

The environmental implications of the Natural and Built Environment Bill

Dr. Mahina-a-rangi Baker

This primer has been produced to address questions about implications of the Natural and Built Environment Bill, including from a Māori perspective. It sets out how this Bill could take us backwards in terms of the way the environment is understood and therefore protected in Aotearoa. It is concerning that in an age of unprecedented environmental degradation, with a once in a generation opportunity for reform, we are facing the introduction of regressive environmental legislation.

What were the key objectives for reforming the current Resource Management Act (RMA)?

1. A system that establishes integrated planning for development and the environment.
2. A system that protects and enhances ecosystems whilst enabling development.
3. A system that sets clear direction to guide decision-making, legislation is easy to understand.
4. A system that provides greater recognition of Te Tiriti o Waitangi and te ao Māori¹.

Will the new Bill meet these key objectives?

No. This primer will set out the aspects of the Bill that will undermine these objectives.

How does the Bill propose to protect ecosystem health and enable development within limits?

The Bill proposes the use of ‘environmental limits.’ Environmental limits are the minimum states of, or maximum levels of harm permitted to, different environmental domains: air, indigenous biodiversity, coastal water, estuaries, freshwater and soil.

Will environmental limits as proposed in the Bill adequately protect ecosystems?

No. The Bill only requires setting environmental limits that prevent ecosystems degrading from their current state. This is despite the situation across many different domains of the environment, where maintaining ecosystems at their current state is not sustainable.² The Bill requires that ‘targets’ are set for each of those limits, but there is no direction to set these at a state that is sustainable, and there is no certainty about when these targets will have effect. Under the new Bill, targets could never be set at a standard that is sustainable, and in the meantime, ecosystems could reach tipping points.

The current resource management regime at least requires sustainable management and environmental standards to reflect the safeguarding of life-supporting capacity of ecosystems.

The Bill also provides for limits to be set at worse than current state if the current state will cause continuing degradation. This takes an approach that where the environment is really degraded, we should not pursue recovering it, or even maintaining it. This could apply in many contexts in Aotearoa.

The Bill even provides for the Minister to direct exemptions from an environmental limit where public benefits can ‘justify the loss of ecological integrity’. This fails to prioritise the protection of ecological integrity and continues the mindset that ecological and human values can simply be traded off.

What is the fundamental concept which is proposed to underpin the approach taken in the Bill?

The fundamental concept in the purpose of the Bill is to ‘recognise and uphold te Oranga o te Taiao’.

¹ Resource Management Review Panel, 2020. New Directions for Resource Management in New Zealand. p.9 <https://environment.govt.nz/assets/Publications/Files/rm-panel-review-report-web.pdf>

² Ministry for the Environment & Stats NZ, 2022. New Zealand’s Environmental Reporting Series: Environment Aotearoa 2022. pp. 22,30,44,52. <https://environment.govt.nz/assets/publications/environment-aotearoa-2022.pdf>

What does Te Oranga o te Taiao mean according to the Bill?

The Bill says Te Oranga o te Taiao means the ‘health of the natural environment’. It takes the Māori concept of ‘taiao’, which is understood by Māori to encompass all aspects of the environment, including social, cultural and economic, and redefines it to mean something much more limited, to what might be thought about as just ecosystems.

What is the problem with this definition of Te Oranga o te Taiao?

There are two key problems with this. Firstly, it reflects a western mindset that continues throughout the Bill: that the health of ‘nature’ and ecosystems can be thought about separately from humans and the rest of the environment. This is not consistent with a Māori worldview which recognises that economic, social and cultural values are *interdependent* with ecosystem health, and that the taiao is an integrated system. It fails to give the clear direction that ecosystem health must be prioritised to the extent that it can support economic, social and cultural well-being. Instead, there are many examples in the Bill that provide for ecosystem health to be traded off for particular economic values.

Secondly, the definition proposes ‘recognising and upholding’ the relationship between iwi and hapū and te taiao, meaning the ‘natural environment’. Those protections are not provided for relationships to the economic, social and cultural parts of the taiao. This is a step back from the inclusive approach of the RMA which recognised the relationships of all Māori to the taiao, not just iwi and hapū.

What would be a more appropriate way of conceptualising the taiao in order to meet the objectives of the reform?

Defining the taiao to encompass all the environment would be more correct, and would set the right framework for the system. A ‘hierarchy of obligations’ as in the National Policy Statement for Freshwater Management 2020 could be applied, which requires that first the health of ecosystems is prioritised, second the health needs of people, and third their social, economic and cultural well-being.

Are there other examples of ecosystems not being adequately protected?

The Bill provides for ‘market-based allocation methods’, which would mean that resources like water, air, soil, coastal waters could be allocated to the sectors and groups that are seen to generate the higher economic, particularly financial, benefits, rather than first ensuring that the state required to maintain ecological integrity is provided for, and then the human health needs are allocated for.

Does the new Bill provide clear direction to guide decision-making?

No. Because there isn’t a clear overarching national direction of what to prioritise in the purpose of the Bill, various layers of the Bill are contradictory in terms of how decisions are made. This worsens a key issue of the resource management system where a lack of central government direction is a source of significant complexity, and there is regional variation in how legislation is interpreted.

Why is a lack of clear national direction concerning for Māori?

We know from the experience of the RMA that wherever there isn’t certainty about priorities in decision-making, decisions tend to favour those who can afford to participate and push their interpretation of what’s important. This is of significant concern for Māori who struggle to afford to participate in decision-making currently and will continue to under this reformed regime.

Prepared by Dr Mahina-a-rangi Baker, Technical Advisor to Te Tai Kaha Māori Collective (New Zealand Māori Council, Federation of Māori Authorities, and Ngā Kaiārahi o Te Mana o te Wai Māori).

12 December 2022