

## Forest & Bird Submission Guide:

### Improving the Draft Natural and Built Environment Act

#### Introduction

You now have a once in a generation chance to help shape the laws to ensure they put nature first.

This is a high-level guide to assist interested Forest & Bird members in writing a personal submission on the draft Natural and Built Environment Act. Note that the Forest & Bird legal team are helping create a comprehensive submission as-well based on extensive involvement with the current RMA.

The Government is currently reforming the way we look after and allocate natural resources in Aotearoa. The Resource Management Act (RMA) is set to be replaced with a new law, the Natural and Built Environment Act (NBA).

Since the RMA was introduced, we've seen rivers more polluted, wetlands drained, native forests cleared, and climate-destroying coal mines approved. Forest & Bird has fought hard through the courts countless times to reduce this loss and emphasise the need for environmental protection.

If the new law is improved, we'll shift from on-going degradation towards restoring Aotearoa's environment, while allowing for sensible development of things like affordable housing. By getting the wording of the law right we could avoid decades of court battles to look after nature.

Now is your chance to provide your input into the new law for nature. Submissions on the exposure draft are **open until 11:59 pm on the 4 August 2021**.

#### What is the exposure draft of the Natural and Built Environment Act?

Given its complexity, there is a two-stage process for developing the NBA. Currently the Environment Select Committee is undertaking an inquiry into what's known as the exposure draft of the NBA.<sup>1</sup> This will inform the development of the full Bill that is set to go through Parliament next year.

The exposure draft outlines the following important sections: the purpose of the act, the relationship with Te Tiriti o Waitangi, key definitions, environmental limits, and environmental outcomes the law intends to achieve. It also outlines how the new National Planning Framework is intended to work (this replaces the current ~100 regional, and district plans, with about 14 regional Natural and Built Environment Plans).<sup>2</sup>

The exposure draft doesn't delve into the details of things like how the public, or groups like Forest & Bird, will be involved in creating the Natural and Built Environment Plans for each region. Nor does it detail how important functions like compliance monitoring and enforcement will work. These details will be released when the full draft law comes out early in 2022. In the meantime, if you're interested you can get a flavour of the direction it'll likely take by having a look at the [RMA Review Panel recommendations](#) which the Government is using as a blueprint for the changes.

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<sup>1</sup> The terms of reference of the Select Committee inquiry can be found [online here](#).

<sup>2</sup> You can read the draft text [online here](#).

### **How does Forest & Bird think it should be improved?**

We're in the midst of creating a thorough full submission that will go into a lot more detail with some suggested wording to improve it but here are the key areas of concern we suggest people should highlight in their submissions:

#### **I. Put nature first in the purpose**

Currently the draft sets up a balancing between '*protecting and enhancing the natural environment*' and '*use of the environment*' for people and communities. In effect, this pits commercial development interests against the needs of the natural environment.

History shows us that development interests will go to great lengths to build things to the detriment of natural ecosystems. As it's currently worded we anticipate years of litigation to determine what takes precedence, as we have seen with the RMA.

*How it could be improved:*

One way this could be improved would be to add the underlined wording to the purpose:

#### *5 Purpose of this Act*

*(1) The purpose of this Act is to enable—*

*(a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and provided this is achieved*

*(b) people and communities to use the environment in a way that supports the well-being of present generations without compromising the wellbeing of future generations.*

## **II. Prioritised environmental outcomes, and guidance for resolving conflicts**

The draft law sets out a long list of desired 'environmental outcomes' some of which are often at odds with each other.

For example, one outcome 'is ecological integrity is protected, restored, or improved' and another is 'in relation to rural areas, development is pursued that enables a range of economic, social, and cultural activities'. Often these will be in conflict with each other and there is little guidance as to what outcome should take precedence.

This situation could arise where multinational mining company wishes to pursue developing a coal mine in a rural community that would destroy the habitat of a rare native gecko. The developers could argue they are providing an economic benefit to the community that would have a flow on social benefit. The developer could claim these support the outcomes in the NBA and is a justified use of the environment as it supports the purpose of supporting 'well-being' of the community. Yet, ecological integrity of the rare native gecko habitat wouldn't be protected. Currently, there is little guidance for a decision maker on what outcome should be prioritised.

*How it could be improved:*

To prevent this situation, the outcomes that aim to protect and restore nature need to be prioritised.

This could be done by having an ordered list, or by splitting the social and economic benefit outcomes from the environmental protection outcomes with a higher preference given to environmental protection outcomes.

Another way would be to develop clear principles for resolving conflicts of outcomes, which highlight the need to put *protecting and enhancing the natural environment* first.

## **III. Environmental limits lead to restoration, not a race to the bottom**

A positive part of the new law is a comprehensive set of environmental limits which any development activity must operate in. This fills a gap that has existed with the RMA which has lacked mandatory national direction in many areas for far too long.

However, the way it is currently drafted doesn't set a direction, or provide a framework of targets, that restore degraded environments. We should aim for healthy functioning natural world, not just one that isn't degraded past the last bottom line.

*How it could be improved:*

There needs to be greater clarity to achieve this principle in the new law, along with clear targets to reach restoration and a degree of safety for the environment, built into the limits that are set where uncertainty exists.

### **How can I make my submission more effective?**

Many members of the Select Committee, like most of us, respond well to real-world examples. So feel free to add some colour to your submission with an example of a local area which you'd like to see protected and restored.

Or you may have experienced unsuitable development in your area that has led to indigenous species suffering, or habitats lost.

Including examples to illustrate what improvements you'd like to see helps add weight to your argument.

You may also want to respond directly to the questions posed in the [Terms of Reference](#) of the inquiry.

### **Where do I send my submission?**

Make your submission on the [Parliament website here](#).

Feel free to share your submission with the Forest & Bird team too by sending it to Regional Conservation Manager Rick Zwaan <[r.zwaan@forestandbird.org.nz](mailto:r.zwaan@forestandbird.org.nz)>.

**Submissions close on 4 August 2021**

### **Where can I find out more?**

You can find more information about resource management reforms on the [Ministry of the Environment's website](#).