Summaries of Reports on Resource Management Reform

Prepared for the Ministry for the Environment

By the Environmental Defence Society

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Contents

Context

This document is a summary of:

(1) the Environmental Defence Society's (EDS's) final submission on the exposure draft of the Natural and Built Environments Bill (and associated parliamentary paper); and
(2) four focused reports prepared by EDS for the Ministry for the Environment during the first half of 2021 designed to assist the Ministry in policy development.

The full versions of the reports are available on the EDS website. EDS is publishing these documents to contribute the ongoing public discourse on the government's resource management system reforms. The authors are Dr Greg Severinsen and Raewyn Peart.

EDS Submission on the exposure draft of the Natural and Built Environments Bill: Summary of Key Points

- The relationship between protecting the natural environment and using it should be one involving a clear hierarchy. This needs to be more strongly articulated in the NBEB's purpose.
- The Bill needs to provide a stronger hierarchy, or principle requiring synergies to be pursued, in its list of outcomes to be pursued. As drafted, it could result in trade-offs between environment and development, and an inappropriate push towards *just* meeting mere environmental limits.
- The language needs to be firmer in several places. The purpose of the NBEB should be more directive than to "enable" protection. It will not be enough to "promote" positive outcomes; it should require outcomes to be "pursued" or "recognised and provided for".
- Te Oranga o te Taiao needs to be defined as meaning something that is amenable to clear interpretation in the courts, not "including" or "incorporating" things.
- It should be made clear that the purpose of environmental limits is not subject to the broader purpose of the NBEB.
- The limits framework needs to be extended to: defend minimum standards even where a part of the environment is not being "used"; include controls necessary to defend minimum states and maximum pressures; include mandatory targets where an environment exceeds a limit; allow for additional non-mandatory limits; include policies and spatial protections; prohibit infringing and offsetting limits; and provide more specificity than the current list of domains. Thought should be given to the legal consequences of something being a "limit".
- It should be made abundantly clear in cl 8 that the national planning framework must pursue outcomes subject to the defence of environmental limits. The NPF's purpose should refer to the establishment of environmental limits.
- While it is good practice, careful thought will need to be given to the implications of "giving effect" to the principles of te Tiriti o Waitangi for allocative decision-making, which is not an aspect of the NBEB addressed in the Bill.
- The definition of the precautionary approach should be strengthened, to reflect the fact that the purpose of setting environmental limits is not just about preventing serious and irreversible harm. It should clarify limits need to provide a buffer to reflect uncertainty in information. It should ensure precautionary and anticipatory action is taken to make ecosystems more resilient to climate change and other environmental stresses.
- As with the national planning framework, it should be specified in the Bill that plans must set targets where environmental limits have been infringed.
- The Bill should make clear that the ability for a plan to resolve policy conflicts does not extend to the balancing of environmental limits vis a vis other outcomes.
- The Bill should provide that plans must be consistent with a regional spatial strategy (under the SPA) except to the extent there is a conflict between environmental limits established under the plan and the contents of the regional spatial strategy.
- The Bill should clarify that the "Minister" refers to the Minister for the Environment or the Minister of Conservation.
- The Bill should clarify that the identification of priority uses for land can only occur once environmental limits have been established and given spatial expression.
- The Bill should take a stronger approach by specifically pointing to the benefits of resolving conflicts through plans rather than consents, not just consideration of whether it is desirable or not.

Summary: Environmental limits in a future resource management system

In theory, a system that sets environmental limits in some shape or form is uncontroversial. Limits are crucial to achieving the long-term public interest in a healthy environment and all forms of wellbeing. However, environmental limits spur debate when applied to the nitty gritty of system design in New Zealand, because they can be interpreted to mean different things in practice, and may be more justifiable when applied to some things (eg water quality) than to others (eg visual amenity). We therefore need a common understanding of what we are referring to and what the consequences of that should be. This summary provides a look at limits holistically, including through a refinement of the Randerson Panel's recommendations. A fuller analysis is available in the complete paper.

The Randerson Panel's conceptualisation of environmental limits

The Panel's report included recommendations that directly relate to providing for environmental limits under new legislation. The Panel also carefully designed a set of terminology around environmental limits, as well as four key related concepts: bottom lines, outcomes, targets and precaution.

1. **Bottom lines** are determined by nature, not the law, and reflect biophysical tipping points beyond which significant and potentially irreversible harm occurs.
2. **Environmental limits** are a *legal* and *regulatory* concept that specifies the safe lower boundary of a domain. It includes a **precautionary** buffer above the biophysical bottom line.
3. **Standards** are a regulatory tool, as under the RMA system, that can be used to impose restrictions or performance restricts to protect a limit or meet a target.
4. **Outcomes** are high level goals that reflect a desired future state.
5. **Targets** are time-bound steps moving towards **outcomes.**

We think this framing is generally appropriate, and provides a good starting point. However, we would make a few refinements*. We propose that bottom line outcomes be legislated to target the things we value, not just the protection of ecological collapse.* They should be clearly distinguished from positive outcomes. Secondly, the requirement for a limit to have a margin of safety above conditions "where significant and irreversible damage may occur", is (1) not specific enough (ie not targeted at domains), (2) not set at an adequate level to meet societal expectations, and (3) does not itself express actual outcomes (in that "significance" and "damage" can be interpreted in vastly different ways). Therefore, there is a gap in the framework proposed: a sound normative basis as to where limits should be set.

Environmental limits

A system of environmental limits needs to go beyond the description of the state of an environmental domain. We propose a cascade of limits which involve clear restrictions with regulatory backing. A "type 1" limit reflects the Panel's conception – a minimum acceptable state. A "type 2" limit refers to the maximum amount of the thing causing harm, such as maximum input of nutrients into waterways. Type 2 limits are needed to achieve type 1 limits, and are better seen as a limit rather than a standard to achieve consistency and coherency in legal status. At the bottom of the cascade are "type 3" limits. These specify a maximum "amount" of a particular human activity that indirectly produces harm, such as the maximum number of livestock per hectare. Type 3 limits must be designed to ensure type 1 and 2 limits are met.

Targets may be needed to either achieve a positive outcome or return to a safe space above bottom lines. Binding targets in the latter category should be deemed limits to attract the same legal consequences. A limit should specifically include a binding target needed to achieve a bottom line. This seems consistent with the Panel's intent, but is not clear in drafting. The result should be that the Minister is more clearly obliged to set binding targets where limits have been infringed.

The current system

The RMA anticipates limits through the drafting of Part 2. Additionally, the current system already has many environmental limits, especially relating to freshwater. But what the RMA lacks is a coherent *framework* for setting and defending environmental limits. "Limit-like" restrictions under the RMA are not comprehensive, and they lack a strong normative foundation, any special status and a future focus.

These inadequacies were seen in the *King Salmon* decision. The important lesson from the Supreme Court is, essentially, that authorities can impose bottom lines if they consider Part 2 demands it (although there is no effective mechanism to ensure action is taken), and it is not permissible to undermine a higher-level authority's decision to do so. Central to the decision was the fact that the NZCPS contained directive and firm protective provisions. But outside of the coastal environment, the policy landscape is much more varied, and there are fewer comparable limits to give effect to. In such cases, it seems increasingly clear that being able to revert to Part 2 in the context of planning and consenting will be risky for the environment, not helpful.

Deficiencies in the RMA hold lessons for what a new system needs to do differently. It must (1) articulate what types of things cannot be treated as limits; (2) clearly outline what we are trying to achieve by setting limits; and (3) clearly outline the consequences of something being a limit.

Thinking about limits

In our view, clear legal consequences need to flow from designation as an environmental limit, if the concept is to be worthwhile. Firstly, the law should prescribe what domains must have limits associated with them. With some minor addition and clarifications, we see the list of domains for which limits must be set in the Panel's proposed section 8 as appropriate. Some outcomes that are still important should not, however, be formulated as limits – such as housing, food security, etc. Limits should provide an environmental "floor" upon which to achieve other outcomes. Furthermore, we will need to resolve conflicts *between* domains with a sustained effort to achieve more than one limit.

The system must have a way to determine *where* a measurable line in the sand is drawn. Debate over where limits should be set should be limited to genuine scientific debate, and not engage in value-based negotiation through collaborative processes. Limits need to be set at a level that will defend environmental bottom lines (minimum outcomes). The law needs to be clear that this is the overriding consideration (not to achieve or contribute to a broader range of outcomes). Qualitative limits must be worded in a way that only allows a very low level of risk of the described effects occurring. The geographic scale a limit is set at should be determined by nature, not jurisdictional ease (ie within council boundaries).

Furthermore, limits should be set based on minimum outcomes we want to achieve, not just ecological tipping points. *These should be set by reference to core values*: the protection of human health and life, including the ability to sustain this in perpetuity; the intrinsic value of the natural world, including specific elements of value such as marine mammals and indigenous flora and fauna;

and the values New Zealanders hold dear relating to the natural world. Principles should also guide limit setting: the precautionary principle, ecosystem-based management, and the non-regression principle should be statutory.

Under new legislation, the principles of the Treaty will need to be given effect to. But it should also be made clear that environmental limits, developed in partnership with Māori and designed to protect the taonga of Aotearoa, are defined as an *important expression of Treaty principles rather than something to be balanced against them.* For instance, tikanga principles should be added to the statutory principles mentioned above, and legislated bottom lines should be phrased in narrative form, integrating te ao Māori and te reo Māori.

The Panel focused on the problem of limits not being set rather than their implementation – there are few legal consequences that flow from something being designated as an environmental limit in the Panel's model. We recommend that there be the following legal consequences if something is designated as an environmental limit under the NBA.

Recommended legal consequences of being classified as a limit

1. Limits should be set under a separate and more focused set of minimum outcomes that the limit is responsible for defending or achieving, not generally under the purpose of the Act.
2. The Parliamentary Commissioner for the Environment or similar body should review/audit limits. An independent panel of experts (including members with expertise in mātauranga Māori) could be established by the Minister to provide recommendations on limit-setting.
3. A clear legal requirement that limits prevail in the event of conflict with other provisions.
4. A requirement that a consent cannot be granted contrary to an environmental limit.
5. Enhanced monitoring requirements.
6. A duty for authorities to prioritise and take action on threatened or infringed limits.
7. A duty (not just a power) to review relevant resource consents where limits are threatened or infringed.
8. Focused attention on limits through how instruments are structured (eg a dedicated, integrated NPS-NES focusing on "limits" within the new National Planning Framework, and specific sections on limits in regional and national state of the environment reporting)
9. A requirement that a consent authority can decline a consent where it has inadequate information, and must do so where there is a real risk of an environmental limit being infringed.
10. A requirement that any proposal to change a provision expressing a limit be publicly notified.
11. A requirement that regional spatial strategies comply with and give effect to environmental limits.

Interaction and implementation with the wider system

Environmental limits under the NBA should form the envelope around which broader planning (eg transport, infrastructure funding etc) happens through a regional spatial strategy, not the other way round. A spatial strategy should be required to comply with and give effect to environmental limits set under the NBA. This is a slightly different formulation than the Panel's, which recommended that spatial strategies be "consistent" with "national direction".

Additionally, the SPA would be a suitable place for high level principles of wellbeing to be expressed beyond just the standard references to social, cultural, economic and environmental wellbeing. That includes explicit recognition that humanity operates within the constraints of biophysical boundaries, and that decision-makers need to take a holistic and ecosystem-based approach to setting and defending environmental limits across multiple statutory frameworks.

Limits should be defined to include policies in NPSs where they are necessary for achieving bottom line outcomes. NPSs expressing limits should be legislatively required to be expressed in as much specificity as possible, so the outcome expected is clear when it comes to implementation through combined plans and assessment of consents. Importantly, provisions containing limits should be specifically tagged as such, and that should be required by the NBA. We also recommend that a new national planning framework includes a specific part on a limits "strategy", outlining how central government intends to defend environmental limits. This would be broader than just directly setting limits through NESs.

We agree with the Panel that the balance should be shifted away from relying on consents as the main place where limits "bite". Making it clearer in advance – in national direction and plans – whether a particular proposal will be allowed (and what conditions it will be subject to if it is) would reduce cumulative impacts as well as provide greater certainty for industry. We recommend that this be included as an implementation principle in section 9 or in provisions governing national direction and planning processes. The NBA also should introduce a requirement for decision makers to consider whether the existence of a limit means prohibited activity status is required for some things.

Limits could conceivably be set by multiple institutions: Ministers, regional councils, territorial authorities, independent commissioners, or even Parliament. Limits could also be set in a hierarchical way across institutions, with regional or local institutions setting place-based limits to the extent needed to translate national limits to particular contexts. Policy makers should carefully consider whether limits should be limited to provisions set by the Minister, or whether they should also include: (1) Provisions set by councils that are required to give effect to or implement limits set by the Minister, (2) Provisions set by councils that are more stringent than a limit set by the Minister, and (3) Provisions set by councils that are for matters other than the mandatory domains.

Key supporting measures for the system will include enforcement, funding, monitoring and evaluation. The system may also require allocative issues to be resolved. We recommend that this happen as a matter of urgency and that the NBA resolve such issues head on. Relationships with other statutes will need to be reviewed and aligned. An emergency order power could support the system where urgent environmental limits are needed.

What this means for a future system

The conceptualisation above means that successfully incorporating "limits" into a future system involves ensuring that many related concepts, tools and moving parts are working effectively together, not just focusing on a handful of provisions in a single statute. While the Randerson Panel's recommendations go a long way towards remedying the RMA's structural issues, we see room for refinement. We have outlined a conceptualisation of limits that is coherent and highly structured, and addressed some key ideas about how to implement this cascade within the Panel's proposed model. Furthermore, environmental limits are crucial, but they are not enough. The NBA, the SPA and the wider resource management system needs to be firmly focused on the pursuit of positive outcomes as well. We support the intent of the Panel here with respect to the NBA, but note that deep societal change will be required as well. The role of government is to build support for this, not just to legislate.

Summary: National direction in a future resource management system

Generally, national direction is the set of resource management planning instruments that can be created by central government. Under the RMA, it includes national policy statements (NPSs), the New Zealand Coastal Policy Statement (NZCPS), national environmental standards (NESs) and National Planning Standards. For convenience, general regulation making powers are also often included under the general umbrella of national direction, as additional tools that central government can use to influence the resource management system. This summary looks at the role national direction could play in a future resource management system.

What national direction should be designed to do

The purpose of the NBA requires careful drafting, as that is ultimately the lodestar under which national direction will be set. It should be made clearer within the Act's purpose that environmental limits have primacy. Additionally, the NBA requires a much more targeted normative basis under which the distinct function of limit setting through national direction is undertaken: we recommend that section 8 be revised so that the purpose of setting limits is "to avoid infringement of environmental bottom lines", not to achieve the Act's broader purpose. This would be achieved through a new legislated set of domain-specific unacceptable outcomes (environmental bottom lines) specifically described in the Act in narrative form (in a new section 7A), which limit setting would need to avoid.

We recommend that "limits" be defined to include policies in NPSs. This has drafting implications for: (1) how limits are defined in section 8; (2) the drafting relevant to the creation of NPSs (in that the Minister should be required to create NPSs for the matters listed in section 8, and that NPSs must state limits to fulfil the Minister's obligations under s 9(3)); (3) any relevant cross-references that relate to limits (eg the impact of limits in consenting and creating spatial strategies).

Further consideration should be given to whether some legislated guidance is needed about how to balance particularly important outcomes (ie those that are not environmental limits) in draft section 7. This could be done through a firmer direction to recognise and provide for some things. This, along with a clear duty on the Minister to clarify any potential tensions between section 7 matters, should assist in providing a more coherent package of national direction.

National direction may well need to play a role in supporting allocation decisions under the NBA, and that role should be reflected in the matters on which national direction can be made and the associated functions of the Minister. However, key questions about allocation (eg principles and processes) should be contained within the NBA, and not left to national direction.

The structure of national direction

There are a number of gaps in the current framework of national direction, and these need to be filled. These are where matters of national significance exist but have no or little corresponding national policy guidance.

We foresee issues with making joint NPS-NES documents mandatory. NPSs can legitimately operate without associated NESs (because their regulatory expression may need to be through council plans), while a single NES may need to be linked to more than one NPS (a single regulation may be justified by a number of different policies). However, there should be a legislative requirement added to the NBA that the Minister is obliged to clearly link NESs to relevant policies in NPSs,

whether or not they are in the same instrument, and that the clear purpose of the former is to give effect to the latter.

Having a single instrument for national direction – a National Planning Framework – would have many benefits. It would promote (1) coherence across policy provisions (currently contained in different NPSs); (2) consistency between regulatory and policy provisions (which can currently exist as islands); (3) adequate connections (all direction would be in one place with close links); and (4) completeness (it would be an integrated instrument covering all matters of national importance). We recommend a four-part structure to a National Planning Framework. Part 1 would outline how the document as a whole would give effect to the NBA's purpose and principles (including Te Tiriti); Part 2 would provide a coherent and comprehensive set of domain-based chapters (including the setting of domain-based environmental limits) to which subsequent parts would be linked; Part 3 would provide any additional national direction on particular sectors, spaces or topics; and Part 4 would address any cross-cutting matters (including any provisions on allocation). National Planning Standards would exist alongside this instrument.

While there are different options for how it could be structured, it would make most sense for objectives, policies, regulations and other directives to be linked tightly to each other within each chapter in a National Planning Framework, rather than separating policy provisions from regulatory provisions. The structure of the National Planning Framework should be outlined in National Planning Standards alongside a model combined plan, to make it easier for councils to give effect to it. There should also, however, be a broad legislative outline in in the NBA itself as to how an NPF is structured (especially its domain-based Part 1).

We agree with the Panel that regulations could be confined to administrative rather than substantive matters. Any substantive regulations already in existence (eg for marine pollution and dumping) should be brought within the fold of an NPF.

A National Planning Framework should be accompanied by an implementation strategy. This could be contained within the NPF, but it makes most sense for it to exist in parallel. This strategy should be required by legislation. The Minister should be obliged in an implementation strategy to include a more substantive definition of what "nationally significant" means, giving councils a better sense of the grounds upon which national direction will be created. The wording in draft section 9(3) of the NBA should be changed from a requirement that the Minister "have regard to" whether a matter is nationally significant to a requirement that the Minister "be satisfied" that this is the case.

The legal effect of national direction

As mentioned earlier, an environmental limit should be defined more broadly to include provisions in NPSs. That would ensure that consenting decisions could not be granted contrary to a policy limit, not just a regulatory limit. The consenting sections of the NBA should be amended so that a consent authority is obliged to place relatively stronger weight on relevant policies in national direction where they clash with policies in council plans. A specific duty, not just power, to review consents where new limits are imposed through national direction should be imposed. A clear process for de-allocating existing rights needs to be linked to this duty.

An implementation principle should be included either in section 9 or in provisions relating to the content of national direction, specifying that policies should be directive where possible and the relationship between different policies should be made as clear as possible.

Furthermore, spatial strategies should be required to give effect to environmental limits contained in national direction, where relevant. That more active direction (ie more than just consistency with national direction) is appropriate because some objectives sought through national direction may require strategic spatial expression/translation at a regional level to be effective. Additionally, future development strategies currently prepared under RMA national direction should be subsumed in regional spatial strategies made under the SPA. National direction should be reviewed to consider which other elements may be more appropriately located under the SPA framework.

Several relationships between national direction and the Climate Change Response Act need to be made clearer in drafting. In particular, it should be made clear that national direction must be consistent with emissions reduction plans and a national adaptation plan. A change to the latter instruments should trigger a review of relevant national direction. It should also be clarified that detailed land use change for climate change adaptation (eg managed retreat) is to be driven by national direction under the NBA (and the combined plans that give effect to it), but supported by tools provided for under separate adaptation legislation. The cross-cutting nature of climate change mitigation and adaptation, and the need for CCRA instruments to link closely to all aspects of national direction (not just dedicated "climate" parts), further supports the development of a single integrated instrument (an NPF).

Lastly, consideration should be given to whether some provisions contained within existing or proposed NPSs – notably environmental limits – should instead be contained in the NBA itself.

The process for producing and changing national direction

The Panel's recommended process for the development and amendment of national direction is broadly sound. We would add that members of the independent board of inquiry should be appointed by the independent judicial officer appointed by the Minister to chair the board. However, greater clarity is needed as to how Māori are to be involved in the development phase of national direction (this could involve an expansion of the role of the Panel's recommended National Māori Advisory Board, although that expert body does not resolve the question of how to engage with mana whenua at a national, representative, level). Additionally, there should be specific provision for local government to play a role in co-developing national direction.

There should be explicit legislative recognition that, where regulatory provisions in national direction are being developed, it is important to outline the relevant policy framework first. There should be a requirement that any new national direction be assessed against, and be well integrated within, the existing framework of national direction, particularly so that environmental limits are safeguarded.

Where national direction contains environmental limits, there should be an independent review/audit role for the Parliamentary Commissioner for the Environment (together with adequate resourcing to discharge this function). In addition, or alternatively, an independent panel of scientific experts (including members with expertise in mātauranga Māori) could be established by the Minister to provide recommendations as to what limits should be set and at what level.

Transitional arrangements

We broadly agree with the transitional arrangements proposed by the Panel. Over the next three years there should be (1) a general review and alignment process for existing national direction; (2) a systematic assessment of which gaps in national direction need to be filled and how, starting with policy provisions and progressed according to transparent criteria (starting with limit setting); and (3) both of these things should be approached carefully so that each piece of national direction

becomes oriented towards inclusion in a more coherent structure – a single, tiered National Planning Framework. Existing processes for national direction – particularly the NPS for Indigenous Biodiversity and the implementation of freshwater direction – should not be held up.

Summary: Landscape Protection in a Future Resource Management System

The Government's reform of the resource management system provides a significant opportunity to improve the way we currently provide for landscape protection. EDS considers the provisions relating to landscape protection could be strengthened further, based on an application of our multi-year Protected Landscape Project to the specific reform opportunities identified by the Resource Management Reform Panel.

What is a landscape?

The concept of a 'landscape' is different to different people. Māori associate landscape with their tribal region (rohe) and intertwined with people through whakapapa (genealogical) connections to specific features. Conversely, the early New Zealand European concept of landscape centres around the idea of beauty and protection from industrialisation.

This European tradition has changed in the Aotearoa New Zealand context. New Zealand Courts have long recognised that landscape is broader than just visual considerations. It involves both natural and physical resources and various factors relating to the way people perceive and associate with them.

However, navigating the two world views and devising effective protection mechanisms that encompass, empower and enable both te ao Māori and Pākehā approaches is still some distance away. The term 'landscape' as applied in Aotearoa New Zealand does not fit comfortably with te ao Māori, leading to Māori using both "cultural landscapes" and "ancestral landscapes" to describe their *particular* landscapes. This makes explicit use of these terms in the new legislation important.

What have we learned from the project?

EDS' Protected Landscapes project ran for two years, and included case studies from abroad and local areas. The international review highlighted that conflicting interests and pressures must be directly addressed in any protective model; there needs to be an effective regulatory framework, responsive governance, and adequate resourcing and funding. Local case studies demonstrated that that landscape protection systems need to be able to take into account local context. Yet, there also needs to be consistency across application.

We also found that the pressures on landscape are more multi-faceted than in the past. Some of the biggest threats to landscape values were:

- Pastoral intensification and irrigation (Mackenzie Basin and Kaitorete Spit)
- Urban development (Waitākere Ranges and Waiheke Island)
- Tourism (Waiheke Island and Akaroa)
- Exotic plantation forestry (Mackenzie Basin and Banks Peninsula)
- Wilding pines (Mackenzie Basin)
- Plant pathogens (Waitākere Ranges)
- Weeds (Waitākere Ranges)
- Predators (most places but particularly Aotea Great Barrier Island and Banks Peninsula)

Two strong themes emerged from the case studies: weak district or regional planning rules will not result in good outcomes, and policy developed through a narrow lens can often result in unintended

consequences. There needs to be a coherent package for landscape protection. These are two elements that we see capable of being addressed within the current reforms.

What are the current protections?

Natural landscapes are vitally important for numerous aspects of Aotearoa New Zealand and its people, yet we are still seeing their degradation. While the RMA recognises their importance in s 6(b), significant institutional and regulatory failure has resulted in a lack of protection for our important landscapes. The "protection of outstanding natural features and landscapes (ONLs) from inappropriate subdivision, use, and development" is a matter of national importance. Key terms are not defined and have been keenly contested in the Courts, such as 'outstanding', 'natural' and 'inappropriate'. Furthermore, there is inconsistency, as ONLs in the coastal environment receive stronger protection due to the NZCPS, whereas there is no national policy direction on non-coastal landscape.

What could regional spatial strategies do for landscape protection?

The Strategic Planning Act could be utilised in several ways to improve landscape protection.

- In the process of developing regional spatial strategies for land, freshwater and the coastal marine area, important landscapes should be identified, correcting uneven mapping across regions. Strategies could be required to identify 'landscapes of national importance', eg Mackenzie Basin, Banks Peninsula, Wakatipu Basin, Waitākere Ranges and Aotea Great Barrier Island.
- Regional strategies should address a range of spatial environmental matters including landscape change, protection and restoration.
- Developing strategies through consensus decision-making should enable mana whenua to ensure Māori values associated with specific landscapes and Māori cultural landscapes are reflected in planning documents.
- Implementation agreements, accompanying regional spatial strategies, should include funding provision for the protection and restoration of important landscapes.
- Central government should use a national priorities statement to identify long-term priorities for landscape protection to resolve at a regional level.
- Plans developed under the NBA, the Local Government Act and the Land Transport Management Act should be consistent with the regional spatial strategy, ensuring that local governments' long-term plans and budget are aligned with the strategies' provisions on landscape protection and restoration.
- The SPA should apply to land under the Crown Pastoral Land Act 1998 and the conservation estate to fully integrate statutory frameworks impacting landscape matters.

What could be the role of the NBA in landscape protection?

The NBA could support landscape protection by:

- Retaining the wording "protection and enhancement of outstanding natural features and outstanding natural landscapes".
- Requiring mandatory national direction on section 7 outcomes including those relating to landscape protection and enhancement.
- Including reference to heritage landscapes and amenity values in the new legislation.
- Developing combined plans, including the provision for mana whenua representatives on the planning committee, an independent audit before notification and independent scrutiny of

submissions. This should include requiring combined plans to map important landscapes within each region.

- Utilising Regional Policy Statements to provide strong direction for the protection of important landscapes in each region.
- Providing greater recognition for iwi planning documents in the management of Māori cultural landscapes and support for the co-design of policy and planning provisions to protect their values.
- Implementing the RMR Panel's proposal to establish regional hubs for compliance, monitoring and enforcement and other proposals to strengthen this function.

What could be the role of national direction in landscape protection?

There is a current lack of national direction on landscape matters. An NPS on Landscape should be prioritised to establish environmental outcomes, targets and bottom lines for the country's landscapes including outstanding and amenity landscapes. A Landscape NPS could provide specific policy for 'landscapes of national importance' identified in regional spatial strategies and prioritise the protection and restoration of their values. It could direct that these areas receive priority for existing government initiatives and funding.

Summary: Designing the Strategic Planning Act to better address the marine environment

It has long been acknowledged that Aotearoa New Zealand's ocean management system is dated, fragmented and not producing optimal outcomes. This summary scrutinises the proposed Strategic Planning Act (SPA) through an explicit "oceans lens" and sets out recommendations on how the SPA could be designed to better support effective marine planning and management. A fuller discussion is available in the complete report.

Purpose and principles

As there is no primacy given to the protection and enhancement of the natural environment in the indicative purpose of the SPA, the setting of environmental limits and national direction under the NBA for the marine environment will be extremely important if the SPA is to result in positive marine environmental outcomes. This needs to occur before any regional spatial strategies are prepared. The SPA should however set out principles to underpin the planning process and these should include applying ecosystems-based management and te ao Māori approaches. It should also be made clear in the SPA that these principles are to be applied when making decisions.

Achieving integration

The SPA is intended to improve strategic integration across the resource management system at a regional level through spatial strategies. Including both catchments and the sea in regional spatial strategies is essential for achieving positive marine outcomes, as catchment-based activities have significant impacts on the coastal marine area and are the main driver of ecological degradation in many inshore areas. Until broader oceans reform is undertaken, regional councils should continue to manage the entire coastal marine area under the NBA and regional spatial strategies prepared under the SPA should align with this jurisdiction. However, councils are generally under resourced to manage a specialised and expensive task. Therefore, a national hub with expertise in marine information, mapping and planning should be established at a national level and be deployed to assist councils with the development and implementation of regional spatial strategies.

There also should be an ability to undertake inter-regional planning because the boundaries of regional councils do not generally align with the extent of biologically connected marine areas (bio-regions). However, flexibility in the detail of planning required for and applied to parts of a region should not be used to reduce the amount of focus placed on the coastal marine area versus the terrestrial environment and the SPA should be drafted to ensure that the coastal marine area receives considered attention in each region.

If the SPA is extended to apply to the EEZ, tailored mechanisms to interface with these decision-making tools under the EEZ would need to be developed. A placeholder should be included in the SPA to make that link easier in the future. The SPA could make separate provision for the development of regional spatial strategies applying to the EEZ, which could then apply to the Fisheries Act, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act and Maritime Transport Act amongst others.

Integration with the wide variety of marine management regimes will be crucial. Additional marine-relevant legislation should be listed within the SPA schedule including at least the Conservation Act and Fisheries Act. Omitting to do so risks further entrenching the legislative and administrative fragmentation within the marine area. Conservation management strategies prepared under the

Conservation Act need to be well linked to combined regional plans prepared under the NBA in order to integrate marine biodiversity management. We note the government's intention to reform the Conservation Law System more broadly, and these reforms will need to carefully consider the interface between conservation legislation and the resource management system including the SPA. There are current proposals to reform marine protected area legislation and consideration should be given to providing a mechanism through which the spatial identification of prospective marine protected areas (including networks) through regional spatial strategies could be directly implemented through the new legislation. Additionally, a more developed planning framework needs to be provided for within the Fisheries Act to provide an effective mechanism to interface with the SPA and through this better integrate with 18 other marine management regimes. In the interim, sustainability measures taken under the Fisheries Act should be required to be consistent with regional spatial strategies under the SPA.

Planning approach

The RMR Panel proposed that provision be made in the SPA for a 'national priorities statement' as a "tool for central government to signal its intention to address certain nationally significant issues through regional processes". The national priorities statement under the SPA should have a section specifically focused on spatial planning in the coastal marine area, particularly given the strong public interest (and general lack of private property rights) in the area.

A targeted marine information gathering process should be resourced and commenced well in advance of the planning process. The SPA could provide a framework for the process of collecting information to support marine spatial planning.

Regional spatial planning needs to be undertaken from the sea up into the mountains rather than from the mountains into the sea. Marine areas are the final sink for many contaminants that are derived from catchments. It is therefore important that catchments are managed within the marine area front of mind. At least some parts of the marine environment (estuaries and areas impacted by catchments) will need to fall within the scope of detailed spatial plans (eg habitat mapping), rather than being just a general demarcation of zones focused on resolving conflict between competing human uses.

The SPA should also require regional spatial strategies to identify important ecological areas in the marine environment types including habitats of importance to protected or endangered species, habitats of importance to fisheries, areas suitable for marine uses, marine areas suitable for restoration and marine areas susceptible to catchment impacts such as sediment and nutrients (and for which limits will need to be set).

Regional spatial strategies themselves are to be developed jointly by central government, local government and mana whenua through consensus decision-making. Joint planning committees under the SPA would need to include representatives from the Department of Conservation, Ministry for the Environment and Ministry for Primary Industries due to their significant role in managing the marine environment.

Consideration should be given to including tailored provisions within the SPA that apply to the development of the coastal marine area portion of regional spatial strategies, rather than importing the approach used for terrestrial planning. In terrestrial spatial planning we have a better understanding of where the boundaries of activities start and stop, and of the scale at which their impacts may occur. Marine environments do not react to development pressures based on the traditional notions of 'sites' and 'boundaries'. Understanding impacts in marine environments

requires spatial planning approaches that consider chains of causation and an understanding of the complexity and fluidity of marine environments.

Role of environmental limits

The NZCPS already provides some environmental limits for the coastal environment as confirmed by the Supreme Court in the *EDS v New Zealand King Salmon* decision. It is important that the requirement for regional spatial strategies to be consistent with the NZCPS is retained and that these limits are upheld.

We have made a number of other recommendations in our Environmental Limits paper, and these are to do with the system of limits as a whole. In the marine environment, further thought is needed as to what those things would be, but they would include the integrity of ecosystems, the protection of threatened species, the safeguarding of habitat for fishing, and so forth. These limits need to be – not just a set of measurements of the state of an environment – but requirements that clearly flow through to actual regulatory restrictions on activities that could threaten those minimum states.

Allocation

Marine spatial planning plays a much stronger role in allocating (notionally) common space for private uses, such as aquaculture and marine infrastructure, than land based planning. It is therefore important that the SPA makes clear how such allocation is undertaken and the process for identifying candidate areas. Collaborative planning groups (involving mana whenua and stakeholders), such as utilised for the Hauraki Gulf marine spatial planning process, can be very useful in eliciting the full range of values at stake when allocating areas of marine space to particular uses. Additionally, the SPA should include principles to guide spatial allocation of the coastal marine area to different uses. The rights, needs and aspirations of mana whenua will need to be at the forefront of any deliberations around allocation.

Funding

Implementation agreements, which will accompany regional spatial strategies, include more detailed planning for "certain infrastructure or environmental remediation projects" and apportion funding responsibility between central and local government. These could then be linked to the budgeting process for each government body. This would serve as a useful implementation tool for proactive actions identified for the marine area, such as marine monitoring initiatives and coastal restoration initiatives and this should be included in their scope.

Dedicated consideration should be given to developing a more comprehensive financing system for marine management, which could include tendering of marine space, rating of seabed occupation, licensing fees for vessels (including recreational vessels above a certain size) and royalties on the extraction of resources such as minerals, gravel, sand and marine life. In the absence of any more comprehensive charging system for marine users, considerably more central government funding, sourced from taxpayers, will be required to finance the development and implementation of regional spatial strategies in the coastal marine area.

Potential future oceans reform

At this stage, we don't see the proposals for the SPA precluding any of the options that we are developing for future oceans reform as part of our dedicated oceans project. Clearly the SPA itself might need amendment in the event of future reform to adjust its scope. The important thing is to approach reform with ongoing evolution of marine management in mind. All indications are that the

bones of a future system proposed by the RMR Panel will be appropriate, and provide a good springboard for reforms that will build on this core to go further into the marine space.

-ends.