

Environment Committee

Inquiry on the Natural and Built and Environments Bill

Submission by Dr Trevor Daya-Winterbottom FRGS Legal Associate RTPI

My name is **Trevor Daya-Winterbottom**. I am an Academic Lawyer and currently hold the position of Associate Professor in Law and Deputy Dean at Te Piringa Faculty of Law, University of Waikato. A brief biographical note outlining my qualifications and experience is **attached**. This submission is an individual submission, made as part of my academic responsibility as “critic and conscience of society” under s 268 of the Education and Training Act 2020.

My submission on the Natural and Built and Environments Bill (NBA) exposure draft is divided into three parts:

1. Summary and conclusions.
2. The terms of reference of the inquiry.
3. Comments on specific provisions in the exposure draft of the Natural and Built Environments Bill (NBA).

1 SUMMARY AND CONCLUSIONS

Making submissions on the NBA exposure draft is difficult in the abstract, and the right to make further submissions on the full text of the Bill (and related legislation) when introduced into Parliament is reserved.

For the reasons given below, the NBA exposure draft does not (as currently drafted) achieve the objectives set out in the terms of reference for the Parliamentary inquiry.

Some suggested amendments to the NBA exposure draft are made in this submission.

While the terms of reference for the Parliamentary inquiry do not include the counterfactual of amending the Resource Management Act 1991 (RMA) to achieve the stated objectives, an informed and critical appraisal of this approach was covered by Simon Upton in his RMLA Salmon Lecture 2020.¹

I confirm that I wish to speak in support of my submission before the Environment Committee.

2 TERMS OF REFERENCE OF THE INQUIRY

This part of my submission addresses the terms of reference of the inquiry.

Protect and restore the natural environment

This term of reference focuses on the extent to which the exposure draft of NBA will support the protection and where necessary, restoration of the natural environment, including its capacity to provide for the well-being of present and future generations.

Justice Joe Williams writing extra-judicially about the RMA and the common law and, in particular, how the statutory infrastructure in the RMA “might better accommodate the principle of whanaungatanga” in relation to freshwater articulated the following analysis of part 2 of the RMA from a “Kupean” perspective:²

... Section 5 speaks to the Act’s sustainable management purpose including the purpose of safeguarding the life supporting capacity of water and eco-systems. Mana and mauri seem to fit rather comfortably into that construct.

¹ Simon Upton, “RMA Reform: Coming Full Circle” [2021] RM Theory & Practice 61.

² Justice Joe Williams, “He Pukenga Wai” [2021] RM Theory & Practice 40, 54.

Section 6 requires recognition of, and provision as a matter of national importance for, “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga”.

We should perhaps remember that the reference is to ancestral water. That need not be taken to mean the water of their ancestors. It is equally capable of meaning the relationship of Maori with water as their ancestor. This framing is more tikanaconsistent. It shifts te mana, te tapu me te mauri o te wai to centre stage. It also gathers in kaitiakitanga to which particular regard is required in s 7. And the Treaty principles referenced in s 8 echo this.

The Parliamentary paper on the exposure draft NBA builds on the foundation of the Supreme Court decision in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* regarding the meaning of sustainable management and the planning hierarchy imposed by this concept on the structure of legislation.³ Recent High Court decisions have clearly articulated how sustainable management works in practice from a tikanga Maori perspective (embracing whanaungatanga, tapu, and kaitiakitanga),⁴ for example:

- In *Ngati Maru Trust v Ngati Whatua Orakei Whaia Maia Ltd* [2020] NZHC 2768, Whata J found that the obligations to Maori under s 6, s 7, and s 8 of the RMA are mandatory considerations that decision-makers must meaningfully respond to.⁵
- In *Tauranga Environmental Protection Society Inc v Tauranga City Council and Bay of Plenty Regional Council*, Palmer J

³ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] 1 NZLR 593.

⁴ Horiana Irwin-Easthope, “The Increasing and Enduring Importance of Tikanga Maori and Cultural Evidence in the Environment Court” [2017] RM Theory & Practice, 93, 95.

⁵ *Ngati Maru Trust v Ngati Whatua Orakei Whaia Maia Ltd* [2020] NZHC 2768 at [73] and [102].

found that part 2 of the RMA imposes both environmental and cultural bottom lines that provide strong directives at all stages of the planning process.⁶

There is therefore a strong relationship between the obligations to Maori under part 2 of the RMA and the concept of sustainable management.

Internationally, the concept of sustainable management as expressed via the Rio Declaration on Environment and Development 1992 has exerted a strong influence on the development of both multi-lateral environmental agreements (MEAs) that New Zealand is party to, and New Zealand domestic law. These linkages are important in drawing comparative support from Senior Courts in other jurisdictions regarding the interpretation of key normative principles,⁷ including – prevention, intergenerational equity, sustainable development and integration, public participation, precaution, polluter-pays, environmental impact assessment, and indigenous peoples and sustainable development.⁸ Beyond that, the omission of any express reference to sustainable management in the NBA (for example, as an implementation principle) will not complement other statutes or MEAs relating to the New Zealand environment.⁹

Accordingly, absent express reference to the concept of sustainable management in the exposure draft of NBA will not fully support the protection and where necessary, restoration of the natural environment, including its capacity to provide for the well-being of present and future generations.

⁶ *Tauranga Environmental Protection Society Inc v Tauranga City Council and Bay of Plenty Regional Council* [2021] NZHC 1201 at [92], [95], [96], [98], and [100].

⁷ Lord Carnwath, "Judges and the Common Laws of the Environment – At Home and Abroad" *Journal of Environmental Law* Volume 26, 2014, 177.

⁸ Rio Declaration on Environment and Development 1992, Principles 2, 3, 4, 10, 15, 16, 17, and 22.

⁹ Environment Act 1986, long title; Conservation Act 1987, s 2 (definition of conservation); Fisheries Act 1996, s 8; Hazardous Substances and New Organisms Act 1996, s 5 and s 6; Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, s 10.

Better enable development within environmental biophysical limits

This term of reference focuses on the extent to which the exposure draft of NBA will support the resource management reform objectives to better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure.

Enabling development within environmental biophysical limits

Enabling development within environmental biophysical limits will require spatial planning to identify the aspects of the natural environment that should be protected, either by prescribing environmental limits or via other methods. To resolve conflict, an “effects hierarchy”¹⁰ should be included in the NBA, the NPF, and NBEPs. Ultimately, consent for proposed activities should be refused where it is not practicable, possible, or appropriate to achieve any of the outcomes identified in the hierarchy. The responsible Minister and local authorities should be required to make explicit policy choices when preparing these instruments about whether adverse effects should be avoided or remedied or mitigated. Absent any explicit policy choice, the default position under the NBA should be to avoid any adverse effects.

There will in some cases be an inevitable conflict between protecting and enhancing the environment on the one hand and enabling development on the other hand. In these cases, the principle of “in dubio pro natura” should apply, namely:¹¹

In cases of doubt, all matters before courts, administrative agencies, and other decision-makers shall be resolved in a way most likely to favour the protection and conservation of the environment, with preference given to alternatives that are least

¹⁰ See, for example, National Policy Statement for Freshwater Management 2020, clause 3.21(1).

¹¹ IUCN World Declaration on the Environmental Rule of Law 2016, Principle 5.

harmful to the environment. Actions shall not be undertaken when their potential adverse impacts on the environment are disproportionate or excessive in relation to the benefits derived therefrom.

Enabling a significant improvement in housing supply

Enabling a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure will require detailed planning via the NPF and NBEPS.

For example, the National Planning Policy Framework for England includes a detailed set of policies that require affordable housing to be provided on-site by in major housing developments where 10% of the total number of homes is required to be provided for affordable home ownership or rent (20% below local market value or local market rents) via development contributions.¹²

The National Planning Policy Framework for England also requires local authorities via their plans to identify specific deliverable sites that are available for housing development within the first 5 years of the plan period, and to identify specific development sites or broad areas for growth where future housing development could be located for the second 5 years of the plan period (and where possible for the third 5 years of the plan period).¹³ In particular, local authorities are required to update annually the supply of specific deliverable sites that are available for housing development in order to provide a minimum of 5 years' supply of land for housing at all times to accommodate likely population growth.¹⁴

Similarly, enabling the timely provision of appropriate infrastructure, including social infrastructure is also a key feature of the National

¹² Ministry of Housing, Communities & Local Government, *National Planning Policy Framework* (2021), 11, 17, and 64.

¹³ Ministry of Housing, Communities & Local Government, *National Planning Policy Framework* (2021), 18-19.

¹⁴ Ministry of Housing, Communities & Local Government, *National Planning Policy Framework* (2021), 20.

Planning Policy Framework for England that requires local authorities to provide for infrastructure via their plans by setting out the financial contributions required to fund appropriate infrastructure provision.¹⁵ The timing of infrastructure provision is assisted by including *Grampian* conditions on the grant of planning permission that normally require infrastructure to be in place either before development commences or is occupied.¹⁶

Accordingly, enabling an adequate supply of land for housing (including affordable housing) and associated infrastructure provision will require strong directive provisions to be included in the NPF, annual plan changes to NBEPs by local authorities to keep minimum housing land supply requirements up to date, and the inclusion in the NBA of appropriate provisions to enable local authorities to levy development contributions and include *Grampian* conditions on the grant of resource consent. The provisions currently included in s 12 to s 18 of the NBA regarding the content of the NPF do not include the kind of strong direction that will be required to drive the delivery of housing supply and infrastructure via NBEPs.

Give effect to the principles of Te Tiriti o Waitangi

This term of reference focuses on the extent to which the exposure draft of NBA will support giving effect to the principles of Te Tiriti o Waitangi and provide for greater recognition of te ao Maori, including matauranga Maori.

Section 6 of the NBA is clearly stronger than s 8 of the RMA because all persons exercising powers, function, and duties under the NBA “must give effect to the principles of Te Tiriti o Waitangi”, in contrast with the current duty under the RMA to “take into account” Te Tiriti principles.

¹⁵ Ministry of Housing, Communities & Local Government, *National Planning Policy Framework* (2021), 11.

¹⁶ *Grampian Regional Council v City of Aberdeen District Council* (1984) P&CR 633.

By placing the obligations to Maori currently found in s 6 and s 7 of the RMA in s 8 of the NBA together with a range of other outcomes that have no particular weighting, arguably downgrades these important matters from mandatory considerations that form a cultural bottom line to merely permissive considerations. Compared with the current position under the RMA, the NBA exposure draft does not provide greater recognition of te ao Maori.

A better approach would therefore be to include the obligations to Maori currently found in s 6 and s 7 of the RMA in an amendment to s 6 of the NBA. Providing for these obligations in further subsections would afford them greater statutory protection as mandatory obligations.

Better prepare for adapting to climate change

This term of reference focuses on the extent to which the exposure draft of NBA will support better preparation for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change.

Section 8 of the NBA provides that the NPF and NBEPs must promote greenhouse gas (GHG) emissions reductions and improved environmental resilience to climate change effects. Since 2004 New Zealand has relied on a single legislative method to mitigate climate change emissions – the emissions trading scheme that was finally introduced by the Climate Change Response (Emissions Trading) Amendment Act 2008.

Scientific analysis from the New Climate Institute notes that the reforms introduced by the Resource Management (Energy and Climate Change) Amendment Act 2004 that currently preclude local authorities from considering the effects of climate change when deciding resource consent applications have been “a major impediment” on reducing GHG emissions.¹⁷ While these restrictions on local authority discretion will be

¹⁷ climateactiontracker.org (accessed 25 June 2021).

repealed from 31 December 2021, the focus on decarbonising industry by banning the use of new coal boilers, phasing out coal use on existing industrial sites by 2037, and requiring a switch from diesel and natural gas to electricity, remains arguably narrow – and currently fails to address increasing GHG emissions from land transport.¹⁸

Absent any substantive change to New Zealand’s current policy settings regarding carbon zero, the scientific analysis indicates that their long-term effect would be “highly insufficient” and on track for global warming of “over 3°C and up to 4°C”.

Put simply, on the basis of this analysis from the New Climate Institute, New Zealand’s current GHG emissions reduction commitments are not consistent with addressing its “fair share” of global GHG emissions compatible with holding global warming within the 1.5°C to 2°C range.

Without sighting the NPF it is difficult to make any informed comment in the abstract as to whether s 8(j) of the NBA regarding GHG emissions reductions will better mitigate emissions contributing to climate change.

Improve system efficiency and effectiveness

This term of reference focuses on the extent to which the exposure draft of NBA will support improving system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.

The select committee was also asked to pay particular attention to this objective, and was asked to collate ideas for making the new system more efficient, more proportionate to the scale and/or risks associated with given activities, more affordable for the end user, and less complex, compared to the current system.

Four preliminary comments are made regarding system efficiency and effectiveness and the NBA exposure draft:

¹⁸ Ministry for the Environment, *Phasing out fossil fuels in process heat: National direction on industrial greenhouse gas emissions* (April 2021).

First, adopting a collaborative approach between the Government and local authorities would be sensible to ensure that the NPF is prepared and maintained in a timely way. However, the task of preparing the NPF should not be underestimated in terms of transitioning from the current suite of national environmental standards and national policy statements to a single national planning framework, because the current framework of national direction under the RMA is arguably incomplete. For example, the National Planning Policy Framework for England replaced a suite of 24 planning policy guidance notes. Appointing a committee and subcommittees to drive the NPF process under the NBA would reflect the collaborative approach used for preparing NBEPs, and expertise from local authorities, NGOs, and professional bodies (under the aegis of the Royal Society) could assist in filling in any gaps.

Second, focusing solely on regional spatial strategies under the NBA and the proposed Strategic Planning Act is unlikely to resolve some of the contentious matters that have dogged the RMA, for example, protecting outstanding landscapes from inappropriate development and ensuring that infrastructure (such as wind farms) is provided in the right places. Addressing, such matters by preparing a national spatial plan could assist in producing system efficiencies. Overseas examples, include the Dower Report 1945 that provided robust analysis for identifying naturally beautiful landscapes outside national parks in England and Wales that warranted protection as Areas of Outstanding Natural Beauty (AONB).¹⁹ The report has stood the test of time and 38 AONBs have subsequently been designated in England and Wales based on the recommendations in the report. More recently, the Welsh Government has prepared a national development framework covering the whole Principality,²⁰ that addresses most of the outcomes listed in s 8 of the NBA. Similarly, the Welsh National Marine Plan 2019 is an exercise in spatial planning that (inter alia) provides strategic guidance on the appropriate areas within the coastal environment where wind farms may be located. Adopting a

¹⁹ John Dower, *Report to the Government on National Parks in England and Wales* (Cmd. 6628, HMSO, 1945).

²⁰ Welsh Government, *Future Wales: The National Plan 2040* (24 February 2021).

national approach to spatial planning via the preparation of a national spatial strategy could therefore assist in streamlining the process for preparing NBEPs under the NBA.

Third, system efficiency and effectiveness under a framework statute like the RMA or the proposed NBA arguably depends on the streamlining effect of national direction and regulation. For example, under the Town and Country Planning Acts 1947-1990 in England and Wales extensive use has been made of statutory regulations to provide for the equivalent of permitted and controlled activities under the RMA. The latest iteration of these regulations is the Town and Country Planning (General Permitted Development) (England) Order 2015.²¹ Again, a collaborative approach (as noted above) between Government, local authorities, NGOs, and professional bodies could be used to prepare similar regulations for New Zealand. This approach could improve system efficiency and effectiveness by enabling NBEPs to focus exclusively on the objectives, policies, and methods required to provide for restricted discretionary and discretionary activities, and how any resource consent applications for non-complying activities should be assessed and determined.

Fourth, the Parliamentary paper on the exposure draft lists a number of examples of system efficiencies including (inter alia) reducing public participation in the NBA plan development process to “requiring written submissions rather than oral”.²² Arguably, reducing public participation in this way overlooks three critical points:

- That an underlying component of the theory of the New Zealand state²³ is the tradition of affording oral hearing rights for submitters in relation to the preparation of planning instruments.
- That providing for effective public participation is an aspect of “human dignity” rights.²⁴

²¹ SI 2015 No 596 (www.legislation.gov.uk).

²² New Zealand Government, *Natural and Built Environments Bill: Parliamentary paper on the exposure draft* (1 July 2021), 41.

²³ Sian Elias, “Righting Environmental Justice” [2014] *RM Theory & Practice*, 49.

- That public participation in plan preparation is a streamlining exercise that provides the justification for “shutting” the public out from the majority of resource consent decision-making.²⁵

For example, in the period 2018/19 the streaming effect of allowing full public participation in the RMA plan preparation process enabled the majority of resource consent applications to be processed without notification – with only 3.8 per cent of resource consent applications being given either public or limited notification.²⁶

Accordingly, there is a real question regarding the appropriate place for public participation in the resource management system that is not currently addressed by NBA exposure draft and which needs to be resolved. Providing for oral submission rights on plans (as currently provided for under the RMA) is likely to be the most efficient and effective way to address this matter.

3 COMMENTS ON SPECIFIC PROVISIONS IN THE NBA

This part of my submission provides some comments on specific provisions in the NBA exposure draft.

Purpose and environmental limits

The central feature of the NBA is the protection and enhancement of the natural environment by upholding Te Oranga o te Taiao, and by enabling people and communities to use the environment to support their well-being without compromising the needs of future generations. This overall statutory purpose (s 5) is to be achieved by complying with environmental limits that are to be designed to protect ecological integrity or human health, by promoting a suite of desired eco-centric and anthropocentric

²⁴ Sian Elias, “Righting Environmental Justice” [2014] *RM Theory & Practice*, 52; James R May and Erin Daly, *Human Rights and the Environment: Legality, Indivisibility, Dignity and Geography* (Edward Elgar Publishing, 2019).

²⁵ *Westfield (NZ) Ltd v North Shore City Council* [2005] NZRMA 337 at 376 (NZSC) per Blanchard J.

²⁶ Ministry for the Environment, *Resource Consents Explorer* (www.mfe.govt.nz).

outcomes, and by avoiding, remedying, or mitigating any adverse effects on the environment. The concept of Te Oranga o te Taiao that is hard-wired into the NBA is clearly eco-centric.

The NBA includes a strong mandatory requirement to give effect to the principles of the Treaty of Waitangi (s 6).

Environmental limits (as noted above) are to be designed to protect ecological integrity or human health (s 7) in the form of either minimum or maximum standards pertaining to air, biodiversity, coastal waters, estuaries, freshwater, and soil. These limits are to be prescribed either by the NPF prepared by the responsible Minister (s 12) or by NBEPs prepared by local authorities (s 25). When setting any environmental limits the responsible Minister (s 16) and local authorities (s 24(3)) are required to apply a precautionary approach.

National planning framework

Preparation of the NPF is mandatory (s 9) and is designed to provide integrated direction regarding matters of national significance and for any matters where national consistency is desirable (s 10). The NPF is to be prepared and maintained in accordance with the provisions to be included in schedule 1 of the NBA, but schedule 1 is covered by a placeholder in the exposure draft and no detail is currently provided by the Government about the mechanics of how this will be rolled out.

The NPF will have regulatory effect (s 11) and may apply to any specified region or district or part of New Zealand. However, the potential for the national planning framework to apply *throughout* New Zealand is implicit rather than explicit. The NPF is required to address a selection of 9 out of the 16 environmental outcomes listed in s 8. Notable omissions from the selection are:

- Access to the coast, lakes, rivers, and wetlands, and the protection of the natural character of these features (s 8(e)).

- Protection of the Maori interests currently provided for in s 6 and s 7 of the RMA (s 8(f)-(i)).
- Protection of highly productive land (s 8(m)(i)).
- The protection and sustainable use of the marine environment (s 8(n)).

The omission of the Maori interests currently protected under s 6 and s 7 of the RMA is significant. Currently, these matters are mandatory directives under the RMA²⁷ and will be downgraded to permissive considerations if the key elements of the NBA included in the exposure draft are enacted in their current form. This approach is not consistent with the upholding Te Oranga o te Taiao (s 5) or giving effect to the principles of the Treaty of Waitangi (s 6).

There is potential for considerable conflict between the eco-centric and anthropocentric outcomes listed in s 8 of the NBA. While provision is made to help resolve any conflicts via the NPF (s 13(3), or by NBEPs (s 22(1)(g)), or by local authorities on a case-by-case basis when deciding resource consent applications (s 24(2)(d)) - no statutory guidance is provided as to how any conflicting objectives should be weighed. Currently, this exercise is a matter for political discretion. This approach is not consistent with the strong eco-centric focus of the concept of Te Oranga o te Taiao (s 5) or the desire to promulgate mandatory environmental limits (s 7). There is therefore a strong argument that political discretion should be clearly constrained by these overriding normative principles in part 2 of the NBA that define the purpose of the proposed statute.

While the Government's intention in drafting these conflict resolution provisions is that they should "echo" the RMA planning hierarchy defined by the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38, in practice these

²⁷ *Ngati Maru Trust v Ngati Whatua Orakei Whaia Maia Ltd* [2020] NZHC 2768 (Whata J) at [73] and [102].

provisions as currently drafted do not implement this intention and arguably provide for a return to the overall broad judgment approach in *North Shore City Council v Auckland Regional Council* [1997] NZRMA 59. It is also for note that, the Review Panel Report recommended that a hierarchy for resolving these conflicts should be included in the NBA that required them to be resolved either through national direction or combined regional plans but not via the resource consent process.²⁸ The approach in the Report is clearly much closer to the judgment in *King Salmon* than the approach currently included in the exposure draft of the NBA.

Despite the Government's intention to increase efficiency and reduce complexity, the NPF may still be required to be transposed into NBEPs or regional spatial strategies (s 15(1)(a) and (b)) via plan change processes.

Implementation principles

The exposure draft of the NBA also includes a placeholder provision (s 18) requiring relevant persons to have regard to a series of implementation principles in relation to the preparation and content of the NPF under part 3 of the NBA. The implementation principles include:

- Promoting integrated management.
- Recognising and providing for kawa, tikanga, kiatiakitanga, and matauranga Maori.
- Ensuring appropriate public participation is carried out in a way that will be consistent with good governance and proportionate to the matters under consideration.
- Promoting effective mechanisms for iwi participation.
- Recognising and providing for the responsibility of iwi to protect and sustain the health and well-being of te taiao.

²⁸ Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), 486.

- Having particular regard to cumulative effects.
- Taking a precautionary approach.

Notable omissions from the list of implementation principles in s 18 of the NBA are - prevention, intergenerational equity, sustainable development, public participation (including effective access to environmental information, redress and remedies), polluter-pays, and environmental impact assessment.²⁹

The precautionary approach referred to in s 16, s 18, and s 24 is defined by s 3 of the NBA as meaning:

... 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.

There are some important differences between the exposure draft of the NBA and the recommendations in the Review Panel Report in relation to the implementation principles now included in s 18. For example, the Report recommended that these principles should be included in part 2 of the NBA and apply to the performance of all functions under the NBA, and that they should include express references to providing for kaitiakitanga and tikanga Maori and matauranga Maori, and the need to complement other relevant legislation and international obligations.³⁰

The latter point is important because the RMA is currently used as implementing legislation for a number of multi-lateral environmental agreements (e.g. Ramsar Convention regarding the protection of wetlands) and achieving consistency between the provisions in the NBA and these international obligations will also be critically important. A better

²⁹ Rio Declaration on Environment and Development 1992, Principles 2, 3, 4, 10, 15, 16, 17, and 22.

³⁰ Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), 485.

approach would be for the NBA to provide that the statute is designed to implement and give effect to a range of international obligations and to list the relevant treaties and agreements in a schedule to the NBA, coupled with an express requirement to interpret the provisions of the NBA consistently with these obligations.³¹

Additionally, the definition of the precautionary approach currently included in the NBA is arguably more development focused than the provision recommended by the Review Panel Report. For example, the Report focused on “uncertain, unknown or little understood” environmental effects that may “have potentially significant and irreversible adverse consequences”.³² The approach in the Report is arguably much closer to the definition of the precautionary approach in Principle 15 of the Rio Declaration on Environment and Development 1992 than the current drafting in the NBA. Likewise, the precautionary approach defined in s 3 of the NBA is narrower than the more stringent approaches to precaution in s 10 of the Fisheries Act 1996 and s 34 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZCSA). Arguably, given the interface between managing the marine environment and the exclusive economic zone, the more stringent approach to precaution in EEZCSA should be mirrored in the NBA. While environmental impact assessment (EIA) is an important procedural aspect of preventing environmental harm and implementing the precautionary approach,³³ there is currently no reference to EIA in the list of implementation principles in s 18 of the NBA notwithstanding the provision made for EIA in s 88 and schedule 4 of the RMA.

Natural and built environment plans

Provision is made for the content of NBEPs (s 22) and for their collaborative preparation by the local authorities in the respective region

³¹ *New Zealand Air Line Pilot’s Association Inc v Attorney-General* [1997] 3 NZLR 269.

³² Report of the Resource Management Review Panel, *New Directions for Resource Management in New Zealand* (June 2020), 485.

³³ Pierre-Marie Dupuy and Jorge E Vinuales, *International Environmental Law* (2nd Edition, Cambridge University Press, 2018), 47, 62.

by a joint planning committee (s 23). The preparation of NBEPs is mandatory (s 19). Given the emphasis on infrastructure provision in relation to spatial planning,³⁴ a notable omission from the collaborative approach to preparing NBEPs is the absence of requiring authorities from the membership of joint planning committees (cl 1, schedule 3).

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³⁴ New Zealand Government, *Natural and Built Environments Bill: Parliamentary paper on the exposure draft* (1 July 2021), 12.