SUBMISSION ON PROPOSED CHANGES TO RMA NATIONAL DIRECTION, PACKAGES 1, 2 AND 3, ON BEHALF OF THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INC.

To: Ministry for the Environment

Sent: by email to ndprogramme@mfe.govt.nz , also uploaded via the submissions page.

From: Royal Forest & Bird Protection Society of New Zealand Inc.
PO Box 631
Wellington
Contact: Erika Toleman
e.toleman@forestandbird.org.nz

Date: 25 July 2025

Introduction

The Royal Forest and Bird Protection Society of New Zealand Inc (Forest & Bird) has been Aotearoa New Zealand's independent voice for nature since 1923. Forest & Bird's constitutional purpose is:

> To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.

Forest & Bird is a key participant in district and regional planning and consenting decisions relating to indigenous biodiversity, freshwater, coastal environment and natural landscapes across New Zealand. It is a staunch defender of RMA requirements to sustain the life-supporting capacity of ecosystems, maintain biodiversity and protect significant indigenous vegetation and significant habitat of indigenous fauna.

In addition, it has over 100,000 members and supporters who are passionate about enhancing, restoring and protecting nature in rural and urban areas throughout the country.

This submission addresses National Direction Packages 1, 2 and 3.

In summary, the proposed changes to national direction represent a major shift away from managing human activities within environmental limits. As such, they represent a significant threat to the natural environment and its life-supporting capacity, which in turn jeopardises the wellbeing of people and communities.

Overall comments relevant to all topics

The proposals:

- are inconsistent with New Zealand's international obligations under climate[1], biodiversity,[2] fisheries[3] and natural hazard-related[4] multilateral agreements, and also run contrary to New Zealand's domestic policy goals and obligations in those areas.[5]
- do not implement Part 2 of the Resource Management Act 1991 ("RMA").
- are internally inconsistent, for example by relying on identification of significant natural areas or mapping of wetlands while also preventing or extending the timeframe for those actions to be implemented.
- run contrary to the evidence as to the degradation of freshwater quality, reduction in quality and extent of wetlands, biodiversity loss, and carbon emissions.
- treat protection of the environment as an impediment to be overcome through permissive policy, rather than a critical safeguard to sustain ecosystems, people and communities, and overlook the role of nature-based solutions in providing for our wellbeing.

In many places, the rationale for the change is that "the Government is concerned that", or "the Minister believes" something is a problem. In most instances, the Government's concern or the Minister's belief is not supported by readily available information regarding the state of New Zealand's environment or the effect of existing policy. A clear example is the effect of Te Mana o Te Wai which "the Government is concerned" is being interpreted as requiring pristine freshwater quality. Forest & Bird is not aware of a single example of Te Mana o Te Wai being interpreted as requiring pristine water quality anywhere in New Zealand. There are much more pressing concerns when it comes to freshwater, with the most recent environmental reporting showing continuing decline.[6]

PACKAGE 1 – INFRASTRUCTURE AND DEVELOPMENT

Part 2.1 National Policy Statement for Infrastructure

1. Is the scope of the proposed NPS-I adequate?

No. Given the extent to which activities are enabled by the NPS-I, its scope is too broad.

2. Do you agree with the definition of 'infrastructure', 'infrastructure activities' and 'infrastructure supporting activities' in the NPS-I?

[1] United Nations Framework Convention on Climate Change.
[2] Convention on Biological Diversity; Ramsar Convention.
[3] United Nations Convention on the Law of the Sea.
[4] Sendai Framework for Disaster Risk Reduction 2015–2030.
[5] Climate Change Response Act 2002; Emissions Reduction Plans 1 and 2; National Adaptation Plan, Te Mana o Te Taiao / Aotearoa New Zealand Biodiversity Strategy.
[6] Our Environment 2025.

The definitions are too broad, because they are linked to highly enabling policies.

3. Does the proposed objective reflect the outcomes sought for infrastructure?

The proposed objective is a list of outcomes, and therefore reflects the outcomes stated in the Discussion Document. However, important outcomes are missing, in particular infrastructure should:

- be sited in locations where it will have the least impact on the natural environment
- reduce carbon emissions
- support resilience and adaption to natural hazards

4. Does the proposed policy adequately reflect the benefits that infrastructure provides?

The proposed policy (P1) is not just about reflecting the benefits that infrastructure provide. It requires planning decisions about infrastructure to "recognise and provide for" the benefits of infrastructure, thereby elevating those benefits above other considerations. A far more important question is whether infrastructure should be prioritised in this way. While infrastructure contributes to people's wellbeing and some infrastructure is crucially important, a safe climate and the life-supporting capacity and climate resilience of ecosystems are more important to people's wellbeing, for example to reduce the risks of flooding, fire, heat waves, droughts, sea level rise and ocean acidification.

Native ecosystems are natural infrastructure and living carbon sinks, and their protection is critical to human wellbeing.

The co-benefits and costs of infrastructure should be factored in to decision-making to ensure New Zealand's policy settings maximise benefits to people, the economy, and the natural environment. At present, the proposed policy is overly weighted towards the short-term, direct benefits of infrastructure.

Policy P1 includes reducing emissions and protecting the natural environment as benefits of infrastructure, which is supported. However, these matters can also be adversely affected by infrastructure.

5. Does the proposed policy sufficiently provide for the operational and functional needs for infrastructure to be located in particular environments?

The proposed policy (P2) requires that planning decisions recognise and provide for the operation need or functional need of infrastructure to locate in particular environments. Prioritising activities that have a functional need can be an effective way to reduce the scope of activities that can adversely impact high natural value areas like wetlands or the coastal marine area. However, because the definition of infrastructure is so broad, and because the policy refers to functional or operational need, the scope of activities that can adversely impact high natural value areas is hugely expanded.

A distinction should be retained between functional need and operational need where an activity would adversely affect the environment, and not all operational needs should be recognised and provided for. An operational need is a need "for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or

operational characteristics or constraints". There will often be ways of working around such constraints. Enabling operational needs of infrastructure at the expense of the natural environment discourages innovation and increases the likelihood of environmental harm. Policy P2 should only provide for operational needs of infrastructure where necessary to support functional need, and where the characteristics or constraints that produce the operational need cannot be addressed through alternative siting or design.

Policy P2 includes recognising and providing for functional or operational need "whether or not the infrastructure has been spatially identified in advance". Forest & Bird supports spatial planning as a mechanism to minimise conflict between the natural environment, local communities and activities that would impact the natural environment, and opposes this clause as it undercuts the value of spatial planning.

6. Do you support the proposed requirement for decision-makers to have regard to spatial plans and strategic plans for infrastructure?

A requirement to have regard to spatial planning is supported provided the spatial planning process is robust, incorporating consideration of environmental constraints such as significant natural areas. The wording of policy P3 refers to "relevant spatial plans and master plans prepared by the infrastructure provider and provided to the consenting authority" – this is not spatial planning, but rather infrastructure providers setting out where they would like their infrastructure to be located, with that infrastructure then being enabled by policy P3. This is the opposite of spatial planning, and is opposed.

Policy P2 is to recognise and provide for infrastructure even if it has not been spatially identified, and P3 is to have regard to the extent to which infrastructure has been identified in advance. In combination these policies mean that infrastructure is enabled whether or not it has been spatially planned. This is inefficient and likely to result in increased environmental harm.

7. Would the proposed policy help improve the efficient and timely delivery of infrastructure?

The policy goes well beyond methods to improve efficient and timely delivery of infrastructure. Policy P4.2)a) requires decision-makers making planning decisions (which includes decisions on consents and designations) to "recognise it is the role of the infrastructure provider to identify the preferred location for the infrastructure activity". Decisions about which areas to protect, and where to allow development, are relevant to all New Zealanders. Inefficiency can also come in the form of community opposition when policies undermine the protection of important areas. The functional needs of infrastructure are relevant to determining appropriateness of locations for infrastructure, and are already provided for in Policy P2. The broad range of considerations relevant to spatial planning should not be trumped by infrastructure providers' "preferred locations". This must be considered in proportion to impacts on the natural environment. Often adjustments can be made that deliver development benefits within environmental constraints, but this needs to stressed as a priority in policy otherwise impacts on the natural environment are more likely to be sidelined or ignored.

Policy P4.2)b) imposes a very onerous burden on decision-makers to consider (unspecified) "relevant internationally, nationally and regionally accepted standards and methods". This makes decision-makers vulnerable to a legal challenge where it is later said that they failed to consider a relevant consideration.

Policy P4.3 refers to "infrastructure supporting activities", which are to be recognised and provided for. "Infrastructure supporting activities" is vaguely defined[7] as "means activities needed to support infrastructure activities that are not undertaken by the infrastructure provider or ancillary activities, and may include quarrying activities". There is no limit to the activities that could meet that definition. "Recognise and provide for" is a strong direction. Counter-balancing considerations relating to the natural environment are much more weakly expressed.[8] As such, this policy provides for a very broad (unlimited) range of activities to have significant adverse effects on the environment. This will cause substantial environmental harm.

8. Does the proposed policy adequately provide for the consideration of Māori interests in infrastructure?

No. Proposed policy P5 is very weak in its allowance for tangata whenua views to influence infrastructure planning and consenting.

9. Do the proposed policies sufficiently provide nationally consistent direction on assessing and managing the adverse effects of infrastructure?

The proposed policies (P6 – P8) are not adequate as a framework for managing the effects of infrastructure on the environment.

The first relevant policy is P6. In this policy, the obligation on decision-makers is only to "have regard to" the extent to which adverse effects have been avoided, remedied or mitigated. This:

- enables significant adverse effects on the environment
- does not require that the infrastructure avoid, remedy or mitigate its effects (in contrast to the effects management hierarchy expressed in other national direction).

Policy P7 requires that planning decisions enable the efficient operation, maintenance and minor upgrade of existing infrastructure in all environments and locations provided effects are avoided, remedied or mitigated. "Maintenance and minor upgrade" is very broadly defined, such that in practical terms P7 requires the enablement of significant changes to existing infrastructure, with potentially catastrophic effects:

- it includes maintenance and upgrades necessary to continue to deliver the same or similar level of infrastructure services or to improve resilience. An upgrade necessary to "improve resilience" of a hydro-power scheme to climate change could include a larger dam or reduced residual downstream flow. If enabling this upgrade prevails over setting environmental flows that provide for ecosystem health

[7] Definition D9

[8] As discussed below in relation to Policy P6

(including the ecosystem's resilience to climate change), "minor" upgrades will have major adverse effects

- it includes any upgrade that has no more than minor adverse effects on the environment after the upgrade is complete. This wording may be interpreted as excluding construction effects, which may be significant.

The reference to "all environments and locations" contrasts with the reference to environmental values "in section 6 or covered by national direction", indicating Policy P7 covers existing infrastructure within, or which affects, significant environmental features and values. As such it is not consistent with other national direction requiring a higher standard of care.

Policy P8 is:

> P8 Planning decisions must enable new infrastructure or major upgrades of existing infrastructure, provided that adverse effects on environmental values (not in section 6 or covered by national direction) are avoided where practicable, remedied where practicable, or mitigated where practicable.

The term "enable" is highly directive, indicating that decision-makers must include lenient plan provisions and grant resource consent applications where the rest of the policy is met.

The intention of the words "not in section 6 or covered by national direction" appears to be to carve out new infrastructure that affects environmental values referenced in section 6 or other national direction, presumably with a view to the level of protection or effects management frameworks in those instruments applying instead.[9] However the language is unclear: as worded, the policy instead appears to enable new infrastructure and major upgrades everywhere, with the requirement to avoid, remedy or mitigate adverse effects only applying to environmental values not in section 6 or national direction.

In either case, P8 does not implement s 6 RMA and does not ensure consistency with other national direction:

- Policies P1 to P4 and provide a directive, enabling approach to infrastructure that will skew consideration towards provision of the infrastructure even where its effects are not consistent with section 6 or other national direction. This enablement is reiterated in P6, which includes a requirement to consider "technical and operational requirements and constraints" (already covered by P2).
- Policy P6.e) requires consideration of the financial and timing implications of mitigation measures and consent conditions to ensure these are proportionate and cost-effective. This may be interpreted as allowing adverse effects on significant environmental features because the cost of mitigation would be too high.

[9] Although the Discussion Document suggests there is an intention to revisit the effects management approach in other national direction in future, as it says "The Government has now decided to focus on resolving these major tensions between infrastructure and natural environmental values in the replacement of the RMA, rather than through the current proposed changes to national direction."

- The legislative change in 2024 preventing local authorities from identifying significant natural areas (SNAs)[10] means these sites have often not been identified in national direction. Instead, it will be necessary to demonstrate whether features are significant in terms of s 6(c).

It is unclear whether P6 is intended to manage the potential adverse effects of infrastructure on people and communities, which may also be significant.

10. Do the proposed policies sufficiently provide for the interface between infrastructure and other activities including sensitive activities?

No comment

Part 2.2 National Policy Statement for Renewable Energy Generation

11. Do you support the proposed amendments to the objective of the NPS-REG

While Forest & Bird supports renewable generation where sited and undertaken appropriately, Forest & Bird opposes the objective insofar as it weakens environmental protection. While the proposed policies that flow from the objective are of greater concern, the objective is still problematic as it focuses on increasing REG and is deficient in addressing the need to protect environmental features.

It has not been demonstrated that the proposed amendment to the objective (or the NPS-REG in general) are necessary. The current NPS-REG does not present a major barrier to REG – where there are numerous examples of REG gaining consent. Market forces, new technology, and construction costs are all barriers that will not be overcome by weakening environmental protection in existing policy direction.

Further, there is a need to manage demand rather than seek to cater to ever increasing demand – the objective needs to reflect this. Regardless of how much REG is developed it is not going to keep up with demand (and the loss that occurs with transmission). There is a more pressing need to address the issue of demand and storage of electricity to smooth out peak demand.

While transitioning to fully renewable electricity generation is necessary to achieve New Zealand's emissions budgets and reduction targets, there is huge policy inconsistency in this area. The Government cancelled 35 climate policies and actions that were part of the first emissions reduction plan (2021-2025), putting in place a second emissions reduction plan which severely lacks actions or policies for reducing emissions at source. The proposed amendments which refer to REG's role in emissions reduction and which enable REG infrastructure in a way that does not safeguard the environment will cause environmental damage but still fail to achieve emission reduction targets, if implementation of the CCRA continues to be so directionless.

12. Are the additional benefits of renewable electricity generation helpful considerations for decision-makers? Why or why not?

[10] Resource Management (Freshwater and Other Matters) Amendment Act 2024

Forest & Bird generally supports Policy A(a)(v) but opposes the reference to "imported" fossil fuels. It is unclear why it is limited to only imported fossil fuels. The burning of fossil fuels, regardless of fossil fuel origin, drives climate change. Policy A(a)(v) needs to be expanded to include all fossil fuels, including those derived from New Zealand, if it is to achieve the Objective of supporting New Zealand's emission reduction targets. The policy would also benefit from additional direction that expressly refers to replacing non-renewable sources in energy generation.

Policy A(a)(vi) ("the temporary and reversible adverse effects of some REG technologies on the environment") is opposed. It is unclear what it is intended to capture and assumes that temporary or reversible effects are acceptable. In some instances, a temporary effect may cause material harm,[11] and thus should not be pitched as a "benefit". The reference to "reversible adverse effects" is similarly problematic and raises uncertainty. An activity may be reversible but not its effects, and vice versa. It is not clear at what timeframe an effect must be reversible. Most activities are reversible within some period of time. It is a misnomer to categorise "temporary" and "reversible" effects as a benefit and the clause should be deleted.

Aspects of Policy A(b)(i) are opposed as while there are benefits from locating REG close to demand and network locations, this needs to be balanced against the need to site REG in the least ecologically damaging locations. There are instances where electricity networks will be located in or adjacent to ecologically sensitive areas such as wetlands or indigenous vegetation.[12] What may be efficient may mean greater adverse effects on habitats, species, and landscapes. Policy A(b)(i) therefore has the potential to contradict the proposed Objective which directs REG to support the achievement of New Zealand's emission reduction and to provide for the health and safety of people. Forest & Bird acknowledges that reduced electricity loss is a benefit, but the policy needs to direct consideration of issues on the other side of the coin, including the adverse effects "efficiency gains" may lead to. The placement of REG in areas like wetlands, shrublands and other indigenous vegetation - recognised for their important role in carbon sequestration and storage, hazard mitigation,[13] and ultimately stabilising the climate – will not assist in the response to climate change.

Forest & Bird broadly supports policies that support the avoidance of greenhouse gas emissions (Policy A(a)(i)) and reliance on fossil fuels (PolicyA(a)(v)). It is however important that policies that recognise and provide for such matters do not have perverse outcomes and allow new or increased threats to Aotearoa's remaining biodiversity.

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[11] In *Port Otago Limited v Environmental Defence Society* [2023] NZSC 112, the Supreme Court observed that the standard of protection under NZCPS Policy 11(a) was from "material harm", recognising that "temporary harm can be material" at [65]

[12] See for example Decision on the COVID-19 Fast Tracking Consent for Harmony Energy Solar Farm – Carterton (Expert Consenting Panel) [2024] https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/HES-Carterton/Decision-and-Conditions-of-the-Expert-Consenting-Panel-Harmony-Energy-Solar-Farm-Carterton-with-Minor-Corrections.pdf at 7.65-7.69 where solar arrays are to placed over wetlands.

[13] See Beverley Clarkson, Anne-Gaelle Ausseil, Philippe Gerbeaux "Chapter: Wetland ecosystem services" in John Dymond (ed) *Ecosystem services in New Zealand* (Manaaki Whenua Press, 2014) 192-202

Direction to "recognise and provide for" the listed considerations arguably places them on equal footing to listed matters of national importance under s6 RMA. This raises questions over the vires of elevating such matters, very much within the ambit of s7 of the RMA, to the same level as s 6 RMA. Amendments are therefore needed to ensure that s6 RMA matters remain pre-eminent to reduce uncertainty, and ultimately prevent the kind of decision-making that has contributed to ongoing biodiversity loss.

Forest & Bird therefore seeks the following amendments:

Policy A National significance and benefits of renewable electricity generation

a) Decision-makers must recognise ~~**and provide for**~~ the national significance and benefits of REG activities at a national, regional and local scale. The benefits of REG activities, include, but are not limited to:
    i. avoiding and reducing greenhouse gas emissions to provide positive effects for people, communities and the environment;
    ii. contributing to the security, resilience and independence of electricity supply at national, regional and local levels through diverse REG sources and locations;
    iii. providing for the social, economic and cultural well-being of people and communities and for their health and safety;
    iv. increasing resilience and long-term stability by using renewable rather than finite sources of energy;
    v. avoiding reliance on ~~**imported**~~ fossil fuels for the purposes of generating electricity **by facilitating the replacement of non-renewable energy sources, including the use of fossil fuels, in energy generation**; and
    ~~**vi. the temporary and reversible adverse effects of some REG technologies on the environment.**~~
b) The additional **potential** benefits of REG activities that are:
    i. located close to electricity demand and electricity networks, such as reduced electricity losses, economic efficiencies and **(provided environmental features are protected)** environmental benefits;
    ii. co-located with other appropriate REG activities and assets and other appropriate infrastructure and activities; and
    iii. located where adverse effects on other activities **and the environment** are minimised.

13. Does the proposed policy sufficiently provide for the operational and functional need of renewable electricity generation to be located in particular environments?

Yes, however, the extent to which this is enabled is unjustified and not supported. Forest & Bird opposes reference to "operational need" – particularly in relation to areas with s 6 RMA values, because it significantly broadens the range of activities that are enabled to have significant adverse effects on vulnerable environmental features. The NPSREG should not provide for REG to locate in s 6 RMA areas where there is only an operational need to do so. Forest & Bird's concern is that it is too easy to justify any apparent "need", including relating to cost reduction, as an "operational need."

The ability to locate infrastructure in areas with s 6 RMA values should only occur in very narrow circumstances – which is what a reference to "functional need" is intended to deliver.

The proposed definition of "functional need" is "the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment."[14]

As observed by the High Court in *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council,* "can only occur" is a high threshold,[15] and the focus in the definition is the need for an activity to locate in a "particular environment," rather than a particular location.[16]

REG is often proposed in areas which contain a higher proportion of indigenous biodiversity and/or an outstanding natural feature or landscape, including, locating where threatened or at risk species are present.[17] The ability to locate REG in particular environments, including environments afforded protection under s 6 RMA, where there is only an operational need is likely to have the perverse effect of enabling REG in the wrong place and lead to further environmental degradation. This provides no certainty, and means a broad spectrum of REG activities with potential adverse effects on s 6 values, including on SNAs and wetlands, can be undertaken in unjustified circumstances. As the National Policy Statement for Indigenous Biodiversity (NPSIB) does not apply to REG (and electricity network assets and activities), the risks for terrestrial indigenous biodiversity are particularly grave under the current drafting.[18]

'Functional need', is an appropriate standard to apply when considering REG activities in areas with s 6 RMA values. The reference to "functional need" on its own will capture genuine necessity, rather than "desirability". It will at least drive more effort on the part of applicants to site REG in locations that secure better environmental outcomes.

Accordingly, Forest & Bird seeks that "operational need" is deleted from Policy C1(1). If it is to be retained, it should not apply within areas with s 6 RMA values, or alternatively, be accompanied by an additional policy which directs that alternative sites, locations, and methods have been considered and are unavailable.

The listed matters under C1(2) are also examples of "operational need" as they go to logistical constraints. They conflate the distinction between "operational need" and "functional need" and need to be deleted as they are not examples of "functional need".

14. Do the proposed new and amended policies adequately provide for existing renewable electricity generation to continue to operate?

Yes, however the policy framework would benefit from an additional policy that directs decision-makers to consider opportunities and measures to reduce adverse effects when addressing upgrades on existing REG infrastructure.

15. Do the proposed policy changes sufficiently provide for Māori interests in renewable electricity generation?

[14] The same provision appears in the National Planning Standards at 58, and the NPS-FM cl 3.21(1)
[15] *Poutama Kaitiaki Charitable Trust and D & T Pascoe v Taranaki Regional Council* [2022] NZHC 629, at [48]
[16] At [53]
[17] See Southland Wind Farm decision report: https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Southland-Wind-Farm/Decision/Southland-Wind-Farm-Decision_FINAL-1.pdf
[18] NPS-IB clause 1.3(3)

The proposed policy changes do not adequately recognise the role of tangata whenua as kaitiaki. We note that Attachment 1.3 refers to the NPS on Urban Development as being the framework on which the drafting of Policy P3 is based. Forest & Bird considers cl 3.3 of the NPS for Indigenous Biodiversity provides a more appropriate framework for policies related to Māori interests than those in the NPS on Urban Development. [19]

16. Do you support the proposed policy to enable renewable electricity generation development in areas not protected by section 6 of the RMA, or covered by other national direction?

Forest & Bird broadly supports proposed Policy P2. It commends the intention to keep REG out of areas protected by s 6 RMA and covered by other national direction as this will ensure the ability to "recognise and provide for" matters of national importance under section 6 RMA is not compromised, and aligns with the statutory obligation on local authorities in ss 30 and 31 RMA.

Part 2.3 National Policy Statement for Electricity Networks

17. Do you support the inclusion of electricity distribution within the scope of the NPS-EN?

No. Forest & Bird opposes the inclusion of electricity distribution within the scope of the NPS-EN. Electricity distribution is broadly defined and will capture distribution systems that may not be of regional or national significance in the same way as the national grid. There is more flexibility in the siting of electricity distribution networks, so they should not receive the same level of enablement as the national grid. The proposed amendments to the NPS-EN are also too permissive and therefore broadening its application to other infrastructure is not appropriate.

18. Are there risks that have not been identified?

Yes. As the NPSIB does not apply to electricity transmission network assets and activities, the risks for terrestrial indigenous biodiversity are not comprehensively addressed by the proposed amendments.[20] The NPS-EN will be presumed to "cover the field" in terms of effects management in terrestrial areas.

The proposed amendments risk driving further biodiversity loss and cumulative adverse effects on the environment. The reference to "operational need" suffers the same problems as comparable amendments to the NPS-REG (see response to question 13). As currently drafted, the proposed provisions give EN proponents carte-blanche to locate effectively anywhere, including sensitive ecological environments. This is unjustified.

The proposed amendments would allow transmission infrastructure development to have adverse effects on section 6 values and areas. The proposed wording of Policies P 2(1), P 4(1), and P6(1) is unlawful, as it expressly limits the ability to "recognise and provide for" matters of national importance under section 6 RMA. Maintenance of indigenous

[19] NPS-UD Policy 9
[20] NPS-IB clause 1.3(3)

biodiversity is also a statutory obligation placed on local authorities under the RMA.[21] The proposed amendments may therefore prevent local authorities from meeting their statutory obligations under ss 30 and 31 RMA.

A major risk associated with developing EN without any limits is that it facilitates "planning creep" by leading to additional activities and development that EN attracts, for example REG infrastructure. EN in the wrong place (for example a wetland) will facilitate generation activities in the wrong place (for example, large solar farms in the wetland and adjacent ecotones). This is not sustainable management. It is also inefficient. If EN is allowed to develop in areas with s 6 RMA values, difficult decisions about the trade-offs between the importance of EN and the loss of biodiversity and other values will be pushed to the consent stage – leading to litigation and ad hoc decision-making.

The natural environment can best respond to climate impacts if it is intact, connected, and its ecological and physical processes are maintained and enhanced. It is important that EN activities (and REG activities) can work synergistically with the environment, rather than undermine it. The proposed provisions do not provide for this.

19. Do you support the proposed definitions in the NPS-EN?

Forest & Bird opposes the definition of "Electricity Network (EN)" and considers that "and the electricity distribution network" must be deleted from the definition as the NPS-EN should not apply to the electricity distribution network. It is neutral as to the remaining terms.

20. Are there any changes you recommend to the NPS-EN?

Yes. Additional issues and suggested changes are set out below.

<u>Policy P2</u>

Subclauses (a)-(d) of clause 2 predetermine apparent "needs" and "requirements" when this may not be the case in every situation that EN seeks to expand. This is inappropriate, as the onus must be on the EN proponent to demonstrate it is "necessary" or "required". Policy P2(a) also lists matters which are operational needs, and it is inappropriate to conflate these with functional needs. As with REG infrastructure, EN should not locate in S 6 RMA areas.

There is a difference between "need" (or "requirements") and desire or convenience. Not all EN activities fall in the category of strict "need" or "requirement". The use of the verbs "recognise" in conjunction with "require" and "need" appear to emulate, and even go beyond, the verbs used in NZCPS Policy 9 on "Ports".[22] In *Port Otago Limited v Environmental Defence Society Inc* [23] the Supreme Court found that the use of the terms "recognise" and "requires" in NZCPS Policy 9 gave it the same directive quality as NZCPS "Avoidance" Policies 11, 13, 15, and 16 (which direct the avoidance of adverse effects on listed environmental

[21] RMA ss 30 and 31. In *Property Rights in New Zealand Inc v Manawatu-Wanganui RC* [2012] NZHC 1272 the High Court confirmed s 30(1)(ga) places a mandatory obligation for regional councils to include objectives policies and methods to achieve maintenance of indigenous biodiversity.
[22] NZCPS Policy 9 commences "Recognise that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping, with efficient connections with other transport modes, including by…"
[23] [2023] NZSC 112

values).[24] The Supreme Court found that, where Policy 9 conflicts with NZCPS "Avoidance" Policies, reconciliation of policies was required including via a "structured analysis" to determine any pathway for port development. [25] The "structured analysis" includes determining whether the project is required to ensure the safe and efficient operation of the ports in question and is "not merely desirable." [26] The proposed drafting of Policy P2 unjustifiably places EN activities on the same standing as port development. This is opposed. The development of EN infrastructure is different. Unlike EN infrastructure, there is little choice as to where to situate port activities (limited to the coastal environment) and as the Supreme Court observed, there is an already established ports network servicing national and international shipping.[27]

Where "necessity" is established, adverse effects on section 6 RMA areas or values should only happen after careful consideration of alternatives and options for avoiding, or if avoidance is not practicable, remedying or mitigating adverse effects. Suggested amendments include:

> **P2 Operational need or functional need for EN activities to be in particular locations and environments**
>
> 1) Planning decisions must recognise and provide for EN activities that have ~~**an operational need or**~~a functional need to be in particular environments **while protecting environmental values in section 6 of the RMA**~~**., including in areas with section 6 RMA values, with unavoidable adverse effects on those environments.**~~
>
> 2) Decision-makers shall recognise: ~~**that the operational or functional need of EN activities may include:**~~
>
> ~~**a) the need for EN assets to convey electricity over long distances and in all locations and environments, including:**~~
>
> ~~**i. within and across urban and rural environments;**~~
>
> ~~**ii. within the coastal environment, including the coastal marine area;**~~
>
> ~~**iii. across jurisdictional boundaries within and across districts and regions; and**~~
>
> b) ~~**the need for**~~ **the benefits of the EN operating** ~~**operate**~~ effectively and efficiently as an interconnected system across New Zealand;
>
> c) ~~**the requirement for**~~ **the extent** regular maintenance and upgrading of the EN **may be required** due to its age, ~~**the need**~~ to improve resilience, and ~~**the need**~~ to increase capacity to meet increasing demand; and
>
> d) the ~~**need for the EN to connect**~~ **proximity of EN** to electricity generation, and to respond to demand~~**, wherever located**~~.

[24] *Port Otago Limited v Environmental Defence Society Inc* [2023] NZSC 112 at [71]
[25] *Port Otago* at [75]-[76]
[26] *Port Otago* at [76](a)
[27] *Port Otago* at [70]

Policy P5

Policy P5 is opposed as it repeats matters in P2 and severely undermines environmental protections in other policy documents. Suggested amendments include:

> **P5 General considerations when considering and managing the environmental effects of EN activities**
>
> 1) When considering the environmental effects of EN activities and measures to avoid, remedy, or mitigate any adverse effects on the environment, decision-makers must also:
>
> a) consider the constraints imposed on achieving those measures by the technical and operational requirements of the EN;
>
> **~~b) recognise that EN activities are needed to increase and improve the capacity and delivery of the EN over time;~~**
>
> c) recognise that changes in amenity from EN activities **~~are~~** **may be** unavoidable and necessary to achieve an effective, efficient, safe, secure, reliable, and resilient EN;
>
> d) adopt relevant international and national standards and recognised best practice standards and methodologies to assess and manage adverse effects; and
>
> **x) recognise the need to avoid cumulative adverse effects**
>
> **~~e) consider the financial and timing implications of mitigation measures and any consent conditions to ensure these are proportionate and cost-effective~~**

Forest & Bird considers that the NPSIB is the appropriate document to manage the effects from EN and REG activities on terrestrial biodiversity. NPSIB clause 1.3(3) should be deleted.

Policy P6

Note that this is dealt with below in relation to question 29.

Policy P8

Policy P8 is partially opposed as it is too weak. A policy driving consideration of opportunities to reduce the environmental footprint of EN is commended, however the reference to "financial implications of any measures of any measures to reduce adverse effects" is opposed. The reference to financial implications renders the policy direction redundant, as financial implications – no matter the size – may readily be relied upon by EN proponents. Policy P8 already commences with reference to considering "practicable" opportunities and measures which enables financial implications to be factored into decision-making.

> **P8 Reducing existing adverse effects of EN assets when considering upgrades**
>
> 1) Decision-makers must consider practicable opportunities and measures to reduce the existing adverse effects of EN assets when considering non-routine EN activities, taking into account the technical and operational requirements of the EN **~~and the financial implications of any measures to reduce adverse effects~~**.

Policy P9

Policy P9(c) "recognise that it is not practicable to avoid all adverse effects of EN activities" is opposed. This presupposes that avoiding adverse effects will not be practicable when this will not always be the case. Like with other proposed policies under the NPS-EN, P9(c) will discourage more innovative solutions to the environmental issues that EN may cause. Forest & Bird suggests redrafting as follows:

> **P9 EN activities within urban environments and servicing new development**
>
> 1) Decision-makers on EN activities within urban environments must:
>
> a) recognise that the EN forms an essential part of well-functioning urban environments that must be provided for;
>
> b) allow for changes in amenity associated with routine EN activities;
>
> ~~**c) recognise that it is not practicable to avoid all adverse effects of EN activities; and**~~
>
> d) recognise that the effective and efficient development, operation, maintenance, and upgrade of the EN may be appropriate use and development when protecting historic heritage.

21. Do you support the proposed objective? Why or why not?

Clause (e) of the objective ("manages adverse effects on the environment in a proportionate and cost-effective way") is inconsistent with the treatment of environmental values under other parts of Package 1, specifically the NPS-REG and NPS-I.

Consideration of what is "proportionate" and "cost effective" will discourage EN proponents from considering less harmful measures and from developing innovative ecological solutions. It may be interpreted as allowing adverse effects on a wide range of environmental values (including significant ecological values, natural character, and tangata whenua values) because the cost of effects management is perceived to be high. In consenting contexts, costs can too easily be relied upon to sidestep more rigorous effects management measures. Required amendments are as follows:

> **OBJ1**
>
> 1) The EN is developed, operated, maintained, upgraded, and protected in a manner that:
>
> a) recognises and provides for its national significance, **where appropriate;**
>
> b) secures the resilience of the EN, **where appropriate,** including in relation to the effects of natural hazards and climate change;
>
> c) provides for the well-being and needs of present and future generations, including by increasing and improving the capacity and delivery of the EN over time;
>
> d) recognises and provides for the role of the EN ~~in achieving~~ **where it demonstrates it is consistent with achieving** New Zealand's emissions reduction and renewable energy targets, and associated commitments in any relevant plan prepared under the Climate Change Response Act 2002;

e) ~~manages adverse effects on the environment in a proportionate and cost-effective way; and~~ ensures that adverse effects on the environment are avoided, remedied or mitigated, including to recognise and provide for matters of national importance;

f) protects the EN from the adverse effects of other activities.

22. Will the proposed policy improve the consideration of the benefits of electricity networks in decision-making?

Yes, but as currently drafted, it does this at the expense of important ecological considerations. The direction is overly enabling for EN activities. The proposed policy poses a real risk that natural values will not be appropriately protected – especially in the terrestrial environment where the NPSIB does not apply to ETN. Further amendments are required to ensure that EN activities may be provided for where appropriate and within environmental limits.

23 Does the proposed policy sufficiently provide for the operational and functional needs for electricity networks to be located in particular environments

Yes, but it should not. See comments above in relation to question 13.

24 Do you support Transpower and electricity distribution businesses selecting the preferred route or sites for development of electricity networks?

No. Proposed Policy P4 prevents local authorities from developing a strategic approach to where EN is located, ousts community input, and will only encourage biodiversity loss. This is highly inefficient as this pushes the contest as to where EN should locate to the local level and to be dealt with on an ad hoc basis. It will drive a reactive approach – where the community (including environmental NGOs) and mana whenua will be required to defend environmental considerations case-by-case. This undermines the value of proactive strategic planning and the of role national direction.

Policy P4(1)(a) recognises Transpower and EDN providers as having a preeminent role of determining EN locations. Subclauses (b)-(d) then subjugate environmental considerations through weak direction including "have regard to" in (c) and explicit direction to "recognise" unavoidable adverse effects in (d). This is opposed. It will prevent councils, mana whenua, and communities from leading their own spatial strategies as to location of EN, including important areas where EN should not locate such as ecologically sensitive areas and sites of significance to mana whenua. We suggest deletion of this policy. A policy directing that effects are managed by avoiding adverse effects on areas or values covered by section 6 of the RMA or covered by national direction is supported. For areas outside s 6 RMA or covered by national direction, the direction to avoid, remedy, or mitigate other effects would be appropriate.

25. Are there any other route or site selection considerations that have not been identified?

An additional clause which explicitly requires the consideration of cumulative adverse effects is necessary.

26. Does the proposed policy adequately provide for the consideration of Māori interests in electricity networks?

See response to question 15.

27. Do you support the proposed policy to enable development of electricity networks in areas not protected by section 6 of the RMA, or covered by other national direction?

Yes, it is more appropriate to enable EN outside areas protected by s 6 RMA or covered by national direction. However, the proposed provisions in attachment 1.3 do not reflect this.

Proposed Policy P2(1) provides for EN activities with an operational need or functional need to occur in areas with section 6 RMA values. This is opposed for the following reasons:

- It is inconsistent with comparable provisions proposed for the NPS REG and NPS-I which at least acknowledge that REG and infrastructure should develop outside areas with section 6 values or covered by national direction. For example, proposed Policy P8 of the NPS-I and Policy P2 of the NPS-REG. It is also unjustified for the electricity network to be enabled in section 6 areas.

- It is imperative that EN activities are precluded from developing in s 6 RMA areas, especially section 6(c) areas, particularly as the NPSIB is disapplied in relation to EN activities. Indigenous fauna including threatened and at-risk species will be particularly exposed by this proposed policy, as will important habitats such as wetlands. Ensuring these types of biodiversity are protected from the effects of EN is necessary to have any hope of halting biodiversity decline.

- A major cause of indigenous biodiversity loss is the failure to manage cumulative adverse effects, which proposed amendments to the NPS-EN Policies such as P2 will only exacerbate.

- It does not meet the statutory obligations in s 6, ss 30 and 31 RMA, and to safeguard life-supporting capacity of ecosystems which is required to achieve sustainable management in accordance with s 5(2) RMA.

- The coastal marine area, wetlands, and the margins of lakes and rivers (recognised under s 6(a) RMA), also happen to be areas that play an important role in hazard mitigation, including by providing important buffers. It is counterproductive to place infrastructure, including EN infrastructure, in these areas. Forest & Bird's submission points on question 72 (in relation to the proposed NPS-NH) also apply here too.

28 Do the proposals cover all the matters that decision-makers should evaluate when considering and managing the effects of electricity network activities?

No. Forest & Bird seeks an express provision in the NPS-EN that the provisions under the NZCPS and NPSFM are to prevail in the event of a conflict.

29. Do you support the proposed policy to enable routine works on existing electricity network infrastructure in any location or environment?

No. Policy P6 is opposed. Like the policies above, it risks contributing to ongoing biodiversity loss particularly through cumulative effects. With much of NZ biodiversity affected by loss, fragmentation, and degradation, routine EN activities present an opportunity to reduce adverse effects.

Terrestrial biodiversity is particularly prone to risks with Policy P6, as the NPSIB does not apply to electricity transmission network assets and activities (NPSIB clause 1.3(3)).

The use of "where practicable" is also opposed. This defers the question of what is practicable to the consenting stage. This does not assist and misses the opportunity for national direction to encourage more ecologically responsible outcomes. A decision-maker may factor in the costs of more responsible effects management and too readily conclude they are too high to be "practicable".[28] It is also contrary to s 5 RMA which requires that adverse effects are "avoided, remedied, or mitigated", with no "where practicable" caveat.

The definition of "routine electricity network activities" is incredibly broad and would allow significant effects on s 6 values, as well as on biodiversity not covered by s 6. The definition does not limit effects of routine activities and therefore F&B does not consider it appropriate to "enable" these activities. P6 must be replaced with policy direction that ensures that routine EN activities do not compromise section 6 RMA values or are done in accordance with existing national direction. Outside s 6 RMA areas or areas covered by national direction, the direction must be to avoid, remedy or mitigate. We also submit that the definition of routine activities should be amended to ensure that the effects of the activities covered are no more than those already caused by the existing activity.

30. What other practical refinements to Policy 8 of the NPS-EN could help avoid adverse effects on outstanding natural landscapes, areas of high natural character, and areas of high recreation value and amenity in rural environments?

An additional clause which explicitly requires the consideration of alternative locations, sites, and methods.

31. Do you support the proposed policy to enable sufficient on-site space for distribution assets?

No comment.

32. Should developers be required to consult with electricity distribution providers before a resource consent for land development is granted? If not, what type or scale of works would merit such consultation?

No comment.

[28] See *Tauranga Environmental Protection Society Inc v Tauranga City Council and others* [2021] NZHC 1201 At [148]

Part 2.4 Amendments to the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009

33. What activity status is appropriate for electricity transmission network activities when these:
a. do not comply with permitted activity standards?
b. are located within a natural area or a historic heritage place or area?

Activities that do not comply with permitted activity standards or located within areas with s 6 RMA values should be given at least discretionary activity status in order to allow adverse effects of particular projects to be fully considered. To do otherwise may prevent local authorities from implementing direction in other national policy statements when considering consents. Local authorities need to retain discretion to enquire into whether or not the activity is appropriate or what appropriate conditions of consent to manage effects would be. Restricted discretionary activity status, unless carefully worded, may not be broad enough to enable this assessment.

Controlled activity status is not appropriate as it does not give the opportunity to decline the consent if significant adverse effects are likely.

34. Do you support the proposed scope of activities and changes to the permitted activity conditions for electricity transmission network activities?

No. Many proposed amendments either introduce new standards with insufficient safeguards for biodiversity, remove important safeguards, or expand the scope of existing inadequate standards. For example:

- Regulation 28 and 29 are proposed to be amended to include discharges onto land where they may enter water. The existing permitted activity standards in regulation 28 are subjective and uncertain, ultimately requiring value judgements to be made at the local level to determine whether there is compliance with the standard (i.e. "the discharge must not have adverse effects on aquatic life that are more than minor"). Accordingly, the scope of regs 28 and 29 should not be broadened.
- Proposed amendments to Regulations 30 unduly limit the range of areas where vegetation clearance conditions would apply, for example only areas of significant indigenous vegetation and significant habitats. Important biodiversity is not confined to mapped SNAs, for example, highly mobile fauna (such as birds and bats) may fly between areas of significant habitat and therefore become susceptible to vegetation clearance and tree trimming outside an SNA.
- It is unclear whether regulation 30(3) and 30(4) are proposed to be removed. Forest & Bird does not support their removal. As to r 30(3), standards pertaining to soil conservation are vital to ensure the impacts of sediment loss are controlled to protect habitat for aquatic species to live in. As to r 30(4), land administered by the Department of Conservation presents some of the last vestiges of important habitat and uncontrolled vegetation clearance in such areas is highly inappropriate.

35. Do you support the proposed matters of control and discretion for all relevant matters to be considered and managed through consent conditions?

No, there are proposals to remove important safeguards in existing matters of control. For example, matters of control relating to earthworks and vegetation clearance in regulation 20 are proposed to be deleted. This is inappropriate as indigenous fauna may be adversely affected by earthworks and vegetation clearance. These also may lead to sediment generation in waterways – adversely affecting aquatic species.

It is also curious that an additional matter of control of "operational and functional needs of ETN activities" is proposed to be included across controlled activity rules under the NES-ENA. Generally, matters of control under controlled activity rules refer to techniques, methods, or measures that can tangibly manage effects. It is unclear what constructive advantage a reference to "operational and functional need" would have in managing effects from a controlled activity rule when consent must be granted anyway – unless this is to enable weaker consent conditions. If the intention is to enable weaker conditions where regulations affect biodiversity, then this is opposed.

36. Would the proposed National Grid Yard and Subdivision Corridor rules be effective in restricting inappropriate development and subdivision underneath electricity lines

No comment.

37. Do you support adding any or all of the five categories of regional activities to the NES-ENA as permitted activities?

No. Preserving the natural character (including margins) of the coastal environment, wetlands, lakes, and rivers is a matter of national importance under section 6 of the RMA. Protecting river extent and values is also directed under the NPS-FM, with related standards set out in the NES-F. The protection of the coastal marine area is via the NZCPS. All five regional activities can either individually, or cumulatively, cause significant adverse effects. Permitted, or even controlled, activity status is inappropriate in these circumstances because it does not give the opportunity to decline the consent if significant adverse effects are occurring.

The groundwater takes may be for any purpose and the duration is not clear. These should be accounted for and subject to allocation limits like all other uses. Exempting such takes is not consistent with the NPSFM 2020.

As to river crossings, even at a smaller scale, these may not only reduce stream extent but can completely remove fish passage to habitat in reaches beyond that structure.[29] This

[29] See: P Franklin, E Gee, C Baker and S Bowie "New Zealand Fish Passage Guidelines for structures up to 4 metres" (NIWA, Hamilton, 2018); PG Jellyman and JS Harding "The role of dams in altering freshwater fish communities in New Zealand" in *New Zealand Journal of Marine and Freshwater Research* (2012) 46 at 475-489; Environment Southland "A guide to improving fish access through culverts" (Environment Southland, 2020) https://www.es.govt.nz/repository/libraries/id:26gi9ayo517q9stt81sd/hierarchy/community/farming/good-management-practice/documents/Land%20sustainability%20guides%20and%20factsheets/A%20guide%20to%20improving%20fish%20access%20through%20culverts.pdf

could cause fragmentation of non-diadromous galaxiids, or restrict migration of other species to sea to spawn. Works in the bed of a river can also disturb spawning sites for kanakana and kākahi.[30] Structures associated with river crossings often increase sedimentation. Losses in river and stream extent also significantly affects the ecosystem health of water bodies.

Permitting stormwater outflows anywhere as routine activities could be incredibly damaging to urban streams and rivers. Stormwater discharges can be laden with dissolved heavy metal contamination which can stay in sediment for a long time, especially in rivers with intermittent or slow flows. Due to stormwater being untreated, it is also likely to carry pollutants including oil, grease, fluorescent whitening agents, which have a detrimental effect on water quality and not easily removed.

38. Do you support the proposed permitted activity conditions and the activity classes if these conditions are not met?

No. Unless carefully worded, the conditions may be insufficient to ensure that policy direction from other higher order instruments (NZCPS, and NPSFM) will be achieved. In any event, permitted activity rules do a poor job of managing cumulative adverse effects.

We do not support the proposed activity classes if conditions are not met. At least discretionary is appropriate. Local authorities need to retain discretion to enquire into whether or not the activity is appropriate or what appropriate conditions of consent to manage effects would be. Restricted discretionary activity status, unless carefully worded, may not be broad enough to enable this assessment.

Controlled activity status, for example as proposed for regulation 32 vegetation clearance, is not appropriate as it does not give the opportunity to decline the consent if significant adverse effects are likely.

39. Do you support management plans being used to manage environmental impacts from blasting, vegetation management and earthworks?

Not on their own. Management plans cannot replace having regulatory bottom lines and measurable standards to enforce compliance. They may not adequately implement other higher order direction contained i.e. the NPSFM and NZCPS. They will be insufficient on their own to address the degradation of ecosystem health and biodiversity.

40. What is an appropriate activity status for electricity distribution activities when the permitted activity conditions are not met, and should this be different for existing versus new assets?

As above, at least discretionary is appropriate. Local authorities need to retain discretion to assess whether or not the activity is appropriate or what appropriate conditions of consent to manage effects would be. Restricted discretionary activity status, unless carefully worded, may not be broad enough to enable this assessment.

[30] Ministry for the Environment "National works in waterways guideline" (Ministry for the Environment, Wellington, 2021) https://environment.govt.nz/assets/publications/works-in-waterways-guideline.pdf

Controlled activity status is not appropriate as it does not give the opportunity to decline the consent if significant adverse effects are occurring.

41. What is your feedback on the scope and scale of the electricity distribution activities to be covered by the proposed NES-ENA?

No comment.

42. Do you support the proposed inclusion of safe distance requirements and compliance with some or all of the New Zealand Electrical Code of Practice for Electrical Safe Distances 34:2001?

No comment.

43. Is the proposed NES-ENA the best vehicle to drive compliance with the New Zealand Electrical Code of Practice for Electrical Safe Distance 34:2001? If not, what other mechanisms would be better?

No comment.

44. Should the NES-ENA allow plan rules to be more lenient for electricity distribution activities proposed to be regulated?

No. This pushes discussion about what standards should apply, and what controls are appropriate, back to the local level. This is highly inefficient as it will only provide EN proponents the ability to continue participating in lengthy planning processes to further weaken environmental standards applicable to their infrastructure. This is not helpful and undermines the value that a nationally consistent set of minimum standards should provide and the role that they can play in driving efficiency in planning processes.

45. Should the NES-ENA allow plan rules to be more stringent in relation to electricity distribution activities in specific environments? (eg, when located in a 'natural area')

Yes. It should be open to local authorities, mana whenua, and communities to input into plan rules affecting specific environments including "natural areas". This should be an option. There may be important local or regional reasons to restrict development in certain areas, for example in important nest areas and foraging sites of threatened or at-risk indigenous avifauna.

Forest & Bird anticipates that EN proponents will oppose stringency however we note stringency does not "open the floodgates." Implementing more stringency is not a straightforward task as section 32(4) of the RMA provides an additional matter that must be assessed. If a provision in a proposed plan is more restrictive than a national environmental standard, the section 32 assessment must consider whether the restriction is "justified in the circumstances of each region or district in which the prohibition or restriction would have effect."

46. Do you support the proposed provisions to make private electric vehicle charging and associated infrastructure a permitted activity at home or at work?

It is not anticipated that private electric vehicle charging would have a significant ecological footprint. However, for the avoidance of doubt, if the intention is to enable electric vehicle

charging and associated infrastructure a permitted activity where this involves clearance of native vegetation, this is opposed.

47. Have private or at work electric vehicle users been required to obtain a resource consent for the installation, maintenance and use of electric vehicle charging infrastructure

No comment.

48. Should the construction, operation and maintenance of electric vehicle charging infrastructure be a permitted activity, if it is located in a land transport corridor?

It is not clear on whether indigenous vegetation clearance would apply to this proposed permitted activity rule. If the intention is to allow electric vehicle charging infrastructure be a permitted activity, if it is located in a land transport corridor as permitted activity and where this involves clearance of native vegetation, this is strongly opposed.

49. Should the construction, operation and maintenance of electric vehicle charging infrastructure become a permitted activity, if it is ancillary to the primary activity or outside residential areas?

It is not clear on whether indigenous vegetation clearance would apply to this proposed permitted activity rule. If the intention is to allow the construction, operation and maintenance of electric vehicle charging infrastructure as a permitted activity where this involves clearance of native vegetation, this is strongly opposed.

50. Do you support the proposed provisions for electric vehicle charging for all types of EVs, or are additional requirements needed for heavy vehicles such as large trucks, ferries or aircraft?

If the intention is to allow the construction, operation and maintenance of standalone EV charging as a permitted activity where this involves clearance of native vegetation, this is opposed. The proposal to require consent for standalone EV charging outside "natural areas" is supported however as noted earlier, mobile fauna can be located outside these areas and therefore further limits on vegetation clearance are required.

SECTION 3: DEVELOPMENT

Part 3.1: National Environmental Standards for Granny Flats (Minor Residential Units)

The NES-GF would provide for granny flats (minor residential units or MRUs) of up to 70 m^2 as a permitted activity provided standards in the NES are met.

MRUs are defined as "self-contained…", so will have their own water supply and wastewater. The NES-GF enables a combined maximum building coverage of the MRU and principal residential unit of 50%. There is no requirement for there to be capacity within the wastewater network, or for the increased impervious surface to be within the capacity of stormwater infrastructure. While this may not be an issue if there is low uptake, if many properties within a catchment choose to add a MRU, this could place an unmanageable burden on infrastructure, with consequential effects on the environment from unmanaged wastewater and stormwater contaminants, flooding and scour. A 50% building coverage

standard aligns with the MDRS standards, but the MDRS is applied at the same time as suitable infrastructure is delivered.

MRUs are not required to have access to sunlight or outdoor living space and Councils are not able to impose standards requiring this. It is doubtful that people's physical and mental health and wellbeing will be improved if housing moves in this direction. A house is better than no house at all, but as a country we can set a standard of at least requiring that people are housed in buildings with light and access to an outdoor area.

The NES-GF is unclear on whether indigenous vegetation clearance rules apply to MRUs. It says that existing district plan rules for MRU development apply where a development does not meet one or more of the permitted activity standards in the NES, but it appears that non-compliance with a rule in a regional or district plan is overridden by the NES.[31]

If the intention is to enable MRUs where this involves clearance of native vegetation, this is strongly opposed. Biodiversity in urban areas represents some of New Zealand's most threatened environment types. Most district or regional plans control clearance of native vegetation for dwellings, and in some instances a limited amount of clearance will have been authorised by resource consent for the establishment of new dwellings. If further clearance for MRUs is allowed, this will cause cumulative loss of indigenous cover beyond sustainable limits and with no requirements for remediation or offsetting of biodiversity losses. The NES-GF should include an additional permitted activity standard controlling clearance of indigenous vegetation for a new MRU, and should state that indigenous vegetation clearance rules in regional and district plans apply.

Part 3.2: National Environmental Standards for Papakāinga (NES-P)

Consistency and enabling provisions for papakāinga are supported. However Forest & Bird is concerned that effects on indigenous biodiversity have been ignored in the NES-P.

The NES-P will apply on Māori ancestral land which is broadly defined, including land formerly or currently held under Te Ture Whenua Māori Act 1993 and general land owned by iwi or hapū following a transfer by the Crown or a local authority, along with land that forms part of a natural feature declared to be a legal entity or person (including Te Urewera).

In zones for rural purposes, Māori purposes, and residential purposes, papakāinga development of up to 10 residential units on Māori ancestral land that meet the permitted activity standards (regardless of the minimum lot size in the underlying zone) and ancillary non-residential activities including commercial activities are proposed to be permitted activities (PA1). All of those zones are likely to contain indigenous vegetation and habitat of indigenous fauna. Underlying standards and rules in district plans, regional plans and regulations apply where they relate to the topics specified in PAS3. This list of topics does not include indigenous vegetation clearance rules, or controls to manage disturbance of fauna adjacent significant natural areas. The latter could include, for example, rules controlling the keeping of cats and mustelids near vulnerable bird, bat or lizard habitats, rules about reflectivity of cladding, or rules about noisy activities.

[31] Rules for protection of native vegetation and habitat may be found in regional or district plans or both.

Development that does not comply with a permitted standard (RD1) and development of up to 30 residential units (RD7) are restricted discretionary activities. The matters of discretion do not include effects on indigenous vegetation or indigenous fauna (RDM6).

Papakāinga development on Treaty settlement land is proposed to be a restricted discretionary activity, with the only matter of discretion being the extent to which the applicant can demonstrate that the land will remain in use as papakāinga in the long term. Effects on indigenous vegetation and fauna are not able to be considered. In many instances, Treaty settlement land is former conservation land and may have high conservation values.

Non-residential activities not included in PA2 (this would include quarries, mines, large commercial activities, landfills etc) are a restricted discretionary activity, with matters of discretion focussed on amenity and residential character and no ability to consider indigenous vegetation or fauna (RD4 and RDM4).

RD8 makes papakāinga developments of up to 30 residential units a restricted discretionary activity if located next to intensive indoor primary production, mining, quarrying, or rural industry, in order to manage reverse sensitivity effects. However no similar provision is made for papakāinga effects on adjacent significant natural areas.

As such, the proposals will not manage effects on significant indigenous vegetation or significant habitats of indigenous fauna, or maintain indigenous biodiversity.[32]

Additional issues are:

- It is not clear whether fire risk has been considered.
- The NES-P is inconsistent in its treatment of outstanding natural landscapes ("ONL), with effects on ONLs only able to be considered (under RDM6) outside zones where they are permitted or for more than 11 residential units. There is no reference to outstanding natural features ("ONF").

Notification for RD papakāinga is limited to authorities and immediate neighbours (N1). This will not enable input from persons or groups representing the public interest in biodiversity, landscape and freshwater-related matters, even where a papakāinga will adversely impact those features. FENZ is also excluded from commenting on proposals.

66. What additional permitted activity standards for papakāinga should be included?

The following additional permitted activity standards should be included:

- An additional permitted activity standard preventing clearance of indigenous vegetation for residential and non-residential papakāinga development where the papakāinga is within or adjacent to an area of significant indigenous vegetation or significant habitat of indigenous fauna.
- An additional permitted activity standard controlling papakāinga in an outstanding natural landscape or outstanding natural feature.

[32] Despite that being the stated intention of PAS3 (Attachment 1.7, page 8 and Discussion document p 61).

- Any changes necessary to ensure fire risk to surrounding vegetation or dwellings is effectively addressed.

67. Which, if any, rules from the underlying zone should apply to papakāinga developments?

Underlying rules should apply if they relate to the following:

- Rules controlling indigenous vegetation clearance or effects on significant indigenous vegetation or habitat of indigenous fauna within or adjacent to the papakāinga site.
- Rules controlling activities that affect outstanding natural features and outstanding natural landscapes.
- Deletion of N1

68. Should local authorities have restricted discretion over papakāinga on Treaty settlement land (ie, should local authorities only be able to make decisions based on the matters specified in the proposed rule)?

The matters of discretion should include:

- effects on indigenous vegetation and habitat of indigenous fauna within or adjacent to the papakāinga site.
- effects on outstanding natural features and outstanding natural landscapes.
- fire risk.

69. What alternative approaches might help ensure that rules to enable papakāinga on general land are not misused (for private/commercial use or sale)?

No comment

70. Should the NES-P specify that the land containing papakāinga on general land cannot be subdivided in future?

No comment

Part 3.3: National Policy Statement for Natural Hazards

Forest & Bird generally agrees with the problem statement in the National Policy Statement for Natural Hazards, except that it does not sufficiently address:

- the potential for natural hazard management to adversely impact biodiversity, natural character and landscape values (e.g. seawalls preventing coastal erosion).
- the ability of healthy, well-functioning natural systems and features to mitigate natural hazard risk (e.g., nature-based solutions[33]).

Forest & Bird supports the proposal for a NPS-NH, but considers greater recognition of these factors is needed.

For coastal environments, new policy would sit alongside the NZCPS, with the NZCPS prevailing where there is any conflict between policies. The same hierarchy is not provided

[33] As identified as a priority throughout the National Adaptation Plan (https://environment.govt.nz/publications/aotearoa-new-zealands-first-national-adaptation-plan/)

for the NPSIB and the NPSFM, so biodiversity and rivers are not protected from significant impacts of natural hazard mitigation works. The NPSIB and NPSFM should prevail.

71. Should the proposed NPS-NH apply to the seven hazards identified and allow local authorities to manage other natural hazard risks?

As this NPS-NH is intended to be built on in future, flooding, landslips, coastal erosion, coastal inundation, active faults, liquefaction and tsunami are priority hazards to cover initially. The management of natural hazards not listed, such as wildfires, is enabled under 'other natural hazard risks", though, the lack of direction for such hazards may result in varying application throughout the country, potentially complicating the effectiveness of the NPS-NH.

72. Should the NPS-NH apply to all new subdivision, land use and development, and not to infrastructure and primary production?

Forest & Bird does not understand the rationale for not having the NPS-NH apply to infrastructure (why this is "not a priority") when much of New Zealand's infrastructure is threatened by hazards and appropriate siting, sizing and design of future infrastructure is essential.

The North Island Weather Events of 2023 illustrated the need for the country to better plan where public infrastructure is located relevant to natural hazard risks. Treasury estimated the total cost of the events to the New Zealand economy at between $9 billion and $14.5 billion[34] and found that "More than half of overall damage relates to public infrastructure"[35]. This makes clear that it is necessary to include infrastructure in the NPS-NH.

Including infrastructure would also better implement the proposed objective of the NPS-NH. Infrastructure should not cause risk displacement. The NPS-NH can achieve many positive outcomes if it recognises the ability of nature-based solutions to mitigate natural hazard risk. For built infrastructure, this means keeping it out of high-risk areas, or places that will lead to risk displacement (e.g., a seawall can impact coastal processes, making down the coast more vulnerable to erosion or a bridge over a stream can limit stream capacity, making upstream flood risk higher).

The proposed NPS-I provides for consideration of natural hazards but in a general, discretionary way. The proposed NPS-NH is more directive as to how these risks should be assessed, and should apply to infrastructure.

The exclusion of primary production also raises a concern that primary production may be provided for on land subject to natural hazards when open space for the implementation of nature-based resilience options would be a preferable land use (e.g. on river berms).

Question 73. Would the proposed NPS-NH improve natural hazard risk management in New Zealand?

[34] https://www.icnz.org.nz/wp-content/uploads/2025/02/ICNZ-NIWE-REPORT-FINAL-1.pdf
[35] https://www.treasury.govt.nz/sites/default/files/2023-04/impacts-from-the-north-island-weather-events.pdf

Possibly. The objective under consideration provides that to avoid, mitigate and reduce risks arising from natural hazards on subdivision, land use and development, local authorities should apply a risk-based approach to managing natural hazard risks, and apply land-use and other use controls that are proportionate to the level of natural hazard risk.

Forest & Bird seeks greater recognition of the role of nature-based solutions (aligning with the National Adaptation Plan) including making room for rivers, maintaining coastal vegetation such as mangroves, and green infrastructure, as methods to mitigate natural hazard risks. It makes sense to take sea level rise predictions for the next century and storm surges into account both for the cost to taxpayers and the environment in planning. The proposed objective is overly focussed on applying controls on subdivision, land use and development, when protection of the natural environment and its resilience to natural hazards should be a key part of the approach, as it is in many other countries, as recommended by the Sendai Framework for Disaster Risk Reduction 2015–2030[36], to which, New Zealand is a signatory.

74. Do you support the proposed policy to direct minimum components that a risk assessment must consider but allow local authorities to take a more comprehensive risk assessment process if they so wish?

Forest & Bird supports the minimum components for consideration: the likelihood of a natural hazard event occurring, the consequences of a natural hazard event for the activity being assessed, existing and proposed mitigation measures, residual risk, and potential impacts of climate change on natural hazards at least 100 years into the future.

75. How would the proposed provisions impact decision-making?

The proposed policies require local authorities to proportionately manage natural hazard risk, based on the level of natural hazard risk (P3) and to make decisions based on the best available information (P4). Local authorities likely already consider that they are managing natural hazard risk in a proportionate way. If change in the nature of management is expected, more directive policy is likely required. This suite of policies does not add materially to policies already in regional policy statements and plans.

New subdivision, use and development, including mitigation measures, must not exacerbate significant natural hazard risk on other sites or locations (P5). Why are significant natural hazard risks on the site of the new subdivision, use or development not relevant under P5?

Policy support for protection of the environment's resilience to natural hazards (as an aspect of its life-supporting capacity) should be included.

76. Do you support the placement of very high, high, medium and low on the matrix?

No comment

[36] https://globalplatform.undrr.org/sites/default/files/2022-02/Words%20into%20Action%20Guidelines%20on%20Nature-based%20Solutions%20for%20Disaster%20Risk%20Reduction.pdf?startDownload=true

77. Do you support the definition of significant risk from natural hazards being defined as very high, high, medium risk, as depicted in the matrix?

No comment

78. Should the risks of natural hazards to new subdivision, land use and development be managed proportionately to the level of natural hazard risk?

Yes in principle, but this concept will have a different meaning depending on who is considering it.

79. How will the proposed proportionate management approach make a difference in terms of existing practice?

It is unlikely to make a difference for the reasons set out in answer to question 75.

80. Should the proposed NPS-NH direct local authorities to use the best available information in planning and resource consent decision-making?

It is generally a good idea to make decisions based on the best available information, however as set out below it can create legal complexity and delay.

81. What challenges, if any, would this approach generate?

It can lead to decisions being delayed because better information will be made available in future. It can also lead to challenges to local authority decisions on the basis that better evidence is available. Those risks would likely count against the intention of the policy.

82. What additional support or guidance is needed to implement the proposed NPS-NH?

Central Government should provide support and guidance to better enable the large-scale implementation of nature-based solutions as a cost-effective and co-beneficial approach to natural hazard risk reduction. There is substantial international guidance, including but not limited to the UN Office for Disaster Risk Reduction's report *Nature-Based Solutions for Disaster Risk Reduction*[37]. This would also help align the NPS-NH with other national direction, such as the National Adaptation Plan.

83. Should the NZCPS prevail over the proposed NPS-NH?

Yes. The same hierarchy should be specified in relation to the NPSIB and the NPSFM, as discussed above.

Section 4: Implementation of infrastructure and development instruments

84. Does 'as soon as practicable' provide enough flexibility for implementing this suite of new national policy statements and amendments?

No comment

[37] https://globalplatform.undrr.org/sites/default/files/2022-02/Words%20into%20Action%20Guidelines%20on%20Nature-based%20Solutions%20for%20Disaster%20Risk%20Reduction.pdf?startDownload=true

85. Is providing a maximum time period for plan changes to fully implement national policy statements to be notified sufficient? a. If not, what would be better, and why? b. If yes, what time period would be reasonable (eg, five years), and why?

No comment

86. Is it reasonable to require all plan changes to fully implement a national policy statement before or at plan review?

No comment

87. Are there other statutory or non-statutory implementation provisions that should be considered?

No comment

PACKAGE 2 - PRIMARY SECTOR

Part 2.1 National Environment Standards for Marine Aquaculture

1. Have the key problems been identified?

The key problems identified are unnecessary restrictions, difficulty of changing consent conditions, and that getting consent for research and trials is too hard and taking too long.

New Zealand's coastal and inshore environment is a delicately balanced system, already at risk from multiple threats. Due to the nature of the inshore environment, it is at higher risk of ocean warming/climate change, pollution and sedimentation. There is also a great lack of knowledge of how developments and human induced changes influence that risk on inshore environments, and how these could be offset or compensated for. Even conducting research trials in this environment could have a severe and long-lasting effect on the localised environment and the species which rely on it.

Aquaculture can have significant adverse effects on benthic ecosystems, water quality, marine mammals, sharks and seabirds (along with navigation, recreation, landscape and natural character values). Where existing marine farms are having these effects, they would generally have been considered as part of reconsenting or through bespoke regional processes such as was proposed for Marlborough. However, the extension of consent duration provided by the Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Act 2024 has prevented this. Ensuring that all marine farms are operating within appropriate environmental parameters should be identified as a key problem to address.

2. Do the proposed provisions adequately address the three issues identified?

No comment

3. What are the benefits, costs or risks of the proposed changes?

Proposed permitted activity conditions (R2) and controlled activity entry requirements (R3 and R9) for research and trial activities contemplate changes to structures, equipment,

mooring and anchorage systems within existing marine farm areas, but there is no requirement that these must not increase risk to marine mammals, sharks and seabirds (e.g. entanglement in moorings or nets) or important benthic ecosystems.

Public and limited notification for applications for coastal permits under R3, R6, and R9 is prevented. This is opposed because coastal permits for research and trials that involve different structures or moorings may have significantly greater impacts on marine animals and seabirds such as penguins, and should be the subject of wider consideration than just the consent authority and applicant.

Proposed R17 would allow research and trial activities in new marine areas as a permitted activity. Outstanding areas (except where only subsurface structures are involved) and significant marine ecological areas are excluded. This is inadequate:

- outstanding areas do not only protect surface visual values
- few plans have identified significant marine ecological areas, and those that have tend to be small areas, not including wide-scale marine mammal and seabird habitats. Risk of entanglement by marine mammals and seabirds is not addressed at all by this proposal.

The same concerns apply to proposed R18 – controlled activity research and trial activities and R21 - restricted discretionary research and trial activities. These may be up to 2 ha and up to 4 ha respectively, with inherent risk to marine mammals and seabirds.

Matters of control and discretion in Attachment 2.1.1 include conditions relating to adverse effects on marine mammals and seabirds and effects on reefs, biogenic habitat and regionally significant benthic species, which is supported. "Marine mammal and seabird conditions" are not identified as relevant to R4, R7, R10 or R13 (research and trials in consented space), preventing conditions that would address increased risk from the research and trials structures and moorings. "Management practices to minimise adverse interactions between marine mammals or seabirds and the marine farm, including entanglements, injury, and mortality" are relevant to R4, R7, R10, and R13 but management practices does not cover structure and mooring design.

The table of matters of control and discretion is missing some regulations, including R18 and R21. Does this mean no matters of control apply?

The matters of control for research and trials in consented space include "If in an outstanding area, effects on the values and characteristics that make the area outstanding". However, this will only be triggered by surface structures, which in many instances will not enable consideration of effects on the values and characteristics that make the area outstanding.

The effects of climate change, including warming sea temperatures in some places and increased cyclone strength and storm surges also need consideration when siting new aquaculture or changing species/structures. For example, the Muriwhenua Aquaculture project proposed 9 new marine farms, 8 of which are in direct line of cyclone storm surges or increased Tasman Sea storms.

Part 2.2: National Environmental Standards for Commercial Forestry

Overarching comments

The stated objective of the proposals is to "remove regulatory burden and uncertainty for the commercial forestry sector". In pursuing this objective, the proposals are inconsistent with the findings of the 2023 Ministerial Inquiry into Land Use (MILU) in Tairāwhiti and Te Wairoa and risk poorer environmental outcomes.

The proposed changes appear to weaken, rather than strengthen, the regulatory framework at a time when evidence demands a more robust and precautionary approach.

The MILU report, commissioned by the government, concluded that "many of the areas under pine should never have been planted in the first place" and that these land-use decisions have "locked in" decades of risk. The report recommended strengthening oversight and empowering councils to make decisions reflecting local conditions.

These proposals move in the opposite direction by centralising control and reducing council autonomy. This approach is problematic given the foreseeable impacts of increasing high-intensity rainfall events caused by climate change.

Weakening the regulatory framework transfers long-term environmental and financial risk from forestry operators to downstream communities, tangata whenua, and taxpayers, who will bear the costs of managing damage to infrastructure, property, and ecosystems.

Proposed Amendments to Regulation 6

The proposal to curtail the ability of local authorities to implement rules more stringent than the national standard is a key area of concern. Regulation 6 enables councils to make more stringent rules than the NES-CF where necessary to give effect to an objective developed under the NPSFM. Government is proposing to amend regulation 6(1)(a) so that stringency is only available to manage the risk of severe erosion. This is opposed:

- This specific provision was included in the 2023 update to empower councils based on the MILU recommendations; to weaken it now is to disregard that evidence.
- If councils and communities decide that achieving limits and targets for a receiving waterbody requires a more protective approach than the NES-CF rules would achieve (for example, because the waterbody is habitat for threatened species sensitive to sediment), it should be open to councils to have tailored rules that ensure that outcome is achieved. The limited stringency proposed caters for extreme risk events only, and does not provide the flexibility required to protect freshwater at the FMU-specific level.
- This approach also fails to account for the significant variations in geology, topography, and climate across New Zealand.

Forest & Bird recommends that Regulation 6(1)(a) is retained in its current form to allow councils the necessary flexibility to give effect to the NPS-FM and protect local environmental, cultural, and community values.

Amendments to Regulation 6(4A)

The proposal to remove Regulation 6(4A) undermines the "right tree, right place" principle. This regulation is a key mechanism for councils to control the location of new afforestation based on local knowledge. Its removal limits the ability of councils to avoid adverse effects before they are created, placing them in a reactive position of managing harms from forests planted in unsuitable areas.

Forest & Bird recommends retention of Regulation 6(4A) to ensure councils have the ability to strategically guide the location of new forests to avoid establishing future risks in unsuitable landscapes.

Regulation 69 and Schedules

Forest & Bird supports a risk-based approach to harvest management. It cautiously supports the move away from minimum standards of slash removal for low-risk sites but considers it essential that there is good monitoring of the effectiveness of a risk based approach and signals that it may be necessary to revert to minimum standards for all sites if it is not shown to be effective.

However, the proposed framework is too narrowly focused and does not address the full spectrum of risks associated with clear-fell harvesting on erosion-prone land.

The proposed "slash mobilisation risk assessment" does not adequately define the full scope of the problem. The primary risk is often landscape instability, where the triggers include soil saturation, post-harvest root decay, and soil disturbance from machinery, leading to mass-movement erosion. Slash is often the debris carried by these larger erosional events. A regulatory tool focused only on slash mobilisation is treating a component of the problem, not the cause, and will therefore be less effective.

The draft template for the risk assessment has several weaknesses:[38]

- Its initial gateway relies on the Erosion Susceptibility Classification (ESC), which is derived from 1:50,000 scale mapping and may be too coarse to identify localised hazards.
- It notes that high-intensity rainfall is "not sufficiently reliable for a regulation". This is inadvisable. In a changing climate, rainfall intensity is a critical and foreseeable trigger for landslides. Excluding it from a regulatory risk assessment is inconsistent with a common-sense approach.
- Rainfall must be based not only on past events, but also take into account climate change.
- Slope features that are physically present and observable (such as gullies that could intercept and channel landslide to waterways) are stated to involve too many

[38] Some of these issues have been raised by Dr Nathanael Melia, Senior research fellow, New Zealand Climate Change Research Institute, Victoria University of Wellington; and Founding Director of Climate Prescience: https://www.sciencemediacentre.co.nz/2025/07/16/slash-and-forestry-management-changes-proposed-expert-reaction/

variables despite these being features of active erosion.It introduces subjective criteria that will be difficult to implement and enforce consistently.

The proposal to remove the term "woody debris" from planning requirements because it is undefined is not the correct solution. While the term requires a clear definition, its removal creates a loophole. "Slash" is defined as tree waste from the forestry operation itself. "Woody debris" should be defined to include all organic material (e.g., pre-existing timber, vegetation from stream banks) mobilised as a direct consequence of the forestry operation destabilising the landscape.

An alternative option raised in the discussion document is to change the size and volume thresholds in the regulations so that slash that is sound wood greater than 3.1 metres (an increase from 2m in the current NES) with a 10 centimetre small end diameter must be removed from the forest cutover. A residual amount of 15 cubic metres of material of this size might be left on the cutover. This increase in the thresholds is opposed. There is no evidential basis for differentiating between sound wood greater than 3.1 m compared to 2m, both lead to environmental harm. This would result in unacceptable environmental risks.

Forest & Bird's recommendations are to:

1. Broaden the assessment's scope from a "Slash Mobilisation Risk Assessment" to a comprehensive "Erosion and Debris Flow Risk Assessment". This must include quantitative measures for slope stability, soil properties, and design rainfall intensity, in addition to slash.
2. Require that the risk assessment be undertaken by a suitably qualified and experienced professional, with the certified report provided to the council for review as part of the harvest plan.
3. Define, rather than delete, the term "woody debris" to ensure operators are responsible for all material mobilised as a consequence of their activity.

Regulations 10A & 77A

The proposal to remove the requirement for afforestation and replanting management plans is a significant weakening of the regulatory regime. The justification that they are "redundant" and impose unjustified costs is not a sufficient reason to remove a key planning tool.

These plans are essential for proactive environmental management. They require an operator to document and consider long-term environmental impacts and management responses before commencing an activity with a multi-decade lifecycle. This is fundamental to the RMA's purpose of avoiding adverse effects. Removing this requirement shifts the framework from a proactive planning model to a reactive management one, which has proven to be ineffective and costly.

Forest & Bird recommends that the requirement for Afforestation and Replanting Management Plans in Regulations 10A and 77A and Schedule 3 is retained.

Part 2.3: New Zealand Coastal Policy Statement

22. Would the proposed changes achieve the objective of enabling more priority activities and be simple enough to implement before wider resource management reform takes place?

23. Would the proposed changes ensure that wider coastal and marine values and uses are still appropriately considered in decision-making?

Policy 6

The proposed changes to Policy 6 are to:

- strengthen the language to make it more directive that activities must be enabled
- add a reference to "operational need" to clauses that recognise functional need

These changes will make it easier to mine in the CMA even where important coastal features and indigenous biodiversity are impacted.

The Discussion Document says that the changes to Policy 6 will make it easier to give consent to priority activities in the coastal environment. The breadth of the proposed changes mean not only "priority" activities are enabled, but any Infrastructure, renewable electricity, electricity transmission, aquaculture and resource extraction activities. The effect of the changes is to significantly expand and more directly enable activities that have adverse effects on coastal biodiversity and landscapes. The detrimental impact of this to New Zealand's economic, social and environmental wellbeing is not adequately acknowledged. A good example of this is the reliance of coastal fisheries on a healthy coastal environment for recreational, cultural, commercial and non-extractive values. New Zealanders cherish the coast, and do not support short-term economic gain being prioritised over sustainability and protection.

Policy 6 should be retained in its current form.

Policy 8

It is proposed to amend policy 8 to direct decision-makers to provide for aquaculture activities within aquaculture settlement areas. The language proposed is extremely directive: decisionmakers must "provide for aquaculture activities". Forest & Bird is concerned that this will require consent authorities to approve new marine farms even where they would have significant adverse effects on marine ecology.

Forest & Bird supports upholding the Māori Commercial Aquaculture Claims Settlement Act 2004.

We understand from discussions with Te Ohu Kaimoana that in practice, recent authorisations under the Settlement Act take into account environmental values to some degree. However, we also understand that the breadth and detail of environmental matters taken into account is not consistent across all authorisations, particularly older authorisations. Forest & Bird would support better integration between the Settlement Act and resource consent decisions. For example, a provision requiring decisionmakers to have particular regard to an authorisation when deciding whether to grant a coastal permit for aquaculture. However, the language of the proposed amendments to Policy 8 goes beyond

good integration, and will not ensure that coastal and marine values and uses are appropriately considered in decision-making.

The Settlement Act does not guarantee the right to establish aquaculture in an aquaculture settlement area. It provides space for authorisation holders to apply for coastal permits for aquaculture, with the space being preserved from incompatible activities by s 165E RMA. The RMA expressly provides that the granting of an authorisation under the 2004 Act "does not confer any right to the grant of a coastal permit in respect of the space that the authorisation relates to" (s 165R RMA). By effectively guaranteeing the grant of coastal permits despite s 165R, the policy goes beyond the intent of the 2004 Act, provides an advantage for authorisation holders over other aquaculture businesses which must have their applications assessed on their merits, and is ultra vires.

If Policy 8 is amended, the amendments should require decision-makers to:

- recognise the cultural benefits of aquaculture (as proposed); and
- require decisionmakers to have particular regard to an authorisation when deciding whether to grant a coastal permit for aquaculture in an aquaculture settlement area.

24. Are there any further changes to the proposed provisions that should be considered

Blue carbon

The NZCPS changes fail to consider the potential for blue carbon and the millions of dollars it could contribute to the New Zealand economy, as well as numerous co-benefits for both our communities and natural environment. A recent report published by the Ministry for the Environment and The Nature Conservancy identified one of the main barriers as being current policy and regulatory settings but stated that "policy and regulatory barriers can be overcome… with further research and potential legislative change"[39]. Given changes are proposed for the NZCPS, it would be a missed opportunity to fail to consider this matter.

Integration with s 9(c) Fisheries Act

Planning and consenting for activities in the marine environment should take into account Habitats of Particular Significance for Fisheries Management ("HOPS") established as part of the implementation of s 9 (c) of the Fisheries Act.[40] MPI has a work programme to identify and protect these habitats, and it would be counterproductive and inconsistent to allow harmful activities to affect these habitats while also seeking to protect them. HOPS are by definition significant habitats for indigenous fauna because fisheries resources, whether harvested or not, are primarily indigenous fauna so a habitat of particular significance for fisheries management is a habitat of particular significance for indigenous fauna. Seagrass that creates a nursery ground for a range of fish species (and so is important in the life cycle

[39] https://environment.govt.nz/news/coastal-wetland-blue-carbon-policy-research-in-aotearoa/

[40] Section 9(c) states that all persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, must take into account the environmental principle that habitat of particular significance for fisheries management should be protected.

of fish, including species that are harvested commercially, culturally and recreationally) is a potential example.[41] HOPS also apply to freshwater habitats because tuna (eels) are included in the Fisheries Act.[42]

Part 2.4: National Policy Statement for Highly Productive Land

Not addressed

Part 2.5: Multiple instruments for quarrying and mining provisions

33. Do you support the proposed amendments to align the terminology and improve the consistency of the consent pathways for quarrying and mining activities affecting protected natural environments in the NPS-FM, NES-F, NPSIB and NPS-HPL?

No.

The proposal to amend the NPSIB would replace "mineral extraction" with "the extraction of minerals and ancillary activities" and replace "aggregate extraction" with "quarrying activities". Those terms are only used in clause 3.11. Activities listed in clause 3.11 do not need to meet Clause 3.10(2). Clause 3.10(2) is a short list of the five biodiversity impacts that were identified through technical advice as causing the most significant, and likely irreversible, biodiversity loss.[43] New activities seeking to establish within a significant natural area must avoid those effects, unless an exception such as clause 3.11 applies. In other words, activities listed in clause 3.11 are able to have those significant and irreversible effects on significant natural areas, provided they mitigate, remedy, offset or compensate as far as practicable for those effects.

The terms "mineral extraction" and "aggregate extraction" were deliberately chosen for the NPSIB, in order to limit the activities able to cause those significant and likely irreversible effects to the locationally constrained aspect of activities – here the extraction of minerals or aggregate - and not all of the ancillary activities that may occur as part of mining or quarrying activities, such as processing, transport, storage, sale and recycling of aggregates, deposit of overburden, and accessory buildings, which are not similarly constrained.

Other NPSIB amendments are to remove the words "could not otherwise be achieved using resources in New Zealand, remove the requirement for a benefit to be "public" and enables consideration of regional (not just national) benefits to the mining consent pathway. Those terms were specifically chosen for the NPSIB, to limit the range of activities that would come within the clause 3.11 exception.

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[41] https://fs.fish.govt.nz/Doc/23537/AEBR_129_2739_ENV2009-07%20Obj%201-3,%20MS%204,%207,%2010,%2013.pdf.ashx

[42] This technical summary from the 2019-20 Aquatic Environment and Biodiversity Annual Review (AEBAR) illustrates how dams in rivers can impact on HOPS, as well as providing a more general summary: https://www.mpi.govt.nz/dmsdocument/42147/direct/

[43] Loss of ecosystem representation and extent; disruption to sequences, mosaics, or ecosystem function; fragmentation of SNAs or the loss of buffers or connections within an SNA; a reduction in the function of the SNA as a buffer or connection to other important habitats or ecosystems; a reduction in the population size or occupancy of Threatened or At Risk (declining) species that use an SNA for any part of their life cycle.

The effect of the proposal is not simply to realign the NPSIB for consistency with the National Planning Standards and other instruments. It is a huge expansion of the activities that are exempted from the requirement to avoid the effects in clause 3.10(2) and allowed to cause significant and likely irreversible biodiversity loss. Generally these effects are not able to be adequately offset or compensated for. This proposal will lead to increased biodiversity loss through habitat destruction. It is contrary to section 6(c) and will not maintain biodiversity as required by sections 30 and 31 RMA. It is also contrary to Te Mana o te Taiao, the Aotearoa New Zealand Biodiversity Strategy, its associated goals and New Zealand's international obligations to the the Kunming-Montreal Global Biodiversity Framework (GBF).

It is not in New Zealand's interests to enable aggregate processing plants, coal storage facilities, overburden dumps and lakes of toxic waste in our most precious and highly valued ecological areas (unless they can avoid significant adverse effects, in which case the NPSIB would already provide for their establishment).

34. Are any other changes needed to align the approach for quarrying and mining across national direction and with the consent pathways provided for other activities?

No comment

35. Should "operational need" be added as a gateway test for other activities controlled by the NPS-FM and NES-F?

No.

The proposal to amend the NPSFM and NESF would add "operational need" as a gateway for mining and quarrying. This will similarly expand the range of activities that can have significant adverse impacts on wetlands and rivers.

Part 2.6: Stock Exclusion Regulations

36. Do you agree that the cost of excluding stock from all natural wetlands in extensive farming systems can be disproportionate to environmental benefits?

The proposal is to amend the requirement that all stock must be excluded from any natural wetlands that support a population of threatened species, so that it would not apply to non-intensively grazed beef cattle and deer.

Our Environment 2025 identifies that New Zealand has lost an estimated 90 percent of historical wetland area, and that "the small fraction that remains is vital for the survival of many threatened plant and animal species". It acknowledges that wetlands continue to be lost:

- Freshwater wetland area decreased by 1,498 hectares between 2012 and 2018
- Wetlands continue to be degraded by drainage and disturbance from adjacent land use, particularly roading and grazing

It is very unlikely that threatened wetland species will survive in the long term if they are subjected to grazing and trampling by beef cattle and deer.

The change proposed to Regulation 17 will cause loss of threatened species, contrary to New Zealand's obligations under the Convention on Biological Diversity and the Ramsar Convention obligation to ensure "wise use" of wetlands.[44]

Te Mana o te Taiao, the Aotearoa New Zealand Biodiversity Strategy ("ANZBS") is a national strategy for addressing the biodiversity crisis in New Zealand. It involves recognising nature as being at the heart of our economy. A 2030 goal is "no loss of the extent or condition of wetland ecosystems which have been identified as having high biodiversity value".[45] Wetlands that contain threatened species have, by definition, high biodiversity value. This proposal is contrary to the ANZBS.

In that context, the costs of excluding beef cattle and deer from wetlands that contain threatened species in no way exceed the benefits.[46]

PACKAGE 3 – FRESHWATER

1. What resource management changes should be made in the current system under the RMA (to have immediate impact now) or in the future system (to have impact longer term)? From the topics in this discussion document, which elements should lead to changes in the current system or the future system, and why?

Our Environment 2025 makes clear the dire state of freshwater in New Zealand:

- In some places, groundwater is unsafe for drinking due to contamination by *E. Coli* and nitrate-nitrogen from human and animal sources.
- 45 percent of the country's rivers are not suitable for swimming due to *E.Coli* contamination. Many monitoring sites (41%) are getting worse.
- 55 percent of New Zealand's river length have moderate or severe organic pollution or nutrient enrichment
- Water quality is more degraded when there is more high-intensity pasture and horticultural land upstream

It is extremely concerning that councils are presently barred from notifying new freshwater planning instruments, meaning that no progress can be made on setting frameworks for our most pressing freshwater issue: reducing nutrient, sediment and *E.Coli* discharges to surface water, groundwater, and coastal receiving environments.

For example, the new Otago Regional Council water plan was paused by the Government, and is now over two decades old. There have been many changes in the Otago region since the original water plan became operative in 2004, and severe degradation in some areas.

[44] Wise use of wetlands is the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development (Resolution IX.1 Annex A (2005)).
[45] Goal 10.3.2.
[46] Question 36 is very poorly framed, as it is not directed to the proposed change to regulation 17. Generic answers to this question will in no way contribute to understanding of costs and benefits of the change.

Re-starting freshwater planning should be a priority, and for that reason Forest & Bird supports any national changes needed to enable the Government to be comfortable with regional planning recommencing sooner rather than later.

Part 2.1: Rebalancing freshwater management through multiple objectives

2. Would a rebalanced objective on freshwater management give councils more flexibility to provide for various outcomes that are important to the community? How can the NPS-FM ensure freshwater management objectives match community aspirations?

The fact that the NPSFM has a single objective does not mean that it only provides for one goal (contrary to how the objective is described in the Discussion Document). The single objective contains three goals, with a clear hierarchy to apply in the event of conflict.

The objective being consulted on would direct councils to safeguard the life-supporting capacity of freshwater and the health of people and communities while enabling communities to provide for their social, cultural and economic well-being, including productive economic opportunities. This provides no clear guidance as to how these matters are to be balanced in the event of conflict. Past experience demonstrates this will perpetuate degradation of water quality. It will also result in lengthy and costly court battles for all sides to work out those conflicts.

The Discussion Document says that the Government is concerned that the hierarchy inherent in the NPSFM objective is currently being interpreted as requiring pristine water quality to be achieved, before allowing any other uses of freshwater. There is no basis for that concern and no "problem" that this change will solve. There is no evidence that prioritisation of the health and well-being of waterbodies and freshwater ecosystems is preventing high quality applications for resource consent from being granted, or increasing the cost to applicants. Analysis by MFE of the previous legislative process to disapply the Te Mana o Te Wai hierarchy in resource consent processes[47], established that:[48]

- There is limited evidence on how the hierarchy of obligations is impacting resource consent applications across the country.[49]
- In most consent decisions reviewed by MFE, consent applicants were able to demonstrate that their activity adhered to the hierarchy of obligations, which led to consent being granted, or inconsistency with the hierarchy of obligations was balanced against wider considerations, which led to consent being granted.[50]
- Officials were only aware of two resource consent applications that had been declined where inconsistency with the hierarchy of obligations featured as one of the reasons contributing to those decisions. A groundwater take application in Hawke's Bay was refused, in part because it did not sufficiently meet the hierarchy of Te Mana o te Wai, and a discharge permit application in Taranaki was refused with one of ten principal reasons being 'the application is inconsistent with Te Mana o te Wai'.

[47] Resource Management (Freshwater and Other Matters) Bill 2024
[48] Regulatory Impact Statement: Excluding the hierarchy of obligations within the National Policy Statement for Freshwater Management from resource consenting (23 May 2024)
[49] At 44.
[50] At 46.

> However, in both examples, adverse environmental effects also featured in the decisions and these consents would likely have still been declined irrespective of the hierarchy of obligations.[51]

The Government should be much more concerned with improving the severe water quality issues identified in Our Environment 2025 than with the fanciful suggestion that the NPSFM hierarchy is requiring pristine water quality.

3. What do you think would be useful in clarifying the timeframes for achieving freshwater outcomes?

The Discussion Document says that the NPS-FM has often been misinterpreted as requiring water quality and bottom lines to be achieved or complied with immediately. That is wrong: that interpretation has never been taken. The proposed new objective would require regional councils to consider the pace and cost of change, and who bears the cost. Those matters are already considered under s 32 RMA.

The proposed new objective fails to consider how freshwater ecosystems may be impacted, or irreversibly lost, through longer timeframes for improvement. If a time-focussed objective is introduced, it should enable all aspects of environmental, social and cultural wellbeing to be factored in, not just economic cost.

The Discussion Document identifies two additional objectives under consideration:

- A requirement to maintain or improve freshwater quality.
- New objectives to enable the continued domestic supply of fresh vegetables, and to address water security.

An objective of maintaining or improving freshwater quality is supported in principle, provided it is sufficiently directive.

New objectives enabling intensive vegetable production and water security are opposed if they provide for further degradation of water quality or habitat loss.

4. Should there be more emphasis on considering the costs involved, when determining what freshwater outcomes councils and communities want to set? Do you have any examples of costs associated with achieving community aspirations for freshwater?

See response to 3 above.

Part 2.2 Rebalancing Te Mana o Te Wai

5. What will a change in NPS-FM objectives mean for your region and regional plan process?

See response to 3 above

6. Do you think that Te Mana o te Wai should sit within the NPS-FM's objectives, separate from the NPSFM's objectives, or outside the NPS-FM altogether – and why?

[51] At 47-48.

It is difficult to reconcile the three options described in the Discussion Document with the five options addressed in the Interim RIS. The spectrum of options include:

- removing the hierarchy of obligations, permanently disapply Te Mana o Te Wai in consent decisions, and clarify that progressive improvement over time is allowed.
- reinstate the 2017 Te Mana o Te Wai provisions (this would make Te Mana o Te Wai one of multiple objectives and something to "consider and recognise", with no hierarchy of obligations)
- remove Te Mana o Te Wai provisions

Te Mana o Te Wai uses Māori words to express concepts that are common to all New Zealanders. As the Environment Court considering the proposed Southland Water and Land Plan said of the concept:[52]

> While expressed in te reo Māori, Te Mana o te Wai benefits all New Zealanders.

Te Mana o Te Wai comprises a concept (the hierarchy of obligations), and a framework (6 principles relating to the roles of tangata whenua and other New Zealanders in freshwater management, which inform the NPSFM and its implementation).[53] The consultation documents only address the concept, and do not discuss what is intended for the framework but presumably the option of removing Te Mana o Te Wai means removing both the concept and the framework. Forest & Bird is not aware of any difficulties in applying the concept or the framework.

Te Mana o te Wai should remain as a fundamental concept.

7. How will the proposed rebalancing of Te Mana o te Wai affect the variability with which it has been interpreted to date? Will it ensure consistent implementation?

Neither the Discussion Document nor the RIS identify any "variability" of interpretation of Te Mana o Te Wai so the premise of this question is unsound.

Considering the 2017 NPSFM in *Aratiatia Livestock*, the Environment Court interpreted Te Mana o Te Wai as:[54]

> ...referring to the integrated and holistic wellbeing of a freshwater body

and to

> ... the health of the environment, the health of the waterbody and the health of the people.

That concept has been consistently applied.

Part 2.3: Providing flexibility in the National Objectives Framework

Forest & Bird supports retention of the four compulsory values:

- Ecosystem health
- Human contact

[52] *Aratiatia Livestock Ltd v Southland Regional Council* [2019] ELHNS 314 at [20]
[53] NPSFM Clause 1.3
[54] At [17]-[20]

- Mahinga kai
- Threatened species

In addition, habitat and natural form and character should be compulsory values. These are basic ecological, human health and cultural values that any freshwater management system should address.

The Discussion Document says that the NPS-FM has been criticised for being relatively inflexible. That is not accurate. The concept of "bottom lines" and "limits" are deliberately inflexible, as they need to be to manage cumulative impacts from a range of discharges and uses. However, community and industry involvement is provided for in almost every aspect of the NOF, from FMU delineation to value and attribute selection and determination of timeframes for improvement. There is significant flexibility in the NPS-FM.

The Discussion Document recognises that it is important councils are directed to manage the four major contaminants that are known to adversely affect freshwater: ie, nitrogen, phosphorous, sediment and *E. coli*. It is a relief to see the importance of these contaminants is recognised. Forest & Bird strongly supports retaining the requirement to manage these contaminants. Other critical things to manage are periphyton, dissolved oxygen, and MCI along with lake- and estuary-specific concepts like trophic state and macrophyte cover.

Government is consulting on whether to give councils flexibility to deviate from bottom lines and monitoring methods, and on whether national bottom lines are required at all, or if instead councils should determine where limits are set based on community input.
Any additional flexibility would be subject to it being used for specific purposes and having regard to appropriate matters. Forest & Bird does not support flexibility in setting bottom lines, except where local conditions make a threshold or method for monitoring an attribute inappropriate. The current NPS-FM already acknowledges natural variability by enabling target attribute states to be set above national bottom lines if naturally occurring processes make the bottom lines unachievable.[55] Forest & Bird strongly opposes allowing Councils to deviate from bottom lines simply because achieving national bottom lines has a high social, cultural or economic cost. Those costs are already able to be taken into account in the timeframe for improving water quality, and should not justify failing to achieve a bottom line altogether. Bottom lines already set a low level of protection for ecosystems and no further lowering of standards should be provided for.

Part 2.4: Enabling commercial vegetable growing

Vegetable growing should be managed to at least achieve national bottom lines. Permitted activity status for discharges in overallocated catchments makes it very difficult to reduce cumulative contaminant loads.

Preventing urban development on highly productive land contributes to keeping land available for vegetable production in more sustainable ways.

[55] Clause 3.32.

Part 2.5 Addressing water security and water storage

Government is considering whether to develop new national standards that permit the construction of off-stream water storage. In principle, construction of off-stream storage such as ponds on farms is supported as a method to enhance water security, provided it does not displace indigenous habitat. Proposed standard 9 is:

> Clearance of vegetation that was established for flood and erosion control measures or that is ecologically significant vegetation (as specified in a relevant plan) is not permitted.

This standard will not be effective, because Councils have been prevented[56] from identifying ecologically significant vegetation in plans. Any permitted standard should only come into effect after completion of processes to identify ecologically significant vegetation.

Abstraction of water associated with this storage should not be permitted and requires consideration along with other water takes within appropriate flows and limits.

Part 2.6: Simplifying the wetlands provisions

Forest & Bird does not support the proposal to define induced wetlands as wetlands that have developed unintentionally as an outcome of human activity for purposes other than creating a wetland or water body, and excluding these from wetland provisions in the NPS-FM and NES-F, except where a council identifies them as regionally significant. Induced wetlands can have important habitat value. The backstop for protection of regionally significant wetlands relies on Council identification, yet other changes proposed in this same consultation will reduce, extend or remove identification requirements, making this backstop ineffective.

Forest & Bird supports removing the pasture exclusion from the definition of a 'natural inland wetland' because it has resulted in many wetlands with significant ecological values being identified as non-wetland, due to the dominance of exotic flora species. However, the proposal to permit farming activities in and around wetlands is not supported. The types of farming activities currently being considered are fencing and irrigation. Fencing for stock exclusion purposes is supported, but it should be set well back from the wetland. Irrigation around wetlands may have adverse effects particularly if it is accompanied by grazing (which is presumably the intention of irrigating the area) or fertigation (which will contribute contaminants to the wetland). This proposal is also likely to be ineffective at addressing its intended outcome. Unless the intention is to allow farming activities within wetlands (which is strongly opposed), this proposal does not address farming concerns that it is difficult to identify wetlands. The proposal to permit farming activities is also likely, in practice, to result in farming activities like grazing being used to remove wetland vegetation prior to other land uses like urban development. The superior option is to support regional councils in identifying wetlands and incentivise fencing and other protection.

The proposal to enable wetland construction is supported in principle.

Government is consulting on removing the requirement for councils to map natural inland wetlands within 10 years. Many activities that would result in wetland loss are permitted in

[56] By the Resource Management (Freshwater and Other Matters) Amendment Act 2024

national environmental standards or plans subject to a condition that they do not occur within a natural inland wetland. That approach only works if it is accompanied by wetland mapping. This proposal is strongly opposed.

Any further loss of wetlands is an economic as well as environmental cost because of the critical role of wetlands in moderating peak flows and filtering water. Unless those costs are internalised to the landowner, further wetland degradation, particularly for farming, will be a form of hidden subsidy with wider society (including other farmers) footing the bill.

Part 2.7: Simplifying the fish passage regulations

No comment

Part 2.8: Addressing remaining issues with farmer-facing regulations

NES-F rules for synthetic nitrogen fertiliser

The NES-F cap on nitrogen fertiliser was intended to hold the line while more specific nitrate leaching limits were established for FMUs through the NOF process and freshwater farm plans were implemented. By preventing Councils from notifying freshwater planning instruments, and halting the freshwater farm plan process, the Government has halted those developments in their tracks. The NES-F nitrogen fertiliser cap remains an important upper limit in the meantime.

Part 2.9: Including mapping requirements for drinking water sources

Forest & Bird supports the proposal to require regional councils to map source water risk management areas. Resourcing to support this new obligation should be provided.