



Environment Institute
of Australia and
New Zealand Inc.

Ministry for the Environment
Wellington

Date: 19 February 2023

To Whom It May Concern,

SUBMISSION: Natural and Built Environment Act

This submission sets out the Environment Institute of Australia and New Zealand (EIANZ) position on the 'Draft **Natural and Built Environment Act**' (NBEA), released November 2023.

We acknowledge the effort that the Ministry for the Environment have put into incorporating submissions and feedback on the NBE Bill to date.

About EIANZ

Founded in 1987, EIANZ is a professional association of some 2000 environmental practitioners from across Australia and New Zealand. We provide opportunities for professional and academic dialogue across all sectors of the environmental industry. The Institute membership includes specialists in a range of environmental disciplines: climate change, contaminated land, planning, engineers, law, environmental science, freshwater, marine and coastal sciences, and ecology.

A significant initiative of EIANZ is the Certified Environmental Practitioner (CEnvP) Scheme, which is Australasia's first accreditation scheme designed exclusively for environmental practitioners and recognises environmental professionals in line with their professional counterparts from engineering, accounting, planning and architecture. Several members of EIANZ hold specialist CEnvP ecologist certifications. Three members residing in NZ are Fellows of the EIANZ recognising the contributions to environmental practice over several decades. These credentials are significant in the recognition of environmental practice in New Zealand.

Our approach

The feedback expressed in this submission is formed from a consensus approach amongst practitioners within EIANZ. The main thrust of the feedback was developed from a small number of members before seeking comment from the membership at large. Accordingly, it represents a whole of industry feedback rather than any regional or sector response. More importantly it represents the collective experience of environmental practitioners who work with and implement the environmental legislation. We emphasise that our submission is based on the clarity, consistency, and practicality of the proposed NBEA. In addition, we draw attention to areas where our experience suggests that greater direction is required within the proposed legislation.

EIANZ recognises that there is an imperative to establish the NBEA in law within the next few months (and likely prior to the 2023 General Election). Accordingly for the most part we do not seek to suggest major or fundamental changes to the drafted legislation. Rather we draw on our experience to seek greater clarity and a fit for purpose of the NBEA. This includes the use of a consistent language. Where we consider that some components are either redundant or unhelpful we, as much as possible, have suggested alternatives that we believe will aid the efficiency and practice of resource management.

One important tenet of our submission is to provide for a more efficient resource management process (including a common terminology) so that in our practice we avoid unnecessary debates on the meaning of terms and expressions (especially those as set out in criteria and/or describing adverse effects) and concentrate on the real matter in hand of providing for the purpose of the NBEA. Accordingly, in our submission, we make comment and draw attention to the variety of ill-defined terms and expressions and seek to streamline these to a common terminology.

Submissions

EIANZ supports the broad changes represented by the NBEA, notably the emphasis on strategic level plans, and more directive outcomes and targets. EIANZ particularly commends the emphasis on effects assessment in the NBEA, but we have concerns about some of the specific provisions in the Bill which we detail below.

Language and Terminology

One of the more frustrating experiences of the EIANZ membership is the extent of disagreement amongst practitioners and stakeholders about the meaning and application of the various terms used to express effects on the environment. The RMA introduced the term 'more than minor adverse effects' but other language that has emerged includes 'minimal', 'trivial', 'negligible', and 'unmeasurable'.

Our wish is for some consistency with regard to the definition and meaning of the terminology used in the NBEA. We cannot express enough how much resource and time that gets used in debates on the meaning of such terms; resources that could be put to much better use.

We note that the NBEA as drafted, introduces various new expressions related to adverse effects on the environment. Some examples are:

- Cl.7 interpretation - **adverse effect** does not include a **trivial**¹ effect.
- Cl. 64(2)(c) - the activity would, if carried out in an alternative location, result in a more than **trivial** adverse effect on the attributes that make the alternative location a place of national importance.
- Cl. 50(2)(c) - 'places indigenous plants or animals at **increased risk of local displacement** or extinction; or (ii) poses a risk of irreversible or **significant harm** to ecological integrity;
- Cl. 50(1) - The responsible Minister must set a minimum level target in the national planning framework if the Minister is satisfied that the associated environmental limit is set at a level that represents **unacceptable degradation of the natural environment**.

We understand that the changes may be deliberate in order to distance the terminology away from that used in the RMA; EIANZ supports that purpose. However, EIANZ submits that definitions and interpretation of the meaning of these terms will be extremely helpful. We are not seeking any qualitative or quantitative measure of the adjectives that describe an effect. Rather a standard dictionary definition or simple explanation is acceptable to provide everyone with the intent of its meaning in the NBEA. We consider that this directive is best made clear in the NBEA rather than the NPF to ensure consistency and intent.

Extension of submission date

EIANZ acknowledges and thanks the Ministry for the Environment for providing EIANZ with an extension to the submission date so that a more comprehensive and well considered submission could be presented.

Hearing

Should there be an opportunity to present our submission face-to-face with the Ministry of the Environment, the EIANZ would wish to take up that opportunity to be heard.

¹ means trifling; inconsiderable; of small worth or importance.

Specific submissions

Section	Support/Oppose	Reasons	Relief Sought
Cl. 3 - Purpose	Support and oppose	<p>EIANZ generally supports the purpose of the NBEA as set out in Clause 3 and acknowledges that this directive is fundamental to the implementation and interpretation of the NBEA. As the anchor or touchstone for future operation of the NBEA, EIANZ contends that certainty and clarity in the drafting of Cl. 3 is imperative.</p> <p>This section is broadly supported by EIANZ in this respect, subject to the following points:</p> <ul style="list-style-type: none"> • The word ‘compromising’ in Cl. 3(a)(i) has no equivalent in RMA s 5 (nor Part 2 as a whole) and is relatively untested through the RMA. We consider it to be language that is ambiguous and with potentially wide-ranging meaning, whereby potentially minor or moderate (in context) impacts of existing activities on future wellbeing, might be said to compromise that wellbeing. We submit that a clearer alternative language would be to refer to ‘while sustaining’ rather than ‘without compromising’. • It is unclear how Cl. 3(a)(i)-(iv) of Cl. 3(a) are intended to operate in relative terms, with the conjunctive “and” appearing to direct that all elements of the purpose must be applied on an equal footing, regardless of potential conflict in a given situation. Specifically, as addressed below, the respective function and role of environmental limits and methods to promote system outcomes, and the nature and extent of exemptions to environmental limits (to manage adverse effects (ss3 (a)(iv)), needs very careful thought and attention. • The direction to ‘recognise and uphold Te Oranga o te Taiao’ (Cl. 3(b) is supported by EIANZ but we recognise that this introduces a significant new statutory dimension to the resource management system, also not tested through the RMA. A most notable element is that the definition of the term (in Cl. 7) references the ‘health’ of the natural environment. We note that the provisions set out in the NBEA refer to the ‘ecological integrity’, of the natural environment (and not ‘ecological health’), ‘Ecological Integrity’ and ‘Ecological 	<p>Retain basic structure and wording of Cl. 3 but ensure that the NPF and NBEA plans give clear coherent and consistent direction as to how the purpose elements are to be implemented, interpreted and applied, as addressed further below.</p> <p>Amend Cl. 3(a) (i) as follows:</p> <p><i>Supports the well-being of present generations without compromising while sustaining the well-being of future generations.</i></p> <p>Amend ‘health of the natural environment’ to ‘ecological integrity’ OR provide a clear and concise definition of ‘health of the natural environment’.</p>

Section	Support/Oppose	Reasons	Relief Sought
		<p>Health' are not the same thing and in fact are quite different concepts as expressed in science².</p> <p>We submit that if environmental limits are to be set for the protection of 'ecological integrity' then 'ecological integrity' should be the term to be used consistently to express the condition of the environment. If the 'health of the natural environment' is retained and preferred (as it may be for the environmental domains) EIANZ submits that a separate and very clear definition is required to distinguish 'health of the natural environment' from 'ecological integrity'</p> <p>Beyond that the drafting of Cl. 3 (a) and (b) as two distinct purpose components is supported; thereby reducing the extent to which integration or 'reconciliation' of the two purpose elements would be required. Instead, each element would presumably need to be applied and promoted on its own terms.</p>	
Cl. 5 – System outcomes		<p>EIANZ support the inclusion of systems outcomes and the re-emphasis of resource management in NZ to an outcome-facing legislation.</p> <p>However, EIANZ submits that the outcomes listed in the draft NBEA are not forward-looking enough and are accordingly may not achieve the aim of protecting the wellbeing of future generations in a holistic and strategic way. EIANZ is also concerned of the vague and ambiguous wording of the proposed system outcomes in Cl. 5. As written, too much is left open to interpretation, and we consider that a tighter language is needed to prevent uncertainty and facilitate compliance. We note a hierarchy of expressions from 'protection', 'achieving', 'promoting', 'availability' and 'provision'. We are not clear why such a hierarchy is required if the system outcomes are what we want to achieve through this legislation. We submit that the terms 'protection' and 'achieving' along with 'must' should be included for each system outcome.</p>	As submitted – changes to the language that is stronger, bolder and targeted.

² The scientific literature shows that Ecological Health (EH) describes the basic physical and biological state of an ecosystem in relation to its ability to support services. The distinction between Ecological Integrity (EI) and Ecological Health (EH) can be described as an ecosystem may have high EH (functioning and provisioning well) but a low EI (low composition of natural indigenous species or low representation of the ecosystem type). If an ecosystem has high EI with a high degree of measurement of integrity for each of the components (composition, function, structure and resilience) then by definition it must have high EH. The same may not be the case in reverse.

Section	Support/Oppose	Reasons	Relief Sought
		<p>We also consider that the NBEA can provide for system outcome targets, or at least provide that the NPF does so. The legislation can set realistic or even ambitious targets for matters such as a percentage reduction in 'greenhouse gas emission', or a percentage increase in areas that meet the criteria for 'significant biodiversity areas' rather than the passive vocabulary currently in use.</p> <p>EIANZ sees this moment of resource management form as the time for the bold move and bold decision-making that is required to shape the future of New Zealand. Quantifiable and targeted system outcomes is one measure that will hold ourselves as a nation to account.</p>	
Cl.6 – Decision making principles	Support with amendments	<p>EIANZ supports the decision-making principles in Cl.6 but with some suggested amendments.</p> <ul style="list-style-type: none"> • We note, as currently expressed, these decision-making principles (other than the principle expressed in Cl.6(3)) only apply to the Minister and Regional Planning Committees (as opposed to persons exercising functions, duties and powers under the Act more generally). EIANZ considers that the principles should apply more broadly across the Act, for example to include persons making decisions on resource consents through the various pathways under Part 5 of the NBEA. • We also note that Cl.6(1)(a) is directed at 'achieving integrated management between the natural and built components of the environment'. We were surprised to read this as we would expect 'integrated management' to apply more broadly, and especially across the environmental domains (land, air and water) and/or between regional and territorial authorities. We submit that the purpose of integrated management should be extended to all relevant and logical purposes and that this should be clearly expressed within the provision. • We support Cl. 6(1)(b) and (c) notably in the reference to the 'actively promote the outcomes provided for under this Act', and 'recognise the 	<p>Amend Cl. 6(1) as follows:</p> <p><i>To assist in achieving the purpose of this Act, the Minister and every regional planning committee, all persons exercising powers and performing functions in making decisions under the Act, must—</i></p> <p><i>(a) provide for the integrated management of the <u>natural and built</u> environment.</i></p> <p>Delete Cl. 6(2)(a) and separately provide for application of the precautionary principle within Cl. 6.</p> <p>Delete the references to "duties" within Cl. 6 (2), and otherwise amend the provision so as to read:</p>

Section	Support/Oppose	Reasons	Relief Sought
		<p>positive effects of use and development in achieving those outcomes'. However, EIANZ considers that these directives could be strengthened such as 'demonstrate the outcomes provided for under this Act'.</p> <ul style="list-style-type: none"> • EIANZ also notes that no guidance is provided as to how these principles under Cl. 6 sit relative to the purpose element expressed in Cl. 3(iii) of the Bill, whereby use and development of the environment must comply with environmental limits (which seems to be directed regardless of whether that use in meeting the limits would promote system outcomes). The same issue arises as to the principle in Cl. 6(1)(d) ('manage the effects of using and developing the environment in a way that achieves, and does not undermine, the outcomes'). We further submit that the NPF and NBEA plans should not be confined to resolving conflicts between or among outcomes, but between or among outcomes and limits in order to further all elements of the purpose of the Act as expressed in Cl. 3. • Cl. 6(2)(a) requires that all persons exercising functions, duties and powers under the Act must favour "caution" where the information available to them is uncertain or inadequate. It is unclear how this new principle of "caution" relates to established international and domestic law addressing the precautionary principle and also as currently expressed in the New Zealand Coastal Policy Statement 2010 (NZCPS) Policy 3 and the Exposure Draft of the National Policy Statement for Indigenous Biodiversity (NPSIB) Policy 3.7 In those documents the principle is confined to situations involving effects that are uncertain, unknown or little understood but potentially giving rise to significant adverse effects. We seek clarity and consistency on the use of 'caution' in the decision-making principles. • On this note of information, Cl. 805 determines a hierarchy of 'best information' but we note that no reference is made to this determination in Cl. 6. We make further comment on Cl. 805 below, but EIANZ submits that reference to 'best information' should be made within Cl. 6 as a logical cross-reference and requirement. 	<p><i>(2) ...all persons exercising powers and performing functions and duties and powers <u>in making decisions</u> under this Act must favour:</i></p> <p>Amend Cl. 6(3) as follows:</p> <p><i>(3) All persons exercising powers and performing functions and duties in making decisions under this Act must recognise and provide for the responsibility and mana of <u>relevant each iwi and hapū</u>...</i></p> <p>[NB identical point in Cl.7 SP Bill]</p>

Section	Support/Oppose	Reasons	Relief Sought
		<ul style="list-style-type: none"> <li data-bbox="593 295 1512 414">• EIANZ supports the provision as written at Cl. 6(2)(b) ‘a level of environmental protection that is proportionate to the risks and effects involved’, although it is not clear how this principle would be applied relative to the various purpose elements in Cl. 3. <li data-bbox="593 446 1512 694">• We note that the Cl. 6 refers to ‘all persons exercising functions, duties, and powers under this Act’. We consider that the Cl. 6 principles should instead be confined to those persons exercising decision making functions and powers (as would include requiring authorities on notices of requirement under Cl. 513, Boards of Inquiry, expert consenting panels, planning committees etc), rather than all persons. The responsibility of all persons exercising functions, duties, and powers under this Act is clearly set out in Clauses 13 to 15. <li data-bbox="593 726 1534 885">• EIANZ agrees with the principle set out in Cl. 6(3) (‘All persons exercising powers and performing functions and duties under this Act must recognise and provide for the responsibility and mana of each iwi and hapū to protect and sustain the health and well-being of te taiao in accordance with the kawa, tikanga (including kaitiakitanga), and mātauranga in their area of interest’). 	
Definitions			

Section	Support/Oppose	Reasons	Relief Sought
Cl. 7 Interpretation	Ecological Integrity	<p>We support the inclusion of ecological integrity as the measure of protection.</p> <p>We note the revised interpretation of ‘ecological integrity’ (EI) and the removal of ‘resilience’ and the inclusion of ‘representativeness’ as follows:</p> <p>ecological integrity means the ability of the natural environment to support and maintain the following:</p> <ul style="list-style-type: none"> (a) representation: the occurrence and extent of ecosystems and indigenous species and their habitats; and (b) composition: the natural diversity and abundance of indigenous species, habitats, and communities; and (c) structure: the biotic and abiotic physical features of ecosystems; and (d) functions: the ecological and physical functions and processes-of-ecosystems. <p>It is unclear why this change has occurred. The extensive literature on EI supports two broad categories of definition of EI: those focused more on the composition and structure (the species present – what is present and is it what should be present, its representativeness) and those focused more on function and resilience (how it works and sustains itself). The earlier interpretation of EI combined both categories into a single definition.</p> <p>We submit that as ecological integrity is the measure for the implementation of environmental limits (Cl. 37). The purpose of setting environmental limits is - a) to prevent the ecological integrity of the natural environment from degrading from the state it was in at the commencement of this Part: and (b) to protect human health (see below) - it is logical that the ‘resilience’ of an ecosystem is integral to the environmental limit; that is the ability of the ecosystem to sustain itself at that limit. This is supported by the retention of ‘functions’ in the NBEA definition and the inclusion of resilience (or sustainability) in many definitions of EI.</p>	<p>Inclusion of ‘<u>resilience</u>’ as a component of ecological integrity as follows:</p> <p>Resilience: its resilience to the adverse impacts of natural or human disturbances including long-term viability; size and shape; buffering; surrounding landscape and boundaries.</p> <p>Inclusion of ‘Representation’ as a component of composition.</p> <p><u>Definition of ecological integrity to read as follows:</u></p> <ul style="list-style-type: none"> (a) <u>composition</u>: the natural diversity and abundance of indigenous species, habitats, and communities, including representativeness; and (b) <u>structure</u>: the biotic and abiotic physical features of ecosystems; and (c) <u>functions</u>: the ecological and physical functions and processes of ecosystems (d) <u>resilience</u>: to the adverse impacts of natural or human disturbances.

<p>Cl. 86 and Cl. 233</p>	<p>Support with amendments</p>	<p>The ability of the NPF to direct the use of an Adaptive Management (AM) approach in the circumstances stated in Cl. 86(1) is supported. Adaptive Management (AM) (cl. 86) is an important management tool, but we make note of potential misuse. Cl. 86 provides for the application of AM where there is potential for significant environmental change, but where the timing and magnitude of the changes remains uncertain.</p> <p>EIANZ submit that <u>any</u> significant adverse effect could meet these criteria, such are the complexities of full knowledge of the environment. In some extremes, this could lead to perverse situations where a minimum effort is applied to assess environmental effects, and the proposal or application to move rapidly to AM strategies. If this occurs then it is possible that real environmental damage can occur before changes are detected and responses formulated and implemented, and/or before adaptive measures can be implemented. We also note that a requirement of AM is that effects are reversible, and we suggest an amendment on this matter.</p> <p style="text-align: center;">-----</p> <p>Accordingly, as AM introduces flexibility for resource management, we consider that the suggested amendments will provide flexibility without compromising the purpose of the AM. What this means is that indicators (or triggers) should trigger remedial action before adverse effects become “overly damaging” (cf. Sustain Our Sounds) or cause ‘unacceptable damage’, rather than before any adverse effects arise at all. We consider that the ‘Effects Management Hierarchy’ can be applicable in some circumstances, and this should be provided for.</p> <p style="text-align: center;">-----</p> <p>Cl.233(2)(b) requires certification and review of environmental management plans. We can find no definition of certification of environmental (or ecological) management plans within the NBEA, and who the certifier would be. Our experience as practitioners is that the current environmental management plan ‘certification’ process is vague, uncertain, often untimely and often undertaken by inexperienced and poorly qualified personnel. We consider that timebound period (e.g., six-week period) should be required to certify a management plan, with a directive for a ‘suitably qualified or certified person’. We submit that a</p>	<p>Cl.233(3) be revised as follows:</p> <ul style="list-style-type: none"> • The consent authority must consider whether the assessment of effects has been carried out to an appropriate standard (i.e., not just a cursory assessment) before AM can be considered; • AM can only be used for environmental changes that are reversible. <p style="text-align: center;">-----</p> <p>Amend Cl.233(2) as follows: (2) An adaptive management approach must <u>may</u></p> <p>Amend Cl. 233(4)(c) as follows: (c) indicators are set to prompt remedial action before adverse effects occur or reach unacceptable levels (i.e., more than trivial adverse effects).</p> <p style="text-align: center;">-----</p> <p>Definition of ‘certificate of approval’ for the certification of management plans along with a directive of qualifications required to be a certifier. In addition, certification should be time-bound to be completed (we suggest less than six weeks).</p>
---------------------------	--------------------------------	--	--

Section	Support/Oppose	Reasons	Relief Sought
		<p>directive in the NBEA is required for the 'certificate of approval' for the certification of management plans, as it is also provided for subdivisions within the NBEA (Cl. 568). We also submit that the 'certificate of approval' should be undertaken by a 'suitably qualified (or certified) person' and that the certification process is timebound. We view this as a fundamental inconsistency within the NBEA and a matter that should be a directive of the NBEA and not left to the NPF.</p>	
Environment Limits and Targets			

<p>Cl. 37 – Environmental Limits</p>	<p>Support with amendments</p>	<p>EIANZ supports the intent of the NBEA to set environmental limits for the protection of ecological integrity of the natural environment and human health, to further the purpose element in s3 and notably s3(a)(iii). We see the framework for mandatory environmental limits and associated targets as being at the core of the legislation.</p> <p>As practitioners EIANZ members recognise the critical need to get the environmental limits correct, such that they achieve their purpose but are not so off the mark that they are either unachievable or damaging to the environment.</p> <p>Nevertheless, EIANZ has a number of specific concerns regarding the workability of this set of provisions as currently drafted.</p> <p>Specific concerns include:</p> <ul style="list-style-type: none"> • EIANZ is mindful of the difficulty of establishing scientifically robust and defensible environmental limits for each of the natural environment domains required under Cl. 38. The experience of limit-setting for the National Objectives Framework for the NPS-FM 2020 under the RMA demonstrated just how fraught limit setting can be in practice, at least if it is to be based on a consensus within the scientific community. • The challenges of that experience would be significantly compounded under the NBEA by the requirement for environmental limits to be set across other natural environment domains including air, indigenous biodiversity, coastal water, estuaries and soil, and to protect (or prevent further degradation of) the “ecological integrity” (see above) of these domains. The exercise would also require a strong understanding of just what the ‘ecological integrity’ of an ecosystem is. • In that regard, the scientific, conceptual and practical issues in understanding and defining the ecological integrity of an ecosystem means that very different outcomes could result depending on whether limits are to be set on a “minimum biophysical state” or “maximum amount of harm or stress” basis (Cl.40), and the spatial scale applied for limit setting purposes (noting Cl.54 and Cl.55). <p>-----</p>	<p>Remove interim environmental limits.</p> <p>Rely on minimum level targets as set out in Cl. 50.</p> <p>Require advice from ‘Limits and Targets Review Panel’ for the first NPF produced under the NBEA (see Schedule 6).</p>
--------------------------------------	--------------------------------	---	---

		<p>EIANZ strongly supports the proposal that a 'Limits and Targets Review Panel' but we submit that panellists should be drawn from a range of expertise and experience and to include practitioners who have experience of implementation of environmental regulations and policy.</p> <p>EIANZ strongly supports the proposal that a 'Limits and Targets Review Panel' must be established at the initial stage of the NPF process (under Schedule 6). However, EIANZ strongly submits that the 'Limits and Targets Review Panel' be established for the first NPF produced under the NBEA. Accordingly, <u>EIANZ opposes Schedule 6 clause 31(1)(b) and we address this in response to Schedule 6 below.</u></p> <p>-----</p> <p>EIANZ strongly supports the 'establishment of the baseline' or starting point as set out in Cl.37(a) ('to prevent the ecological integrity of the natural environment from degrading from the state it was in at the commencement of this Part'), rather than any 'historic reference', 'pristine state' or even more vague 'constructed' integrity. While historical baselines may play a role (such as establishing the extent of biophysical or ecosystems that once existed, or the former presence of a species or community in areas from which they are no longer found), we consider that ecological integrity is generally and more practically assessed by comparing the integrity of a site to extant, less modified or unmodified sites, whether for general guidance or a specific benchmark. We acknowledge that some environmental limits might reflect pristine environments, while others might be more degraded.</p> <p>However, we note that this starting position Cl. 37(a) and 40(3)(a) appears to be contradicted by Cl. 41(2)(a) providing for interim limits to be set as "a state in a management unit <i>that is more degraded than it was at the commencement of this part</i>". The implication in this subsection appears to be that the environmental state of a management unit might become more degraded than it was at the commencement of Part 3 of the Bill (Cl. 41(2)(a)) when the very purpose of environmental limits is to prevent that situation from arising (Cl. 37(a)).</p> <p>We question the merits of providing for interim environmental limits at all. If interim limits are only to be set in situations in which existing stresses will inevitably make the environment worse than the enactment (likely 2023) state, then we do not see the need to provide for them at all. The same regulatory</p>	
--	--	---	--

Section	Support/Oppose	Reasons	Relief Sought
		<p>result will be achieved by setting environmental limits and requiring that no activities be allowed contrary to them.</p> <p>One interpretation of an interim limit is that it reflects that the environment will get worse because of inputs already in the system or expected to occur. As for any environmental limit, this requires the understanding and measurement of the 'ecological integrity' of the ecosystem(s).</p> <p>The NBEA then goes on to provide for an interim limit which is essentially creating a new and different baseline condition of ecological integrity. Instead of providing for the prevention of worsening of ecological integrity of an ecosystem (at the 2023 baseline condition), it serves to prohibit activities that make a subsequent, more degraded, ecological integrity worse.</p> <p>EIANZ considers that an interim environmental limit appears to serve no practical purpose, at least from an ecological or regulatory perspective. Irrespective of whether an environment is at a 2023 level of ecological integrity or has since become worse, the direction not to allow activities contrary to an "environmental limit" has the same result: the activity cannot proceed. This may explain why provisions simply say that consents cannot be granted contrary to an "environmental limit"; because if that limit is breached then there is also no ability to breach a lower interim limit</p> <p>We consider that rather than providing for the setting of interim limits, the matter can be addressed through targets for the purpose expressed in Sl. 47, or through minimum level targets as set out in Cl. 50 (see below).</p> <p style="text-align: center;">-----</p> <p>All of the above matters underscore the critical role of the 'Limits and Targets Review Panel'; the need for that Panel to have sufficient expertise and experience as practitioners to perform its functions, and to engage with stakeholders during the process, before it provides advice to the Minister in the initial stage of the NPF process.</p>	

<p>CI.47-53</p>	<p><i>Targets</i></p> <p>EIANZ supports the inclusion of targets for the purpose of assist in achieving Cl. 48(2)(c). However, we consider that certainty would be required as to which system outcome any target may be set for.</p> <p>Specifically, targets should only be set for the s38 natural environment domains (reflecting Cl.49(1)), and the system outcome.</p> <p>EIANZ supports:</p> <ul style="list-style-type: none"> • That targets be set at a level better than that of the associated environmental limit (as would reflect the natural environment state on commencement of Part 3 of the NBEA), under Cl.49(4); and • That targets set in plans be better than applicable <i>minimum level targets</i> set under the NPF (Cl.49(4)(b)); and • Provision for such minimum level targets where the environmental limit represents unacceptable degradation of the natural environment (as at commencement of Part 3 of the NBEA, per Cl.50). <p>EIANZ seeks clarity of the status of targets set for environmental limits (Cl. 49(1), 'Targets must be set for each aspect of the natural environment for which limits are required by section 38(1)'. It is not clear within the NBEA whether a target set for each aspect of an environmental limit can be breached, thus opening a scenario whereby potentially the ecological integrity of an ecosystem does not rise above the 2023 baseline limit as established in Cl.37. We do not believe that this is the intent of the establishment of targets within the NBEA.</p> <p>-----</p> <p>We have some deep concerns with the expressions of what we might broadly term 'adverse effect' and the criteria as drafted in Cl. 50(1) and (2). As set out earlier in our submission, the language of the NBEA needs to be consistent and clear. Whilst EIANZ strongly supports the establishment of minimum level targets as required, we find reference to terms such as 'unacceptable damage of the natural environment' unhelpful and inconsistent with other similar considerations of the legislation. Exactly what 'unacceptable damage' means and who or how 'unacceptable damage' is deemed to be or is occurring is likely</p>	<p>Clarify the purpose of compliance with a target and whether a target can be breached.</p> <p>Define the various terms of 'adverse effect'.</p>
-----------------	--	---

Section	Support/Oppose	Reasons	Relief Sought
		<p>to keep debate lively for years to come. If 'no more than trivial effect' is acceptable in some parts of the NBEA then why not use the same expression here.</p> <p>We also observe caution on the criteria set out in Cl. 50(2)(c), most notably 'risk of local displacement' or 'significant harm". Local displacement is likely to be even more relevant to highly mobile fauna using a broad landscape of habitats.</p> <p>We question – is 'significant harm' the same as 'unacceptable damage' and/or 'more than trivial adverse effect'. If these expressions are intended as different meanings or magnitude of effect or state, then we contend these expressions should all be defined in the NBEA (and not left to the NPF); OR use a single term for all matters.</p> <p>We also note here the use of language whereby reference is made to the 'state of the natural environment' (Cl. 50(2)(b) and (c) whereas in other parts of the NBEA there is reference to the 'health of the natural environment' and to 'ecological integrity'. EIANZ submits that consistency in the use of a single term is more helpful and beneficial; <u>OR</u> a clear definition and distinction between these terms is referenced in the NBEA (and not left to the NPF).</p>	

Section	Support/Oppose	Reasons	Relief Sought
Cl.54-s55	Support with amendments	<p><i>Management units</i> EIANZ support the establishment of ‘management units’ (consistent with Freshwater Management Units under the NPSFM 2020), but we observe a circularity of logic apparent to Cl. 55(1)(a). That is, the size of a management unit is to be determined by whether it would enable limits and their associated targets to meet the purposes set out in Cl. 37 and Cl. 47. However, limits and targets should presumably be set to prevent further degradation in (or restore) ecological integrity in management units with the question of scale determined on a credibly derived environmental basis, independently of the scale of the unit concerned. To put this simply, this leads to a “chicken and the egg” scenario.</p> <p>EIANZ submits that management units should be set at a sensible spatial scale (such as established ecological (biophysical) districts³, with environmental limits then reflecting the natural environment state on commencement of Part 3 of the NBEA in such districts. The Cl. 55(2) criteria could also be applied in setting management unit scale, but again through an independent (sequenced, rather than circular) approach.</p> <p>EIANZ supports Cl. 55(3) providing that the scale of a management unit should be set to provide flexibility and to maximise opportunities for appropriate effects management and offsetting to be applied if required.</p>	Re-word Cl. 55 to prevent any ambiguity of purpose.

³ McEwan, M. (ed.) 1987. ECOLOGICAL REGIONS AND DISTRICTS OF NEW ZEALAND. Published (in four parts) by Department of Conservation, Wellington, New Zealand June 1987.

Section	Support/Oppose	Reasons	Relief Sought
Cl. 80-82	Oppose exemptions	<p>Clause 80(2)(c) is of concern to EIANZ in that it confers a power for the NPF to include “exemptions from standards”. It should be made clear that this does not authorise another substantive exemption pathway (by allowing breaches of permitted activity standards) where there is a risk that an activity will result in significant adverse effects on the natural environment or where there is a risk of environmental limits being breached. Cl. 82(2)c powers to direct exemptions from standards need to specifically exclude situations where environmental limits and minimum level targets are threatened or infringed.</p> <p>Note that EIANZ supports Cl. 81(c) (‘prescribe exemptions for the purpose of biosecurity control or pest control, from any provision of section 22, either absolutely or subject to any prescribed conditions, and either generally or specifically or in relation to particular descriptions of contaminants or to the discharge of contaminants in particular circumstances or from particular sources, or in relation to any area of land, air, or water specified in the national planning framework’).</p> <p>Cl. 82 provides for the NPF to include “transitional provisions for any matter”. Transitional provisions should be clear on the face of primary legislation. We flag here that transitional provisions are an issue more broadly with the Bill, including when it comes to compliance and enforcement (where new provisions and tools do not appear to come into effect until NBEA plans are made).</p>	As submitted.

Section	Support/Oppose	Reasons	Relief Sought
Cl.102-103	Support and amendments needed	<p>EIANZ supports Cl. 102(h) that plans must specifically include provisions that give effect to water conservation orders (including land use). This addresses a significant weakness of the RMA and needs to be retained.</p> <p>We also note that Cl. 102 makes no reference to the inclusion of matters related to climate change.</p> <p>EIANZ opposes Cl.103(2) that plans only <u>may</u> have to include content on matters contained in Cl. 644(a), (d), (e), (f) and (g). These clauses contain key matters that lie within the jurisdiction of regional councils that should be required to be dealt with in plans, such as:</p> <p>86 (a) the use of land for the purpose of—</p> <ul style="list-style-type: none"> (i) soil conservation: (ii) maintaining and enhancing the quality of freshwater in water bodies and coastal water: (iii) maintaining the quantity of freshwater in water bodies and coastal water: (iv) maintaining and enhancing ecosystems in water bodies and coastal water: <p>mitigating or reducing the risks arising from natural hazards:</p> <p>(d) the discharge of contaminants into or onto land, air, or water and discharges of water into water:</p> <p>(e) in relation to the bed of a water body,—</p> <ul style="list-style-type: none"> (i) the introduction or planting of any plant in, on, or under that land for the purpose of— <ul style="list-style-type: none"> (A) soil conservation: (B) maintaining and enhancing the quality of water in the water body: (C) mitigating or reducing the risks arising from natural hazards: (ii) managing historic heritage on the beds of lakes and rivers: <ul style="list-style-type: none"> (e) the maintenance and enhancement of indigenous biodiversity:. <p>EIANZ submits that these matters <u>must</u> be included in plans.</p>	<p>Support s.102(h) Amend Cl. 103(2) to read:</p> <p><i>The matters that may <u>must</u> be included in a plan are those for which a regional council is responsible, as set out in section 644(a), (d), (e), (f), and (g).</i></p>

Section	Support/Oppose	Reasons	Relief Sought
CI.805	Support with amendments	<p>A requirement under this Act to use the best information available at the time is a requirement to use, if practicable, complete and scientifically robust information, followed by a hierarchy of other information.</p> <p>EIANZ supports the inclusion of a section outlining a hierarchy of Best Information, and we support the attributes of Best Information as laid out in CI. 805.</p> <p>However, we note that nowhere in the NBEA is reference made to CI. 805 or the application of 'Best Information'. We consider this a significant omission as we understand the importance of strong factual evidence for decision making under the legislation.</p> <p>In addition, we note the exclusion of reference to mātauranga Māori in this hierarchy of 'Best Information'. We note that mātauranga Māori is referenced alongside scientific knowledge for the purpose of setting management units (CI.55(10(b))).</p> <p>EIANZ strongly submits that mātauranga Māori should be included alongside scientific knowledge as 'Best Information' as it has been recognised by the Courts in recent RMA decisions (e.g., Motiti & Northland).</p> <p>We consider that a section early in NBEA directing Best Information for the Act of for specific sections; or specific sections of the Act direct Best Information as required.</p>	<p>Include mātauranga Māori in CI.805(1) as follows</p> <ul style="list-style-type: none"> • <u>Amend CI.805(1) to read:</u> <u>A requirement under this Act to use the best information available at the time is a requirement to use, if practicable, complete and scientifically robust information; and complete and reliable mātauranga Māori knowledge.</u> • Include: Reference to CI.805 and Best Information as required in appropriate sections of the Act, notably Section 6 and s40. For example: CI.40(5) Environmental limits must be set based on Best Information as set out in CI.805.

Section	Support/Oppose	Reasons	Relief Sought
Cl. 555 to Cl. 567	Support with amendments	<p>EIANZ supports the inclusion of places of national importance including significant biodiversity areas (SBAs) and the establishment of criteria to identify these features.</p> <p>EIANZ supports Cl. 561 which anticipates protection of significant biodiversity even when not included in a plan but either new information has emerged, or should the area meet the criteria.</p> <p>-----</p> <p>We note that Cl. 558 sets out the considerations that must be considered in establishing the criteria to be prescribed for identifying significant biodiversity areas (Cl. 557):</p> <ul style="list-style-type: none"> (a) representativeness, meaning the extent to which an indigenous ecosystem, consisting of the habitat of indigenous biota in an area, is characteristic of the indigenous biodiversity within the context and scale of the area concerned: (b) diversity and pattern, meaning the extent to which the expected range of diversity and pattern of biological and physical components is present in an area within the appropriate assessment scale: (c) rarity and distinctiveness, meaning the presence of rare or distinctive indigenous species, vegetation, ecosystems, animal communities, or habitats of indigenous biota: (d) ecological context, meaning the extent to which the size, shape, connectivity, and configuration of an indigenous ecosystem or habitat of indigenous biota contributes to the maintenance of indigenous biodiversity within the surrounding land-based and aquatic environments. <p>EIANZ supports the inclusion of these considerations but note that while three of these criteria can arguably be seen to be derivatives from the definition of 'ecological integrity' (Cl. 7, representative, structure, composition), the fourth criterion 'ecological context' describes characteristics of 'resilience' (or sustainability). Whilst we agree with the inclusion of ecological context here (Cl. 558) we consider that inclusion here adds weight to our submission that 'resilience' should be included in the definition of 'ecological integrity' (Cl. 7, see above).</p>	As submitted with reference to the definition of 'Ecological Integrity'.

Section	Support/Oppose	Reasons	Relief Sought
Schedule 3	Support with amendments	<p>EIANZ supports the inclusion of principles for biodiversity offsetting.</p> <p>We note the terminology used in the schedule and submit changes to the language.</p> <p>Principle 1 refers to ‘A biodiversity offset is a commitment to redress more than minor residual adverse impacts’. As we address in our submission above, we seek consistency in the language of the NBEA, and notably around expressions of ‘adverse’ or ‘damaging’ effects. We find that the NBEA has preferably referred to ‘more than trivial adverse effects’, and as best we can understand, only in Cl. 395 is reference made to ‘minor effect’ (a section that is largely drawn directly from the RMA).</p> <p>EIANZ seeks consistency in the use of expressions of adverse effects and seeks a preference for the term ‘minimal’ over ‘trivial’ but at the very least the removal of ‘minor adverse effects’ (see above). The Courts have referred to cumulative minor adverse effects of residential development in ecosystems as “death-by-a-thousand-cuts” and reference to ‘trivial’ could continue that trend.</p> <p>Similarly, we note that the term ‘mitigation hierarchy’ is applied in Principle 1. EIANZ supports a change of this term to ‘Effects Management Framework’ (as set out in Cl. 61)). We have been referring to the term ‘Effects Management Hierarchy’ in our practice for some time now (see ECIA Guidelines⁴), and it has become accepted in the presentation and communication of management of effects. We also note that it prevents the tautological matter of dealing with mitigation (as per the RMA) by omitting the ‘mitigation’ term from the hierarchy. We note that the ‘Effects Management Hierarchy’ is the terminology of choice in the NPSFM (2020) and in the proposed NPSIB.</p>	Remove reference to ‘more than minor residual adverse impacts’, and replace with commonly used language of NBEA, such as ‘more than trivial residual adverse impacts’.

⁴ EIANZ 2018: Ecological Impact Assessment Guidelines. EIANZ Guidelines for use in New Zealand: terrestrial and freshwater ecosystems.

Section	Support/Oppose	Reasons	Relief Sought
Schedule 6	Support with amendments	<p>EIANZ is concerned with the apparent intent that the first NPF would essentially comprise an assemblage of existing RMA national directions without input from a 'Limits and Targets Review Panel' (clause 31 (1) (b)) resulting in the outcome that existing national direction would have been prepared under an entirely different statute within a sustainable management and effects (rather than limits and outcomes) based concept.</p> <p>We consider that input from a 'Limits and Targets Review Panel' is fundamental to the transitioning from the existing RMA direction to the new NBEA direction, and inherent to purpose of the NBEA. We are concerned that embedding existing national direction and practice in an initial NPF will establish the 'bottom line' or a practice that will be more difficult to transition out of to a truly NBEA-informed NPF.</p> <p>Whilst we understand the requirement for a smooth and timely transition, we submit that, at the very least, an interim 'Limits and Targets Review Panel' is established by the responsible Minister prior to the first NPF, and the first NPF is required to seek advice from that panel prior to releasing the first NPF.</p>	A 'Limits and Targets Review Panel' is established by the responsible Minister prior to the first NPF, and the first NPF is required to seek advice from that panel prior to releasing the first NPF.