of the natural environment. Many submitters noted that the language around environmental protection needed to be more directive. We agree that more directive language is appropriate, especially in regard to the protection of the natural environment.

5 The issues that Recommendation 5 seeks to address are summarised in the departmental report at page 21.

6 The issues that Recommendation 6 seeks to address are summarised in the departmental report at page 22.

Recommendation 7

That the purpose clause use more directive language to require the protection of the natural environment.[7]

Adverse effects—avoid, remedy, or mitigate

In setting out how to achieve the purpose of the NBA, clause 5(2) states that "any adverse effects on the environment of its use must be avoided, remedied, or mitigated".

We note the phrasing of this component of the purpose statement is similar to that used in the purpose section of the RMA. We discussed how this might apply under the NBA.

We considered whether the reference to "any" adverse effects is too stringent, and suggest it could be removed.

Some of us suggested that clear priority should be given to the requirement to "avoid" adverse effects, and further that there should be a clear distinction between "avoid, remedy, and mitigate" and offsets and compensation. As such, offsets and compensation should not be part of the definition of "mitigate" and should only be used to deal with residual adverse effects; that is, after effects of the proposed activity are firstly avoided, then remedied, then mitigated. Some of us note, for clarity, that offsets or compensation should also not be used to comply with environmental limits because of their uncertainty. As submitters noted, an offset or compensation does not require an adverse effect to be directly managed. It seeks to create a positive effect which may be in a different place to that of the activity or on another resource. Appendix 4 of the draft National Policy Statement for Indigenous Biodiversity sets out principles for the use of offsetting and compensation, and the full bill and the NPF should provide for their application. If offsetting and environmental compensation are bundled together and included in the definition of "mitigate", then adverse effects may not be managed.

We understand that the provision is intended to make clear that, as part of the NBA's purpose, pollution and other harm must be dealt with. The NPF and NBE plans are expected to specify how the effects management hierarchy, and then offsetting and compensation, would work in practice.

We consider that further clarity is needed on how this provision would apply in the new system. We understand that work is being done to consider alternative ways of making it clear there is no right to pollute. We will be interested to see the result of this work.

Recommendation 8

That, in regard to adverse effects on the environment:

a. the NBA require the NPF to provide high-level and overarching direction on the effects management hierarchy

[7] The issues that Recommendation 7 seeks to address are summarised in the departmental report at page 22.

b. offsets and compensation not be part of the definition of “mitigate” in clause 3, and the term be redrafted.

Definitions in the interpretation clause

Clause 3 contains a list of definitions for terms in the exposure draft. There were many useful comments about definitions in submissions. Our discussions about the definitions included the following matters:

- whether there should be a separate definition of “built environment”, noting that it is referred to in the definition of “environment”, or whether it is sufficiently incorporated within the existing definitions
- whether the definition of “river” includes braided rivers, or whether an additional definition was needed to specifically recognise the different form and floodplain of braided rivers
- whether there is enough emphasis on “indigenous biodiversity” in the definitions of “ecosystem” and “ecological integrity”
- suggestions that the definition of “infrastructure” and “infrastructure services” should be aligned with terminology used in existing legislation
- whether definitions should include references to industry-specific infrastructure; to lifeline infrastructure; to green infrastructure as the services that nature provides; social infrastructure, such as schools and hospitals; and the role of, and provision for, privately-owned infrastructure, recognising that not all essential infrastructure is publicly owned.
- whether the definition of “infrastructure services” includes supply chain infrastructure
- concerns about the definition of “mitigate”, and the inclusion of the words “offset or provide compensation”, and whether a definition should be included at all
- lack of clarity in the definition of “urban form”, and suggestions it should align with the existing legal term for “urban environment”
- queries about whether the “well-being” definition sufficiently reflected all aspects of human health
- whether the meaning of “cumulative effects” should be clearer, and possibly included within a definition of “effect”
- suggestions for a definition of “urban forest” with a view to the NBA including urban tree protection provisions
- whether the marine environment is sufficiently covered by the definitions
- how kaitiakitanga and mātauranga Māori will be defined or provided for in the NBA.

The development of the full bill will require reviews of the terms and concepts used throughout it. We would prefer it if existing terms and concepts from the RMA were used

where possible and appropriate in order to maintain consistency. This would help avoid uncertainty, and consequent litigation.

Recommendation 9

That, where appropriate, the bill carry over relevant definitions already defined under the RMA, to ensure existing case law is retained in the new system, unless the policy intent changes in a way that justifies a corresponding change to a definition.[8]

[8] The issues that Recommendation 9 seeks to address are summarised in the departmental report at page 14.

Te Tiriti o Waitangi

Clause 6 sets out a requirement to give effect to the principles of Te Tiriti o Waitangi. This duty would apply to all persons exercising powers, or performing functions and duties under the NBA. Clause 3 states that Te Tiriti o Waitangi refers to the meaning of the Treaty as set out in section 2 of the Treaty of Waitangi Act 1975, which includes both the English and Māori texts.

The requirement to "give effect to the principles"

The requirement to "give effect to" the principles would be a higher standard than currently provided for under the RMA, which requires persons to "take into account" the principles.

We considered whether different phrasing should be used in clause 6. For example, we considered whether there should be a requirement to "honour Te Tiriti o Waitangi", or to "give effect to Te Tiriti o Waitangi and its principles", or to "give effect to Te Tiriti o Waitangi" without reference to the principles. Submitters raised concerns that direct reference to the principles only would undermine the articles of Te Tiriti. We looked at what phrasing is used in other legislation, including the Climate Change Response Act and the Education and Training Act. We also note that consistency across the NBA, SPA, and CAA will be needed.

We consider that the drafting of clause 6 has considerable weight in its current form, but that the effect of clause 6 will be dependent on the implementation of the clause throughout the more detailed provisions and policies in the new resource management system.

We note that clause 6 is a "general effect" clause, and it is not subject to other clauses. Rather, other clauses of the NBA will need to be interpreted in light of clause 6. Similarly, we do not consider that Te Tiriti clause should be subsumed within the purpose clause; giving effect to the principles should be considered an intrinsic feature of the NBA.

Some submitters suggested, due to the significance of the NBA and a desire for clarity, that the principles of Te Tiriti should be codified in clause 6. We note that the treaty principles jurisprudence evolves over time. Any codification of Tiriti principles in clause 6 of the NBA could mean the legislation becomes out of date. Legal interpretation rules will help ensure the legislation can give effect to the principles over time.

We do not propose any changes to the drafting of clause 6 at this time.

We acknowledge that submitters queried how clause 6 would be applied throughout the NBA. The parliamentary paper describes how the requirement in clause 6 could work in practice. It notes mechanisms such as participatory rights in preparing NBE plans and RSSs, and the expectation that iwi management plans would be used in the preparation of NBE plans. We believe that consideration needs to be given to ways for ensuring participatory rights can be carried out effectively and equitably, including resourcing which enables iwi and hapū to participate effectively.

Partnership in national and regional governance

Local government exercises a range of functions which the Crown has delegated and it has a vital role in upholding the Tiriti partnership. Many submitters sought more guidance and support on how Tiriti obligations should be implemented.

Submissions from Māori set out two approaches to partnership that could be incorporated within the NBA. One approach was to set up national and regional co-governance bodies, comprising iwi/hapū appointees and local and central government appointees. Another approach included the establishment of "mana whakahaere councils" and regional executive committees which would comprise iwi, hapū, and Māori land owners.

References to Māori in the NBA

The exposure draft refers to tangata whenua through the terms "iwi and hapū", "Māori", and "mana whenua" in different places. The RMA also uses the term "tangata whenua", which is defined in the RMA. Some submitters, such as Māori councils and Māori land trusts, suggested that the NBA should use more expansive terms such as "ahi kā" or "mana whakahaere".

Submissions highlighted that there are differing views amongst submitters about what the appropriate parameters for references to Māori should be. Further, there is a question as to whether the terminology or references should be defined in the NBA. We acknowledge that further conversations are needed to establish the correct terminology or references for Māori throughout the bill as a whole. The terminology used in different places in the bill will reflect the specific context and various functions. We do not think it is appropriate for us to make recommendations regarding this, and we support the conversation between the Crown (via the Government) and Māori continuing, prior to the introduction of the bill.

Honouring treaty settlements and other existing arrangements

It is paramount that the Crown upholds its treaty settlement obligations, and the Government continues to work with post settlement governance entities (PSGEs) to effect this. We were advised that the Government is reviewing all treaty settlement obligations and other arrangements to ensure its obligations are upheld, and that the full NBA will reflect this.

We also acknowledge that some submitters pointed out that they do not have agreements with the Crown, and that the reform should not affect the resolution of any negotiations or Waitangi Tribunal findings.

Recommendations 10 and 11

That the bill include further direction on how the principles of Te Tiriti o Waitangi are to be given effect to, including, but not limited to, local government's role in the Treaty partnership.

That consideration be given to what role the NPF could have in giving additional expression to the principles of Te Tiriti o Waitangi through both the NPF's processes and substantive

content, and, in doing so, provide clarity about how persons operating under it can give effect to the principles.[9]

Freshwater rights and interests

Many submitters called for the reform to address Māori rights and interests in freshwater. The messages were that the reform should not preclude Māori rights and interests in freshwater; and that the reform cannot be completed without addressing Māori rights and interests in freshwater.

The submissions suggested ways that the NBA could address these related messages:

- A preservation provision could be included in the NBA to clarify that the NBA would not affect the rights and interests in natural resources, including freshwater.
- A set of principles could be included in the NBA to develop policy objectives relating to natural resources, including freshwater governance, management, and allocation.

We encourage the Government to consider the points raised by submitters.

[9] The issues that Recommendation 10 and 11 seeks to address are summarised in the departmental report at page 26, as well as the third appendix in the departmental report, “Themes from hapū, iwi, and Māori submitters”.

Environmental limits

Environmental limits would be a central feature of the new system, and there were many submissions on this topic. Outcomes will be pursued subject to environmental limits.

The RMA currently allows for national direction to be made setting environmental bottom lines or limits, and it is envisaged that some existing national direction (in the form of national policy statements and national environmental standards) would be translated into the NPF as environmental limits. We note criticism from submitters of the lack of limits or bottom lines set by the Government under the RMA, as these are effectively optional. The intent is for the NBA to elevate the importance of setting environmental limits, including a mandatory requirement for limits to be set for some biophysical aspects of the natural environment.

Clauses 7 and 12 in the exposure draft set out key provisions regarding environmental limits. We propose restructuring these clauses into five new clauses (which we have set out as clauses 12A to 12E in our revised exposure draft).

Purpose of environmental limits

The exposure draft sets out that environmental limits can be set to protect either or both of the following:

- the ecological integrity of the natural environment
- human health.

The concepts of “ecological integrity” and “natural environment” are defined in clause 3. “Human health” is not defined in the exposure draft. We understand that the definitions in the purpose clause may change during the development of the full bill as other considerations come to light.

We do not propose any changes to the purpose for environmental limits. However, we think that the bill should make clear that the only purposes for which environmental limits could be set are to protect the ecological integrity of the natural environment, or human health.

Later in our report, we propose the use of transitional limits and environmental targets to complement environmental limits.

We note that the reference to environmental limits (in the provisions available) is conceptual in nature, and not detailed. In order for environmental limits to be effective, clarity about the parameters or constraints imposed by the limits will be needed. It is intended that the details for environmental limits will be provided in regulation under the NPF or NBE plans. When the full bill is introduced, detailed explanatory material about environmental limits—with worked examples—would help to explain how environmental limits might work in practice.

We note that later in our report we propose an amendment setting out that the Minister must have regard to certain criteria when setting environmental limits.

Recommendation 12

That the bill clarify that limits could only be set for the purposes of protecting the ecological integrity of the natural environment, and/or human health.[10]

Matters for which environmental limits must be set

Environmental limits can be set for different aspects of the natural environment. The exposure draft sets out six matters for which the Minister would be required to prescribe environmental limits:

- air
- biodiversity, habitats, and ecosystems
- coastal waters
- estuaries
- freshwater
- soil.

The exposure draft also includes a provision providing the option to prescribe environmental limits for any other matter that "accords with the purpose" of environmental limits set out in the above discussion.

"Indigenous biodiversity"

In regard to the six mandatory matters listed above, we propose changing the matter described as "biodiversity, habitats, and ecosystems" to "indigenous biodiversity". We consider that the reference to "biodiversity" is too broad, and that mandatory limits should only be required for indigenous biodiversity. The Minister—through the NPF—would still have the option to set limits regarding non-indigenous biodiversity if they considered it appropriate to do so. Furthermore, the reference to "habitats and ecosystems" is potentially confusing, because both habitats are ecosystems are covered by the definition of "ecological integrity" (which is part of the purpose of limits).

We do not propose any additional mandatory topics for limits

In response to submissions, we considered whether the NBA should specify additional topics for which environmental limits must be set. We considered whether the list of mandatory limits should remain focused on biophysical aspects of the natural environment, or be expanded to include other values such as landscape and culture. The policy intent is for environmental limits to be set to protect the ecological integrity of the environment and human health. Those have a narrower scope, and so we do not propose expanding the list of mandatory topics.

[10] The issues that Recommendation 12 seeks to address are summarised in the departmental report at page 28.

An integrated approach to setting limits should be allowed

We note submitters' feedback that the mandatory matters are listed in a discrete—rather than integrative—way. However, we consider that environmental limits could be prescribed for a combination of matters. For freshwater ecosystems or estuarine habitats, for example, the above six matters could be described in an integrated way. Limits would not necessarily need to be reduced to an expression of a concentration of a contaminant. This would promote the purpose of the NBA and uphold Te Oranga o te Taiao. We propose that the bill state that an integrated approach is allowed.

We queried whether the possible expansive nature of the six matters would lead to the Minister having an obligation to set detailed and comprehensive limits for them in the NPF, and the potential for litigation if the Minister did not do so. We were advised that this issue will be considered in the development of the full bill.

We think it is important that the NBA should provide scope for specific details of limits to be set outside the NPF, for example, through rules and policies in NBE plans.

We understand that further work is being undertaken by the Government to clarify the NBA's relationship with the Climate Change Response Act. The two Acts will be closely related: for example, temperature increases and sea level rises will have significant effects on indigenous biodiversity. We will be interested to see how the relationship affects the operation of the NPF, including the setting of environmental limits. Clause 17 of the exposure draft includes a placeholder for this.

Recommendations 13 and 14

That the bill state that the Minister may set environmental limits that integrate the mandatory matters in clause 13 for which environmental limits must be prescribed, which would be consistent with the NPF's aim of promoting integrated direction.

That the bill require the NPF to set environmental limits for "indigenous biodiversity", rather than "biodiversity, habitats and ecosystems", and that the setting of any limits for non-indigenous biodiversity in the NPF be at the discretion of the Minister.[11]

Responsibility for setting environmental limits

The exposure draft would provide for environmental limits to be prescribed either:

- through the NPF (clause 12 of the exposure draft)
- through NBE plans in accordance with any power delegated by the NPF (clause 25 of the exposure draft).

Due to the importance of environmental limits, we consider that the Minister should be required to set environmental limits for the six mandatory topics rather than solely allowing delegation of those decisions to planning committees when they formulate NBE plans. We

[11] The issues that Recommendations 13 and 14 seeks to address are summarised in the departmental report at page 30.

note that the NPF could set different limits for different circumstances or localities in order to recognise regional variances. We propose that the Minister be able to retain the ability, through the NPF, to direct NBE plans to set further limits on the mandatory topics or for any other matters that accord with the purpose of limits.

Later in our report, we discuss NBE plans and planning committees in more detail. But at this point we note that we considered whether a planning committee should be able to set environmental limits in an NBE plan, if the NPF has not directed it to do so. We acknowledge that local communities would like to have input into determining whether other limits should be set, but the majority of us consider it is necessary for the NPF to delegate any such power before an NBE plan can set a limit. We consider that this will help ensure the NBA system is integrated.

Further, we note that the NPF could set limits applying to a specified part of New Zealand, not just nationally. We agree that this is appropriate.

Later in our report we discuss the process for preparing or amending the NPF, which would include the process for setting limits. At this point, in regard to the setting of environmental limits, we wish to note that a strong evidence-based process is needed, based on scientific and technical advice and mātauranga Māori. How a limit would be applied in practice should be evaluated by stakeholders before a limit is set.

Recommendation 15

That the bill require the Minister to set environmental limits in the NPF on the matters listed in the NBA for which it is mandatory to have limits, and that it remain optional for the NPF to set limits for other matters, or direct that NBE plans set limits for other matters.[12]

Considering how exceptions to environmental limits could be accommodated

We suggest that consideration be given to whether the NBA should provide for situations where narrow exceptions to limits could be allowed or accommodated. A balance would need to be struck when defining any grounds for exceptions so that they do not become the norm; if limits are too flexible, it would undermine their effectiveness. The majority of us consider that any exception would need to be justified.

Some of us consider that there is more scope for exceptions while maintaining the validity of environmental limits, especially for infrastructure development. Some of us think that purposes for which exceptions could be given should be set out in the NBA or NPF, and want to avoid any decision-making process from becoming cumbersome and protracted.

[12] The issues that Recommendation 15 seeks to address are summarised in the departmental report at page 28.

At the time of finalising our report, we note that a proposal for a National Policy Statement for Indigenous Biodiversity includes a mechanism for an exception to provisions that are broadly equivalent to limits under the NBA.

Formulation of environmental limits

The exposure draft includes two formulations in which environmental limits can be stated.

A limit could be formulated as a description of a minimum acceptable state of an aspect of the environment, or a maximum amount of harm or stress that can be caused to a state or aspect of the environment. Some possible examples include:

- the maximum concentration of nitrogen dioxide in an airshed (expressed as a 1-hour mean)
- the maximum concentration of total nitrogen in a lake (expressed as an annual median)
- the maximum number of E. coli bacteria per 100 ml in a freshwater management unit (expressed as the 95th percentile during the bathing season)
- the maximum depth of fine sediment in an estuary (expressed as an area-based annual median, or annual accumulation rate).
- the maximum amount of nitrogen that can be discharged in a catchment (expressed as an annual load)
- the maximum volume of sediment from a catchment (expressed as a total annual load).

While we are not proposing certain limits be adopted, we sought advice about what current policy settings may be analogous to limits. We were advised that the detail or format of limits may resemble some of the content in the National Policy Statement for Freshwater Management 2020, or the ambient air quality standards set out in the Resource Management (National Environmental Standards for Air Quality) Regulations 2004.

We considered whether additional formulations are needed, such as controls on specific human activities or spatial protections for outstanding natural features. At this stage, we consider the limits should focus on maintaining or restoring the current state of the environment, rather than the methods used to do so. Those methods are best incorporated as rules, such as planning controls, within plans, to allow for more flexibility in managing activities and resource use and development.

We considered whether limits—if negatively framed to allow a certain amount of harm—could be seen as leading a race to the bottom, and aspects of the natural environment degraded to the limit over time, or a view that the limit and the harm it allows might be acceptable. To address this, we propose that the NBA expressly include the following additional tools:

- In situations where the existing state of the environment exceeds a limit, the formulation of environmental limits could require improvements over time. Such interim or transitional limits would be time-bound stepping stones towards a desirable state. We discuss this in the section below.

- The NBA should expressly give the Minister a discretionary power to set mandatory environmental targets in the NPF in relation to outcomes. We discuss this later under "environmental outcomes".

We consider that these two tools would fit the shift from an effects-based system to an outcomes-based system under the NBA.

We have differing views about how clarity regarding environmental limits will be achieved. We note that there is ongoing work to establish how limits will operate in practice, how they will be integrated, and how scientific and technical parameters will be set for monitoring and reporting.

Recommendation 16

That the bill proceed with two formulations by which environmental limits may be expressed: either the minimum biophysical state, or the maximum amount of harm or stress that may be permitted.[13]

Allowing for transitional limits to be set

Submitters were concerned that a possible unintended consequence of environmental limits is environmental degradation down to the limit, or that the limit would be seen as an acceptable environmental state in the long term, with no incentive to improve environmental health or quality.

We consider that the NBA should expressly provide for transitional limits as "stepping stones" towards meeting environmental limits, where the existing state was below an environmental limit (or the existing state did not protect ecological integrity and/or human health).

Transitional limits would be set by the Minister in the NPF alongside the relevant environmental limit. Alternatively, the NPF could delegate the setting of a transitional limit to planning committees via NBE plans.

In order to set a transitional limit, the Minister should be satisfied that either:

- the existing state of the natural environment is degraded below the level required to protect ecological integrity or human health; or
- the existing harm or stress to the natural environment is too great to allow the protection of ecological integrity or human health.

Transitional limits would be required to have a specific end point (such as a date or event) before the environmental limit comes into force (or a more stringent transitional limit comes into force).

[13] The issues that Recommendation 16 seeks to address are summarised in the departmental report at page 29.

We propose legislative drafting for transitional limits as new clause 12E.

Recommendation 17

That in cases where current environmental conditions are below an agreed future environmental limit, the NPF could specify a transition pathway towards achieving the environmental limit by setting transitional limits. Transitional limits should be required to have a specific end point or end date.[14]

Duty for persons to comply with environmental limits

The exposure draft states that all persons using, protecting, or enhancing the environment must comply with environmental limits. It is intended that the rules within the NPF, or NBE plans if delegated, would set out how persons would comply with environmental limits.

To emphasise the importance of complying with environmental limits, we think that the bill should include a duty requiring persons exercising functions and powers under the NBA to comply with limits, in a manner appropriate to their role. The nature of this obligation would vary depending on the statutory power being exercised. For example, the NBA could provide that those preparing NBE plans must "give effect to" environmental limits, or that those making decisions about resource consent applications may not grant a consent that would breach a limit, either on its own or because of cumulative effects.

It is important that there are mechanisms to monitor whether limits are being met in practice. This will help to ensure that there is accountability.

Recommendation 18

That the bill include provisions that require persons exercising powers and functions under the NBA to comply with limits, in a manner appropriate to their specific regulatory role.[15]

Principles to guide environmental limits

Some of us consider that the full bill should include principles drawn from environmental law to assist the development and application of environmental limits. The principles could include:

- the precautionary principle
- the principle of non-regression.

We discuss the precautionary principle later in our report.

The non-regression principle requires that, where rules or other measures are established for the benefit of the natural environment, they should not be removed or weakened. The

[14] The issues that Recommendation 17 seeks to address are summarised in the departmental report at page 30.

[15] The issues that Recommendation 18 seeks to address are summarised in the departmental report at page 31.

principle would provide certainty by constraining successive governments from weakening levels of environmental protection through regulations setting environmental limits.

Environmental outcomes

To assist in achieving the purpose of the NBA, the NPF and all NBE plans must promote the environmental outcomes listed in the NBA, subject to environmental limits.

The exposure draft lists the outcomes in clause 8, but we suggest moving that provision to new clause 13A. This would consolidate the general provisions about what must be included in the NPF in one place in the bill.

Reviewing the list of environmental outcomes

Sixteen outcomes in the exposure draft must be promoted under the NBA. They cover a variety of topics, and the parliamentary paper summarises them as:

- the quality of air, freshwater, coastal waters, estuaries, and soils
- ecological integrity
- outstanding natural features and landscapes
- areas of significant indigenous vegetation and significant habitats of indigenous fauna
- the natural character of, and public access to, the coast, lakes, rivers, wetlands, and their margins
- the relationship of iwi and hapū, and their tikanga and traditions, with ancestral lands, water, sites, wāhi tapu, and other taonga
- the mana and mauri of the natural environment
- cultural heritage, including cultural landscapes
- protected customary rights
- greenhouse gas emissions
- well-functioning urban areas and urban form
- housing supply and affordability (including Māori housing aims)
- development in rural areas enabling a range of economic, social, and cultural activities
- sustainable use of the marine environment
- infrastructure services including renewable energy
- natural hazards and climate change, and improved resilience to them.

We received a significant amount of feedback on the specified outcomes, including proposals to rephrase and expand certain outcomes, to consolidate them, add new outcomes, and concerns about the lack of hierarchy among the outcomes. In addition to the feedback submitters gave on the outcomes listed in the exposure draft, we considered

suggestions for additional or expanded topics for outcomes. The main changes sought by submitters included:

- expanding the outcomes for the quality of the built environment
- expanding the outcomes for the quality of the natural environment, including protecting urban trees, protecting the night sky from light pollution, and protecting natural quiet from noise pollution
- including general amenity values, such as amenity landscapes, and rural and coastal character.

Overall, we consider that a more consolidated list of outcomes is necessary, based on groupings of related outcomes. We discuss these below.

Clarifying the terms used in outcomes statements

Different qualifying or directive terms are used in the exposure draft to refer to outcomes, such as “protect”, “significant”, “reduce”, and “restore”. These varied terms could create an unintended hierarchy of outcomes, and introduce undefined threshold tests. They could also create uncertainty in interpretation even though consent applications would be assessed under the plan rules or policies (rather than according to the outcomes list).

We consider that the verbs used in the list of outcomes in the full bill should be carefully considered to ensure consistency where appropriate. We have endeavoured to reflect this recommendation in our proposed list of consolidated outcomes discussed below.

Recommendation 19

That the environmental outcomes be clearly drafted with consistent verbs wherever possible and appropriate.[16]

Proposed environmental outcomes

We propose updating the list of outcomes in the exposure draft. In the revised exposure draft, we have set these out in new clause 13A.

We consider that the NPF and all NBE plans must provide for the following outcomes:

Outcomes relating to the natural environment

These outcomes would include the protection or, if degraded, restoration of:

- the health, mana, and mauri of air, freshwater, coastal waters, estuaries, soils, and indigenous biodiversity
- outstanding natural features and outstanding natural landscapes

[16] The issues that Recommendation 19 seeks to address are summarised in the departmental report at page 36.

- the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers, and their margins.

Outcomes relating to cultural values

The outcomes for cultural values would include:

- the protection and restoration of the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna, and other taonga
- the conservation of cultural heritage.

Outcomes relating to climate change and natural hazards

The outcomes in relation to climate change and natural hazards would include:

- reduced greenhouse gas emissions, including by way of low-emission urban form and increased utilisation of renewable energy
- increased removal of greenhouse gases from the atmosphere
- reduced risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change.

Outcomes relating to well-functioning urban and rural areas

The outcomes for well-functioning urban and rural areas would include:

- enabling enough development for housing, business use, and primary production to meet the diverse and changing needs of people and communities
- the ongoing and timely provision of infrastructure services
- an urban form that promotes economic, social, cultural, and environmental benefits
- the preservation of highly productive land for food production
- enhanced public access to and along the coastal marine area, lakes, and rivers.

Observations about our proposed groupings of outcomes

In the paragraphs below, we note some points about our proposed consolidated list of groupings.

There is no hierarchy

As mentioned earlier, we do not support a hierarchy of outcomes. Therefore, the order in which we have listed the outcomes does not reflect an intended hierarchy. We considered whether, for the avoidance of doubt, the NBA should make it explicit that there is no hierarchy of outcomes. However, legislative interpretation principles assume that a list does not imply a hierarchy. By adding a "for the avoidance of doubt" provision in one part of the bill, it may raise questions about lists in other parts of the bill. On balance, we think such a provision is unnecessary.

It may be appropriate for completeness in other parts of the NBA to state that there is no hierarchy of outcomes, such as where we have suggested principles be included to help guide conflict resolution between outcomes.

We think the new list will reduce duplication and help clarify the connections between different outcomes.

"Provide for" rather than "promote"

The exposure draft required outcomes to be promoted. Submitters queried what this meant. We suggest changing this to require outcomes to instead be provided for. This is consistent with terminology in the RMA. In line with our earlier recommendation for the NBA to use more directive language, we think "provide for" is a more direct requirement and would better reflect the intent of the NBA.

Mana and mauri

The terms "mana" and "mauri" are not defined in the exposure draft. We recall our previous points that it is important that care is given when including tikanga-based terms in legislation, as well as the need for clarity and certainty as to the meaning of terms. We note that there is case law around the term "mauri".

Outstanding natural features and outstanding natural landscapes

We discussed how "outstanding natural features" and "outstanding natural landscapes" would be identified under the NBA. An option includes listing specific features and landscapes (that are considered to be outstanding) in the NPF and/or NBE plans. Another option is for the NBA to include a threshold test to help guide such decisions. We acknowledge that further work is needed to determine the best approach for identifying outstanding features and landscapes. Importantly, the identification must occur at either the NPF or NBE planning stages, rather than at the consenting stage.

Meaning of "well-functioning" urban and rural areas

We think these outcomes more clearly set out the expectation that the NBA will lead to improvements in the quality of the built environment and place-making. We note that "well-functioning" is given context within the National Policy Statement on Urban Development 2020 in relation to urban environments. We suggest that a definition of "well-functioning" in regard to urban and rural areas be included in the NBA.

Outcomes can also be incorporated in other ways under the NBA

A balance needs to be struck between having a detailed list of outcomes and having more detailed provisions elsewhere in the NBA or NPF to give effect to specific intentions. For example, the requirement to recognise protected customary rights was included as an outcome in the exposure draft, but we think it could be included throughout more specific provisions in the NBA.

We note that geothermal water matters are covered in part in the reference to "water", in the outcome relating to the relationship of iwi and hapū with their ancestral lands, water, sites, wāhi tapu, wāhi tupuna, and other taonga. We expect there will be further analysis on whether geothermal water is included in other outcomes.

Recommendation 20

That the NBA include our revised and consolidated list of environmental outcomes.[17]

The NPF and NBE plans are not limited to addressing the identified outcomes

Departmental advice to the committee was that the policy intent of existing national direction instruments such as the National Policy Statement for Freshwater Management would be consolidated and integrated within the NPF. We were also advised that the bill should make it mandatory for the NPF to include content on all of the environmental outcomes (rather than just some), although the level of detail on each could vary.

We note that the intent is that the NPF and NBE plans can address other matters that accord with their purposes, in addition to promoting the listed outcomes. This will enable emerging issues to be addressed. This is reflected in clause 13 of the exposure draft, which sets out what content can be included in the NPF. Clause 22 does the same for NBE plans.

We suggest that the bill makes this clearer.

Recommendations 21 and 22

That the bill state that the NPF should include mandatory content on all environmental outcomes in the NBA.

That the bill clarify that the NPF and NBE plans are not limited to addressing the identified outcomes, and can also cover a broader range of matters to help achieve the purpose of the NBA.[18]

Resolving conflicts between outcomes

The intent of the NBA is to prefer synergies between outcomes, while acknowledging it will not always be possible to resolve conflicts between outcomes. We considered what guidance the NBA should provide to help decision makers (such as the Minister or planning committees) resolve conflicts between outcomes.

Alternative ways to do this include the following:

- Specifically prioritising certain outcomes as a hierarchy in the NBA. The outcomes could be in two lists, with one having priority over the other. This would be similar to the approach in sections 6 and 7 of the RMA.
- Providing a list of principles and requirements to help decision-makers reconcile conflicts in the NBA.

[17] The issues that Recommendation 20 seeks to address are summarised in the departmental report at page 33.

[18] The issues that Recommendations 21 and 22 seek to address are summarised in the departmental report at page 38.

We consider that presenting a hierarchy of outcomes would be inappropriate. We prefer the second option, and suggest that the NBA include principles and other decision-making requirements to guide how conflicts between outcomes are to be addressed.

We received advice about the range of tools that could provide guidance. They include:

- requirements that apply when activities can be located in sensitive places
- requirements for consultation with expert bodies and the public, and for ensuring public participation in planning and consenting processes
- frameworks for determining when offsetting and compensation are acceptable solutions
- requirements for specific principles to be taken into account, such as: the precautionary principle; the principle that harm should be avoided; the principle of rectification at source; the polluter pays principle and internalisation of environmental costs; the principles of inter-generational and intra-generational equity.

While not included in the exposure draft, we note that both the spatial planning framework in the SPA, and the Climate Change Response Act 2002 would have a role in the operation of the NBA system, and would influence how conflicts between outcomes are resolved.

As mentioned above, conflicts between outcomes need to be resolved in the NPF and NBE plans, rather than at the consenting stage. For this to happen, it is critical that when developing the NPF and NBE plans, conflicts are clearly identified and articulated so that communities can have input at this stage. Decisions to resolve conflicts need to be clearly drafted in plain language.

Recommendation 23

That the bill provide further direction on how conflicts between outcomes are to be resolved, including:

a. by specifying that there is no hierarchy among the outcomes
b. by specifying that policies that achieve synergies between outcomes are to be preferred over those that achieve one at the expense of another, so as to avoid conflicts in the first place
c. by providing procedural and substantive requirements to assist decision-makers in resolving conflicts
d. through links with the Climate Change Response Act 2002.[19]

Environmental targets in relation to outcomes

Earlier in our report, we discussed submitters' concerns that setting environmental limits may inadvertently signal that it is permissible to degrade an aspect of the environment down to the limit. We listed two possible tools to counteract this: the use of interim or transitional limits, and the use of targets. In this section, we concentrate on the use of targets.

[19] The issues that Recommendation 23 seeks to address are summarised in the departmental report at page 35.

Clause 11(3) in the exposure draft envisages that the Minister could set targets under the NPF, but it does not expand on what the targets might be for. We suggest that the bill should specifically link the setting of targets as measurable directions to support the achievement of the environmental outcomes.

Targets would provide a timeline for achieving specific outcomes, including, but not limited to, the outcomes listed in the NBA. The specificity of the targets could vary, and relate to either short term or intergenerational improvements.

Recommendation 24

That, in relation to the discretionary power to set targets in the NPF, "target" be defined as a measurable direction to support the achievement of an outcome, including a time by which it must be reached.[20]

[20] The issues that Recommendation 24 seeks to address are summarised in the departmental report at page 37.

The national planning framework (NPF)

The National Planning Framework (NPF) would be the tool in the NBA that the Government would use to provide integrated strategic direction on the management of the environment, and consistent regulation. It is proposed as a single, comprehensive framework that would consolidate the existing national direction.

Clause 9 states that an NPF would be required at all times. It would have status as secondary legislation, and the Minister would have to prepare and maintain it in accordance with Schedule 1. In the exposure draft, Schedule 1 is a placeholder as the details for the processes are being developed.

We understand that the bill will contain transitional provisions to address how the requirements in clause 9 would apply to the preparation of the first NPF, and the status of existing national direction.

Purpose of the NPF

Clause 10 states that the purpose of the NPF would be to "further the purpose" of the NBA by providing "integrated direction" on matters:

- of national significance
- for which national consistency is desirable
- for which consistency is desirable in some, but not all, parts of New Zealand.

The intended role of the NPF is wider than these three points, so we consider that the purpose of the NPF should be expanded to include:

- assisting in resolving conflicts between environmental matters, including between outcomes (such as in clause 13)
- setting environmental limits and strategic direction (as provided for in clause 14).

Submitters raised concerns about conflicts between different national instruments. We consider it important that the NPF provide integrated direction so that conflicts between national direction (such as the different national policy statements and instruments) are resolved centrally. This should lead to better consistency between NBE plans compared with plans under the RMA.

We considered what "matters of national significance" might be, and how to determine what one is. Most of us do not consider that expressly listing the matters of national significance in the NBA would be helpful, as matters can emerge over time. We suggest that the NBA include evaluation criteria and/or a threshold test to identify matters of national significance.

We note the importance of environmental limits, and the NPF's role in setting them, and consider that the NPF's purpose clause should refer to environmental limits.

Recommendation 25

That the purpose of the NPF (as set out in clause 10) be expanded to include:

a. furthering the purpose of the NBA by providing direction on the integrated management of matters of national significance and matters for which national or sub-national consistency is desirable

b. helping to resolve conflicts between environmental matters (clause 13)

c. setting environmental limits and strategic direction (clause 14).[21]

The NPF would be made as regulations

Clause 11 states that the NPF would be secondary legislation for the purposes of the Legislation Act 2019, and have a status as regulations. The regulations would apply throughout New Zealand, or to a specified area. The regulations would:

- set directions, policies, goals, rules, or methods
- provide criteria, targets, or definitions.

The term "goals" is undefined, and should be removed as the concept would be sufficiently covered in the strategic direction requirements and the other terms used. Environmental limits are intended to establish the desired environmental state, while rules, methods, and policies would help determine how that state is achieved.

Secondary legislation provides greater flexibility to update directions over time, reducing the need to frequently amend the primary legislation through an Act of Parliament.

We expect that the NBA will include a clear process for the establishment of an NPF through secondary legislation. We consider that it is important that there are strong checks and balances within the process, such as requirements for public consultation and a board of inquiry process. Similar checks would be needed for the processes to review, amend, or suspend the NPF provisions.

We note the Regulations Review Committee's role of reviewing secondary legislation, and that secondary legislation can be disallowed if certain criteria apply. We will be interested to see how the NBA provides for oversight of the regulation-making process.

Recommendation 26

That further policy work be undertaken to establish what regulations should be contained in the NPF, and we suggest that:

a. the NPF include the types of provisions and functions currently provided for by national policy statements and national environmental standards under the RMA

b. the NPF include all types of provisions that are to be used in NBE plans and regional spatial strategies

[21] The issues that Recommendation 25 seeks to address are summarised in the departmental report at page 44.

c. the term “goals” be removed from clause 11.[22]

Content of the national planning framework

The content of the NPF is set out in clauses 12, 13, and 14.

The NPF sets environmental limits, or empowers NBE plans to set them

Clause 12 sets out that the NPF could prescribe environmental limits, or that the NPF could empower planning committees to set limits under NBE plans.

The process and requirements for setting limits are yet to be developed. We note the support, particularly from iwi, hapū, and Māori groups, for some limits to be set regionally. We understand that further work is being done to determine which limits would be set nationally, and which might be set regionally. This would be clarified in the NPF, rather than the NBA. We encourage agencies, at the introduction of the bill, to provide worked examples of how environmental limits would operate in practice.

As discussed above, the Minister’s power to set environmental limits in the NPF, or empower planning committees to set them, would involve a significant level of discretion in decision-making. We acknowledge that the level of discretion in decision-making may be broadly analogous to that currently available when setting national direction through national policy statements and national environmental standards under the RMA. In addition to providing a procedural process for setting environmental limits by regulation, we consider that the NBA should include clear principles that the Minister or decision-maker must have regard to when setting limits.

Recommendation 27

That the NBA include relevant criteria that decision-makers must have regard to when setting environmental limits.[23]

The NBA would specify what content must be covered in the NPF

The NBA identifies a list of mandatory topics for which the Minister must issue central government direction. As discussed earlier, the NBA would state the outcomes that the NPF (and NBE plans) must provide for. In the exposure draft, clause 13(1) expands on this by requiring the NPF to include provisions directing how certain outcomes are to be promoted. The exposure draft does not require all outcomes to be covered by provisions in the NPF. However, clause 13(2) sets out that the NPF may include provisions on “any other matter that accords with the purpose of the NPF”, including any outcomes that do not have a

[22] The issues that Recommendation 26 seeks to address are summarised in the departmental report at pages 43-44

[23] The issues that Recommendation 27 seeks to address are summarised in the departmental report at page 47.

mandatory content requirement under subclause (1). This means it would be optional for some of the outcomes to have specific directions set in the NPF.

In the exposure draft, the NPF must provide direction for outcomes including:

- the quality of air, freshwater, coastal waters, estuaries, and soils
- ecological integrity
- outstanding natural features and landscapes
- areas of significant indigenous vegetation and significant habitats of indigenous animals
- greenhouse gas emissions
- urban areas
- housing supply
- infrastructure services
- natural hazards and climate change.

Earlier in our report we pointed out that the list of outcomes needs to be rationalised, and that there is no hierarchy or ranking of the outcomes. We think that it should be mandatory for all outcomes that are set out in the NBA to have directions in the NPF, not just those listed above.

The level of specificity that can be prescribed for each outcome in such provisions will vary. We recommend the bill make clear that the mandatory content requirement does not necessarily entail detailed direction on every outcome.

We consider that direction and guidance on how to implement clause 6 with regard to the principles of Te Tiriti o Waitangi needs to be given in the new system. We consider that this should be in the primary legislation, rather than in the NPF.

Recommendation 28

That clause 13 in the bill should be drafted to:

a. provide that the NPF should have mandatory content on all outcomes listed in the NBA, but we note that this may be influenced by our earlier recommendation for changes to the wording of the outcomes

b. clarify that the level of detail provided on each outcome can differ.[24]

The NPF would set out how to resolve conflicts relating to the environment

Clause 13(3) of the exposure draft sets out that the NPF must also include provisions to help resolve conflicts relating to the environment, including conflicts between the environmental outcomes.

[24] The issues that Recommendation 28 seeks to address are summarised in the departmental report at page 50.

A key feature of the new system involves trying to identify and resolve conflicts at the appropriate level. Where possible, conflicts should be identified and resolved at the level of national direction and plan-making, rather than at the consenting level. Therefore, it is important to provide as much clarity about conflict resolution in the NBA and the NPF as possible. Earlier in our report, we proposed amending the purpose of the NPF to include conflict resolution.

Some conflicts are best resolved at a national level by the NPF, while other conflicts (especially relating to place-making) are best resolved at a regional level by NBE plans. For example, we envisage that how to best achieve national targets for reducing greenhouse gas emissions where renewable energy generation (such as wind turbines) could affect an outstanding natural landscape would be the type of conflict best resolved at the national level. Conflicts associated with the impacts of proposed road widening on Māori ancestral land or a significant natural area would be best resolved through regional NBE plan policies and rules.

We consider that the requirement for the NPF to include provisions to help resolve conflicts (as set out in clause 13) could be strengthened further. When establishing those directions, the Minister should be required to have regard to the extent to which it is appropriate for conflicts to be resolved at a national level by the NPF, or at a regional level by NBE plans.

Recommendation 29

That the conflict resolution provision in clause 13 be strengthened by requiring the Minister to have regard to the extent to which it is appropriate for conflicts to be resolved at a national level by the NPF, or at a regional level by NBE plans.[25]

Strategic directions should be included in NPF provisions

The NPF is intended to take a strategic approach to identify central government priorities across the system. Under the RMA, directions are issued separately as national policy statements, national environmental standards, national planning standards, and regulations. By requiring the NPF to include strategic direction, it is hoped there will be greater alignment and reconciliation of competing directions at a central level.

Clause 14 would require the NPF include strategic goals such as:

- the vision, direction, and priorities for the integrated management of the environment within environmental limits
- how the well-being of present and future generations is to be provided for within the relevant environmental limits.

We consider that the strategic goals should instead be formulated as strategic directions for:

- how decision-makers are to achieve the environmental outcomes

[25] The issues that Recommendation 29 seeks to address are summarised in the departmental report at page 50.

- how the well-being of present and future generations is to be provided for within the relevant environmental limits
- the key long-term environmental issues and priorities, and how they are to be dealt with.

We consider this better aligns with the NPF's purpose and its functions relating to outcomes, limits, and long-term issues and priorities.

Recommendation 30

That, in setting strategic directions, the NPF must:

a. provide direction on how to achieve the environmental outcomes
b. provide direction on how the well-being of present and future generations is to be provided for, within environmental limits
c. address key long-term issues and priorities.[26]

Process for preparing the NPF

Clause 9 states that the process by which the Minister would prepare and maintain the NPF is set out in Schedule 1. In the exposure draft, Schedule 1 is a placeholder.

The parliamentary paper notes the following in regard to the preparation of the NPF:

- The process to develop the NPF should provide for direction in all forms, ranging from significant national policy to administrative standards and regulations. This could include using a board of inquiry or independent panel and designing a simplified process for less significant matters.
- A standing independent body, such as a permanent board of inquiry, could convene as needed to review the NPF to maintain consistency and integration across different topics.

We support the checks and balances referred to in the parliamentary paper. We look forward to examining the details of these in the full bill.

The parliamentary paper indicates that the process for the preparation and maintenance of the NPF is intended to provide for:

- a role for iwi, hapū, and Māori that gives effect to the principles of Te Tiriti
- effective and proportionate public consultation
- use of mātauranga Māori and technical advice to inform decision-making
- early engagement with decision-makers, including local government, to discuss spatial strategies and NBE plans
- robust evaluation and analysis during decision-making

[26] The issues that Recommendation 30 seeks to address are summarised in the departmental report at page 44.

- consideration of the precautionary approach, integrated management, cumulative effects, and the purpose of the NBA before developing and recommending direction for the NPF.

We note the strong submissions from iwi, hapū, and Māori seeking a partnership approach to the implementation of Te Tiriti in the development of the NPF and NBE plans.

We agree with submitters about the need for:

- a robust evidence-based process involving mātauranga Māori and other strong technical expertise and scientific advice
- the value of applying a precautionary approach and considering cumulative effects
- the importance of early engagement and a partnership approach with iwi, hapū, and Māori, and with local government
- the need for effective public consultation and input so community aspirations can be reflected in the NPF, and in developing the NPF.

Recommendation 31

That the process for preparing the NPF ensure:

a. a robust evidence-based process involving mātauranga Māori, other technical expertise and scientific advice
b. application of the precautionary approach
c. consideration of the potential for cumulative effects
d. early engagement and a partnership approach with iwi, hapū, and Māori
e. early engagement with local councils
f. effective public consultation and input.[27]

Matters for consideration when preparing the NPF

The Minister would be required to consider certain matters when preparing the NPF. In the exposure draft, this is set out in clause 16. We propose redrafting clause 16 so that its scope can be broadened as the full bill is written. We discuss some aspects of the proposed clause below.

Application of a precautionary approach when setting environmental limits

Clause 16 states that the Minister must apply a precautionary approach when setting environmental limits in the NPF. Clause 3 provides that a precautionary approach is:

> an approach that, in order to protect the natural environment if there are threats of serious or irreversible harm to the environment, favours taking action to prevent those adverse effects rather than postponing action on the ground that there is a lack of full scientific certainty.

[27] The issues that Recommendation 31 seeks to address are summarised in the departmental report at pages 56-57.

We consider that environmental limits should be set using the best information available, and an appropriate scientific process. The limits should be appropriate, measurable, and enforceable. However, it is important that a degree of scientific uncertainty does not prevent environmental limits from being set.

We acknowledge that further work is needed to establish the process under the NPF for setting environmental limits and take them beyond a conceptual framework in order to make it clear how they will operate in practice.

The role of the Minister of Conservation under the NPF

As mentioned above, the NPF would include and replace existing forms of national direction. This would include the New Zealand Coastal Policy Statement (NZCPS). We understand that the matters currently dealt with in the NZCPS would instead be dealt with in the NPF. The Minister of Conservation has powers in regard to approving the NZCPS, including approving regional coastal plans. Clause 17 is a placeholder that will establish, among other matters, what the Minister of Conservation's role will be in relation to the NPF. We understand that the intention is for the Minister of Conservation to continue to have a role in the stewardship of the coastal marine area.

We consider that the Minister of Conservation's important role in this area needs to be retained.

Relationship with the Climate Change Response Act

The parliamentary paper notes that work is in progress to identify how the NBA can be used to progress the achievement of emissions reduction goals under the Climate Change Response Act.

Implementation of the NPF

Clause 15 sets out how the provisions in the NPF will be put into practice. The NPF would have the ability to direct that its provisions:

- be given effect through NBE plans or regional spatial strategies
- have direct legal effect, whether or not they are incorporated into an NBE plan or regional spatial strategy.

Further, the NPF would be able to direct planning committees to make an NBE plan change, either with or without a public plan change process.

The NPF would combine the regulation-making powers of the RMA's tools for national direction. Those tools include: national policy statements, national environmental standards, national planning standards, and other regulations made under section 360 of the RMA. Those tools do not necessarily have to be incorporated into RMA planning instruments in order to have legal effect.

We considered the legal and practical relationships between the NPF, NBE plans, and the regional spatial strategies. We noted concerns about whether direct insertion of NPF provisions into NBE plans would lead to reduced local input into decision-making, and

consider that the criteria we have recommended above to guide the preparation and development of the NPF should help prevent this.

Matters about the NPF not yet included in the exposure draft

The parliamentary paper notes that the following aspects are not yet provided for in Part 3 of the exposure draft:

- how the NPF's effectiveness would be monitored and reviewed, and the tools the Minister would have to ensure implementation
- the legal relationship between the NPF, SPA, and NBE plans, although the NPF will influence both regional spatial strategies and NBE plans
- the role of the Minister of Conservation and other Ministers and agencies in developing and amending the NPF
- the process for setting and changing limits and targets through the NPF, including how the Minister would work with iwi, hapū, and Māori, and be informed by mātauranga Māori, and the role of any independent bodies (such as a board of inquiry)
- exactly how limits and targets would be implemented via regional spatial strategies and NBE plans
- the relationship between the NPF and consents, existing uses and activities, designations, and water conservation orders.

Implementation principles

Clause 18 is a placeholder clause that would set out the principles that relevant persons must follow. The overarching implementation principles in clause 18 would apply across the NBA system.

Further work needs to be done to determine whether overarching principles would be preferable to imposing bespoke requirements for specific functions and powers. If overarching principles are preferable, further work would then be needed to determine what the principles should be. The indicative list of principles includes:

- promoting the integrated management of the environment
- recognising and providing for the application, in relation to te taiao, of kawa, tikanga (including kaitiakitanga), and mātauranga Māori
- ensuring appropriate public participation in processes undertaken under the NBA, to the extent that is important to good governance and proportionate to the significance of the matters
- promoting appropriate mechanisms for effective participation by iwi and hapū in processes undertaken under the NBA
- recognising and providing for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of te taiao
- having particular regard to any cumulative effects of the use and development of the environment
- taking a precautionary approach.

We note submitters' feedback that:

- there are additional principles that could be included
- overarching principles should align with Te Oranga o Te Taiao and clause 6
- further consultation with Māori should be undertaken in regard to the principles
- as currently drafted, clause 18 is imprecise, unclear, and could create legal risk
- it is unclear how the principles would apply in practice.

As mentioned above, consideration needs to be given to whether the implementation principles should be in a standalone general clause, or incorporated into clauses for specific substantive and procedural decision-making requirements. Earlier in our report, we proposed that principles be included in the NBA to assist in resolving conflicts between environmental outcomes.

Recommendation 32

That further work be carried out to determine whether and, if so, how the NBA should include general implementation principles, in addition to other principles.[28]

[28] The issues that Recommendation 32 seeks to address are summarised in the departmental report at page 55.

NBE plans for each region

Part 4 of the exposure draft sets out provisions relating to natural and built environments plans (NBE plans). NBE plans would provide a scheme of policies, rules, objectives, and processes for managing a regional environment. The parliamentary paper describes NBE plans as translating the high-level direction from the NBA, NPF, and regional spatial strategies into local application, to guide decisions on planning and resource use.

The requirement for NBE plans, and their purpose

Clause 19 would require each region to have an NBE plan in place at all times. We support having one plan per region, as we consider that the overall benefits outweigh the disadvantages. Each plan should be able to address sub-regional and local considerations. We acknowledge that creating regional plans that combine district and regional functions from different councils will be a significant undertaking. There are also practical considerations about regional boundaries that need to be addressed, and we understand that the Government is working on this. We note the strong submissions from Nelson City Council, Tasman District Council, and Marlborough District Council about the different environmental character and issues in their regions, and their opposition to requiring a combined plan for all three councils across Te Tau Ihu (the top of the South Island). Some of us agree with these concerns.

Clause 20 sets out the purpose of NBE plans as:

> to further the purpose of the Act by providing a framework for the integrated management of the environment in the region that the plan relates to.

Submitters asked whether the clause was framed correctly, and whether "integrated management" should be defined in the NBA. Given that we have recommended that the purpose clause for the NBA be refined, we recommend that concurrent work be carried out to make clause 20 clearer.

We note the importance of public involvement throughout the plan-making process.

Recommendation 33

That the purpose statement for NBE plans be reviewed for clarity and to reflect any refinements to the NBA's overall purpose.[29]

Content of the NBE plans

Clause 22 sets out the content of NBE plans, including mandatory content and optional content.

Subclause (1) sets out the mandatory content that must be included in a plan. A plan would be required to:

[29] The issues that Recommendation 33 seeks to address are summarised in the departmental report at page 61.

- state the environmental limits that apply in the region (whether set directly by the NPF, or set under the NBE plan if the NPF requires it to do so)
- give effect to the NPF in the region
- promote the environmental outcomes specified the NBA, subject to any direction in the NPF
- be consistent with the regional spatial strategy (RSS)
- identify and provide for matters that are significant to the region, or districts within the region
- help resolve conflicts relating to the environment in the region, including conflicts between the environmental outcomes.

Subclause (1) also provides placeholders for further provisions about:

- NBE plans being consistent with regional spatial strategies
- how NBE plans would incorporate matters and functions currently dealt with under the RMA
- additional specified content that must be included in NBE plans.

NBE plans could include anything else necessary for the plan to achieve its purpose. We note that this power will likely be clarified by other parts of the NBA when it is fully written.

Earlier in our report, we proposed that the NBA include a power to set targets in the NPF in relation to outcomes. We think that consideration should be given to including targets in NBE plans, especially for significant regional matters.

Clause 22(1)(c) includes a placeholder for providing that NBE plans must be consistent with regional spatial strategies. We suggest that the NBA include details about the legal and practical connections between RSSs and NBE plans. We think that the RSS needs to be given sufficient legal weight over an NBE plan to ensure that strategic decisions made through an RSS are not revisited or re-litigated in the preparation of an NBE plan.

It is important that NBE plans provide ways for decision-makers to resolve conflicts relating to a region's environment. Conflict resolution must be dealt with at all levels of the system, and not only in the NPF. The NPF may not be suited to addressing the needs of specific localities, local Tiriti relationships, or situations where local decisions are needed between competing land uses. The inclusion of a specific requirement for NBE plans to help resolve conflicts between competing outcomes should be an improvement on the current system. It is intended to reduce the overall number of consents required, and hence reduce the need for conflicts between outcomes to be resolved at the consenting level.

How NBE plans are prepared, notified, and made

Clause 21 sets out how NBE plans would be prepared, notified, and made. Each region's planning committee must make the plan using the process set out in Schedule 2. In the exposure draft, Schedule 2 is a placeholder and work is being done to develop it.

We note strong submissions and concerns—particularly from local authorities—about how local input will be achieved in plan making, and their potentially reduced role in decision-making through regional planning committees. How the committees would operate in practice was not articulated in the exposure draft. We understand that the Government is continuing to develop policy for this.

A range of tools for achieving local input in plan-making could be considered:

- through direct engagement by the planning committee
- through the membership of the planning committee, such as the level of representation from local authorities
- by drawing from council staff in the region for the secretariat that would support the regional planning committee and the process
- by using the traditional process of seeking submissions and having hearings on plans, and allowing people to be heard.

Other plan-making initiatives could also be developed.

We recognise the crucial role of democratically-elected local authorities in representing their communities and in shaping the places people live, and community and environmental well-being, through the services and infrastructure they provide and their plans. We acknowledge, understand, and accept the concerns raised by the local government sector about the NBE plan process and the need for close engagement with the sector as further policy work is done.

The desire for such localised input was also confirmed to us by the local government sector during the submission process. We agree that it is important there is strong local democratic input in the making of NBE plans. We also recognise that, at a localised level, local authorities have a wealth of experience with consenting and broader regulatory aspects. We consider it important that local councils continue to play a critical role within the NBA's proposed plan-making framework.

The creation of the first NBE plans will be an especially significant undertaking. As mentioned above, we consider that the secretariat for a planning committee should be drawn from the planning staff of the councils within the region. The staff will have expertise pertaining to the region, and it will help ensure the secretariat operates cohesively with local government across the region. Māori within a region will also have advisers who should be part of the secretariat, including in relation to advice on mātauranga Māori. We also consider that there is a role for central government in assisting planning committees to achieve as much consistency as possible when developing NBE plans.

We also note that Treaty settlements have established co-governance and co-management arrangements regarding specific taonga which need to be upheld.

Recommendation 34

That clause 21 and Schedule 2 clearly set out a substantial role for local authorities in place-based planning, and how the planning committee and local authorities could engage with communities when preparing the plan.[30]

Planning committees and their functions

Each region must have a planning committee.

Functions of planning committees

The functions of a planning committee are to:

- make and maintain the NBE plan for the region using the process set out in Schedule 3
- approve or reject any recommendations made by an independent hearing panel following submissions on its NBE plan
- set any environmental limits for the region that the NPF authorises the planning committee to set.

The parliamentary paper notes that planning committees will likely have additional functions, which will be set out in the full bill.

Membership of planning committees, and their funding

The membership of planning committees, and the support services available to it, will be set out in Schedule 3. The membership of planning committees would include representatives of each local authority within the region, mana whenua, and a representative of the Minister of Conservation. The secretariat would provide advice and administrative support and would be funded by local authorities.

The inclusion of a representative of the Minister of Conservation is due to their current role relating to the coastal marine area under the RMA. However, under the NBA, their role with planning committees would not be limited to the coastal marine area.

The parliamentary paper notes that the following matters are still under consideration:

- the size and scope of the planning committees
- how local authorities would be represented
- how mana whenua would be represented
- how secretariats for planning committees would be funded.

In establishing the above, we think it will be important to consider:

- how the different needs of each region will be accommodated in the make-up of the committees

[30] The issues that Recommendation 34 seeks to address are summarised in the departmental report at pages 62–63.

- the need for resourcing to improve capacity and capability
- the role that sub-committees of planning committees (or other appointees) could play in facilitating or contributing to specific work
- the Government's role in the NBE plan-making process, and how it would interact with planning committees

Considerations relevant to planning committee decisions

Clause 24 sets out the considerations that planning committees would have to follow when making decisions on a plan.

When making decisions, committees must have regard to the following:

- any cumulative effects of the use and development of the environment
- mātauranga Māori and any technical evidence and advice that the committee considers appropriate
- the effects the activities dealt with in the plan could have on the natural environment, especially those adverse effects that are significant or irreversible
- the extent to which conflicts should be resolved generally by the NBE plan, or on a case-by-case basis by resource consents or designations.

Planning committees would be required to apply a precautionary approach when making plans. We discussed the meaning of "precautionary approach" earlier in our report, and note that further direction on how to apply such an approach should be included in the NBA or NPF.

Planning committees would be entitled to assume that the NPF furthers the purpose of the NBA, and would be prevented from making their own assessment about that when giving effect to the NPF through plan-making. We note that the intent of this provision is to ensure that NBE plans are not inconsistent with the NPF. However, this provision does not prevent the membership of planning committees from contributing to the development and critical evaluation of the NPF.

The clause includes a placeholder for additional matters that planning committees would be required to have regard to when making decisions.

We recommend that clause 24 be drafted so that it makes clear that planning committees must have regard to mātauranga Māori and any technical advice or evidence that it considers appropriate.

Environmental limits set by planning committees in NBE plans

Earlier in our report, we discussed the setting of environmental limits in the NPF. If the NPF directs it to do so, a planning committee must set environmental limits for its region or specified parts of its region. Clause 25 sets out how a planning committee would approach setting an environmental limit in its NBE plan, should the NPF direct it to do so. The exposure draft does not cover how limits would be developed at a regional level, or how

decisions would be made on limits. We note that setting limits requires a large amount of both qualitative and quantitative information that will need to be analysed and assessed.

Recommendations 35 and 36

That further work be undertaken on planning committees, including representation, how they work and make decisions, and the role of the secretariat.

That the bill state that planning committees must have regard to mātauranga Māori and technical advice.[31]

Matters about NBE plans not in the exposure draft

The parliamentary paper notes the following aspects are not yet provided for in Part 4 of the exposure draft.

Matters not included to do with the NBE plan-making process include:

- plan evaluation and analysis of the plan provisions
- public engagement and consultation, and a role for public and key stakeholders
- what giving effect to the principles of Te Tiriti looks like for the plan development process
- what appropriate evidence and technical expertise would be, including mātauranga Māori and independent advice to inform decision-making
- the role for local authorities
- the independent hearings panel process including appointment of members
- the submission and hearing process after notifying a plan
- the application of the Legislation Act 2019 to plans.

Matters not included in the exposure draft in relation to plan governance and decision-making include:

- how decisions are made by planning committees
- dispute resolution in plan-making
- how current and future Treaty settlements are maintained but not diminished in their effect, and the interface with existing bodies
- funding of the planning committee
- how the secretariat supporting the committee will function
- a planning committee's ability to direct local authorities to undertake work on its behalf.

[31] The issues that Recommendations 35 and 36 seek to address are summarised in the departmental report at pages 71 and 74.

We received many submissions on the importance of public engagement and consultation in the development of NBE plans, regional spatial strategies, and decisions on consent applications. Submitters also emphasised the need to build capacity among iwi, hapū, and community organisations, and to provide resourcing and support so that people can participate on an equal basis. The provisions in the full bill, and the tools and resources which agencies provide to support the new law's implementation, need to provide for effective Māori and public engagement in plan-making and RSS development, and in decision-making under the new system.

The bill needs to be explicit about the competing uses of land, water, air, the coast, and other aspects of the environment, and how these are to be resolved.

3 Ensuring the system is efficient, proportionate, affordable, and less complex

The terms of reference requested that we collate a list of ideas for making the new system:

- more efficient
- more proportionate to the scale and risks associated with given activities
- more affordable for the end user
- less complex than the current system.

The parliamentary paper set out a list of examples for our consideration. Submitters also put forward a substantial number of ideas and examples of their experiences with the system. The ideas and concepts have been collated in the departmental report. We have considered the suggestions, and request that they be taken into account during the development of the bill.

We would like to convey some key points:

The system should be proactive rather than reactive

One of the reasons we support reform of the resource management system is the opportunity it provides to use what we know about the current system to design a new system that is more efficient. We envisage such a system as having greater clarity around what activities are allowed, and the environmental limits in place. This should reduce the focus on consents.

Capability and capacity within the system should be boosted

The system needs to be sufficiently resourced to address capability and capacity deficits that exist in the current system. We suggest that a capability strategy be adopted.

Local government requires support to ensure that the new system can be implemented, and then operate effectively. In addition to funding considerations, support could also include a staged introduction of the new system. For example, local and central government could work together to progressively regionalise some components of monitoring, reporting, and compliance functions.

More resourcing is needed to enable iwi, hapū, and Māori groups to build capability and carry out the work required by the new system. We acknowledge feedback that this has been inadequate in the current system.

Opportunities for input into design and implementation should be strengthened

The development of the new system and the transition to it will also require a lot of input from local government, Māori, and the system's stakeholders. Reform is under way in other areas—such as health, three waters, local government, and tertiary education—and there is a risk this will affect people's ability to be sufficiently involved in the design and

implementation of the system. We suggest this be kept in mind during the development and implementation of the new system.

Requirements in different laws should be aligned, where appropriate

The NBA seeks to consolidate the various instruments of national direction for resource management into one national planning framework. We hope this leads to greater consistency in the directions.

The NBA must also align, as much as possible, with other legislation to avoid duplicating or differing requirements for similar matters. For example, thought needs to be given to how the NBA will interact with the Fisheries Act 1996, the Heritage New Zealand Pouhere Taonga Act 2014, the Building Act 2004, and the Conservation Act 1987. The integrity of the policy intent of other legislation must also be retained.

Retaining existing definitions and concepts

Despite best efforts to define and clarify matters in legislation, a change in systems inevitably creates uncertainty as people evaluate and test new processes. Careful thought needs to be given to the extent to which the new legislation should retain and accommodate existing RMA terminology and concepts, especially where these have been further defined and explained in case law. This could help improve certainty and continuity, and reduce the need for legal action. With the proposed shift in focus to achieving environmental outcomes—rather than enabling subdivision, use and development, and then managing effects—we recognise that it will not be appropriate to retain all existing terminology.

We strongly emphasise the need to ensure that the policy intent and the words of the proposed new legislation are clear and certain. Key terms and concepts must be easily understood, and clearly defined and drafted. This would reduce the risk of conflicting interpretations and then litigation to clarify what the words mean and how the legislation should be applied.

Dispute and conflict resolution could be approached differently

We acknowledge that conflicts and disputes cannot be eliminated from a system designed to make decisions about resource management. However, the existing dispute resolution system through council decision-making and the court system is adversarial, and can be costly. We consider that decisions should be based on a rigorous assessment of relevant evidence and advice. We suggest that thought should be given to shifting the balance toward a more inquisitorial approach. For example, while scrutinising evidence is valid, cross-examination of laypersons by legal counsel acting for another party may not always be the best approach to resource management decision-making.

We consider that there is a place for tikanga-based resolution of environmental disputes, through holding hearings on marae, for example, and ensuring that processes provide for a te ao Māori perspective. We encourage more work on how this could be best implemented and enabled through the full bill. Use of these approaches is evolving. Current examples include at the District Court, and between private parties and local Māori.

Environment Court

The specialist expertise and experience of the Environment Court, and its independence in deciding environmental disputes, means it plays a critical role in the current resource management system. That role should continue. Its mediation services enable alternative dispute resolution and can reduce the need for hearings. Submitters suggested greater use of non-statutory conflict resolution processes, and inquisitorial rather than adversarial proceedings; as well as funding support to increase access to appeal processes.

We encourage central government to consider making funding available for declaration proceedings and similar litigation where this could help clarify the interpretation and application of the new law.

Digital tools could be coordinated and improved

We strongly consider that wider use of digital tools could contribute to greater system efficiencies, if implemented successfully. For example, it could be beneficial to provide national templates, tools, and guidance for digitising planning documents. Some submitters called for greater central government leadership and funding to increase access to, and use of, digitised plans and consenting systems. Similarly, there are opportunities to integrate digital systems across various areas of system administration. Those areas could include e-planning, consenting, property systems, and compliance monitoring and oversight.

To achieve the above, it would be important for agencies to collaborate in determining what is needed to share datasets and resources. Investment from central government would also be needed. We acknowledge that there are risks in centralisation of tools, as local needs may not always be met within the same system. For example, local authorities may consider that different service providers are better placed to respond to regional needs. We encourage work to explore the opportunities that better digital tools can provide.

Consenting and designation processes need a close look

Provisions relating to resource consents and designations were not included in the exposure draft. These matters will be a significant area of focus when the full bill is made available.

We suggest that a single national template for consents (with an online application process) to assist council processing be considered. Consistent fee settings are also desirable. We suggest that consideration be given to options for standardised and more flexible consent conditions for routine resource consent applications, as well as global consenting for small-scale works carried out frequently at different sites.

As referred to above in regard to digital tools, there is room for coordination in the consenting area where councils see benefit in reducing duplication. However, we acknowledge that there needs to be some scope for councils to determine the extent to which this will be done.

Recommendation 37

That the Government consider the ideas in our report for improving system efficiencies.

4 Concluding comments

We thank all submitters for their contributions, both in writing and during hearings. The many thoughtful submissions, and the information, analysis, and expertise which they provided was much appreciated.

We acknowledge the opportunity for the Environment Committee and the public to be involved in the preliminary stage of the bill's development, prior to a full select committee process.

The provisions included in the exposure draft are important elements in the bill. The exposure draft does not contain all of the bill's proposed provisions as further policy work has yet to be completed. This made it challenging for us to consider some matters during the inquiry, but we envisage that these will be more fully considered during a full select committee process. Our recommendations on the available provisions will, we hope, steer the development of the bill.

The RMA was passed into law 30 years ago. Some issues currently facing New Zealand, such as climate change, water quality, and housing, were not necessarily front-of-mind in 1991. There have been many amendments to the RMA over the years which have sought to keep it fit for purpose.

We consider that the system needs to be reformed. A new natural and built environment system should be based on environmental limits to prevent further environmental degradation, and make decision-making processes more effective. Some of us consider that a different approach would be preferable, and suggest that reform should be based on continuous improvement, rather than setting environmental limits.

We are fully aware that the timeframe for reform is (necessarily) long and will not rectify the issues it seeks to address in the short term. In the meantime, the Government of the day must consider methods to address environmental and development issues. As a committee of different political parties from the House of Representatives, we will not always agree on the policies to achieve this.

We await the introduction in the House of the Natural and Built Environments Bill, the Strategic Planning Bill, and the proposed Climate Adaptation Bill.

New Zealand National Party view

National agrees that the existing RMA needs replacing. We have undertaken to work, where possible, with the Government in a constructive way to achieve reform that overcomes the pitfalls and inadequacies of the current legislative framework.

We entered into consideration of the exposure draft of a Natural and Built Environments Bill in good faith under the impression the process would give a clear indication of the Government's pathway to the introduction of an actual bill.

Sadly, the exposure draft presented was significantly incomplete. It contained multiple "placeholders" where clearly work had either not been completed or, if it had, a conscious decision had been made not to reveal the nature or extent of those details. That was disappointing for National members and many submitters who made the point that detailed analysis was difficult or impossible as attempting to do so was to try and second guess the Government's policy initiatives.

We agree with submitters who felt it would have been a more useful process if the second piece of legislation, the Strategic Planning Bill, could have been considered simultaneously.

The exposure draft and the Government's reform plan are largely based on acceptance of the vast majority of the work done by the Resource Management Review Panel chaired by Hon Tony Randerson QC.

We are concerned there has been almost no critical analysis of that work or in-depth consideration of alternative options.

We remain unconvinced that the only pathway for significant structural reform of our nation's resource management framework should amount to little more than a grand tinkering of the existing regime. Yes, the Government's proposals will see three new statutes replace the current Resource Management Act but the essence of that framework is to be maintained and added to.

Our concerns are centred on what we see as the risk that the old will be replaced with the new under different names but with little being achieved in terms "fixing" the underlying issues that exist today.

Indeed, we fear the outcome has potential to make things worse than they are today.

We remain unconvinced that the approach being considered will provide the solutions so desperately needed. In our view there is a case to be made for separating the management of environmental issues and effect from planning. Not doing so runs the risk of perpetuating the complicated, costly, and cumbersome existing situation.

National members will continue to seek common ground with the Government to secure better enhancement of our natural environment while ensuring a sensible pragmatic approach to creation of a built environment that secures for New Zealanders the physical aspects of living in a modern first world nation.

We hope the next stage of the Government's resource management system reform programme will provide better clarity on key issues.

ACT New Zealand view

ACT opposes the direction set out in this draft bill. We believe the Government is putting in place a regulatory regime that will empower the forces that currently frustrate development and restrict progress toward an improved environment.

The draft bill would centralise planning and direction-setting powers into the Minister for Environment's office and unaccountable national planning bodies, with few, if any, checks and balances.

The reform proposes that regional planning rules will be decided by representatives from local and central government and iwi, but without representation from developers and businesses required to operate within the planning system.

The proposed reform introduces unworkable environmental limits that will result in more prohibitions, rather than more permissions, for the range of urban and rural activities essential to New Zealanders' social, economic, and environmental well-being.

As a result, the Government is squandering an opportunity to create meaningful change that could improve the lives of New Zealanders and restore the ideal of a property-owning democracy.

For reform to be successful, meaningful changes are needed to the current system to:

- Protect property rights and expand the ability of property owners to use their land for maximum utility.
- Address the artificial scarcity of land which severely restricts housing supply, caused primarily by the lack of adequate infrastructure service.
- Remove gateway tests requiring developers to first convince planning authorities ***why*** they should be allowed to build, rather than ***how*** effects are managed.
- Reduce the range of activities which require consent by codifying methods to mitigate and remedy the effects of common activities.
- Limit who should be allowed to object to private plan changes and consent applications to only those directly affected by a proposal.
- Prioritise outcomes over effects which can be mitigated and remedied.
- Base environmental protections only on science, not social and cultural constructs.
- Remove contradictions and overlapping provisions in environmental law so all parties have a clear understanding of their rights and responsibilities.
- Address the tendency of current planners to delay resolution of conflicting outcomes, and provide compensation for time delays in consenting and planning decisions.
- Increase certainty for investors, developers and local councils so they do not live in fear of activist planning commissioners and the Environment Court.

ACT engaged with the select committee process in the hope that the considerable input by submitters into the development of this reform would lead to constructive changes to the bill.

The select committee was asked to pay particular attention to the terms of reference objective (e)—“improve system efficiency and effectiveness, reduce complexity, while retaining appropriate local democratic input”.

The committee considered the draft bill without the accompanying draft Strategic Planning Bill, which the Government stated is interdependent. This means that the inquiry process has wasted parliamentary and submitters’ resources, as there was not sufficient detail to allow a comprehensive response and constructive solutions.

The draft bill creates a duty for persons to comply with environmental limits, and where decision-makers are prevented from granting a consent that would breach a limit, this becomes a prohibition in drag. These provisions risk sterilising resources and development in large parts of New Zealand, which means that vital construction materials will be further from where they are needed and will cost more.

The draft bill ignores local and international environmental best practice and introduces new and poorly defined concepts which would take decades to litigate and settle, introducing great uncertainty for investors, developers, and councils.

ACT believes that the proposed reforms will establish a restrictive regulatory regime rather than a system permissive toward the infrastructure and building which is vital to improve social, economic, and environmental outcomes.

The proposed reforms will create a planning system that provides less certainty and less accountability than the RMA does today, at a time when more localised, adaptive, and agile processes are needed to manage development and natural hazards.

Instead of progressing this approach, ACT supports repealing the RMA and replacing it with separate Environmental Protection and Urban Development Acts. Separating environmental protection and urban planning is critical to recognise that a one size fits all approach is not workable.

All parties agree resource management reform is necessary, but this draft bill is not the reform we need. We do not believe it improves the status quo, which is why we do not support further development of this draft bill.

Green Party of Aotearoa New Zealand view

The Green Party recognises that the current Resource Management Act is no longer fit for purpose and supports the intention of replacing it with a strong, outcomes-based framework to protect and restore the natural environment.

Purpose

We depend on nature to live—rain, rivers, and aquifers provide us with water to drink; soil and sunshine enable us to grow food; and nature gives us clean air to breathe. We depend on nature for our social, cultural, and economic well-being. As the Parliamentary Commissioner for the Environment (PCE) said of the NBE bill, "The Bill must provide a measure of priority for the natural environment… Whatever social, cultural and economic aspirations we may have are only achievable if we have secured the biophysical systems on which life depends. To put it starkly, the economy and society are a subset of the environment."[32] The Green Party agrees.

This bill is an opportunity to prioritise the protection and restoration of the natural environment, but as currently drafted, it falls short. The purpose, environmental outcomes and limits proposed, even with amendments recommended by the Environment Committee, are not strong enough to mitigate the risk that the bill will allow further deterioration of the environment and indigenous biodiversity. Accordingly, it is not clear to us that the bill in its current state is a significant improvement on the Resource Management Act.

Developing and implementing new environmental regulation in Aotearoa New Zealand, for land use and water quality and protection of indigenous biodiversity on private land, for example, has been challenging. There has been little national policy direction until recently, and new regulations and environmental standards are often resisted by users of land, water, and coastal waters. There has been limited information about the state of the environment, complacency associated with believing the "100% Pure New Zealand" myth, lack of recognition of the seriousness of the nature crisis and the extent of the environmental degradation; and major gaps in compliance monitoring and enforcement. Changing this context requires substantive changes to the law.

If the reform exercise is to improve upon the RMA and prevent further environmental degradation and biodiversity loss, the full NBE bill must include a clear requirement to protect the natural environment, and prioritise safeguarding nature ahead of providing for economic use and development; especially in the purpose, and in relation to environmental outcomes and environmental limits.

Amendments sought:

- Seriously consider the proposed redrafting of clause 5 put forward by the Parliamentary Commissioner for the Environment (below). It gives priority to upholding Te Oranga o Te Taiao and protecting, and where possible restoring, the ecological integrity of the natural environment. It also includes more active and directive language.

[32] Oral presentation by the Parliamentary Commissioner for the Environment to the Environment Committee, 2 September 2021.

5 Purposes of this Act

(1) The purposes of this Act are to—

(a) uphold Te Oranga o te Taiao and to protect, and where possible, restore, the ecological integrity of the natural environment;

(b) subject to (a), enable people and communities to determine how the environment may be protected, used and developed in a way that supports the well-being of present generations without compromising the well-being of future generations.

(2) To achieve these purposes in an integrated manner, the Act—

(a) provides for environmental limits that must be complied with; and

(b) provides for environmental outcomes that must be promoted which will include the protection, restoration and enhancement of the natural environment; and

(c) requires that any adverse effects on the environment from its use must be avoided, remedied, or mitigated.

(3) In this section, Te Oranga o te Taiao incorporates—

(a) the health of the natural environment; and

(b) the intrinsic relationship between iwi and hapū and te taiao; and

(c) the interconnectedness of all parts of the natural environment; and

(d) the essential relationship between the health of the natural environment and its capacity to sustain all life.

Definition of natural environment

The proposed definition of “natural environment” continues a perspective which sees nature as separate from humans and land, water, air, and biodiversity as “resources” to be exploited. Submitters provided alternatives with a different emphasis.

Amendments sought:

- Seriously consider the definitions of “natural environment” proposed by submitters such as the Tuia Pito Ora New Zealand Institute of Landscape Architects and the Royal Forest and Bird Protection Society for inclusion in the full bill.

Quality of the built environment

The Resource Management Review Panel included “enhancement of features and characteristics that contribute to the quality of the built environment” as one of the outcomes it recommended for the NBEA. Many submitters were concerned at the absence of any outcome focused on the quality of the built and urban environment in the exposure draft; and some by the loss of the RMA concept of “amenity values”. As the Christchurch City Council noted, “the exposure draft does not provide a planning regime that will deliver quality, liveable towns and cities for current and future generations.”

As intensification increases, the quality of the built environment becomes more important to ensure its liveability. As the Urban Design Network said, “Well designed urban spaces are responsive to the needs of local communities. They have a direct effect on the physical and mental health and wellbeing of people.”

Features which contribute to liveability include connected green space, walkable and cycleable urban areas, street safety, the built environment being accessible to all, including children, disabled people, and seniors; and integration of the natural and built environment through restoring urban waterways and protecting and restoring urban biodiversity.

The bill needs a specific outcome related to the quality and liveability of the built environment so that provision of development capacity is integrated with good urban design such as access to sunlight, accessible and attractive public spaces, a relationship between built areas, nature and green spaces, and accessible social infrastructure such as schools and community centres.

Amendments sought:

- Refer to “urban environments” instead of “urban areas”.
- Include a definition of “built environment” such as that suggested by Tuia Pito Ora New Zealand Institute of Landscape Architects in clause 3.
- Include a concept of “liveability” in a new definition of “built environment” and in the environmental outcomes for built and urban environments elsewhere in the bill.
- Define “well-functioning urban environment” as, for example, “an urban environment that facilitates social, cultural and economic interaction between people and communities, and promotes their wellbeing.”
- Consider amending clause 13A(d)(iii) to “an urban form that has environmental benefits and promotes wellbeing.”

Urban tree protection

Over two thirds of the submissions on the exposure draft, some 2,168 submissions, were about urban trees. The Green Party considers urban trees to be an important part of a well-functioning urban environment and accordingly within the scope of the inquiry. We are grateful to the many people who took the time to make a submission.

Urban trees provide space for nature as habitats and food for native wildlife. They are a place to picnic under and for children to play. They enhance air quality, reduce noise, and increase environmental and mental wellbeing. They hold together land banks and cliffs, reduce soil erosion, soak up rain, reduce stormwater runoff to beaches and streams, and sequester carbon. Urban trees provide shade and reduce the heat island effect of built up areas which is likely to become more obvious with a changing climate.

Submitters such as the New Zealand Tree Council/Tiakina Rākau noted that changes to the RMA have led to significant loss of urban trees in our cities and towns, especially of large

trees on private land. Changes to the RMA in 2009[33] and 2013 removed the ability for councils to have district plan rules which applied to general classes of trees to restrict felling and trimming. Trees had to be individually scheduled for rules requiring a resource consent to apply. One Auckland Council report shows that at least 12,879 trees were removed in the 10 years from 2006 to 2016, with actual loss estimated to be higher.[34]

Submitters noted that cities overseas value urban forest and have strategies to increase canopy cover. The 3-30-300 rule promoted by the International Union for the Conservation of Nature (IUCN) could guide the development of tree protection provisions in the law and the national planning framework and regional plans. This "rule of thumb" provides that every citizen should be able to see at least three reasonably sized trees from their home; every neighbourhood should have at least 30 percent canopy cover; and people should have access to high quality green space of at least one hectare within 300 metres or a 5 to 10 minute walk.

Amendments sought:

- Recognise and provide for the protection of urban trees as an attribute of well-functioning and liveable urban areas.
- Include urban trees as one of the matters which the national planning framework should provide policies and rules on, to ensure consistency across the country. This could be done by:
    - defining "urban trees" and "urban forest" in the definition clause.
    - adding an additional matter to Clause 13A(d) Well-functioning urban and rural areas:

        (vi) retain and protect sizeable and mature trees in urban neighbourhoods[35]; and maintain or increase neighbourhood tree canopy cover to at least 30 percent of the urban neighbourhood area.

Protecting night skies and naturally dark skies as part of the natural environment

The exposure draft does not recognise the night sky as part of the natural environment or require its protection from light pollution. Officials consider that light pollution should be managed as an "effect" of land use; in the same way as noise pollution. The Green Party disagrees and believes that naturally dark night skies are a key aspect of the natural environment; just as air and water are. Dark skies contribute to ecological integrity, are part of what can make a natural feature or landscape outstanding, and have an intrinsic value just as clean water does.

Submitters such as the Royal Astronomical Society of New Zealand and regional societies noted that light pollution caused by artificial light at night (ALAN) is increasing in both its

[33] Resource Management (Simplifying and Streamlining) Amendment Act 2009.

[34] Royal Forest and Bird Protection Society submission at p 43.

[35] Existing as at the time of bill's introduction.

geographic presence and reach. Light pollution is an undesirable environmental impact in the same way that air and water pollution are.

There is increasing awareness of the importance of naturally dark skies at night to culture, our sense of connection with the cosmos and place in the universe, human health, and the health of native species and ecosystems. Light pollution can change circadian rhythms and contribute to sleep and mood disorders; and can disrupt animal behaviour from moths to threatened Hutton's shearwater at Kaikoura which crash onto roads because of the town lighting. Wasteful outdoor lighting increases electricity demand and associated greenhouse emissions.

Dark skies deserve recognition and protection from light pollution through national legislation and the national planning framework; rather than in an ad hoc way though individual council bylaws or plan rules. Countries such as France and the United Kingdom are controlling (or moving to control) artificial light at night though national legislation. The NBEA is a chance for Aotearoa to do the same.

As the Royal Astronomical Society of New Zealand said in its submission, "Aotearoa New Zealand has a strong history of night sky cultural and scientific knowledge. Early Māori navigators followed by European explorers used knowledge of the skies both to find and establish the location of Aotearoa New Zealand. Māori astronomy impacted on many aspects of Māori culture traditions."[36] The increasing public recognition and celebration of Matariki depends on being able to see the stars.

In 2019 dark skies was noted as one of the top travel trends by Airbnb, Lonely Planet, and National Geographic. With four dark sky places established in Aotearoa/New Zealand and astro tourism growing, ensuring that the NBEA protects the naturally dark skies enables economic development through astro-tourism as Ngāi Tahu and others are demonstrating in Takapo and in the Mackenzie Basin.

Amendments sought:

- Provide for the protection of naturally dark skies from artificial light at night as part of the definition of natural environment in clause 3 and/or an environmental outcome in clause 13A; and as a matter for which the national planning framework establishes environmental limits in clause 12B and related clauses.

Environmental limits

Clause 12A of the exposure draft, as amended, provides that environmental limits may be set to protect either or both the ecological integrity of the natural environment and/or human health. Clause 12B requires the national planning framework to set environmental limits for six aspects of the natural environment.

The Parliamentary Commissioner for the Environment said that without changes to the purpose statement (clause 5) and the concept of environmental limits (then clause 7) the NBEA risks becoming, "something of a blank canvas, with the environmental limits,

[36] Submission by Royal Astronomical Society of New Zealand at p 1.

environmental outcomes and national planning framework supporting whatever trade-offs between the protection and use of the natural environment the Minister favours at the time."[37] The Parliamentary Commissioner argued that the core elements of environmental protection should be part of the primary legislation, not left to be made by regulation; that the limits should provide for improvement and restoration; as well as protection, and incorporate a buffer or margin of safety above the limit. The Green Party agrees.

The new proposed definition of "target" in clause 3 is useful and recognises the need to improve environmental quality by providing a timeline and a measurable direction in the NPF for achieving specific environmental outcomes. Further changes are needed.

Amendments sought:

- Make "restoration" or "improvement" of a degraded natural environment beyond the limit part of the purpose of environmental limits in clause 12A.
- Require a buffer or a margin of safety above the level required to achieve the purpose of environmental limits to help avoid a lowest common denominator approach.

Environmental outcomes—highly productive land

Food security contributes to a sustainable Aotearoa New Zealand. Protecting the ability to feed people requires sufficient land for that to occur. More than 80 percent of the vegetables grown in Aotearoa New Zealand are grown for domestic supply, and our export of fresh vegetables is important to the Pacific Islands. The Randerson Review panel proposed an outcome of "protection of highly productive soils"[38] and clause 13A(d)(iv) of the exposure draft as amended provides for "the preservation of highly productive land for food production", but the term is not defined.

We understand that work on a National Policy Statement for Highly Productive Land is progressing but it has yet to be made operative so any specific protection or direction it may provide is not known.

The Green Party seeks stronger recognition and protection of highly productive land in the full bill, given its importance to food security and human health; and to avoid the current trend of cumulative loss for subdivision and urban development.[39] We also note the importance of planning protections for food production land in the proposed Spatial Planning legislation, and in ensuring alignment between that legislation and the NBEA.

In clause 12B as amended, the national planning framework must prescribe environmental limits for "soil" but this is too limited. Geographic location, climatic factors, access to water and infrastructure are important to food production, not just soil type or quality.

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37 Submission of the Parliamentary Commissioner for the Environment.

38 (June 2020) "New Directions for Resource Management in New Zealand – Report of the Resource Management Review Panel," at p 460

39 Horticulture NZ noted that 14 of 18 private plan changes in the Selwyn District sought urban zoning for land that is Land Use Classification 1, 2 or 3 suitable for growing food

Amendments sought:

- Include a definition of “highly productive land” that recognises the importance of climatic factors, access to water and infrastructure as well as soils and Land Use Capability; and the size and cohesiveness of land used for primary production. The definition suggested by Horticulture New Zealand in its submission merits more serious consideration.
- The national planning framework should prescribe limits for highly productive land, rather than just soils.
- Expand the environmental outcomes in clause 13A(d) to preserve, “highly productive land for food production that contributes to domestic food supply and land use change to lower greenhouse emissions from agricultural production.”

The role of the Minister of Conservation

Clause 17(i) is effectively a placeholder for the role of the Minister of Conservation in approving the New Zealand Coastal Policy Statement and regional coastal plans. This recognises that the coastal marine area is a public and common domain with high natural values. Aotearoa New Zealand is a global biodiversity hotspot, partly because of the number and diversity of endemic species which are only found in these islands and nowhere else in the world. The biodiversity crisis is serious and extensive with at least 4000 and potentially 9,000 plant and animal species in Aotearoa either threatened, or at risk of extinction.

Having a representative of the Minister of Conservation on all regional committees for regional plans and regional spatial strategies would help ensure that the needs of indigenous biodiversity were better considered and recognised in plan provisions. This should not constrain the ability of the Department of Conservation to make submissions, advocate, and provide technical expertise and advice on plans.

Amendment sought:

- Provide for the Minister of Conservation to be represented on all planning committees as a steward for indigenous biodiversity.

Appendix A—Committee procedure

Committee procedure

We called for public submissions on 1 July 2021 with a closing date of 4 August 2021. We received 3,015 written submissions and heard oral evidence from 301 submitters.

We received advice from the Ministry for the Environment and the Parliamentary Counsel Office.

A representative from the office of the Parliamentary Commissioner for the Environment attended some of our hearings and discussions.

We held discussions with the Minister for the Environment, Hon David Parker.

Committee members for this item of business

Hon Eugenie Sage (Chairperson)
Rachel Brooking
Tāmati Coffey
Simon Court
Anahila Kanongata'a-Suisuiki
Hon Scott Simpson
Tangi Utikere
Angie Warren-Clark
Nicola Willis

Dr Deborah Russell and Stuart Smith were permanent members of the committee during part of our consideration.

We acknowledge the participation of other members during the inquiry.

Advice and evidence received

The documents we received as advice and evidence for this inquiry are available on the Parliament website, www.parliament.nz.

Appendix B—Proposed revised provisions

Proposed redrafting of some provisions

This appendix contains a revision-tracked version of the exposure draft of the bill. It reflects some of our recommendations where we were in a position to consider how they might be incorporated into the drafting of the bill.

However, not all of our recommendations are included in this revision-tracked version of the exposure draft. As we noted in our report, some of our recommendations require more policy work be undertaken by the Government. Consequently, we have not proposed new drafting for these clauses, and have left the clauses as they were in the exposure draft, with an expectation that these will be reviewed and redrafted for inclusion in the full bill.

Natural and Built Environments Bill

Government Bill

Key:

- **this is inserted text**
- ~~**this is deleted text**~~

Note: This version of the Bill shows amendments to the Bill that have been prepared by the PCO for the purposes of select committee consideration. This version does—

- **NOT have official status in terms of unamended text**
- **NOT show whether amendments might in due course be voted as majority or unanimous amendments**
- **NOT have the status of an as-reported back version of the Bill.**

Hon David Parker

Natural and Built Environments Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Natural and Built Environments Act **2021**.

2 Commencement

This Act comes into force on X.

Part 1
Preliminary provisions

3 Interpretation

In this Act, unless the context otherwise requires,—

abiotic means non-living parts of the environment

biotic means living parts of the environment

coastal water means seawater within the outer limits of the territorial sea and includes—

(a) seawater with a substantial freshwater component; and

(b) seawater in estuaries, fiords, inlets, harbours, or embayments

cultural heritage—

(a) means those aspects of the environment that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:

(i) archaeological:

(ii) architectural:

(iii) cultural:

(iv) historic:

(v) scientific:

(vi) technological; and

(b) includes—

(i) historic sites, structures, places, and areas; and

(ii) archaeological sites; and

(iii) sites of significance to Māori, including wāhi tapu; and

(iv) surroundings associated with ~~those~~ sites within the meaning of **subparagraphs (i) to (iii)**; and

(v) cultural landscapes

cultural landscape means [placeholder]

district, in relation to a territorial authority, means the district of the territorial authority as determined in accordance with the Local Government Act 2002

ecological integrity means the ability of an ecosystem to support and maintain—

(a) its composition: the natural diversity of indigenous species, habitats, and communities that make up the ecosystem; and

(b) its structure: the biotic and abiotic physical features of an ecosystem; and

(c) its functions: the ecological and physical functions and processes of an ecosystem; and

(d) its resilience to the adverse impacts of natural or human disturbances

ecosystem means a system of organisms interacting with their physical environment and with each other

environment means, as the context requires,—

(a) the natural environment:

(b) people and communities and the built environment that they create:

(c) the social, economic, and cultural conditions that affect the matters stated in **paragraphs (a) and (b)** or that are affected by those matters

~~**environmental limits** means the limits required by **section 7** and set under **section 12 or 25**~~

~~**environmental outcomes** means the outcomes provided for in **section 8**~~

environmental limit means a limit referred to in **section 12B or 12C**

environmental outcome means an outcome specified in **section 13A**

freshwater means all water except coastal water and geothermal water

geothermal water—

(a) means water heated within the earth by natural phenomena to a temperature of 30 degrees Celsius or more; and

(b) includes all steam, water, and water vapour, and every mixture of all or any of them that has been heated by natural phenomena

infrastructure [placeholder]

infrastructure services [placeholder]

lake means a body of freshwater that is entirely or nearly surrounded by land

land—

(a) includes land covered by water and the airspace above land; and

(b) includes the surface of water

mineral has the same meaning as in section 2(1) of the Crown Minerals Act 1991

Minister means the Minister of the Crown who, under any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Minister of Conservation means the Minister who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Conservation Act 1987

mitigate, in the phrase "avoid, remedy, or mitigate", includes to offset or provide compensation if that is enabled—

(a) by a provision in the national planning framework or in a plan; or

(b) as a consent condition proposed by the applicant for the consent

national planning framework means the national planning framework made by Order in Council under **section 11**

natural environment means—

(a) the resources of land, water, air, soil, minerals, energy, and all forms of plants, animals, and other living organisms (whether native to New Zealand or introduced) and their habitats; and

(b) ecosystems and their constituent parts

natural hazard means any atmospheric or earth- or water-related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment

person includes—

(a) the Crown, a corporation sole, and a body of persons, whether corporate or unincorporate; and

(b) the successor of that person

plan—

(a) means a natural and built environments plan made in accordance with **section 21**; and

(b) includes a proposed natural and built environments plan, unless otherwise specified

planning committee means the planning committee appointed for a region for the purpose of **section 23**

precautionary approach is an approach that, in order to protect the natural environment if there are threats of serious or irreversible harm to the environment, favours taking action to prevent those adverse effects rather than postponing action on the ground that there is a lack of full scientific certainty

public plan change [placeholder]

region, in relation to a regional council, means the region of the regional council as determined in accordance with the Local Government Act 2002

regional council—

(a) has the same meaning as in section 5 of the Local Government Act 2002; and

(b) includes a unitary authority

regional spatial strategy, in relation to a region, means the spatial strategy that is made for the region under the **Strategic Planning Act 2021**

river—

(a) means a continually or intermittently flowing body of freshwater; and

(b) includes a stream and modified watercourse; but

(c) does not include an irrigation canal, a water supply race, a canal for the supply of water for electric power generation, a farm drainage canal, or any other artificial watercourse

structure—

(a) means any building, equipment, device, or other facility that is made by people and fixed to land; and

(b) includes any raft

target means a measurable direction set out in the national planning framework to support the achievement of an environmental outcome, including the time by which the target must be achieved

territorial authority means a city council or a district council named in Part 2 of Schedule 2 of the Local Government Act 2002

territorial sea means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

te Tiriti o Waitangi has the same meaning as Treaty in section 2 of the Treaty of Waitangi Act 1975

transitional limit means a limit referred to in **section 12E**

unitary authority has the same meaning as in section 5(1) of the Local Government Act 2002

urban form means the physical characteristics that make up an urban area, including the shape, size, density, and configuration of the urban area

water—

(a) means water in all its physical forms, whether flowing or not and whether over or under the ground:

(b) includes freshwater, coastal water, and geothermal water:

(c) does not include water in any form while in any pipe, tank, or cistern

well-being means the social, economic, environmental, and cultural well-being of people and communities, and includes their health and safety.

4 How Act binds the Crown

[Placeholder.]

Part 2
Purpose and related provisions

5 Purpose of this Act

(1) The purpose of this Act is to enable—

(a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and

(b) people and communities to use the environment in a way that supports the well-being of present generations without compromising the well-being of future generations.

(2) To achieve the purpose of the Act,—

(a) use of the environment must comply with the environmental limits; and

(b) environmental outcomes for the benefit of the environment must be promoted; and

(c) any adverse effects on the environment of its use must be avoided, remedied, or mitigated.

(3) In this section, **Te Oranga o te Taiao** incorporates—

(a) the health of the natural environment; and

(b) the intrinsic relationship between iwi and hapū and te taiao; and

(c) the interconnectedness of all parts of the natural environment; and

(d) the essential relationship between the health of the natural environment and its capacity to sustain all life.

6 Te Tiriti o Waitangi

All persons exercising powers and performing functions and duties under this Act must give effect to the principles of te Tiriti o Waitangi.

~~7 Environmental limits~~

~~(1) The purpose of environmental limits is to protect either or both of the following:~~

~~(a) the ecological integrity of the natural environment:~~

~~(b) human health.~~

~~(2) Environmental limits must be prescribed—~~

(a) in the national planning framework (*see* **section 12**); or

(b) in plans, as prescribed in the national planning framework (*see* **section 25**).

(3) Environmental limits may be formulated as—

(a) the minimum biophysical state of the natural environment or of a specified part of that environment:

(b) the maximum amount of harm or stress that may be permitted on the natural environment or on a specified part of that environment.

(4) Environmental limits must be prescribed for the following matters:

(a) air:

(b) biodiversity, habitats, and ecosystems:

(c) coastal waters:

(d) estuaries:

(e) freshwater:

(f) soil.

(5) Environmental limits may also be prescribed for any other matter that accords with the purpose of the limits set out in **subsection (1)**.

(6) All persons using, protecting, or enhancing the environment must comply with environmental limits.

(7) In **subsection (3)(a)**, **biophysical** means biotic or abiotic physical features.

8 Environmental outcomes

To assist in achieving the purpose of the Act, the national planning framework and all plans must promote the following environmental outcomes:

(a) the quality of air, freshwater, coastal waters, estuaries, and soils is protected, restored, or improved:

(b) ecological integrity is protected, restored, or improved:

(c) outstanding natural features and landscapes are protected, restored, or improved:

(d) areas of significant indigenous vegetation and significant habitats of indigenous fauna are protected, restored, or improved:

(e) in respect of the coast, lakes, rivers, wetlands, and their margins,—

(i) public access to and along them is protected or enhanced; and

(ii) their natural character is preserved:

(f) the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga is restored and protected:

(g) the mana and mauri of the natural environment are protected and restored:

(h) cultural heritage, including cultural landscapes, is identified, protected, and sustained through active management that is proportionate to its cultural values:

(i) protected customary rights are recognised:

(j) greenhouse gas emissions are reduced and there is an increase in the removal of those gases from the atmosphere:

(k) urban areas that are well-functioning and responsive to growth and other changes, including by—

(i) enabling a range of economic, social, and cultural activities; and

(ii) ensuring a resilient urban form with good transport links within and beyond the urban area:

(l) a housing supply is developed that—

(i) provides choice to consumers; and

(ii) contributes to the affordability of housing; and

(iii) meets the diverse and changing needs of people and communities; and

(iv) supports Māori housing aims:

(m) in relation to rural areas, development is pursued that—

(i) enables a range of economic, social, and cultural activities; and

(ii) contributes to the development of adaptable and economically resilient communities; and

(iii) promotes the protection of highly productive land from inappropriate subdivision, use, and development:

(n) the protection and sustainable use of the marine environment:

(o) the ongoing provision of infrastructure services to support the well-being of people and communities, including by supporting—

(i) the use of land for economic, social, and cultural activities:

(ii) an increase in the generation, storage, transmission, and use of renewable energy:

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

(i) the significant risks of both are reduced; and

(ii) the resilience of the environment to natural hazards and the effects of climate change is improved.

Part 3
National planning framework

Requirement for national planning framework

9 National planning framework

(1) There must at all times be a national planning framework.

(2) The national planning framework—

(a) must be prepared and maintained by the Minister in the manner set out in **Schedule 1**; and

(b) has effect when it is made by the Governor-General by Order in Council under **section 11**.

~~10 Purpose of national planning framework~~

~~The purpose of the national planning framework is to further the purpose of this Act by providing integrated direction on—~~

~~(a) matters of national significance; or~~

~~(b) matters for which national consistency is desirable; or~~

~~(c) matters for which consistency is desirable in some, but not all, parts of New Zealand.~~

10 Purpose of national planning framework

The purpose of the national planning framework is to further the purpose of this Act by—

(a) providing directions on the integrated management of the environment in relation to—

(i) matters of national significance; and

(ii) matters for which national consistency is desirable; and

(iii) matters for which consistency is desirable in some, but not all, parts of New Zealand; and

(b) helping to resolve conflicts about environmental matters, including those between or among the environmental outcomes; and

(c) setting environmental limits and strategic directions (*see* **section 14**).

11 National planning framework to be made as regulations

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make the national planning framework in the form of regulations.

(2) The regulations may apply—

(a) to any specified region or district of a local authority; or

(b) to any specified part of New Zealand.

(3) The regulations may—

(a) set directions, policies, ~~goals,~~ rules, ~~or~~ and methods:

(b) provide criteria, targets, ~~or~~ and definitions.

(4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

~~*Contents of national planning framework*~~

~~**12 Environmental limits**~~

~~(1) Environmental limits—~~

~~(a) may be prescribed in the national planning framework; or~~

~~(b) may be made in plans if the national planning framework prescribes the requirements relevant to the setting of limits by planning committees.~~

~~(2) Environmental limits may be prescribed—~~

~~(a) qualitatively or quantitatively:~~

~~(b) at different levels for different circumstances and locations.~~

Environmental limits

12A Purpose of environmental limits

(1) The only purpose for which environmental limits may be set is to protect either or both—

(a) the ecological integrity of the natural environment:

(b) human health.

(2) All persons using, protecting, or enhancing the environment must comply with environmental limits (*but see* **section 12E(7)**, which applies if an environmental limit is prescribed in conjunction with a transitional limit).

12B Environmental limits in national planning framework

(1) The national planning framework must prescribe environmental limits for the following aspects of the natural environment:

(a) air:

(b) indigenous biodiversity:

(c) coastal waters:

(d) estuaries:

(e) freshwater:

(f) soil.

(2) The national planning framework may prescribe environmental limits for any other aspect of the natural environment.

12C Environmental limits in plans

(1) The national planning framework may prescribe an environmental limit by—

(a) requiring it to be prescribed, wholly or in part, by plans; and

(b) prescribing how planning committees decide on the limit to set in the plan for their region (which may include setting process or substantive requirements).

(2) However, environmental limits for the aspects of the natural environment that are specified in **section 12B** must not be wholly prescribed by plans.

12D Form of environmental limits

(1) An environmental limit may be expressed, in relation to the natural environment or a specified part of that environment, as—

(a) the minimum biophysical state; or

(b) the maximum amount of harm or stress that may be permitted.

(2) An environmental limit may be—

(a) qualitative or quantitative:

(b) set at different levels for different circumstances and locations:

(c) set in a way that integrates more than 1 of the aspects of the natural environment listed in **section 12B(1)**.

(3) In **subsection (1)(a)**, **biophysical** means relating to biotic or abiotic physical features.

Transitional limits

12E Transitional limits in national planning framework or plans

(1) The national planning framework may, in prescribing an environmental limit for a specified aspect of the natural environment, also prescribe 1 or more transitional limits in conjunction with that environmental limit.

(2) **Subsection (1)** applies if the Minister is satisfied, in relation to the specified aspect of the natural environment,—

(a) that its existing state is degraded below the level required to protect ecological integrity or human health; or

(b) that the existing harm to it, or stress on it, is too great to allow the protection of ecological integrity or human health.

(3) The national planning framework may prescribe a transitional limit by—

(a) requiring it to be prescribed, wholly or in part, by plans; and

(b) prescribing how planning committees decide on the limit to set in the plan for their region (which may include setting process or substantive requirements).

(4) In prescribing a transitional limit, the national planning framework or plan—

(a) must specify when the transitional limit is to be replaced by the related environmental limit; and

(b) may specify when a more stringent transitional limit is to apply.

(5) The details required by **subsection (4)** may include reference to a specified date or event.

(6) **Section 12D** applies to the setting of transitional limits.

(7) All persons using, protecting, or enhancing the environment must comply with a transitional limit, instead of the related environmental limit, until the transitional limit is replaced by the related environmental limit.

Environmental outcomes

~~**13 Topics that national planning framework must include**~~

~~(1) The national planning framework must set out provisions directing the outcomes described in—~~

~~(a) **section 8(a)** (the quality of air, freshwater, coastal waters, estuaries, and soils); and~~

~~(b) **section 8(b)** (ecological integrity); and~~

~~(c) **section 8(c)** (outstanding natural features and landscapes); and~~

~~(d) **section 8(d)** (areas of significant indigenous vegetation and significant habitats of indigenous animals); and~~

~~(e) **section 8(j)** (greenhouse gas emissions); and~~

~~(f) **section 8(k)** (urban areas); and~~

~~(g) **section 8(l)** (housing supply); and~~

~~(h) **section 8(o)** (infrastructure services); and~~

~~(i) **section 8(p)** (natural hazards and climate change);.~~

~~(2) The national planning framework may also include provisions on any other matter that accords with the purpose of the national planning framework, including a matter relevant to an environmental outcome provided for in **section 8**.~~

~~(3) In addition, the national planning framework must include provisions to help resolve conflicts relating to the environment, including conflicts between or among any of the environmental outcomes described in **section 8**.~~

13A Environmental outcomes

The national planning framework and all plans must provide for the following environmental outcomes:

Natural environment

(a) the protection or, if degraded, restoration of—

(i) the health, mana, and mauri of air, freshwater, coastal waters, estuaries, soils, and indigenous biodiversity:

(ii) outstanding natural features and outstanding natural landscapes:

(iii) the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers, and their margins:

Cultural values

(b) in relation to cultural values—

(i) protection and restoration of the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna, and other taonga:

(ii) conservation of cultural heritage:

Climate change and natural hazards

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

(i) reduced greenhouse gas emissions, including by low-emission urban form and increased utilisation of renewable energy:

(ii) increased removal of greenhouse gases from the atmosphere:

(iii) reduced risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change:

Well-functioning urban and rural areas

(d) well-functioning urban and rural areas, including by—

(i) enabling enough development for housing, business use, and primary production to meet the diverse and changing needs of people and communities:

(ii) the ongoing and timely provision of infrastructure services:

(iii) an urban form that promotes economic, social, cultural, and environmental benefits:

(iv) the preservation of highly productive land for food production:

(v) enhanced public access to and along the coastal marine area, lakes, and rivers.

13B Contents of national planning framework relating to environmental outcomes

(1) The national planning framework must—

(a) set directions relevant to each of the environmental outcomes; and

(b) provide direction for the resolution of conflicts about environmental matters, including those between or among the environmental outcomes.

(2) Directions given under **subsection (1)(a)** need only be in such detail as is appropriate to the particular environmental outcome.

~~**14 Strategic directions to be included**~~

~~The provisions required by **sections 10, 12, and 13** must include strategic goals such as—~~

~~(a) the vision, direction, and priorities for the integrated management of the environment within the environmental limits; and~~

~~(b) how the well-being of present and future generations is to be provided for within the relevant environmental limits.~~

Other matters

14 Other contents of national planning framework

(1) The national planning framework must include strategic direction on—

(a) how decision makers are to achieve the environmental outcomes; and

(b) how the well-being of present and future generations is to be provided for within the relevant environmental limits; and

(c) the key long-term environmental issues and priorities and how they are to be dealt with.

(2) The national planning framework may also include provisions about any other matter that accords with the purpose of the national planning framework.

15 Implementation of national planning framework

(1) The national planning framework may direct that certain provisions in the framework—

(a) must be given effect to through the plans; or

(b) must be given effect to through regional spatial strategies; or

(c) have direct legal effect without being incorporated into a plan or provided for through a regional spatial strategy.

(2) If certain provisions of the national planning framework must be given effect to through plans, the national planning framework may direct that planning committees—

(a) make a public plan change; or

(b) insert that part of the framework directly into their plans without using the public plan change process; or

(c) amend their plans to give effect to that part of the framework, but without—

(i) inserting that part of the framework directly into their plans; or

(ii) using the public plan change process.

(3) Amendments required under this section must be made as soon as practicable within the time, if any, specified in the national planning framework.

~~16 Application of precautionary approach~~

~~In setting environmental limits, as required by **section 7**, the Minister must apply a precautionary approach.~~

16 Matters to be considered in preparation of national planning framework

[Placeholder: This clause is subject to further policy work on the criteria to be applied in preparing the national planning framework. It is anticipated that the matters in this clause will be included in the procedural matters to be set out in Schedule 1.]

(1) Before environmental limits are prescribed in the national planning framework under this Part, the Minister must apply the precautionary approach.

(2) Before recommending to the Governor-General under **section 11** that directions be made in relation to the resolution of conflicts about environmental matters, the Minister must consider the extent to which it is appropriate for such conflicts to be resolved generally by directions given—

(a) in the national planning framework; or

(b) at a regional level through plans.

17 [Placeholders]

[Placeholder for other matters to come, including—

(i) the role of the Minister of Conservation in relation to the national planning framework; and

(ii) the links between this Act and the Climate Change Response Act 2002.]

18 Implementation principles

[Placeholder for implementation principles. The drafting of this clause is at the indicative stage; the precise form of the principles and of the statutory functions they apply to are still to be determined. In paras (b) and (e), the terms in square brackets need to be clarified as to the scope of their meaning in this clause.]

[Relevant persons must]—

(a) promote the integrated management of the environment:

(b) recognise and provide for the application, in relation to [te taiao], of [kawa, tikanga (including kaitiakitanga), and mātauranga Māori]:

(c) ensure appropriate public participation in processes undertaken under this Act, to the extent that is important to good governance and proportionate to the significance of the matters at issue:

(d) promote appropriate mechanisms for effective participation by iwi and hapū in processes undertaken under this Act:

(e) recognise and provide for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of [te taiao]:

(f) have particular regard to any cumulative effects of the use and development of the environment:

(g) take a precautionary approach.

Part 4
Natural and built environments plans

Requirement for natural and built environments plans

19 Natural and built environments plans

There must at all times be a natural and built environments plan (a **plan**) for each region.

20 Purpose of plans

The purpose of a plan is to further the purpose of the Act by providing a framework for the integrated management of the environment in the region that the plan relates to.

21 How plans are prepared, notified, and made

(1) The plan for a region, and any changes to it, must be made—

(a) by that region's planning committee; and

(b) using the process set out in **Schedule 2**.

(2) [Placeholder for status of plans as secondary legislation.]

Contents of plans

22 Contents of plans

(1) The plan for a region must—

(a) state the environmental limits that apply in the region, whether set by the national planning framework or under **section 25**; and

(ab) state any transitional limits that apply in the region, whether prescribed by the national planning framework or under **section 25**; and

(b) give effect to the national planning framework in the region as the framework directs (*see* **section 15**); and

(c) ~~promote~~ provide for the environmental outcomes ~~specified in **section 8**~~, subject to any direction given in the national planning framework; and

(d) [placeholder] be consistent with the regional spatial strategy; and

(e) identify and provide for—

(i) matters that are significant to the region; and

(ii) for each district within the region, matters that are significant to the district; and

(f) [placeholder: policy intent is that plans must generally manage the same parts of the environment, and generally control the same activities and effects, that local authorities manage and control in carrying out their functions under the Resource Management Act 1991 (*see* sections 30 and 31 of that Act)]; and

(g) help to resolve conflicts relating to the environment in the region, including conflicts between or among any of the environmental outcomes ~~described in **section 8**~~; and

(h) [placeholder for additional specified plan contents]; and

(i) include anything else that is necessary for the plan to achieve its purpose (*see* **section 20**).

(2) A plan may—

(a) set objectives, rules, processes, policies, ~~or~~ and methods:

(b) identify any land or type of land in the region for which a stated use, development, or protection is a priority:

(c) include any other provision.

Planning committees

23 Planning committees

(1) A planning committee must be appointed for each region.

(2) The committee's functions are—

(a) to make and maintain the plan for a region using the process set out in **Schedule 2**; and

(b) to approve or reject recommendations made by an independent hearings panel after it considers submissions on the plan; and

(c) to set any environmental limits and transitional limits for the region that the national planning framework ~~authorises the committee to set~~ requires the plan to prescribe (*see* **section ~~7~~ 25**).

(3) Provisions on the membership and support of a planning committee are set out in **Schedule 3**.

24 Considerations relevant to planning committee decisions

(1) A planning committee must comply with this section when making decisions on a plan.

(2) The committee must have regard to—

(a) any cumulative effects of the use and development of the environment:

~~(b) any technical evidence and advice, including mātauranga Māori, that the committee considers appropriate:~~

(b) mātauranga Māori and any technical evidence and advice that the committee considers appropriate:

(c) whether the implementation of the plan could have effects on the natural environment that have, or are known to have, significant or irreversible adverse consequences:

(d) the extent to which it is appropriate for conflicts to be resolved generally by the plan or on a case-by-case basis by resource consents or designations.

(3) The committee must apply the precautionary approach.

(4) The committee is entitled to assume that the national planning framework furthers the purpose of the Act, and must not independently make that assessment when giving effect to the framework.

(5) [Placeholder for additional matters to consider.]

(6) In **subsection (2)(d)**, **conflicts**—

(a) means conflicts relating to the environment; and

(b) includes conflicts between or among any of the environmental outcomes ~~described in **section 8**~~.

25 Power to set environmental limits and transitional limits for region

(1) This section applies only if the national planning framework—

(a) ~~specifies an environmental limit that must be set by the plan for a region, rather than by the framework~~ requires the plan for a region to prescribe an environmental limit or a transitional limit; and

(b) prescribes how the region's planning committee must decide on the limit to ~~set~~ prescribe.

(2) The planning committee must—

(a) decide on the limit in accordance with the prescribed ~~process~~ requirements; and

(b) set the limit by including it in the region's plan.

Schedule 1
Preparation of national planning framework

s 9

[placeholder]

Schedule 2
Preparation of natural and built environments plans

s 21

[placeholder]

Schedule 3
Planning committees

s 23

Contents

Membership

1 Membership of planning committees

(1) The members of a region's planning committee are—

(a) 1 person appointed under **clause 2** to represent the Minister of Conservation:

(b) mana whenua representatives appointed under **clause 3**:

(c) either—

(i) 1 person nominated by each local authority that is within or partly within the region; or

(ii) [placeholder for appropriate representation if the regional council is a unitary authority].

(2) Despite **subclause (1)(c)**, the same person may be nominated by more than 1 local authority for the purpose of that paragraph.

2 Appointment of member to represent Minister of Conservation

[Placeholder.]

3 Appointment of mana whenua members

[Placeholder] This section sets out—

(a) how many mana whenua representatives may be appointed to a planning committee; and

(b) how those representatives are selected and appointed.

4 Appointment of planning committee chairperson

[Placeholder.]

Support

5 Planning committee secretariat

(1) [Placeholder] Each planning committee must establish and maintain a secretariat.

(2) The function of the secretariat is to provide any advice and administrative support that the committee requires to help it carry out its functions under this Act, including, for example, to—

(a) provide policy advice:

(b) commission expert advice:

(c) draft plans and changes to plans:

(d) co-ordinate submissions.

(3) [Placeholder: policy intent is that local authorities support secretariat.]

6 Local authorities must fund secretariat

[Placeholder.]