Forest & Bird
TE REO O TE TAIAO | *Giving Nature a Voice*

Committee Secretariat
Environment Committee
Parliament Buildings
Wellington

Submission on the Natural and Built Environments Bill – Exposure Draft

Dear Committee,

1. Forest & Bird's submission is that, as currently drafted, the Natural and Built Environment Bill should be rejected. The NBA is a retrograde step in resource management law. It would be preferable to retain the current RMA, with some amendments as necessary.
2. Nature has not fared well under the RMA. Biodiversity is in serious trouble: 4000 of our native species are threatened or at risk of extinction, and the extinction risk is worsening for many species. Pressure on natural resources is widespread – land use change is degrading our soil and water, urban growth is reducing versatile land and biodiversity, our water ways are suffering from farming pollution, urban areas are causing pollution, freshwater use is impacting negatively on our waterways, the way we fish is affecting ocean health, we have high greenhouse gas emissions, and climate change is already affecting our country.
3. Humans depend on nature – social and economic outcomes all rely on a natural world that is healthy and functioning well. What we now need is a step change, to clearly prioritise the protection of the environment on which we all depend – for all of our sakes, and for the intrinsic values the natural environment holds.
4. Instead, what the NBA will deliver is a big step backwards.
5. That step backwards is seen in the purpose of the NBA, which lacks any clear requirement to protect nature or the natural environment, much less any priority towards ensuring that the environment on which we all depend is safeguarded *first.* The purpose will require the same overall broad judgment that led to so much environmental degradation under the RMA, at least before the *King Salmon* judgment. What protection there is included in the NBA's purpose is weakened further by putting non-indigenous elements of the natural environment (tahr, pine trees and possums) on equal footing to protecting our indigenous natural heritage.
6. The new long list of outcomes is to be promoted under the NBA exacerbates this problem. The inevitable conflicts between them are easy to spot. When it comes to resolving these conflicts, again, there is no direction that the environment must first be safeguarded before we use it. Under the NBA, all outcomes have equal weighting, and must merely be 'promoted'. The overall broad judgement will be very broad indeed.

7. Any conflicts are to be firstly sorted out (somehow) by a national planning framework, which is the responsibility of central government. This means it will be up to the government of the day to assign priority. At least under the RMA, there is a hierarchy in sections 6 and 7 to guide decision making in a reasonably coherent way across New Zealand. The approach in the NBA is akin to giving central government free reign to reshuffle section 6 and 7 every new term.

8. Not only is this inevitably going to fail the environment (safeguarding the environment is always the underdog when there's the possibility of vote-winning new development), but it is not going to deliver on the objective of having a more efficient resource management system. The legislation itself needs to set the priority – and that priority *must* be that the environment is safeguarded first, so that New Zealand's development is truly sustainable.

9. Regional plans also will have a role to play in sorting out the complex and conflicting outcomes in the NBA. How they are going to do this is anyone's guess. There is no guidance in the NBA, and without a clear priority for safeguarding the natural environment in the outcomes, again, the environment is likely to be the loser. Not to mention making planning an even more contentious and complex process than it already is.

10. Outcomes were originally proposed as long term goals, which would have mandatory interim targets attached to them to ensure progress. That requirement is gone in the NBA. Without mandatory targets along the way, the outcomes are really nothing more than sections 6 and 7, but without the hierarchy.

11. A glimmer of hope is found in a new requirement to set limits for certain aspects of the natural environment. This ability already exists under the RMA, but hasn't been used as often as it could have. We're still concerned that the 'bar' for those limits isn't clear, or high enough to maintain our indigenous biodiversity and ecosystems.

12. Nor is it clear that the limits will be true limits – if a natural resource is degraded beyond an acceptable limit, real change should be required. Bold leadership will be needed to tackle existing uses of the environment that are beyond those limits, and also to require restoration of the environment. While we hope that might come in the later NBA bill, we don't see that leadership yet.

13. In our view, environmental and efficiency outcomes would be better served by retaining the RMA, and fixing the plan making provisions. The NBA as drafted will return us to the flawed overall broad judgment approach – but worse, because there is no direction in the NBA as to what we actually want from our resource management system. This uncertainty in the overall broad judgment approach will be exacerbated by the fact that conflicting outcomes are to be addressed, and can be changed, by the whim of central government. There is no guarantee at all that the environment on which all New Zealanders depend will be safeguarded in this moving feast.

14. We recognise that the NBA is likely to be passed in some form. As such, it needs to be amended to include a much more ambitious purpose – a purpose that prioritises the protection of our finite natural environment *before* use and development. The NBA needs to require meaningful limits that actually force a changed approach to the way we've used

natural resources in the past. It requires a hierarchy in the outcomes that puts the natural environment first and foremost, which is entrenched in the primary legislation.

15. **Attached** to this submission is an appendix with Forest & Bird's comments on the proposed provisions, along with suggested changes. Our hope is that by making these amendments, the bill will represent some kind of improvement on the RMA.

Signed on behalf of the Royal Forest and Bird Protection Society:

Peter Anderson

General Counsel

APPENDIX TO FOREST & BIRD SUBMISSION ON THE NATURAL AND BUILT ENVIRONMENTS BILL EXPOSURE DRAFT

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CLAUSE 5 - PURPOSE

1. The fundamental problem with the purpose in the Exposure Draft is that it does not provide any prioritisation, either within the purpose or the outcomes. This is redolent of the overall broad judgment approach before the Supreme Court decision in *King Salmon*. The overall broad judgment approach, rightly rejected by the Supreme Court in all but a few situations, involved the decision maker balancing the competing considerations and reaching an overall judgement about whether a particular proposal should proceed.
2. The overall broad judgment is the cause of much of the criticism of the RMA as failing the environment. This was because, in an overall judgment, development would almost always prevail over environmental protection. This is particularly a problem with activities which cause cumulative adverse effects. In particular circumstances, the economic benefits of a development would be favoured over the incremental adverse effects of the development. These incremental effects become cumulative effects, which have significantly degraded our environment. To avoid this continuing, it is critical that some form of prioritisation is contained with the purpose and outcomes.

Prioritisation

3. The absence of prioritisation within cl.5 signals a return to the overall broad judgement. This undermines the entire bill. When deciding when or not an activity should proceed, Te Oranga o te Taiao and the requirement to protect and enhance the natural environment are given no greater weight than providing for economic development.
4. This concern also applies with respect to the requirement to include limits. The intention is that limits protect environmental values. However, if the purpose of the Act does not prioritise environmental values, then the environmental protection inherent in limits is at risk. Limits may be some compromise between environment and development, and therefore become largely meaningless. This concern is reduced somewhat by the absence of reference to the purpose in cl.5. As discussed, we consider it is appropriate that cl.7 should not refer to the purpose.
5. The environmental bottom lines approach of the Supreme Court is preferred. We understand that this was the intention of the new NBA, but this intention is not carried through to the drafting. In order to achieve this, Te Oranga o te Taiao and protecting and enhancing the natural environment needs to be prioritised over the use of the environment.

Drafting issue: Te Oranga o te Taiao and protecting and enhancing the natural environment

6. There is also a drafting issue in cl.5(1) which implies that Te Oranga o te Taiao includes protecting and enhancing the natural environment. However, protecting and enhancing the natural environment is not expressly included in the definition of Te Oranga o te Taiao, which instead uses the phrase “the health of the natural environment”. This concern can be addressed by separating the concepts as set out below.

Outcomes for the benefit of the environment: offsetting and compensation

7. We are also troubled that cl.5(2)(b) could be interpreted in a way that has perverse outcomes. We support the concept of improving the environment, rather than merely

protecting its current and often degraded state. However, care must be taken to ensure that drafting does not pave the way for management approaches that are likely to actually result in further loss of indigenous biodiversity on the basis of enhancement; this would be a worse result for the environment.

8. We are therefore wary of including 'enhancement' in cl.5. This is because the concept of enhancement is often used as support for biodiversity offsetting, or worse, biodiversity compensation associated with environmentally damaging projects. Offsetting and compensation do not equate to protection of the environment, because of the uncertainty that they will actually provide environmentally appropriate outcomes.

9. We are also wary of any drafting construction which could give rise to an interpretation that enhancement is a valid form of, or alternative to, protection. Offsetting and compensation do not protect the environment. They are tools that only apply where an environment has not been protected. While cl.5 uses 'and', rather than 'or', which suggests that both protection and enhancement are to be achieved, there could still a possible interpretation that enhancement alone will achieve the purpose of the Act or that enhancement will achieve protection.

Amendments sought

10. In order to address the concerns above, and an issue discussed below in relation to cl.20, we suggest cl.5 be amended as follows:

5 Purpose of this Act

1. The purpose of this Act is to —

(a) uphold Te Oranga o te Taiao; and

(b) protect and enhance natural heritage; and

provided (a) and (b) are achieved -

(c) allow people and communities to use <u>natural and physical resources</u> ~~the environment~~ in a way that supports the well-being of present generations without compromising the well- being of future generations.

2. To achieve the purpose of the Act,—

(a) use of the environment must comply with environmental limits; and

(b) outcomes for the protection and enhancement of natural heritage must be provided for as a first priority; and

(c) other outcomes must be provided for as a second priority; and

provided (a)-(c) are achieved:

(d) any adverse effects on the environment of its use must be avoided, remedied, or mitigated.

CLAUSE 3 - INTERPRETATION

11. We understand that cl. 3 only includes definitions of terms used in the Exposure Draft and that further definitions will be added in the Bill. We comment first on two terms used in the draft bill, but which are not defined: 'effect' and 'infrastructure'.

Effect

12. The RMA meaning of "effect" will remain appropriate and should be retained under the NBA, because:

    a. There is an intent that plans will generally control the same activities and effects that local authorities manage and control in carrying out their functions under the RMA.

    b. The existing case law on the meaning of effect, and how adverse effects are to be avoided, remedied or mitigated.

    c. When interpreting and applying a "precautionary approach", consideration of temporal or permanent effects, any past, present, or future effect, any cumulative and potential effects are all appropriate and necessary.

Infrastructure

13. The definition of "infrastructure" under the RMA is very broad, and other than for facilities for the generation of electricity, includes infrastructure that is solely for personal use or infrastructure that economically benefits a certain group of people. It is not limited to infrastructure that is for direct public benefit at a large scale.

14. Given that the outcome for infrastructure (cl.8(o)) is aimed at activities which could have significant adverse effects on the environment, there should be greater clarity in the definition of infrastructure. It should be limited to specified resources of the built environment that directly provide for public benefit at a regional scale, and exclude infrastructure that is not for the direct benefit of the public. "Infrastructure services" should follow.

Ecological integrity

15. The definition of ecological integrity plays a crucial role in both the setting of limits under cl.7 and the outcomes set out in cl.8. As such, it is critical that it accurately captures what is sought to be protected, as well as incorporating a clear standard for setting limits.

16. The draft definition needs to be linked much more strongly to maintaining *indigenous* biodiversity. The word 'indigenous' only occurs in clause (a) of the draft definition of ecological integrity, and there it prefaces only 'species' (just one component of biodiversity). The word in clause (a) of the definition also makes the only link in the draft between outcome 8(b) and maintenance of indigenous biodiversity. The intent of outcome 8(b) – whether or not the maintenance of indigenous biodiversity is intended – is therefore tenuous when it needs to be very clear.

17. The draft definition is site-focussed, merely describing aspects of the condition of a particular site. We understand it comes from the draft NPS-IB, and in that context it is

focussed only on particular significant natural areas. It therefore (understandably) ignores the wider scale and the fact that maintaining ecological integrity requires ensuring maintenance of ecosystems across New Zealand. This will fail to protect indigenous biodiversity because maintaining indigenous biodiversity entails protecting variety *across* sites, environments, and ecosystems as well as at particular sites or in particular ecosystems. A definition must enable ecological integrity to be considered at all scales relevant to the outcome.

18. The draft definition also doesn't provide any assurance that particular species within the ecosystem or ecosystems would be required to be protected – under the current definition, a site could still have ecological integrity while a threatened species is eradicated from it.

19. It is also difficult to see how the draft definition could be used to develop a clear 'bar' or standard for the purpose of setting limits, and ensuring outcomes are met.

20. We note that the term is already defined in the Environmental Reporting Act 2015 (ERA), as:

> the full potential of indigenous biotic and abiotic features and natural processes, functioning in sustainable communities, habitats, and landscapes.

21. Although the ERA definition appropriately captures the full diversity of biotic and abiotic features and natural processes, and the range of scales required in a definition of ecological integrity, it lacks the detail that will be needed to set limits. The ERA definition also doesn't refer specifically to indigenous biodiversity, which we think is necessary if this term is to describe one of the only two outcomes that relate to the maintenance of indigenous biodiversity, and also to capture what limits should be aimed at.

22. To address all of the issues discussed, the definition in the NBA should be replaced with the following:

> **Ecological integrity** means the ability of ecological systems to support and maintain the full range of indigenous biological diversity, both within a particular ecosystem and across New Zealand's ecosystems. This requires that the following are supported and maintained:
>
> a. representation: the occurrence and extent of ecosystems and indigenous species and their habitats across the full range of environments
>
> b. composition: the full range, natural diversity and abundance of indigenous species, habitats of indigenous species, and communities within an ecosystem and across ecosystems, allowing for natural changes such as succession;
>
> c. structure: the biotic and abiotic features, including extent, of an ecosystem and across ecosystems;

d. functions: the ecological and physical functions and processes that sustain ecosystems, including connectivity; and

e. resilience to the adverse impacts of natural or human disturbances.

23. A new definition of indigenous biological diversity/biodiversity is also needed. See below.

Ecosystem

24. The exposure draft provides that ecosystem 'means a system of organisms interacting with their physical environment and with each other.' In our view the definition could be more precise, and also should reflect that ecosystems do not fit neatly into a particular site/place. As such we propose:

> **ecological system** means a system of biotic and abiotic components at any scale in which organisms interact with the physical environment and with each other. **Ecosystem** has the same meaning.

Environment

25. This term is incredibly broad. The RMA also defines 'environment' very broadly, but the specific aspects in sections 6 and 7 provide a more narrow focus for achieving the purpose in terms of the environment. Given the long list of outcomes in cl.8, which all have equal weighting, that same 'focussing down' is lacking in the NBA. Rather than changing the definition of environment, we propose to have a clear hierarchy in the outcomes (discussed below).

26. We also note that the definition no longer includes aesthetic considerations, which has positive and negative implications. On the plus side, this may remove some possibly unnecessary restrictions on urban development.

27. In the negative, the loss of these considerations from "environment" has implications for achieving the purpose of the Act. In particular, it is people's appreciation of the natural environmental, which leads to protection, restoration and enhancement (noting our concerns with this term are considered below). Aesthetics are also a key component to liveable cities and urban design principles.

28. Both amenity values (no longer in Part 2) and aesthetic conditions are specific considerations in current national direction.[1] It is unclear how that national direction would be affected if these concepts are removed from this definition.

[1] Including: the NPS for Urban Development 2020 (objective 4, policy 6); the NPS for Freshwater Management 2020 (NPSFM) considers aesthetic features as part of the natural qualities of natural form and character, and aesthetic value in relation to Drinking water supply (Appendix 1B, NPSFM 2020); the NES for Plantation Forestry makes special provision for restrictions on plantation forestry in relation to visual amenity landscapes; and the NZCPS includes amenity values as part of the coastal environment (policy 1), and experiential attributes as a matter in recognising natural character and aesthetic values for identifying and assessing natural features and landscapes (policies 13 and 15).

29. All existing landscape assessments under the RMA may be uncertain, given that aesthetic considerations have formed part of them. Future assessments may also not be able to consider aesthetic values when considering adverse effects on natural character or natural landscapes and features.

30. It is unclear whether water conservation orders may also be affected, in that they can protect 'wild and scenic' characteristics – of which aesthetic values form part.

31. The changed definition of environment will need to be considered in relation to existing national direction, landscape assessments, water conservation orders etc as raised above. Forest & Bird considers that amenity values and aesthetic considerations remain important for both the natural and built environments. **Consideration will need to be given to whether 'aesthetic values' needs to be reinserted into the definition of 'environment' to ensure existing policy, assessments etc remain consistent with the Act.** Clause 8 could then be used to emphasise or de-emphasise aspects of those values as appropriate.

32. We note the wording proposed by the Environmental Defence Society in this regard as a possible way forward:

    a. for a new outcome in cl.8: 'the protection of rural and amenity values';

    b. And the additional words to outcome 'well-designed' the outcome (k) regarding urban areas.

Indigenous biological diversity – new definition

33. A new definition of this is needed. This is to assist in applying the 'ecological integrity' definition in the context of cl. 7 and 8. We propose:

> **indigenous biological diversity** means the variability among living organisms indigenous to New Zealand, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems. **Indigenous biodiversity** has the same meaning.

Mitigate

34. The inclusion of offsetting and compensation in this definition is a significant concern.

35. Firstly, offsetting and compensation are very different approaches to avoiding, remedying and mitigating. The phrase "avoid, remedy or mitigate" relates directly to adverse effects of activities on the environment. For example, to mitigate the sediment run-off from a development, filters may be placed over drain entrances or above waterbodies to capture sediment. An offset or compensation is different – it does not require the adverse effect to be directly managed, but is aimed at creating a positive effect on another resource or at a different place.

36. While that sounds positive, in practice it is a much less certain approach. Ecosystems are complex and have often developed over many hundreds of years. Seeking to replicate them (like for like) cannot be considered to necessarily capture all values which will be lost as a result of adverse effects. Following best offsetting/compensation practice is a 'best endeavours' approach, and it is far from fool proof. As such, there should be a clear

distinction between actions that address adverse effects of an activity and those that offset or compensate.

37. There should also be some direction as to how offsetting and compensation are defined and used. They should only be available to deal with residual adverse effects after adverse effects are first avoided, then remedied, then mitigated, and should follow best practice. Importantly, because of their uncertainty, they should not be used to comply with environmental limits. There is a risk that offsetting and compensation may be used to attempt to comply with limits, if 'mitigate' is defined to contain those concepts.

38. We also are very concerned that the definition allows a consent applicant to propose offsetting or compensation. If offsetting/compensation are to be available as management approaches, that should be clearly set out in the NPF. Plans will then need to give effect to that direction – so that plans can only provide for offsetting and compensation to the extent and in the manner prescribed in the NPF. This will allow careful control over how offsetting and compensation are used, and importantly, it could specify the types of activities or effects these approaches may be suitable for. Very clear guidance of when and how these approaches will be appropriate is required. It should not be left to a consent applicant to simply propose - a consent applicant will often prefer to compensate in particular for adverse effects, because that is an easier standard to meet than true mitigation.

39. Finally, including the concepts of offsetting and compensation within the definition of mitigation is contrary to existing High Court case law. In *Royal Forest and Bird v Buller Regional Council* [2013] NZHC 1346 (at paragraphs 29-78) the Court confirmed (at 72) that these concepts are distinct:

> "offsets do not directly mitigate any adverse effects of the activities coming with the resource consents on the environment. … The usual meaning of "mitigate" is to alleviate, or to abate, or to moderate the severity of something. Offsets do not do that."

40. We therefore propose that **the definition of mitigate is deleted**, and new clauses dealing with offsetting and compensation is inserted, as well as definitions of those terms.

41. Our intention is not to undermine the draft NPSIB approach to dealing with adverse effects management; here we are trying to capture the high level idea that offsetting can only be applied after first avoiding, remedying and mitigating adverse effects, and compensation can only be considered as a final step after offsetting.:

> **16A Biodiversity offsetting and compensation**
>
> Provisions provided for in cl.13(1) must only allow for the consideration of biodiversity offsetting and/or compensation where:
>
> (a) offsetting is only considered for residual adverse effects that cannot be avoided, remedied or mitigated, and where the principles of Schedule X are met; and

(b) compensation is only considered for residual adverse effects that cannot be avoided, remedied, mitigated, or offset, and where the principles of Schedule X are met; and

(c) a precautionary approach is applied.

42. Biodiversity offset and biodiversity compensation should both be defined to require that **no net loss** is achieved. We propose the following, based on the draft NPSIB. We note that the definition for compensation does not refer to a set of principles (as does the offset definition), but a set of principles could be developed and included in a schedule to the Act. We have assumed this will be the case in the above new clauses.

Biodiversity compensation means positive measurable outcomes for indigenous biodiversity resulting from actions designed to counter any residual adverse effects of a subdivision, use or development on indigenous biodiversity values after application of appropriate avoidance, remediation and mitigation measures, where the overall result is no net loss of impacted ecological values, including measures to continue or extend existing biodiversity-related actions.

OR

means an action to achieve a positive measurable outcome for biodiversity that adheres to the principles in [Schedule X].

Biodiversity offset means an action to achieve a positive measurable outcome for biodiversity that adheres to the principles in [Appendix 4 draft NPSIB].

Natural environment

43. Our key concern with this definition is the way it interacts with the provisions in Part 2. Part 2 includes provisions that are broadly aimed at protecting the natural environment. The issue is that the very broad concept of 'natural environment' as defined doesn't actually capture what is intended to be protected. This is somewhat exacerbated by referring to those elements as 'resources' – a term commonly used for something that is to be used, rather than protected.
44. The definition includes both native and non-native elements: "...all forms of plants, animals, and other living organisms (whether native to New Zealand or introduced) and their habitats...". This is appropriate, because non-native elements do form part of New Zealand's natural environment. It also includes minerals and energy.
45. However, the way that this plays out in the clause of Part 2 is concerning. Cl.5 aims to "protect and enhance the natural environment". That means that, in the purpose at least, the protection of e.g. possums is given the same weighting as the protection of

native birds. It is unclear how the protection and enhancement of minerals and energy would be interpreted.

46. Further, cl.5 currently enables Te Oranga o te Taiao to be upheld. Te Oranga o te Taiao specifically refers to the natural environment. We suggest that the same issues may arise with this definition – it is a further direction to protect (or in this case, 'uphold') aspects of the natural environment that may not be what is intended by the concept of Te Oranga o te Taiao.

47. Cl. 7 limits are for the purpose of "protecting the ecological integrity of the natural environment" (7(1)(a)) and will relate to the "biophysical state of the natural environment" (7(2)(a)). As noted above, the definition of ecological integrity needs a refocus, so that it is squarely aimed at maintaining indigenous biodiversity. Without that refocus, currently there is a risk that limits may be set that would benefit non-native species to the detriment of indigenous biodiversity. Again, it is unclear how resources such as minerals and energy would factor into limit setting.

48. The outcomes in cl.8 do not refer to the natural environment, other than in respect of the protection of the mana and mauri of the natural environment (s(8)(g)). However, the outcomes are "to assist in achieving the purpose of the Act", and will therefore be interpreted in light of that cl. 5 purpose. It is not clear how the current direction in cl.5 to protect *all* aspects of the natural environment, will affect the interpretation of those outcomes.

49. Under the RMA the definition of environment is also very inclusive. However, in RMA Part 2 there is more specificity about what is sought to be protected: s5(2)(b) talks specifically about safeguarding the life-supporting capacity of air, water, soil and ecosystems, and treats 'resources' differently (s5(2)(a)).

50. We suggest a similar approach would improve matters here: that is, to separate out the various components of the natural environment, and then be more specific in Part 2 about what is actually sought to be protected.

51. We provide a suggested division here:

> **natural environment** means—
>
> a. **natural heritage:** the natural landscapes and indigenous biological diversity of New Zealand, including but not limited to landforms, ecosystems and their constituent parts, communities, vegetation, species, habitats of indigenous flora and fauna, and the natural physical and ecological processes that sustain these
>
> b. **natural resources:** components of the land, water, air, soil, minerals, energy, and natural heritage of New Zealand that are used by people
>
> c. **introduced biota:** living organisms that have been deliberately or accidentally introduced to New Zealand at or since human settlement
>
> d. other **resources** introduced to New Zealand including **introduced biota:** all abiotic and biotic components of the environment that are used by people, including introduced biota.

Precautionary approach

52. Forest & Bird strongly supports the inclusion of the precautionary approach. However, there are a number of amendments that should be made to the definition, and cl.25, in order for it to be effective and fit for purpose.

53. The definition should be focussed on preventing adverse effects on the natural environment (or possibly, natural heritage), rather than the environment as a whole.

54. Secondly, 'serious or irreversible harm' it is too low a bar to use. We would hope that New Zealand's approach to resource management is more ambitious than that. We note that the precautionary approach concept is already used in the NZ Coastal Policy Statement. Policy 3 provides:

    > 1) Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.

    'Potentially significantly adverse effects' is a more appropriate and commonly understood approach than 'serious or irreversible harm'. This will be more appropriate for general plan making. For limit setting, the definition needs further refinement. A benefit of the NZCPS formulation is that it also clearly captures the concept that the effects of an activity may be uncertain, unknown or little understood.

55. The test of 'serious or irreversible harm' is definitely aimed at the wrong level for the purpose of setting limits. The precautionary approach will effectively form the 'backstop' for limit- setting, and needs to be set higher than this very low bar. Limit setting should be at a level that ensures healthy functioning ecosystems. That is what is apparently intended by cl.7 (by protecting ecological integrity), however, applying this definition of the precautionary approach sets a much lower standard. We see a risk that the conflict between those two concepts will weaken the intended purpose of limits. It is also a rather counter-intuitive definition to apply to limit setting. What would the 'action' be that would need to be taken? As such, the definition should be amended to deal specifically with its use in limit-setting.

56. We therefore suggest the following amendments:

    > **precautionary approach** is an approach that, in order to protect the natural environment if there are threats of potentially significant adverse effects ~~serious or irreversible harm to~~ on the~~a~~t environment (including where the effects of an activity are uncertain, unknown or little understood), favours taking action to prevent those adverse effects rather than postponing action on the ground that there is a lack of full scientific certainty. In the context of environmental limits, a precautionary approach includes establishing buffers to reflect uncertainty in information or understanding, and taking action to prevent limits being infringed.

57. The precautionary approach (appropriately redefined) also needs to unequivocally apply to limit setting at a regional level. It is not clear whether the requirements of cl.24 (Considerations relevant to planning committee decisions) would also apply to the

decisions the committee must make when setting limits under cl.25. To avoid litigation on this point, specific reference should be made in cl.25 to the precautionary approach:

Cl. 25 Power to set environmental limits for region

…

(2) the planning committee must-

(a) Decide on the limit:

(i) in accordance with the prescribed process; and

(ii) applying the precautionary approach; and

(b) set the limit by including it in the region's plan.

CLIMATE CHANGE

58. The interaction between the NBA and climate legislation is extremely unclear and limited as it stands. The new framework must make sure that climate change (mitigation and adaptation) considerations are properly assessed.

59. We recognise that other legislation deals directly with greenhouse gas emissions at a national level. However, currently there is little provision in the NBA for ensuring that natural resource use decisions properly consider how those activities will a) contribute to climate change, and b) will adversely be impacted by climate change effects.

60. For example, as it stands we don't see how the NBA would prevent further developments of destructive coal mines for their climate impact alone. There needs to be explicit provision to consider the direct and indirect greenhouse gas emissions a project may create or enable.

61. When setting environmental limits, these need to be consistent with emission reduction plans and environmental outcomes must help reach the emission reduction plans. In addition, emission reduction plans should be set with regard to how they will impact on other environmental limits.

62. For example, when setting limits on farming activities to improve water quality (such as say stocking rates), consideration should be given to how they are also consistent with emission reduction plans. This will avoid those undertaking activities having to navigate multiple constraints from different legislation.

63. We are pleased to see that reducing greenhouse gas emissions and increasing removals is an environmental outcome. This needs to be prioritised above other outcomes in the list.

64. We are also pleased that the planning framework explicitly includes direction for greenhouse gas emissions (cl.13(1)(e)).

65. We are concerned that the Climate Change Adaptation Act is not set to be introduced until later (perhaps the end of this term we understand). This will create a significant issue when developing the regional spatial strategies without the direction from the CCA. We foresee a risk that the first generation of these plans is developed without proper consideration of how to address the likes of managed retreat and could set a direction the enables development in inappropriate areas.

66. The outcome of increasing greenhouse gas emissions and considering risks of climate change is positive and obviously needed to meet New Zealand's climate change goals. However, we caution that mitigation and adaptation must prevent further damage to [our natural heritage] and should lead to restoration.

67. For example, current policy settings are enabling large conversions to exotic forestry. That doesn't help restore endangered indigenous habitats and creates future risks from fire and degraded soils.

68. A strategic planning approach will be needed to ensure that nature is not harmed by the economic transformation required to decarbonise the economy. The methods used to cut emissions must protect our native plants and animals. This means no new big hydro,

stopping mining on conservation land, and ensuring new wind farms, biofuel production and transport infrastructure don't harm nature.

69. New Zealand should place more emphasis on wetlands, blue carbon, shrublands, mangroves, and pest control. Pest control is critical to protect carbon stocks and deliver the best long term carbon storage in native forests and shrublands. Once fossil fuels are eliminated and agricultural emissions reduced, we will still need to remove carbon dioxide from the air to stabilise the climate. Nature can help us do this, but only if we protect it.

CLAUSE 7 – ENVIRONMENTAL LIMITS

70. While there are some areas where we consider improvements could be made, Forest & Bird is generally supportive of cl.7.

Support no reference to purpose

71. We support the absence of any reference back to the purpose of the Act when setting limits. The means that limits will be consistent with the usual meaning of the word, that is, a measure to protect the natural environment.

72. There would be real issues in referring back to the purpose, particularly where it did not contain any prioritisation. The effect of this is that limits would be some form of compromise between protecting the natural environment and development. This would undermine one of the fundamental reasons for RMA reform.

Targets

73. Given the current degraded state of many aspects of the natural environment, protection of what current ecological integrity exists is no longer enough to achieve TOOTT. The current definition of ecological integrity does not explicitly require improvement of degraded but still functioning ecosystems. As such, protection of that state alone is not an adequate standard for environmental limits.

74. Where an aspect of the natural environment has been degraded, limits/targets must be set at a level that will bring the resource back up to an appropriate level. This should be made an explicit requirement in cl. 7.

75. Targets were suggested by the Review Panel for ensuring that progress was made towards achieving outcomes. The NBA makes the use of targets an optional part of the NPF (cl.11(3)(b)) but does not specify what these may be used for.

76. In our view, cl. 7 should include a requirement to use timebound targets to improve environmental indicators where an aspect of the natural environment is below the relevant limit. Without that requirement, there is no clear onus on local authority to proactively ensure that improvement is made.

Offsetting and compensation

77. It is critical that limits have integrity. A possible way of undermining is to allow breaches of limits where offsetting or compensation has been provided. It would hardly be a limit if it a breach was justified by offsetting or compensation.

78. We do not think this is anticipated by the drafters. However, this is not clear because cl.5(2)(b) provides "outcomes for the benefit of the environment must be promoted". This would allow for an argument that promoting an outcome beneficial to the environment by offsetting or compensation would justify a breach of limits. We think an addition should be made to the cl.7(6) breaches of limits cannot be justified by offsetting or compensation.

Amendments sought

7 Environmental limits

(1) The purpose of environmental limits is to protect either or both of the following:

(a) the ecological integrity of the natural environment:

(b) human health.

(2) Environmental limits must be prescribed—

(a) in the national planning framework (see section 12); or

(b) in plans, as prescribed in the national planning framework (see section 25).

(2A) Where the ecological integrity of an aspect of the natural environment is degraded, in addition to setting a limit in accordance with Clause 7(1), targets and timeframes must also be set to ensure the limit is met within a reasonable timeframe.

(2A) Where the state of the environment does not achieve the purpose of the environmental limits, in addition to setting a limit in accordance with Clause 7(1), targets and timeframes must also be set to ensure that the limit is met within the soonest possible timeframe, applying a precautionary approach.

(2B) Environmental limits must be set consistent with emission reduction plans prescribed under the Climate Change Response Act.

(3) Environmental limits may be formulated as—

(a) the minimum biophysical state of the natural environment or of a specified part of that environment:

(b) the maximum amount of harm or stress that may be permitted on the natural environment or on a specified part of that environment.

(c) adverse effects or activities that are to be avoided.

(4) …

(g) the reduction of greenhouse gases in line with the emission reduction plans under the Climate Change Response Act , in a manner that is consistent with other limits prescribed in section 7;

(5) [no change]

(6) All persons using, protecting, or enhancing the environment must comply with environmental limits. Adverse effects which would cause a limit to not be complied with must be avoided, and cannot be remedied, mitigated, offset or compensated for.

(7) [no change]

CLAUSE 8 - OUTCOMES

'To assist in achieving the purpose of the Act'

79. In our view, this phrase suggests that something over and above promoting the outcomes in cl.8 is required. Presumably this would include adherence to environmental limits, but what else may be required is not clear. In any case, we think it should be made very clear that the direction in relation to the outcomes should be subject to meeting limits. While that appears to be the intention of the NBA, it is not impossible to imagine litigation on this point.

80. The method for 'promoting' is via the NPF and plans. There is some uncertainty created by the different phrases used in to describe the purpose of the NPF, 'to further the purpose of the Act' (cl.10), and the purpose of plans, also 'to further the purpose of the Act'(cl.20). (This is exacerbated by the direction in cl13, which requires the NPF to include 'provisions *directing* the outcomes' – a much more directive standard'.) We suggest thought needs to go into ensuring the various phrases used in the NBA do not cause unintentional differing meanings.

Outcomes must be 'promoted'

81. In theory, moving towards an outcomes based approach, as opposed to an effects approach, could be positive. However, we think it is seriously undermined by the requirement to only 'promote' these outcomes.

82. The term 'promote' is vague, and not directive. It could mean almost anything, including almost nothing. This is totally inappropriate for a provision that should be setting the direction of what the resource management system is to achieve. The standard of 'promoting' something is a very low bar, and gives absolutely no assurance that the outcomes will be achieved – or even that a serious effort will be required towards their achievement.

83. In RMA plans, 'promote' has generally been used in relation to matters where a regulatory approach is not required or is not appropriate. It has been used as a much weaker approach than for rules, and in our experience, is often used where a matter is to be paid lip service only. If only a non-regulatory approach is desired for an outcome, the word promote would sit better within the specific outcome rather that as the overarching direction for the NPF and Plans.

84. This wording does not require the NPF/plans to include any provision requiring action to address the outcomes. All that is required to meet cl.8 is some kind of method for promoting the outcome. This could potentially be as weak as a non-binding method (i.e. not a rule) stating that where possible, significant biodiversity should be protected. While that arguably 'promotes' the outcome, it does not ensure it will actually be achieved.

85. We suggest instead that the term 'provide for' is used. It has an already understood meaning (it is used in s6 RMA), and is far more directive. In other words, it actually

requires that the NPF and plans to include provisions that make it far more likely that these outcomes are achieved.

Prioritisation needed

86. Part 2 of the RMA has been debated over the years, and tinkered with, but in essence there has been resistance to making wholesale changes to that part of the RMA. That's understandable – for a complex piece of legislation that governs so many aspects of New Zealander's lives, it would have been uncertain at best to have regularly changed the RMA's 'engine room.' That engine room impacts on all other parts of our resource management system.

87. It also includes an inbuilt hierarchy, with the matters of national importance in s6 sitting above the matters in s7. That hierarchy sets out what the relative priorities are in our system.

88. The relative certainty that has resulted from a largely constant Part 2, and its inbuilt hierarchy, will be completely lost with the approach taken in the NBA to outcomes.

89. Cl. 8 includes a long list of undifferentiated outcomes, some of which will very obviously conflict. No guidance is given in the NBA as to how to navigate these conflicts, nor which to give priority in general. Instead, the priority to be given to the various outcomes is going to come later, in the NPF and to a lesser extent, plans. That means that each government will be able to change the priorities, and the extent to which each of the outcomes is promoted. Plans will also have a role in determining the relative priorities (cl.22(g)). We think that approach is totally inappropriate. The NBA should say what it means, and not leave absolutely essential decisions to some alter date, able to be changed with each new government. That would be akin to having reshuffled ss6 and 7 of the RMA every few years. The uncertainty that this will create cannot be overstated.

90. More worryingly, if the protection of our natural environment is not firmly prioritised in the primary legislation, it is almost certain to lose out. Protecting our natural heritage is not always popular, and often involves clashes with perceived or actual property rights. Environmental protection is a hard sell compared to vote-winning new infrastructure such as highways. The government of the day will face enormous pressure to prioritise the outcomes so that they enable development. While development is often necessary, the NBA must ensure that short term (i.e. the term of government) thinking cannot determine whether our natural heritage survives in the longer term. Our society and economy depend on a healthy, functioning environment. For all of these reasons, we need clear and unequivocal direction in the legislation itself, setting out that the environment must come first. We cannot have development that is sustainable without that protection.

91. Cl.8 therefore needs to set out clear priorities, and not leave those decisions to the NPF and plans. It must first ensure that the natural environment on which we all depend is protected, and then provide for development within that framework.

The use of 'or' in outcomes (a)-(d)

92. The first four outcomes all use the formulation 'protected, restored *or* improved'. We support the intention that protection is often not enough, given the degraded state of much of our natural environment. We therefore support the outcomes referring to more than mere protection.

93. However, the use of 'or' undermines these outcomes significantly. That is because the three actions of 'protecting, restoring, enhancing' will be seen as equally valid alternatives. In terms of ensuring the environment is appropriately safeguarded, they are not equal.

94. While it may seem that 'enhancing' or 'restoring' contain within them the concept of 'protecting' – so that if you're restoring something, you must also have first protected it – that is not the case. In practice allowing for these approaches as alternatives will mean that protection will not have to occur first – instead, a significant area could first be destroyed, and then later, attempts could be made to restore the area. Restoration (and enhancement, which as described above, often refers to biodiversity offsetting or compensation) provide much less certain results for environmental protection. It is *always* better to protect a natural area, than destroy it and try and recreate it.

95. The concern applies to all 4 outcomes. The outcomes should be aimed at ensuring that our natural environment is protected, restored *and* enhanced.

96. We note that the 'or' construction is not used in other outcomes. For example, outcome (f) uses 'restored and protected', (g) is 'protected and restored', and (h) 'identified, protected and sustained'. There is no reason why a lesser standard should be applied to the outcomes aimed at the natural environment.

Outcome 8(a) (*current wording:* *the quality of air, freshwater, coastal waters, estuaries, and soils is protected, restored, or improved:)*

97. We broadly support this outcome, but think that it may need to be more clear as to what it's trying to achieve. That is because the 'quality' of something is highly subjective, and could include conflicting considerations.

98. For example, in protecting the quality of an estuary, people who prefer open beaches to mangroves, that would mean that a plan should enable the removal of mangroves. However, for those primarily interested in protecting indigenous species the exact opposite would be true – a plan should include provisions ensuring that mangroves are preserved.

99. Usually, legislation is interpreted in light of its purpose. But having recourse to cl.5 wouldn't help – as that is currently drafted, with its overall balancing approach, that too could support both approaches.

100. Leaving the mangroves example aside, what does the quality of those matters mean? We think more thought needs to be given to what is actually sought for this outcome.

101. This could be improved by including the intended state which is to be protected, restored and improved to such as close as possible to 'natural state':

8(a) the quality of air, freshwater, coastal waters, the marine environment, estuaries, and soils is protected, restored, and improved as close as possible to natural state

Outcome 8(b) (*current wording:* ecological integrity is protected, restored, or improved:)

102. We support this outcome, with the amendment from 'or' to 'and' discussed above.

103. We are concerned that there is no outcome to maintain indigenous biodiversity. 'Preserving ecological integrity' appears to be the proxy for that obvious goal. However, we caution that this will only be sufficient if the definition of ecological integrity is amended (as discussed above) to squarely focus on the maintenance of indigenous biodiversity.

104. If that definition is not improved, a new outcome aimed at the maintenance of indigenous biodiversity will be required. Otherwise there will be a lack of a clear direction to maintain (or in fact, do anything about) biodiversity which doesn't meet the 'significance' threshold provided for in outcome (d). This would therefore be a retrograde step, as the RMA currently includes an obligation on councils to maintain indigenous biodiversity (s30(1)(ga) and s31(b)(iii)).

105. We note that this outcome will overlap to an extent with the requirement of limits to protect ecological integrity. We think it should be made clear that the outcome can't be met by simply meeting the limits. Outcomes should be more ambitious than limits – something more than not going below a certain point should be required. This makes it even more important to require that ecological integrity is protected, restored *and* enhanced.

Outcome 8(c) (*current wording:* outstanding natural features and landscapes are protected, restored, or improved*)*

106. We support this outcome. Protecting natural landscapes and features is an essential part of protecting our natural environment as a whole.

107. We note again that this outcome should use 'and' rather than 'or'.

Outcome 8(d) ***(current wording:*** areas of significant indigenous vegetation and significant habitats of indigenous fauna are protected, restored, or improved*:)*

108. We support this outcome. It's RMA counterpart (s6(c)) has been the key provision for trying to achieve protection for our important natural places. It is essential however, that 'or' is replaced with 'and', or the outcome will be seriously undermined.

Outcome 8(e) (*current wording:* in respect of the coast, lakes, rivers, wetlands, and their margins,—

(i) public access to and along them is protected or enhanced; and

(ii) their natural character is preserved:)

109. We support the retention of the direction from s6(a) to preserve the natural character of the coast, waterbodies and wetlands.

110. As will be seen below, we have proposed a prioritisation of the outcomes in cl.8. In that prioritisation, we have focussed on the outcomes most clearly focussed on the protection of the natural environment. As such, we have suggested that 8(e) is split into two outcomes: one dealing with public access, and one dealing with the preservation of natural character.

Outcome 8(n) (*current wording:* the protection and sustainable use of the marine environment:)

111. Outcome (n) is strongly opposed. Firstly, it contains two conflicting concepts – protection and use. An internally conflicting outcome will do nothing to ensure the efficient operation of the NBA.

112. While we would not oppose a specific outcome aimed at the protection of the marine environment, it isn't strictly necessary, as all the preceding 'protection' outcomes will also apply to the marine environment. In fact, by singling out the marine environment and having a specific direction for that environment, significant questions of interpretation arise as to how those earlier outcomes should be applied.

113. In terms of encouraging the 'sustainable use' of the marine environment, this suggests encouraging this is a much lower standard than that of 'sustainable development under the RMA. It echoes the Fisheries Act, which is focused much more on 'using' fisheries resources. It is therefore a big step backwards for the marine environment.

114. It also means that the New Zealand Coastal Policy Statement, the subject of years of litigation to clarify its meaning, may no longer reflect the purpose of the Act. We think the NBA should be drafted carefully, so that valuable existing national direction is not rendered inconsistent.

115. Cl.8(n) should therefore be deleted. Instead we suggest 'marine environment' is added to Cl.8(a).

Outcome 8(o) (*current wording:* the ongoing provision of infrastructure services to support the well-being of people and communities, including by supporting—

(i) the use of land for economic, social, and cultural activities:

(ii) an increase in the generation, storage, transmission, and use of renewable energy:)

116. We note our comments above in the Interpretation section, that this outcome should be aimed only at infrastructure that is for the direct benefit of the public. Infrastructure for private gain should not be promoted in the purpose of the Act. This should either be reflected in the definition of 'infrastructure' or in this outcome.

Absence of targets

117. We note that the Randerson Report proposed targets as a method of ensuring progress towards achieving outcomes. We think there is still merit in considering this approach, in a more directive way than is currently provided for in cl.11(3)(b). Having

mandatory targets reduced the risk of the outcomes being too high level to be meaningful.

Amendments sought

8 Environmental outcomes

To assist in achieving the purpose of the Act, the national planning framework and all plans must, subject to environmental limits:

(1) provide for the following outcomes as a first priority:

(a) the quality of air, freshwater, coastal waters, the marine environment, estuaries, and soils is protected, restored, and improved to as close as possible to natural state:

(b) ecological integrity is protected, restored, and improved:

(c) outstanding natural features and landscapes are protected, restored, and improved:

(d) areas of significant indigenous vegetation and significant habitats of indigenous fauna are protected, restored and enhanced:

(e) the natural character of the coast, lakes, rivers, wetlands, and their margins, is preserved:

(f) the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga is restored and protected:

(g) the mana and mauri of the natural environment are protected and restored:

(h) cultural heritage, including cultural landscapes, is identified, protected, and sustained through active management that is proportionate to its cultural values:

(i) protected customary rights are recognised:

(j) greenhouse gas emissions are reduced and there is an increase in the removal of those gases from the atmosphere, where this can be achieved in a way that is consistent with outcomes (1)(a)-(e) above;

(2) subject to (1), provide for the following outcomes as a second priority:

(a) public access to and along the coast, lakes, rivers, wetlands, and their margins, is protected or enhanced; and

(b) urban areas that are well-functioning and responsive to growth and other changes, including by—

(i) enabling a range of economic, social, and cultural activities; and

(ii) ensuring a resilient urban form with good transport links within and beyond the urban area:

(c) a housing supply is developed to—

(i) provide choice to consumers; and

(ii) contribute to the affordability of housing; and

(iii) meet the diverse and changing needs of people and communities; and

(iv) support Māori housing aims:

(d) in relation to rural areas, development is pursued that—

(i) enables a range of economic, social, and cultural activities; and

(ii) contributes to the development of adaptable and economically resilient communities; and

(iii) promotes the protection of highly productive land from inappropriate subdivision, use, and development:

(e) the ongoing provision of infrastructure services to support the well-beingof people and communities, including by supporting—

(i) the use of land for economic, social, and cultural activities:

(ii) an increase in the generation, storage, transmission, and use of renewable energy:

(f) in relation to natural hazards and climate change,—

(i) the significant risks of both are reduced; and

(ii) the resilience of the environment to natural hazards and the effects of climate change is improved.

PART 3 – NATIONAL PLANNING FRAMEWORK

118. It is difficult to comment on the provisions regarding the National Planning Framework (NPF) as much of the detail is not covered within the exposure draft but is left as placeholders. For example, the way in which the NPF comes into being is critical to its success. Notwithstanding this, we make the following observations.

119. The effectiveness of the NPF depends to some extent on what it is trying to achieve. There are currently a number of key reasons why we have no confidence that it will be effective.

a. It relies on the purpose of the Act and the absence of any prioritisation within the purpose creates a great deal of uncertainty about the contents of the NPF;

b. This vagueness is added to because the NPF is 'to further the purpose of the Act' by providing integrated direction on various matters. This is different to the RMA purpose for NPS's which are to "achieve the purpose of the Act";

c. There is no detail on how the NPF will be brought in to being. However, the NPF is to be a regulation, which are implemented by the government of the day. The effect of this is that the contents of the NPF will ultimately be a political decision. This means that the priorities within the NPF can change from government to government. This concern is increased by cl.13(3), which provides that the NPF must address how conflicts within the objectives should be resolved. No guidance as to how these conflicts will be resolved is provided.

d. The NPF may also include provisions on any other matter 'that accords with the purpose of the NPF', including a matter relevant to a cl.8 outcome. It is highly uncertain as to what these matters might be.

e. There is a requirement to include strategic directions/goals and it is unclear how this will work in practice.

f. There is also uncertainty in the way in which matters of national significance are determined.

120. Under the current drafting the NPF are highly uncertain, with a very wide range of possible outcomes. It is so uncertain that it could become a vehicle for the government of the day to achieve political outcomes. As a regulation is it could be changed regularly, which would be highly unsatisfactory. These concerns may be alleviated once the method of preparing the NPF is set out in detail.

Amendments sought

121. In order to address these concerns we recommend that the purpose and outcomes are amended as discussed above.

122. **There should also be amendments clarifying what a matter of national significance is, particularly in relation to the outcomes**. Alternatively, this should be deleted. We also seek the following change:

10 Purpose of national planning framework

The purpose of the national planning framework is to ~~further~~ achieve the purpose of this Act by providing integrated direction on—

~~(a) matters of national significance; or~~

(b) matters for which national consistency is desirable; or

(c) matters for which consistency is desirable in some, but not all, parts of New Zealand.

123. We will comment on the process for preparing the NPF when these provisions are available.

Cl. 12 Environmental limits

124. Forest & Bird is concerned that there is an overreliance reliance on limits in the Act. We cannot put this better than the Randerson Report:

> 81. Reliance on limits alone risks creating a 'race to the bottom' mentality where exploitation of all available resources above the limit may be seen as acceptable. It may also mean that our environmental management system is not responsive to the need for positive change to improve and enhance the environment and long-term human health and wellbeing. And it creates more risk that cumulative effects will breach bottom lines and that buffers put in place to address uncertainty will come under pressure. As such, outcomes and targets are needed to orient the management approach towards continuous environmental improvement where a healthy and flourishing environment is sought, rather than one that can merely endure human modification. Outcomes are intended to be high-level enduring goals reflecting a desired future state. Targets are time-bound steps for improving the environment and moving towards achieving outcomes.

125. Cl.11(3)(b) provides the NPF may include targets but this is not compulsory. We consider that, where an outcome is not being met, plans should be required to set and include targets. We have provided for this in cl.22 and 25 below.

126. Later in this submission we discuss the desirability of an independent limit-making body. If that suggestion is adopted, some amendments may be needed to this clause.

Cl.13 Topics that the national planning framework must include

127. As noted above, there is a drafting issue with respect to the way in which the outcomes are to be addressed by the NPF. Cl.8 provides that the outcomes are to be promoted by the NPF, which is a different standard to that of cl.13(1).

128. Cl.13(2) provides that the NPF may also include provisions on any other matter 'that accords with the purpose of the NPF', including a matter relevant to a cl.8 outcome. It is highly uncertain as to what these matters might be. Further clarification is needed on what is intended here, or it should be deleted.

129. Cl.13(3) should be deleted on the basis that the conflicts are resolved with reference to the purpose of the Act, rather than the NPF.

Amendments sought

13 Topics that national planning framework must include

(1) The national planning framework must set out provisions providing for ~~directing~~ the outcomes described in—

….

~~(2) The national planning framework may also include provisions on any other matter that accords with the purpose of the national planning framework, including a matter relevant to an environmental outcome provided for in section 8.~~

~~(3) In addition, the national planning framework must include provisions to help resolve conflicts relating to the environment, including conflicts between or among any of the environmental outcomes described in section 8.~~

Cl.14 Strategic directions to be included

130. Forest & Bird is concerned about the inclusion of strategic goals. This adds a further layer of complexity in the planning process. One concern is the potential to bring considerations into limit setting that are not relevant to the purpose of limits.

131. **We seek the deletion of cl.14.**

Cl. 16 application of precautionary approach

132. Forest & Bird supports the inclusion of precautionary approach in cl.16.

Cl. 17 [placeholders]

We note the role of ministers has yet to be determined. However, we support retaining the role of the Minister of Conservation for coastal policy and planning matters as is currently the case under RMA s28.

Cl. 18 Implementation principles

133. It is difficult to comment on this provision given the indicative nature of the drafting. However, we make the following comments:

a. The implementation principles seem to have a broader application than just the NPF;

b. The reference to public participation is supported but there is a great degree of uncertainty about the meaning of the extent to which public participation is "important for good governance". This is likely to be the source of much litigation.

c. Forest & Bird supports the reference to cumulative effects provisions, but considers that the failure to address cumulative effects is one of the main failures of the RMA. We consider that this needs to be addressed more fully than just in relation to the NPF. We note that planning committees must have regard to cumulative effects, but suggest that a stronger provision is needed, probably as part of Part 2.

Amendments sought

134. We consider that this clause should be relocated to an earlier part of the Act to ensure that it has greater application than just the NPF. We strongly support the inclusion of the precautionary approach.

135. We also consider that the reference to 'important for good governance' should be deleted, and public participation should be proportionate to the significance of the issues.

> (c) ensure appropriate public participation in processes undertaken under this Act, to the extent that is ~~important to good governance and~~ proportionate to the significance of the matters at issue:

PART 4 – NATURAL AND BUILT ENVIRONMENT PLANS

Cl.20 Purpose of plans

136. The stated purpose of a Plan is 'to further the purpose of the Act' by providing a framework for 'integrated management' of the environment. This is distinctly different from the RMA, which provides that the purpose of a regional policy statement plan, regional plan and district plan are all 'to achieve the purpose if the Act'. Forest & Bird's concerns with the phrase 'to further the purpose of the Act', have been set out in relation to the NPF purpose, above. The same concerns apply in relation to the purpose of Plans with additional concerns as to the relationship between Plans, the NPF and the purpose of the Act. Forest & Bird has also identified issues with using the terms 'framework' and 'environment' in the purpose statement for Plans.

'to further the purpose of the Act'

137. The term 'furthering the purpose of the Act' is not directive, and raises questions as to what the role of plans will be in achieving the purpose of the Act. Neither the NPF nor plans are required to achieve the purpose of the Act, merely 'further it'. We think the term is unclear and raises considerable litigation risk.

138. There is a further inconsistency with the much more directive requirement in cl.22(1)(b) to 'give effect to' the NPF.

139. This is likely to lead to inconsistency in how plans address matters captured by the NPF compared to matters outside of the NPF. This could mean that Plans focus on direction from the NPF to the exclusion of, or at least delay in, addressing other matters that have not yet been addressed in the NPF. This will be particularly problematic where direction is anticipated via the NPF but may take some time to be gazetted. An example of the is the recent reluctance of councils to continue processes for the identification of SNA's in anticipation of the NPSIB.

140. We suggest a clearer purpose for plans (and the NPF) would be 'to achieve the purpose of the Act'.

'framework for integrated management'

141. The concept of requiring a framework may suggest that there will be another level of implementation below a Plan, which would then apply the framework.

142. The requirement that a plan be a framework for the region is also something of a duplication with the NPF, which is a 'framework', part of the purpose of which is to provide integrated direction at a national level of for 'some…parts of New Zealand' (cl.10(c)). We therefore suggest that reference to plans as frameworks is deleted.

143. We do support reference to 'integrated management' in the purpose of plans, as this incorporates an important aspect of councils' RMA functions. Integrated management should be provided for by the provisions themselves, not via the apparently intermediate step of a framework.

144. The term 'integrated management' should be defined, to ensure clear and consistent interpretation of its meaning is necessary to avoid future litigation and

inconsistency between Plans. This term is not defined under the RMA or the National Planning Standards, but it has been considered within many regional policy statements in a generally consistent way. A recent example is the proposed RPS for Otago which provides helpful consideration of matters where integrated management is particularly important in the planning context.[2]

'of the environment'

145. Under the RMA, the obligation on regional and district councils to provide for integrated management is in relation to 'natural and physical resources' (ss30(1)(a) and 31(a)). Under proposed cl. 21, integrated management 'of the environment' is required. As noted above, 'environment' is defined very broadly in the NBA, and encompasses much more than physical and natural resources. There may be merit in being more specific in cl.21 as to what integrated management should extend to. In our view, it may be beyond the realms of a resource management statute to require plans to manage e.g. the social, economic and cultural conditions of the built environment.

146. However, it is clear that there is a role for the those carrying out functions and responsibilities under the NBA to address the impacts of using resources on the wider aspects in the definition of 'environment'. For this reason it is not a simple matter of replacing the term 'environment' in this clause with 'natural & physical resources'. That would fail to capture the consideration of effects of resource use on wider aspects of the environment.

147. Forest & Bird proposes that cl.5 needs to clarify the relationship between enabling use of natural and physical resources with responsibilities for managing adverse effects on the environment more broadly. Once this is captured in the purpose of the NBA, then the purpose of a Plan can be amended so that integrated management of natural and physical resources, to achieve the purpose of the NBA, will (by reference to the purpose) include management of adverse effects on the environment more generally.

148. Forest & Bird's view is that cl.5(2)(c) appropriately refers to the environment, however Cl.5(1)(b) needs to be narrowed to natural and physical resources. This is reflected in the above suggested amendments to cl.5.

149. To address the above issues with cl.20 we suggest amendments below. **We also suggest that a definition of 'integrated management' should be included in the Act.**

Amendments sought

Purpose of plans

The purpose of a plan is to ~~further~~ achieve the purpose of the Act by providing ~~a framework~~ for ~~the~~ integrated management ~~of the environment~~ in the region that the plan relates to.

[2] https://www.orc.govt.nz/media/10027/proposed-otago-regional-policy-statement-june-2021.pdf IM – Integrated management, in particular IM–E1 – Explanation and IM–PR1 – Principal reasons, Proposed Otago Regional Policy Statement June 2021

Cl. 21 How plans are prepared, notified and made

150. We note the placeholder clause that plans may be made as secondary legislation. While this may improve certainty, it may make it more difficult to fix problems in plans, for example if something is missed, or if provisions are not producing the intended results. This will result in inefficiency, as inaccurate provisions remain in force for a longer period.

Cl. 22 Contents of plans

Cl.22(1)(a)

151. Forest & Bird supports this requirement as it will mean that all environmental limits for a region are incorporated in one document. However, this may create some inconsistency with the approach to regulation (e.g. an NES) which under the RMA has precluded any duplication in plans. Given the content and potential size of the NPF there will need to be clear direction on what is to be included solely in the NPF and what is to be in plans and most importantly, where cross referencing (including hyperlinks) should be used in Plans to ensure both documents are implemented as intended.

Cl.22(1)(b)

152. Forest & Bird generally supports the requirement that Plans give effect to the NPF.

153. Forest & Bird anticipates that further detail on responsibilities of councils to observe regulations, and the circumstances in which plan provisions can be more stringent than regulations will be included in the draft Bill. In our view, plans should be enabled to restrict and control activities even where that would represent more stringent approach than that of a limit set in the NPF, or more general NPF provisions.

Cl.22(1)(c)

154. Our concerns with the term 'promote' apply here. Stating this as subject to the NPF also creates some uncertainty given that both the NPF and Plans have the same responsibility under cl.8.

Cl.22(1)(d)

155. Forest & Bird has concerns with what this requirement could mean. While we agree that revisiting issues already resolved through a community engaged decision-making process is not desirable, it is not certain that such resolution will be the best way to achieve the purpose of the NBA for a number of reasons.

156. Firstly, it is not yet known what the purpose or guiding provisions of the Spatial Planning Act will be. If that Act is aimed at different priorities to the NBA, an RSS produced under the SPA may not be consistent with this Act. As such, it would be inappropriate to require a plan to be consistent with an RSS (although we note the intent to make RSS consistent with the NPF, this is not yet confirmed).

157. Several questions arise about the relationship of the NPF, plans and an RSS. Where the NPF directs an environmental limit must be set in a plan, how would this be met through the RSS? And would the RSS override such an environmental limit? Similarly, if

long term objectives to improve natural environmental quality are set in plans how will development and infrastructure under the RSS have regard to them, let alone help achieve them?

158. Further, the timing of plan and RSS making is not yet confirmed. We presume the RSS may come first, however our concern is that an RSS is unlikely to reflect the detailed level of knowledge of a region that the plan would normally include. Significant natural areas for example, require a relatively detailed proves of investigation to identify and confirm in a robust way. If that kind of information isn't present in an RSS, it would be contrary to the outcomes to require the plan to be consistent with the RSS.

159. Even once a plan is made, change may be required to that plan. For example, where a significant natural area is identified after a plan is operative and after the RSS is made operative. In that case, the plan would need to be amended, but this would make the plan inconsistent with the RSS, which would not include the new significant natural area.

160. We note that an RSS is intended to be required to be consistent with the NPF. However, a plan may cover issues that are not addressed by the NPF or may set out further details to give effect to the NPF.

161. Therefore, for all of the above reasons Forest & Bird considers there needs to be a 2-way process between an RSS and a plan to ensure that an RSS does not result in further degradation of the natural environment, inconsistent with a Plan. Without further guidance on this relationship we foresee argument about the level to which a Plan has to be consistent with the RSS. We make a suggested change below, but caution that the '2-way street' may need to be broader than only in relation to SNAs.

Cl.22(1)(e)

162. The wording 'provide for' would prioritise regional and district matters without any direction on determining the significance of such matters. This wording is more directive than cl.8 and would result in perverse outcomes, because of the suggested priority for local matters over the cl.8 outcomes. This risk is increased given the purpose of plans to 'further' the purpose of the Act rather than achieve it.

163. An amendment should therefore be made to ensure that locally significant issues are subject to Part 2. Although we understand the general intent that plans refer back to the NPF only, rather than also to Part 2, locally significant issues are likely to be issues not covered by the NPF, and so recourse back to Part 2 is appropriate:

(e) <u>Subject to Part 2,</u> identify ~~and provide for~~

i. Matters that are significant to the region; and

ii. For each district within the region, matters that are significant to the district;

164. Another option is to retain the RMA approach to the identification of locally significant issues (s62(1)(a) and 75(2)(a)), but ensuring that the drafting does not elevate the locally significant issues above the Part 2 matters or the NPF.

Cl.22(1)(f)

165. Forest & Bird is concerned that defining this as a plan function, rather than prescribing the function of a council, removes responsibility from Councils. In our view this responsibility must either be transferred to Planning committees, or be shared with, or remain solely with councils.

Cl.22(1)(g)

166. In our view, potential conflicts will be given a much clearer framework with an improved Part 2, which would clearly reflect a priority to protect the natural environment before providing for its use. As stated before, the Act shouldn't leave important decisions till the NPF and plans. The Act should therefore also, in addition to an improved Part 2, include principles for resolving remaining conflicts.

167. This sub-clause repeats the conflict resolution requirement for the NPF. However, without a focus this direction is very broad and could include conflicts between use, development and protection, and conflicts between outcomes. It is also unclear whether this is aimed at policy content or intended to guide consenting considerations; i.e. the content of rules.

168. Forest & Bird agrees that resolving conflicts between uses and development is an important role of local authorities. For example, addressing reverse sensitivity, identify preferred land uses through zoning and measures to retain versatile soils. However, this needs to occur in the context of clear guidance form an improved Part 2, and conflict resolution principles in the Act.

169. As the NBA currently stands, the resolution of conflicts at the plan level could be used to determine priority – specifically, it could prioritise use and development over the natural environment, and would only be restricted in relation to matters where an environmental limit has been set.

170. Reading cl.22(1)(g) and (e) together a Plan could clearly put local issues 'above' the cl.8 outcomes.

171. Careful consideration of the use of directive language in the plan content requirements is needed. However, most important is a clear priority in the purpose of the Act towards protection of the natural environment.

172. This sub-clause needs reconsidering once conflict resolution principles, and an improved Part 2, are included in the NBA.

Cl.22(1)(h)

173. Targets to achieve limits (and possibly also outcomes) need to be mandatory part of plans. While limits will generally 'sit' more appropriately in the NPF, it makes more sense to set targets in plans. That is because each region will likely need to undertake different actions to ensure limits are met, depending on the patterns of resource use and how far they are from meeting a relevant limit.

174. Cl.22(1)(h) should therefore require that plans include targets to ensure that where limits are not yet met, timely progress is made towards them. In our view, outcomes could also have targets attached to them, and should similarly be required in plans.

Cl.22(2)(a)

175. The order of provisions changes the step-down approach of the RMA, being: objectives, policies and then methods including rules. The RMA provides for a hierarchical relationship between objectives, policies and rules within a plan. Section 75(1) requires that plans state 'the objectives for the district', policies to 'implement the objectives', and rules 'to implement the policies'. Other methods to implement policies may also be included. This hierarchical relationship is also reflected in section 32, in the sense that objectives must be evaluated as to whether they are the 'most appropriate way to achieve the purpose of the Act' and the evaluation of other provisions is as to whether they are 'the most appropriate way to achieve the objectives'.

176. We think this hierarchy should be retained, as it clear, logical and well understood. On the contrary, cl.22(2)(a) puts rules after objectives, which arguably suggests a direct relationship between those concepts, and a demotion of the relevance of policy. It is the wording of objectives and policies which make provision for integrated management and resolve conflicts. For this reason, objectives and policies should be listed first.

177. Policy is a critical element to achieving outcomes and should not sit after the rules which achieve them. Further, the inclusion of 'processes' as a separate provision is uncertain. It is unnecessary and confusing to change the RMA order and make up of provisions when the National Planning Standards 2019 have just provided a comprehensive template for such provisions. The RMA step-down approach should be retained.

Cl.22(2)(b)

178. Further clarity may be needed about the relationship between this function of plans and the role of an RSS.

Cl.22(3)(c)

179. We cannot see the reason for this sub-clause. There is no guidance as to what a provision made under this sub-clause might be for. It also risks undermining the intention to have consistent plan formats.

180. Cl.22 should specifically set out what a plan can contain, and then this expansive catch-all would not be needed.

Amendments sought

22 Contents of plans

(1) The plan for a region must—

(a) state the environmental limits that apply in the region, whether set by thenational planning framework or under section 25; and

(a) where a limit set under (a) is not met, include binding targets to ensure that

limit must be met within the soonest possible timeframe, applying a precautionary approach.

(b) give effect to the national planning framework in the region as the framework directs (*see* section 15); and

(c) ~~promote~~ provide for the environmental outcomes specified in section 8 subject to any direction given in the national planning framework; and

(d) [placeholder] be consistent with the regional spatial strategy, except where a plan identifies natural areas for protection, the plan's provisions prevail; and

(e) Subject to Part 2, identify ~~and provide for —~~

(i) matters that are significant to the region; and

(ii) for each district within the region, matters that are significant to the district; and

(f) [placeholder: policy intent is that plans must generally manage the same parts of the environment, and generally control the same activities and effects, that local authorities manage and control in carrying out their functions under the Resource Management Act 1991 (*see* sections 30 and 31 of that Act)]; and

(g) help to resolve conflicts relating to the environment in the region, including conflicts between or among any of the environmental outcomes described in section 8, in accordance with Part 2 and the conflict resolution principles in cl.XX; and

[placeholder for additional specified plan contents]; and

(h) include anything else that is necessary for the plan to achieve its purpose (*see* section 20).

(2) A plan may—

(a) set:

(i) objectives

(ii) policies to implement the objectives

(iii) rules, or other methods, to implement the ~~processes,~~ policies; and~~, or methods:~~

(b) identify any land or type of land in the region for which a stated use, development, or protection is a priority:

~~(c) include any other provision.~~

Cl.24 Considerations relevant to planning committee decisions

Cl.24(1)

181. It is not yet clear at what point a committee will make a decision on a plan. Presumably this will be twice: firstly, a decision to propose a plan, and secondly, decisions on a recommendation from an independent hearing panel, which presumably would make a plan operative. Some clarity about this may be needed in this clause.

Cl.24(X) potential new clause – seeking advice from limit-setting body

182. We make comments later in this submission about the potential for an independent limit-setting body. If that suggestion is adopted, then there may be merit in providing for planning committees the power to seek advice from that body. This would assist in ensuring the plan provisions ensured that limits were met.

Cl.24(2)(a) cumulative effects of the use and development of the environment.

183. Failing to prevent adverse cumulative effects has been one of the biggest problems of the RMA. Under the RMA, 'effect' is defined as including all cumulative effects. Section 5 requires that these are avoided, remedied, mitigated. In making rules, councils must have regard to the actual or potential effect on the environment of activity including in particular any adverse effect (s76(3)). Then s104 requires that consent authority 'must have regard to' actual or potential effects.

184. This clause is essentially a repeat of that framework, whereas it should be a significant improvement. It simply requires the committee to 'have regard' to cumulative effects. While we hope that the use of limits will prevent cumulative effects down to a certain level, there is no clear requirement in the NBA to do anything more above that level. That means that a 'race to the bottom' (i.e. to the limit) is more likely to be enabled by this Act. This is further exacerbated by the lack of a hierarchy protecting the natural environment in Part 2, and the problems we've identified above with the NPF.

185. We therefore submit that a much stronger provision should require the committee to have regard to the 'desirability of avoiding cumulative adverse effects'.

Cl.24(2)(c) 'whether the implementation of the plan could have effects on the natural environment that have, or are known to have, significant or irreversible adverse consequences'.

186. Firstly, 'have, or are known to have' is the same thing. It makes no sense to repeat these. This appears to be a drafting error, which was apparently intended to replicate the concept used in the RMA: 'will or may have on the environment', in s104(1)(ab).

187. This phrase should be changed to replicate the RMA formulation.

188. This sub-clause also overlaps somewhat with the requirement in cl.22(3), which requires the precautionary approach to be taken. However, it doesn't actually require the precautionary approach to be taken, only that serious or irreversible effects are 'had regard to'. Currently the wording of cl.22(3) is more directive, so would presumably take precedence if there was an issue. However, it may be clearer to simply require the

precautionary approach to be applied. We note our comments in relation to the definition of 'precautionary approach', which suggests a slightly different standard. Care will need to be taken that unintended consequences do not arise from removing this consideration however.

Cl.24(2)(d) 'the extent to which it is appropriate for conflicts to be resolved generally by the plan or on a case-by-case basis by resource consents or designations.'

189. There is currently no clear sense that it would be better to resolve conflicts in the plan, rather than via consenting. We had understood this to be one of the aims of reform. The requirement in cl.22(2)(d) could be achieved by the same approach we have now – consent requirements, with policies around them, which will eventually resolve the conflicts. We therefore think a more directive statement in this clause is warranted, that points to the benefits of having conflicts resolved in the plan itself.

Cl.24(3) Precautionary approach

190. We strongly support this clause.

191. We have commented above on the appropriateness of the precautionary approach definition, and specifically its use for setting limits.

Cl.24(4) Committee entitled to assume that the NPF furthers the purpose of the Act, and must not independently make that assessment when giving effect to the framework.

192. We understand that this clause attempts to codify the case law based on *King Salmon (*including *Davidson).* However, this appears to go further than the case law, in that the case law did provide some exceptions where it was acceptable to have recourse to Part 2 for guidance in setting plan provisions. We have a number of concerns with the strict approach set out in this clause.

193. Firstly, we imagine that the NPF will take several years to complete. It will presumably provide direction on more and more topics, but plans will probably need to be drafted before the NPF is able to be completed. In that situation, recourse to Part 2 would be required to ensure that plan still further/achieved the purpose of the Act.

194. The NPF may have been completed, but may simply not provide guidance on a particular issue. In that case, recourse to Part 2 would be warranted and necessary.

195. We also caution that this approach may not allow for a plan to include a provision that is more stringent than the NPF. Currently the RMA provides for the circumstances in which plan provisions may be more restrictive than an NES. We support that approach, in that a council should be free to impose more protective measures in their region. However, if the planning committee is required to agree that the NPF furthers/achieves the purpose of the Act, it is unclear whether it would have any basis to provide for more stringent regional measures.

196. Further, this clause could give rise to an interpretation that meeting a limit set in the NPF is all that a plan needs to do to further/achieve the purpose of the Act. We think this is contrary to the approach intended by the Act, in particular with its focus on outcomes (which we think are something 'over and above' merely meeting limits).

197. As such, we think more careful thought needs to go into this clause, and possibly some clear exemptions need to be added.

Cl.24(5) additional matters to be included

198. The matters not yet listed should include a reference to the requirements of cl.22, Schedule 2 and any s32 type requirement (if that is somewhere outside Schedule 2).

199. The NBA should make clear that the considerations in cl.24 also apply to the independent hearings panels in their consideration of submissions on proposed plans.

Cl.24(6) meaning of conflicts

200. This clause should specific that conflicts in cl.24(2)(d) do not include conflicts between environmental limits and outcomes. This is to ensure that limits remain as strict limits.

Amendments sought

24 Considerations relevant to planning committee decisions

(1) A planning committee must comply with this section when making decisions on a plan.

(2) The committee must have regard to—

(a) the desirability of avoiding any cumulative effects of the use and development of the environment:

(b) any technical evidence and advice, including mātauranga Māori, that the committee considers appropriate:

(c) whether the implementation of the plan could have effects on the natural environment that will or may have~~, or is likely are known to have,~~ potentially significant ~~or irreversible~~ adverse consequences:

(d) the ~~extent to which it is appropriate for~~ benefits of having conflicts ~~to be~~ resolved generally by the plan rather than ~~or~~ on a case-by-case basis by resource consents or designations.

(3) The committee must apply the precautionary approach.

(4) The committee is entitled to assume that the national planning framework furthers the purpose of the Act, and must not independently make that assessment when giving effect to the framework. *See above comments.*

(5) [Placeholder for additional matters to consider.]

Include reference to cl.22, Schedule 2, and any s32-type consideration.

(6) In subsection (2)(d), **conflicts**—

(a) means conflicts relating to the environment; and

(b) includes conflicts between or among any of the environmental outcomes described in section 8(2);

(c) but does not include conflicts between environmental limits set under section 7 and outcomes, nor any conflicts between outcomes listed in cl.8(1) and those cl.8(2).

Cl. 25 power to set environmental limits for region

201. We set out the amendments sought below, which are discussed in preceding sections of this submission:

a. To require that the precautionary approach applies to limits set by a planning committee, not only those limits set in the NPF;

b. The requirement to set time-bound targets where limits are not yet met, also discussed above.

202. We also note that if the suggestion (discussed later in this submission) to have an independent limit-making body is adopted, some amendments may be needed to this clause (depending on whether there would still be an ability to set limits locally).

Amendments sought

Cl. 25 Power to set environmental limits for region

(1) Subsection (2) of this section applies only if the national planning framework—

(a) specifies an environmental limit that must be set by the plan for a region, rather than by the framework; and

(b) prescribes how the region's planning committee must decide on the limit to set.

(2) the planning committee must-

(a) Decide on the limit:

(i) in accordance with the prescribed process; and

(ii) applying the precautionary approach; and

(b) set the limit by including it in the region's plan:

(3) Where a limit set in either the NPF or in accordance with this section has not been met, the planning committee must also set binding targets to ensure that limit must be met within the soonest possible timeframe, applying a precautionary approach.

Schedule 3 – Planning committees

203. We note that this schedule is yet to be fully developed so only have limited comments on it. We generally support the planned composition of the planning committees but note that the appointment of a person by the Minister of Conservation should not curtail the ability for the Director-General of Conservation to provide independent advice and advocacy through the planning processes as currently provided for in the RMA.

FURTHER RECOMMENDATIONS FOR IMPROVING THE DRAFT BILL

Setting of environmental limits

204. While we hope to see the National Planning Framework achieve improved environmental outcomes above and beyond environmental limits, we recognise that the backstop will be environmental limits. This makes the process for setting and reviewing limits critical to get right.

205. The public needs to have confidence and trust in the institutional arrangements of how limits are set. Those arrangements need to reinforce robust independent science-based measures to ensure they result in effective limits to stop further degradation, and restoration of degraded environments. While industry input is useful for workable plans the regulatory function and decision making needs to remain independent from industry.

206. Given the degraded state of most of Aotearoa's ecosystems, we need a mechanism of continual improvement that prevents backsliding every time a new government decides to tinker with and relax the rules. We recommend a similar approach to the ratcheting up mechanism in carbon budgets and emission reduction plans.

207. The NBA needs to incorporate a similar approach to the Climate Change Response Act. That Act mandates that the independent Climate Change Commission recommends carbon budgets to the government. The government has to respond to with how they're going to meet those budgets or a different plan that has a stronger (in terms of emission reductions) outcome.

208. For the NBA this would see an independent commission informed by good science recommending the evidence-based limit to the Minister, who then either must adopt it or propose something demonstrably stronger to achieve the desired outcome.

209. This could be done by scaling up the functions of the Parliamentary Commissioner for the Environment or establishing a new Commissioner for Future Generations. Either way they would need to be staffed appropriately to offer the independent expertise needed and be able to draw on the expertise from science teams in other agencies and Crown Research Institutes.

A voice for nature

210. The limited success of the RMA, in terms of protecting the natural environment, has often come from NGOs like Forest & Bird taking cases to the Environment Court. Over the last thirty years, case law has accumulated to assist in how the law is interpreted and implemented in order to prevent further environmental degradation. The cost of doing so has largely been borne by generous donors.

211. While we hope that the improvements recommended in this submission will ensure a greater clarity from the time the NBA is implemented, we still anticipate the new framework will inevitably go through a lengthy litigious process while the new concepts bed in. This process will be far more onerous if the improvements we recommend aren't made.

212. Either way, there is an overriding need for a well-resourced independent 'voice for nature' in each level of the planning process proposed. This would help address the current imbalance, where those who want to undertake an activity affecting the environment are able to invest vast resources into either ensuring the rules make it easier for them to do so or commission reports to show how they meet the rules. Too often nature loses out and people profit from the externalities.

213. We note the RMA Review Panel's recommendation that iwi and hapū are resourced to properly participate in the development of plans under the NBA and we support this. In addition, environmental NGOs should be able to access an expanded environmental legal fund or similar.

Restoring general tree protection

214. While general tree protection under the RMA had its issues, the wholesale removal of urban tree protection in 2012 has left our cities vulnerable to unnecessary and alarming rates of tree removal. This is particularly worrisome with the understanding that older trees sequester more carbon than younger trees. If we are to meet our obligations under the Paris Agreement and become carbon neutral by 2050, protecting and maintaining urban tree cover is essential.

215. Additionally, urban tree cover helps reduce the urban heat island effect, reduce vulnerability to climate and ecological crises, and produces a host of mental health outcomes for urban residents. The greener a city, the better mental health will be, and the better off our native birds and invertebrates will be.

216. It is clear that without stringent rules and regulations to protect our tree cover, the felling of urban trees will remain rampant, and often without cause. One Auckland Council report shows that at least 12,879 trees have been removed over a 10 year period from 2006-2016, with the number estimated to be far greater.[3] Since then we have seen many more significant urban trees removed in Auckland alone, spawning protests across the city.

217. Changes must acknowledge the importance of protecting mature trees and develop a framework that protects trees based on their age, height and diameter at breast height (DBH), but does so in a way which is specific to the species being targeted. For example, pittosporum hedges should not fall under the same strict regulations as kauri or others. The scheduling rules should also be changed to permit scheduling of trees via the normal Schedule 1 plan making process. Trees are an intergenerational asset.

218. The bill must support an approach towards parks and public land management which recognises that working with natural processes using low interference management strategies is more effective than high-intervention destroy-and-rebuild strategies in achieving ecological and climate outcomes including for native ecology restoration.

[3] https://www.stuff.co.nz/auckland/108208326/the-horrific-loss-of-tree-cover-in-central-auckland