

27 July 2025

**To:**

Ministry for the Environment  
PO Box 10362  
Wellington 6143

By Email: [ndprogramme@mfe.govt.nz](mailto:ndprogramme@mfe.govt.nz)

**Submitter:**

Environmental Defence Society  
PO Box 91736  
Victoria Street West  
Auckland 1010  
C/o Shay Schlaepfer, Chief Operating Officer: [shay@eds.org.nz](mailto:shay@eds.org.nz)

**PROPOSED CHANGES TO NATIONAL DIRECTION - PACKAGE 1 DISCUSSION DOCUMENT -  
INFRASTRUCTURE AND DEVELOPMENT**

**1. Introduction**

- 1.1 This is the Environmental Defence Society's ("**EDS**") feedback on the Package 1: Infrastructure and Development Discussion Document ("**Discussion Document**").
- 1.2 National direction is the 'engine room' of the Resource Management Act 1991 ("**RMA**"). Regional policy statements and regional and district plans must "give effect" to it<sup>1</sup> and decision-makers on resource consent applications must "have regard"<sup>2</sup> to it. It therefore has significant ramifications for resource management decision-making.
- 1.3 EDS has been intimately involved in past national direction reviews and considers the proposals set out in the Discussion Document to be of high importance. It wishes to continue engagement in the review process beyond this feedback.
- 1.4 The national direction instruments being reviewed in the Discussion Document are secondary instruments to the RMA, and amendments to them must comply with the relevant provisions

---

<sup>1</sup> RMA, ss 62(3), 67(3), 75(3)

<sup>2</sup> RMA, s 104(1)(b)(iii) and (v)

of the RMA (including Part 2 RMA). Compliance with RMA statutory obligations is a focus of EDS's feedback in this submission.

## **2. Relationship with Phase 3 resource management reform**

- 2.1 This review of national direction is occurring before replacement resource management laws are enacted in 'phase 3' of the Government's programme of RMA reform. The 'blueprint' for those laws includes national policy direction. The Discussion Document states that the changes being proposed now have been designed to align with the new system, and that it is expected that they will carry over and transition into the new system when it comes online. It is unclear if this will be a 'lift and shift' exercise, or whether new national direction will require a significant re-draft of RMA versions.
- 2.2 Either way, progressing substantial national direction review under a regime that is proposed to be replaced, and then implementing those new instruments (presumably via transitional arrangements) in a new regime which Ministers describe as being radically different, is a confusing, unstructured and backwards way for reforming national direction. Any consideration of the future regime in current national direction review is also unlawful. The new regime is not a relevant consideration, particularly given that at this stage its structure, purpose and content is unknown.
- 2.3 Since the Discussion Document was released for consultation, the Government has compounded uncertainty by announcing that the RMA will be amended to include "plan stop" provisions. This change would stop notification of proposed plans and regional policy statements, including instruments that have been notified (but not yet reached hearings stage). Some limited plan and policy development will continue, notably including private plan changes, and those that progress the Government's priorities, or relate to natural hazards.
- 2.4 This latest announcement has significantly constrained the importance of national direction. It will mean that national policy statements will not be implemented in plans and policies, except those that are exempt from the plan stop notice, until some unknown time in the future when the new system switches plan making back on. Meantime, they will remain relevant to resource consent decision-making, but on a limited and discretionary basis (as a relevant consideration to which decision-makers must "have regard"). National Environmental Standards will continue to have effect.
- 2.5 This announcement has added significant complexity to the uncertain interface between phase 2 and phase 3 RMA reforms. This is not strategic or coherent.

## **3. Section 1 of Discussion Document: Introduction**

### ***Impact assessment***

- 3.1 The Government has released four packages of proposed changes to national direction. The changes proposed in the freshwater package are focused on "enabling primary sector growth"

and realising “immediate economic gains”.<sup>3</sup> The changes proposed in the infrastructure package are focused on “changing the culture of ‘no’ that has existed in New Zealand’s planning system for decades” and “enabling delivery” of infrastructure.<sup>4</sup> The changes proposed in the primary sector package are focused on “enabling primary sector growth” and making it easier to farm.<sup>5</sup> The changes proposed in the housing package are focused on “freeing up land for development and removing unnecessary planning barriers.”<sup>6</sup> In short, all of the proposed changes make use and development easier by reducing the protection afforded to the natural environment and related intrinsic values.

- 3.2 Within each package, there has been no analysis undertaken of the cumulative impact of the proposed changes to national direction on the natural environment to determine if they enable use and development only “while” (at the same time as)<sup>7</sup> safeguarding the life-supporting capacity of air, water, soil and ecosystems.<sup>8</sup>
- 3.3 There has also been no analysis undertaken of the cumulative impact of the changes to national direction across all four packages on the natural environment to determine if they enable use and development only “while” (at the same time as)<sup>9</sup> safeguarding the life-supporting capacity of air, water, soil and ecosystems.<sup>10</sup>
- 3.4 In relation to freshwater and indigenous biodiversity (terrestrial, coastal and marine), nowhere alongside the numerous changes to facilitate use and development, does the Discussion Document recognise the concerning state of the environment; that water quality has been declining in most locations for many decades and that New Zealand (and the world) is facing a biodiversity crisis.
- 3.5 Freshwater ecosystems are degraded across most of New Zealand and their condition is generally getting worse, not better. Between 2016 - 2020, 55% of New Zealand’s rivers show conditions with moderate or severe organic pollution or nutrient enrichment, and 46% of large lakes show poor or very poor health in terms of nutrient enrichment. 90% of wetlands have been drained, and 76% of native fish are threatened with, or at-risk of, extinction. Polluted waterbodies are located where people live, work and play. Those with mild or almost no pollution are located where population is very low, or where people generally do not live. There is therefore a direct connection between human activities, particularly those which are proposed to be more readily enabled and provided for in the national direction packages, and pollution, destruction and degradation of freshwater bodies.<sup>14</sup>

---

<sup>3</sup> Freshwater package 3 Discussion Document pg 5 and pg 9

<sup>4</sup> Infrastructure package 1 Discussion Document pg 6 and pg 9

<sup>5</sup> Primary sector package 2 Discussion Document pg 6; Freshwater package 3 Discussion Document pg 9

<sup>6</sup> Going for Housing Growth package Discussion Document pg 5; Freshwater package 3 Discussion Document pg 9

<sup>7</sup> *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 34

<sup>8</sup> RMA, s 5

<sup>9</sup> Ibid fn 5

<sup>10</sup> RMA, s 5

- 3.6 Land use change is occurring at speed, putting pressure on New Zealand's unique ecosystems and species, resulting in degradation and loss.<sup>11</sup> This impact is due to the failure of the RMA, and other legislation, to control three intertwined drivers: habitat loss, fragmentation and degradation (collectively 'habitat transformation').<sup>12</sup> For example:<sup>13</sup>
- a. 1,129 of species are classified as Threatened, including 533 Nationally Critical species and 215 Nationally Endangered species.
  - b. 3,341 of species are classified as At-Risk.
  - c. More than 80% of New Zealand was covered with indigenous forest before human arrival. In 2018, this was reduced to 27%, mostly on public conservation land.
- 3.7 While the Discussion Document states that 30% of New Zealand's indigenous biodiversity is found in the marine environment and that over half of these species are endemic,<sup>14</sup> it fails to record that more than half of indigenous marine invertebrate species are threatened with extinction, or are at risk of becoming threatened. In 2021, 91% of indigenous marine bird species (82 of 90) were threatened with extinction or at risk of becoming threatened. 22% of indigenous marine mammal species (10 of 49) were threatened with extinction or at risk of becoming threatened.
- 3.8 Nowhere does Discussion Document acknowledge that this is the natural environmental context in which its suite of enabling provisions and lenient rules would sit. To the contrary, the Discussion Document suggests that providing for the broad spectrum of infrastructure activities it enables would only benefit people and communities. EDS agrees that infrastructure provides benefits. But the benefits of different types of infrastructure (in terms of class and scale of importance e.g. national, regional, or district), need to be considered alongside the costs of construction. There is a fundamental failure to acknowledge and explain the benefits associated with the natural environmental features the changes to national direction in the Discussion Document would allow to be adversely affected or lost.
- 3.9 The current state of the country's freshwater, terrestrial and coastal marine environments necessitate increased protection and restoration. The state of the environment is such that careful consideration of what activities can occur and where is required. This will not be achieved by solely enabling activities known to have significant adverse environmental impacts, both individually and cumulatively. Such an approach fails to recognise people's reliance on a healthy natural environment and the sustainable management purpose of the RMA.

---

<sup>11</sup> Ministry for the Environment & Stats NZ, 2022, New Zealand's Environmental Reporting Series: Environment Aotearoa 2022, p 19

<sup>12</sup> Environment Aotearoa 2020 'Pohutukawa'

<sup>13</sup> <https://nzecs.org.nz/>; Ministry for the Environment & Stats NZ, 2022, New Zealand's Environmental Reporting Series: Environment Aotearoa 2022, p 17-19

<sup>14</sup> Infrastructure package 1 Discussion Document pg 27

### ***Status of notified changes***

- 3.10 Under s 46A of the RMA, the Minister must publicly notify a “proposed national environmental standard or national policy statement” (emphasis added).
- 3.11 The Discussion Document states that the changes described in it have been released for public consultation in accordance with s 46A of the RMA.<sup>15</sup>
- 3.12 However, Attachments to the Discussion Document say that the changes set out “do not represent the proposed ... wording” and instead show “illustrative wording” only (emphasis added). The Attachments further explain that the “proposed” wording will be “drafted after the consultation stage”.
- 3.13 The requirements of s 46A of the RMA are not met by notifying illustrative wording on the basis that proposed wording will be “drafted after the consultation stage”.<sup>16</sup> The Minister is statutorily required to notify the instrument it proposes to adopt i.e., the “proposed” national policy statement or national environmental standard.
- 3.14 Consequently, EDS expects that the “proposed” version of each instrument will be publicly notified after this round of consultation is complete, with a further opportunity for public submission.

## **4. Section 2 of Discussion Document: Infrastructure**

### ***Section 2.1: National Policy Statement for Infrastructure (“NPS-I”)***

#### *Question 1: Is the scope of the proposed NPS-I adequate?*

- 4.1 The scope of the NPS-I as set out in the Discussion Document is too broad with respect to what activities it applies to. It is also inadequate with respect to environmental considerations. This is a doubly negative outcome for the environment.
- 4.2 Beginning with the first point, the NPS-I extends to activities well beyond what is defined as “infrastructure” in s 2 of the RMA. It also captures what the Discussion Document calls “social infrastructure” and Attachment 1.1 calls “associated infrastructure”. Where the text in Attachment 1.1 refers to “infrastructure” in its objectives and policies, it captures both infrastructure as defined by s 2 of the RMA and “associated infrastructure”.<sup>17</sup>
- 4.3 Further, it applies to what Attachment 1.1 calls “infrastructure supporting activities”. These are not infrastructure activities at all, but rather any activity purportedly “needed to support

---

<sup>15</sup> Infrastructure package 1 Discussion Document pg 9 (it is noted that s 57 RMA states that s 46A applies to the New Zealand Coastal Policy Statement)

<sup>16</sup> Infrastructure package 1 Discussion Document Attachment 2.3 “Instrument topic” box pg 1

<sup>17</sup> Per note in the reasons column next to definition D7

infrastructure activities”, regardless of whether they are undertaken by the infrastructure provider (and including quarrying activities).

- 4.4 This extremely broad spectrum of activities is then subject to numerous, enabling objectives and policies.
- 4.5 These activities will have wide-ranging and currently unknown effects. Indeed, the interim regulatory impact statement (“**IRIS**”) identifies the “cumulative impact on the environment from multiple infrastructure projects being consented” as a cost of the NPS-I and says “[T]here is a lack of information on the extent to which the proposed amendments are likely to impact the specified environmental values”. “However, the proposal increases the likelihood of adverse effects.”<sup>18</sup>
- 4.6 Information quantifying the potential adverse impacts on the natural environment, particularly on areas that are protected or preserved as a matter of national importance, is required to determine if enabling the activities within scope of the NPS-I as set out in Attachment 1.1 is consistent with sustainable management. Absent this information, the scope of the NPS-I needs to be limited to infrastructure as defined in s 2 of the RMA.
- 4.7 Turning to the second point, the IRIS explains that the Government has decided to address “major infrastructure development interactions with natural environment features such as outstanding natural landscapes, freshwater and indigenous biodiversity” in the RMA replacement legislation.<sup>19</sup> As a result, a draft effects management hierarchy for new infrastructure is not included in the NPS-I.<sup>20</sup> Instead, the effects management hierarchies set out in the New Zealand Coastal Policy Statement 2010 (“**NZCPS**”), National Policy Statement for Freshwater Management 2020 (“**NPS-FM**”), and National Policy Statement for Indigenous Biodiversity 2023 (“**NPS-IB**”) will apply and be read alongside the NPS-I “to manage effects on those values articulated in section 6 of the RMA.”<sup>21</sup>
- 4.8 This approach is supported. The effects management hierarchies contained in the NZCPS, NPS-FM and NPS-IB and applying to s 6 RMA areas and values should not be replaced.
- 4.9 However, carving out areas of important environmental value from the scope of the NPS-I, also means that there are no objectives or policies addressing the high-level expectations for infrastructure in these areas or impacting these values. Consequently, when looking at the NPS-I decision-makers will be referring to an extensive suite of objectives and policies that “recognise and provide for benefits of infrastructure”<sup>22</sup>, with no recognition of the significant potential adverse effects of infrastructure activities. This gap is particularly significant given the broad spectrum of activities captured.

---

<sup>18</sup> IRIS pg 33 table at “Environment / Biodiversity” row

<sup>19</sup> IRIS pg 13

<sup>20</sup> Infrastructure package 1 Discussion Document, under heading “assessing and managing adverse effects of infrastructure”

<sup>21</sup> IRIS pg 13

<sup>22</sup> IRIS pg 4

- 4.10 As a result, the NPS-I reads as if the provision of infrastructure is a matter of national importance that must be recognised and provided for, above and beyond the protection of specific parts of the natural environment. That is incorrect and a perversion of s 6 of the RMA.
- 4.11 If objectives and policies relating to effects on the natural environment are to be left out of the NPS-I at this stage, at the very least, a provision(s) needs to be included which acknowledges that infrastructure (and supporting activities) can have significant adverse effects on the natural environment; acknowledges that the natural environment also supports the well-being of people and communities and provides national, regional and local benefits; and directs decision-makers to the NZCPS, NPS-IB and NPS-FM.

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

- 4.12 The definition of "infrastructure" is the same as s 2 of the RMA and is acceptable.
- 4.13 The definition of "additional infrastructure" captures activities that fall within the general understanding of social infrastructure and is acceptable in that sense. The NPS-I is subordinate legislation and cannot amend the RMA definition of "infrastructure". Consequently, these activities must be separately defined.
- 4.14 The inclusion of "infrastructure supporting activities" is opposed for the reasons set out under Question 1.
- 4.15 These are not the only definitions included in Attachment 1.1 of the Discussion Document, so it is unclear why the question is limited to them.
- 4.16 The terms "maintenance and minor upgrade" and "major upgrade" are also defined, and it is the activities captured by them that are enabled through the objectives and policies also set out in Appendix 1.1.
- 4.17 The definition of "maintenance and minor upgrade" makes the definition of "major upgrade" otiose. It includes "replacing existing infrastructure with the modern equivalent equipment or asset, which may not be 'like for like'." On a plain reading this provides for any upgrade, regardless of size, because it enables replacement on a not like-for-like basis. This subparagraph (D10(b) in Attachment 1.1) should be deleted. The other subparagraphs in D10 are sufficient to define "maintenance and minor upgrade". The definition of "major upgrade" can then remain.

*Question 3: Does the proposed objective reflect the outcomes sought for infrastructure?*

- 4.18 The objective does not address the outcomes sought for infrastructure in relation to the natural environment. These must be specified to ensure integrated management of natural

and physical resources and to recognise and provide for the matters of national importance in s 6 of the RMA.

- 4.19 This is not achieved by the statement in objective 1(f) that infrastructure “is delivered in a timely, efficient, and ongoing manner while managing adverse effects on the environment”.
- 4.20 An objective to manage expresses nothing other than a need to address effects. That is not an objective or goal. The NPS-I objective(s) must state the outcomes for the natural environment intended in relation to infrastructure. Including, for example, identifying where infrastructure will not be located and explaining what natural environmental outcomes infrastructure will be managed to achieve.

*Question 4: Does the proposed policy adequately reflect the benefits that infrastructure provides?*

- 4.21 As set out under Question 1, the policies only reflect the benefits of infrastructure. As also set above, the policies (in particular Policy 1) read as if the provision of infrastructure is a matter of national importance that must be recognised and provided for, not the protection of specific parts of the natural environment. That is wrong.
- 4.22 What the policies fail to adequately reflect are the adverse effects and costs of infrastructure, which in the context of Attachment 1.1 captures activities well beyond infrastructure as defined by s 2 of the RMA. Additional provisions need to be included to address these matters as set out under Question 1.

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

- 4.23 This question appears to relate to Policy 2 and Policy 4(3) in Attachment 1.1. These provisions (in summary) direct decision-makers to recognise and provide for the functional need and operational need for some infrastructure and some infrastructure supporting activities, to be located in particular environments or locations.
- 4.24 These provisions are of broad application in terms of the environments to which they apply. On their face, they apply both within and outside all s 6 RMA areas. They are also broad in terms of the activities to which they apply. They capture all infrastructure activities as defined by s 2 of the RMA, all “associated infrastructure” and all “infrastructure supporting activities”.
- 4.25 The framing of this question presupposes that both the functional and operational need for infrastructure to be located in all of these environments should be provided for, for all of these activities. EDS does not agree that is the case.
- 4.26 “Functional need” and “operational need” are different concepts. “Operational need” is broader and more enabling. Blanket application of both concepts across the environment is not appropriate because the natural environment is not uniform. There will be some areas

where infrastructure of any type, and/or infrastructure supporting activities, simply should not be located because of the uniqueness or vulnerability of that part of the natural environment. There will be others where only a “functional need” test should apply, and there will be others where a “functional need” and an “operational need” test can apply. Each approach applies requires careful analysis and it does not appear this has been undertaken.

- 4.27 It is not appropriate to simply apply a “functional need” test across the natural environment for all these activities on the basis of alignment with other national instruments, which is what the Discussion Document implies. This is because the reach of these provisions is significantly broader than that of the provisions in other instruments referring to operational need. For example, Clause 3.11 of the NPS-IB refers to the “functional need” and “operational need” of infrastructure, but infrastructure is a much more narrowly defined activity and Clause 3.11 only applies to a limited ambit of indigenous biodiversity. The implications of providing for “functional need” and “operational need” for the full spectrum of activities covered by the NPS-I, and in all situations, needs to be considered and this has not been done.

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

- 4.28 Yes. However, policy directing that only infrastructure-related spatial plans are considered risks undermining integrated resource management. Decision-makers should be directed to consider all spatial planning documents relevant to the location where an infrastructure project is located. This might include, for example, a regional biodiversity strategy required under the NPS-IB.

*Question 7: Would the proposed policy help improve the efficient and timely delivery of infrastructure?*

- 4.29 In EDS’s view Policy 4, and the NPS-I policies generally, are unlikely to achieve this outcome because:
- a. These policies do not, and cannot, change the statutory processes for plan-making and resource consents. Therefore, a direction to enable “the efficient and timely delivery of all infrastructure activities” has little utility. Subparagraph (1)(a) of Policy 4 should be deleted.
  - b. The policies are extremely lengthy and cumbersome. They include multiple directions, some of which require consideration of extensive material, and many of which will require careful reconciliation with objectives and policies relating to environmental characteristics and values impacted by a particular proposal. This style of drafting contributes to laborious and slow processes with extensive evidence and analysis. Short, concise and focused policy supports efficient processes. The balance of Policy 4, and the NPS-I policies generally, should be streamlined and simplified and then renotified for public comment.

- 4.30 Further, Policy 4 reads as if decision makers “must” enable the “delivery” of “all infrastructure projects”. There has been no analysis of the potential effects of that outcome. Providing for all infrastructure in all places is contrary to sustainable management.

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

- 4.31 EDS does not consider that the policies do this.
- 4.32 Policy 7 relates to planning decisions about the operation, maintenance and minor upgrade of existing infrastructure in all locations, including in areas captured by s 6 of the RMA, clause 3.10 of the NPS-IB, Policies 11, 13, and 15 of the NZCPS, and wetlands, rivers, and lakes captured by protective policies in the NPS-FM. As noted above, the definition of “maintenance and minor upgrade” is open ended and is not limited to “like for like” upgrades, and infrastructure captures much more than s 2 RMA activities. Policy 7 says this broad range of activities “must” be enabled provided that “adverse effects are avoided where practicable, remedied where practicable, or mitigated where practicable”. This includes in locations captured by s 6 RMA and Policy 11 NZCPS.
- 4.33 That management framework is inconsistent with the objectives and policies in the NPS-IB, NZCPS and NPS-FM relating to s 6 RMA values and areas. Those instruments do not provide for effects to be managed only where this is “practicable” to the applicant. This management framework is also inconsistent with preserving or protecting s 6 RMA values. It enables potential significant adverse effects to be left unaddressed, and decision-makers “must” enable the activity regardless.
- 4.34 First, the term “where practicable” must be deleted.
- 4.35 Second, the management framework should extend to also provide for offsetting and compensation.
- 4.36 Over time, RMA jurisprudence and planning instruments have developed to include offsetting and compensation as tools to address residual effects causing material harm. Addressing these residual adverse effects is essential for avoiding cumulative loss from multiple projects.
- 4.37 As a result, offsetting and compensation should be included in Policy 7. The framework applying to each concept must be in accordance with best practice. For indigenous biodiversity covered by the NPS-IB the frameworks should be those in the NPS-IB and for freshwater they should be that in the NPS-FM.
- 4.38 Policy 8 then provides for new infrastructure or major upgrades with adverse effects on environmental values not covered by s 6 or other national direction. Again, this policy requires new infrastructure to be enabled outside s 6 areas where effects are avoided, remedied, or mitigated “where practicable” and fails to provide for offsetting and compensation. Whether “where practicable” is consistent with national policy relating to values outside s 6 areas has

not been considered and needs to be to confirm it is appropriate. Offsetting and compensation must be added to the effects management hierarchy in this clause to address cumulative adverse effects.

***Section 2.2: National Policy Statement for Renewable Electricity Generation (“NPS-REG”)***

*Questions 11 - 16: Combined response*

- 4.39 EDS supports renewable electricity generation (“REG”) as part of New Zealand’s response to the climate crisis.
- 4.40 However, it is important that REG is progressed having regard to environmental values so that both the climate and biodiversity crisis can be addressed in tandem. Providing for REG in high value areas can result in adverse environmental impacts that outweigh the gains achieved from renewables.
- 4.41 The NPS-REG text set out in Attachment 1.2 of the Discussion Document fails to recognise this, and does not include sufficient protection for the natural environment while promoting renewable electricity. In particular:
- a. The changes expand the scope of the NPS-REG to include all ancillary activities. EDS understands the practical reasons for this, but without an analysis of the individual and cumulative impact on the natural environment from enabling this broad spectrum of activities it is not possible to confirm whether the proposal complies with the RMA.
  - b. For the reasons set out under Question 3, the objective should be amended to specify the outcomes sought for renewables in relation to the natural environment.
  - c. The NPS-REG text in Attachment 1.2 refers to an extensive list of “benefits” across multiple provisions. It does not recognise any of the costs of REG activities, including the loss of benefits derived from the natural environment. EDS seeks the same relief as sought in relation the NPS-I on this issue.
  - d. Policy C1(a) elevates REG provisions to a s 6 RMA matter when it is not one. The 2004 changes to the RMA made renewables a s 7 consideration, which remains the case. The NPS-REG cannot be used to subvert the protections afforded to s 6 environmental values and areas. These requirements must be “recognised and provided for”. A critical aspect of achieving this is limiting renewable infrastructure in these areas to those that have a “a need to locate” there because that is “where the renewable energy resource is available”, as is the case under existing Policy C1. EDS seeks that the amendments to Policy C1(1) do not include the terms “provide for” and “operational need” as proposed in Attachment 1.2.

- e. Policy 2 raises the same issues as the NPS-I policy addressed under Question 9. The same amendments are needed.
- f. The failure to address effects on s 6 RMA areas, and areas captured by national direction, risks uncertainty and inconsistencies across national direction instruments. The NPS-REG should expressly refer to the instruments that set out how effects on these areas are managed to ensure national direction is read in an integrated way.

### **Section 2.3 National Policy Statement on Electricity Transmission (“NPS-ET”)**

*Questions 17 - 32: Combined response*

- 4.42 Changes to the NPS-ET set out in the Discussion Document essentially replicate those made to the NPS-REG. Submission points under Section 2.2 are equally applicable.

### **Section 2.4: National Environmental Standards for Electricity Transmission (“NES-ET”)**

*Questions 33 - 50: Combined response*

- 4.43 Retaining the requirement for new or replacement poles in the road reserve to be subject to district plan rules where the road reserve is identified as having natural or heritage significance is supported (relevant Regulations 26(1)(b), 27(2)(a), 28(1)(a) and 29(6)).
- 4.44 The permitted activity standard requiring that temporary telecommunication facilities are only permitted in areas identified in district plans with special, natural or heritage significance *in emergencies only* and only when they can be installed without damaging or altering the protected areas is supported. However, the protection this affords should not be limited to natural areas identified in district plans. Some regions identify special natural areas in regional policy statements or regional plans.
- 4.45 The new activities proposed to be introduced as permitted activities in the NES-ET should not be permitted in areas with s 6(a), (b) or (c) RMA values.<sup>23</sup> In those areas, a consent requirement should apply to ensure that effects on these areas and their values are properly identified and managed in accordance with national, regional and district objectives and policies. This same principle should apply to all new transmission activities in these areas.

### **Section 2.5: National Environmental Standards for Telecommunication Facilities**

*Questions 51 - 56: Combined response*

- 4.46 Any new activities, including upgrades, that increase or expand the footprint of a facility in areas with s 6(a), (b), or (c) RMA values should not be permitted. In those areas a consent

---

<sup>23</sup> These activities are river crossings; groundwater takes and use, dewatering; stormwater discharges; structures in the coastal marine area; works in the bed of a lake or river: Discussion Document pg 37

requirement should apply to ensure that effects on these areas and their values are properly identified and managed in accordance with national, regional and district objectives and policies.

## **5. Section 3: Development**

### ***Section 3.3: National Policy Statement for Natural Hazards (“NPS-NH”)***

- 5.1 According to the Regulatory Impact Statement (“**RIS**”), the preferred option (number 2) is a high level NPS with a consent decision-making focus and guidance.
- 5.2 As the preferred option is not overly directive, local authorities have more discretion about applying the policy. Local authorities are expected to use the policy to scrutinise applications for resource consents where there are known natural hazard risks.
- 5.3 The RIS acknowledges that the approach is a relatively light touch as it allows the decision-maker discretion in how it is applied. This is in line with Ministerial direction around the administrative burden for local government, including disruption and cost.
- 5.4 Options have also been limited based on Ministers’ directions to those that would not require significant resources of local authorities; it does not include options which would require amending or changing an existing plan to have an impact, or options that require widespread additional information gathering or mapping.
- 5.5 In contrast, option 3 is a highly directive NPS with a consent decision-making focus. The RIS notes this option will address the problem and resulting issues by setting out in detail what local authorities need to do to appropriately understand and address risk from natural hazards for new development. This makes it the most comprehensive policy option, which is more likely to deliver certainty of implementation, lower costs to local authorities to implement because less policy interpretation is required, and result in a more consistent approach to hazard identification assessment and management.
- 5.6 This option was described to be the more comprehensive option and may help protect local authorities against successful legal challenge when they are seeking to address natural hazard risk because the policy approach is more prescribed by central government and there is less room for interpretation. Feedback on the proposed National Policy Statement for Natural Hazard Decision-making 2023 (“NPS-NHD”) was strongly in favour of more detailed direction for local government.

#### Option 2

- 5.7 Positive elements of Option 2 are:
  - a. The definition of significant risk (instead of *high risk* as previously proposed) is assessed using a risk matrix and categorised as medium, high and very high.

- b. Local authorities may build on this definition to make it more comprehensive and risk adverse, but cannot make it more risk tolerant. The term 'tolerance' to a natural hazard and 'willingness' to those subject to risk, appear to have been removed from the proposal. It is important that these terms are not included in the policy.
- c. Local authorities must consider the potential impacts of climate change on natural hazards at least 100 years into the future.
- d. Residual risk must be taken into account by local authorities.
- e. The proposal will be supported by non-statutory guidance for implementation.

5.8 Points of concern relating to Option 2 are:

- a. To avoid, mitigate and reduce risks from natural hazards on subdivision, use and development, local authorities are expected to apply land use or use controls that are *proportionate* to the level of natural hazards risk. The term proportionate is open to wide interpretation, which may lead to inconsistent application across councils.
- b. There is no required timeframe to 'give effect to' the NPS-NH in plan changes. While the intent is to minimise the implementation burden on councils, this risks continued development in hazard-prone areas, potentially leading to greater costs when those areas are eventually affected by natural hazards.
- c. While it is positive that local authorities must use the best available information in assessing natural hazard risk (this does not solve the issue of resourcing constraints), it should mention the requirement for councils to take into account national guidance on the identification of natural hazards, particularly the National Climate Adaptation Risk Assessment.
- d. The scope of the NPS-NH is too limited, applying only to 'new development'. EDS has previously argued that avoiding high risk of natural hazards may also be important when determining the consenting of existing development. The definition should include the consenting of activities involving the presence of buildings, structures or infrastructure on land.
- e. There is no reference to the NPS-NH prevailing over national direction on urban development in the event of conflict, nor any mention of alignment or prioritisation between these policies.
- f. There is no reference to the National Climate Change Risk Assessment and its relevance to natural hazard risk management and the support this can provide to local authorities.

- g. There is no mention of a precautionary approach and its applicability wherever risks are uncertain, unknown or little understood.
- h. There should be a clearer direction to local authorities to proactively identify and manage areas exposed to natural hazards.

#### Proportionate management

- 5.9 The proposal states that proportionate management means that stronger constraints on development are appropriate when risk is higher, and development should be enabled where risk is lower. However, it fails to specify that development 'must not' be allowed when the likelihood and consequence level are rated as very high or high.
- 5.10 The proposal suggests that a more standardised approach that allows managing natural hazard risk through planning documents - rather than on a consent-by-consent basis, could be considered as part of any future resource management system. This is a positive direction; an overarching approach is needed. A consent-by-consent basis is inherently *ad hoc* and will not deliver the consistency required to manage risks in the long term across areas exposed to multiple hazards.
- 5.11 Moreover, the term proportionate remains too vague, leaving room for varying interpretations and reinforcing one of the core issues - inconsistency in hazard risk management across councils.
- 5.12 The RIS notes there is a risk that inappropriately risk averse approaches to natural hazards will prevent *much needed development*, which could be designed or located in a way which would withstand natural hazards events. Moreover, it states that *anecdotally* there are concerns that some local authorities have been too risk averse and inappropriately restricted development in order to avoid risk from natural hazards.
- 5.13 This statement raises concerns, particularly in terms of potential influence on the decision to propose a more flexible approach to the development of the NPS-NH. It can be argued that, in fact, there are numerous cases across the country – both historical and recent – where development has been allowed in areas that are highly exposed to natural hazards, where properties and communities have suffered the consequences of inadequate or ineffective planning decisions.
- 5.14 The RIS notes that the ideal approach for developing an NES would be to work with natural hazards experts and local government officials to test the technical components in order to draft the NES for consultation. However, there was no time available for this process. EDS supports a NES for natural hazards and considers it should prohibit new development in high risk areas. As a priority, we need to stop making the situation worse.

## **6. Conclusion**

- 6.1 EDS awaits public notification of the proposed national direction instruments addressed by the Discussion Document. It expects that the changes included in those proposed instruments will reflect public submissions on the Discussion Document, be underpinned by detailed scientific and legal analysis, and comply with the RMA.