

Appendix 2: Christchurch City Council Detailed Submission on the Natural Environment Bill

Clause	Topic	Request	Relief Sought	Reason
General comment	We recognise that there is substantial cross-referencing to the Planning Bill and duplication of the same provisions. This is not user-friendly and increases the likelihood of inconsistencies developing. We recommend, where possible, that definitions are consistent across the Bills.			
Part 1: Preliminary provisions				
3	Definition of Climate Change	Include definition	<p>Include the definition of climate change from the current Resource Management Act 1991:</p> <p>“climate change means a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods”</p>	<p>‘Climate change’ is referenced in the definition of Natural Hazards but is not defined in the Bill.</p> <p>A definition of climate change is necessary, to allow for the consideration of potential effects of spatial planning and proposals involving a permit under this bill on Greenhouse Gas (GHG) emissions.</p>
	Definition of “identified Māori land”	Amend	Expand the scope of types of land to include land gifted or returned to an iwi authority or Runanga as part of cultural or Te Tiriti o Waitangi redress.	The definition must be broadened to capture instances where Māori are given land as part of any redress action undertaken by a governmental body. Not doing so is likely to limit the full potential of local Māori and the ability for the Council to work with iwi and hapū to realise their contemporary social, cultural, and economic development aspirations.
Part 2: Foundations				
11(1)(d)	Goal to achieve no net loss in indigenous biodiversity	Amend	Amend no net loss of indigenous biodiversity to ‘ <i>maintain and enhance</i> .’	<p>We are concerned that ‘no net loss’ could be interpreted as a minimum bottom line rather than a goal, which in our view, is an inadequate response to the New Zealand ecological context. The proposed “no net loss” standard is a lesser test than the RMA, and as such risks further decline from a system that is already failing to protect and enhance biodiversity (see Department of Conservation Biodiversity Report)</p> <p>No net loss of biodiversity is inadequate for an overall national biodiversity goal. Aotearoa is home to a high number of endemic species of which at least 81 animal and plant species including 62 bird species are extinct. More than 75% of indigenous species are threatened with extinction or are at risk of being threatened. Before human arrival, 80% of the land was covered with native forest. By 2018, this was down to 27%. (see PCE report).</p> <p>Offsetting biodiversity loss to compensate by providing alternatives to unique flora and fauna (resulting in a ‘net’ position) is unlikely to reverse these trends and risks ongoing cumulative decline.</p>
		Clarify	Synergy with Planning Bill must be considered with care; clarify where the	Support indigenous biodiversity being in the Natural Environment Bill and not in the Planning Bill; but emphasise the importance of integration between the

Clause	Topic	Request	Relief Sought	Reason
			management / protection of urban trees would be.	<p>indigenous biodiversity provisions and the high natural character and ONF/ONL provisions in the Planning Act. There are synergies between these matters that need to be considered.</p> <p>Like our submission on the Planning Bill, clarification is also needed regarding the management of trees. They could be managed in either or both Bills as they are natural environment, also climate resilience, and overlap with indigenous biodiversity. They are also infrastructure and an important part of the built environment, e.g., stormwater management and heat island effect mitigation.</p>
11(1)(f)	Goal on Māori interests	Amend	<p>Add sub-clause, as follows:</p> <p>(iv) giving effect to the principles of Te Tiriti o Waitangi, particularly kaitiakitanga.</p>	<p>Te Tiriti o Waitangi is the basis for a trusting and productive relationship between the Crown and Māori. In practical terms this extends to local government. It is extremely difficult for local government to form a constructive relationship with mana whenua while working under legislation that does not recognise this.</p> <p>If the clause is retained, referring to Māori “interests” creates ambiguity which needs to be clarified. We are unclear how “interests” will be determined, and, in our view, could mean that outsiders with no particular tie to an area are given as much say as the mana whenua in that area. To that end, we support an additional sub-clause that seeks the principles of Te Tiriti o Waitangi are given effect to.</p>
11	Add clear climate change goals	Amend	Amend goal 1(e) to include climate change alongside natural hazard risk.	<p>The current Bill only sets one goal relating to climate change adaptation, but only in relation to natural hazards. This is a limited framing that hinders the Bill.</p> <p>As the goals will be supported by national direction, including climate change within goals will clarify national direction relating to climate change considerations.</p>
13(e)	Procedural principles	Delete	Delete clause 13(e)	<p>This clause is vague and could be used to require consent authorities to “enable” inappropriate activities.</p> <p>There is potential that ‘acting in an enabling manner’ is contrary to the protection and enhancement directives of the Natural Environment Bill.</p>
14(a)(i)	Considering effects of activities	Delete	Delete subclause 14(a)(i)	Effect is defined in the Bill to be both positive and adverse effects. There is little point in stating that positive effects should be considered because any effects assessment would include this as part of the standard consideration.
15(1)(b)	Considering adverse effects of activities	Amend	Simplify subclause 15(1)(b) to read “...create effects that are minor or more than minor”; or “minor or greater”	In practice, to cover off cumulative effects, all the effects – including the “less than minor” effects, do need to be considered (and that consideration would

Clause	Topic	Request	Relief Sought	Reason
				need to be recorded within the report). However, we support the intent of capturing and considering cumulative effects.
32 (a)(ii)	Principles for classifying activities	Clarify	Clarify the term “sufficient allocation” used in subclause 31(a)(ii) in the context of where a rule seeks to protect a natural resource, rather than enable the use of one.	The term “sufficient allocation” is not clear where the purpose of a rule is to protect an aspect of the natural environment e.g., indigenous biodiversity, and where one of the goals of the Bills that there should be “no net loss in indigenous biodiversity”. This needs to be clarified as both subclauses (i) and (ii) of clause 32(a) need to be fulfilled.
32(b)-(d)		Amend	Require that the classification of an activity within the activity types in these clauses should specifically include consideration of cumulative effects if more than one of such an activity should occur and risk breaching an environmental limit, be inappropriate, result in unacceptably high level of adverse effect.	Consideration of the effects of an activity into one of these classifications should include consideration of the cumulative effects if more than one such activity was to occur.
39	Permitted activity rules	Amend	The process for determining whether a permitted activity requires registration is convoluted and will be difficult to apply in practice.	Support the requirement for permitted activity registration but only if a Plan rule requires registration, as it better enables monitoring of plan and system performance and enables the collection of fees. However, there is an inconsistency between clause 39 and clause 202. Clause 39 states that all permitted activities must be registered, while the wording of clause 202(1) suggests that it is optional for councils to have Plan rules that require registration. Our preference is that the Plan sets out which permitted activity rules require registration, to appropriately target this (and the associated administrative burden).
45	Defined terms	Amend	The definition of resilience should incorporate the potential effects of climate change.	To ensure the environment limits are fit for purpose, the definition of resilience must take into account the anticipated increase in climate change impacts on our natural environment’s ability to recover over time to retain its essential qualities and functions.
46	Purpose of environmental limits	Amend	Modify subclause (b): <i>protect and enhance the life-supporting capacity of the natural environment (ecosystem health limits).</i>	This change better reflects the intended purpose of the Bill, which includes the enhancement of the natural environment. It reflects that some ecosystems are presently in a degraded state and enhancement is needed to ensure their life-supporting capacity is sustained. A similar change could also be considered for (a).
56(b)	Assessing impact of proposed environmental limit or methodology	Clarify	Clarify weighting between the needs or aspirations of the community in relation to the economy, society and the natural environment.	Council notes that the weighting of these sub-clauses requires careful consideration through the development of national instruments.

Clause	Topic	Request	Relief Sought	Reason
63 - 65	General content of action plans; Considerations before action plans can include controls on land use or inputs; Requirements for action plans to remedy breach of environmental limits	Clarify	Clarify the purpose of action plans in clauses 63-65 and how they relate to natural environment plans.	There could be a lot of overlap and duplication between these action plans and the natural environment plan. An action plan may set out how rules in a natural environment plan be prepared but may require updating after the provisions in a natural environment plan become operative. Given the short timeframes in the transition period, the preparation of an action plan that may overlap significantly with a natural environment plan, the purpose of an action plan as distinct from a natural environment plan requires clarification.
65	Requirements for action plans to remedy breach of environmental limits	Clarify	Provide legislative pathway if interim limits and timeframes not met.	It is unclear what happens if the interim limits and specified timeframes are not achieved. This should be considered and anticipated within the legislation.
69	Matters to consider when making national instrument	Amend	Amend the section to require the Minister to have regard to the following when making a national instrument: <ul style="list-style-type: none"> • The National Adaptation Plan • The National Adaptation Framework • The National Climate Change Risk Assessment, and • The Emissions Reduction Plan 	At present under the RMA the Minister must have regard to most of these documents when making national environmental standards. This includes a requirement that the Minister must have regard (or provide for, or similar) to these documents ensures that climate change considerations will be included in the national decision-making process. We believe that consideration of climate change documents should not be reduced through this legislative change.
86	National standards relating to significant infrastructure that breach environmental limits	Support and clarify	Support there being a high threshold for establishing a consenting pathway for significant infrastructure activities that breach environmental limits.	We support this in-principle, on the understanding that the threshold for establishing a consenting pathway and the alternatives assessment requirements is very high. However, given the discretion afforded to the Minister to make national instruments, we are concerned that there are not appropriate checks and balances. Therefore, we consider that the standards should be drafted to ensure that such significant infrastructure activities are classified as a Discretionary Activity.
90(1)	Amendments to national standards without full process	Amend	Remove exemptions in clauses (b).	We consider the exclusions (b) could have effects or implications that are more than minor and would warrant consideration under clause 69. These sub-clauses should be revised.
92	Purpose of natural environment plan	Amend	Replace 'natural resources' with ' <i>natural environment</i> ' [linking to clause 3 definition].	The purpose of natural environment plans is to enable the use, protection, and enhancement of natural resources, rather than the environment as a whole. We consider that this should be replaced with the cl.3 definition, to better achieve the purpose of the Bill.
93	Each region must have 1 natural environment plan	Clarify	Seek clarity about the status of a proposed plan	There needs to be an allowance for the first natural environment plan, as there will not be one in place at the time the Bill comes into force.

Clause	Topic	Request	Relief Sought	Reason
Part 3: Combined plan and other matters				
97	Core obligations when preparing and deciding natural environment plan	Amend	Amend clause 97 so that regional councils preparing natural environment plans must have regard to both the current National Adaptation Plan and National Emissions Reduction Plan prepared as required under the Climate Change Response Act.	This change would ensure greater alignment across national plans and better aligns with current climate change related commitments.
97(4)(b)		Amend	Amend subclause 97(4)(b) to include regard for Conservation Management Strategies prepared as required under the Conservation Act.	Conservation Management Strategies prepared under the Conservation Act are relevant to the purpose and content of a Natural Environment Plan at a regional scale, and regard should be given to them when drafting Natural Environment Plan.
104	Plan may require adaptive management approach	Amend and clarify	Amend the section to clarify whether the adaptive management approach can be used to manage not only effects of activities but also effects of hazard risk on activities.	<p>This clause allows for an adaptive approach to be used to manage the effects of activities on the environment. It is unclear whether it could be used to manage the effect of natural hazards on the activity itself. We submit that it should do so and seek clarification on this matter.</p> <p>If the clause does allow for this, it would allow for a more dynamic approach to managing natural hazard risk to activities.</p>
105	Methods relating to incentives	Support	-	Incentives are a valuable tool that can assist in achieving objectives.
112	Review of provisions in natural environment plan at least every 10 years	Amend	<p>Change requirement that that a report is completed from 10 years to 12 years of a Plan becoming operative.</p> <p>Seek that the standard is more reflective of a regional plan and consider territorial authorities, rather than just regional authorities.</p> <p>Remove private plan changes from (1)(a).</p>	<p>The proposed clause is largely the same as s79 of the RMA. This section has known issues insofar as the requirement to begin a review 10 years after a Plan becomes operative, with no set date for when it must be actioned. This has led to a large delay in second generation plans for medium to smaller Councils and further frustration with communities and developers alike.</p> <p>Modifying the standard that a report must be published 12 years after a Plan becomes operative is more reflective of how the standard should operate: a review commenced 10 years after an operative date, with 2 years to draft reporting and have this published. Setting a completion date (rather than initiation date) also means that local authorities are flexible to when the review commences but will still have to meet a fixed date for completing the review.</p> <p>The clause is currently only tied to the other TAs that are responsible for other parts of the Plan and therefore does not reflect the single regional Plan approach. At a minimum, the clause should be updated to include territorial authorities (or a link to the Planning Act (cl.99), with the idea that the entire document is reviewed comprehensively.</p> <p>The reference to private plan changes appears unnecessary as a full review would address all rules comprehensively. It may also mean that areas subject</p>

Clause	Topic	Request	Relief Sought	Reason
				to a private plan changes are considered in a separate review cycle, which is complicated given a land use plan will be a chapter in a regional plan.
Part 4: Natural resource permits				
128	Natural resource permit may include wildlife approval	Support / Clarify	Clarify	<p>Support in principle, noting that this has the potential to reduce duplication and cost for applicants. There is, however, risk that relevant stakeholders are not included in the approval of a natural resource permit and thereby diminish the outcomes of protected or endangered species. This will be a substantive matter for national instruments.</p> <p>We seek clarification on the implementation of this provision, and raise the following questions:</p> <ul style="list-style-type: none"> • Will national direction set out a procedure for this wildlife approval? • How will councils have the ability to ensure that appropriate stakeholders are included in the decision making process?
157	Matters relevant to activities affecting drinking water supply source water	Support	-	Retain as proposed.
163	Land use permit may be refused or granted with conditions if risk from natural hazards	Clarify or amend	-	<p>This clause allows for applications for land use permits to be declined or granted with conditions if there is a risk from natural hazards. We support this in principle, however, there is an exemption for primary production activities which we do not support. We would like this exemption for primary productive activities to be removed to ensure a consistent approach is taken.</p> <p>The clause does not contain an exemption for infrastructure as per the equivalent provision in the Planning Bill (clause 146). This must be consistent between the Bills.</p> <p>Council supports there NOT being an exemption for infrastructure. Infrastructure should not be built in places where it is at risk from natural hazards.</p>
166	Precautionary principle where information uncertain or inadequate	Support	Retain as proposed.	We support embedding the precautionary principle and requiring consideration of adaptive management.
168	General requirements before conditions may be included	Support	Retain as proposed.	We support requiring applicant agreement if the condition is not directly connected to the applicable rule or standard.
169	Particular conditions that may be included in natural resource permits	Support	Retain as proposed.	We support a condition requiring services or works including protecting, planting, or replanting of any tree of other vegetation or protecting, restoring, or enhancing any natural or physical resource. These particular standards support climate change mitigation through sequestration and adaptation as trees and

Clause	Topic	Request	Relief Sought	Reason
				vegetation can improve resiliency to climate impacts including, for example, reducing heat in urban areas.
202	Notification and registration of activity subject to permitted activity rule	Support	Retain as proposed.	This reduces consenting red tape by allowing Councils to have oversight over activities with minor effects, which without this clause would be restricted discretionary activities.
Part 5: Key roles				
231, 232 and 233	Transfer and delegation of powers	Amend	Amend to include iwi/hapū authority either as a public authority (amending clause 231) or include in clauses 232(1) and 233(1).	This amendment enables Council and iwi to find a solution for managing natural resources on Māori land or in similar situations where iwi do not recognise the authority of councils, but councils are obligated to manage the resources in question.
240(4)(c)	System performance framework	Amend	Amend clause 210(4)(c) of Planning Bill to: (i) Māori groups that the chief executive considers to be representative of relevant interests; and (ii) relevant iwi and hapū	In our view, allowing the Chief Executive to decide whether a group is representative of relevant interests or not has the potential to undermine clause 11(1)(i) if the CE decision excludes iwi and hapū who have an interest. Proposed sub-clause 210(4)(c)(ii) will capture these groups while 210(4)(c)(i) allows for wider consultation if necessary.
Part 6: Enforcement and other matters				
258(1)(h)(ii)	Scope of enforcement order	Amend	Amend 258(1)(h)(ii) to cover individuals or groups who have been closely associated with non-natural persons who have a history of non-compliance. Potential amendment: (ii) that— (A) if the permit holder is a natural person, the permit holder <u>or any person who has held a controlling interest in, or exercised effective control over, the activity authorised by the permit</u> has been or is the subject of an enforcement order or a conviction under this Act within the previous 7 years; or (B) if the permit holder is not a natural person, the permit holder <u>or any person who has held a controlling interest in, or exercised effective control over, the permit holder or the activity authorised by the permit</u> has been or is the subject of an	The clause is focused on the <i>permit holder</i> , which creates a gap where historic non-compliance by an individual may not automatically follow into a newly formed company. Council has experienced problems in the past with different corporate vehicles, owned and controlled by the same individual/s; compliance history should create consequences for other entities that are under the same person's control.

Clause	Topic	Request	Relief Sought	Reason
			enforcement order or a conviction under this Act.	
298	Local authorities to prepare compliance and enforcement strategy	Amend	Replace “takes into account” in 298(1) with “does not contravene”.	<p>Sub-clause (2) requires local authorities to work with iwi authorities and hapū when developing a compliance and enforcement strategy. This obligation implies a level of cooperation and good-faith engagement that is difficult to sustain if Treaty settlements or voluntary or statutory agreements can be departed from at the discretion of the authority.</p> <p>Sub-clause (1), however, only requires those agreements to be “taken into account” when preparing the strategy. This is a relatively weak obligation that does not require consistency with, or adherence to, those agreements, and therefore does not prevent their breach or disregard. As drafted, clause (1) does not provide sufficient support for the collaborative obligation in clause (2) and may undermine its practical effectiveness.</p>