Submission from Climate Justice Taranaki on the Natural and Built Environments Bill: Parliamentary paper on the exposure draft, July 2021

1. Climate Justice Taranaki Inc. (CJT) is a community group dedicated to environmental sustainability and social justice. This includes issues of inter-generational equity, notably in relation to climate change, which will impact future generations' inalienable rights to safe water, food and shelter, crucial to sustaining livelihoods and quality of life. CJT became an incorporated society in 2015.
2. CJT appreciates the opportunity to submit on the Natural and Built Environments (NBE) Bill exposure draft and notes the limited scope of the exposure draft.
3. CJT would like to also review the currently excluded topics, notably consenting, existing use rights, water conservation orders, compliance, monitoring and enforcement, and the function and roles of Ministers, agencies, regional councils and territorial authorities, once they become available for public consultation.

Part 1 Preliminary provisions

4. We note and agree with Clause 3 Interpretation, "*ecological integrity means the ability of an ecosystem to support and maintain"* its composition, structure, functions and resilience.
5. We note that under Clause 3, "*well-being means the social, economic, environmental, and cultural well-being of people and communities, and includes their health and safety*".

   We do not agree with including "*economic*" in the interpretation of "*well-being*". Economics has dominated too many policies and overshadowed other crucial aspects of people and community well-being, notably physical, emotional and social well-being[1]. Economic well-being or material wealth is often achieved at the expense of other kinds of well-being.
6. We note the placeholders for the interpretations of "*infrastructure*" and "*infrastructure services*". We question whether coal mines and oil and gas wellsites, production stations and waste disposal/treatment facilities, energy generation such as wind or solar farms, hydrogen production and other industrial facilities would be included in their interpretations?
7. We note the placeholder under Clause 4 on How the "*Act binds the Crown*". We urge that the government works closely with Māori organisations and refer to existing Waitangi Tribunal reports[2] and recommendations, when developing this, especially with any specific exceptions.

Part 2 Purpose and related provisions

8. We support that the purpose of the NBA Bill upholds Te Oranga o te Taiao (Clause 5(1)).
9. However, we seek further development of what it incorporates, beyond what's laid out in Clause 5(3):
   a. *"the health of the natural environment*
   b. *the intrinsic relationship between iwi and hapū and te Taiao*
   c. *the interconnectedness of the natural environment; and*
   d. *the essential relationship between the health of the natural environment and its capacity to sustain all life*."
10. We question the lack of reference to Te Mana o te Wai, now enshrined in the National Policy Statement for Freshwater Management[3], and how the NBE Act might interact or support these?
11. Notably "*Te Mana o te Wai encompasses 6 principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater, and these principles inform this National Policy*

[1] https://www.econation.co.nz/well-being/
[2] https://waitangitribunal.govt.nz/publications-and-resources/waitangi-tribunal-reports/
[3] https://environment.govt.nz/assets/Publications/Files/national-policy-statement-for-freshwater-management-2020.pdf

Statement and its implementation". These principles would seem highly relevant to the NBE Bill, yet they are not discussed or even mentioned. Another key part of the concept is:

"*There is a **hierarchy of obligations** in te Mana o te Wai that prioritises:*

a. *first, the health and well-being of water bodies and freshwater ecosystems*
b. *second, the health needs of people (such as drinking water)*
c. *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future*."

12. We argue that such a hierarchy of obligations, giving priority to water, and in this case the Environment, is crucial to incorporate in the NBE Act, perhaps integral to the definition of Te Oranga o te Taiao, and the wider RMA Reform.
13. Following the hierarchy of obligations, we propose that Clause 5(2)(b) be rephrased and moved forward as the top priority, so that Clause 5(2) reads:

"To achieve the purpose of the Act,—

(a) Promote positive outcomes for the environment; and
(b) Use of the environment must comply with environmental limits; and
(c) Any adverse effects on the environment of its use must be avoided, remedied, or mitigated."

14. We fully support Clause 6 "*All persons exercising powers and performing functions and duties under this Act must give effect to the principles of te Tiriti o Waitangi*."

Environmental limits

15. On Clause 7(1) re Environmental limits, we argue that the purpose of environmental limits should protect both, not either, "*(a) the ecological integrity of the natural environment*" and "*(b) human health*". We propose replacing "*health*" with "*well-being*" which has a wider interpretation.
16. We have serious issues over Clause 7(3) on how Environmental limits may be formulated. How are "*minimum biophysical state of the natural environment…*" and "*maximum amount of harm or stress that may be permitted…*" defined? In practice, who would determine these and how?
17. Without clear definitions and explanations, they would be open to misinterpretation and abuse. In our experience, the vagueness of the term "*less than minor*" when applied to adverse effects, has often been used as a get-out-of-jail card by our regional and district councils, to avoid public notification and to allow activities to go ahead, without science-based assessment of the effects.
18. Notwithstanding the lack of definition on "*the maximum amount of harm or stress that may be permitted*", we do not see its relevance, if "*the minimum biophysical state…*" is properly defined/ interpreted. We don't want to give the impression that it is permitted to cause harm or stress to the natural environment, knowing the dire state of our current natural environment and many of the indigenous species, habitats and ecosystems in Aotearoa.
19. Given that the purpose of environmental limits is to protect either/both (we argue for both) the ecological integrity of the natural environment and human health (we propose well-being), these should be incorporated in the interpretation and determination of "*minimum biophysical state…*" It is also critically important to thoroughly assess and take into account the current state of the environment (e.g., a species' threatened category or how close an ecosystem is to losing its ecological integrity), and the cumulative effects/stress (past, present and future) of any proposed activities, before making decisions.
20. We are glad to read in the explanation in paragraph 111 that "*Limits will take a precautionary approach (and therefore incomplete or uncertain data should not be a barrier to setting limits)*". We would like some elaboration on this and its application. Unfortunately, based on our experience, this principle has been widely referred to but rarely acted upon in legislation and decision-making.

Environmental outcomes

21. On Clause 8 re Environmental outcomes, we support the subclauses (a) to (d) so that the quality of air, waters and soils, ecological integrity, outstanding natural features and landscapes, areas of significant indigenous vegetation and habitats are "*protected"* and/or "*restored".* We ask that the word "*improved"* be removed from these sub-clauses to avoid ambiguity and abuse of language.

22. Similarly, we propose replacing "*enhanced*" by "*restored where appropriate*" so that subclause reads:

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

    (i) public access to and along them is protected or restored where appropriate."

    We added "*where appropriate*" because there are cases where public access would be harmful, e.g. because of infectious plant diseases or obnoxious water weeds, or presence of critically endangered species.

23. We also support the inclusion into Clause 8 Environmental outcomes: *"(f) the relationship of iwi and hapū, and their tikanga and traditions...*" and *"(g) the mana and mauri of the natural environment*" be protected and restored; *"(h) cultural heritage... is identified, protected and sustained through active management..." and "(i) protected customary rights are recognised".* Ongoing initiatives[4, 5] that aim to foster such outcomes offer valuable learnings and inspirations.

24. On sub-clause 8(k)(ii) re urban areas and growth, we propose to add "*public*", so it reads: "*ensuring a resilient urban form with good public transport links within and beyond the urban area*". Please refer to our recent submission on the Ministry of Transport's discussion paper Hīkina te kohupara for our elaborated views on transport[6].

25. On sub-clause 8(l)(i) in relation to housing supply, we are strongly opposed to using "*consumers*" because it perpetuates the ingrained problem of treating housing as a commodity rather than homes (a basic human right). We propose rewording it and adding "adequate" so it reads:

    "*(l) a housing supply is developed to— (i) provide adequate choice to tenants and owners*".

26. On sub-clause 8(l)(ii), we propose to insert "*environmental sustainability and climate resilience*", so it reads:

    "(ii) contribute to the affordability, environmental sustainability and climate resilience of housing".

    Please refer to our recent submission[7, 8] on the Ministry of Housing's discussion paper on the Government Policy Statement – Housing and Urban Development for our elaborated views.

27. On sub-clause 8(m)(ii), we propose to delete "economically" and expand the scope of the sub-clause, so it reads:

    "*8(m) in relation to rural areas, development is pursued that— (ii) contributes to the wellbeing, adaptability and resilience of communities*".

28. We are concerned about sub-clause 8(m)(iii), notably the rationale, application and implication of this clause "*in relation to rural areas, development is pursued that— (iii) promotes the protection of highly productive land from inappropriate subdivision, use, and development".*

    How is "*highly productive land*" defined and what constitutes "*inappropriate subdivision, use, and development*"? For example, could this clause be used to perpetuate industrial-scaled, export-focussed dairying at the expense of smaller community-based farming with more diverse produce for local markets and less reliance on chemical fertilisers and pesticides? From our experience in Taranaki, many once

[4] https://www.teaomaori.news/planting-seeds-ngati-koroki-kahukura-whanau
[5] https://www.mauricompass.com/
[6] https://climatejusticetaranaki.files.wordpress.com/2021/06/cjt-submission-to-motransport-hikina-te-kohupara-with-toitu-23jun21.pdf
[7] https://climatejusticetaranaki.files.wordpress.com/2021/07/cjt-submission-on-govt-policy-statement-housing-urban-development-july21-v4.pdf
[8] https://climatejusticetaranaki.files.wordpress.com/2021/05/toitu-taranaki-2030-just-transition-community-strategy-apr21-web.pdf

productive small farms supporting numerous families and workers were bought and amalgamated into huge farms that are heavy on artificial inputs and thin on employment opportunities, resulting in many cases the loss of once thriving villages and schools, and increased commuting to larger towns for work and schools.

29. Still in relation to so-called "*highy productive land*", would it be used to promote Genetically Engineered (GE) organisms and activities? Given the significant implications and contentious nature of GE, it needs to be properly defined in the NBE Act, with guidance provided. Questions need to be answered in terms of the relationship between the NBE Act and the Hazardous Substances and New Organisms Act (HSNO) 1996, and the role of mana whenua and regional and local authorities in regulating landuse that may involve GE organisms and activities.

30. On sub-clause 8(n), we propose adding "*coastal*", so it reads:

    "*the protection and sustainable use of the coastal marine environment",*

    to avoid jurisdictional confusion with the Exclusive Economic Zone and Continental Shelf (EEZ-CS) Act.

31. On sub-clause 8(o) re "*infrastructure services*", we seek considered formulation of its definition and scope. We strongly propose an addition of 8(o)(iii):

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

    (iii) an end to any new fossil fuel exploration, production, storage and transmission, and use of non-renewable energy".

32. We are unsure about the rationale and feasibility of sub-clause 8(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*."

    We propose perhaps the following wording instead:

    "*(i) the significant risks of both on communities are reduced; and*

    (ii) communities are better adapted and resilient to the impacts."

Part 3 National planning framework

33. We are concerned about the apparent power given to the Minister, notably in clause 9(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."* And in clause 11(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."*

34. We note the placeholder under Schedule 1 Preparation of national planning framework. We believe there are valuable findings and decisions from relevant case law in the last 30 years that must be considered and retained, to help inform the formulation of the NBE Act, national planning framework and NBE Plans.

35. We query why under Clause 13(1), only 9 of the 16 environmental outcomes (clause 8) are listed to require provisions under the national planning framework.

36. We strongly support the application of precautionary approach in setting environmental limits (Clause 16) and urge that it be actively used in the assessment and decision-making over proposed activities.

37. We note the placeholders under clause 17 in relation to the role of the Minister of Conservation and the links between this Act and the Climate Change Response Act 2002. We seek the inclusion of links between this Act, Te Mana o te Wai and the National Policy Statement for Freshwater Management 2020, and indeed various other National and Regional Policy Statements.

38. We strongly support Clause 18 under implementation principles, "*(d) promote appropriate mechanisms for effective participation by iwi and hapū... (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*" and "*(g) take a precautionary approach."*

39. Clause 18(c) "*ensure appropriate public participation in processes undertaken under this Act..."* is extremely important. While the existing submission and hearing process on plans and consent applications are inefficient and often ineffective or imbalanced (due to inequitable resources among parties), it is still a means of ensuring there is a degree of public participation and transparency. We look forward to reading sections that describe in detail the process of how the public may effectively participate, as they become available for public consultation.

Part 4 Natural and built environments plans

40. We note clause 19, "*There must at all times be a natural and built environments plan (a plan) for each region*." Would such a plan build on the existing regional plans (e.g. Taranaki regional long-term plan, freshwater plan, soil plan, air quality plan, coastal plan, etc.)[9] and the respective district plans and strategies[10] within that region, while incorporating all the requirements under the NBE Act?

41. We support clause 22(1)(e) that "The plan for a region must— *(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".*

42. We support clause 24(2) that the planning committee must have regard to any cumulative effects, any technical evidence and advice, including mātauranga Māori... and clause 24(3) that the committee must apply the precautionary approach.

Schedules 1 and 2

43. We note the placeholders for *Schedule 1—Preparation of national planning framework*, and *Schedule 2—Preparation of natural and built environmentals plans*. We look forward to seeing these completed schedules for subsequent consultation.

Schedule 3 Planning committees

44. The development of *Schedule 3 Planning committees* is a complex and sensitive process which is crucially important for the effective and sustainable implementation of the NBE Act. We think the planning committees should have representation from the District Health Boards, given their expertise and mandate in environmental impacts on human health, and representation from established local environmental groups with their knowledge and commitment to local environmental issues.

45. In respect to Te Tiriti o Waitanga and rangatiratanga, we believe it would be helpful to consider the research and recommendations from Ka Māpuna[11] and He Puapua[12, 13, 14]. More specifically, mana whenua representatives should be "*appointed*" or "*elected*" or by their own people, rather than "*appointed*" by the Minister or the local/regional authorities. Clause 3 needs to state this clearly.

46. To ensure that mana whenua (hapū, iwi and other Māori community organisations) is well represented in the planning and decision making process, there needs to be a robust funding mechanism so that the time, resources and expertise offered are compensated for. This would ameliorate the current situation

[9] https://www.trc.govt.nz/council/plans-and-reports/
[10] https://www.newplymouthnz.com/Council/Council-Documents/Plans-and-Strategies
[11] http://www.response.org.nz/wp-content/uploads/2021/07/Ka-Ma%CC%84puna-15July21Low-Res.pdf
[12] https://www.tpk.govt.nz/docs/undrip/tpk-undrip-he-puapua.pdf
[13] https://www.rnz.co.nz/programmes/the-detail/story/2018795469/what-is-he-puapua
[14] https://theconversation.com/separatist-or-radically-inclusive-what-nzs-he-puapua-report-really-says-about-the-declaration-on-the-rights-of-indigenous-peoples-163719

whereby hapū and iwi struggle to participate and contribute to the process meaningfully, due to commitments to paid work, whānau and kaitiakitanga. There is a clear inbalance of power when hapū, iwi and community groups are expected to engage with fully resourced parties like corporations seeking resource consents, as well as regional and district councils and central government agencies.

47. We therefore ask that clause 6 under this Schedule be expanded so that funding goes beyond the planning committee secretariats, onto mana whenua and local environmental groups that are represented in the planning committee. It would also be useful to fund training initiatives to build capaicty and mutual understanding needed for planning committees to work effectively.