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Environmental Defence Society submission on the exposure draft of the Natural and Built Environments Bill (and accompanying parliamentary paper)

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1. Introduction

The Environmental Defence Society (EDS) thanks the Environment Select Committee for the opportunity to make a submission on the exposure draft of the Natural and Built Environments Bill (the Bill) and accompanying parliamentary paper.

EDS is a not-for-profit organisation dedicated to achieving good environmental outcomes for all New Zealanders. It is active in capacities as a litigator, a policy think tank, and a conference organiser. It has recently completed multi-year project looking at the future of the broader resource management system in New Zealand, and both phases of this project were key inputs required to be considered in the terms of reference of the government's independent review panel chaired by Hon Tony Randerson QC.

EDS has also been active in advising on various matters relating to the development of the Bill and wider resource management reform package. We are pleased to see that some of the concerns we have raised have been addressed in the Bill, although a number of concerns remain outstanding.

We note that the exposure draft of the Bill contains only a selection of provisions, and the relationship with these provisions and others that have yet to be drafted will be significant. In other words, it is difficult to provide a comprehensive submission on the provisions that *have* been included (especially in terms of their detailed drafting) without knowing how they will relate to ones that have not.

For clarity, in this submission we refer to the provisions included in the exposure draft of the Bill as "the Bill", and refer to the proposed legislation as a whole (including provisions not yet drafted) as the Natural and Built Environments Bill, or "NBEB".

The NBEB, essentially, is intended to replace the Resource Management Act 1991 (RMA). It is designed to fill much the same conceptual space in a future resource management system, and make use of a conceptually similar machinery and range of tools (national direction, plans, consents, designations and so forth). We also note the general policy intention is to follow the recommendations of the Randerson Panel. The Bill before the Select Committee is focused on what can be described as the normative heart of the NBEB – its purpose and principles and a framework for the core tools that will be used to achieve it.

In the first section of our submission, we outline what we see as positive aspects of the Bill. This is important, to ensure good elements of the drafting and structure are not undermined. We then focus our submission on what we see as the essential components of the Bill that require amendment or more nuance. We conclude by commenting on the important links that will need to be made between the provisions in the Bill and the NBEB as a broader piece of legislation.

2. The Bill has positive aspects

There are a number of positive features of the Bill, including some that respond to matters we have raised in the past. These features must be retained. Some of these are a reflection of the improvements recommended by the Randerson Panel, while others improve upon those recommendations further. We commend the Panel and subsequent policy development. In particular:

- A new purpose of the legislation quite different to sustainable management (recommended by the Panel);
- The inclusion of a separate, clearly defined, legal category for the concept of environmental limits distinct from other "outcomes" (recommended by the Panel);
- The inclusion of a more specific purpose for environmental limits, so that these are set with reference to that more protective purpose rather than the more general purpose of the legislation (not specifically recommended by the Panel);
- The inclusion of positive outcomes to pursue, rather than the maintenance of existing outcomes (recommended by the Panel);
- The ability for "limits" to include provisions in plans (ie limits targeted at local circumstance), not just in the national planning framework (not specifically recommended by the Panel);
- The ability for "limits" to include policy provisions, not just "regulations" in National Environmental Standards
- The creation of an integrated national planning framework, rather than a more comprehensive set of national direction in the form of NPSs and NESs (not specifically recommended by the Panel)
- Changes to the plan making process, including the use of a regional planning committee and the production of a combined plan at a regional level (recommended by the Panel).

3. EDS has outstanding concerns

EDS has a number of outstanding concerns. Below, we outline what these are across six sections, and make recommendations for how they should be addressed. At the end of each section (in yellow boxes), we provide tracked changes to drafting to reflect our recommendations. We have compiled these recommended drafting changes in Appendix 1.

Overall, what is required is more nuance in drafting that is easily achieved, rather than fundamental change.

3.1 Purpose

Although it is short and general, it is vitally important to get the drafting of the NBEB's purpose right, because it may serve as the ultimate test against which many more specific decisions are made.

The purpose of the NBEB is drafted as follows:

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 environmental limits; and
(b) 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.

This has potential to be a substantial improvement on the purpose of sustainable management in the RMA. However, several matters require improvement.

1. It is inappropriate for the purpose of the legislation to be "enabling" the protection of the natural environment. This is passive language for a statute that is consciously intended to be driving change. More directive and active language would be for the Act to "uphold" such things. The language of "enabling" would be more appropriate in subsection (1)(b), albeit with the caveat mentioned below.

   The purpose of the NBEB should not be to "enable" the protection of the natural environment. It needs to be more directive.

2. The caveat referred to above is that there needs to be a clearer relationship between the "protective" element of the purpose and the "use" element. The adoption of the word "and" in cl 5(1)(a) is problematic. Experience under the RMA has been that the term "while" (interpreted as "at the same time as") has been open to extensive interpretation, because those two elements cannot always happen at the same time.

   If the NBEB's purpose is to be used as a lodestar for decision-making on national direction, plans or consents, it will be vitally important that the relationship is firmer and expressed as a hierarchy. The term "and" should be replaced by a term like "then". This reflects the more modern approach used in the hierarchy under the NPS for Freshwater Management, where the needs of the river are said to come first, *then* other things.

   The relationship between protecting the natural environment and using it should be one involving a clear hierarchy. This needs to be more strongly articulated in the NBEB's purpose.

3. Although we support the use of a concept like Te Oranga o te Taiao over a formulation like sustainable management, there are a number of potential issues with it.

   For one, it is not specifically defined in cl 5(3). Instead, the concept itself is said to *incorporate* various things like the health of the natural environment (begging the question what *else* it might incorporate), and "upholding" it is also said in s 5(1)(a) to "include" protecting the natural environment (again, begging the question what *else* it might include).

   Related to that question is *who* gets to define what else it includes and incorporates. There may be an assumption that tangata whenua will be best placed to do so, given it is a concept expressed in te reo Māori and we understand it has been developed by experts in te ao Māori. But the Bill leaves this function unclear, and does not directly contemplate that *anyone* will do so. It is inappropriate to leave such policy gaps to be filled by the courts.

   An open-ended definition is not ideal if the purpose of the NBEB is going to be used as a lodestar for decision-making. If it is not to be used this way (ie the purpose is intended to be descriptive of what the rest of the legislation does rather than operative), that

needs to be stated specifically. If it *is* intended to be an operative provision (eg the ultimate test in decisions on national direction, plans and consents), then it needs to be specifically defined as "meaning" something, not "incorporating" and "including" things.

While it is not necessarily a *problem*, it is worth thinking carefully about the relationship between environmental protection (one aspect of Te Oranga o te Taiao) and the intrinsic relationship between iwi and hapu and te taiao (another aspect of the same concept). Is there a scenario in which those two things might come into conflict, and in that case which one wins out? It may be more appropriate for an "intrinsic relationship" to be framed as a "kaitiaki" or "whakapapa" relationship as it is more specific and may better reflect the intent described in the parliamentary paper accompanying the Bill.[1]

A better definition of te Oranga o te Taiao might be already provided in cl 8(g) of the Bill. This might see the following definition:

> [Te Oranga o te Taiao means that] the mana and mauri of the natural environment are protected and restored.

This would provide more certainty to the overall application of the legislation, while still leaving room for tangata whenua to identify what it means in practice when applied to specific circumstances within their rohe.

Although the use of a novel term like Te Oranga o te Taiao is not itself problematic, and it is appropriate for its place-based *application* to be guided by experts in te ao Māori, it is inappropriate for a term that is central to the purpose of the legislation to be defined in an open-ended way. It needs to be defined as *meaning* something that is amenable to clear interpretation in the courts, not *including* or *incorporating* things.

4. In our view the use of the term "use" of the environment in cl 5(2)(a) is also too narrow. It is not just the use of the environment that must comply with environmental limits. The risk is that already degraded parts of the environment remain degraded even if no one is using them, because the damage has already been done. Environmental limits must also stand firm in the face of change (eg climate change), and must not be allowed to lose their ecosystem integrity as a result of such pressures. It would be better to state that environmental limits must not be "breached".

It is not just the "use" of the environment that must comply with environmental limits. Limits include minimum measures of environmental health that must, at a minimum, be defended/achieved even where that part of the environment is not being used.

5. As also mentioned below in relation to cl 8 (outcomes), it should be made clear in cl 5(2)(b) that outcomes for the benefit of the "environment" (which includes a wide range of human activities, not just the natural environment) need to be achieved in a way that achieves synergies with outcomes that focus on the health of the natural environment.

[1] At [94] of the parliamentary paper.

The risk otherwise is that these outcomes will be treated in practice as trade-offs and outcomes will push as close as possible to environmental limits.

We also consider that the use of the term "promoted" in cl 5(2)(b) is awkward, reading more like something an advertising agency does than a legal framework.[2] It also implies that passive measures may be enough, for example to "make people aware" of an outcome, whereas in reality this may require regulatory and financial mechanisms. This should be reframed as something more familiar and firmer, such as "pursued" or "recognised and provided for".

To achieve the purpose of the legislation, it will not be enough to "promote" positive outcomes. The language needs to be firmer, requiring outcomes to be "pursued" or "recognised and provided for".

6. The three ways in which the purpose of the NBEB are to be achieved (in cl 5(2)(a)-(c)) also require a clearer hierarchy. This could be achieved by clarifying that (b) and (c) are "subject to" the achievement of (a).

There needs to be a clearer hierarchy in the list of ways in which the purpose of the legislation is to be achieved.

7. The reference to "mitigation" in cl 5(2)(c) is concerning, given that "mitigation" is defined as including offsetting and compensation without imposing a clear hierarchy as to when avoidance, remediation, mitigation and offsetting/compensation is appropriate. There is a significant amount of nuance in the case law surrounding the use of such measures that should be carefully considered before including this term. To be safe, we recommend that the term "mitigation" be included without additional reference to offsetting, and simply to let the existing case law stand, to ensure offsetting and compensation are used appropriately.

   This is particularly important because the purpose of an environment limit (see further below) is not phrased in a way that reflects valuable *local* environments. The risk of offsetting and compensating in this context is that environmental limits might be achieved by simply trading off extensive damage in one place (eg areas with high agricultural potential) for benefits in another (a bush environment).

   We also note that while net benefits (notably for biodiversity) can be achieved through a biobanking framework for offsetting, this needs to be part of a well-developed and much more nuanced legal framework for biobanking, which is not included in the NBEB as it stands.

Concepts like offsetting and compensation should not be included in the mitigation hierarchy without also including clear legislative safeguards around their use. That is particularly important where such things form a core part of the purpose of the legislation.

[2] The RMA talks about the promotion of sustainable management, but that too is an unusual framing.

8. With respect to cl 6 (Te Tiriti o Waitangi), we support the general use of such clauses that *give effect* to the principles of te Tiriti. That is consistent with the Crown's obligation of partnership.[3] We simply flag that policy makers will need to turn their attention to the implications that this has for allocative decisions. While there are no provisions in the exposure draft that tackle allocative questions directly, and no mention is made of such implications in the parliamentary paper,[4] case law on the identically worded provision in the Conservation Act (the *Ngai Tai* decision) has confirmed that in some cases in the context of the conservation estate, this will require preference to be given to iwi/hapū.[5] That may well sometimes be appropriate for aspects of the environment managed under the NBEB (eg freshwater, coastal occupation etc), but it needs to occur within a proper framework (including principles that are up front about such things) that provides a degree of certainty for all.

While it is good practice, careful thought will need to be given to the implications of "giving effect" to the principles of te Tiriti o Waitangi for allocative decision-making, which is not an aspect of the NBEB addressed in the Bill.

9. As an aside, we note that defining the natural environment to include the "resources" of land, water, air and so forth continues a highly anthropocentric view of the environment that sits uneasily with concepts like te Oranga o te Taiao. There is no need to include the phrase "the resources of" at all, as "resources" is not itself defined.

The natural environment should not be defined with reference to "resources".

Drafting recommendations: purpose

3 Interpretation

…

~~**mitigate**, in the phrase "avoid, remedy, or mitigate", includes to offset or pro- vide 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~~ [unless a more developed framing around offsetting and compensation is to be included in the NBEB]

….

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

…

[3] Parliamentary paper at [103].

[4] Parliamentary paper at [101]-[106]. However, there is a paragraph that talks about giving effect to Te Tiriti in the Bill itself rather than an NPS, and it is "intended that guidance and direction on this will be contained in further provisions of the NBA" (at [123]).

[5] *Ngāi Tai ki Tāmaki v Minister of Conservation* [2018] NZSC 122.

5 Purpose of this Act

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

(a) uphold Te Oranga o te Taiao, ~~to be upheld, including by protecting and enhancing the natural environment~~; then~~and~~
(b) enable people and communities to use and enjoy the environment in a way that supports the well-being of present generations without compromising the well-being of future generations.

(2) ~~To achieve t~~The purpose of the Act requires,—

(a) ~~use of the environment must comply with~~ environmental limits to be established and complied with~~;~~ and;
(b) subject to (a), positive environmental outcomes ~~for the benefit of the environment must be~~to be ~~promoted~~pursued; and
(c) subject to (a), 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~~means that the mana and mauri of the natural environment are protected, restored and enhanced in all its aspects, and recognises the importance of the kaitiaki relationship between iwi and hapū and te taiao.~~—~~

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

3.2 Environmental limits

It is a very good thing that a separate legal category for environmental limits has been provided in the Bill. However, a number of matters require further attention.

The key provisions relating to limits are as follows:

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.

10. We note that the concept of "ecological integrity" is defined in cl 3 as the ability of an ecosystem to support and maintain a number of things, including its composition – "the natural diversity of indigenous species, habitats, and communities that make up the ecosystem". Thus, while the purpose of limits does not specifically refer to the importance of protecting *indigenous* biodiversity over *non-indigenous* biodiversity, that comes through in the definition of ecological integrity. In other words, ecological integrity cannot be protected without supporting indigenous biodiversity – it is a pre-requisite.

    We also note that while a core component of "ecological integrity" is the diversity of *indigenous* species, the "natural environment" is defined as including non-indigenous organisms and their habitats. This means that there is, effectively, a specific legal obligation to protect indigenous biodiversity contained in non-indigenous habitats (for example, plantation forests). That is a good thing.

    That said, there is potential to strengthen the Bill with respect to the protection of indigenous biodiversity. It could be made clear that ecological integrity cannot be achieved without maintaining indigenous biodiversity, for example by merging the definition in the Bill with that provided in the Environmental Reporting Act:

the full potential of indigenous biotic and abiotic features and natural processes, functioning in sustainable communities, habitats, and landscapes.

This might see a formulation like the following:

> **ecological integrity** means the ability ~~of an ecosystem~~ to support and maintain the full range of New Zealand's indigenous biological diversity, both within particular ecosystems and across ecosystems. It requires supporting and maintaining —
>
> (a) representation: the occurrence and extent of ecosystems and indigenous species and their habitats across the full range of environments;
> (b) ~~(a) its~~ composition: the full range, natural diversity, and abundance of indigenous species, habitats of indigenous species, and communities ~~that make up the ecosystem~~ within and across ecosystems, allowing for ecological changes such as succession; and
> (c) ~~(b) its~~ structure: the biotic and abiotic ~~physical~~ features and characteristics of ecosystems, including their extent; and
> (d) ~~(c) its~~ functions: the ecological and physical functions and processes ~~of an~~ that sustain representation, composition, or structure; and
> (e) ~~(d) its~~ any other properties that contribute to resilience of composition, structure, or function to the adverse impacts of natural or human disturbances.

11. There needs to be greater clarity as to how the separate purpose of environmental limits (in cl 7(1)) relates to the more general purpose of the legislation in cl 5 (particularly given the open-ended nature of the purpose described above). While *one* way in which the purpose of the legislation is said to be achieved is through compliance with environmental limits, cl 5(2) provides *other* ways in which it will be achieved as well.

    With the current drafting in the Bill, when setting limits, there is the risk that the broader purpose of the legislation can be referred to as a way to undermine or colour the interpretation of the narrower purpose of environmental limits. The Bill should clarify that the "overall broad judgement" approach (where the more protective policies of instruments under the RMA – essentially, limits – could be "trumped" by referring to the more balanced set of matters in the Act's purpose) is not possible under the NBEB.

    This issue can be at least partly resolved by the clarification recommended in [2] and [6] above, but should be made consistent in cl 7(1) as well. This could be achieved by clarifying that the purpose of environmental limit setting has primacy over the purpose of the NBEB itself when setting limits. In principle this is not dissimilar to how water conservation orders work under the RMA now (they have a separate purpose within the Act).

    It should be made clear that the purpose of environmental limits is not subject to the broader purpose of the NBEB.

12. The Bill provides in cl 7(3) that environmental limits may be formulated in two ways: a minimum environmental state or a maximum amount of permitted stress/pressure. The use of the term "permitted" here is confusing, as it suggests a permitted activity status (and therefore potentially allows additional damage to be done through "consented" activities). That is not the policy intention, so should be reframed as a less technical term such as "allowed".

The term "permitted" in cl 7(3) should be replaced with a less technical term such as "allowed" to better reflect the policy intent.

More significantly, a third category of environmental limit should be included in a new subsection (c). That would specifically include "controls on particular human activities" impacting on the minimum biophysical state or contributing to maximum pressure. The risk of not including this category is that the NBEB sets (1) ambitious states of the environment, and (2) maximum pressures tolerated, but fails to give the same status to actual regulatory controls on the activities having an impact.

In some cases, there may be multiple activities contributing to the infringement of a limit (eg in a catchment), and it is not always clear who is contributing what or what controls should follow relative to each other. A control on any one of them – including a policy concerning things like clear fell harvesting or stocking rates – should also be regarded as a "limit" for the purposes of the Act.

A new cl 7(3)(c) should be inserted to include a new category of environmental limit: the controls on particular activities necessary to not infringe a minimum biophysical state or a maximum pressure.

Related to the above point, it needs to be made clearer as to what consequences actually flow from a provision (in the national planning framework or a plan) having the legal status of a limit. One consequence contemplated by cl 7(6) the Bill already is that "all persons using, protecting or enhancing the environment" must comply with limits.

This is important when it comes to consenting. Although the Bill does not outline the provisions relating to decision-making on resource consents, under the RMA there is a requirement to "have regard" to a number of things. The obligation to "comply" with limits is a much firmer one, and means that the above point (that policies outlining controls on actual *activities* should be included as a "limit") is extremely important when it comes to consenting. The parliamentary paper accompanying the Bill highlights the intent for there to be strong links between limits and other instruments that will manage harmful activities.[6]

Status as a "limit" should also have other consequences. For example, a provision flagged as a limit in a plan should not be able to be changed through a private plan change process (similar to the inability to seek private plan changes under regional

[6] Parliamentary paper at [143].

policy statements at the moment). It should also be required to be monitored and reported on specifically, including under the Environmental Reporting Act.

Careful thought should be given to what consequences flow from a provision having a specific legal status as a "limit". For instance, such provisions should not be able to be changed through a private plan change and should be highlighted in environmental reporting. These provisions will need to be contained elsewhere in the NBEB.

13. The cl 7(6) duty to comply with limits should also be extended, to include not just "all persons using, protecting or enhancing the environment" but also "all those exercising functions under the Act" as well as any other act. That would ensure that, once established, limits for minimum environmental states and maximum pressures or stresses would need to be translated into regulatory controls on particular activities when it comes to planning and consenting, and that limits could not be infringed through other legislation (such as the Urban Development Act).

A duty to comply with environmental limits should specifically include those exercising functions and powers under the NBEB.

14. There is also a concerning gap in cl 7(3) of the Bill with respect to targets. The Randerson Panel anticipated that targets would be required to be to set to achieve outcomes (including in national direction). The Bill does not do this, on the basis that it would be unworkable and unnecessary to require targets to be set for every single one of the diverse outcomes mentioned in what has become cl 8. That is understandable.

However, one place in which it is essential to set mandatory and binding targets is in the context of environmental limits. This is because limits may already be infringed in some places, and the imperative is not just to defend what remains, but also to improve it to what it should be. This requires the insertion of a new cl 7(3B), specifying that when the biophysical state of a part of the natural environment does not currently reflect the purpose for which limits must be set, they must be expressed as a binding target and an action plan developed to comply with those limits as soon as practicable.

The parliamentary paper associated with the Bill contemplates that establishing what targets are, and for what matters they will be set, will be progressed through the development of the national planning framework.[7] However, that will not be adequate for targets that are needed to return to a safe space above environmental limits – legislative framing is required to ensure that this happens.

The Bill should require targets to be set for "improvement" where limits have already been exceeded. At present, the Bill does not contemplate mandatory targets, even though they were recommended by the Randerson Panel.

15. The *purpose* of environmental limits in cl 7(1) should also be expanded to reflect the fact that some ecosystems have already lost their integrity (including their natural diversity

[7] At [125].

of indigenous species). As currently drafted, limits only have a purpose to *protect* ecological integrity or human health. This arguably implies protection of what is there now from further activities. It should be changed to wording that talks about making sure that the environment is not "in a biophysical state" that infringes limits.

The purpose of environmental limits should be broadened so it includes not just the protection of the environment from further harm, but also the need for limits to be achieved where they have already been exceeded.

16. The purpose of environmental limits in cl 7(1) should be expanded in another way, too: to ensure that "overall" measurements of ecosystem integrity and human health cannot be achieved at the expense of localised degradation. As mentioned in [6] above, the risk of allowing unfettered offsetting/compensation is that limits are regarded as national or regional level averages, hiding significant variation in environmental health within them. That raises not just ecological issues, but also risks of environmental injustice (where the environment is more degraded in areas of lower socio-economic condition).

    Safeguarding limits in this way would not prevent the establishment of place-based limits (ie policies or numerical figures tailored to the ecological characteristics of particular catchments, areas or environments),[8] but it would ensure that the *concept* of a limit could not be infringed in any of them. At the very least, the purpose of environmental limits should be refined to be "protecting the natural environment, *including* its ecological integrity…".

    The scale at which "limits" should be measured deserves closer attention by policy makers. This is already well developed with respect to freshwater (in the NPS for Freshwater Management) and air quality (in the NES on Air Quality), but is much less clear when it comes to biodiversity (eg whether it is acceptable for existing significant natural areas to be damaged if offset elsewhere). The Bill contemplates that limits can be imposed at different geographical scales ("levels"), but does not outline what those are for different domains.

    The Bill should make clear that environmental limits measured at a national or other coarse scale cannot be achieved by infringing limits in some places and offsetting them through improvements elsewhere.

17. More specificity should be provided with respect to the matters for which environmental limits "must be prescribed" in cl 7(4). As drafted, these are simply a list of domains. The risk is that a duty to establish limits for each of these things stops short of a comprehensive range of limits *within* those domains that will actually achieve ecological integrity.

    For example, many things impact on the ecological integrity of freshwater, such as nutrients, sediment, pathogens from wastewater, plastics, contaminants in stormwater

[8] Which is envisaged in the fact that the Bill contemplates limits in plans that will give effect to limits in a national planning framework.

and so forth. There should be a clear duty to set limits for *all* aspects of these matters that are needed to achieve the purposes for which limits are set.

We recommend that a schedule be developed outlining the specific aspects of these domains that require limits, and that cl 7(4) be amended to refer to this more detailed list.

The Bill needs to provide more specificity as to the matters for which environmental limits are required, over and above a short list of domains. These could be contained in a new schedule, to be referred to in cl 7(4).

18. In particular, there is a significant question as to whether the mandatory establishment of environmental limits for "biodiversity, habitats and ecosystems" and "coastal waters"[9] requires spatial expression. In particular, it may be difficult to achieve biodiversity limits without spatially protecting areas like significant natural areas or marine protected areas. Clause 7(3) – outlining how environmental limits can be formulated – should therefore be expanded in a new subsection (d) by referring to "spatial protections designed to achieve the minimum biophysical state in section 7(3)(a)".

    It should also be made clear that such limits require not just the protection of particular disconnected "sites" (where there happens to be high biodiversity values remaining), but also the ways in which existing and new sites and other mechanisms relate to each other (ie to establish representative networks for indigenous biodiversity and good connectivity).

    The Bill should clarify in cl 7(3) that environmental limits can be formulated through the establishment of spatial protections in particular locations (such as significant natural areas), and that this encompasses how those relate to each other to form coherent networks or connections.

19. A brief mention should also be made of the relationship envisaged between the NBEB and the Fisheries Act when it comes to limits. The Court of Appeal in the *Motiti* decision has confirmed that regional councils have jurisdiction to control fishing impacts on biodiversity at least in certain circumstances.[10] The responsible Minister under the RMA arguably has even broader powers to do that in national direction, and the inclusion of mandatory limits for coastal waters and biodiversity and habitats under the NBEB raises the question as to what those should include vis a vis controls under the Fisheries Act (including the deployment of marine protected areas closed to fishing and controls on fishing methods).

    Clause 7(4), or an associated schedule of matters for which limits must be set, should address the maximum amount of harm or stress that may be allowed on habitats vulnerable to fishing activities.

[9] These limits will need to achieve "ecological integrity", which is defined to include the ability of an ecosystem to support "natural diversity of indigenous species, habitats and communities" (cl 3).
[10] *Attorney-General v The Trustees of the Motiti Rohe Moana Trust & ors* [2019] NZCA 532 [4 November 2019].

20. There is also the place of greenhouse gas emissions to consider. We recommend that limits on greenhouse gas emissions also be made mandatory in cl 7(4), or a new cl 7(4A) *to the extent that this is directed by an emissions reduction plan under the Climate Change Response Act*. This link is important, because otherwise any signal in an emissions reduction plan that the NBEB is to be used to address climate change will not automatically become mandatory; under cl 7(5) it would be something that "may" be prescribed if it accords with the purpose of limits in cl 7(1).

    The purpose of limits in cl 7(1) could also be expanded to include contributions to the protection of the global climate. This would not *require* limits to be set for the reduction of greenhouse gases, but it would provide a normative hook if they *were* to be set.

    Without this amendment, it might be more difficult to link limits on climate change to the purpose for which such limits are set (ecological integrity and human health), because cl 7(5) only allows limits to be set for matters that accord with this purpose.

    A new cl 7(4A) should be inserted, requiring climate related limits to be imposed *to the extent directed by an emissions reduction plan made under the Climate Change Response Act*. The purpose of environmental limits could also, as a consequence, be expanded to include "contributions to the protection of the global climate" or similar. Climate related limits are not, at the moment, well represented in the purposes for which limits are set.

21. A drafting inconsistency needs to be addressed in cl 7(5), which states that environmental limits "may" be prescribed for any other matter that accords with the purpose of such limits. The definition of "environmental limits" in cl 3 is, however, "the limits *required* by section 7..". This creates an incongruous provision in which non-mandatory environmental limits are simultaneously limits and not limits (the Schrödinger's cat of environmental law, perhaps).

    The definition of environmental limits needs to be amended to include limits that *may* be imposed, not just those that *must* be imposed.

Drafting recommendations: environmental limits

3 Interpretation

…

environmental limits means the limits ~~required~~ provided for ~~by~~ in section 7 and set under section 12 or 25

…

ecological integrity means the ability ~~of~~ ~~an ecosystem~~ to support and maintain the full range of New Zealand's indigenous biological diversity, both within particular ecosystems and across ecosystems. It requires supporting and maintaining —

(a) representation: the occurrence and extent of ecosystems and indigenous species and their habitats across the full range of environments;
(b) ~~(a) its~~ composition: the full range, natural diversity, and abundance of indigenous species, habitats of indigenous species, and communities ~~that make up the ecosystem~~ within and across ecosystems, allowing for ecological changes such as succession; and
(c) ~~(b) its~~ structure: the biotic and abiotic ~~physical~~ features and characteristics of ecosystems, including their extent; and
(d) ~~(c) its~~ functions: the ecological and physical functions and processes ~~of an~~ that sustain representation, composition, or structure; and
(e) ~~(d) its~~ any other properties that contribute to resilience of composition, structure, or function to the adverse impacts of natural or human disturbances.

7 Environmental limits

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

(a) the ecological integrity of the natural environment: and
(b) human health.

(1B) For the avoidance of doubt, environmental limits are to be prescribed for the purpose in section 7(1), not the broader purpose of the Act contained in section 5(1).

(2) Environmental limits must be prescribed—

(c) in the national planning framework (see section 12); or
(d) 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~~ is ~~permitted~~ allowed on the natural environment, or on a specified part of that environment, to safeguard the biophysical states established under section 7(3)(a):
(c) controls on particular human activities designed to safeguard the biophysical states established under section 7(3)(a):
(d) spatial protections, including the connections between protected spaces, designed to safeguard the biophysical states established under section 7(3)(a).

(3B) Where the current biophysical state of the natural environment, or a specified part of that environment, does not reflect the purpose for which that limit must be set under section 7(1):

(a) An environmental limit must be expressed as a binding target; and

(b) [placeholder] must create an action plan by which that target is to be achieved as soon as practicable.

(4) Environmental limits must be prescribed for the matters contained in Schedule [placeholder], which must cover the following overlapping ~~matters~~domains:

(a) air:
(b) biodiversity, habitats, and ecosystems:
(c) ~~coastal~~ waters in the coastal marine area:
(d) estuaries:
(e) freshwater:
(f) soil.

(4A) Environmental limits must be prescribed for the reduction of greenhouse gases to the extent that this is directed by an emissions reduction plan under the Climate Change Response Act.

(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, and all persons exercising functions and powers under this Act or any other Act, must comply with environmental limits.

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

3.3 Environmental outcomes

It is a good thing that the Bill recognises the importance of achieving positive outcomes, not just managing the adverse effects of activities. However, a number of improvements need to be made to cl 8 and related provisions. We will not reproduce cl 8 in its entirety due to its length.

22. To provide consistency, it should be made clear at the start of cl 8 that the national planning framework and all plans must, "within environmental limits" promote the outcomes listed in cl 8. It is important this refers to environmental limits (which are linked to ecological integrity) rather than just the natural environment more generally, because some outcomes (eg renewable energy) could otherwise be pursued in ways (eg large scale hydro-generation) that improve some aspects of the environment (eg the climate) at the expense of others (eg rivers).

    The instance of the term "promote" in cl 8 we also consider awkward; it would be preferable to use a well-known and directive term such as "recognise and provide for" or "pursue".

    It should be made abundantly clear in cl 8 that the national planning framework must pursue outcomes subject to the defence of environmental limits.

23. The element of most concern in cl 8 is the lack of a clear hierarchy between outcomes, which are left as an undifferentiated mass presented in no clear order. These outcomes range from the highly development focused, such as rural "development … [that] enables a range of economic, social, and cultural activities" to the highly protective, such as "ecological integrity is protected, restored or improved" (a concept which includes indigenous biodiversity). It is unclear whether this set of outcomes would support or prevent the conversion of indigenous land cover to, say, pastoral farming. It is also confusing because the "protection" of ecological integrity is already the purpose of setting environmental limits, so allowing "positive outcomes" to simply achieve the same thing is nonsensical.[11]

    Other outcomes will be confusing in the extreme to policy makers expected to make decisions based on this list, such as cl 8(n), which even ties two opposed concepts within the *same* outcome: "the protection and sustainable use of the marine environment". Is this pointing to the need for an expanded aquaculture sector? Or being used to signal the need for marine protected areas? Overall, the clause lacks clarity.

    The risk with this approach is that outcomes could be traded off against each other. Past experience under the RMA has been that the environment frequently loses out when such trade offs occur with outcomes pushed ever closer to (and sometimes exceeding) bottom lines and environmental limits. This undermines one of the key purposes of the resource management reforms which is to improve environmental outcomes.[12] The risk is exacerbated by the fact that any conflicts between outcomes are, in the Bill, to be left to the discretion of the Minister when determining a national planning framework, and to planning committees when determining plans (cl 13(3)). If conflicts remain, they can even be determined on an ad hoc basis through consenting decisions. Thus while the imposition of environmental limits is a good thing, it should not be taken as license to push as close to those limits as possible. That is outdated thinking, and is not reflective of the Randerson Panel's intent nor, as far as we can tell, the intent of the Bill's drafters. But the list in cl 8, combined with the general and open-ended purpose of the NBEB, makes this an entirely possible result.

    Some hierarchy is required within this undifferentiated list in cl 8. That could be achieved by splitting it into two, similar to the division between sections 6 and 7 in the RMA (with a more directive direction included in relation to the former). An alternative mechanism would be to include a principle (a new cl 8(2)) stating that the pursuit of all economic and social outcomes must occur in a way that causes no net harm to the natural environment and, where possible, creates synergies between outcomes. A third mechanism would be to use the approach of the New Zealand Bill of Rights Act, which stipulates in section 6 that:

[11] Because the language allows ecological integrity to be protected, restored *or* improved, the minimum outcome sought is protection.

[12] See cl 5, Terms of Reference, Resource Management Review Panel, approved by Cabinet on 11 November 2019.

> Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

The NBEB version could look like this:

> Wherever an outcome can be achieved in a way that is consistent with the protection and enhancement of the natural environment, that synergistic approach shall be preferred to one in which one outcome is balanced against another.

This approach may be more workable than providing two separate lists, given that many outcomes listed are not clearly "environmental" or "non-environmental" and many synergies are possible if decision-makers are compelled to explore them. For example, an important part of urban form and well-functioning urban areas is the inclusion of green space, connection to nature, and water sensitive design. The relationship of iwi and hapū with their ancestral lands, water and so forth relies on a kaitiaki relationship. Similarly, cultural heritage can have important environmental components. The provision of infrastructure can be achieved through concrete pipes and roads, but equally through nature-based solutions like wetlands, rain gardens and restoration activities in the coastal environment. (For that reason, it would also be beneficial to extend the definition of "infrastructure" and "infrastructure services" in cl 3 to include ecological infrastructure that can be used instead of hard infrastructure). We note that the achievement of synergies is specifically included as part of the policy intent in the parliamentary paper accompanying the Bill.[13]

That said, because the "natural environment" is defined so broadly (eg it could include the "enhancement" of pasture or minerals, which are both part of the natural environment), specific policy weight should also be provided for the kinds of things where improvement is required under any circumstances (not just where synergies are possible). At a minimum, that should mean that "ecological integrity" (the revised definition recommended earlier) is "recognised and provided for" rather than just "promoted" or "pursued" alongside other things. Close consideration should be given to whether other outcomes should be placed under that stronger policy direction.

The Bill needs to provide a stronger hierarchy, or principle requiring synergies to be pursued, in its list of outcomes to be pursued. As drafted, it could result in trade-offs between environment and development, and an inappropriate push towards just meeting environmental limits. The Bill of Rights provides a good principle that could be used.

Furthermore, stronger relative policy weight should be attached to (at a minimum) the improvement of ecological integrity, to ensure that this cannot be traded off against conflicting outcomes (eg rural development) if synergies are not possible.

[13] At [87].

New and internally contradictory principles like the "protection and sustainable use of the marine environment" should not be included.

24. Urban matters in cl 8 also require more attention. The Bill deliberately refrains from using terms like "amenity" to ensure that a desire of existing residents to prevent change does not lead to adverse urban outcomes (eg housing unaffordability through resistance to densification). That policy intent is sound, and the removal of the term is understandable, although we also note that the inclusion of amenity in section 7 of the RMA has not stopped some significant densification in places like Auckland.

    However, because of that exclusion, the way in which urban matters are framed in cl 8(k) is inadequate. The focus is on housing supply, enabling activities, good transport links and a resilient urban form. The term "urban form" describes a range of matters (such as the shape, size, density and configuration of an area), but resilience is not defined, nor is "well-functioning", leaving the purpose for which urban form is being managed far from clear. Simply saying that the shape, size, density and so forth of an area are important is not a substitute for articulating what those things should look like or what they are trying to achieve.

    The concept of "urban form" also falls short of including the broader range of matters that make up good urban "design". The latter includes consideration of the look and feel of a place, its ability to build community and connection, and its role in improving (for example) active mobility, physical and mental health and crime reduction.[14] An increasingly important element of good urban design is the relationship between the built components of the urban environment and nature, and the many synergies that are possible between them (eg the use of nature based infrastructure solutions like wetlands, making room for rivers, green roofs, water sensitive building design, low energy and low emissions neighbourhoods, passive heating and so forth). None of that is encapsulated in the Bill's outcomes, although we note that there is a specific reference to the importance of urban design and urban tree cover in the associated parliamentary paper.[15] The Urban Design Protocol[16] contains guidance on urban design that describes the concept reasonably well, and this should be updated and incorporated by reference in a new definition of "good urban design" or "well-designed" urban areas that replaces that of "resilient urban form".

    Law makers should not throw the baby out with the bathwater here. It is legitimate to want to prevent NIMBYism by facilitating change and densification, but that change must still be *designed* well; if it is not, we risk allowing the market to provide whatever developments are most financially attractive at the time with the potential loss of the

[14] On the connection between the spatial characteristics of cities and health and wellbeing, see WHO 2016 *Urban Green Spaces and Health: a review of evidence*. Copenhagen: WHO Regional Office for Europe. https://www.euro.who.int/en/health-topics/environment-and-health/urban-health/publications/2016/urban-green-spaces-and-health-a-review-of-evidence-2016; https://www.buildingbetter.nz/research/urban_wellbeing

[15] At [38].

[16] Its seven "Cs" articulate the matters that need to be considered in this regard: Context, Character, Choice, Connections, Creativity, Custodianship and Collaboration.

vibrancy, attractiveness and sustainability of our cities. The policy goals of urban change and good urban design are entirely compatible, but they are not the same thing.

The Bill should better provide for urban outcomes, including by embracing a broader outcome relating to good urban design. That should be defined with reference to the significant benefits for the natural environment that urban design can provide (including green infrastructure).

Landscape protection is also effectively limited to cl 8(c) (outstanding natural landscapes) and cl 8(h) (cultural landscapes as part of cultural heritage). However, this leaves all other landscapes that are valuable, but less than outstanding or of heritage value, without any form of protection or anticipated outcome. Under the RMA, the concepts of amenity and the quality of the environment have been used, not just to resist necessary change in cities, but also to provide valuable protections for landscape and character. Their omission is a major oversight, failing to protect local values and attachments to landscapes, as well as the values that make Aotearoa New Zealand attractive as a tourist destination. The Bill should include outcomes relating to rural character/amenity, coastal character and landscape.

The Bill should provide clearer outcomes for the protection of rural character/amenity, coastal character and landscape.

Drafting recommendations: outcomes

3 Interpretation

…

green infrastructure means using the natural environment to provide infrastructure services to people in a way that protects and enhances the natural environment.

…

infrastructure [placeholder], and includes green infrastructure.

…

infrastructure services [placeholder], and includes the services provided by green infrastructure.

…

8 Environmental outcomes

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

(1) recognise and provide for the protection, restoration and improvement of ecological integrity; and

(2) subject to environmental limits, pursue 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)~~(b) outstanding natural features and landscapes are protected, restored, and~~or~~ improved:

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

~~(e)~~(d) 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:

(e) the protection of rural and coastal amenity values:

(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-designed, well-functioning and responsive to growth and other changes, including by—

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

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

~~(ii)~~(iii) pursuing the synergistic benefits that come from protecting and enhancing the natural environment in and around urban areas, including green infrastructure:

(l) a housing supply is developed to—

(i) provide choice to consumers; and

(ii) contribute to the affordability of housing; and

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

(iv) support 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)~~(n) 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:

~~(ii)~~(iii) the ability of infrastructure services to enhance the natural environment:

~~(p)~~(o) 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.

8A Wherever an outcome in section 8(2) can be pursued in a way that is consistent with the protection and enhancement of the natural environment, that synergistic approach shall be preferred to one in which one outcome is balanced against another.

8B In pursuing the outcomes in section 8(2), there must be no net harm caused to the natural environment.

3.4 National planning framework

National direction is dealt with in cll 9 -17 of the Bill. It is a positive thing that the Bill contemplates the use of a national planning framework, rather than speaking of individual pieces of national direction (NPSs and NESs). However, a number of features need to be improved.

25. In cl 10, the purpose of the national planning framework is said to be to "further the purpose of this Act". That is generally appropriate, but it fails to recognise that the establishment of environmental limits – which is a core thing that the framework does – has its own purpose. The national planning framework should therefore reflect this distinction by clarifying that its purpose is:

    "to further the purpose of this Act, including by establishing environmental limits for the purpose in cl 7(1),…."

    Furthermore, a new cl 10(aa) should be inserted to clarify that the national planning framework must provide integrated national direction not just on matters of national significance and where consistency is required, but also on environmental limits. It should also be made clear that all other integrated national direction is subject to environmental limits.

    The purpose of the national planning framework should specifically refer to the establishment of environmental limits.

26. To reflect comments made earlier, cl 11(3)(b) could clarify that targets "must" be set (not "may" be set) in the national planning framework where limits in cl 7(3)(a) have been infringed already. In such cases, targets are not just aspirational goals; they are necessary emergency measures that must be prioritised by setting timebound steps towards improvement in order to meet the limit.

    Even where limits are currently being met (ie there is ecological integrity) close consideration should be given to making targets mandatory (and, once set, binding) for some outcomes in cl 8 (for example, for the restoration and improvement of air, freshwater, coastal water, estuarine and soil quality, and the restoration of areas of significant indigenous vegetation/habitats).

    Also relevant to this point is cl 15(3), which currently provides that "amendments required under this section [to implement the national planning framework] must be

made as soon as practicable within the time, if any, specified in the national planning framework." Clause 15(3) itself may not be problematic as long as there is a clear obligation in the national planning framework to set targets, and steps towards those targets, that require amendment to plans.

The Bill needs to provide for the mandatory establishment of targets in the national planning framework where limits have already been infringed. Mandatory targets should also required for some outcomes relating to the natural environment (ie beyond just meeting environmental limits).

27. A further amendment is required in cl 12(1). At present, there is an inconsistency in drafting between cl 12(1), which states that limits *may* be prescribed in the national planning framework or plans, and cl 7(2), which states that limits *must* be imposed in the national planning framework or plans.

    We understand that the policy intent is that environmental limits must be imposed, and that s 12(1) is simply intended to say that this can be done *either* in the national planning framework *or* in plans. However, as drafted, cl 12(1) implies that the setting of environmental limits is either not mandatory or can be done through instruments other than the national planning framework or plans. This should be corrected to make clear that limits must be prescribed in either the national planning framework or in plans.

    It will also be important to clarify that if limits are not prescribed in the national planning framework itself, this framework *must* prescribe the requirements relevant to the setting of limits in plans. As drafted, cl 12 arguably contemplates that the national planning framework might choose *not* to prescribe these requirements.

    Clause 12 should be amended to clarify that environmental limits *must* be set either in the national planning framework or in plans.

28. Clause 12(2)(a) allows limits to be prescribed quantitatively or qualitatively. Because limits are set through the "national planning framework" as a whole, presumably this will allow limits to take the form of policies (in the nature of an NPS), not just qualitative standards (in the nature of an NES). It is essential that this is the case, because (as we can see in the NPS for Freshwater Management and New Zealand Coastal Policy Statement), national level policies are sometimes the most effective place for national level limits to be set (and to be then translated into regulatory restrictions through catchment, area or activity-based standards in plans). It should therefore be made abundantly clear in cl 12(2)(a) that "qualitatively" prescribed limits include policies.

    It should be made clear that "qualitatively" described limits include limits in the form of policies.

29. The term "different levels" in cl 12(2)(b) is ambiguous and should instead refer to "different geographical scales".

Clause 12(2)(b) should be amended to refer to "different geographical scales" rather than "different levels".

30. The precautionary principle outlined in cl 16 should not apply only to the establishment of environmental limits in the *national planning framework*, but also where those limits are established within *plans* (ie where the national planning framework provides framing for limits that must then be set in plans). At present, cl 16 only refers to limits set by the Minister.

    Clause 16 should also be amended to refer to the setting of limits "as outlined in section 7" rather than "as required by section 7", because cl 7 *allows* additional limits to be set beyond mandatory ones. It is important that those are also set with reference to the precautionary approach.

    A more minor point is that a consistent drafting approach should be taken to the precautionary approach across cl 16 (which speaks of "applying" a precautionary approach) and 18(g) (which speaks of "taking" a precautionary approach). We do not have a view on which verb is more appropriate, but to avoid the courts potentially inferring a different meaning this should be made consistent.

The Bill should be amended to clarify that a precautionary approach is needed, not just when limits are established in the national planning framework, but also when they are translated to regulatory provisions in plans. Amendment is also required to reflect the fact that not all limits are mandatory, but non-mandatory limits also require a precautionary approach. Further changes are needed to achieve consistency in drafting.

31. Finally with respect to precaution, there is a significant question as to whether its current formulation is adequate when applied to the specific function of limit setting. In cl 3 the precautionary approach is defined as:

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

    The purpose of setting environmental limits (ecological integrity and human health) does not completely align with this definition. Limits are not just about preventing serious and irreversible harm.

    The risk is that a decision-maker, when setting limits, is allowed to postpone action due to uncertainty where there is *not* serious or irreversible harm to the environment. For example, the clearance of vegetation in one single SNA might not be regarded as serious in isolation, and could be considered reversible in theory (through replanting). Similarly, the ability to close beaches temporarily in the event of a wastewater overflow means it may have neither serious nor irreversible effects on the environment, so does that justify delaying measures to address ageing/failing infrastructure?

The definition of the precautionary approach should be strengthened, to reflect the fact that the purpose of setting environmental limits is not just about preventing serious and irreversible harm.

For limit setting, precaution is not so much about *having* to take action where there is a risk of serious or irreversible harm (setting limits is mandatory anyway), but rather ensuring that there is a buffer between where a limit is set and the state of the environment it is trying to prevent, to reflect any uncertainty about effects and our lack of understanding of ecosystem dynamics. This is more consistent with the Randerson Panel's conceptualisation of precaution in the context of limit setting.

More nuance is needed in the concept of precaution when applied to the setting of environmental limits. In that context, it is less about having to take action, and more about providing a buffer to reflect uncertainty in information.

The relationship between the general precautionary principle and climate change could also usefully be clarified. Traditionally, precaution under the RMA has been treated as something that comes into play when regulating particular human activities. But taking action to prevent future damage is not just about regulating to stop the harmful effects of human activity; it is also about proactively increasing the resilience of ecosystems in the face of global climate change by, for example, taking restoration action and creating protected areas.

The Bill should clarify that a precautionary approach is needed, not just when controlling human activities, but also to ensure precautionary and anticipatory action is taken to make ecosystems more resilient to climate change and other environmental stresses.

There is also an argument that the precautionary approach should apply only to the *natural* environment, given that the *environment* is defined broadly to include economic and social conditions. Taking a precautionary approach to the environment could see the uncertainty of damage to the natural environment balanced against the uncertainty of social impacts occurring. That could potentially justify environmentally damaging action to allow large scale development that will produce jobs and housing, if the social impacts of not doing so were regarded as uncertain and potentially serious. Currently, the definition of precautionary approach refers to both the natural environment and the environment.

The precautionary approach should be defined specifically with reference to the *natural* environment.

32. With respect to the implementation principles in cl 18, we note that these are at the indicative stage of drafting only. One thing that stands out to us is the need to provide additional focus to cl 18(f), so that particular regard is had not just to cumulative effects, but also the potential of those effects to infringe environmental limits. There is also a

question as to whether promoting appropriate mechanisms for effective iwi and hapū participation will necessitate funding to support those mechanisms.

Clause 18(f) should specifically require an assessment of whether cumulative effects have the potential to infringe environmental limits.

33. We also note that the definition of "Minister" remains flexible (whoever has the authority to administer the Act). We support the Randerson Panel's recommendation that roles under the NBEB are performed by the Minister for the Environment and/or Minister of Conservation.

The Bill should clarify that the "Minister" refers to the Minister for the Environment or the Minister of Conservation.

34. Although it need not form an amendment to the provisions contained in the exposure draft, consideration should be given in further policy development to how a national planning framework is to be structured. It is not currently clear whether this is intended to be a single instrument,[17] but whether or not that is the case, the national planning framework should have some coherence in its structure to prevent it becoming fragmented across multiple sectors, domains, spaces and topics. That is currently the risk as more national direction is added to deal with specific topics as the need arises, and where relationships between instruments can be fraught or unclear. This has been recognised by the Panel, and in the parliamentary paper associated with the Bill.[18]

We would recommend that the national planning framework be a single instrument containing multiple layers. The first should be a layer of domain-based policies (the domains for which limits must be set in cl 7(4)), linked tightly to any rules and standards needed to give effect to them. That should be where provisions specifically flagged as environmental limits – whether policies, regulations or framing for how plans need to implement them – are contained.

All other elements of the national planning framework, including how those policies apply to particular sectors and regions, should be required to be consistent with or give effect to the layer of domain-based policies.

The structure of the national planning framework should be given more framing in the NBEB, although that need not happen in the front end provisions of the Bill. It could instead be outlined in a schedule.

Close attention will also need to be paid to how "satellite" acts such as those for the Hauraki Gulf[19] and Waitakere Ranges[20] interact with the national planning framework. At the moment, instruments within these are deemed to be an NZCPS or NPS, and this will need to be reflected in the broader structure/framing of the national planning

[17] It is described in the parliamentary paper as being "consolidated in one coherent set" [133].
[18] Parliamentary paper at [132].
[19] Hauraki Gulf Marine Park Act 2000.
[20] Waitakere Ranges Heritage Area Act 2008.

framework too. The framework could, for example, provide sections for regionally-specific provisions, and consequential amendments will need to be made to terminology in those other statutes.

It is important that instruments currently deemed to form national direction under other acts continue to have this link in a new national planning framework. Consequential amendments will be required to those acts, and the national planning framework could be structured to accommodate these regional overlays.

Drafting recommendations: national planning framework

3 Interpretation

…

Minister means the Minister [for the Environment or Minister of Conservation] ~~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~~

…

precautionary approach is an approach that, in order to protect the natural environment if there are threats of serious or irreversible harm to that~~e~~ 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. In the context of environmental limits, a precautionary approach includes establishing buffers to reflect uncertainty in information or understanding, and taking action to prevent limits being infringed.

…

10 Purpose of national planning framework

The purpose of the national planning framework is to further the purpose of this Act and the purpose of environmental limits, by providing integrated direction on—

(a) environmental limits
~~(a)~~(b) other matters of national significance; or
~~(b)~~(c) matters for which national consistency is desirable; or
~~(c)~~(d) matters for which consistency is desirable in some, but not all, parts of New Zealand.

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 methods:

(b) provide criteria, targets, or definitions

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

(5) The national planning framework must be structured in the way outlined in Schedule [placeholder]

12 Environmental limits

(1) Environmental limits required under section 7, including binding targets required under section 7(3B), must be prescribed in either—

(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.

(1A) For the avoidance of doubt, the national planning framework must prescribe the requirements in section 12(1)(b) to the extent environmental limits are not contained in the national planning framework itself.

(2) Environmental limits may be prescribed—

(a) qualitatively or quantitatively (including through directive policies);~~:~~ and
(b) at different ~~levels~~ geographical scales to reflect~~for~~ different circumstances and locations; but~~.~~
~~(b)~~(c) the geographical scale at which limits are set must not undermine the purpose for which they are prescribed in section 7(1).

16 Application of precautionary approach

~~In setting environmental limits, as required by section 7, the Minister~~Persons responsible for setting environmental limits under section 7 must ~~apply~~ take a precautionary approach.

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]—
…
f) have particular regard to any cumulative effects of the use and development of the environment, including their potential to infringe environmental limits:
…

3.5 Content of plans

With respect to the content of plans (cll 22-25), we make only a handful of points. Generally, it is a positive thing that plans are to be integrated at a regional level and made through regional planning committees comprised of councils and mana whenua in partnership. However:

35. Clause 22(2)(a) should specify that plans may set targets as well as objectives, rules, processes, policies or methods. Furthermore, targets should be required to be set to return to a safe space above environmental limits that have already been infringed. That could be achieved by amending cl 22(1)(a) to require targets to be set to achieve the limits applying to the region.

    As with the national planning framework, it should be specified in the Bill that plans must set targets where environmental limits have been infringed.

36. It is crucial that cl 22(2)(b), which allows a plan to identify any land or type of land as one for which a particular use is prioritised, is specifically made subject to environmental limits. The risk otherwise is that specific activities – eg an industrial park or aquaculture – are identified in advance as being the preferred use of land. The clause should specify that such things can only happen after spatial protections designed to achieve environmental limits are considered. That is crucial for things like biodiversity and habitat "limits", which require not just restrictions on activities but also proactive spatial protections in particular places (eg significant natural areas).

    The Bill should clarify that the identification of priority uses for land can only occur once environmental limits have been established and given spatial expression.

    Clause 22(2)(b) should also be expanded so that it more clearly applies to the coastal marine area. The reference to "land" encompasses the seabed, but not the water column. Spatial protections at sea are equally about the use of the water column, because many activities (eg fishing and aquaculture) can have impacts on biodiversity and species as well as other human activities that occur above the seabed.

    Clause 22(2)(b) should encompass not just land, but also the water column in the coastal marine area.

37. Clause 24(2)(d) provides that a planning committee must have regard to "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 and designations". We consider that this could be strengthened, by requiring the committee to have regard to the "benefits of conflicts being resolved" in the plan in advance.

    The Bill should take a stronger approach by specifically pointing to the benefits of resolving conflicts through plans rather than consents, not just consideration of whether it is desirable or not.

38. It should be clarified in a new cl 24(6)(c) that "conflicts" referred to in cl 24(2)(d) does *not* include "conflicts between environmental limits set under cl 7 and outcomes set under cl 8".

The Bill should make clear that the ability for a plan to resolve policy conflicts does not extend to the balancing of environmental limits vis a vis other outcomes.

39. Clause 25(2)(b) should be amended to clarify that a limit must be included in the region's plan *within the timeframe specified* in the national planning framework.

Drafting recommendations: content of plans

22 Contents of plans

(1) The plan for a region must—

(a) state the environmental limits (including binding targets) that apply in the region, whether set by the national planning framework or under section 25; and
…
(c) ~~promote~~ recognise and 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, except to the extent there is a conflict between environmental limits established in the plan and the contents of a regional spatial strategy; and
…

(2) A plan may—

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

(b) subject to environmental limits, identify any land or type of land (or water) in the region for which a stated use, development, or protection is a priority:
…

24 Considerations relevant to planning committee decisions

(2) The committee must have regard to-
…
(d) the ~~extent to which it is appropriate for~~benefits of having conflicts ~~to be~~ resolved generally by the plan rather than~~or~~ on a case-by-case basis by resource consents or designations.

(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(2); but.
(c) does not include conflicts between environmental limits set under section 7 and outcomes listed under section 8, or between outcomes listed in section 8(1) and section 8(2).

3.6 The relationship between the Bill and other elements

It is important that the provisions in the Bill interface well with the provisions in other legislation (including existing statutes like the Climate Change Response Act and Fisheries Act) and new legislation envisaged in the reform package (eg the Strategic Planning Act).

40. There is a particularly important relationship between the NBEB and the Strategic Planning Act. We understand the policy intention is for regional spatial strategies under the latter to have to be consistent with the national planning framework, but for plans to have to be consistent with regional spatial strategies. That makes some sense.

However, when it comes to environmental limits, that relationship is more complex and needs to be clarified. In particular, cl 22(1)(d) is important. Currently, this is framed as:[21]

22(1) The plan for a region must –
(a) [placeholder] be consistent with the regional spatial strategy

The complication is that plans can themselves contain environmental limits, if those are framed by the national planning framework. This raises the question of whether these should also be required to be consistent with the regional spatial strategy (or the other way round). We recommend that plans must be consistent with the regional spatial strategy *except to the extent there is a conflict between environmental limits established in the plan and the contents of a regional spatial strategy*.

Ideally, that conflict would not arise. Yet it is not a fanciful outcome. Limits expressed spatially in particular places (eg the location of significant natural areas or marine protected areas) are likely to crystallise only in a plan once they are mapped, with the national planning framework setting a framework for their establishment. It would be important for a (presumably) more "balanced" and less protective statute like the Strategic Planning Act not to be able to essentially erase spatial protections crucial for achieving limits for indigenous biodiversity and habitats.

The Bill should provide that plans must be consistent with a regional spatial strategy *except* to the extent there is a conflict between environmental limits established under the plan and the contents of the regional spatial strategy.

[21] The parliamentary paper states: "the intention is that key strategic decisions made through the RSS are not to be revisited when preparing a plan" at [196].

41. There will be another key relationship between the NBEB and the proposed Climate Change Adaptation Act. While we do not yet know enough about the latter to comment meaningfully, we note that how we adapt to climate change has significant implications for the defence of environmental limits under the NBEB. For example, if we build hard coastal protection structures to protect property from rising sea levels and storm surges, that can effectively erase the inter-tidal habitats valuable to much marine life. We therefore recommend some mechanism by which limits and targets set under the NBEB have significant weight in decisions made under the Climate Change Adaptation Act.

Limits and targets set under the NBEB should have significant legal weight in decisions taken under the proposed Climate Change Adaptation Act.

42. As mentioned earlier, there also needs to be a clear relationship between emissions reduction plans made under the Climate Change Response Act and the national planning framework and plans made under the NBEB. In particular, the latter will need a clear legal direction to achieve greenhouse gas emission reductions in the ways outlined in emissions reduction plans, not just a general obligation to consider them.

There needs to be a firm legal direction that instruments made under the NBEB must take measures to implement emissions reduction plans in the ways directed in those plans, not just that they be considered alongside other things.

4. Supporting measures and concluding comments

The overall thrust of our submission is that while the drafters of the Bill should be commended for a new and visionary piece of legislation, there are many things that require improvement. There will also be a number of critical elements that will only become apparent when the NBEB as a whole, and the Strategic Planning Bill, are drafted. Two such matters will be an allocative framework and provisions concerning the extinguishment of existing uses, and we will be looking closely at those.

However, while legislative drafting is important, we emphasise **strongly** that legislative change is only as good as the institutional and other measures (eg information and funding) that will ensure its intent is actually realised. Otherwise they are just words on paper.

In particular, we note that a strong accountability framework will be needed when it comes to setting environmental limits. Mandatory limits will not be effective if they are set in the wrong place to achieve what they are meant to, or if they become a political football that seesaw up and down depending on the government of the day.

As mentioned above, part of the solution is a requirement that binding *targets* are set when limits have already been infringed, and for progress against clear metrics to be specifically highlighted through environmental reporting. We have recognised this in the climate change context, but it is equally relevant to environmental limits more broadly. Another important thing will be to ensure the purpose of setting environmental limits, and the things

for which they are set, are specific and detailed enough to be able to hold ministers to account for progress and failures (for example, through judicial review).

However, close consideration needs to be given to the following supporting measures as well. It is too early to provide actual drafting for such things (drafting would need to be extensive and it is not clear in which framework they would belong), but that does not diminish their importance.

43. A principle of non-regression should be included, so that there is a legal obligation that limits, once set, cannot be eroded or weakened later on unless evidence is clear and compelling. In other words, there needs to be a "ratchet effect" so that limits cannot fluctuate according to political cycles.

44. There should be entrenchment of provisions relating to environmental limits, so that they cannot be tinkered with as easily (as has happened under the RMA).

45. A thoroughly independent institution should be created to (1) provide independent advice to ministers/planning committees on environmental limits before they are set and (2) increase accountability by auditing the effectiveness of limits. This could operate in a similar way to the Climate Change Commission. For example, clear reasons would need to be provided by ministers/councils if its advice on limits were not followed.

    This would also provide a concentration of independent science and mātauranga Māori expertise in a single institution, as well as providing more political space for "safe" decision-making that is potentially unpopular in the short term. We note that an informal science advisory panel has been established within the Ministry for the Environment, but that is not the same thing as a formal institution with a clear mandate, a legal existence, and specific roles in decision-making processes. It could, however, begin life informally (as with the Interim Climate Change Committee) and morph into a more formal existence over time.

    Such an institution could be a new one (what we have called a "Futures Commission" in past work), or it could be an expansion of an existing one, such as the Parliamentary Commissioner for the Environment (eg with multiple commissioners, expanded resourcing, and a more structured role in the system). We have described this kind of institution in chapter 8 of our phase 2 report on resource management reform, which is available on our website at RMLR Model for the Future WEB.pdf (eds.org.nz). We see it as crucial for the realisation of the goals of resource management reform. Without deep institutional reform, we risk legislative change being watered down or become like "shifting deckchairs on the Titanic".

    The role of environmental advocacy also needs to be considered closely. At present, there is considerable reliance under the RMA on non-governmental organisations to litigate and act as watchdogs. To complement the independent commission mentioned above, there is a strong case for a formal, independent and robustly funded environmental defender's office to hold ministers and planning committees to account

through the judicial system as the NBEB is implemented through national direction and plans.

46. There needs to be overarching environmental principles applying to all public decision-making (eg for public finance, waste minimisation, local government funding and so forth), not just decision-making under the NBEB. In previous work we have suggested that these principles could be included in an overarching statute like the Strategic Planning Act, but the appropriateness of that will depend on what that act ends up looking like. Alternatively, they could be included in the Environment Act or the New Zealand Bill of Rights Act (alongside a right to a healthy environment). We note that similar, overarching principles are common in other jurisdictions, such as Canada. They should be entrenched. The wellbeing of the "environment" relies on a lot more than just regulation made under the NBEB.

47. Consideration should also be given to whether ministers and planning committees should actually be the ones responsible for setting all environmental limits under the NBEB. If the directions in the legislation are sufficiently clear, there is considerable room for an independent, expert entity to set the actual regulatory limits based on policy created by ministers and/or councils. This could be subject to appeal to the Environment Court, recognising that limits protecting basic ecological integrity are existentially important safeguards, not political trade-offs. There is already recognition of the importance of independent decision-making when it comes to consenting, through the widespread use of independent commissioners at the council level and the inability of ministers to decide consents directly. That could be extended to the setting of regulatory limits in national direction and plans, which could be achieved through an expanded (and considerably strengthened) Environmental Protection Authority – a true national environmental regulator.

We again thank the Environment Select Committee for the opportunity to submit on the Bill, and we request to be heard in support. The Bill marks an important point of generational change that will guide outcomes for many years to come, and it is crucial we get it right.

Appendix 1: Combined drafting recommendations

3 Interpretation

…

environmental limits means the limits ~~required~~ provided for ~~by~~ in section 7 and set under section 12 or 25

…

ecological integrity means the ability ~~of~~ ~~an ecosystem~~ to support and maintain the full range of New Zealand's indigenous biological diversity, both within particular ecosystems and across ecosystems. It requires supporting and maintaining —

(a) representation: the occurrence and extent of ecosystems and indigenous species and their habitats across the full range of environments;

(b) ~~(a) its~~ composition: the full range, natural diversity, and abundance of indigenous species, habitats of indigenous species, and communities ~~that make up the ecosystem~~ within and across ecosystems, allowing for ecological changes such as succession; and

(c) ~~(b) its~~ structure: the biotic and abiotic ~~physical~~ features and characteristics of ecosystems, including their extent; and

(d) ~~(c) its~~ functions: the ecological and physical functions and processes ~~of an~~ that sustain representation, composition, or structure; and

(e) ~~(d) its~~ any other properties that contribute to resilience of composition, structure, or function to the adverse impacts of natural or human disturbances.

…

green infrastructure means using the natural environment to provide infrastructure services to people in a way that protects and enhances the natural environment.

…

infrastructure [placeholder], and includes green infrastructure.

…

infrastructure services [placeholder], and includes the services provided by green infrastructure.

…

Minister means the Minister [for the Environment or Minister of Conservation] ~~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~~

…

~~**mitigate**, in the phrase "avoid, remedy, or mitigate", includes to offset or pro- vide 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~~ [unless a more developed framing around offsetting and compensation is to be included in the NBEB]

….

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

…

precautionary approach is an approach that, in order to protect the natural environment if there are threats of serious or irreversible harm to thate 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. In the context of environmental limits, a precautionary approach includes establishing buffers to reflect uncertainty in information or understanding, and taking action to prevent limits being infringed.

…

5 Purpose of this Act

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

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

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

(a) use of the environment must comply with environmental limits to be established and complied with; and;
(b) subject to (a), positive environmental outcomes for the benefit of the environment must beto be promotedpursued; and
(c) subject to (a), any adverse effects on the environment of its use must be avoided, remedied, or mitigated.

(3) In this section, Te Oranga o te Taiao incorporatesmeans that the mana and mauri of the natural environment are protected, restored and enhanced in all its aspects, and recognises the importance of the kaitiaki relationship between iwi and hapū and te taiao.—

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

7 Environmental limits

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

(a) the ecological integrity of the natural environment: and
(b) human health.

(1B) For the avoidance of doubt, environmental limits are to be prescribed for the purpose in section 7(1), not the broader purpose of the Act contained in section 5(1).

(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~~ is ~~permitted~~ allowed on the natural environment, or on a specified part of that environment, to safeguard the biophysical states established under section 7(3)(a):
(c) controls on particular human activities designed to safeguard the biophysical states established under section 7(3)(a):
(d) spatial protections, including the connections between protected spaces, designed to safeguard the biophysical states established under section 7(3)(a).

(3B) Where the current biophysical state of the natural environment, or a specified part of that environment, does not reflect the purpose for which that limit must be set under section 7(1):

(a) An environmental limit must be expressed as a binding target; and
(b) [placeholder] must create an action plan by which that target is to be achieved as soon as practicable.

(4) Environmental limits must be prescribed for the matters contained in Schedule [placeholder], which must cover the following overlapping ~~matters~~domains:

(a) air:
(b) biodiversity, habitats, and ecosystems:
(c) ~~coastal~~ waters in the coastal marine area:
(d) estuaries:
(e) freshwater:
(f) soil

(4A) Environmental limits must be prescribed for the reduction of greenhouse gases to the extent that this is directed by an emissions reduction plan under the Climate Change Response Act.

(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, and all persons exercising functions and powers under this Act or any other Act, 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~~

(1) recognise and provide for the protection, restoration and improvement of ecological integrity; and

(2) subject to environmental limits, pursue 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)~~(b) outstanding natural features and landscapes are protected, restored, and~~or~~ improved:
~~(d)~~(c) areas of significant indigenous vegetation and significant habitats of indigenous fauna are protected, restored, and~~or~~ improved:
~~(e)~~(d) 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:
(e) the protection of rural and coastal amenity values:
(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-designed, well-functioning and responsive to growth and other changes, including by—
(i) enabling a range of economic, social, recreational and cultural activities; and
(ii) ensuring a resilient urban form with good transport links within and beyond the urban area: and
(iii) pursuing the synergistic benefits that come from protecting and enhancing the natural environment in and around urban areas, including green infrastructure
(l) a housing supply is developed to—
(i) provide choice to consumers; and
(ii) contribute to the affordability of housing; and
(iii) meet the diverse and changing needs of people and communities; and
(iv) support 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:~~

(n) 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:

(iii) the ability of infrastructure services to enhance the natural environment:

(o) 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.

8A Wherever an outcome in section 8(2) can be pursued in a way that is consistent with the protection and enhancement of the natural environment, that synergistic approach shall be preferred to one in which one outcome is balanced against another.

8B In pursuing the outcomes in section 8(2), there must be no net harm caused to the natural environment.

10 Purpose of national planning framework

The purpose of the national planning framework is to further the purpose of this Act and the purpose of environmental limits, by providing integrated direction on—

(a) environmental limits

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

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

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

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 methods:

(b) provide criteria, targets, or definitions

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

(5) The national planning framework must be structured in the way outlined in Schedule [placeholder]

12 Environmental limits

(1) Environmental limits required under section 7, including binding targets required under section 7(3B), must be prescribed in either—

(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.

(1A) For the avoidance of doubt, the national planning framework must prescribe the requirements in section 12(1)(b) to the extent environmental limits are not contained in the national planning framework itself.

(2) Environmental limits may be prescribed—

(a) qualitatively or quantitatively (including through directive policies);~~:~~ and
(b) at different ~~levels~~ geographical scales to reflect~~for~~ different circumstances and locations; but~~.~~
(c) the geographical scale at which limits are set must not undermine the purpose for which they are prescribed in section 7(1).

16 Application of precautionary approach

~~In setting environmental limits, as required by section 7, the Minister~~Persons responsible for setting environmental limits under section 7 must ~~apply~~ take a precautionary approach.

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]—
…
f) have particular regard to any cumulative effects of the use and development of the environment, including their potential to infringe environmental limits:
…

22 Contents of plans

(1) The plan for a region must—

(a) state the environmental limits (including binding targets) that apply in the region, whether set by the national planning framework or under section 25; and
…
(c) ~~promote~~ recognise and 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, except to the extent there is a conflict between environmental limits established in the plan and the contents of a regional spatial strategy; and
…

(2) A plan may—

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

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

24 Considerations relevant to planning committee decisions
…
(2) The committee must have regard to-
…
(d) the ~~extent to which it is appropriate for~~benefits of having conflicts ~~to be~~ resolved generally by the plan rather than~~or~~ on a case-by-case basis by resource consents or designations.
…
(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(2); but~~.~~
(c) does not include conflicts between environmental limits set under section 7 and outcomes listed under section 8, or between outcomes listed in section 8(1) and section 8(2).