INTRODUCTION

1. Forest & Bird is New Zealand’s largest and longest-serving independent conservation organisation, with many members and supporters. Its mission is to be a voice for nature, on land, in fresh water, and at sea, on behalf of its members and supporters. Volunteers in 50 branches carry out community conservation projects around New Zealand.

2. In support of the Society’s objectives, it has been involved in resource management processes around New Zealand for many years, at the national, regional, and district level. It routinely submits on regional and district plan provisions, and advocates in the Environment Court in relation to plan provisions relating to indigenous biodiversity, landscape and natural
character, and also regularly participates in resource consent processes. Forest and Bird has
taken cases in all levels of the Court system in order to achieve appropriate protections for
nature under the RMA. While we have had successes in the cases we have taken, what we
see as an overall trend for biodiversity is alarming. We are therefore pleased that a
comprehensive review of the Act and its implementation is occurring. We are cautiously
optimistic that this could slow, and ideally reverse, the decline in Aotearoa’s natural
heritage.

OVERALL AND GENERAL COMMENT

3. As the latest State of the Environment Report set out, nature in Aotearoa New Zealand is in
serious trouble:

Our biodiversity has declined significantly. At least 75 animal and plant species have become
extinct since humans arrived in New Zealand. Marine, freshwater, and land ecosystems all
have species at risk: 90 percent of seabirds, 76 percent of freshwater fish, 84 percent of
reptiles, and 46 percent of vascular plants are currently threatened with or at risk of
extinction.

The extinction risk has worsened for 86 species in the past 15 years. The conservation status
has improved for 26 species in the past 10 years, but more than half require active
management to stay that way.¹

4. Pressure on natural resources is widespread – land use change is degrading our soil and
water, urban growth is reducing versatile land and biodiversity, our waterways are suffering
from farming pollution, urban areas are causing pollution, freshwater use is impacting
negatively on our waterways, the way we fish is affecting ocean health, we have high
greenhouse gas emissions, and climate change is already affecting our country.

5. Clearly something in our resource management system is not working as it should. In our
view this is partly a result of how the Act is drafted, with its balancing approach to effects on
the environment, but also is in large part due to implementation issues. Both of these issues
need to be addressed in order for the use and development of our natural resources to be
truly sustainable.

6. Our comments in this submission attempt to address these issues. A lot of detail will of
course need to be thought through and resolved in the review of the Act and its
implementation. In this document then, we set out our high level thoughts on how things
could be improved.

7. In our view Part 2, and the rest of the Act and its implementation, should reflect a mandatory hierarchy of priorities. The environment should sit at the top of this, supported by clear outcomes that incorporate mandatory bottom lines. The next tier of the hierarchy should reflect essential social needs, including giving effect to the Treaty. Development and use for social reasons can occur where environmental outcomes can still be achieved. Finally, economic development can occur where that will support both social and environmental outcomes.

8. Development must now occur within binding environmental limits. Amending Part 2 to reflect a hierarchy of outcomes that must be achieved supports that approach. Not only is a ‘restrictive’ approach now needed (i.e. development cannot occur below a limit), proactive work is also now required. Maintenance and restoration for some resources is now required. An outcomes approach, rather than solely looking at the effects of development outside this context, could support that. Some resources will be so degraded that no more use will be appropriate, and restoration is required. An outcomes approach can encompass both limits and also improvement/restoration requirements.

9. Part 2 should set out the mandatory outcomes to be achieved under the Act. These may need more particularity at the local level. Limits will also need to be set for some resources to ensure that the outcomes are met. Limits should be set at the national level as far as is possible.

10. The overall balancing approach to the dealing with adverse effects of an activity will be gone. Planning and consent decisions will need to follow the Part 2 hierarchy: plans must ensure that outcomes will be met, and that any limits are not exceeded; consent will not be able to be granted if an outcome or limit is not achieved. Obviously the effects of an activity will be considered as part of consenting, but that will occur in the framework of mandatory outcomes, set according to a hierarchy. Overall balancing will no longer apply.

11. The planning process should ‘front-end’ much more decision-making about what activities will be appropriate, and where. Planning must be done with a comprehensive understanding of environmental limits, so that plans do not provide for activities that will lead to an outcome not being achieved or a limit being exceeded. This will mean much greater certainty for plan users.

12. An outcomes/limits approach means a better approach to allocation will be needed. Economic instruments will also have an important role to play in ensuring that outcomes are met.

13. Compliance, monitoring and enforcement need significant improvement (with or without a new approach to the Act). An outcomes approach would provide a clearer framework for
those functions. If there are hard limits in place, there needs to be robust information about resource use to inform decisions about resource use within that limit.

ISSUE 1: LEGISLATIVE ARCHITECTURE

14. We would not support separate legislation for environmental management and land use planning for development. In our view that is likely to exacerbate some of the efficiency and delay issues with the planning and consenting process, in that there would need to be compliance with two separate statutes. The urban environment is part of ‘the environment’ and while it may have (generally) different attributes and features to a rural or forested area, there will always be environmental effects that will need to be considered. For example, the stormwater discharges from an urban development could have impacts on streams and coastal water. Urban areas do not exist in a vacuum. Dividing environmental protection out from land use planning would not make the need for such protection disappear, but would simply shift the source of the obligation. There are however risks inherent in a separated approach, in that environmental considerations could be more easily sidelined, or deemed irrelevant.

15. We do recognise that improvements could be made to the planning process. We would support much better planning, which incorporates a thorough consideration of likely environmental effects of developments of certain kinds in certain places. Essentially, this would ‘front-end’ most of the decision making process, so that it was much clearer in district/regional plans what would be acceptable and what wouldn’t. This would give greater clarity and certainty to developers and the community.

16. We caution however that plans need to be made in accordance with the hierarchy we discuss in the next section, which embodies an outcomes/limits approach. Plans must be made with adequate knowledge of an area’s natural values and the potential effects on those values. Environmental outcomes and limits should be identified and planned for first, rather than using potential development as the starting point. As set out in our suggested Part 2 below, we think that the precautionary principle will be important in plan drafting, as it may not always be possible at the planning stage to definitively understand the activities and locations that are likely to achieve the outcomes and limits.

17. Better planning, which is based on environmental limits and resolves issues as much as possible at the outset, would lead to greater certainty. If plans are detailed and clear, consenting for many activities could be streamlined. In essence we are advocating for plans to actually make decisions based on the environmental outcomes/limits identified.
THERE IS A NEED FOR SUSTAINABLE DEVELOPMENT IN THE FUTURE.

1. Should there be separate legislation dealing with environmental management and land use planning for development, or is the current integrated approach preferable?

18. The current integrated approach is appropriate, although see above comments.

ISSUE 2: PURPOSE AND PRINCIPLES OF THE RMA 1991

19. As is acknowledged in the Discussion Document, our resource management system has resulted in insufficient protection for the natural environment. In our experience, this has to do with ineffective implementation rather than inherent major failings with the RMA. However part of the reason is the balancing approach that has been taken to applying Part 2 (and which is inherent in other parts of the RMA e.g. s104). Given the importance of Part 2 in the rest of the Act, in our view it is essential to improving environmental outcomes that the current wording is amended. Amending Part 2 is critical as it currently lacks a clear and directive statement of the outcomes to be achieved. All decisions under the RMA flow from Part 2, and as such, it is essential to ensure it provides clear guidance that will actually result in better environmental outcomes.

20. We strongly support a shift to outcomes based planning, and in our view the Act will need to be changed so it explicitly requires environmental limits and/or targets to be set to achieve outcomes set out in Part 2. Part 2 will require redrafting to shift to an outcomes and limits approach. Although section 6 in particular, could be read to mean that those matters of national importance formed bottom lines, in practice the overall balancing approach has meant any activity can potentially be appropriate, even where this means significant adverse effects on biodiversity.

21. For example under the current approach wetlands continue to decline and in many cases entire wetlands have been lost as the benefits of alternative land uses have been balanced against the adverse effects to the wetland and environment. An outcomes and limits approach could set out, for example: ‘Recognise that wetlands are places thriving with indigenous biodiversity and ecological systems, and there must be no further loss of any wetland with significant, outstanding or high natural values’. It would then be clear that the outcome sought by the Act would be to ensure beneficial outcomes for wetlands and that the limit when considering effects is to avoid the loss of any wetland with significant, outstanding or high natural values.

22. The Act has also failed to deal with cumulative effects. Currently there is no real imperative to deal with cumulative effects – the planning system does not deal with it (well or at all), and at consenting time the primary focus is on the effects of the activity in question. There is no real framework for considering cumulative effects – effects are considered on a case by case basis.
case basis, without adequate knowledge of the overall effect on the resource, and no clear
direction on what is needed for that resource to be protected or sustained overall. A move
to an outcomes approach, that takes an overall picture of a resource and how an outcome
for that resource would be met, and which utilises binding limits, would provide the
framework to properly deal with cumulative effects. Monitoring would support that
approach.

23. In our view, Part 2 must embed a mandatory hierarchy, where the natural environment sits
at the top. The natural environment must be at the forefront of decision making. The
current wording, which leads to a balancing approach to environment, social, cultural and
economic considerations as to adverse effects and benefits is a primary factor in the failings
of the of the resource management system to adequately protect and maintain nature. This
is because economic benefits often win out over adverse environmental effects as the latter
is harder to quantify and often less tangible to decision makers. We accept that benefits and
effects will remain part of resource management decision making, however they must be
applied within a framework that sets clear direction for planned outcomes and within limits.

24. A ‘sustainable management’ focus is no longer appropriate. Rather, the focus should be
environmental protection with long term maintenance and enhancement as our overarching
purpose. Use, development or management of natural and physical resources can only occur
if it is consistent with, and supports that purpose and supporting outcomes. This shifts the
focus from one that assumes most resources are available for use and development, to a
focus that truly considers what the environmental limits of a resource are, and then decides
whether any development might be appropriate to achieve the purpose and outcomes.

25. In our view, Part 2 needs to clearly direct environmental protection and enhancement as the
priority outcome. This means a hierarchy of:

a. Environment – natural, that which favours ecosystems and habitats of indigenous
   species, and natural landscapes and features.

b. Then Society - this should include the Treaty, as well as the broad goals of society
   for healthy functioning communities, including such things as parks and reserves,
   urban planning, schools, etc.

c. Then finally, Economy - this is the area of private and/or commercial gain.

26. Part 2 will set out the high level but directive outcomes that must be achieved. Limits will
need to be set (preferably in national direction) to ensure that these outcomes are achieved.

27. The Part 2 outcomes may need to be made more specific in the district/regional context.
Any such particularised outcomes could not detract from the Part 2 outcomes. Limits may
also need to be set to apply more particularly to the local area, or where limits for an outcome or resource had not been set nationally. In our view there should be a combined RPS, regional and district plans (hereafter called combined plans). The combined planning stage would set any particularised outcomes where necessary, as well as any limits need to achieve the outcomes.

28. Environmental limits need to be established for long term environmental protection, what we would desire in a healthy society, and then what types of economic activity will support the two above. Effectively following the hierarchy approach above so that all outcomes are developed to fit together and work with each other, rather than operating against each other. To be clear, a societal activity could only take place if it supported the environmental outcomes; and an economic activity could only take place if it supported both environmental and societal outcomes.

29. As set out above, combined plans would need to give effect to this hierarchy; this would include by setting more specific outcomes and limits for the relevant area in line with those set in Part 2. Plans could not provide for activities that contravened the hierarchy. Similarly, consent decisions would no longer be made under a broad balancing approach of all objectives and policies of a district/regional plan (and sometimes also looking at Part 2). As noted, plans would need to start from an identification of environmental outcomes and limits for an area, and any development that was planned for could only occur if those outcomes and limits were met.

30. This approach would also flow through to consent decisions. The use of the hierarchy and clear outcomes and limits would mean activities that did not give effect to the hierarchy, or which contravened an environmental limit, would not be able to occur.

31. While of course the effects of an activity will still need to be considered, setting clear outcomes and limits will give those effects a much clearer framework within which to be considered. The hierarchy is also essential in that regard. Currently most effects are considered without a clear picture of what they may mean for a resource overall, and such effects (even where significantly adverse) can be accepted if there is another positive factor with which to balance them.

32. This is a significant shift from the current balancing approach. However, a significant shift is now required given the state of our environment. It will also lead to much greater certainty, as compared to the balancing approach.

33. In our view, Part 2 should set the environmental outcomes, rather than the Act providing for them to be set in another document. Action needs to be taken as soon as possible. Including outcomes in Part 2 will also ensure that they permeate the implementation of the Act, and clearly guide decisions made under the Act.
34. We note that EDS has suggested a reworking of Part 2 in its Report: ‘Reform of the Resource Management System: A model for the future. Synthesis report’, at page 90. We appreciate the work and thought that has gone into this drafting, and recognise that any redrafting of Part 2 will require very careful consideration. We broadly support the proposed Part 2, however we make the following comments.

35. We support the idea of a hierarchy contained in the EDS proposal. In the EDS proposal, section 5 contains 4 subparagraphs that effectively make up the ‘top tier’. This includes recognition that use and development must occur within environmental limits, a range of matters that (if we understand it correctly) go towards ascertaining the environmental limits, giving effect to the Treaty, and a justice/participation provision.

36. The EDS hierarchy differs slightly from what we have suggested above, in that the EDS version includes a range of matters not entirely environment-focussed in the top tier. For example, achieving essential social wellbeing has equal status to the protection of natural heritage; giving effect to the Treaty sits at the same level as environmental limits. We have suggested some changes below.

37. As will be discussed further below, while we support climate change mitigation having a focus in the RMA, we are concerned that this must not come at further cost to the natural world. We would therefore seek that if climate change mitigation is to remain at the top tier, that a safeguard be included to the effect that mitigating significant risks from natural hazards (including climate change) occurs in a manner that protects natural heritage.

38. It is not clear how conflicts between the top tier matters would be resolved under the EDS approach. We are weary of the balancing approach which could be required to deal with such conflicts. For example, if giving effect to the Treaty could not be done in a way that was within environmental limits, which would prevail? In our view an amendment is needed, to make clear that giving effect to the Treaty needs to be given effect to, but that it still must be done in a way that protects our natural heritage. Given the perilous state our environment is now in, in our view this is appropriate.

39. The EDS model does at least represent an improvement from the current approach, in which economic considerations often outweigh environmental and social matters. Under the EDS model, economic considerations are subject to environmental and essential social wellbeing matters (s5(b)(iv)).

40. We support EDS’ suggested section 6. However we think that Part 2 needs a more proactive focus. Currently, ss6-7 state that use and development must not compromise a series of outcomes. Given the move to an outcomes approach, in our view there also needs to be a
positive requirement to meet the outcomes – not just a negative statement that use and development do not compromise the outcomes. As such, we recommend additions to the start of s6: ‘Protecting natural heritage means that the following outcomes must be achieved, and that use and development do not compromise…’ This approach leaves open the question of who bears the positive responsibility for ensuring the outcomes are met, but also states clearly that use and development cannot undermine those outcomes. A similar approach should be taken to section 7.

Other comments

41. We strongly support climate change mitigation becoming part of Part 2. This will be discussed further below.

42. We support (in terms of paragraph 73(e) of the Issues and Options Paper) Part 2 including a matter regarding providing for sufficient housing, however this must occur within environmental limits. This is consistent with Forest and Bird’s suggested hierarchy, as discussed above. Our interpretation of the EDS hierarchy would also require that housing be provided for only where the environmental outcomes are met (i.e. the protection of natural heritage, but also the other matters in section 5 in the ‘top tier’).

43. Other provisions of the Act would need to be amended to strengthen the requirements of Councils/plans/consent decisions to give effect to a new outcomes and limits approach. These changes are dealt with in later sections.

Suggested redraft of Part 2

44. As such, we set out the EDS redraft, with our suggested changes underlined.

(5) The purpose of this Act is to ensure that the environment is protected, maintained and enhanced sustainably and fairly managed by:

(a) recognising that use and development must occur within environmental limits, because environmental limits sustain the natural environment and the survival and wellbeing of current and future generations;
(b) in accordance with (a) protecting, as a matter of national importance, Aotearoa New Zealand’s natural heritage;
(c) subject to the achievement of (a) and (b):
   (i) protecting, as a matter of national importance, the essential social wellbeing of current and future generations;
   (ii) giving effect to the principles of the Treaty of Waitangi

2 Although we note that EDS section 8A does address that to an extent.
(iii) preferentially avoiding, and then mitigating significant risks from, and fostering resilience to, natural hazards including climate change and ocean acidification;
(d) subject to the achievement of (a)–(c), enabling people and communities to provide for their economic wellbeing and resilience, and other aspects of their social wellbeing; and
(d) recognising that access to information, public participation and access to justice are key pillars of sound environmental governance.

Natural heritage outcomes
(6) Protecting natural heritage means that the following outcomes must be achieved, and ensuring that use and development do not compromise:
(a) Aotearoa New Zealand’s contribution to mitigating global climate change in accordance with its international obligations or under relevant legislation, including achieving carbon budgets established under the Climate Change Response Act;
(b) maintenance of indigenous biological diversity, the resilience, life-supporting capacity and intrinsic value of ecosystems, and the enhancement of indigenous ecosystems and threatened species where they have been degraded or depleted by human activities;
(x) recognition that wetlands are places thriving with indigenous biodiversity and ecological systems, and there must be no further loss of any wetland with significant, outstanding or high natural values;
(c) maintenance of the condition and extent of areas of significant indigenous vegetation and significant habitat of indigenous fauna;
(d) maintenance of the quality, quantity and flow variability of freshwater in accordance with Te Mana o Te Wai, and the quality of coastal water; and their enhancement where they are degraded such that ecosystem health or human health are not safeguarded;
(e) maintenance of air quality; and its enhancement where it is degraded such that ecosystem health or human health are not safeguarded;
(f) maintenance of soil health; and its enhancement where it is degraded such that ecosystem health or human health are not safeguarded;
(g) protection of attributes of outstanding natural landscapes and outstanding natural features that contribute to their outstandingness;
(h) protection of attributes that contribute to the natural character of the coastal environment, wetlands, lakes, rivers and their margins; and
(i) enhancing and protecting the role of indigenous flora and fauna and ecosystems in providing resilience to climate change and ocean acidification.

Essential social wellbeing outcomes
(7) Protecting essential social wellbeing means:

(a) that the following outcomes must be achieved, and ensuring that use and development do not compromise:

(i) Aotearoa New Zealand’s contribution to mitigating global climate change in accordance with its international obligations or under relevant legislation, including achieving carbon budgets established under the Climate Change Response Act;
(ii) the food and water security of current and future generations;
(iii) people and communities’ understanding of, connection to, and enjoyment of nature, including through public access to green spaces in urban environments, and to and along the coastal environment and water bodies;
(iv) the protection of historic heritage.

(b) ensuring that the benefits and costs of using and developing natural and physical resources are fairly and efficiently shared between people and communities now and in the future;

c) promoting use and development that minimises waste, consistent with a circular economy and society.

Treaty obligations

(8) Without limiting section 5(c), giving effect to the principles of the Treaty of Waitangi includes:

(a) the protection of protected customary rights; and
(b) protection and enhancement of the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga.

Exercise of functions and powers

(8A) All persons with functions and powers under this Act must:

(a) exercise their functions and powers in a manner that implements the purpose of the Act; and
(b) adopt an approach by which they:

(i) have particular regard to cumulative effects of use and development;
(ii) take a long-term view;
(iii) take a precautionary approach where effects on the environment are uncertain, unknown, or little understood, but potentially significantly adverse or likely to be irreversible; and
(iv) promote the alignment of measures under this Act with measures under other relevant statutes;
(c) take steps to:

(ii) restore and enhance natural heritage and social wellbeing; and
(ii) anticipate and avoid environmental damage before it happens; and
d) without limiting (a), have particular regard to and make provision for:
   i) the exercise of kaitiakitanga;
   ii) the ethic of stewardship;
   iii) protection of the habitat of trout and salmon;
   iv) the benefits of environmentally sustainable social and economic
development, including infrastructure, affordable housing, and a quality
urban environment;
   v) the efficient use of natural and physical resources;
   vi) the finite characteristics of natural and physical resources;
   vii) the importance of energy security, and the benefits to be derived from
renewable electricity generation.

Definitions (to add to section 2):

Circular economy means an approach to resource use in which resources are kept in use for
as long as possible, the maximum value is extracted from them whilst in use, and then their
products and materials are recovered and regenerated at the end of their service life.

Quality urban environment means an urban environment that makes it possible for all
people, whanau, communities and future generations to provide for their wellbeing,
including by:
   a) offering people access to a choice of homes that meet their demands, jobs,
opportunities for social interaction, high-quality diverse services and open space;
   b) providing businesses with economies of scale, with access to many consumers,
suppliers, skilled people and sources of innovation;
   c) using land, energy and infrastructure efficiently;
   d) responding to changing needs and conditions;
   e) protecting natural heritage and ecological connectivity, enabling people to
experience nature and open space close to their homes, and adopting
environmentally sustainable design approaches; and
   f) taking a spatial planning approach to large scale redevelopment and new
development.

Precautionary approach means favouring caution and environmental protection over use
and development in the circumstances set out in s8A(b)(iii).

QUESTIONS
2. What changes should be made to Part 2 of the RMA?

45. As set out above.

3. Does s5 require any modification?

4. Should ss. 6 and 7 be amended?

5. Should the relationship or ‘hierarchy’ of the matters in ss. 6 and 7 be changed?

46. Yes, as per above discussion. Part 2 should embed a clear hierarchy, where environmental outcomes must be met before other matters (social and then economic) are provided for. The current balancing approach is not effective at ensuring our natural resources are sustainably managed. Nor does it provide clarity for users of the Act.

6. Should there be separate statements of principles for environmental values and development issues (and in particular housing and urban development) and, if so, how are these to be reconciled?

47. In our view these matters may be able to be incorporated into Part 2 itself. Whether these issues are dealt with in Part 2, or in some separate statements, the hierarchy we suggest above must be followed. This means that e.g. housing and urban development, must only occur where environmental outcomes can be met.

7. Are changes required to better reflect te ao Māori?

8. What other changes are needed to the purpose and principles in Part 2 of the RMA?

48. As discussed above.
49. We would support greater Māori/iwi involvement in the RM system. We note that in some areas of the country there is more Māori/iwi participation than in others. Where participation is lagging, support and guidance should be provided to increase this.

50. We note the EDS redraft elevates the status of the Treaty under the RMA from its current one under s8 (under which the principles of Treaty are to ‘be taken into account’). Under the EDS redraft, the Treaty principles are to be ‘given effect to’ (EDS s5(c)). This is a much higher standard, and as the Panel will be aware, is the same as is used under s4 of the Conservation Act.

51. The EDS redraft puts giving effect to the Treaty at the ‘top tier’ of the Part 2 hierarchy, so that it sits at the same level as recognising that use must occur within limits (EDS s5(a)), and the matters that go toward those limits (as set out in EDS s5(b)), and the access to information and participation principle (EDS s5(d)). As noted above, we have concerns about how these matters might be reconciled.

52. In the recent Supreme Court decision of Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation [2018] NZSC 122, the Court considered the meaning of the requirement in s4 of the Conservation Act to give effect to the Treaty principles. The Court noted that the requirement in s4 is a powerful Treaty clause, and that it required more than procedural steps. The Court agreed that ‘substantive outcomes for iwi may be necessary including, in some instances, requiring that concession applications by others be declined’.\textsuperscript{3} The Court went on to say that the s4 directive meant that a process was required ‘under which the meeting of other statutory or non-statutory objectives is achieved, to the extent that this can be done consistently with s 4, in a way that best gives effect to the relevant Treaty principles.’\textsuperscript{4}

53. In our view those findings are a logical consequence of the strong directive in s4 Conservation Act. The findings also suggest that careful thought needs to go into how the Treaty is incorporated in the RMA.

54. For example, what would a s4-like provision mean for consenting under the RMA? This would need to be factored into any new allocation guidance. Even if no new allocation guidance or systems result from the broader RMA reforms, including a s4-like Treaty provision would at least mean that clear guidance would need to be developed for decision makers about questions of priority rights in consenting. We have no issue with that, and

\textsuperscript{3}[2018] NZSC 122, paragraph 52.
\textsuperscript{4}Ibid, paragraph 54.
agree that this could be a valuable way that iwi/Māori could have an increased role in the RMA.

55. Our concerns are mainly around how equally weighted (in the EDS redraft) requirements to give effect to the Treaty and to manage resources within environmental limits (including by protecting natural heritage) would work. In some instances the two imperatives would be aligned, in others not, for example where iwi/Māori sought to undertake a development activity (e.g. dairy conversion) where that would not occur within environmental limits, or would not achieve natural heritage protection.

56. Forest & Bird’s view is that all resource use must occur within environmental limits – whether it is for the development of essential infrastructure, climate change adaptation, or is for the purpose of giving effect to the Treaty principles.

57. As such we have proposed an amendment to the EDS redraft, which would amend the current RMA to include ‘giving effect to the Treaty’ under section 5, but that this would be subject to natural heritage protection.

QUESTIONS

9. Are changes required to s8, including the hierarchy with regard to ss. 6 and 7?

58. As above.

10. Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?

59. If the Treaty principles are incorporated into the RMA in a stronger way (e.g. by requiring that they be given effect to) a review of the RMA will need to be undertaken to consider whether this stronger direction is reflected in subsequent provisions. It may also be helpful to include the wording of the principles in to the interpretation section of the Act.
*ISSUE 4: STRATEGIC INTEGRATION ACROSS THE RESOURCE MANAGEMENT SYSTEM*

60. We support the idea of spatial planning. In our view spatial planning could see an improvement in environmental outcomes, certainty and efficiency. A shift to an outcomes approach will be difficult without the type of strategic, long term planning that a spatial plan could (hopefully) require. Our key concern is that spatial planning is done with an ‘environment first’ focus – in line with the hierarchy we discuss in Issue 2 above. If spatial planning is done using the current balancing approach, it is likely to lead to worse environmental outcomes.

61. In our view, spatial planning should occur under the RMA, as part of an improved combined plan (i.e. combined RPS, regional and district plan). That way, the improved Part 2 hierarchy, that provides for environmental outcomes as mandatory directives, would set the context for the spatial plan. Firstly, the bottom line needs of the environment must be ascertained, then the priority needs of iwi and the broader community, and then finally, where the economy can help support and boost those outcomes. That way we can encourage better and more resilient systems and move towards achieving the outcomes that we need to do in a climate and ecologically challenging world.

62. We are unclear how a spatial plan process would work, if not under the RMA. We agree that there should be cohesiveness across all aspects of the resource management system, but do not see how a planning process that tried to incorporate every factor of resource management would work in practice.

63. As such, we see a role for spatial planning in these sense that it should be used as part of preparing a combined plan. Spatial planning in this sense would mean (at least) first considering the outcomes to be achieved under Part 2 and in the region and setting limits in order to achieve those. The consideration could be given to what type of activities and uses will be appropriate and where, including not just development, but also restoration activities. This would result in a combined plan with clear outcomes and limits, that set out with certainty what activities would be appropriate, where, and according to what standards. It would also likely result in some activities being prohibited. One product of this planning process would be a map, setting out the zones for particular purposes. Within those zones there would still be nuance, e.g. an SNA in a residentially zoned area would still be protected. This is how we see spatial planning working most effectively under the RMA.

64. We are aware that ‘spatial planning’ is often used to mean a more high level type of strategic planning, which incorporates a range of non-RMA issues and coordinates various sectors. As noted above, in an ideal world this could have a range of benefits. However in our view it would be such a significant shift from current planning, and would take so long, that it is unlikely to be workable. The RMA is the correct forum to plan for use,
development, and also restoration/protection of natural resources. It has a regime already in place to deal with such matters. One option to bring LGA and LTMA matters more into alignment with RMA combined plans would be to include Part 2 into those Acts, so that decisions and plans made under them would have to follow the same principles as those followed in the combined planning process. Additionally, decisions under those Act would need to give effect to combined plans.

65. We also see a real problem with that kind of high level spatial planning. If it is to have any real role in terms of guiding development, detailed knowledge of environmental limits and needs (and society and economic needs) would be required at the spatial planning stage. Decisions made at the high level spatial plan stage would (if they were given strong legal weight) affect district/regional planning, and therefore the kinds of activities and environmental effects that end up occurring. Under an outcomes-based approach, there is a risk that if spatial planning is done without comprehensive understanding of environmental limits and outcomes, that the spatial plan could work against those limits and outcomes. However, that kind of fine grained analysis of effects usually only comes at the later (currently consenting) stage. We do not see how a high level strategic spatial plan could work, without a very high level of detail going into it – and that is the kind of detail that would be considered at the combined plan stage.

66. Given that, we see spatial planning as a slightly more confined concept – essentially it is improved planning, that takes an outcomes approach, with clearly defined environmental limits, and more clearly sets out what will be appropriate (and what won’t be), in what circumstances, and in what locations.

67. We see spatial plans as essentially being part of much improved combined plans. We do not think there should be a national spatial plan, for the same reasons we discuss above – the level of detail required to draft an effective one would make the process unworkable.

68. Improved combined planning, that uses an outcomes and limits approach, and plans for how and where certain activities will/won’t be appropriate, should not only be used for urban areas. This kind of strategic thinking also needs to be applied to ensuring environmental outcomes and bottom lines are met, as well as climate change adaptation and mitigation responses. This means that non-urban areas would also need to be planned for. In accordance with a revised Part 2, outcomes/limits should take into account not only our various ecosystems, but carbon emissions and mitigation measures, e.g. transport and infrastructure pathways, planted landscapes to absorb emissions, housing density and availability options, other options for infrastructure (e.g. sewerage) that is more environmentally friendly, urban rainwater collection/food farms, etc. Climate resilience responses should also be included. The marine space could also benefit from this kind of strategic spatial planning based on a clear hierarchy of principles and outcomes.
69. There must also be safeguards built into the system, so that the combined plan must be changed if environmental outcomes and limits are not being met.

70. Improved combined planning, incorporating spatial planning as discussed above, also offers the opportunity to deal with cumulative effects in a much more strategic and hopefully effective way than has so far occurred. If a combined plan must be based first on environmental outcomes and limits, a clearer overview of whether cumulative effects are now at a particular resource’s limit could be taken, and an appropriate response planned for.

QUESTIONS

11. How could land use planning processes under the RMA be better aligned with processes under the LGA and LTMA?

71. As above.

72. Bylaws and notices of requirement for designations prepared under the LGA and LTMA could have a requirement to be consistent with any relevant combined plan (see below).

73. It would also be useful for combined plans to identify the need for any bylaws and designations which are necessary for and those which would support achieving the outcomes/objectives of the spatial plan.

12. What role should spatial planning have in achieving better integrated planning at a national and regional level?

74. As discussed above, we see spatial planning as being an important aspect of improved combined plans. Improved planning needs to be based on the outcomes/limits of the hierarchy in Part 2. This kind of detail is essential – without it, a spatial plan would risk setting the stage for activities to occur that would not meet outcomes and limits.

75. The Act should include new provisions on how to incorporate spatial planning into the combined planning process. This must start with the identification of outcomes, and the setting of limits to achieve those outcomes. There must also be a requirement that plans be reviewed and amended, where environmental outcomes and/or limits are not being met. The precautionary principle should apply, given that in some cases it will be difficult to definitively determine whether activities in certain areas will lead to the achievement of outcomes and limits.

76. Changes should not be able to be made to plans that would undermine the achievement of the environmental limits and outcomes that are set at the start of the process. However
there should be provision to change the plan if it becomes clear that the plan is likely to lead to those limits and outcomes/limits not being met.

77. Public participation needs to be a key aspect of any changes to plans.

13. **What role could spatial planning have in achieving improved environmental outcomes?**

78. Discussed above. Environmental outcomes are the starting point in improved combined planning. Limits must then be set in order to achieve those outcomes. It will then be possible to ascertain where and how any development could be possible.

79. Improved combined plans, incorporating spatial planning, could play a key role in improving environmental outcomes. Combined plans could not only base development capacity on the capacity of the environment to absorb such development, but could also be used as a proactive tool for environmental restoration. For example, if a region's outcome was that 1000ha of wetlands be restored by X date, improved combined planning could identify areas where that would be feasible for such restoration. Funding could be planned for that restoration, including if necessary purchase of private land, and funding for the restoration work itself. The combined plan could then zone the areas for wetland restoration, and prohibit other development, while creating a permissive rule framework for the restoration work. The improved combined plan process will also be able to ensure that other necessary development (e.g. infrastructure) has sufficient space elsewhere to be located, so that the wetland restoration outcome is not threatened. In our view, without some kind of strategic overview that spatial planning will hopefully provide, it is difficult to see how environmental outcomes will be improved.

14. **What strategic function should spatial plans have and should they be legally binding?**

80. In our view, spatial planning should be part of an improved combined plan. Regular monitoring of outcomes would need to feed into the plan once it was operational, so that it could be amended where necessary. Once a plan is fully implemented there should be regular review of whether it achieves the required outcomes.

15. **How should spatial plans be integrated with land use plans under the RMA?**

81. As discussed above, combined plans should include spatial planning. We reiterate our concern that the plan must be drafted with a detailed understanding of the environmental outcomes and limits that must be achieved.
ISSUE 5: ADDRESSING CLIMATE CHANGE AND NATURAL HAZARDS

82. Forest & Bird strongly supports the inclusion of climate change mitigation into the Act, including into Part 2 of the Act. We also think that climate change adaptation needs to be addressed much more proactively in the Act. If New Zealand is to achieve the very significant reduction in carbon emissions that is required to transition to a low carbon future and play our part in avoiding catastrophic climate change, it is essential that carbon emission considerations are built into planning and decision-making. We caution however, that the RMA response to both mitigation and adaptation must ensure that no further damage is done to our natural resources.

83. By way of example, currently the RMA places weight in favour of renewables but does not tilt away from climate polluters. The consequence of such an approach is that a transition towards more reliance on renewables is likely to be achieved not by requiring polluters to face the true cost of their development plans but rather to subsidise renewables by transferring costs onto the natural environment. Given the parlous state of much of New Zealand’s biodiversity this is an unacceptable approach.

84. In our view the polluter pays principle, which holds that the person who causes pollution should bear the costs of the damage caused and any remedy required, needs to be built into the Act. This principle plays a significant role in environmental management, acting as a deterrent and directing accountability for harm.

The role of nature in New Zealand’s climate change response

85. New Zealand has a nature-based economy (food, fibre and tourism). New Zealand also relies on nature for protection from extreme weather-related events. At the same time, New Zealand’s natural environment is in serious trouble with 4000 species at risk, natural capital in decline, ecological services diminishing or under pressure and serious threats to the intrinsic value of nature. Climate change and ocean acidification will increase these pressures.

86. New Zealand can create a virtuous circle to help deal with these challenges: nature will help us become more resilient, but only if we help nature itself become more resilient. Three matters need to be kept in mind when considering the best RMA response to both mitigation and adaptation.

87. Firstly, the role that nature plays in providing resilience. One of the precursor agencies to the Department of Conservation, the Forest Service, protected large swathes of native forest for soil and water conservation purposes. Successive governments recognised that forests buffer the water flows that come from storm events and reduce sedimentation and erosion. This forest was called “protection forest” because it protected downstream farms, towns
and infrastructure. This is one example of how nature provides resilience. Other examples include:

- The role of dunes in protecting land from storm surges
- The role of lakes and wetlands in buffering extreme flows
- The role of mangroves in reducing local acidification and in buffering the coast from storm surges
- The role of tussock grasslands in capturing water and preventing erosion
- The role of natural catchments in providing reliable, clean, water.

88. Secondly, the role of nature in carbon dioxide removal. New Zealand’s nature-based economy provides opportunities through our management of land and sea to carry out significant carbon dioxide removals and storage. Examples include:

- Existing native forests, shrub-lands and tussock-lands provide a substantial carbon stock
- Avoiding destruction of native vegetation by clearing and pests prevents emissions and maintains carbon stocks
- Retiring land from grazing and restoring native forest, shrub and tussock ecosystems on those lands provides a source of removals
- Improved coastal fisheries management can result in the restoration of kelp forests with the consequent blue carbon storage potential.

89. And thirdly, the risks to nature from our climate response. A poorly designed RMA response to climate change will create risks for nature. These risks to nature include:

- Introducing new resilient grasses or shrubs for fodder that can become serious weeds
- Use of inappropriate locations or species for plantation forestry, resulting in loss of natural habitats and wilding tree spread
- Inappropriately located renewable energy infrastructure leading to habitat destruction or degradation
- Loss of geothermal features and their associated rare and localised ecosystems due to excessive extraction of geothermal energy
- Expansion of irrigation into areas of indigenous or mixed exotic/indigenous habitat such as tussock grasslands, resulting in damage to habitats where water is applied, and downstream water pollution and loss of mauri
- Relocated infrastructure causing a loss of rare ecosystems in the new locations for infrastructure.
90. Forest & Bird completely supports climate change being dealt with under the RMA, as a complementary measure to the ETS. However, the RMA provisions must be drafted in such a way as to ensure that further damage to nature does not occur.

Should the RMA deal with mitigation?

91. We already have the ETS as a policy response to climate change mitigation. However, in our view there are a number of reasons that the RMA is also an essential tool in addressing mitigation. Firstly, there are some matters that are not adequately dealt with by the ETS.

92. Some activities indirectly “lock in” emissions. Transport is notoriously inelastic to price. Because people will pay what they need to in order to travel to get to work, deliver goods to market, get to school or go shopping, the structure of transport and urban systems is more significant than emissions pricing to influence behaviour. Behaviour change to reduce emissions in transport is more likely to be driven by a mixture of transport and spatial planning than emissions price. For example, greenfield development and urban sprawl will tend to drive increases in emissions simply because people will need to travel further to work and shop. It’s important that the district/regional planning under the RMA can address these indirect effects of land use planning on emissions.

93. Some activities are just too big. New Zealand’s emissions trading system suffers from a problem of the tail wagging the dog. In a small economy, large scale manufacturing and energy production plant can be disproportionate to the size of the over-all economy. Once established, this manufacturing plant can be a significant enough factor in the economy that the potential capital flight, employment and wider economic effects of regulating the emissions produced by such large scale plant can deliver too great a political risk to a Government making regulatory decisions under the emissions trading scheme. This means that instead of the emissions trading scheme driving decisions on investment, commercial decisions on investment can drive political decisions on the emissions trading scheme, distorting the influence of emissions trading on the economy in favour of large or otherwise politically influential polluters.

94. We can see this in the way that the emissions trading scheme largely protects major emitters and how the review in 2015/16 revealed that it had nil effect on firms’ investment decisions.\(^5\) By incorporating decisions on major projects into the resource management system decision making moves ultimately to the Environment Court where it is much less vulnerable regulatory capture and strategic games by investors. It’s important that the RMA

\(^5\) “Some participants have recently indicated that the NZ ETS is not affecting their investment decisions, due to current low carbon prices and the effect of the transitional measures. In some cases, these firms could be relying on continued protection from full NZ ETS emissions obligations in the medium-to-long term. Projections indicate that New Zealand’s current policy measures, of which the NZ ETS is the main instrument, will have little impact on gross emissions in the future if current settings continue.” ETS Review 2015/16
addresses this by making major projects subject to a resource consent process for their emissions or by ruling out a certain level of scale and emissions intensity.

95. A National Policy Statement and NES on climate change should largely address very large scale new point source polluters, transport and similar infrastructure, urban form and other spatial matters and cumulative impacts of activities where those cumulative impacts contribute significantly to New Zealand’s emissions profile (such as agricultural emissions). With the exception of significant cumulative impacts, and very large scale new point source emitters, all other point source emissions should be addressed through the ETS. In the event that an activity with a significant cumulative impact is effectively priced, it could sit outside the RMA.

96. We are aware that some commentators may object to mitigation considerations being brought into the RMA because of the ‘regulatory double-dipping’ in terms of the ETS. However, the issue of regulatory double dipping does not apply to activities where the generation of emissions is indirect (such as decisions on urban form, and transport systems) because there is a separation between the ‘person’ carrying out the proposed activity (such as building transport infrastructure) and the emissions consequences of the future users of the product of this activity.

97. Some activities have off-shore and downstream effects. The primary climate change impact of mining for fossil fuels is in their subsequent use, although this is not addressed through the ETS. In our view it should be made explicit that the eventual/subsequent emissions caused by mining, regardless of where those emissions actually occur, should be considered under the RMA. The RMA should make specific reference to the emissions created by the use of fossil fuels that are mined and this should be weighed into decisions on whether to permit a mine to proceed. This could be around the current s104, to provide guidance when considering consent decisions that involve emissions in subsequent use.

98. As described in the preceding paragraphs, bringing mitigation under the RMA will complement the ETS in respect of activities that are not well regulated under the ETS. However it will also create an essential link between the Climate Commission’s carbon budgets and actual planning and controls on activities. As the Panel will be aware, the Climate Commission is to create national carbon budgets. The carbon budget will say how much emissions must reduce by and when. Central and local government then will need to translate these budgets into action in the form of RMA and transport planning and investment, rules and controls on activities. (Central government will need to determine how to distribute responsibility regionally – such decisions could be incorporated into spatial and then district/regional plans.) For example, Auckland City’s approach to roading and public transport is likely to have a significant impact on whether people use cars or public transport, and therefore have an impact on emissions and whether New Zealand achieves its
carbon budget. If land use planning encourages urban sprawl or more dairy conversions then emissions will go up and not down and the carbon budget won’t be met. As such, bringing mitigation into the RMA is an essential part of NZ’s climate response.

99. Local authorities are well-placed to build emissions-related considerations into their planning and decision-making, particularly if they are supported by clear national guidance in the form of a climate-related National Policy Statement. This would give further direction to the Part 2 matter (discussed below).

100. Including the ability to account for climate emissions also allows councils to more proactively tackle their declarations around tackling climate change, and enables them to make decisions based on what types of industry they would support. It also allows for the community to have a greater say in what industries are based where if they are adding to the climate problem.

Ocean acidification

101. Ocean acidification is a strategic risk to New Zealand because the marine environment is critical to New Zealand for economic, social and cultural reasons and because New Zealand is a major centre of global marine biodiversity. Risks to New Zealand’s economy, culture and natural environment include:

- Loss of underlying ocean productivity through a reduction in plankton
- Vulnerability of shellfish farming and harvest to ocean acidification
- Risks to wild harvested stocks such as squid
- Loss of opportunities for recreational and cultural food harvesting
- Risk of cascading effects through the marine food web affecting multiple species of social and economic importance.

102. Ocean acidification needs particular attention, as it is a separate, albeit related, process to climate change. The RMA should specifically refer to ocean acidification, including in Part 2. Climate change is a heating of the atmosphere caused by a range of gases. Ocean acidification is a change in ocean chemistry caused solely by carbon dioxide. They are related in that burning fossil fuels generates carbon dioxide and this causes both climate change and ocean acidification but they differ in mechanism and effect.

103. A new definition of ocean acidification would also be needed.

104. The RMA should enable councils to make decisions in relation to coastal management to reduce the local effects of ocean acidification (such as recognising the value of protecting mangroves for managing coastal pH), to reduce other impacts on vulnerable biota (such as

---

The section 2 definition of climate change does not include ocean acidification.
the effects of sedimentation on shellfish) and to explicitly acknowledge the effects of carbon dioxide emissions on ocean pH as well as climate change.

Changes sought – Part 2

105. Mitigation should be included in Part 2. We caution that it must only be included in such a way that ensures that mitigation does not cause further adverse effects or harm to our natural heritage.

106. As set out in Issue 2, we think the EDS Part 2 formulation needs some tweaks, as it does not ensure that mitigation actions will be done in a way that protects nature. EDS s5(b)(iii) puts mitigating significant climate change risks at the same ‘tier’ as natural heritage protection. We see this as an unclear approach, as the two outcomes could conceivably conflict (see above section on risks to nature). We prefer an approach that would put natural heritage protection either in a ‘higher tier’ than mitigation, or that it remain where it is on the hierarchy, but it is made clear that mitigation must be done in a way that does not further damage nature. It should also specifically refer to ocean acidification. For example,

107. (iii) mitigating significant risks from, and fostering resilience to, natural hazards including climate change and ocean acidification, in a way that protects natural heritage.

108. Part 2 should also make explicit reference to role of nature in helping provide resilience (for example through restoring indigenous vegetation on erodible soils and the role of mangroves and dunes in providing coastal buffering. This reference is needed to drive changes in thinking in resource management decision making. Although resilience forms part of EDS 6(a), specific mention is warranted to ensure that the role of nature is taken into account when considering climate change response actions. As such, we would seek to include the following words in EDS s6:

109. (i) Enhancing and protecting the role of indigenous flora and fauna and ecosystems in providing resilience to climate change and ocean acidification.

110. We suggest that consideration should be given to including achieving the carbon budget (set by the Climate Commission) as an outcome that must be met under Part 2. We suggest an amendment in Issue 2 to reflect that.

111. Adaptation also needs a stronger place in Part 2. We see this as having been achieved by EDS 5(b)(iii), which covers both mitigation of risks, and fostering resilience to those risks – which is the essence of adaptation. However, as argued below, in our view there needs to be an emphasis on the preferential avoidance of risks over mitigation of them. As such, we would add the following words to our suggested amendment to EDS 5(b)(iii):
(iii) preferentially avoiding and then mitigating significant risks from, and fostering resilience to, natural hazards including climate change and ocean acidification, in a way that protects natural heritage.

Other changes sought - mitigation

112. We would support national direction to encourage the types of activities needed to transition to a lower carbon economy. However, national direction must also address the impacts of these activities on nature, in line with what we have said above.

113. Carbon capture and storage is a red herring as it is far more expensive than renewable options and is simply used to delay emissions reductions. We would therefore not support a primary focus of any national direction being placed on carbon capture activities.

114. There is a significant risk that the route the RMA reform will go down is to create inappropriate incentives for low emission development rather than penalize high emission development. In practice this means lowering the bar for non-climate related impacts of low emission development. We saw signs of this in relation to the Interim Climate Commission’s report on moving to 100% renewable energy that suggested a loosening of rules relating to freshwater to facilitate new renewable energy. This kind of approach would mean that the burden of reducing emissions would shift away from polluters and onto nature. There are similar risks with adaptation.

115. We would not therefore support a more permissive approach (as suggested at paragraph 92 of the Issues and Options Paper) for activities that help to transition to a cleaner economy. Activities such as forestry and renewable energy development can cause a number of serious environmental effects, which in turn lessen NZ’s resilience to climate change. We would support good standards for these activities however, that make it clear that they should not impact on biodiversity outcomes. Rather than adopting a more permissive approach for these activities, we suggest adopting a stricter regulatory approach for activities that are detrimental to the climate. This will encourage lower carbon activities, while not providing for further environmental damage.

116. We support the use of spatial planning for land use and infrastructure for addressing mitigation. As we have said elsewhere, spatial planning must start with the environmental outcomes and limits that must be met, and then, where there is capacity in those limits or outcomes, plan for development. If climate change mitigation is added as an outcome in Part 2, plans will need to give effect to this – as set out above, spatial and land use plans will be one of the most effective tools available for driving e.g. transport behaviour change. If spatial plans are made without reference to mitigation, there is a very real risk
that the plans could lock in emissions (e.g. transport emissions from greenfield development) that then become unresponsive to price signals.

117. We support the development of an NES with controls on greenhouse gas emissions. Targeting this at particular emission-intensive activities for which emissions pricing is unlikely to be effective. We caution however that the ‘emissions-bar’ not be set too high, particularly given the cumulative effects of several relatively low emission activities.

118. We agree that the Minister for the Environment should develop national direction under the RMA in response to the carbon budgets determined by the CCRA. As set out above, local government action will be necessary to achieve those carbon budgets, and in a potentially controversial or political area such as this, national direction will be essential to support (or force) local authority action. Again, this national direction should direct that impacts on nature are avoided.

119. We note again that ss30 and 31 will need amending to include a climate change mitigation and adaptation function.

Other changes sought – adaptation

120. Adaptation needs a long term approach that recognizes the quite significant changes that will need to be made to deliver resilience in the face of climate change. Planning should be on the basis of likely emissions trajectories rather than agreed global targets as this is more precautionary and global action significantly lags behind the targets set. This means planning for 3 degrees to 4 degrees warming rather than 1.5 degrees as internationally agreed. It is important to note that while mitigation should be based on New Zealand’s carbon budget, adaptation should be based on precautionary estimates of the effect of global efforts. National direction may be required on this issue. The scale of climate change New Zealand needs to adapt to is largely outside New Zealand’s control.

121. Consideration of natural hazard and climate change risks should be explicit in resource management decisions, including consents, and there needs to be a stronger emphasis on avoiding risks rather than engineering out way out of them. This is reflected in our suggested amendment to Part 2 above. The damage to farms that had been developed on old Rangitata riverbed is a good case example. In the heavy rains at the end of the year the Rangitata River breached stop banks and flowed down the old channel which was the reason behind naming a large area of land as “Rangitata Island” - it originally was an island between two major channel systems of the Rangitata. Aerial photos show that the river just re-established its course down old channels and destroyed the farming infrastructure in its path. This area should never have been developed. Preferential avoidance of risks should be included in any national direction on adaptation.
122. We support the development of national direction to provide clearer planning restrictions for development in high risk areas. We caution that the bar not be set too low for what constitutes a ‘high risk area’, and that a long term view is taken. What may be low risk now may not be in 10-15 or even 20 years. Given the long term nature of housing, hard decisions should be made on these areas sooner rather than later, and in our view national direction will need to provide local authorities with formulae or methods for determining what kinds of areas will not be suitable for further development. We agree that Councils do need clearer direction, encouragement, and information to assist them in adapting to climate change and address natural hazards. Some issues will require mandatory direction, rather than guidance however. For example, the difficult political nature of housing in vulnerable coastal areas suggests that national direction should require that development is prevented in those areas.

123. Again, national direction should ensure that the role of nature in providing climate resilience is recognised and provided for, and that adaptation actions must not cause further environmental damage. Activities that exacerbate risks, such as dune lowering and mangrove clearance should be included. National direction should not be restricted to infrastructure and urban planning, as the Rangitata River example illustrates.

124. We support the use of spatial planning to identify future adaptation response. This is an essential tool in responding well to climate change. Again, this must be done with environmental outcomes and limits as a starting point, and ensure that adaptation responses will not cause further environmental damage. Land with natural values or natural areas should be seen as available for relocating infrastructure for example – our climate response should not cause further environmental degradation.

125. We agree that work will need to be done to clarify existing use rights in the context of managed retreat. This may also be relevant to areas away from the coast that become unusable.

126. Any new planning approaches should not be used to permit activities that would create new environmental problems. The hierarchy and outcomes of Part 2 (and subsequent direction and plans) should apply.

127. We agree that the Minister for the Environment should be required to develop national direction in response to the national adaptation plan developed under the CCRA. Again, this is likely to include politically difficult actions and issues, and councils will need guidance (and in some case mandatory direction) on these matters.
QUESTIONS

16. Should the RMA be used as a tool to address climate change mitigation, and if so, how?

128. As above.

17. What changes to the RMA are required to address climate change adaptation and natural hazards?

129. Part 2 changes as above. Changes to functions in ss30-31 to reflect climate change mitigation and adaptation role. Requirements for national direction on climate change responses. Improved planning provided for to address mitigation and adaptation. However amendments to the RMA need to ensure that the weakness of the CCRA in not recognising the role of nature in our climate response if not replicated.

18. How should the RMA be amended to align with the Climate Change Response Act 2002?

130. As above. National direction to ensure Councils can (and will) take action on the emissions budgets and adaptation plans. However amendments to the RMA need to ensure that the weakness of the CCRA in not recognising the role of nature in our climate response if not replicated.
ISSUE 6: NATIONAL DIRECTION

131. We agree that there is a need for greater national direction under the RMA. We recognise that work is underway to produce more. National direction has the potential to save Councils and submitters time and resources, if it can provide clear and unambiguous direction. For example, Forest & Bird has been involved in countless legal cases around New Zealand about the criteria for significance under s6(c). The upcoming NPS for Indigenous Biodiversity, which currently includes significance criteria, will hopefully end the need to continuously argue this issue.

132. However, our support for national direction depends in large part on whether Part 2 can be improved in the way we have set out in Issue 2. If a clear hierarchy is embedded in Part 2, with environmental limits and outcomes as the first priority, national direction that followed that hierarchy would be helpful.

133. In terms of a single policy statement, in our view an improved Part 2 should perform this function.

134. We recognise that more detail may still be required for implementing aspects of the new Part 2, in particular if more than one matter is at the ‘top tier’ of a new Part 2 hierarchy. We would therefore support a mandatory suite of national direction, provided that it followed an environmental limit/outcome approach, rather than the current balancing approach.

135. Existing national direction will need to be reviewed if Part 2 is amended to reflect an outcomes/limits approach.

136. We support planning standards, and those that are consistent across the country. Again however, unless Part 2 is not clear and/or strong enough, we are unsure as to whether they would deliver improvements in environmental outcomes, or efficiencies.

137. We support the idea of a mandatory policy statement on the Treaty.

QUESTIONS

19. What role should more mandatory national direction have in setting environmental standards, protection of the environment generally, and in managing urban development?

138. As above, national direction should provide guidance on the new Part 2 approach, in particular where there are any potential conflicts. National direction should set environmental limits as much as possible.
ISSUE 7: POLICY AND PLANNING FRAMEWORK

139. We agree that useful changes could be made to the planning framework. Forest and Bird staff and members spend a huge amount of time engaged in planning processes in order to get appropriate protections for nature.

140. However, given the work and resources that plans require, which involve several staff members and often external experts over a period of months or years, the environmental outcomes that plans deliver are often disappointing. For example, if we manage to secure discretionary status for vegetation clearance in significant natural areas, we usually consider that a win. However, discretionary status simply puts the decision over whether an area can be cleared off for another day. Even in the rare cases we achieve non-complying status, because of the overall balancing of objectives and policies in s104D, even non-complying status can be ‘balanced away’. We want to see planning that actually makes decisions wherever possible about what should be protected. The greater certainty that this would mean would benefit both the environment and also those seeking to undertake activities.

141. We would support spatial planning being required as part of an improved combined planning process. As discussed in Issue 4 above, in drafting those plans, Part 2 would need to prevail – that is, with the environment as the starting point. As discussed above, we think spatial planning as part of the combined plan process has a role in meeting environmental outcomes and climate change adaptation planning, so there is justification for requiring spatial planning in all areas – including possibly the marine area.

142. We are very wary of plans being captured by well-resourced developers. They should be based on objective science, and the process for drafting them should ensure that vested interests do not have influential or decision making roles. Forest and Bird has a lot of experience with the planning process being unduly influenced by vested interests. Given the vital importance of planning in ensuring that Part 2 is given effect to, it is essential that the process used is transparent and effective. To that end, we suggest that there could be a role for independent experts to advise the decision makers. Additionally, we think that the Environment Court should have a role in ensuring that spatial plans give effect to Part 2.

143. We agree that regional policy statements, district and regional plans should be combined. As noted above, plans require a huge investment of time and resources, not only from submitters, but also the Councils themselves. There would be efficiencies in undertaking these processes at one time. It would also reduce complexity. Reconsidering the roles of district and regional councils may also have merit – their functions sometimes overlap (e.g. in respect of rules protecting biodiversity). Extreme care would need to be taken however
that removing or reducing the roles or functions of regional or district councils did not reduce environmental protections.

144. As above, high level (but binding) outcomes should be set in Part 2 itself. These outcomes should be given more detail in combined plans where necessary. Environmental limits would need to be set (where this had not already occurred in national direction) by combined plans. Spatial planning would form part of this, and would be based on these outcomes and limits.

145. These outcomes/limits would need to have greater weight than is currently given to objectives and policies. All provisions of the plan would need to be tested against these outcomes and limits. If a particular provision would not give effect to, or would lead to a contravention of an outcome or limit, it could not be included in the plan.

146. Using the outcomes and limits would also allow clearer decisions at the planning stage about what activities (and in what locations) will not be acceptable. For some activities, prohibited status should be used, or moratoria. In some cases, an activity could be acceptable only if strict and clear standards are applied, in which case non-complying could apply. For example, in giving effect to Part 2, a plan might provide that all native forest of a particular type was to be retained (and/or restored). Clearance of this forest type would need prohibited status. However, the plan could also have a different rule about ‘offsetable’ forest types - if the forest was one that could be potentially successfully offset, then the plan could state clearly that clearance of that forest type could not be granted unless it could be successfully offset.

147. Sections 104-104D would need amending to ensure that overall balancing of various considerations and plan objectives and policies could not happen. If outcome or limit in the plan (or Part 2) was contravened, the activity could not proceed.

QUESTIONS

20. How could the content of plans be improved?

148. There needs to be clear direction for councils to plan for outcomes. Setting outcomes in Part 2 is the starting point. As above, these outcomes could be set out in more specific detail in each RPS.

149. This could be supported by including direction for environmental planning in the RMA sections on duties, developing combined plans and/or councils functions. For example as an alternative to the Part 2 amendment suggested under the EDS approach:

a. Adding a new subsection in Part 3 relating to duties for “environmental planning” that every person exercising powers and performing functions under this Act must
undertake those powers and functions consistent with principles of environmental planning.

b. Principles of environmental planning⁷:
   i. The precautionary principle⁸:
      o Where there is uncertainty about the risk of environmental harm, the precautionary principle allows protective measures to be taken without having to wait until the harm materialises.
      o Where there is uncertainty about the environmental impact of an activity, such that:

         (a) effects on the environment are uncertain, unknown, or little understood, and
         (b) are potentially significantly adverse (whether considered alone or cumulatively with respect to other activities) or
         (c) likely to be irreversible, decision makers must favour caution and environmental protection.

   ii. The prevention principle:
      o This principle requires preventive measures be taken to anticipate and avoid environmental damage before it happens.

   iii. Environmental damage should be rectified at source:
      o Working alongside the prevention principle, this ensures damage or pollution is dealt with where it occurs.

   iv. The polluter pays principle:
      o This principle holds that the person who causes pollution should bear the costs of the damage caused and any remedy required. It plays a significant role in environmental management, acting as a deterrent and directing accountability for harm.

   v. The integration principle:
      o This principle requires that environmental protection is integrated into all other policy areas, in line with promoting sustainable development. Both national and local government have responsibilities to protect our environment.

   vi. The enhancement principle:
      o This principle holds that enhancement of environmental, social and economic wellbeing is fundamental to planning for outcomes.

⁷ Adapted from EU environmental policy principles set out at https://www.clientearth.org/what-are-environmental-principles-brexit/
⁸ Includes aspects of Policy 3 NZCPS and Policy 61(2) Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
vii. The planning principle
  o That planning is related to the future and for the future. This principle requires actions to positively contribute towards achieving the objectives and outcomes established under this Act.

c. Amend section 62 or sections 64/73 and/or s32 to include direction for environmental planning to support the development of plan provisions.

150. Planning for outcomes will also will require amendments to the provisions dealing with the contents and preparation of plans:

a. Amend section 32 to require an assessment that demonstrates that each plan provision aligns with achieving the mandatory outcomes. This cannot be done in a ‘in the round’ or ‘overall’ way, or the outcomes and limits will be too easily undermined.

b. Amend section 62 to require that regional policy statements (or combined plan) must state the environmental (and potentially social and economic) outcomes that are to be achieved in the region. These must give effect to the outcomes in Part 2.

c. Amend sections 63 and 72 (if separate plans are to be retained) to add that the purpose of regional/district plans is also to achieve the outcomes in Part 2 and the regional policy statement.

d. Sections 66 and 74 will need to include specific reference to the requirement for the plan to include outcomes that will give effect to those in Part 2.

e. Sections 67 and 75 need to be amended to require that the plan must state the methods for achieving the outcomes set in the RPS (or if more specificity is desired, district/regional plans can include even more fine-grained outcomes, and these must be stated in the plan). These methods will need to be specific, and where appropriate, time bound. The methods must include limits where appropriate.

f. These sections will also need to be amended to require monitoring of the achievement of the outcomes and limits.

g. Plans should be required to be amended where regular monitoring shows (or this is discovered in other ways) that outcomes and/or limits are not being met.

h. Amendments will also be needed to require spatial planning to form part of combined plans, using the outcomes and limits that have first been identified in the as the basis.

21. How can certainty be improved, while ensuring responsiveness?

151. See comments on combined plans above. We think much greater certainty can be achieved by using the Part 2 hierarchy, informed by objective science and evidence, to create plans that actually make decisions about resource use wherever possible.
152. This is provided for to some extent already in the Act through default activity status under s9 – 14 of the Act and plan reviews. Plans generally specifically provide for expected activities. Where activities are not anticipated there is usually a consent pathway via discretionary or non-complying. Plan changes and reviews allow for change/response. However, we think that using the Part 2 hierarchy and its environmental outcomes, which would be made area-specific in regional policy statements and possibly also combined plans, much greater certainty could be achieved. That is, by front-ending the decision-making process, there would be much less use of discretionary status for example.

153. As discussed above, where the planning process could not decide outright on the appropriateness (i.e. whether it would achieve the required outcomes or not) of an activity, discretionary or non-complying status might be used. However there would need to be much clearer guidance for how that activity would be decided on. Currently, a discretionary (or even non-complying) activity is looked at in the round, and all the relevant objectives and policies of a plan are thrown into the mix, and a balancing exercise is done. Under the new Part 2 hierarchy however, this kind of balancing could no longer occur. Change would need to be made to ss104-104D to make it clear that for any particular activity, the hierarchy would need to be met (by applying the outcomes and limits), or the activity could not proceed.

154. In this way there could be still be responsiveness, while achieving the limits and outcomes. To be clear however – ‘responsiveness’ in our view should not require that limits and outcomes are ignored. These need to be mandatory, actual limits if environmental improvement and greater certainty is to be achieved.

155. As the RMA currently stands, certainty and responsiveness in respect of achieving environmental objectives (particularly those intended to provide for s6) and to address environmental issues is lacking. Existing use rights, first in first served and rights of renewal in consenting processes are particular problematic and they constrain response. This is discussed further below.

22. How could planning processes at the regional and district level be improved to deliver more efficient and effective outcomes while preserving adequate opportunity for public participation?

156. A lot of the material in the previous question is relevant here.

157. Combined plans would already provide some efficiencies.

158. While we would support flexible plan making processes for minor plan changes, we are wary of how the decision that a plan was ‘minor’ would be decided. If this is pursued, there would need to be very clear guidance in the Act about what constitutes ‘minor’.
There would need to be some method of ensuring that even minor plan changes met the hierarchy and outcomes in Part 2 (and as detailed in lower order plans). Currently that check and balance role (with respect to current Part 2 matters) is undertaken via public participation by submitters, including rights of appeal to the Environment Court. If any public participation steps are removed from the plan making process, there needs to be an alternative, preferably non-political method of ensuring that the plan change still will achieve the outcomes. This is a fraught area, and care needs to be taken to ensure that minor plan changes will not be used (deliberately or otherwise) to circumvent or undermine the mandatory outcomes and limits. In our view the Schedule 1 process is basically an acceptable one. It is definitely time and resource consuming. However, if plans moved to much more certain outcomes, rather than leaving so much of the decision making till the consenting process, this investment would be much better spent.

159. Having said that, we would be comfortable with a single stage process. However we would be concerned if local authorities had the ultimate responsibility. Nor would we want to see decisions on plans being passed to other politicised people (Independent Hearings panel members can be selected according to their political views). We strongly suggest that the Environment Court should have a central role in any single stage planning process. Appeal rights to the High Court on points of law should be retained.

160. In terms of draft plans requiring Ministerial or central government approval, we would be wary of this. In our view, as long as the Act sets clear outcomes, and all relevant national direction is sufficiently clear (and directive where appropriate), and the Environment Court holds a central role in plan making, this should not be necessary. Our concern here is that plans could too easily become politicised.

161. We do see that there could be merit in providing more technical and perhaps administrative assistance from central government to local authorities with plan making.

162. In terms of iwi management plans, we see that there’s a role for greater involvement of iwi management plans, where iwi are exercising kaitiakitanga. However we have serious concerns for some areas, e.g. West Coast, where iwi have been outspoken in support of destructive industries and not for protecting the environment, e.g. Denniston. Again, if the hierarchy we are advocating is followed, this would not be an issue. Environmental outcomes come first, and then if social (or economic) outcomes can be accommodated, they may be appropriate.

163. In our experience, private plan changes are usually promulgated by developers to pursue private and/or commercial gain. They often are not been well assimilated into the broader plan, are poorly drafted, and create new resource management problems, as are written to suit a particular specific outcome. In our view they should be severely restricted. If
proper planning is done at the outset, then it should not be able to be undermined by private individuals’ (usually) economic aspirations.

23. *What level of oversight should there be over plans and how should it be provided?*

164. As set out above.
ISSUE 8: CONSENTS/APPROVALS

165. We agree that improvements could be made to the consenting process.

166. In terms of the Whaiwhakaaro at paragraph 114, in our view a lot of these suggestions have merit, as long as combined planning is done with clear environmental outcomes and limits as their basis. Much greater certainty, clarity, and improved environmental outcomes could result from a consenting process that was based on a clear and directive plan, based on environmental outcomes.

167. We also agree that the utility of the consenting process is called into question by the very common lack of enforcement and compliance monitoring, and by the ability for consents to be changed to remove restrictive conditions. In tandem with outcomes-based planning (and therefore consenting), better compliance and monitoring is required to ensure that environmental protection and improvements actually occur.

168. We would be comfortable with the categories of activity being simplified. There is currently an over-reliance on the use of discretionary category when a Council seems unable to say yes or no to something when a plan is being prepared. This is effectively a decision to leave the decisions for later, ‘depending on effects’, and isn’t what robust and effective planning should be. With greater use of clear outcomes and limits as the starting point of district/regional planning, there should be much greater certainty over what activity status should be applied to certain activities in particular locations.

169. We would like to see greater use of non-complying and prohibited, but instead the current trend we see is a move towards controlled or restricted discretionary activities. Our system is tending to lend itself to try to be more permissive, when certainty and clarity can also be obtained through greater stringency.

170. We also think that improvements need to be made to ss104-104D. Under existing s104 of the RMA, consents may be granted for activities that breach environmental limits, such as the freshwater quality limits and targets that have been set in order to give effect to the National Policy Statement on Freshwater Management. In order to make an outcomes approach actually work, those limits and targets must be binding. As such, ss 104-104D will need to be amended to make clear that any activity that contravenes an outcome or limit (specified in the combined plan or in national direction) must not be granted. The overall balancing of plan objectives and policies inherent in those provisions will no longer be able to occur – if a limit or outcome is not met, then the activity cannot proceed. This will be a significant shift from current consenting, but in our view this is now required.

171. We also have concerns about the permitted activity baseline, where there is the slow creep of cumulative impacts, and also where other activities then build on the permitted
baseline to make it seem that there is little cumulative effect. There should be no such thing as permitted baseline, we should assume the environment before the permitted impacts.

172. Efficiency can be improved under the RMA, where effects are well known in a particular location or for a particular resource. These issues would need to be considered in a combined plan. For such particular activities, then they could proceed with transparency, e.g. not notification per se, but a clear decision as to why they are approved, and what outcomes they are relevant to meeting.

173. We have some sympathy with only requiring certain activities to undertake a full AEE, but this depends on how well the planning process sets outcomes and limits, and assesses particular activities and their effects against those outcomes and limits. In our experience, problems have often arisen through a lack of an AEE, so any reduction in the requirement to have an AEE would need to be very clearly and carefully set out, and only be used in cases where a detailed outcomes/limit setting process had first occurred through the spatial and district/regional planning process.

174. Similarly, we would be comfortable with more clearly specifying permitted development rights for residential activities, but again – only where an outcomes/limits-based planning process had first been undertaken.

175. With regards notification, we would not want to see all consent applications notified. This would be too resource-intensive for us to monitor. We do see merit in plan specifying what must be notified. More guidance/definition about who should be notified may also be helpful, but caution that this would need very careful consideration to avoid inappropriately curtailing participation rights.

176. We are neutral on retaining a separate consenting pathway for nationally significant proposals.

177. We strongly support a requirement to make all consents and applications available to the public.

178. We have concerns about the ability of Councils to vary consents effectively without public participation or sometimes even knowledge. Even when there has been a large consent issued, Councils vary aspects of the consent without any consultation with any of the original parties, this has happened various times with mining on the Buller Coal Plateau. Consent variations should be required to be notified to at least the submitters that were involved in the original consent process.
QUESTIONS

24. How could consent processes at the national, regional and district levels be improved to deliver more efficient and effective outcomes while preserving appropriate opportunities for public participation?

179. As discussed above, we think that more effective and efficient outcomes could be delivered by the consenting process, as long as that is based on improved planning. Planning that is based on detailed and clear outcomes should lead to much greater certainty in plans as to what is and what is not acceptable. This could for example mean that certain activities had a simpler consenting pathway. We repeat our proviso that this kind of consenting change could only work where thorough and careful consideration was paid to setting environmental limits and outcomes first.

180. Public participation provides an essential check and balance in our resource management system, and we think this role will remain essential as resource scarcity bites in more areas. As such, as discussed above, we are reluctant to suggest any reduction in public participation rights.

181. In general we strongly favour a presumption in favour of public participation. Public participation will remain particularly important for any activities that have the potential to lead to an environmental outcome not being achieved, or where a limit may not be met. (We repeat our point that for some resources, prohibited status or moratoria will need to be used to ensure outcomes are met.) This may be difficult to determine at notification time. We are hopeful that with more clarity in plans about what is not acceptable (and what is), there should be less grey areas on this point. However, for some activities it may impossible at plan preparation time to determine whether an activity will lead to an outcome/limit being achieved. In that case, there should be a strong presumption in favour of notification.

182. If the current formulation of Part 2 is retained, public participation should be a presumption where any s6 matters are identified through an assessment of effects, or where the processing Council considers a s6 matter may arise (ensure that all plans have identified as far as practicable any s6 matters, so that AEE’s provide an additional level of identification to provide opportunity for protection).

183. As discussed above, in urban areas that have been through an environmental outcomes-based plan process, certain activities could have default limited notification, unless special circumstances exists. Special circumstances in this case would include where the effects of a proposed activity may impact a s6 matter or water (or under the new approach, where an outcome is unlikely to be achieved or a limit not met). Limited notification might include MfE or DoC if the activity or effects are the subject of an NPS. Limited notification...
might include Historic Places and/or local rununga if historic or cultural heritage or customary rights are relevant.

25. How might consent processes be better tailored to the scale of environmental risk and impact?

184. As discussed above, there could be some lesser consenting requirements where a proper outcomes based planning process has been followed; whether this is appropriate depends on how robust the plan making process has been however.

185. Allow for consideration of the actual existing environment. Just because someone else has been allowed to do it in the past or the plan permits some aspects of the activity, this should not be the basis for determining consent.

186. If a consent is required for a proposal (where the proposal includes an activity/s that triggers a consent requirement) any activities included in the proposal which would otherwise have be permitted on their own (i.e. if they were independent to the proposal) are to be considered in establishing the effects of the proposal and making a decision on the application.

187. The permitted baseline approach has led to the inclusion of effects from activities that would not have occurred in the absence of the larger proposals to which they are associated. The permitted baseline approach has effectively led to cumulative effects which are not and cannot be adequately considered by decision makers. It should therefore be abolished.

26. Are changes required for other matters such as the process for designations?

188. The Council should be the decision maker with respect to designations, rather than the requiring authority. Appeal rights would arise from that Council decision, to the Environment Court.

189. Designations are a useful tool to provide certainty for existing activities and provide for future services which benefit the wider community. Once established retaining them should be above local political changes.

27. Are changes required for other matters such as the review and variation of consents and conditions?

190. Consent decisions should state which outcomes (from the relevant plan) are being achieved by the grant of that consent, and what limits are relevant to that consent.
191. In our view there needs to be both greater ability for Councils to vary and/or cancel consents, and also mandatory direction that Councils do this where outcomes are not being achieved, or limits are being exceeded. Consents should be able to be cancelled (or varied where appropriate) where:

a. a review/monitoring finds that consent conditions have not been met and environmental effects are occurring;

b. a review/monitoring finds that an outcome that was meant to be achieved in part by the exercise of the consent was not being met, or a limit that was relevant to the consent was being exceeded;

c. where a significant environmental issue has been identified and cancelling the consent would avoid or mitigate adverse effects on the environmental issue or provide for a more appropriate use of a limited resource (appropriate use being determined by the Part 2 hierarchy.)

192. In our experience Councils are extremely reluctant to vary the conditions of consent. This reluctance can exist despite adverse environmental effects occurring because of the exercise of consents. Because of the relatively controversial nature of varying/cancelling consents, in our view there should be mandatory directive guidance in the Act (and possibly expanded on in national direction) that Councils must vary or cancel consents where outcomes are not being achieved, or where relevant limits are being exceeded.

193. Councils should be required to review consents periodically, e.g. every 3 years, in order to assess whether variance or cancellation of consent is necessary. (This would tie in with a requirement for more consistent compliance and monitoring.) This regular review is unlikely to be needed for small scale e.g. urban residential activities.

194. Appropriate use in terms of the Part 2 hierarchy should be considered at all consent reviews and for any variation to a consent or to condition which would increase the amount of resource taken, used or affected.

28. Are changes required for other matters such as the role of certificates of compliance?

195. No comment.
ISSUE 9: ECONOMIC INSTRUMENTS

196. Forest & Bird strongly supports the greater use of economic instruments. We see this as an area that could lead to much better environmental outcomes. We also think it is important to address fairness issues around private individuals/companies using natural resources for private profit, essentially for free.

197. In our view this is an area that is likely to require national direction. The issues associated with the use of economic instruments will be complex. While specific instruments and/or approaches may be needed for certain resources or uses in particular regions, central government should provide as much guidance (and possibly direction) as possible. Councils may not have the expertise or resources to implement new economic instruments, so central government should have a role in providing direction and guidance, and possibly also the administration of economic instruments.

198. We agree that councils should be provided with a broader range of economic tools to support the resource management system. This could be particularly useful if an outcomes/limits approach is taken in the RMA. Again, there may be merit in actually directing Councils to use economic instruments where there is pressure on particular resources.

199. However, environmental offsetting and transferable rights need to be tackled with enormous care. Strict guidelines need to be developed that give effect to the Part 2 hierarchy.

200. We also think that s104(1)(ab) should be amended so that compensation can no longer be considered as a factor that can be weighed up under the overall consenting decision. Compensation may still be appropriate (with strict guidelines), but not as a factor to consider when deciding whether to grant consent. This is because compensation doesn’t address the actual effects of an activity onsite. We also think that allowing for compensation as part of a decision making process does not have a place under an outcomes based approach. For example, if the outcome in the plan was that there would be no net loss of wetlands in a region, and an activity would involve destruction of wetlands, then allowing for some kind of compensation as part of the decision making would not address the outcome. Allowing the activity would not achieve the outcome, and therefore should not be granted consent. Allowing compensation to somehow factor into this would undermine an outcomes/limits based approach.

201. We would strongly support mandatory charges for commercial uses. We support resource rentals for freshwater. Some consideration should also be given to charging for long term personal use of public resources. We think the focus at least in the first instance should be on commercial activities.
202. We strongly support Councils being required to use the revenue from economic instruments to protect, restore and maintain natural resources. As discussed in Issue 2, a proactive approach to protecting our natural heritage is now needed. In some cases it is no longer enough to simply protect what is left of an aspect of biodiversity. For some parts of nature, restoration is now required. That raises questions about who should bear the responsibility of such restoration – should a new resource user (consent applicant) have to undertake restoration work to ‘make up for’ those who have over-used the resource before them? Requiring Councils to undertake restoration work with the revenue from economic tools is one answer to that issue.

QUESTIONS

29. What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system?

203. We see an important role for economic tools, as outlined above.

30. Is the RMA the appropriate legislative vehicle for economic instruments?

204. Yes, given that it is the legislation that already deals with the resource use. Economic tools should be set according to the outcomes and limits set for a particular resource or region.
ISSUE 10: ALLOCATION

205. Forest and Bird strongly supports a review of how allocation is dealt with under the RMA. The current system, with its first in first served approach, strong expectation of continued use rights, and lack of clear planning of resource limits and allocation, has not produced good environmental outcomes. The natural environment is already at its assimilative capacity in many ways, and this will be exacerbated by climate change. As such, allocation issues are likely to intensify.

206. A move to an outcomes-based approach is likely to require a different approach to allocation, and allocation issues will be relevant to activities other than the current obvious ones (e.g. freshwater). For example, if an outcome required under the relevant plans is that any further modification of X kind of habitat is limited to 5% of current extent of that habitat (assuming any such modification might be appropriate – the outcome may only be possible where offsetting is appropriate and provided for), then allocation issues arise. The ability to modify that last 5%, in accordance with the outcome or limit, will likely be in great demand by developers.

207. We generally support the comments made by EDS in the Synthesis Report (Summary Report) at pages 20-21. We agree that there are no easy answers for allocation issues. The idea of tranches of allocation rights could have merit, on the basis of the Part 2 hierarchy.

208. We agree that the first in first served approach will need to be amended. While we do not have definitive answers for what should replace that approach, we note areas of caution that will need to be considered:

a. Renewals of existing uses – we agree that the current strong expectation that use rights will continue in perpetuity needs to change. Such an approach cannot continue while using a limits/outcomes approach. However we do have sympathy for users who have invested time and money etc based on a resource consent. Some kind of a priori rights are likely to be appropriate, within the framework of outcomes/limits still being met.

b. There should be an allocation of all resources that is held for future generations – in accordance with the redrafted Part 2. Consideration will need to be given as to how much is appropriate.

c. There will need to be somewhere in the RM system that determines how much of a resource is available for use, and sets timeframes for when it can be used. Given that this is inextricably linked to the setting and achievement of limits and outcomes, the appropriate place to do this is probably the combined plan. We are
comfortable with where the allocation decisions ‘sit’, but reiterate that they must be based on the environmental limits and outcomes.

d. Outcomes and limits will need regular review, to ensure they have been correctly set and are still meeting Part 2. As such, there will need to be some mechanism whereby allocation is also reviewed. This will of course be based on regular monitoring of consents.

e. We see merit in requiring annual resource consent fees, and for certain resources, a resource rental as well (e.g. freshwater). This would potentially discourage consent holders from retaining consents where they are no longer being used.

f. As discussed elsewhere, Councils needs much greater ability to vary or cancel consents. This would depend on more regular mandatory monitoring. Where an outcome or limit was not being met, Councils should be required to review a consent. There may need to be direction in the Act about mandatory actions that Council must undertake with respect to consents, in order to ensure the Part 2 outcomes (and the more specific ones set in plans) are being met.

31. Should the RMA provide principles to guide local decision making about allocation of resources?

209. Yes, as discussed above. Given the complexities of allocation there should be direction either in the RMA or in national direction (or more likely, both) to assist and in some cases require Councils to deal with allocation in certain ways.

210. Also, in Issue 7 we suggest the inclusion of ‘environmental planning principles’.

32. Should there be a distinction in the approach taken to allocation of the right to take resources, the right to discharge to resources, and the right to occupy public space?

211. They all require a robust decision making process. However, the reason for needing an allocation may be relevant – for example, in line with the amended Part 2 approach above, an allocation could be made available for essential social wellbeing, with any remaining allocation being available for commercial use.

33. Should allocation of resources use such as water and coastal marine space be dealt with under the RMA or elsewhere as is the case with minerals and fisheries, leaving the RMA for regulatory issues?

212. We think it should be dealt with under the RMA. The lack of integration between environmental effects under the RMA and minerals and fisheries management under the
separate Acts is already a problem. Allocation needs to be considered as part of an integrated management response which puts the natural environment first, in accordance with the revised Part 2.

213. Allocation will likely involve questions of how the resource is to be used (in order to determine which use is best of two different potential uses). This kind of consideration is best made under the RMA. The outcomes to be met by the relevant plans will have an important role in determining the best use of a resource.

214. Given the very complex nature of allocation, there could be a need for national direction on this issue, and potentially some kind of central government oversight (and/or administration).
ISSUE 11: SYSTEM MONITORING AND OVERSIGHT

215. We agree that greater monitoring of how the system is functioning would be useful. This would involve both the state of the environment and also how the RMA is performing to deliver outcomes and limits, but also bringing in wider considerations such as fairness and efficiency.

216. In our view the Ministry for the Environment is the appropriate agency to undertake this kind of role. However, where the Ministry is responsible for an area of work (and we note that this may increase as a result of this review), a different body would need to perform the oversight function.

217. Where we see a potential gap is the link between reporting and change. Consideration should be given to requiring action, e.g. review of parts of the RMA, or review of national directions etc, where monitoring shows that Part 2 is not being met, or that other systemic problems are occurring.

218. Consideration should be given to the link with the outcomes of the New Zealand Biodiversity Strategy.

219. We agree that a continuing role for the PCE in undertaking specific inquiries is appropriate.

34. What changes are needed to improve monitoring of the resource management system, including data collection, management and use?

220. Central government should have a role in collecting or (at least) coordinating monitoring sites and data collection. MfE is probably the best fit for this role.

35. Who should have institutional oversight of these functions?

221. As above, MfE should, unless it has a responsibility for the function itself. In which case, another body such as the EPA could have the oversight function. The important point is that there is consistent monitoring, and action taken where systemic failures are discovered.
ISSUE 12: COMPLIANCE, MONITORING AND ENFORCEMENT

222. This is an area that we think needs major improvement – regardless of whether part 2 is redrafted, or any other changes to the RMA are made. Forest & Bird spends a huge amount of time and resources on planning (as discussed above) and consenting, mainly with large scale proposals. It is disheartening at best to put this kind of work in, when we know from experience that monitoring of both plan provisions (permitted activities are particularly hard to monitor, as they allow for activities usually with no Council knowledge), and consent conditions is patchy at very best. Enforcement suffers from other, related issues – enforcement is often politically unpalatable, is costly, and may be ineffective in changing behaviour.

223. CME tends to be grossly under-funded. In many cases Councils simply do not have the funds available to attend to this function. Political will may also exist to undertake this role.

224. Given these problems, in our view central government needs to play a much stronger role. This needs to be both in preparing national direction (or changing the Act, or both) on what monitoring is required, and what action must be taken in order to ensure monitoring is meaningful and will result in change where necessary. In our view central government should also take over at least some aspects of the CME function (i.e. not just provide guidance and direction). Rather than individual councils being responsible for CME functions, we suggest that central government could pool together relevant people from various agencies who would be answerable to MfE. Alternatively, a new agency could be set up dedicated to these functions. Staff would likely need to be sited at Council offices, or if not at Council offices, at least in the relevant area – but with clear reporting lines back to MfE.

225. Regular compliance monitoring should be required, and this should be linked (as discussed elsewhere) to a greater ability to vary and cancel consents. Consents should state the plan outcomes or limits that are relevant to them. Monitoring could be linked to those outcomes/limits, which would provide a framework for monitoring effects. We think that Councils may need to be required to take certain actions in this regard, given the political issues surrounding CME (assuming Councils retain any role in CME – otherwise there should be mandatory directives to the appropriate CME agency). These mandatory requirements should be set out in the Act or national direction. We note that EDS recommends removing enforcement decisions from elected Councillors – we support that view.

226. Spot monitoring should also be required, over and above regular monitoring. The priority could be on activities that are at greatest risk of causing environmental damage.
227. If the Act is amended to reflect an outcomes/limits approach, this will make monitoring more meaningful (and the outcomes approach won’t work without effective monitoring) – at the moment decisions are made on insufficient information, on an overall balancing approach of various conflicting factors (as embodied in plan objectives and policies). If there are hard limits in place, there needs to be the information to support decisions about resource use up to that limit. Proper monitoring will provide that information.

228. Cost recovery on CME is appropriate for all activities.

229. We agree that a broader and strengthened range of powers and penalties is appropriate.

230. There also needs to be transparency in CME. The results of all CME work should be easily accessible (online) to the public, in a digestible form.

231. The results of any CME on particular consents should automatically be sent to submitters on those consents.

**QUESTIONS**

36. **What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?**

232. As above.

37. **Who should have institutional responsibility for delivery and oversight of these functions?**

233. As above – MfE (or some other central government agency) should have at least the primary responsibility for both delivery and oversight of these functions. Councils could then be required to take certain action where appropriate. For example, where central government CME found that a plan’s permitted activities were leading to an environmental outcome or limit not being met, the Council should be required to change the plan. Similarly where CME of a consent revealed compliance issues, Councils (or the CME agency) should be required to take action such as reviewing or revoking consent.

38. **Who should bear the cost of carrying out compliance services?**

234. As above. User pays should be the general principle, particularly where the use is a commercial one. There needs to be a stronger requirement for Councils to take financial contributions, bonds and place adequate consenting requirements on activities where remediation is required, e.g. for quarrying activities, refuse disposal/dumps and hazardous waste storage. Too often these costs are hidden or realised later with the rate/tax payer picking up the cost. There should be a requirement for decision makers to require remediation conditions and public notice of any changes sought to those conditions.
235. Establishing a robust compliance, monitoring and enforcement framework will require tax or general rates monies, however once in place it should become primarily user pays, in particular for commercial activities. There will always be an element that requires tax or rates funding. For example establishing water monitoring sites may require rates money but the maintenance of the site should be covered by monitoring charges as part of any consents for which the site will be used to monitor effects.

236. Whatever funding arrangement eventuates, and whoever takes on/retains the various aspects of the CME function, there needs to be much greater funding available. If Council is to retain a role, central government funding may be required, e.g. to cover the costs of CME for non-commercial uses if cost recovery is not used for those activities. This is a key point – however CME is funded, it needs a significant boost in order for the RMA to be effective, either in its current form, or with any amendments.
ISSUE 13: INSTITUTIONAL ROLES AND RESPONSIBILITIES

237. We generally support all of the options set out at paragraph 138. In general, and as discussed elsewhere, we see the need for greater central government involvement – in providing direction and guidance, and in some cases, taking over aspects of certain functions from Councils. In some areas caution is needed however, to ensure resource management decisions do not become politicised.

238. In relation to options (d) and (e), we strongly support a continued role for the Environment Court, and also support expanding their role. In our experience, Environment Court members have the expertise and political independence to make fair and robust resource management decisions. If plan making is going to move to a single step process, the Environment Court should play a central role. We would prefer that the Court’s role is expanded, rather than increasing the role of Independent Hearings Panels.

QUESTIONS

39. Although significant change to institutions is outside the terms of reference for this review, are changes needed to the functions and roles or responsibilities of institutions and bodies exercising authority under the system and, if so, what changes?

239. We think that careful consideration should be given to rationalising the number of councils. A unitary model like Auckland’s could mean significant efficiencies in terms of cost and resources. It would also make more sense if district and regional plans are to be combined. We often hear from Councils that it is difficult for them to perform all the functions expected of them under the RMA because of their low ratings base. With the efficiencies of combined Councils, this presumably would improve.

40. How could existing institutions and bodies be rationalised or improved?

240. As above.

41. Are any new institutions or bodies required and what functions should they have?

241. As above, we think that either MfE, or a new body, should take over all or some of the CME functions that Councils currently have.

242. As discussed above, national direction will be needed in several areas, e.g. provision of economic instruments, establishing and allocating resource use rights, strategic planning for environmental outcomes and sustainable development. Consideration will need to be given as to whether central government involvement should extend beyond providing direction, and into delivery of those functions. If so, new agencies may be needed.
ISSUE 14: REDUCING COMPLEXITIES ACROSS THE SYSTEM

243. We agree that the Act has become very complex. We caution that any amendments to reduce the complexity need very careful consideration, so as not to reduce environmental protections.

244. In our view, as discussed elsewhere, complexity could be reduced if planning is done with a clear outcomes/limits approach. Increased certainty about whether activities will be acceptable will reduce frustrations and delays with the Act.

245. We do not agree (as suggested in paragraph 139) that broad based appeals add undue cost and caused delay. As the Panel is aware, very few consents are ever appealed, and the majority are settled by mediation. The right to appeal is a crucial safeguard in the Act. Forest and Bird uses this right carefully, and in our experience it is often only at the appeal stage that environmental protections as envisaged by the Act and/or relevant plan(s) can be achieved. Appeals do increase costs for applicants, and they take time to work through, but in our view those matters should be seen as the norm for controversial applications. The appeal process is an appropriate and essential safeguard in our system, and we strongly oppose any suggestion that it should be restricted.

QUESTIONS

42. What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness?

246. Put the definitions all in one place, i.e. under “interpretation” s2.

43. How can we remove unnecessary detail from the RMA?

247. Consideration could be given to removing the collaborative planning process.

44. Are any changes required to address issues in the interface of the RMA and other legislation beyond the LGA, LTMA?

248. Yes. The EEZ Act. There needs to be better integration between effects of activities in the EEZ and the CMA. NZCPS should apply to all NZ waters and be promoted at government level for international waters.

249. The environmental outcomes set under the RMA also need to apply to the Crown Minerals Act.