

DRAFT FOR CONSULTATION

Natural and Built Environments Bill

Government Bill

Hon David Parker

Natural and Built Environments Bill

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

This Act comes into force on X.

Part 1

Preliminary provisions

3 Interpretation

In this Act, unless the context otherwise requires,—

abiotic means non-living parts of the environment

biotic means living parts of the environment

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

(a) seawater with a substantial freshwater component; and

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

cultural heritage—

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

- (i) archaeological:
- (ii) architectural:
- (iii) cultural:
- (iv) historic:
- (v) scientific:
- (vi) technological; and

(b) includes—

- (i) historic sites, structures, places, and areas; and
- (ii) archaeological sites; and
- (iii) sites of significance to Māori, including wāhi tapu; and
- (iv) surroundings associated with those sites

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

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

- (a) its composition: the natural diversity of indigenous species, habitats, and communities that make up the ecosystem; and
- (b) its structure: the biotic and abiotic physical features of an ecosystem; and
- (c) its functions: the ecological and physical functions and processes of an ecosystem; and
- (d) its resilience to the adverse impacts of natural or human disturbances

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

environment means, as the context requires,—

- (a) the natural environment:
- (b) people and communities and the built environment that they create:
- (c) the social, economic, and cultural conditions that affect the matters stated in **paragraphs (a) and (b)** or that are affected by those matters

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

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

freshwater means all water except coastal water and geothermal water

geothermal water—

- (a) means water heated within the earth by natural phenomena to a temperature of 30 degrees Celsius or more; and
- (b) includes all steam, water, and water vapour, and every mixture of all or any of them that has been heated by natural phenomena

infrastructure [placeholder]

infrastructure services [placeholder]

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

land—

- (a) includes land covered by water and the airspace above land; and
- (b) includes the surface of water

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

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

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

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

- (a) by a provision in the national planning framework or in a plan; or
- (b) as a consent condition proposed by the applicant for the consent

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

natural environment means—

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

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

person includes—

- (a) the Crown, a corporation sole, and a body of persons, whether corporate or unincorporate; and
- (b) the successor of that person

plan—

- (a) means a natural and built environments plan made in accordance with **section 21**; and
- (b) includes a proposed natural and built environments plan, unless otherwise specified

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

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

public plan change [placeholder]

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

regional council—

- (a) has the same meaning as in section 5 of the Local Government Act 2002; and
- (b) includes a unitary authority

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

river—

- (a) means a continually or intermittently flowing body of freshwater; and
- (b) includes a stream and modified watercourse; but
- (c) does not include an irrigation canal, a water supply race, a canal for the supply of water for electric power generation, a farm drainage canal, or any other artificial watercourse

structure—

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

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

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

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

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

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

water—

- (a) means water in all its physical forms, whether flowing or not and whether over or under the ground:
- (b) includes freshwater, coastal water, and geothermal water:
- (c) does not include water in any form while in any pipe, tank, or cistern

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

4 **How Act binds the Crown**

[Placeholder.]

Part 2

Purpose and related provisions

5 **Purpose of this Act**

- (1) The purpose of this Act is to enable—
 - (a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and
 - (b) people and communities to use the environment in a way that supports the well-being of present generations without compromising the well-being of future generations.
- (2) To achieve the purpose of the Act,—
 - (a) use of the environment must comply with 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.

6 Te Tiriti o Waitangi

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

7 Environmental limits

- (1) The purpose of environmental limits is to protect either or both of the following:
 - (a) the ecological integrity of the natural environment:
 - (b) human health.
- (2) Environmental limits must be prescribed—
 - (a) in the national planning framework (*see* **section 12**); or
 - (b) in plans, as prescribed in the national planning framework (*see* **section 25**).
- (3) Environmental limits may be formulated as—
 - (a) the minimum biophysical state of the natural environment or of a specified part of that environment:
 - (b) the maximum amount of harm or stress that may be permitted on the natural environment or on a specified part of that environment.
- (4) Environmental limits must be prescribed for the following matters:
 - (a) air:
 - (b) biodiversity, habitats, and ecosystems:
 - (c) coastal waters:
 - (d) estuaries:
 - (e) freshwater:
 - (f) soil.
- (5) Environmental limits may also be prescribed for any other matter that accords with the purpose of the limits set out in **subsection (1)**.
- (6) All persons using, protecting, or enhancing the environment must comply with environmental limits.
- (7) In **subsection (3)(a)**, **biophysical** means biotic or abiotic physical features.

8 Environmental outcomes

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

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

- (b) ecological integrity is protected, restored, or improved:
- (c) outstanding natural features and landscapes are protected, restored, or improved:
- (d) areas of significant indigenous vegetation and significant habitats of indigenous fauna are protected, restored, or improved:
- (e) in respect of the coast, lakes, rivers, wetlands, and their margins,—
 - (i) public access to and along them is protected or enhanced; and
 - (ii) their natural character is preserved:
- (f) the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga is restored and protected:
- (g) the mana and mauri of the natural environment are protected and restored:
- (h) cultural heritage, including cultural landscapes, is identified, protected, and sustained through active management that is proportionate to its cultural values:
 - (i) protected customary rights are recognised:
- (j) greenhouse gas emissions are reduced and there is an increase in the removal of those gases from the atmosphere:
- (k) urban areas that are well-functioning and responsive to growth and other changes, including by—
 - (i) enabling a range of economic, social, and cultural activities; and
 - (ii) ensuring a resilient urban form with good transport links within and beyond the urban area:
- (l) a housing supply is developed 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) the ongoing provision of infrastructure services to support the well-being of people and communities, including by supporting—
 - (i) the use of land for economic, social, and cultural activities;
 - (ii) an increase in the generation, storage, transmission, and use of renewable energy;
- (p) in relation to natural hazards and climate change,—
 - (i) the significant risks of both are reduced; and
 - (ii) the resilience of the environment to natural hazards and the effects of climate change is improved.

Part 3

National planning framework

Requirement for national planning framework

9 National planning framework

- (1) There must at all times be a national planning framework.
- (2) The national planning framework—
 - (a) must be prepared and maintained by the Minister in the manner set out in **Schedule 1**; and
 - (b) has effect when it is made by the Governor-General by Order in Council under **section 11**.

10 Purpose of national planning framework

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

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

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).

Contents of national planning framework

12 Environmental limits

- (1) Environmental limits—
- (a) may be prescribed in the national planning framework; or
 - (b) may be made in plans if the national planning framework prescribes the requirements relevant to the setting of limits by planning committees.
- (2) Environmental limits may be prescribed—
- (a) qualitatively or quantitatively;
 - (b) at different levels for different circumstances and locations.

13 Topics that national planning framework must include

- (1) The national planning framework must set out provisions directing the outcomes described in—
- (a) **section 8(a)** (the quality of air, freshwater, coastal waters, estuaries, and soils); and
 - (b) **section 8(b)** (ecological integrity); and
 - (c) **section 8(c)** (outstanding natural features and landscapes); and
 - (d) **section 8(d)** (areas of significant indigenous vegetation and significant habitats of indigenous animals); and
 - (e) **section 8(j)** (greenhouse gas emissions); and
 - (f) **section 8(k)** (urban areas); and
 - (g) **section 8(l)** (housing supply); and
 - (h) **section 8(o)** (infrastructure services); and
 - (i) **section 8(p)** (natural hazards and climate change);
- (2) The national planning framework may also include provisions on any other matter that accords with the purpose of the national planning framework, including a matter relevant to an environmental outcome provided for in **section 8**.
- (3) In addition, the national planning framework must include provisions to help resolve conflicts relating to the environment, including conflicts between or among any of the environmental outcomes described in **section 8**.

14 Strategic directions to be included

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

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

15 Implementation of national planning framework

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

- (a) must be given effect to through the plans; or
- (b) must be given effect to through regional spatial strategies; or
- (c) have direct legal effect without being incorporated into a plan or provided for through a regional spatial strategy.

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

- (a) make a public plan change; or
- (b) insert that part of the framework directly into their plans without using the public plan change process; or
- (c) amend their plans to give effect to that part of the framework, but without—
 - (i) inserting that part of the framework directly into their plans; or
 - (ii) using the public plan change process.

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

16 Application of precautionary approach

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

17 [Placeholders]

[Placeholder for other matters to come, including—

- (i) the role of the Minister of Conservation in relation to the national planning framework; and
- (ii) the links between this Act and the Climate Change Response Act 2002.]

18 Implementation principles

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

[Relevant persons must]—

- (a) promote the integrated management of the environment:
- (b) recognise and provide for the application, in relation to [te taiao], of [kawa, tikanga (including kaitiakitanga), and mātauranga Māori]:
- (c) ensure appropriate public participation in processes undertaken under this Act, to the extent that is important to good governance and proportionate to the significance of the matters at issue:
- (d) promote appropriate mechanisms for effective participation by iwi and hapū in processes undertaken under this Act:
- (e) recognise and provide for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of [te taiao]:
- (f) have particular regard to any cumulative effects of the use and development of the environment:
- (g) take a precautionary approach.

Part 4**Natural and built environments plans***Requirement for natural and built environments plans***19 Natural and built environments plans**

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

20 Purpose of plans

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

21 How plans are prepared, notified, and made

- (1) The plan for a region, and any changes to it, must be made—
 - (a) by that region’s planning committee; and
 - (b) using the process set out in **Schedule 2**.
- (2) [Placeholder for status of plans as secondary legislation.]

*Contents of plans***22 Contents of plans**

- (1) The plan for a region must—
 - (a) state the environmental limits that apply in the region, whether set by the national planning framework or under **section 25**; and
 - (b) give effect to the national planning framework in the region as the framework directs (*see section 15*); and
 - (c) promote the environmental outcomes specified in **section 8** subject to any direction given in the national planning framework; and
 - (d) [placeholder] be consistent with the regional spatial strategy; and
 - (e) identify and provide for—
 - (i) matters that are significant to the region; and
 - (ii) for each district within the region, matters that are significant to the district; and
 - (f) [placeholder: policy intent is that plans must generally manage the same parts of the environment, and generally control the same activities and effects, that local authorities manage and control in carrying out their functions under the Resource Management Act 1991 (*see sections 30 and 31 of that Act*)]; and
 - (g) help to resolve conflicts relating to the environment in the region, including conflicts between or among any of the environmental outcomes described in **section 8**; and
 - (h) [placeholder for additional specified plan contents]; and
 - (i) include anything else that is necessary for the plan to achieve its purpose (*see section 20*).
- (2) A plan may—
 - (a) set objectives, rules, processes, policies, or methods;
 - (b) identify any land or type of land in the region for which a stated use, development, or protection is a priority;
 - (c) include any other provision.

*Planning committees***23 Planning committees**

- (1) A planning committee must be appointed for each region.
- (2) The committee's functions are—
 - (a) to make and maintain the plan for a region using the process set out in **Schedule 2**; and

- (b) to approve or reject recommendations made by an independent hearings panel after it considers submissions on the plan; and
 - (c) to set any environmental limits for the region that the national planning framework authorises the committee to set (*see section 7*).
- (3) Provisions on the membership and support of a planning committee are set out in **Schedule 3**.

24 Considerations relevant to planning committee decisions

- (1) A planning committee must comply with this section when making decisions on a plan.
- (2) The committee must have regard to—
- (a) any cumulative effects of the use and development of the environment;
 - (b) any technical evidence and advice, including mātauranga Māori, that the committee considers appropriate;
 - (c) whether the implementation of the plan could have effects on the natural environment that have, or are known to have, significant or irreversible adverse consequences;
 - (d) the extent to which it is appropriate for conflicts to be resolved generally by the plan or on a case-by-case basis by resource consents or designations.
- (3) The committee must apply the precautionary approach.
- (4) The committee is entitled to assume that the national planning framework furthers the purpose of the Act, and must not independently make that assessment when giving effect to the framework.
- (5) [Placeholder for additional matters to consider.]
- (6) In **subsection (2)(d), conflicts**—
- (a) means conflicts relating to the environment; and
 - (b) includes conflicts between or among any of the environmental outcomes described in **section 8**.

25 Power to set environmental limits for region

- (1) This section applies only if the national planning framework—
- (a) specifies an environmental limit that must be set by the plan for a region, rather than by the framework; and
 - (b) prescribes how the region’s planning committee must decide on the limit to set.
- (2) The planning committee must—
- (a) decide on the limit in accordance with the prescribed process; and
 - (b) set the limit by including it in the region’s plan.

Schedule 1
Preparation of national planning framework

s 9

[placeholder]

Schedule 2
Preparation of natural and built environments plans

s 21

[placeholder]

Schedule 3

Planning committees

s 23

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Membership

1 Membership of planning committees

- (1) The members of a region's planning committee are—
- (a) 1 person appointed under **clause 2** to represent the Minister of Conservation;
 - (b) mana whenua representatives appointed under **clause 3**;
 - (c) either—
 - (i) 1 person nominated by each local authority that is within or partly within the region; or
 - (ii) [placeholder for appropriate representation if the regional council is a unitary authority].
- (2) Despite **subclause (1)(c)**, the same person may be nominated by more than 1 local authority for the purpose of that paragraph.

2 Appointment of member to represent Minister of Conservation

[Placeholder.]

3 Appointment of mana whenua members

[Placeholder] This section sets out—

- (a) how many mana whenua representatives may be appointed to a planning committee; and
- (b) how those representatives are selected and appointed.

4 Appointment of planning committee chairperson

[Placeholder.]

*Support***5 Planning committee secretariat**

- (1) [Placeholder] Each planning committee must establish and maintain a secretariat.
- (2) The function of the secretariat is to provide any advice and administrative support that the committee requires to help it carry out its functions under this Act, including, for example, to—
 - (a) provide policy advice:
 - (b) commission expert advice:
 - (c) draft plans and changes to plans:
 - (d) co-ordinate submissions.
- (3) [Placeholder: policy intent is that local authorities support secretariat.]

6 Local authorities must fund secretariat

[Placeholder.]