SUBMISSION TO THE ENVIRONMENT COMMITTEE

Natural and Built Environment Bill no. 186-1
Spatial Planning Bill no. 187-1

February 2023
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Introduction

This submission is made on behalf of Koi Tū, the Centre for Informed Futures and Ngā Ara Whetū, Centre for Climate, Biodiversity & Society. Together these transdisciplinary centres at the University of Auckland designed and hosted a multi-stakeholder workshop in January 2023 to gather and synthesise the collective expertise and deep wisdom of academics, business, and community leaders. The goal was not to reach a consensus statement for submission, but rather to understand key common issues as well as points of disagreement and tension in the collected perspectives on the Natural and Built Environment Bill (NBE Bill) and the Spatial Planning Bill (SP Bill).

While the final submission is made strictly by the Koi Tū and Ngā Ara Whetu Centres, workshop participants and others we consulted were:

- Professor Jennifer Salmond, School of Environment, The University of Auckland
- Dr Lee Beattie, Head of School, School of Architecture and Planning, The University of Auckland
- Guy Salmon, Executive Director, Ecologic Foundation
- Peter Anderson, General Counsel, Forest and Bird
- Angela Gray, System Transformation Lead, BRANZ Limited
- Dr Ian Boothroyd, Fellow of the Environment Institute of Australia and New Zealand
- Melissa Clark-Reynolds, Managing Director, FutureCentre.nz
- Katherine Wilson (Head of Advocacy) and Sandamali Gunawardena (Advocacy Advisor), Property Council New Zealand
- Michelle McCormick, Policy Director, Infrastructure New Zealand
- Dr Richard Templer, Chief Executive Officer, Engineering New Zealand
- Paul Melville, Principal Advisor, Federated Farmers
- Rachel de Lambert, Landscape Architect, Partner Boffa Miskell
- Corina Jordan, Chief Executive, Fish and Game New Zealand

Background

Koi Tū: The Centre for Informed Futures grew out of the office of the inaugural Chief Science Advisor. Its establishment was inspired by experience with the multitude of long-term, complex, collective, and poorly characterised issues facing Aotearoa New Zealand, which seemed out of reach within short political cycles. Thus, since 2018, Koi Tū has built a strong reputation as a university-based centre for transdisciplinary implementation-oriented research and collaborations to help broad communities of policy actors address such issues in evidence-informed and inclusive ways. With links across research and policy communities nationally and internationally, Koi Tū has developed innovative processes for joining expertise and public values in deliberation on some of our most complex societal challenges. The gathering and synthesis of evidence-informed perspectives to make this submission is one such example.

Ngā Ara Whetū: Centre for Climate, Biodiversity & Society is a flagship cross-faculty research centre at the University of Auckland on Climate, Biodiversity and Society. Ngā Ara Whetū (Star Paths) highlights the ethos of the centre named for the journeys of our collective ancestors...
to the shores of Aotearoa, New Zealand. Ngā Ara Whetū enables and enhances collaborative research and training. The Ngā Ara Whetū network draws on transdisciplinary scholarship at the University of Auckland in the fields of the natural sciences, social and health sciences, Māori studies, law, engineering, and economics. It strives to connect this work to policymakers and the public, engaging Aotearoa New Zealand in environmental action.

Preparing the Submission

The proposed Bills are intended to play a vital role in environmental management for the benefit of the natural environment itself as well as present and future generations, while providing more certainty for development and resource-use decisions. For this reason, Koi Tū and Ngā Ara Whetū have sought to bring together multiple perspectives to deliberate on the Bills in preparation for this submission. Despite the summer timing, the exercise achieved a high degree of diversity in the perspectives gathered. The resulting discussion is expanded upon in the body of this submission.

We thank the Environment Select Committee for the opportunity to make a submission on the Natural and Built Environment Bill (NBE Bill) and Spatial Planning Bill (SP Bill), and for extending our deadline to do so. We would welcome an opportunity also to make oral submissions.

Key message

We support the need for the transformation of the current Resource Management Act 1991 (RMA). The RMA is not fit-for-purpose from an environmental or societal standpoint. The shortcomings and complexities of its implementation and oversight have resulted in progressive degradation of the natural environment while also failing to facilitate much-needed infrastructure and housing.

However, we do not support the NBE and SP Bills in their current form. We believe the two Bills, as written, potentially generate overlapping and complex risks for the future, which require careful attention.

The recent extreme weather events, catastrophic flooding and landslides have highlighted the importance of fundamental changes required in our resource management approaches, measures and actions to ensure that the natural environment and the built environment are not in a perpetual state of conflict. Failing to do so will only amplify all of the risks we detail below.

Thus, we believe there needs to be a greater emphasis in the Bills on the intrinsic value of nature and on how the Bills should directly tackle the climate crisis, beyond what has been proposed. Current planning processes thus far have created risks that the new Bills fail to mitigate adequately. We urge you to focus on what we see are the risks and missed opportunities in the Bills so that these might be urgently attended.
The Koi Tū and Ngā Ara Whetū submission

1. The overall framework

1.1 Phasing and interdependence of the three bills

The proposed framework for the new resource management system is not legislatively or operationally simpler than the framework of the RMA it is intended to replace. We believe the three individual statutes are neither necessary nor appropriate. Separating the management of the natural and built environment, regional strategic planning, and climate change adaptation only complicates their rollout and undermines their necessary connectedness.

The three-bill framework is likely to lead to a more complex system of obligations and oversight responsibilities, raising the risk of inadvertent contradictions between the elements. In addition, the text of the third element – the Climate Change Adaptation Bill (CCA Bill) – has not yet been made available, beyond indications of high-level ‘early policy ideas’. The fragmented and incomplete nature of the proposed overall framework leaves too much room for operational error.

The unavailability of the CCA Bill is a significant uncertainty for plan-making and decision-making for areas that are or will be at risk of flooding or sea-level rise, such as for the natural and built environment plans and regional spatial strategies. Recent climate change related catastrophic flooding and slope instabilities of the Nelson, Auckland, Gisborne, and Hawke’s Bay regions and elsewhere shed a stark light on the importance of considering adaptation foremost, before more unsuitable land is committed to development and before key ecosystem ‘safety valves’ are lost. We are significantly concerned about the lack of reference to the CCA Bill across the NBE Bill and the SP Bill, and the inadequate mechanisms to promote positive outcomes and contributions to climate change and net zero carbon emission targets. We recommend including identified mechanisms in the statute for guiding the eventual reconciliation of the bills for the Spatial Planning Act, the Natural and Built Environment Act with that of the Climate Adaptation Act.

Recommendation:

1.1.1. Reconcile the bills for the Spatial Planning Act and the Natural and Built Environment Act with that of the Climate Adaptation Act. Effective reference between the NBE and the SP Bills (or perhaps their integration) can aid in reducing risks of potential operational disconnections, contradictions, and uncertainties. At the very least, set out principles, processes, and timeframes in both the NBE Bill and SP Bill for reconciling with the CCA Bill and managing potential interactions or conflicts.
1.2 Interdependencies within the broader reform landscape

In addition to the internal interdependencies of the three Acts in the framework, we believe that resource management reform will not achieve the desired outcomes on its own and should not be considered independently from other policy settings. Instead, it must be better coordinated with other ongoing policy/regulatory reforms.

For instance, there are at least three other major ongoing initiatives: local government reforms including co-governance, infrastructure priorities of national significance, and reforms to the research, science and innovation system, the final shape of which will need to meet the knowledge needs of resource management reforms on an ongoing basis. All of these reforms should be viewed more explicitly in relation to each other so as to coordinate with the resource management system reform. They are fundamentally interdependent and must not be left strictly to ministerial silos.

This is not to suggest that all reforms must have a matching pace, but that consideration be given to how they will link. A simple example is research, science and innovation strategy reforms that include mechanisms to serve the knowledge needs of resource management decision makers and practitioners and multiple scales, such as the inclusion of new science policy interface structures (see section 5 of this document).

To this end, we note that Schedule 15 of the NBE Bill and Schedule 5 of the SP Bill set out amendments to other legislation that will be required as a result of the changes proposed by the Bills respectively. We suggest that select committee consider what further directives might be included here about the other areas under reform and how their respective legislation would need to interact with resource management system reforms.

Other potential risks include:

- The complexities of establishing Regional Spatial Strategies (RSS) for newly defined regional boundaries, with existing local government arrangements may lead to prioritising the needs of larger councils over smaller ones within the same regional boundary.

- Addressing complex and slow-burning issues such as climate change and emerging natural hazards with latent impacts (such as air pollution) that span the individual remit of agencies and regions requires multi-agency, multi-disciplinary and cross-regional coordination. Currently, such coordination is impeded by differences in operational models, information asymmetries, incommensurable data systems and non-transferable, institution-specific capabilities among public agencies.\(^1\) Consideration of two parts of a three-part bill in isolation is unlikely to help remedy this situation.

- Institutional resources, capabilities (including skills and knowledge), funding, and insufficient monitoring and evaluation practices are long-standing issues

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that are central to the challenges of the resource management system in Aotearoa New Zealand. There is no indication how the Bills will support the strengthening of these institutional capacities that will be needed to support the delivery of anticipated outcomes in the new resource management system.

**Recommendations:**

1.2.1 Provide clear national directions on a range of outcomes to be achieved across the regional levels through a national spatial strategy, which is distinct from the National Planning Framework. See Irish example [here](https://npf.ie/wp-content/uploads/Completea-1.pdf).

1.2.2 A coordinated approach across agencies and levels of governance needs to look at the interactions (benefits, trade-offs, contradictions) instead of merely looking at alignment or consistency across broad reforms and policy sector priorities. Provide clear direction and interpretation on such interactions at the legislative level within Schedule 15 of the NBE Bill and Schedule 5 of the SP Bill.

1.3 Managing conflicts and trade-offs

The NBE Bill does not offer any prioritisation among the stated outcomes. Nor does it set out any guidelines on managing conflicts or trade-offs among them. Instead, it proposes to deal with conflicts through the Natural and Built Environment plans (clause 102), with the national planning framework (NPF) “helping to” resolve them (clause 33). We believe this mechanism is a step backwards from the RMA, in which ‘matters of national importance’ and ‘other matters’ are at least identified for special consideration (including, in some cases, protection of particular natural and physical resources) (sections 6 and 7 of the RMA). Under the NBE Bill, without a clear means to identify matters of national significance laid out in statute, there is an unacceptable risk of regulatory oversight of critical environmental values. Furthermore, we believe that it is essential to recognise the intrinsic value of a biodiverse natural environment independently of any specific ecosystem services it provides, recognising instead its fundamental and systemic importance for human survival.

**Recommendations:**

1.3.1 Overarching principles for resolving conflicts should be set out in the statute, and particularly in the Purpose of the Act (clause 3), the system outcomes (clause 5), the decision-making principles (clause 6), and the purpose of national planning framework (clause 33), to provide meaningful and clear directions for decision-making at all levels.

1.3.2 The NBE Bill should clarify that a first priority is to achieve synergies between different resource management matters and outcomes, where practical. Where achieving such synergies is impractical, the priority must be to safeguard the life-supporting capacity of the natural environment and its intrinsic values; and to enhance, restore, or
regenerate these when or where they can no longer meet the needs of present and future generations or the wellbeing of ecosystems.

1.3.3 Recognise the intrinsic value of the natural environment and safeguard its life-supporting capacity. Require that this capacity be enhanced or restored to the extent possible and as necessary to meet the wellbeing of environment.

1.4 Managing future changes and cumulative effects

We support the adaptive management approaches in the NBE Bill, and the authority of the NPF to direct a plan to use adaptive management (clause 86). However, we are concerned that the decision to the use of adaptive management is left to ministerial discretion on the basis that the Minister is satisfied: “(a) there is likely to be a significant change in the environment; but (b) the timing and the magnitude of that change are uncertain.”

Instead, we advocate that plans and spatial strategies at all levels should incorporate and implement principles of adaptive management as a matter of course, if required to effectively deal with uncertainties and complexities of resource management and planning issues, and/or the potential for new evidence and future environmental change. Other concerns about how to manage for cumulative and future effects are set out below.

In addition, we note that an NBE plan may direct the use of an adaptive approach if there is likely to be a “significant change” in the environment (clause 110). We submit that an adaptive approach should be triggered on the basis of both strong signals of impacts and weak signals of effects that are gradual or incremental.

By way of example, recent research in New Zealand on naturally occurring hazardous dust (including respirable crystalline silica, asbestos and erionite) has discussed the carcinogenic risk evolving over long time periods and in a cumulative manner. If disturbed by human activities or natural events, fibres can become airborne and, if inhaled, can cause significant lung disease including malignant mesothelioma. However, their effects can also be subtle and generic. It is an example of a risk that is emergent, falls between typical sectoral remits, and that has often ‘escaped’ regulations, but for which action-taking now can prevent poor future outcomes. New Zealand has a relatively high rate of malignant mesothelioma compared to other high-income countries. The use of an adaptive approach that only considers the strong signal of “significant change” without considering weaker incremental and cumulative signals would miss opportunities to protect human health in such a case.

Recommendations:

1.4.1. An adaptive management approach must also consider gradual or incremental changes and with potential severe harm to the environment, human health, or well-being.

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1.4.2. Set out an adaptive regulatory framework across the three bills with a built-in operational cycle for monitoring weak signals, cumulative effects over longer term.

1.5 Achieving Government’s reform objectives on climate change and emission reduction

As discussed in our ‘Key message’ at the outset, we think there is a lack of adequate attention to addressing the climate crisis in the Bills. Indeed, we believe the Bills are unlikely to achieve the Government’s objectives with respect to climate change and emissions reduction. We advocate that the adverse impacts of climate change and the need to reduce greenhouse gas emissions must be specifically catered for in the Bills and, indeed, they must become a central feature.

Currently, the NBE Bill does not effectively promote the role and values of land use planning in bringing about meaningful improvements to climate change issues and net zero carbon emissions. Alongside climate change adaptation, mitigation is also critical, but again, the NBE Bill is unacceptably weak in this regard. For example, the Natural and Built Environment (NBE) Plans (clause 223) do not require consideration of individual use or development for climate change and net zero carbon emissions.

Recommendations:

1.5.1 The NBE Bill must set out minimum assessment requirement on how individually consented land use or development contributes to climate change and net zero carbon emissions objectives, for example, in the clause 223 (2) matters that consent authority must have regard to for consideration of resource consent application. We also recommend:

- Clause 97 is an important one. As currently worded, it requires NBE plans to ‘give effect’ to the NPF and ‘be consistent’ with the relevant regional spatial strategy. We believe Clause 97 Scope of the Natural and Built Environment Plans must require the plans to “give effect the Climate Change Adaptation Bill”.

- Clause 102 should require that contents of the NBE plans must “include provisions that give effect to climate change and net zero carbon emission targets within the region of which the plan applies”, and in clause 97 scope of NBE plans.

- The “not inconsistent with” wording in clause 21 of Schedule 6 should be replaced with wording “give effect to”, thus, to require the National Planning Framework (NPF) proposals must give effect to an emissions reduction plan or national adaptation plan.
2. Independence and oversight

2.1 Legislative and policy independence

There is a stronger level of ministerial control and influence that appears to extend beyond what is currently imposed in the RMA. We have significant concerns that core matters such as resolving conflicts or trade-offs between system outcomes (clause 21 of Schedule 6) and setting out environmental limits and targets (clause 52) are left to the Minister or Regional Planning Committees (RPC). In addition, exemptions from an environmental limit or an interim limit (relating to ecological integrity) may be directed by the Minister (clause 44). We consider that the Minister and RPCs’ decision-making in this regard should be guided by legislated guidelines that clearly set expectations, timeframe, direction, and limits from the outset.

The National Planning Framework (NPF) proposals can be changed or withdrawn (in whole or in part) by the responsible Minister of the day (clause 21 of Schedule 6). In addition, an RPC must amend a plan if the plan rule duplicates or conflicts with a framework rule (clause 71). Taken together, these provisions create a material risk that the Government of the day may use its power to rewrite the NPF proposals and environmental limits or targets. Lower-level natural and built environment plans will then need to be amended following the variations of the NPF.

We are concerned that the limits and targets review panel and board of inquiry (to make recommendations on the NPF proposal) are ministerially appointed and subject to ministerial approval (clauses 3 and 9 of Schedule 6).

Recommendation:

2.1.1 Establish an independent Sustainability Commission (or equivalent) and/or a standing independent expert group (e.g., Environmental Forum or equivalent) to support the work of the Secretary for the Environment as kaitiaki of Aotearoa-New Zealand’s natural world. They should be appointed for monitoring National Planning Framework, environmental limits and targets, interim limits, and for granting exemptions from environmental limits. This should enable decision-making that transcends political cycles and generations.

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3. Purposes, outcomes, principles

3.1 Interactions between purpose, decision-making principles, and system outcomes

As noted above, the proposed system outcomes (clause 5) and purpose of the Act (clause 3 of the NBE Bill) lack clarity on whether there is a prioritisation or hierarchy among the listed outcomes. The lack of clarity on the relative priority given to environmental considerations leaves too much room for interpretation and risks allowing even worse environmental outcomes.

We are also concerned about the lack of clarity in relationships between the stated purpose of the NBE Bill, its decision-making principles, its stated system outcomes and the national planning framework outcomes5. The lack of guidance on balancing potentially competing outcomes in the NBE Bill is already challenging, to say nothing of how the outcomes should work in concert with the principles and the set of NPF outcomes.

Underlining this point, we note inconsistencies or disconnections between system outcomes and the purposes of the Act. For example, the ‘future generation’ element in clause 3 (purpose of the Act) has not been addressed in the system outcomes. Decision-making principles differ significantly from clause 5 (system outcomes). It is also unclear how the system outcomes will work with framework outcomes (clause 60) of the NPF.

We are concerned that the decision-making principles do not reflect on environmental limits or targets, which may allow for these clause 6 clauses to override environmental limits. Clause 6 principles have not reconciled with the purposes of the Act (clause 3) to “comply with environmental limits and their associated targets” and provide for “wellbeing of future generations”.

In addition, cost or economic evaluations and modelling in decision-making in New Zealand has often focused on ‘market price’. We advocate distinctions must be made between long-term ‘costs’ (including externalities) and immediate ‘market price’.

Recommendations:

3.1.1. Where assessing economic effects, cost-effectiveness, or conducting economic modelling or evaluation (e.g., clause 25 of Schedule 7, the NBE Bill), the ‘true’ costs from environmental degradation and the effects of climate change must be considered (i.e., externalities and long-term cumulative costs).

5 For instance, the phrase “to assist in achieving the purpose of the Act”, in our view, suggests the purpose of the Act is over and above system outcomes. At the same time, the decision-making principles are said “to assist in achieving the purpose of this Act”, and the purpose of the NPF is to “further the purpose of this Act”. Similarly, the NBE Bill states an evaluation report on the proposal for the NBE plan or plan change must consider the extent to which the proposal presents the most appropriate way of “achieving the purpose of this Act” (clause 25 of Schedule 7). However, it does not require consideration of the ‘system outcomes’, ‘framework outcomes’ of the NPF, or ‘plan outcomes’ of the NBE plans.
3.1.2. Related to 3.1.1, it must be recognised that climate change mitigation and general environmental policies can contribute to economic growth\(^6\) in various channels, which should be considered in evaluation, modelling, and decisions.

3.1.3. Clarify the inter-relationships and resolve conflicts between the purposes of the Act, the decision-making principles, the system outcomes, and the framework outcomes of the NPF, as well as the environment limits and targets. System outcomes and decision-making principles should refer to environmental limits or targets as a principle.

3.1.4. Add a clause in clauses 3, 5 and 6 to address trade-offs of competing outcomes in the legislation instead of leaving it to the NPF (recommended principle in 1.3.2).

3.1.5. An evaluation report on the proposal for a NBE plan or plan change should require specific assessment against to the ‘system outcomes’ in the NBE Bill, ‘framework outcomes’ for the NPF, or ‘plan outcomes’ of the NBE plans.

### 3.2 Purpose (clause 3)

The purpose of the NBE Bill (clause 3) is worded broadly with the dual (and inherently conflicting) intent to “enable the use, development, and protection of the environment” and to “recognise and uphold te Oranga o te Taiao.” It is unclear how this inherently conflicted statement of purpose is to be applied to make decisions about future land and resource use and development.

For example, clause 3 is ambiguous about whether the purpose of the Act privileges human activity, Te Taiao, or both. Feedback from diverse interests in our workshop demonstrated that the purpose statement could be interpreted in multiple ways.

Our workshop concluded that in their current form, the listed components of the statutory purpose in clause 3 are ambiguous, in conflict, and unduly complex. They leave room for interpretation that (unhelpfully) may be left to litigation to resolve.

For example, we noted particularly:

- the wording “promoting” outcomes is ambiguous and open to interpretation. We advocate to use wording “achieving” outcomes;

- “the benefit of the environment” and “recognise and uphold” are open to conflicting interpretation in decision-making;

- the interpretation of ‘wellbeing’ is broad and often has competing goals within

itself (i.e. “the social, economic, environmental, and cultural well-being of people and communities, and includes their health and safety” as per clause 7 of the NBE Bill);

- The clause 3 (a) (iv) phrase “manages adverse effects” is broad and unclear, without clarity on the requirements of the level to which these adverse effects are managed.

Recommendations:

3.2.1 Rewrite clause 3 of the NBE Bill with a tightly defined purpose statement, and unambiguous wording which address the shortcomings identified above.

3.2.2 Reconcile the dual/conflicting purposes and clarify what they mean, how they relate to each other, and how to make decisions when interacting.

3.3 Outcomes (clause 5)

Clause 5 of the NBE Bill is currently drafted to provide for a long list of outcomes. We noted that these outcomes echo many, but not all, of the United Nations Sustainable Development Goals, to which New Zealand is a signatory. We further note that most of the SDGs are closely related to or impacted by resource management and planning systems, yet key SDGs are not reflected in the resource management reform bills, which is missed opportunity in our opinion. Specifically: SDG3 Good health and wellbeing; SDG7 Affordable and Clean Energy; SDG8 Employment; and SDG10 Reduced Inequalities goals are not addressed or provided for in the drafted system outcomes.

It must be recognised that legislative reform of this magnitude has far reaching spill-over effects, which offer once-in-a-generation potential to effect change in other policy areas, not least through the types of land and other resource use transitions that will be needed as we confront dual climate and housing crises. This potential is underdeveloped in the current draft Bills.

Indeed, we believe the drafts are not forward-looking enough and do little to protect the wellbeing of future generations in a holistic and strategic way. Thus, in addition to the currently listed outcomes, the wording of clause 5 of NBE Bill could be strengthened by also promoting beneficial outcomes, rather than just mitigating adverse effects. Some examples include:

- Other beneficial outcomes of climate change mitigative opportunities
- Enhancing the environment, not just conserving

7 Outcomes include: ecological integrity; natural features; the natural character of the coastal environment, wetlands, and lakes and rivers and their margins; climate change and natural hazards; well-functioning urban and rural areas; availability of highly productive land; recognition of the relationship of iwi and hapū and the exercise of their kawa, tikanga, and mātauranga; the protection customary rights; conservation of cultural heritage; enhanced public access to and along the coastal marine area, lakes, and rivers; and the provision of infrastructure services.

• Quality densification and commensurate public transport infrastructure
• Social-spatial dislocation and justice
• Access to employment opportunities
• Opportunities for quality ‘placemaking’ to create quality spaces that strengthening connections between people and places
• Public participation and deliberation

Resource management in New Zealand has not typically addressed, in any strategic way, the interconnected issues of carbon emissions, clean energy, public health, social equality and quality placemaking. Yet environmental management and planning play a central role in the transition to a zero-carbon society and in realising long-term public health, social-spatial equality, and quality placemaking. The resource management system should actively promote the achievement of these outcomes rather than just mitigating negative impacts. In doing so, there is a need for ongoing benchmarking of the performance of planning authorities and decision-making systems in realising the system outcomes.

Overall, significant concerns were raised by workshop participants about the vague and ambiguous wording of the drafted system outcomes (clause 5). Currently, too much is left open to interpretation and tighter language is needed to prevent uncertainty and facilitate compliance. In addition, interactions (and prioritisation) must be more systematically and strategically addressed. Therefore, participants advocated for a clearer rewrite of the clause with the following general and specific recommendations.

Recommendations:

3.3.1. Description of outcomes and integrity of outcomes must be more specific so as to provide more meaningful guidance on operationalisation and evaluation within the NPF and regional plans. Descriptions should actively encourage beneficial outcomes and help give effect to associated (national and international) goals and commitments.

3.3.2. Make better use of the established values of resource management and planning systems to promote long-term benefits.

3.3.3. Identify more targeted objectives specific to each operation. For example, set national carbon reduction targets per annum with binding targets for management units. Local authorities must be enabled to monitor targets.

3.3.4. Prospective system outcomes for future generations must be included. For example:

9 Specific examples include:
- Clause 5 (d), ‘the availability of highly productive land for land-based primary production’, does not specify either a definition or outcome for highly productive land, leaving too much open to interpretation
- The word “including” in the subclause 5(a) (iii), 5(c)(ii), and 5(e) is open to interpretation
- The wording “natural resources” is highlighting nature as ‘resources’ rather than acknowledging the intrinsic values of nature itself
- Some wording is more explicit with more decisive directionality. For example, ‘achieving’ is written in clause 5(b), whilst clause 5(c) uses ‘promotes’. 
example, clause 5 (d) must consider not just the current but also future “availability of highly productive land for land-based primary production…”

3.3.5. Require management plans to contribute to achieving broader desired outcomes that take account of cumulative effects and future scenarios. See part 6 of this document for comments on deliberative processes to help achieve this.

3.3.6. Set minimum standard requirements for assessment (e.g., by Regional Planning Committees) and for how the system outcomes are pursued by plan creation and resource consent.

3.3.7. Clause 5 should recognise the interconnectedness of ecosystems in a holistic way, including the interdependency between climate, biodiversity and human wellbeing.

3.4 Decision-making principles (clause 6)

A concern shared across the diverse group of workshop participants was that decision-making principles seemed only to apply to the Minister and regional planning committees. In addition, we note that clause 6 decision-making principles are often open-ended statements that should be made more specific. We urge greater clarity on the principles’ application to ensure that they are broadly adopted and enforced.

In terms of decision-making processes embedded in the Bills, these are highly flexible and add to the potential for uncertain application. For example, Regional Spatial Strategy (RSS) processes are left to a small group of representatives to decide. This may lead to RSSs that are less socially robust and effective. In short there is a risk of inadequate or unchecked use of clause 6 of the NBE Bill due to the lack of clarity and contested wording.10

As far as specific principles are concerned, it is the principle of “proportionality” that presents perhaps the most obvious risk. First, the subjectiveness of the concept makes it vulnerable to be used as a ‘Trojan Horse’ to introduce interpretations of the Bill that may not have been intended by its drafters or that undermine or conflict with appropriate levels of environmental projection. Second, the concept of proportionality also tends to suffer from presentism unless there is explicit instruction and methodologies to also account for emerging, cumulative, and future risks and feedback effects (see earlier comments on listening for weak as well as strong signals in foresighting future scenarios). Third, there is no clarity on the criteria of proportionality nor on who sets these. There is a concern that ‘proportionality’ as a decision-making principle will favour economic interests in the calculus of proportionate risk.

10 Specific examples include:
- “integrated management of the environment” in the NBE Bill lacks definition or explanation
- There is a lack of clarity on the definition of “caution” in clause 6(2) and whether it is in reference to development or environmental degradation, or other adverse effects
- “The outcomes” of clauses (1) (b) and (1) (d), and “actively promote the outcomes”.
The interpretation of proportionality has material consequences and clear risks. For instance, its use in the fast-tracking consenting pathway for infrastructure and housing projects effectively can override due process and potentially remove any safeguards that environmental limits and targets are maintained.

The following recommendations address the above issues about decision-making principles.

**Recommendations:**

3.4.1 Redevelop and rewrite clause 6 to be more specific, including how the decision-making principles should deal with the trade-offs and prioritisation among competing outcomes.

3.4.2 All clauses should use clear and precise language. Clause 6(b) should be amended to read “actively promote achievement of outcomes provided for under this Act”.

3.4.3 The clause 6(1) should be amended to “all decision-makers under this Act”. For example, these should include independent Hearing Panel members and Environment Commissioners.

3.4.4 Fast-tracking consent proposals should be reviewed by independent experts rather than at the Minister’s discretion, taking into account current and future scenarios, cumulative effects and potential multi-scalar outcomes using best evidence and data.

3.4.5 Set out and articulate a regular review process for decisions and decision-making practices.

### 3.5 Interpretation (clause 7)

Conventional legislative drafting techniques (the use of certain words and phrases) can be used to convey rigidity or flexibility in a bill’s intent. However, the interpretation clause must not convey such flexibility that it could lead to uncertainties left to the courts to interpret. For example, the concept of “ecological integrity” is referred to across the NBE Bill as a critical system outcome, setting environmental limits, interim limits, minimum level targets, and limits and targets review. Although an interpretation is provided, it is still vague and ill-defined. It is essential that robust guidance is provided on how this concept is to be given effect and assessed in accordance with its definition in clause 7 (i.e., “the ability to support and maintain” the “representation”, “composition”, “structure” and “functions”).

Another example is the broad concept of “well-being.” Clause 7 defines ‘wellbeing’ to mean the “the social, economic, environmental, and cultural well-being of people and communities, and includes their health and safety.” However, achieving all of multiple
elements of wellbeing involves balancing a range of competing outcomes within its interpretation. No interpretive guidance is offered as to how these components should be weighed up and how this might be done in different contexts, nor even that they should be.

**Recommendation:**

3.5.1 All technical definitions and conceptual interpretations must be unambiguous and forward-looking.
4. National Planning Framework

4.1 Resolving conflicts with resource allocation principles (clause 36)

The NEB Bill proposes that conflict between system outcomes will be addressed in the both the NPF and at NBE plan levels. We note that the existing national directions under the RMA will be adapted to become the first NPF. However, the details remain inexplicit regarding, what to consider or how to implement it.

The resource allocation principles for the NPF are set out as (a) sustainability, (b) efficiency, and (c) equity (clause 36). There is no definition for them in terms of what they are, when, how, and by whom to consider them.

Recommendations:

4.1.1 Add definitions of ‘sustainability’, ‘efficiency’, and 'equity' and add details in clause 36 concerning what, when, how, and who decides and operationalises these, and how (whether by principles or processes) to deal with conflicts between or among them.

4.1.2 Clarify how resource allocation principles are distinct from decision-making principles and operations of applying these two principles.

4.2 Limits and Targets (Part 3, subpart 2 and subpart 11; Schedule 6)

Environmental limits are not referred to in either the Purpose (clause 3) or the Decision-making principles (clause 6) of the NBE Bill, or in the Regional Spatial Strategies in the SP Bill. This lack of mention at the level of agenda-setting clauses is concerning. Limits and targets may not be adequately mirrored in the decisions on resource consents (with wordings “contrary to” in clause 223(11)(a)). There are risks that clause 3 or clause 6 sub-clauses (e.g., clause 6(3)) do not adequately express the need to operate within environmental limits.

In addition, we are concerned that the environmental limits are measured and set based on the current state at the commencement of Part 3 of the NBE Bill (clause 40, subclause 3) but not on an actual outcome. This is because, in many contexts, the current state of environment is already degraded and needs improvement.

As well, the management units are set at the discretion of minister or a regional planning committee (clause 55), but without guidance in statue as to their maximum size. This means that large size can be leveraged to allow some areas to degrade so long as areas located elsewhere within the unit are protected. In this way, the overall balance of the unit may meet its target, but it may ignore significant ecosystem needs or worse, it could impair internal connectivity within whole ecosystems. This can result in risks for heavy environment or ecology degradation.
There were also significant concerns in the workshop about a variety of flexibilities provided in the NBE Bill to provide room for undermining or overriding environmental limits and targets. We noted:

- The exemptions to limits are set out broadly. The exemption regime from environmental limits (clause 45 of the NBE Bill) may provide a trade-off to prioritise urban and land development if “the activity must provide public benefits that justify the loss of ecological integrity”. However, there is no clarity on the definitions of “public benefits” and assessment methods of “ecological integrity”. This would be the direction of the responsible Minister.

- Another example is the flexibility for an interim limit for ecological integrity to be set as a state in a management unit that is more degraded or worse than it is at the commencement of the Part 3 of the NBE Bill, which allows the current state of environment to degrade further for an unspecified amount of time.

- The responsible Minister is required to set a minimum level target in the NPF if the Minister is satisfied that the associated environmental limit is set at a level representing unacceptable degradation of the natural environment (clause 50). There is no clarity or definition of “unacceptable degradation”, and where, when, or at what timeframe that the minimum level target must be set to meet them.

- Further, limits and targets can be qualitative or quantitative, with more than one limit or target applicable to a management unit. Competing environmental limits in one management unit and the prioritisation between or among them should be clarified. Also, qualitative limits and targets are challenging to monitor and open for interpretations.

**Recommendations:**

4.2.1 Environmental limits and targets should be referred to in the purpose of the Act and system outcomes by adding new clauses in Part 3 of the NBE Bill specifically on giving effect to environmental limits and targets, in addition to subpart 6 “giving effect to national planning framework”.

4.2.2 When setting environmental limits, there should be an explicit evaluation as to whether retaining the current state is sufficient to meet the future needs and wellbeing of people and the environment, not just when the environment poses a “risk of irreversible or significant harm to ecological integrity”. Instead, it should be explicitly set out in the statute on when there is a requirement for restoration.

4.2.3 The identification of “unacceptable degradation” and the set of a minimum level target should be reviewed by an independent review panel and informed by scientifically robust evidence.
4.2.4 Excessive embedded flexibility risks undermining the impact of environmental limits or targets (e.g., granting exemptions, identifying unacceptable degradation, and setting out interim limits). We recommend that the potential consequences of accessing such flexibility mechanisms must first be considered by independent experts utilising best evidence and data.

4.2.5 The NBE Bill should require that NPF set out assessment standards for management units to meet environmental limits and targets in such a way that does not trade-off ecosystems within the unit (clauses 54, 55). We recommend elevating the issue of target and limit setting by adding new clauses in Part 3 of the NBE Bill specifically on giving effect to environmental limits and targets, in addition to subpart 6 “giving effect to national planning framework”.
5. “Best information,” knowledge and expertise

5.1 Use of best information (clause 805) and expert advice

Our workshop participants raised significant concerns about the placement and framing given to robust scientific advice to inform decision making within the framework of the Bills.

For instance, while clause 805 of the NBE Bill compels the generic use of ‘best information’ there is no specific requirement or interpretation to guide decision-makers on when, how and by whom evidence should be sought and applied.

Moreover, the implied hierarchy between ‘scientifically robust information’ and ‘information obtained by modelling’ is problematic. What is good planning if not the development of scenarios that include modelled cumulative effects, feedback cycles and other plausible inputs based on accumulated data together with scientific knowledge of system dynamics? Models are an accepted and indeed essential component of climate and environmental science. Yet, as it is written, clause 805 could see even the most robust models dismissed (which could be a particular risk if their findings are politically unpopular).

It was also pointed out that the requirement for content evaluation of the natural and built environment plans (clause 25 of Schedule 7, NBE Bill) is less comprehensive than the section 32 assessment of the RMA, with only one level of assessment for achieving the purpose of the Act (clause 3 of the NBE Bill). We believe this is an insufficient requirement for robust policy evaluations that are supposedly evidenced by the best information. The plan content evaluation must refer to the best information and independent expert advice.

5.2 Independence of evidence and advice

For all the reasons laid out above, we are concerned that decisions on core matters (such as resolving conflicts among outcomes or setting environmental limits, targets, interim limits, and granting exemptions) would be left to the Minister or Regional Planning Committees, and that these decisions will be made with a lack of evidence and expert interpretation and advice\textsuperscript{11}.

We believe these types of decisions must be informed by scientifically robust measurement or modelling. It is essential, for instance, that environmental limits be defined based on a systematic and evidence-informed assessment of levels that can achieve the system outcomes and purposes of the NBE Bill and remain adaptable for future system changes.

Thus, we strongly urge that critical decision points be required to demonstrate the use of transparent advice of independent scientific experts. Whatever the mechanism or procedure established for such independent advice, it should be protected by statute.

\textsuperscript{11} We note parenthetically that the existing Environmental Reporting Act 2015 does not require the Ministers to consult independent scientists or statisticians or refer to scientific research evidence before recommending the making of regulations.
Recommendations:

5.2.1 Insert a clause in clause 6 of decision-making principles to require the use of and reference to independent evidence and advice on any national-level policies, national planning framework, environmental limits, targets, and NBE plans, and to ensure they are based on independent evidence or expert advice.

5.2.2 The best information and science must be broadly referred to throughout the Bills and when setting out prioritisations, standards, policies, matters of national significance, and the decision-making on them. Both the NBE Bill and the SP Bill (e.g., decision-making) must set out the requirements for using the best information, and clarify what, how, when they are provided by whom and at what timeframe.

5.2.3 Specifically add requirements for us of best information at minimum to the following clauses:
- The principles of decision-making (clause 6)
- The set of national planning framework, environmental limits and targets, interim limits, and exemptions from environmental limits (Part 3)
- The content evaluation of natural and built environment plans (clause 25 of Schedule 7)
- The decisions on affected application consenting process (Subpart 5 of Part 5)
- The compliance and enforcement (Part 11)
- The proceedings heard by environment judge (clause 692)

5.3 Access to and transparency of data

There remain gross inadequacies in our knowledge of our natural environment and the impacts of our activities on it. The current investment and arrangements for research fall well short of what is needed to ensure we have the necessary and timely information to guide useful actions for a sustainable future. So too does investment in the development, protection and storage of essential monitoring datasets.

Our workshop participants generally agreed there is a lack of coherence in data regarding environmental information, environmental modelling and impact assessments that are required to make decisions. Quality baseline data and long-term datasets are necessary.

Where data exists, its availability to the public can be limited, which can hinder performance monitoring, evaluation, reporting and the public scrutiny necessary in a democracy. Moreover, lack of access to environmental data limits the scope of expert advice that is possible. We advocate public access to government (local, regional, and central) environmental data as a provision of the public good. This includes Crown Research Institutes (CRIs) and council held data. Ideally, such access would be provided as a central and arm’s length data curation and management service to avoid any conflicts of interest, while serving

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the public good. This is a good example of how and where the bill needs to harmonise with the ongoing research, science, and innovation system reforms.

**Recommendation:**

| 5.3.1 | Prioritise national investment in long-term and quality datasets, which must be held in a safe but accessible way. Similarly, we believe public access should be provided to data from the Crown Research Institutes (CRIs) and local councils. |

**5.4 Mātauranga Māori**

We acknowledge that considerations of Mātauranga Māori have been included in several places in the NBE Bill, including:

- the design and implementation of biodiversity offsetting (Schedule 3) and redress (Schedule 4)
- the set out of the size and location of management unit for environmental limit or target (clause 55)
- the principles for cultural heritage offsetting redress (Schedule 5)
- the identification of areas of highly vulnerable biodiversity (clause 562)

We also noted that Mātauranga Māori is one of the areas of collective expertise when appointing panel members, such as:

- the limits and targets review panel
- board of inquiry of NPF proposal
- Independent hearings panels

However, it is our view that Mātauranga Māori should be properly defined in the Bills.

**Recommendation:**

| 5.4.1 | Mātauranga Māori should be properly defined in the Bills, e.g., in the clause 7 of the NBE Bill. |
6. Opportunities for public engagement and deliberations

6.1 Public engagement in planning and decision-making processes

Both the complex public values associated resource management and the socio-cultural context of Aotearoa New Zealand demand an approach to decision-making and governance that is inclusive and engaged.

We note that local authorities have the functions to prepare statements of community outcomes (clause 645 of the NBE Bill) or regional environmental outcomes (clause 643) that record a summary of the significant resource management issues of the region, of a district, or local community. However, these are discretionary rather than compulsory. Moreover, the process for their preparation does not appear to have to comply with any national direction, regulation, or other planning document under the NBE Bill or the SP Bill.

Furthermore, the excessive length and cost of consultation process is one of the reasons that ordinary citizens are often detached from public decision or planning processes that structurally may privilege some groups who may have motivation and resources to participate. For instance, the requirement in the NBE Bill to provide evidence of ‘submissions’ throughout the plan development process may discourage groups or individuals lacking resources from participating, due to the constraints of the format.

6.2 Regional Planning Committees (RPCs)

We are further concerned that the proposal to use small group representatives for decision making may not provide a meaningful process for public engagement. There seems to be very broad flexibility regarding the RPCs’ functions and powers.

For example, it is required that RPCs maintain an engagement register of those interested in being consulted in the plan creation process. However, it is not mandatory for the people on an engagement register to be consulted (clause 15 of Schedule 7). This leaves open the possibility of discretionary consultation practices and the potential for intentional or unintentional silencing of concerns.

Furthermore, we have some concerns about the powers granted to RPCs in Schedule 7 of the NBE Bill. Clause 38 of Schedule 7 provides that RPCs may strike out submissions (in whole or in part), while clause 66 allows RPCs to rule on objections from submitters. Similarly, RPCs can adopt a process for preparing Regional Spatial Strategies (RSS) without a hearing. These provisions are vulnerable to abuse and risk reducing the effectiveness and robustness of the RSS or the NBE plans.

6.3 Independent Hearing Panel (IHP)

The NBE Bill proposes that the IHP plays an important role in decision-making to make recommendations to the RPCs. The Minister would oversee the accreditation of the IHP. However, it is unclear what the criteria are and how it works for the accreditation of a ‘regional candidate pool’ and the selection process from the pool.
Recommendation

6.3.1 clarification is required on the appointment, function, and power of an IHP during an appeals process.

6.4 Institutionalising representative public deliberation to improve decisions

Given the concerns outlined above, we suggest that public processes for deliberative decision making could be usefully deployed for major resource management and planning decisions, and that such processes should be institutionalised in these bills. Deliberative initiatives like citizens’ assemblies can inform better policy outcomes, give greater legitimacy to make hard choices, and enhance public trust.\(^\text{13}\)

Citizen assemblies or “deliberative mini-publics” are constructed through random selection of a demographically representative sample of the population. Members meet to learn about the issue, interview experts, and find common ground on solutions in a structured and facilitated process. Koi Tū’s experience running deliberative processes including Aotearoa’s first Citizen’s Assembly with a strong institutional remit on the future sources of water in Auckland, serve as an example structure that could be considered.\(^\text{14, 15, 16}\)

Recommendations

6.4.1 We recommend institutionalising representative public deliberation, to improve collective decision making that can contribute to mitigate legacy problems with participatory practices and the disproportionate elite influence on these processes, and to present a more participatory and transparent model that would engage a wider range of communities.

6.4.2 Any commitment to public deliberation should be supported by funding to increase the capacity and capability of consultation participants in the resource management and planning system.

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\(^{14}\) Citizen assemblies offer hope for democracy and climate change challenges. [https://informedfutures.org/newsroom-citizen-assemblies/](https://informedfutures.org/newsroom-citizen-assemblies/)


\(^{16}\) See Koi Tu project on Deliberative public decision-making practices [https://www.complexconversations.nz/](https://www.complexconversations.nz/)
7. Conclusion

This submission was prepared by researchers at Koi Tū, the Centre for Informed Futures and Ngā Ara Whetū, Centre for Climate, Biodiversity & Society at the University of Auckland. The lead author was Dr Wendy Liu, and the co-authors were Kristiann Allen, Associate Director of Koi Tū and Dr Anne Bardsley, Deputy Director of Koi Tū. Professor David Noone, Dr Maria Armoudian and Professor Jacqueline Beggs contributed to commentary on behalf of Ngā Ara Whetū. Associate Professor Vernon Rive (AUT Law School and member of the New Zealand Centre for Environmental Law at the University of Auckland) provided input on selected legal issues in the submission. We are grateful for the opportunity to ideate and sense-check with a broadly diverse group of participants from sectors across sectors that are particularly interested in the resource reform.

As university-based transdisciplinary research centres, core partnerships with Mana Whenua and, more broadly, tangata whenua fundamentally inform our organisations’ perspectives, while recognising that iwi and other Māori organisations will speak for themselves as Crown partners in the development of this landmark legislation.

We welcome opportunities to present to select committee on any of the issues raised in this submission.
Koi Tū: The Centre for Informed Futures

We engage with people and organisations focused on the long-term development of New Zealand, and on core issues where trustworthy and robust analysis can make a real difference.

Ngā Ara Whetū: Centre for Climate, Biodiversity and Society

Transdisciplinary innovation and collaboration in research, education, and engagement for thriving peoples and planetary wellbeing.