

Natural and Built Environments Bill Exposure Draft – Parliamentary Commissioner for the Environment’s proposed changes

NBEB Exposure Draft text	PCE proposed text (changes in red)	Rationale for change
<p>5 Purpose of this Act</p> <p>(1) The purpose of this Act is to enable—</p> <p>(a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and</p> <p>(b) people and communities to use the environment in a way that supports the well-being of present generations without compromising the wellbeing of future generations.</p>	<p>5 Purposes of this Act</p> <p>(1) The purposes <u>are</u> of this Act <u>are</u> to,—</p> <p>(a) <u>uphold</u> Te Oranga o te Taiao <u>and to protect, and where possible, restore, the ecological integrity of</u> the natural environment;</p> <p>(b) <u>subject to (a), enable</u> people and communities <u>to determine how</u> the environment <u>may be protected, used and developed</u> in a way that supports the well-being of present generations without compromising the well-being of future generations.</p>	Plural to clarify multiple purposes.
		This wording is from the explanatory material to the NBEB with an added reference to ecological integrity, and is not governed by the verb “enable”.
		It is relatively common for statutes to refer to a primary or main purpose, and then have other or additional purposes. However, in my view the concept of (a) and (b) being the two purposes of the NBEB, but with (b) being subject to (a), fits best with the explanatory material and the idea that development should occur within environmental biophysical limits. The added reference to people and communities determining how the environment will “be protected, used and developed” provides clarity that ‘use’ may have different dimensions, including development.
<p>(2) To achieve the purpose of the Act,—</p> <p>(a) use of the environment must comply with environmental limits; and</p> <p>(b) outcomes for the benefit of the environment must be promoted; and</p> <p>(c) any adverse effects on the environment of its use must be avoided, remedied, or mitigated.</p>	<p>(2) To achieve <u>these</u> purposes <u>in an integrated manner</u>, the Act —</p> <p>(a) <u>provides for</u> environmental limits <u>that must be complied with</u>; and</p> <p>(b) <u>provides for environmental outcomes that must be promoted which will include the protection, restoration and enhancement of the natural environment</u>; and</p> <p>(c) <u>requires that</u> any adverse effects on the environment <u>from</u> its use must be avoided, remedied, or mitigated.</p>	More active language.
		The addition of “which will include the protection, restoration and enhancement of the natural environment” is intended to emphasise the priority of protecting the natural environment as part of outcome setting.
		More active language.
<p>(3) In this section, Te Oranga o te Taiao incorporates—</p> <p>(a) the health of the natural environment; and</p> <p>(b) the intrinsic relationship between iwi and hapū and te taiao; and</p> <p>(c) the interconnectedness of all parts of the natural environment; and</p> <p>(d) the essential relationship between the health of the natural environment and its capacity to sustain all life.</p>	<p>(3) In this section, Te Oranga o te Taiao incorporates—</p> <p>(a) the health of the natural environment; and</p> <p>(b) the intrinsic relationship between iwi and hapū and te taiao; and</p> <p>(c) the interconnectedness of all parts of the natural environment; and</p> <p>(d) the essential relationship between the health of the natural environment and its capacity to sustain all life.</p>	

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7 Environmental limits	7 Environmental limits	Order of clauses has been modified to clarify relationship between clauses and put all the clauses related to environmental limits together.
(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.	(1) The purpose of environmental limits is to protect, <u>or where necessary restore or improve:</u> (a) the ecological integrity of the natural environment: (b) <u>the mana and mauri of the natural environment:</u> <u>(c) the capacity of the natural environment to support the health needs of people.</u>	Addition to reflect that environmental limits could be used to restore an environment already degraded beyond the limit. This subclause has been moved from the outcome clause – see clause 8(g) – thereby ensuring that limit-setting takes account of Māori values and avoids it being lost amongst 15 other unprioritised outcomes. Clarifies the relationship is between human health and the <u>natural</u> environment rather than the health benefits of the built environment to avoid potential conflicts with limits based on natural biophysical limits.
(6) All persons using, protecting, or enhancing the environment must comply with environmental limits.	<u>(2)</u> All persons using or protecting the environment must comply with environmental limits.	Subclause shifted up order to give it more prominence as a key feature of environmental limits.
(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.	<u>(3)</u> Environmental limits must be prescribed for <u>all</u> — (a) air: (b) biodiversity, habitats, and ecosystems <u>on land, in freshwater and in coastal water:</u> (c) coastal waters: (d) estuaries: (e) freshwater: (f) soil.	“all” ensures that all of the domains – wherever they occur in New Zealand – have a limited applied to them without implying that limit has to be the same nationally. It also prevents a limit for one domain being set for only one part of New Zealand and being seen as satisfying the requirement of the Act. Provides additional clarity that all biodiversity, habitats and ecosystems are covered.
(5) Environmental limits may also be prescribed for any other matter that accords with the purpose of the limits set out in subsection (1).	<u>(4)</u> Environmental limits may also be prescribed for any other matter that accords with the purpose set out in subsection (1).	
16 Application of precautionary approach In setting environmental limits, as required by section 7, the Minister must apply a precautionary approach.	<u>(5) Environmental limits must provide a margin of safety above the level required to achieve the purpose in subsection (1).</u>	Shifted from clause 16 to put all clauses relevant to environmental limits together. Clause 16 would then not be needed. Wording modified to be clearer about what the precautionary approach means in terms of environmental limits.
	<u>(6) Where the state of the environment is degraded and would not without restoration or improvement achieve the purpose of subsection (1), limits must specify a minimum level of restoration or improvement and the time limit within which that restoration or improvement must be achieved.</u>	New clause to help ensure that environmental limits are not the lowest common denominator of an already degraded environment and to allow time for limits to be achieved without causing undue economic or social stress.

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(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.	<u>(7)</u> Environmental limits may be formulated as <u>a combination of any or all of the following</u> — (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 to the natural environment or on a specified part of that environment: <u>(c) spatial controls:</u> <u>(d) controls on intensity or location of human activities.</u>	 Additional ways to formulate environmental limits provides flexibility in describing limits especially for those domains which are harder to quantify, such as biodiversity.
S12 (2) Environmental limits may be prescribed— (a) qualitatively or quantitatively: (b) at different levels for different circumstances and locations.	<u>(8)</u> Environmental limits may be prescribed— (a) qualitatively or quantitatively: (b) at different levels for different circumstances and locations.	Shifted from clause 12(2) to put all clauses relevant to environmental limits together.
(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).	<u>(9)</u> Environmental limits must be prescribed either— (a) in the national planning framework (see <u>Part 3</u>); or (b) in plans, <u>if the national planning framework prescribes the requirements relevant to the setting of limits by planning committees</u> (see section 25).	 Reference changed as proposing s12 no longer needed as its subclauses are proposed to either be shifted or deleted. Replicates the wording in clause 12(1) which is proposed to be deleted as it is repetitive of the similar clause 7(2). I propose combining them to avoid repetition.
	<u>(10) In prescribing environmental limits, the Minister, or the planning committee if being prescribed in plans, must have regard for:</u> <u>(a) [placeholders as needed]:</u> <u>(b) [placeholder as needed].</u>	New clause to help ensure limits are set robustly and consistently. Detail of considerations still to be determined. (Note: This subclause is additional to the drafting suggested in the original written submission).
(7) In subsection (3)(a), biophysical means biotic or abiotic physical features.	<u>(11)</u> In subsection <u>(7)(a)</u> , biophysical means biotic or abiotic physical features.	Updated reference to reflect proposed new order of clauses.
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.		Propose deletion as is repetitive of the similar clause 7(2).