Climate Justice Taranaki Submission

The Natural and Built Environment Bill and Spatial Planning Bill

5 February 2023

Introduction

1. Climate Justice Taranaki Inc. (CJT)[1] 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 increasingly impact present and future generations' inalienable rights to safe water, food and shelter, crucial to sustaining livelihoods and quality of life. Comprised of a broad range of people with varied expertise and life experiences, CJT has engaged respectfully with government on numerous occasions. Many of the key points raised in our submissions have proven accurate.

2. We thank the Environment Select Committee for the opportunity to make a submission on the Natural and Built Environment Bill (NBEB)[2] and Spatial Planning Bill (SPB)[3]. Sadly, the Bills have been formulated with a mindset that fails to properly recognize, nor adequately address, the already dire and deteriorating state of our environment[4].

3. Based on our members' collective experience over the past decades, it is clear that the Resource Management Act 1991 (RMA) has failed to protect the environment for its inherent values, mana and mauri, or for sustaining community, iwi and hapū wellbeing. The RMA, its interpretation and execution, has enabled the degradation and destruction of the natural environment, indigenous ecosystems and waterways, for the benefit of extractive and polluting industries, profit-driven housing development and economic growth. Taranaki, where we are based, has suffered hugely from industrial dairying and the fossil fuel and petrochemical industries. The Act is long overdue for reform and replacement by something that has environmental wellbeing at its core.

4. The NBEB and SPB would represent an improvement on the RMA, but only subject to targeted, and in some cases, substantively significant amendments. We therefore do not support the Bills in their current form.

5. Our overriding concern is that the Bills need to ensure good outcomes for the natural environment; i.e. not only prevent further degradation but enable ecosystem restoration to standards/targets well above what we have become complacent with. The shifting baselines[5] should not become the targets or even limits as proposed in the Bill. The past memories and stories from tangata whenua across Aotearoa

[1] https://climatejusticetaranaki.wordpress.com/

[2] https://www.legislation.govt.nz/bill/government/2022/0186/latest/LMS501892.html?search=ts_act%40bill%40regulation%40deemedreg_natural+and+built_resel_25_a&p=1

[3] https://www.legislation.govt.nz/bill/government/2022/0187/latest/LMS545761.html?search=ts_act%40bill%40regulation%40deemedreg_spatial_resel_25_a&p=1

[4] New Zealand, per capita, is a global leader in over-consumption, pollution of water with nitrates and other chemicals, pollution of air with greenhouse gases, and pollution of land with pesticides and industrial wastes, including so-called 'forever chemicals' and a suite of 'commercial in confidence' unknowns. Put simply, we as a nation are living well beyond our environmental limits, borrowing (stealing may be more appropriate term) from current and future generations – those inalienable rights to safe water, food and shelter, all reliant on a functioning biosphere that supports the rich diversity of life with which we share this planet.

[5] https://earth.org/shifting-baseline-syndrome/

over te taiao, seasonal rhythms, the abundance of forest foods and kai moana, should be considered when setting targets and limits.

6. The Bills, in the current forms, significantly curtail the opportunity of appeals, especially merit-based appeals. The right of appeal at the consenting stage is heavily restricted. This needs to be addressed, consistent with open democracy.

7. The submissions of the Environmental Defence Society (EDS) and the Environment and Conservation Organisations of NZ (ECO) go into more detail on the matters outlined in our submission and cover areas we have missed. We ask that they be considered thoroughly.

The Natural and Built Environment Bill

Purpose of the NBEB

8. The purpose clause of the NBEB is vital, as it will directly influence decision-making by Ministers and planning committees. However, its wording is currently unclear, and introduces many conflicting and overlapping concepts. Also, its various components are connected by different conjunctions, making relationships between them overly complex, particularly when compared to the RMA (which used the single conjunction "while"). Overall, the wording of the purpose clause will cause confusion, litigation and argument.

9. The NBEB actually has two purposes, separated by the conjunction "and". The first, which seeks to enable use and development in a way that protects the environment, falls short on two fronts: the phrase "in a way that" is not sufficiently protective, and it fails to recognise that proactively restoring (not just enabling protection of) the environment needs to be a core element of the purpose clause.

10. The second purpose, to recognise and uphold te Oranga o te Taiao, sees the introduction of several general concepts without a clear sense of what they mean or how they relate to each other. We interpret **te Oranga o te Taiao** as follows—
    (a) healthy ecosystems; and
    (b) the essential relationship between the health of ecosystems and its capacity to sustain life; and
    (c) the interconnectedness of all living creatures including humans; and
    (d) the intrinsic relationship between all Māori and te Taiao

11. The purpose could be better crafted as a single, tightly defined purpose statement that is expressed as a hierarchy, conceptually similar to Te Mana o te Wai in the National Policy Statement (NPS) for Freshwater Management. Its unambiguous first priority should be to uphold the life-supporting capacity of the natural environment and its intrinsic value, with use for various human wellbeings subject to that priority.

System outcomes

12. One of the key system outcomes missing under clause 5 is the **urgent drawdown of excessive development and material throughput back to within ecological, biophysical and social limits**. This should be the logical outcome of the Purpose clause 3(a)(iii) "*complies with environmental limits and their associated targets*", if comprehensive limits are selected and set at the right levels. It is widely recognized that the linear model of economic growth is no longer fit for purpose. **The NBEB should incorporate clear recognition and outcomes in terms of circular economy and degrowth,** failing which there is little chance of protecting and/or restoring ecological integrity and the life-supporting capacity of our natural environment.

13. As to the long list of system outcomes included in the Bill, we are concerned that there is **no internal weighting or hierarchy**. Many potentially conflicting outcomes must all be "provided for", with conflicts to be resolved with a high degree of political discretion by the Minister or through plans. Examples of conflicting matters in clause 5 include the protection and restoration of the ecological integrity of the natural environment 5(a)(i), on the one hand, and the promotion of the use and development of land (5(c)(i), on the other. **5(b)(ii) the removal of greenhouse gases from the atmosphere, such as with large-scaled monoculture of carbon forest plantations, also has the potential to destroy or severely degrade ecological integrity**.

14. There is a real risk that as currently worded, clause (5) could resurrect a form of "overall broad judgement" that defined the RMA for 20 years, where short term economic opportunities frequently outweighed the long-term imperative to protect the natural environment. There needs to be a clearer hierarchy where the ecological integrity and intrinsic value of the natural world receives more weight than other things.

15. **Clause 5(c)(ii) which promotes "*the ample supply of land for development, to avoid inflated urban land prices*" is another cause of serious concern**. It is not only directly in contradiction with *5(a) the protection or, if degraded, restoration* of the ecological integrity, mana, and mauri of air, water, soils, coastal environment, wetlands, indigenous biodiversity, etc. **It is wrong to blame purely the shortage of supply of land as the cause of inflated urban land prices, and presumably housing costs**. The systemic deregulation of the housing and rental markets has enabled uncontrolled speculation and unaffordable housing. Coupled with the failure to invest in state and social housing[6], it has caused and perpetuated Aotearoa's housing crisis[7], especially in urban areas.

16. **We propose expanding Clause 5(d) to read "*the availability of highly productive land for diverse, sustainable land-based primary food production*"** to avoid further expansion of industrial scaled monoculture, notably dairy products for export or potentially future biofuel crops. In the face of the climate emergency, a key driver of the NBEB and SPB needs to be food security[8] and resilience for Aotearoa and Pacific Islands, rather than profit-driven exports.

17. The list of outcomes in the NBEB does not adequately recognise the importance of urban outcomes (eg principles of good urban design) or issues that were previously captured by the now abandoned concept of "amenity", such as noise and odour. **Even in rural settings, noise, odour and light, as well as traffic, should all be considered to protect people's health and wellbeing**. For example, in the small rural community of Uruti in north Taranaki, neighbours of a composting site that has taken and stockpiled oil and gas and industrial food wastes have been sickened, most likely due to odours[9]. The increased in heavy traffic, noise and light and flares from wellsites in the night are also taking a toll on rural communities such as Tikorangi[10].

18. There also needs to be a stronger recognition that *synergies* between different outcomes are to be pursued or preferred where practicable. For example, 5(c)(ii) an adaptable and resilient urban form with good accessibility for people and communities… should also contribute to good outcomes for 5(b) in relation to climate change and natural hazards. At present, the Minister is invited to simply prioritise outcomes using his or her own discretion. This could, for example, see the perpetuation of traditional modes of environmentally damaging infrastructure (eg concrete pipes and stormwater outfalls) rather than encouraging nature-based solutions (eg wetland planting and reduction of pollution at source) that can provide the same services while improving environmental outcomes.

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[6] https://ojs.victoria.ac.nz/counterfutures/article/view/6773
[7] https://www.abc.net.au/news/2021-08-02/new-zealand-launches-inquiry-into-housing-crisis/100342540
[8] https://www.newsroom.co.nz/sustainable-future/building-future-resilience-should-start-with-food-security
[9] https://www.rnz.co.nz/news/national/443383/air-quality-review-indicates-link-between-compost-site-odour-and-illness
[10] https://jury.co.nz/category/petrochem/

Regional planning committees and decision-making principles

19. We are concerned about the potential for undemocratic outcomes including lack of transparency or representation in the formation of regional planning committees, i.e. by appointment as per Schedule 8. **A more democratic approach would have at least two independent members elected by the community within each region**; or at least allow an opportunity for the community to **have a say on the final composition of the committee**, potentially through the Local Government Commission (Schedule 8, clause 3(4).

20. **We do not agree with decision-making principle clause 6(1)(c)** "*recognise the positive effects of using and developing the environment to achieve the outcomes*". There are clearly circumstances when the environment is best left untouched, rather than using and developing it.

21. Clause 6(1)(e) "*manage the cumulative adverse effects of using and developing the environment*" is weak. It is our experience at numerous hearings under the Exclusive Economic Zone and Continental Shelf (EEZ-CS) Act that **cumulative adverse effects** have never been properly assessed, avoided or minimized. As written in the current form, cumulative effects are a given and there is thus little reason to avoid them. It is unlikely "*to halt the slide in environmental outcomes*" as envisaged in the explanatory notes of the Bill.

22. **Under clause 6(2)(a), we prefer specifying the use of the precautionary principle[11] in decision making over simply "*caution*"**. This can be achieved by inserting into the interpretation of the Bill the definition used under Principle 15 of the Rio Declaration (1992)[12]:

    "*Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*"

23. Another missing decision-making principle is the general polluter pays principle. All polluters should, in principle, be responsible for pollution generated by them, but the NBEB only recognises this where sites have become contaminated. The principle needs to be applied where environmental impacts have tangible and chronic negative effects, including on health (eg. Nitrate contamination in drinking water in Canterbury)[13], when it comes to determining who pays for cleaning up waterways (eg. from nutrients), and where the coastal environment and communities are impacted by the sediment and other detritus from forestry or other operations.

24. The NBEB should also have a clear principle of non-regression, so that once higher environmental standards and targets have been achieved, they cannot subsequently be undone. As currently drafted, the NBEB provides no safeguards against reverting to lower environmental standards over time.

The NBEB's system of limit and target

25. We support the inclusion of clear environmental limits in the NBEB. The RMA lacked a proper framework for establishing environmental bottom lines, beyond which no further harm would be allowed to the ecological integrity of the natural world.

26. We also support that environmental limits *must* be set for particular domains under clause 38(1) of the NBEB. This should prevent some 'politically difficult' things - for example, indigenous biodiversity - from being ignored or put on the slow track. However, the aspects of the natural environment for which

[11] https://www.integratesustainability.com.au/2018/01/25/what-is-the-precautionary-principle-and-how-is-it-applied/

[12] https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

[13] https://www.rnz.co.nz/news/environment/468134/impact-of-dairy-farming-on-canterbury-water-quality-unsustainable

environmental limits must be set are overlapping and very general. There should be more specific things for which limits must be set, including known stresses like sediment and nutrients, and minimum states relating to indigenous vegetation cover.

27. A strong and directive framework for *target* setting is also necessary. In many contexts, the natural environment is already degraded and needs to be restored and improved as a matter of urgency. It is positive that targets must be set for aspects of the environment subject to limits.

28. However, we think that the NBEB's current framework for limit and target setting is deeply flawed. First and foremost, the terminology used in the NBEB is confusing and does not reflect what people would intuitively think "limits" should be doing, which is setting a minimum *acceptable* state of the environment. Instead, the NBEB treats environmental limits as *measurements of the current* state irrespective of how degraded that is. In addition, unless an aspect of the environment can be shown to be necessary to protect human health, a "limit" will be a line permanently set as at 2023. This is deeply problematic.

29. The approach to ecological wellbeing contrasts with limits set for human health, which must be set at levels that actually "protect" health and not just prevent it from getting worse than current levels. Environmental limits need to follow this approach.

30. It would be more appropriate to rename what the NBEB currently terms "limits" as "baselines". This would reflect the intention that they measure where we are now. The term environmental "limit" could then be repurposed as a measure of the *minimum acceptable state of the natural environment*. It may be that the current definition of "ecological integrity" in the NBEB could serve as the basis for measuring what that minimum state should be.

31. Given that limits are defined as the current state of the environment, it is also unclear why they would be set by the Minister as a political actor and not by an independent, expert group. After all, the current state is an objective matter, best determined through scientifically robust biophysical measurement rather than through a political process.

32. Concerningly, the NBEB creates a variety of ways in which environmental limits and targets can be undermined. For example, the concept of "interim" limits, which allow the current state to decline further, provides room for existing pressures to continue to harm the environment for unspecified amounts of time. This will allow ongoing degradation.

33. There is also excessive discretion to grant exemptions to limits. These are far too broad and rely on what the Minister thinks, not what the law states. For example, clause 45(2) of the NBEB allows the Minister to determine whether "public benefits" would justify the loss of ecological integrity, reintroducing by stealth the idea of an overall broad judgement approach to undermine environmental limits.

34. There is also no clear role for the independent Limits and Targets Review Panel when it comes to granting exemptions. At a minimum, the Minister should be required to have particular regard to the views of the Panel before granting an exemption, and appeal rights to the Environment Court should be available where the Minister does not follow the Panel's recommendation.

35. Limits are also further undermined by the ability for the Minister to set very large "management units" across which limits will apply. These could allow extensive harm in one place to be 'offset' (a regularly misappropriated and misapplied term) by improvements elsewhere without "infringing" the overall limit. It could also mean that a large area is considered to be in good "overall" health, even though pockets within it are heavily degraded, with the consequence that minimum level targets for improvement do not have to be set at all.

36. There is a lack of reference to compliance with environmental limits when it comes to decision-making criteria for designations. Resource consents cannot be granted contrary to environmental limits, but that is not mirrored in the provisions for designations. This requires correction.

37. The Minister must set a "minimum level target" for improving the environment only if he or she is "satisfied" that current state represents "unacceptable degradation". There is no definition of "unacceptable" degradation. Even if the Minister is satisfied there is unacceptable degradation, there is no clear guide as to *where* the targets are to be set or what *timeframes* must be set to meet them. This provides excessive political discretion, and lead to similar arguments to those that have bedevilled the RMA and EEZ-CS Act, over what is acceptable, trivial, negligible or 'less than minor'. Setting scientifically defensible levels and limits is crucial.

38. There is also no mechanism by which mandatory targets for environmental improvement can *become* an updated set of environmental limits. This is a big failing, because in many cases strong protection is conferred by the NBEB only if something is legally a "limit" (eg when an activity must be a prohibited activity, or when an exemption is required). Those things do not apply when something is simply a "target", even if it is mandatory.

39. The NBEB lacks a robust accountability mechanism or legal consequences for failing to meet targets, especially where the current state of the environment is degraded.

40. There is also an excessively broad ability for the Minister to allow large infrastructure projects to go through fast-track consenting processes. While this is not an *exemption* from the need to comply with limits and targets, it is still concerning because the process lacks some of the safeguards that were present in the Covid-19 response legislation on which it has been modelled (eg the ability for specified groups to comment on a project's environmental risk).

Discharges

41. Since oil was discovered 150 years ago, Taranaki has been subject to contaminant discharges to air[14], land and water, from the oil and gas and petrochemical industries[15]. Under the RMA, regional plan rules and consent processes have failed to protect Taranaki's environment and the health and wellbeing of local communities. **How would clause 22 of the NBEB – Restrictions on discharging contaminants, involving "framework rule", "plan rule" and "resource consent", improve the situation and restore environmental health?**

42. As an example, multiple jurisdictions have now banned or imposed a moratorium on hydraulic fracturing (aka fracking or well stimulation) which involves the discharge of toxic fracking chemicals into underground formations. Such legal decisions are based on documented environmental and social impacts of fracking[16], the precautionary principle, as well as human rights to health, water, food, housing, access to information and/or public participation[17]. **Yet fracking is allowed to go on, even escalate, around Taranaki, as well as the discharge of contaminated drilling wastes[18] and produced**

[14] https://www.stuff.co.nz/taranaki-daily-news/7981769/Oil-firm-called-to-explain-illegal-flaring
[15] https://climatejusticetaranaki.files.wordpress.com/2018/04/ccheung-cjt-slides-for-dowse-25mar18-v2.pdf
[16] https://psr.org/resources/fracking-compendium-8/
[17] https://gnhre.org/human-rights/the-legal-status-of-fracking-worldwide-an-environmental-law-and-human-rights-perspective/
[18] https://climatejusticetaranaki.files.wordpress.com/2019/02/cjt-submission-on-remediation-nz-uruti-applications-11feb2019-final.pdf

water onto/into land and near water, severely degrading agricultural land[19] and waterways[20], leaving regrettable legacy. Such discharges in the coastal marine areas are less well documented and more difficult to be scrutinised by the public. **How would the NBEB clauses 22 and 24 address these?**

Existing uses

43. We ask that clause 27(3) be expanded to include not just "building" but any "structure" (eg culvert, pipe, turbine) and extinguish existing use rights in cases of repeated non-compliance.

44. We ask that clauses 28 and 30 be expanded to **discontinue existing activities** in cases of repeated non-compliance.

Effects management framework, "trivial" effects and exemptions

45. It is also unclear how the NBEB's "effects management framework" is intended to operate when it comes to managing effects on areas of significant biodiversity. Although one part of the Bill seems to specify that more than "trivial" effects on such places cannot be allowed (a strong starting point), another suggests that the effects management hierarchy "applies". This hierarchy can allow harmful effects if they are counteracted through offsets elsewhere, or even if some financial compensation is provided where stronger measures are not "practicable". It needs to be clarified that the effects management framework cannot undermine the stronger direction to avoid more than trivial impacts on significant biodiversity areas. **We do not support any form of "offsetting" for adverse effects as suggested in clause 63(a).**

46. **Are "*trivial*" effects the equivalence of "*less than minor*" effects? The latter phrase has plagued the effective execution of the RMA on the ground, allowing subjective judgements by Councils and consent applicants, to override genuine environmental and community concerns.**

47. As elsewhere in the NBEB, there are also extensive exemptions which allow activities to cause impacts on significant biodiversity areas, including those which "*will provide nationally significant benefits that outweigh any adverse effects of the activity*". This is yet another opportunity for environmental wellbeing to be undermined by economic considerations. The ability to provide exemptions needs to be constrained significantly.

48. The NBEB even suggests that it is possible to obtain an exemption from the requirement to apply the effects management framework entirely, meaning that one could jump straight to financial compensation without even considering avoidance or remediation. National direction is also expressly authorised to require approaches that are less stringent than the effects management hierarchy. Both need to be removed.

Notification, affected person and right to appeal

49. Our experience in Taranaki has clearly demonstrated that all too often **regional and district councils avoid notification or identifying affected persons, especially when it's in relation to oil and gas resource consents**. The vast majority of consents are granted non-notified, with a few being limited notified. **Councils have too much discretion** in determining whether an application should be notified and who, if anyone, is an affected person. 'Affected' persons could lose their 'affected' status if they are deemed 'difficult' in the consenting process, and never be notified again for similar consent applications.

[19] https://www.rnz.co.nz/news/national/278834/guidelines-will-protect-livestock-commissioner
[20] https://www.rnz.co.nz/news/national/470372/judge-warns-compost-plant-owners-may-walk-away-leaving-a-hefty-clean-up-bill

50. **Clause 199(3)(b) needs to be expanded to allow notification of persons who have not given written approvals as 'affected' persons in the consenting process, if they have reason to believe they are 'affected'.** Alarmingly, there are households in Taranaki listed in oil companies' emergency evacuation plans, yet they have not been deemed 'affected' parties by Councils or never been informed if they were.

51. **Clause 200(2) needs to be expanded** to allow notification of persons not being identified as 'affected' in the planning framework, plan or by consent authorities, if they have reasons to believe they are 'affected'.

52. **We do not support clause 253(1)(b) which limits the right to appeal to the Environment Court to "*any person who made a submission on the application or review of consent conditions***." This automatically ruled out any persons who are not deemed 'affected', with all the problems explained earlier. In reality in Taranaki, consent amendments are rarely, if ever, publicly or limited notified.

Fast-track consenting process and right to appeal

53. **We strongly object to all fast-track consenting**, notably laid out under subpart 8 for specified housing and infrastructure, encompassing clauses 315 to 327. Our 2016 submission[21] on the Resource Legislation Amendment Bill which enabled fast-track consenting explained our objections and concerns in detail. In a 2020 open letter[22], we reiterated our grave concerns over fast-track consenting for so-called 'shovel-ready' infrastructural projects under the name of Covid recovery. Since then, at least two hydrogen projects[23], [24] have been fast-tracked in Taranaki, without robust environmental and economic impacts assessment or public inputs.

54. **We also strongly object to clause 327 which restricts appeals to the High Court only**, on a question of law rather than facts. Such appeals are hugely costly and beyond reach by most, thus suppressing legitimate concern or dissent, stymieing public participation and eroding democracy.

55. **Fast-track consenting goes against the considered advice from the Climate Change Commission in May 2020[25]:**

    "We understand and support efforts to support economic and social recovery from the shock of COVID-19. We strongly believe that in doing so we also need to avoid creating future problems and potentially large public and private costs and losses.

    If we lose sight of climate change during this time, we may end up compounding today's crisis with a future one.

    For that reason, we think it prudent that the potential to increase ongoing climate change costs and liabilities would ideally be expressedly stated as a reason for declining a fast track application. Failing that, we consider that the Minister should exercise his discretion to decline applications by applying a climate change lens to his decision-making: in other words consider whether the project will result in greater exposure of the New Zealand economy and communities to climate-related risk or make the transition to a low emissions economy harder. We have reached the point where climate change needs to be our focus for future investments."

[21] https://climatejusticetaranaki.wordpress.com/2016/03/14/rma-change-gives-minister-over-riding-power/
[22] https://climatejusticetaranaki.wordpress.com/2020/04/13/open-letter-covid-19-sparks-systemic-change-beyond-shovel-ready-projects/
[23] https://climatejusticetaranaki.wordpress.com/2021/10/04/press-release-fast-tracking-hiringa-ballance-kapuni-hydrogen-project-%ef%bf%bc/
[24] https://www.stuff.co.nz/taranaki-daily-news/news/123190645/council-being-asked-to-approve-43m-thermal-dryer-project-for-new-plymouth
[25] https://www.climatecommission.govt.nz/public/Letter-to-Minister-Covid-Response-7-April2020.pdf

Clearly proper assessments of the implications of proposed projects on climate change impacts are complex and cannot be rushed.

56. In December 2022, **the Parliamentary Commissioner for the Environment advised[26] MBIE to halt decisions** on any major energy development proposals until a system-wide analysis is conducted, also speaks to the importance of not rushing or fast-tracking consents:

    "*Policy choices and investment decisions made this decade will have significant long-term consequences for both the direction and speed with which New Zealand decarbonises its energy system. They will inevitably set up self-reinforcing path dependencies. Given the consequences of these choices for the public at large, they should not be left to market forces alone to resolve…*

    Decisions made in the absence of a whole-of-system analysis could render some elements redundant, or risk suboptimal outcomes. Obvious examples are proosals such as the Lake Onslow project and green hydrogen…" (See also our points 62-64 below).

Positive aspects of the Bill

57. Despite significant shortcomings, the NBEB contains many features that are an improvement on the RMA and should be retained through the parliamentary process.

- Plans (including land use provisions) will be required to give effect to water conservation orders;
- Consenting decisions must not be granted contrary to an environmental limit or target (assuming that issues with limits and targets identified earlier are fixed);
- Plans will provide more certainty on when consent applications should be notified, and there is the ability to appeal notification decisions to the Environment Court;
- The NBEB should result in more clarity as to what is and is not allowed in plans, and less reliance on consents (which has caused cumulative impacts);
- There will be fewer, more integrated plans and a single, more coherent set of national direction (in the National Planning Framework);
- There will be clearer liability with respect to contaminated sites;
- There will be a stronger ability to alter or extinguish existing use rights and consents (**clause 277**), notably where environmental limits are threatened or exceeded; and
- Express allocation principles are included based on equity, efficiency and sustainability, although significant uncertainty remains as to how this relates to strong Te Tiriti o Waitangi obligations to *give effect* to the principles of te Tiriti.

The Spatial Planning Bill

Purpose of the SPB and integration

58. We support Clause 3(a) which ties the purpose of the SPB in with the purpose and system outcomes of the NBE Act. It can potentially be strengthened with stronger wordings.

59. We also support Clause 3(b) which promotes integration of the NBE Act with Land Transport Management Act 2003 and Local Government Act 2002, but **what about the Climate Change Response Act 2002 as well as the upcoming Climate Change Adaptation Act**? Surely any spatial planning needs to have climate change mitigation and adaptation in mind.

[26] https://pce.parliament.nz/media/ndudvpxt/letter-considerations-for-the-development-of-new-zealand-s-energy-strategy.pdf

60. It is really important that **clause 4(1)(a) be rewritten so that "*a regional spatial strategy must be consistent with the relevant natural and built environment plan under the Natural and Built Environment Act*…"** rather than the other way round.

61. Clause 4(1) needs to be expanded to ensure that **any exploration and development plans under the government's Minerals and Petroleum Strategy 2019-2029[27] must be consistent with the relevant regional spatial strategies** which in turn are consistent with the relevant NBE plans. This is critical given the projected increase in mineral demands for the urgent transition away from fossil fuels (eg. steel, aggregate, copper and aluminium for wind turbines, cobalt and lithium for EVs). It is our grave concern that without a genuine respect of ecological and biophysical limits and political will to push for **degrowth through the reduction of overall energy demand[28] and material throughput**, mining[29] in the name of zero emission will lead to widespread, irreversible environmental damage and social harm.

62. Moreover, MBIE is formulating the **New Zealand Energy Strategy by 2024**[30] which "*will set out how the energy sector will decarbonise and ensure that steps are coordinated across the whole energy system… towards greater levels of renewable energy and other lower emissions alternatives.*" In a letter to the Minister of Energy and Resources in December 2022, the Parliamentary Commissioner for the Environment (PCE) warned that[31]:

    "*There are potentially far **too many competing claims over too few resources for each of these different projects to be considered in isolation from the rest of the energy system**. The accelerated deployment of electric vehicles, the gas-transition plan, real-time market electricity pricing, new network infrastructure, accelerated deployment of solar photovoltaic and onshore wind generation, **new offshore wind**[32], the biofuel mandate, short haul electric flight, near shore electric marine transport, the fate of the Tiwai Point Aluminium Smelter, **green hydrogen** and Onslow pumped storage are all large enough on their own to have significant implications for the entire energy system…*

    *The essential high level point is that the Government must undertake a comprehensive whole-of-system energy analysis that compares different energy scenarios on a fair and consistent basis **prior to any decisions** being made to advance specific options."*

63. Indeed the significant implications would not be confined to the energy system but also affect all natural and built environments on land and offshore, the climate and people's wellbeing. **Clause 4(1) needs to be expanded to ensure that any development under the government's Energy Strategy 2024 must be consistent with the relevant regional spatial strategies** which in turn are consistent with the relevant NBE plans.

Coastal Marine Areas

64. **The Bill needs much more consideration on spatial planning across coastal marine areas (CMAs) and into the EEZ**, given the now huge and growing business interest in developing massive **offshore wind farms[33]** off the coast of Taranaki and elsewhere, both within the coastal marine area and in the EEZ. New Zealand's international obligation to protect and restore threatened marine species populations

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[27] https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/a-minerals-and-petroleum-resource-strategy/

[28] https://action.greens.org.nz/reasonable_rents?fbclid=IwAR3_LJ1Xc-WONj7tbcsrCSLpRoGwte-CWC9pj3tbjRJlmS4xbPdGqTRuL8k

[29] https://climatejusticetaranaki.files.wordpress.com/2023/01/cjt-submission-crown-minerals-amendment-bill-23jan23-final.pdf

[30] https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-strategies-for-new-zealand/new-zealand-energy-strategy/

[31] https://pce.parliament.nz/media/ndudvpxt/letter-considerations-for-the-development-of-new-zealand-s-energy-strategy.pdf

[32] https://www.mbie.govt.nz/have-your-say/enabling-investment-in-offshore-renewable-energy/

[33] https://www.newsroom.co.nz/unlimited-resource-nzs-offshore-energy-revolution

must be honoured when proposed development and use of the coastal marine areas are considered, using the precautionary principle (See our points 22 above)

Regional spatial strategies – key matters

65. We would like clarifications over **clause 17(1)(a) "*areas that may require protection, restoration, or enhancement*."** Is this referring to natural or degraded areas that require protection or restoration? If so, then it needs to be clarified, expanded and given **necessary weighting** to avoid it being lost amidst the long list of sub-clauses making way for a wide range of development—urban, resource extraction, energy and infrastructure.

66. We fully support **clause 17(1)(b)** listing "*areas of cultural heritage and areas with resources that are significance to Māori*" as one of the key matters, and ask that "*tangata whenua and mana whenua*" be added to the clause and **heavy weighting** be given to it.

67. **Clause 17(1)(e) re rural use – more emphasis should be given to ensure that rural areas are empowered to provide for Aotearoa's food security[34] while ensuring rural communities' resilience** (eg. clean water supply, sustainable energy, healthy homes, accessibility to healthcare, public transport options).

68. Clauses 17(1)(i) and (j) are really important as they are attempts to deal with natural hazards and the effects of climate change including a mention of resilience. However, we are concerned that **too much emphasis is given to "*major new infrastructure*" in subclause 17(1)(j)(i)** without qualifying it or explaining how it "*would help to address the effects of climate change in the region*". We are mindful of how often costly infrastructure or engineering 'solutions' are touted to protect us from climate change effects but fail to deliver. **It is far better to work with nature such as restoring river flows and wetlands to reduce urban runoffs and vulnerability to flooding, and to enable appropriate "*land use changes that would promote climate change mitigation and adaptation*" as proposed under subclause 17(1)(j)(ii)**.

69. Clause 17(1)(d) re extracting natural resources including power generation – see our points 61-63. above.

70. Clause 17(1)(f) re the coastal marine area – see our points 64 above.

Relationship with NBE Plans and public participation

71. Clause 29(1) needs to be much strengthened to ensure that "***A regional spatial strategy must* (not may) *be guided by the region's operative natural and build environment plan***…" Subclauses 29(1)(a) and (b) need to be expanded to ensure that significant biodiversity areas, outstanding natural landscapes, and other places of environmental and cultural values are respected, before any development plans are in place. Otherwise, spatial strategies are likely to be focused on identifying significant development corridors, without the environmental information necessary to know if the right projects are being planned for the right places.

72. **The list of interested parties provided under Schedule 4 is very top heavy**— Crown entities, appointing bodies for the regional planning committee, local authorities, council-controlled organisations, etc. **The list is also industry heavy, with clause 1(h) which lumps "*interests of relevant industry sectors*" with "*non-government organisations*" and clause 1(i) "*relevant private infrastructure providers and operators*".** Clearly real NGOs, environmental, community and social justice groups that are so under represented here have a great deal of interest in regional spatial strategies and how they might affect the environmental and people. Academic and research institutes also have a lot to offer in determining what needs to be included in the draft strategy and reviewing

[34] https://www.newsroom.co.nz/sustainable-future/building-future-resilience-should-start-with-food-security?fbclid=IwAR0n-APkls8YbvHQwuB7lFg1D0YNdJ6awJo2obBwUIU4u0Syj-naw4huan4

drafts. Amongst crown entities, the Department of Conservation should have a clear role in planning committees tasked with developing spatial plans, not just an interested party.

73. We strongly support the requirement of **public notification of draft regional spatial strategy** (Schedule 4 clause 4) and ask that this requirement be applied also to clause 5; i.e. if a regional planning committee proposes to adopt a regional spatial strategy that is materially different from the draft.

Climate change and our concluding remarks

74. The Bills provide an ineffective framework for addressing climate change mitigation or adaptation, and only weak links with the Climate Change Response Act. For example, rather than just being consistent with, we argue that planning instruments must give effect to emissions reduction plans.

75. An overarching need is that these Acts are consistent with, and support, all other Acts pertinent to New Zealand's commitment to addressing climate change and associated impact on oceans (marine heatwaves[35], acidification[36] and deoxygenation). Like most nations, New Zealand has been far too slow to act on these existential challenges, in part because of the predatory delay[37] tactics of some industries, and their regulatory capture of governments at local, regional and national levels. Time is now very short, globally, as the UN, IPCC and indeed all credible science agencies, have increasingly warned. 'Our nuclear-free moment' has arrived, as witnessed most recently by unprecedented rainfall and flooding in our largest city[38].

76. We caution, as have many before us, that those industrial self-interests must not continue to determine policy and legislation. Their self-interested influence has been a major drawback on getting various pieces of legislation fit for purpose in a climate-changed world. It is not for lack of warnings. One highly credible one came from Scottish economist philosopher Adam Smith, pioneer of the political economy (1776). Smith was highly sceptical of the motivations of some in the business class, 'mercantilists' in his day:

    "The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it."

    History, sadly, has proven him correct. As above, we need urgent, clear legislation based in the best science, unfettered by vested interests.

77. Furthermore, we wish to reiterate our points on degrowth earlier (points 12 and 61). The inconvenient truth facing our time now is that we must undergo an **urgent drawdown of excessive development and material throughput back to within ecological, biophysical and social limits**, for humanity's survival, and with strategic hard work, help restore the life-supporting capacity of our natural world. We owe this to our ancesters and future generations.

[35] https://www.rnz.co.nz/news/national/482415/marine-heatwave-fiordland-set-to-reach-record-sea-temperature
[36] https://www.rnz.co.nz/news/national/473764/ocean-acidity-rising-in-new-zealand-coastal-waters
[37] http://www.terrenceloomis.ac.nz/latest-publication.html
[38] https://www.rnz.co.nz/news/political/483503/tough-calls-to-be-made-on-future-of-climate-vulnerable-communities-chris-hipkins