SUBMISSION TO THE LOCAL GOVERNMENT AND ENVIRONMENT SELECT COMMITTEE ON THE RESOURCE LEGISLATION AMENDMENT BILL
ENVIRONMENTAL DEFENCE SOCIETY

Name of submitter: Environmental Defence Society Incorporated

Address for service: Environmental Defence Society Incorporated
Private Bag 91736
Victoria St West
AUCKLAND 1142

Gary Taylor QSO, Chief Executive
Madeleine Wright, Legal Advisor

Contact phone: (09) 480 2565
Email: madeleine@eds.org.nz

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INTRODUCTION

1. The Environmental Defence Society (**EDS**) is a public interest environmental law group, formed in 1971. Its membership consists largely of resource management professionals. The focus of EDS's work is on achieving good environmental outcomes through improving the quality of New Zealand's legal and policy frameworks and statutory decision-making processes.

2. EDS welcomes the opportunity to comment on the Resource Legislation Amendment Bill (**Bill**) which amends the Resource Management Act 1991 (**RMA**), the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZA**), the Environmental Protection Authority Act 2011(**EPAA**), the Conservation Act 1987 (**CA**), the Reserves Act 1977 (**RA**) and the Public Works Act 1981 (**PWA**).

3. This submission comments on the Bill in two ways. First, it analyses the Bill under four themes. Second, it includes a clause-by-clause analysis in **Appendix A**, stating EDS's position, relief sought, and supporting reasons.

4. The four themes are:

    a. Erosion of Environmental Bottom Lines.

b. Enhanced Ministerial Powers & Diminished Public Participation.

c. Urban Contamination.

d. Plan-making Processes.

BACKGROUND

5. Prompted by developments in international thinking on integrated resource management and sustainable development, a wholesale reform of New Zealand's environmental laws occurred during the 1980s. This culminated in the enactment of the RMA which endeavoured to incorporate into one statute the law relating to the use of land, air and water to provide a single system to promote "sustainable management of all natural and physical resources".[1]

6. Since 1991 there have been 19 RMA amendment acts.[2] The present RMA is 682 pages long, making it 300 pages longer than the original version.

7. The Bill seeks to make further amendments to improve the RMA to achieve sustainable management in "an efficient and effective way".[3] Three overarching problems have been identified:[4]

- There is a lack of alignment and integration of policies and processes across the system.
- Resource management processes and practices are not proportional or adaptable.
- The system makes robust and durable decision-making difficult.

8. These problems are real. EDS agrees that parts of the RMA need to be fixed. Some of the Bill's proposed amendments will help to solve these issues and others will not, and will instead lead to perverse outcomes and compromise sustainable management of New Zealand's natural and physical resources.

ENVIRONMENTAL BOTTOM LINES

Concern

9. EDS submits that through a number of individual changes the Bill erodes environmental bottom lines which compromises both protection and use of the environment.

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[1] Resource Management Act 1991, section 5. See Geoffrey Palmer *The Making of the Resource Management Act*, in *Environmental – the International Challenge* (Victoria University Press, Wellington 1995) at 145-174.

[2] See Ministry for the Environment *List of all RMA amendment acts* at http://www.mfe.govt.nz/rma/rma-reforms-and-amendments/list-all-rma-or-amendment-acts.

[3] See Resource Legislation Amendment Bill, Explanatory Note, Introduction, at 101-1,

[4] See Regulatory Impact Statement –Resource Legislation Amendment Bill 2015, at [15].

Relevant provisions

10. The provisions that erode environmental bottom lines are summarised below. In-depth commentary and relief is set out in the clause-by-clause analysis in **Appendix A**. Our concerns are:

    a. Failure to address the anomaly in section 104 RMA that consent authorities are only required to "have regard to" environmental bottom lines in superior planning instruments when deciding whether to grant a resource consent application and on what terms. This creates a lacuna in the implementation and application of environmental bottom lines in the RMA and national planning documents whereby resource consents for activities that will cumulatively result in a breach of a directive bottom line can be granted. For example, resource consent(s) can be obtained in a catchment that is over-allocated, and where the activity will lead to further over-allocation, despite the freshwater plan setting water quality limits, and the direction in the National Policy Statement Freshwater Management 2014 (**NPSFM**) that water quality be maintained or improved. (See **Appendix A** at 29).

    b. Amendments to section 104 RMA propose mandatory consideration of offsets. No definition[5] or criteria to ensure the tool is used correctly or to clarify where offsets sit within the mitigation hierarchy[6], are provided. This compromises environmental bottom lines through exacerbating the routine overlooking of the avoidance step. In the absence of an explicit mitigation hierarchy the gradation toward the use of offsets and environmental compensation is absent.[7] Highlighting the latter elements of the hierarchy in section 104 and not the former (avoid, remedy, mitigate) risks a much greater focus on addressing effects rather than directly avoiding, remedying or mitigating them. It also opens the door for offsetting to be implemented incorrectly or used when inappropriate. (See **Appendix A** at 21).

    c. Proposed amendments to section 104 RMA require consent authorities to have "particular regard" to a National Planning Template (**NPT**). However, the NPT is not required to "give effect" to existing National Policy Statements (**NPS**) or National Environmental Standards (**NES**). It also indicates that greater weight is attached to objectives and policies in the NPT than in a NPS. This means the NPT could include provisions which contradict or compromise existing national bottom lines. (See **Appendix A** at 21).

    d. Proposed amendments to sections 61, 66 and 74 RMA that planning instruments be "prepared and developed in accordance with" NPSs, NESs and the NPT. The proposed amendments would result in the RMA including two different directions regarding the relationship between local planning instruments and national planning instruments. This

[5] See draft Biodiversity National Policy Statement for offsetting definition and criteria.

[6] See www.thebiodiversityconsultancy.com/approaches/mitigation-hierachy/.

[7] Quertier F & S Lavorel, 2011, *Assessing ecological equivalence in biodiversity offset schemes: Key issues and solutions*, Biological Conservation.

creates ambiguity and would likely lead to litigation to determine how the formulations should be reconciled. In ***Environmental Defence Society Inc v New Zealand King Salmon Company Ltd***[8] the Supreme Court considered the relationship between the requirement in section 66(1) RMA that a regional council prepare and change its plan in accordance with Part 2 RMA and section 67(3) that the contents of the plan give effect to the New Zealand Coastal Policy Statement 2010 (**NZCPS**). The Court found that in giving effect to the NZCPS a local authority is necessarily acting in accordance with Part 2. The proposed amendment creates unnecessary conflict for no obvious benefit. (See **Appendix A** at 13).

e. Proposed amendments to the NES provisions allowing rules in plans to be more lenient than a NES standard. In EDS's submission this is contrary to the underlying reason for promulgating a NES: to provide nationally consistent baseline standards or parameters to maintain a clean, healthy environment.[9] (See **Appendix A** at 8).

f. The proposed resource consent fast-track option that allows activities that breach a plan rule in a "marginal or temporary" way to be treated as a permitted activity. A permitted activity is a clearly defined trigger point beyond which it is no longer certain an activity will not compromise bottom lines, and so consent is required. An exception for "marginal or temporary" non-compliance erases this bottom line. In doing so it replaces clarity and certainty with uncertainty and discretion. (See **Appendix A** at 18).

g. The proposed amendment that submissions on resource consent applications can only comment on adverse effects identified in public or limited notification documents.[10] This prevents a submission from alerting a consent authority to effects of an activity which it or the applicant has not identified. Further, a superior mechanism for focusing submission points already exists in the RMA - restricted discretionary activity status. During the process of creating a plan, the local authority decides, with the input of all interested parties, whether all potential effects of an activity are relevant when consent is needed for it, or only specified effects. (See **Appendix A** at 7, 19).

Discussion

11. In ***King Salmon***[11] the Supreme Court confirmed that the RMA envisages a resource management framework based on environmental bottom lines. In doing so it corrected jurisprudence that had replaced the policy intention of the RMA, that section 5 provide "a framework to establish objectives with a biophysical bottom line that must not be compromised"[12], with an "overall judgement" test[13].

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[8] ***Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*** [2014] NZSC 38at [75]-[85].

[9] MfE *National Environmental* Standards http://www.mfe.govt.nz/rma/rma-legislative-tools/national-environmental-standards

[10] And the corresponding mandatory requirement that submissions that comment on any other adverse effects be struck out.

[11] ***Environmental Defence Society Inc v New Zealand King Salmon Company Inc*** [2014] NZSC 38.

[12] Hon Simon Upton, *Resource Management Bill: Third Reading,* New Zealand Parliamentary Debate, 4 July 1991 at 3018-3020.

12. The Supreme Court decision demonstrates that the environmental protections in the RMA are real. The concept of bottom lines is intended to not only protect the environment but to provide certainty to resource users. Provided environmental bottom lines are met people have flexibility to make use of New Zealand's resources.[14] Bottom lines are intended as the base line parameters necessary to enable a healthy economy and society, as well as a healthy environment. They underpin the RMA's management framework. Their erosion compromises the wellbeing of society, the economy and the environment.

ENHANCED MINISTERIAL POWERS AND DIMINISHED PUBLIC PARTICIPATION

Concern

13. In pursuit of expedient outcomes the Bill significantly extends Ministerial discretion and decision-making powers and simultaneously reduces public participation in RMA processes.

14. EDS submits that Ministerial discretion provided for by the Bill is excessive and the reduction in public participation unjustified. The changes allow the politicisation of RMA processes and compromise the democratic separation of powers. The focus on quick decision-making will compromise good decision-making and good environmental outcomes.

Relevant provisions

15. The provisions that provide for excessive Ministerial power and inappropriately compromise public participation are summarised below. In-depth commentary and relief is set out in the clause-by-clause analysis in **Appendix A**. Our concerns are with the following provisions:

    a. The proposed Streamlined Planning Process (**SPP**) empowering the Minister to design a bespoke planning process upon application by a local authority. Minimal public participation is provided for in the process (submissions are the only mandatory requirement). Once the process is completed the Minister has the power to review and amend any of the provisions in the proposed planning document. There is no requirement for the provisions to accord with Part 2 RMA or national planning instruments. The local authority must implement the Minister's decision once it is received. There are no opportunities for appeal. (See **Appendix A** at 16).

    b. Empowering the Minister to develop a mandatory NPT (see **Appendix A** at 11). The NPT can set out requirements relating to structure, format or content. It goes beyond process into policy. There is no express requirement that its contents accord with Part 2 RMA. There is no requirement that NPT provisions give effect to other national planning instruments. The development process mirrors the NPS fast-track process. There is no board of inquiry option and no hearing opportunity.

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[13] ***New Zealand Rail Limited v Marlborough District Council*** [1994] NZRMA 70 (HC).

[14] See Hon Simon Upton, *Resource Management Bill: Third Reading,* New Zealand Parliamentary Debate, 4 July 1991 at 3018-3020.

c. Prior to adoption of the NPT, empowering the Minister to make regulations that can permit a specified land use, and to prohibit or override plan provisions that, in the Minister's opinion, would restrict land use for residential development. (See **Appendix A** at 27).

d. Empowering the Minister to make regulations prohibiting or overriding rules whenever the Minister considers that the rules relate to "the same subject matter" as is included in other legislation and that the duplication is "undesirable". The question of whether particular activities or effects should be regulated under the RMA should not come down to whether duplication, overlap or repetition is "undesirable" (which has no clear meaning and is inherently subjective), but rather whether sustainable management is achieved by relying only on the provisions of the other legislation. (See **Appendix A** at 27).

e. Empowering the Minister under the Collaborative Planning Process (**CPP**) to appoint the chair of the review panel who, in the event of equality of votes on a matter, has a casting vote. (See **Appendix A** at 15).

f. Empowering the Minister to identify particular activities or classes of activities that must be processed using the new "fast-track" process and/or that must be processed non-notified or limited notified. (See **Appendix A** at 18).

g. A new mandatory strike-out provision. The strike-out tests are unclear and extremely broad, giving the decision-making authority wide discretion. Absent definition or criteria they lend themselves to bias. Although a right of objection is retained the Bill also proposes to delete provision for appeals on objections. As the same body hears the strike-out objection as makes the strike-out decision this is a weak safeguard. (See **Appendix A** at 7).

h. The new step-by-step notification processes and blanket non-notification for controlled, restricted discretionary or discretionary boundary activities, subdivisions or residential activities. (See **Appendix A** at 19).

i. The proposed deletion of the right to appeal any resource consent for boundary activities, subdivisions and residential activities (apart from non-complying activities) and the narrowing of the scope of appeal in the limited instances it is available. (See **Appendix A** at 20).

j. The proposed deletion from the board of inquiry process to produce a draft report, receive and consider comments on the draft report, and then to produce a final report. (See **Appendix A** at 23).

k. The proposed local authority power to limited notify a proposed policy statement or plan change if it is able to identify all persons it considers "directly affected" by the proposed change. (See **Appendix A** at 28).

Discussion

16. Public participation is core tenet of the RMA.[15] It is underpinned by the belief that involving those who are affected by a decision in the decision-making process will result in better outcomes. Amendments since 1991 have reduced public participation in RMA processes. The Bill proposes amendments which would reduce these very limited opportunities further. At the same time it significantly enhances Ministerial discretionary powers to control plan-making and plan content. Some of these provisions are excessive and, in EDS's submission, undermine the Rule of Law.

17. EDS agrees that not all decisions need or deserve the same level of public engagement. Good public participation should be contextualized to the problem. [16] For example, in New Zealand's urban context there is a case for separate processes to apply. However, in EDS's submission, the Bill's proposed whole-sale reduction of appeal rights and enhanced Ministerial powers swing the pendulum too far.

18. Restrictions of notification and appeal rights have not been nuanced to respond to the underlying driver for the Government's identified need for expediency – development pressures in a small number of fast-growing urban centres. Instead a wholesale constriction of public participation at all stages has been justified on the basis that participation has, in all instances, unduly elongated plan-making and consenting. In EDS's submission this is incorrect. Only 3% of resource consents are notified nationally.[17] Specifically, only 2% of subdivision consents and 1% of land use consents are publicly notified.[18] In 2012/2013 97% of resource consents were processed in time.[19] Also over that time, only 0.7% of resource consent applications were appealed to the Environment Court. These statistics show that the majority of consent applications are not held up as a result of public input. EDS submits that the whole-sale reductions in public participation are looking to fix a problem the statistics suggest does not exist.

19. The proposed NPT process, SPP and regulation-making powers cast the Minister as legal administrator, and legal interpreter. In all instances it is ultimately the Minister's opinion of what will achieve sustainable management that will prevail, without any ability for that opinion to be tested. This does not sit comfortably with the democratic separation of powers. It removes the checks and balances on government power that ensure accountability and impartiality are maintained.

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[15] See ***Murry v Whakatane District Council*** [1991] 3 NZLR 276 at 281.

[16] See Reed MS, ***Stakeholder participation for environmental management: A literature review***, 2008, Biological Conservation 2417.

[17] Minister for the Environmental local authority statistics – financial year 2012/2013 at Table 2.4.

[18] Ibid.

[19] Ibid.

URBAN CONTAMINATION

Concern

20. EDS submits that amendments proposed in response to planning issues in the urban environment have contaminated the balance of the RMA's processes and the Bill's proposed amendments. Put another way, if the desire is to limit NIMBY submitters in fast-growing cities, then those areas should be targeted with their own processes.

Relevant Provisions

21. The provisions that may be appropriate in an urban environment[20] but should not be rolled out to apply to all situations are summarised below. In-depth commentary and relief is set out in the clause-by-clause analysis in **Appendix A**. The concerns are:

    a. Fast-tracking and limited notification of specifically prescribed activities.

    b. Fast-tracking and limited notification of resource consent applications for residential activities, boundary adjustments and subdivision.

    c. Ministerial power to permit a specified land use, and to prohibit or override plan provisions that, in the Minister's opinion, would restrict land use for residential development.

    d. Permitted activity status for boundary adjustments.

    e. SPP alternative.

Discussion

22. The world is rapidly urbanising.[21] New Zealand is no exception. 65% of New Zealand's total population growth between 2026 and 2031 is expected to occur in Auckland.[22] The housing market and public infrastructure providers are struggling to keep up.[23] Expansion, development and increasing land prices are also occurring in Hamilton, Christchurch and Tauranga.[24] There are also parts of New Zealand at the other end of the spectrum with small, stable or declining populations and limited urban development pressure.

[20] In some instances EDS submits that the amendments as proposed are acceptable and in others they are acceptable subject to specific changes. See **Appendix A**.

[21] Blakeley R, *The Planning Framework for Auckland 'Super City': an insiders view*, Policy Quarterly, Vol 11 Issue 4, November 2015 at 5.

[22] Ibid at 6.

[23] Ibid. See also New Zealand Productivity Commission *Better Urban Planning* 2016.

[24] New Zealand Productivity Commission *Better Urban Planning* 2016 at Figure 10.

23. The Bill provides for increased Ministerial powers and reductions in public participation in an effort to respond to these pressures and to speed-up and up-scale house-building in New Zealand's few fast growing urban centres.[25] It appears these provisions are intended to fill the void that repeal of the Housing Accords and Special Housing Areas Act 2012 and its bespoke development provisions will create.[26] However, the Bill's proposed changes have not been restricted to apply to the urban environment, the contextual issues of which they were intended to respond. EDS submits a more focused approach to New Zealand's different areas and environments is required. The application of fast-track provisions developed to respond to urban issues should be restricted to the urban environment. It is not appropriate that they apply to large scale proposals or outside the urban context. This would have the potential to lead to perverse outcomes. For example, conversion of the Mackenzie drylands to dairy farming could be identified by the Minister as a "prescribed activity" and fast-tracked despite significant adverse environmental effects. Under the relevant provisions scale and complexity are relevant when deciding if an activity should be identified as a "prescribed activity" but ultimately the decision is up to the Minister's judgement.

24. Fast-track provisions are not necessary at all. Robust and comprehensive zoning with an appropriate policy framework would achieve the same outcome. Residential zones of different intensities can be determined as part of the planning process with opportunity for public input. A policy framework applying only permitted, controlled or restricted discretionary activity statuses with focused standards can be applied. As can limited notification. This provides for public input (during plan development), prevents unnecessary re-litigation of zoning decisions[27], and speeds up consenting. If national consistency of particular urban planning provisions is desired then a combined urban NPS/NES or a specific urban-focused part to the RMA should be considered.

25. Although fast-track options may have validity in the urban context this should not equate to a *carte blanche* for development. A number of the Bill's proposals swing the pendulum too far and risk perverse outcomes and environmental degradation including:

    a. Reversal of the presumption against subdivision. Significant direct (i.e fragmentation) and indirect effects (i.e development which is generally provided for where subdivision is authorised) mean subdivision should not be able to be undertaken as of right. This is importing hard-line political ideology into the RMA which should remain free of such distortions. What density of subdivision is to be allowed as of right? Subdivision is subject to specific national direction in the NZCPS. This measure would create a policy conflict. It is not a good idea at all.

[25] The *Regulatory Impact Statement* repeatedly records that amendments have been proposed to respond to urban pressures. For example see Chapter 3 Consenting at [216]-[356].

[26] See section 3 Housing Accords and Special Housing Areas Act 2012. Sections 16 and 17 (providing for establishment of 'Special Housing Areas') are repealed on 16 September 2016. The rest of the Act is repealed on 16 September 2018.

[27] *Regulatory Impact Statement* at [277].

b. Proposed permitted activity status for "marginal or temporary non-compliance" with a requirement under the RMA, regulations or a relevant plan. This is contradictory to the concept of clear and defensible environmental bottom lines.

PLAN-MAKING PROCESSES

Concern

26. The Bill provides for two new planning processes as alternatives to the traditional Schedule One process: the SPP and the CPP. It also provides for a new mandatory NPT.

27. EDS submits that:

a. Under the SPP the Minister is afforded unacceptable discretion to determine the plan-making process, restrict public input, and amend and insert plan content. There is merit in a plan-making process which is responsive to urgent issues.[28] However, the checks and balances included in the SPP are inadequate.

b. At a conceptual level the CPP is positive. EDS holds two concerns. First, the Bill proposes to extend its application beyond freshwater planning to all planning matters. Collaborative processes are appropriate for discrete and focused issues and arose out of the Land and Water Forum's recommendations. CPPs are especially useful in a catchment planning process where all stakeholders become engaged in setting hard limits. Their application to broader plan-making, with multiple and diverse issues and stakeholders, is not so clearly relevant. We do note however that the CPP remains a choice and is not mandatory. Secondly, the proposed process has insufficient safeguards to *inter alia*:

- Ensure that the collaborative group and its processes and recommendations are fair and robust and comply with the RMA.

- Ensure that the final plan provisions comply with the RMA.

c. At a conceptual level a NPT is positive. It too arose out of the Land and Water Forum's work and was intended to apply to process. The Bill extends it to policy. In our submission it should be restricted to process matters: structure and form of plans. There is adequate power to provide national direction on policy content through the NPS and NES processes.

[28] *Regulatory Impact Statement* at [160]-[161]. For example, Auckland and Christchurch.

Relevant Provisions and Discussion

Streamlined Planning Process

28. The SPP was developed in response to the urgent planning situations of Auckland and Christchurch.[29] It is intended to enable flexible and timely plan-making processes to apply in similarly unique situations without the need for special legislation.[30]

29. EDS accepts that Auckland and Christchurch presented unique planning situations and that there was merit in unique planning processes being applied.[31] However, as proposed in the Bill the checks and balances incorporated into the SPP are inadequate.

30. The criteria for when a local authority can apply for a bespoke process are extremely broad and could capture almost any scenario. There is a risk of local authorities applying for a bespoke process solely to limit public input and appeal rights to speed up plan-making. This is not the intention of the process. The criteria for when the process is available should be tightened.

31. As already discussed, the SPP provides for an excess of Ministerial power and inappropriately compromises public participation. Ministerial discretion is widened and appeal rights diminished specifically to reduce the risk of delay.[32] EDS submits that in pursuing fast decision-making the SPP may result in poor decision-making. The significant imbalance between Ministerial power and public participation unjustifiably undermines due process and compromises the Rule of Law[33].

Collaborative Planning Process

32. The CPP has been introduced on the basis that front-end engagement in the planning process will reduce litigation and costs and create better quality plans.[34]

33. EDS supports introduction of a CPP at a conceptual level. However, it holds significant concerns with the CPP as proposed in the Bill.

34. At the front and back ends of the process participation is compromised. Placing the membership of the collaborative group solely in the hands of the local authority risks cherry picking people for inclusion and exclusion. Failure to appoint an independent chairperson of

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[29] Ibid.

[30] *Regulatory Impact Statement* at [177].

[31] Notwithstanding this, EDS considers (and has publicly commented on) the focus on speed in the PAUP process has compromised the ability of the public and public interest groups to participate to an unacceptable extent.

[32] *Regulatory Impact Statement* at [178].

[33] See Lexis Nexis 'Rule of Law' at www.lexisnexis.co.nz. "The Rule of Law, in its most basic form, is the principle that no one is above the law.

[34] *Regulatory Impact Statement* at [180].

the collaborative group risks process stagnation and internal bullying. Good science is critical to strong collaborative processes and robust outcomes. Any compromise of the collaborative group should be within accepted scientific parameters to prevent perverse outcomes. Although some limits on appeal rights are necessary to incentivise collaboration the CPP extends these too far.

35. A number of elements of the CPP do not sit comfortably with the Rule of Law. Throughout, the CPP fails to require compliance by decision-makers with the purpose and principles of the RMA. Although the terms of reference must direct the collaborative group to consider how to comply with the RMA there is no requirement that its processes or recommendations do so.[35] The terms of reference are set by the local authority and are not subject to third party scrutiny or appeal. The collaborative group's obligations with respect to the Act and higher order planning instruments should be set in the RMA and not left to the terms of reference. This is necessary to ensure environmental bottom lines are respected.

36. Similarly, in preparing its proposed plan the local authority may make changes if giving effect to the consensus position would not comply with the RMA and include provisions on issues where consensus was not reached, but there is no express requirement that the changes and provisions themselves comply with the RMA.[36] Both the review panel and the local authority in making their final decisions can amend the proposed plan's provisions to comply with the RMA but there is no opportunity for public input on the alternative provisions and extremely limited appeal rights. Any of the review panel's final recommendations carried through into the final decision are beyond question. The local authority is able to use reference to/reliance on Parts 4 and 5 RMA as a shield against rehearing. In short, it is possible that all rehearing avenues are blocked. We accept limited appeal rights are necessary to incentivise collaboration. However, the process as proposed includes insufficient checks and balances to ensure that the collaborative group's position is respected and that plan's provisions comply with the RMA for appeal restrictions to be justified.

37. On points where a rehearing opportunity is not available appeals on points of law can be made. EDS strongly supports appeals on points of law being made to the Environment Court.

National Planning Template

38. EDS supports a NPT at a conceptual level. In its submission the NPT should be restricted to structure and format. It would remove the lack of alignment and integration between

[35] See New Schedule 1, Part 4. Specifically, clause 41 requires that the terms of reference direct the collaborative group to consider how to comply with the RMA but there is no requirement in clause 43 that the group's recommendations comply or record why they are considered to comply with the RMA.

[36] See New Schedule 1, Part 4. Specifically, clause 45 (3) empowers the local authority to diverge from the consensus position if giving effect to the consensus position would mean the proposed plan would not comply with the RMA, however there is then no requirement that the alternative provisions themselves comply with the RMA. Further clause 45 only addresses matters on which the collaborative group reached consensus. There is no clause addressing how the proposed plan is to address matters on which consensus was not reached.

planning instruments. This would make plans more user-friendly and would speed up decision-making and reduce costs.

39. The NPT should not specify policy content. As proposed in the Bill (and discussed above) the Minister is afforded excessive discretion to determine the NPT's content, with no specific requirement that NPT provisions comply with the RMA or give effect to the NZCPS, NPSs or NESs.

40. Provision for the NPT to specify policy content is neither desirable nor necessary. The Bill proposes a number of changes to the NPS and NES processes. It specifies NPS content and confirms that NPSs can be extremely directive. It extends the ability for NESs to apply to specific parts of the country to NPSs. It provides for a combined NPS/NES making process. The NPS and NES provisions provide government with ample opportunity to provide clear and directive national guidance, including objectives, policies and rules, on matters where national consistency is desirable. The Supreme Court has confirmed that lower order planning instruments must give effect to national planning instruments. What is required to give effect to national planning instruments will turn on how specific and directive its provisions are. If, for example, the government wants to include a policy and corresponding rule requiring a specific activity to be avoided in a specific type of location and for prohibited activity status to apply, it can. Lower order instruments will have to implement this requirement. It is not necessary for it to be duplicated in the NPT.

CONCLUSION

41. EDS is actively involved in resource management policy and planning. It appreciates the need for efficient and effective procedure and for plan agility. There is a need to take a hard look at the RMA (and New Zealand's broader planning and environmental laws) to see if it is fit for purpose.

42. The Bill has proposed a suite of changes intended to achieve faster and better planning outcomes. In EDS's submission some of these changes are positive and some are not. Novel processes may have application in the specific context which prompted their inception, but be inappropriate in a wider planning context. Policy makers need to be aware that fast processes are not necessarily good processes. Compromising the RMA's environmental bottom line ethos, reducing public participation and increasing Ministerial power risks poor outcomes for New Zealand's environment and for local communities.