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PROPOSED CHANGES TO NATIONAL DIRECTION – PACKAGE 2 DISCUSSION DOCUMENT - PRIMARY SECTOR

1. Introduction

- 1.1 This is the Environmental Defence Society's ("**EDS**") feedback on the Package 2: Primary Sector 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 it¹ and decision-makers on resource consent applications must "have regard"² 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

¹ RMA, ss 62(3), 67(3), 75(3)

² 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”.³ 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.⁴ The changes proposed in the primary sector package are focused on “enabling primary sector growth” and making it easier to farm.⁵ The changes proposed in the housing package are focused on “freeing up land for development and removing unnecessary planning barriers.”⁶ 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)⁷ safeguarding the life-supporting capacity of air, water, soil and ecosystems.⁸
- 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)⁹ safeguarding the life-supporting capacity of air, water, soil and ecosystems.¹⁰
- 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.¹⁴

³ Freshwater package 3 Discussion Document pg 5 and pg 9

⁴ Infrastructure package 1 Discussion Document pg 6 and pg 9

⁵ Primary sector package 2 Discussion Document pg 6; Freshwater package 3 Discussion Document pg 9

⁶ Going for Housing Growth package Discussion Document pg 5; Freshwater package 3 Discussion Document pg 9

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

⁸ RMA, s 5

⁹ Ibid fn 5

¹⁰ 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.¹¹ 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’).¹² For example:¹³
- 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,¹⁴ 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 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.

Status of notified changes

- 3.9 Under s 46A of the RMA, the Minister must publicly notify a “proposed national environmental standard or national policy statement” (emphasis added).
- 3.10 The Discussion Document states that the changes described in it have been released for public consultation in accordance with s 46A of the RMA.¹⁵

¹¹ Ministry for the Environment & Stats NZ, 2022, New Zealand’s Environmental Reporting Series: Environment Aotearoa 2022, p 19

¹² Environment Aotearoa 2020 ‘Pohutukawa’

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

¹⁴ Infrastructure package 1 Discussion Document pg 27

¹⁵ Primary sector package 2 pg 9 (it is noted that s 57 RMA states that s 46A applies to the New Zealand Coastal Policy Statement)

- 3.11 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”.
- 3.12 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”.¹⁶ The Minister is statutorily required to notify the instrument it proposes to adopt i.e., the “proposed” national policy statement or national environmental standard.
- 3.13 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 the Discussion Document: Primary sector proposals

Section 2.2: National Environmental Standards for Commercial Forestry (“NES-CF”)

Scope of proposed changes

- 4.1 The changes to the NES-CF set out in the Discussion Document (referred to as “discrete amendments”) do not address systemic issues with the NES-CF, which are:
- a. An inability to manage actual and potential adverse environmental effects of erosion and discharge (e.g., sediment and slash) caused by harvesting and earthworks forestry activities in medium and high areas (orange and red Erosion Susceptibility Classification (“**ESC**”) zones).
 - b. Related failure to require on-site capture of sediment and slash to internalise these effects.
 - c. Inadequate or absent spatial and temporal constraints on forestry activities to ensure on-site management of sediment and slash.
 - d. Failure to address cumulative impacts of forestry activities on freshwater and coastal marine areas.
- 4.2 The changes do not respond to the growing body of data on adverse downstream and receiving environmental effects of commercial forestry activities, including slash and sedimentation.

¹⁶ Discussion Document Attachment 2.3 “Instrument topic” box pg 1

- 4.3 Failure to address systemic issues and respond to evidence of adverse effects as part of this review of the NES-CF does not comply with minimum legal requirements. This includes s 43A(3) of the RMA.
- 4.4 The NES-CF is permitting forestry harvesting and earthworks activities which have significant adverse effects on receiving water bodies, including freshwater bodies and the coastal marine area and on indigenous flora, fauna, and their habitats. Evidence of this abounds in the Gisborne and Marlborough/Tasman regions, but it is not limited to those locations. This review cannot lawfully gazette an amended NES-CF that continues to permit forestry activities that result in these effects.
- 4.5 A wider review of the NES-CF is both merited and statutorily required. The Discussion Document has purported to unreasonably limit the review to a narrow list of issues that are not underpinned by relevant information to inform evidence-based policymaking.
- 4.6 The existing regulatory framework should be strengthened, not weakened as proposed. This will provide industry with investment certainty while addressing environmental bottom lines and community wellbeing.
- 4.7 EDS requests that the NES-CF be amended, as part of this review, to:
- a. Limit clearfell harvesting to a maximum of 40 hectares, or 5% of, any forest catchment management unit, whichever is the lesser, during the window of vulnerability on any orange or red ESC land.
 - b. Insert a definition of “*forest catchment management unit*” in Regulation 3: “a catchment area upstream and surrounding a Strahler Stream 3rd Order stream derived from the NIWA (now Earth Sciences NZ) River Environment Classification”.
 - c. Insert a definition of “*window of vulnerability*” in Regulation 3: “a period of no less than six years after clearfell harvest in a forest catchment management unit”.
 - d. Insert a definition of “*gully system*” in Regulation 3: “comprises gully heads and connected incised channels including the convergent side slopes”.
 - e. Designate harvesting in any gully system as a discretionary activity in orange ESC and a non-complying activity in red ESC.
 - f. Designate replanting and afforestation in any gully system as a non-complying activity on orange ESC and a prohibited activity on red ESC.
 - g. Refine to 1:10,000 the ESC for areas currently zoned yellow, orange, and red ESC.
 - h. Retain Regulation 6(4A) enabling more stringent rules for afforestation in any regional plan.

- i. Retain Regulation 6(1)(a) enabling more stringent rules in any regional plan to meet any objective to give effect to the National Policy Statement for Freshwater Management 2020 (“**NPS-FM**”).
- j. Require all regional and unitary councils to undertake and adopt within 3 years of gazettal more stringent rules under Regulations 6(1)(a), 6(1)(b) and 6(4A) to protect the following from slash, woody debris, debris flows, and sediment:
 - i. Public roads and other infrastructure:
 - ii. Properties, including dwellings:
 - iii. Rivers, lakes, estuaries, and the sea:
 - iv. Drinking water supplies.
- k. Amend the Annual Exceedance Probability threshold to 1% from 5% in Regulations 20, 46, 47, 69, 86 and Schedule 6, and from 2% in Regulation 48(2).

General feedback on Discussion Document

- 4.8 The Discussion Document identifies the economic benefits of commercial forestry, but does not address corresponding adverse effects, both actual and potential, to fresh and coastal water systems, indigenous biodiversity, natural character, and intrinsic values of biotic and abiotic systems and taonga species. As such, the proposed changes to the NES-CF address only one half of the equation.
- 4.9 The problem definition for changing the NES-CF is not appropriately developed. It weakens controls on forestry activities that are already not fit for purpose without a proper assessment of potential significant adverse effects on downstream environments. No assessment has been undertaken as to whether these environmental impacts comply with RMA obligations or the objectives of the NES-CF itself. They cannot be said to be in accordance with the RMA.

Stringency

Question 10: Does the proposed amendment to 6(1)(a) enable management of significant risks in your region?

- 4.10 EDS opposes the change to Regulation 6(1)(a) because it represents a material reduction in councils’ ability to apply stringency to protect freshwater values, including downstream receiving environments with nationally or regionally significant values. Specifically:
 - a. “Severe erosion” is undefined; for example, differences between moderate and accelerated erosion.
 - b. There are other categories of risk outside of “severe erosion” areas that require a higher standard of management for forestry practices, and it is unclear whether the wording accurately reflects that need.

- c. The dual threshold of “severe erosion” and “significant adverse effects” is likely to constrain councils’ ability to manage areas with the highest likelihood of shallow landsliding and gully erosion and the highest likelihood of connectivity with waterways.
- d. The requirement to identify underlying risk through mapping at a 1:10,000 scale places the evidential burden on councils to address the deficiencies of the ESC. This is unreasonable. ESC mapping is too coarse (1:50,000) to accurately reflect risk at an operational scale. The NES-CF should impose minimum information requirements on forestry applicants to provide detailed, fine-scale mapping and evidence to demonstrate that proposed activities (including renewals or extensions of existing approvals) are appropriate for the specific landscape. Councils must have the ability to require additional information to satisfy reasonable information requests.

4.11 EDS seeks that the existing stringency provisions in Regulation 6(1)(a) be both retained and strengthened.

4.12 Alternatively, EDS seeks:

- a. That the reference to “severe erosion” is deleted, as an undefined term which excludes relevant risks, and is replaced by “accelerated erosion and excessive sedimentation”.
- b. That “significant” be replaced with the term “relevant” adverse effects to ensure that localised impacts on the receiving environment are addressed.
- c. That councils undertake and adopt (via Schedule 1 RMA) a stringency assessment based on specified criteria (to be defined by guidance) within a defined timeframe (such as 3 years). This would enable a standardised platform for monitoring and research to assess policy effectiveness.

4.13 With respect to the last point, Ulrich SC & Hanifyani MN have undertaken the only standardised national assessment of stringency and its application since the NES-CF was gazetted.¹⁷ This report is not referred to in the Regulatory Impact Statement on the changes to the NES-CF but it is clearly relevant to a discussion on stringency. As stated by Ulrich and Hanifyani:

The government’s view on the implementation of stringency is that it is a cost to business; a major and frustrating cause of inconsistency that undermines a national set of regulations; and that the environmental outcomes are not well linked (NZ Government, 2021a). This emerged from a review of the NES-PF after one year in effect, undertaken by the Ministry of Primary Industries (MPI)’s forestry arm Te Uru Rākau (NZ

¹⁷ Ulrich SC & Hanifyani MN. 2024. A stringent failure: Regulators do not use available tools to protect aquatic ecosystems from clearcut forestry impacts in New Zealand. *Journal of Environmental Management*, 370, 122540

Government, 2019b, 2021b). It is not clear from the self-review or its supporting information how these findings were derived. The review did not examine all regions, and not every regional plan was assessed in the regions studied (NZ Government 2019b). The data showed analysis of six regional plans in varying levels of detail (NZ Government, 2021b). In contrast, this study analysed data from all 16 councils in a comprehensive way (Supplementary Tables S1 and S2). The 'Year one' review did identify capacity and capability issues in some councils to manage forestry activities under the NES-PF. It suggested providing guidance and implementation assistance to councils on the application of stringency. However, this is not for a 'strategic and principled' approach to systematically identify avoid, mitigate, and remedy the causes of ecosystem degradation and risks to human life and infrastructure by targeted prohibitions, rather Te Uru Rakau's definition of stringency is confined to allow councils to:

- *"Impose an additional performance standard on an activity that is permitted in the NES-PF;*
- *Require a resource consent for an activity that the NES-PF permits; or*
- *Expand the matters the council may consider when processing a resource consent, and therefore potentially add additional conditions on a resource consent" (NZ Government 2021a, p. 49).*

- 4.14 EDS agrees that it is essential to ensure that stringency is strategically and consistently applied across the country, on the basis of sound data, and that councils should have authority to impose bespoke obligations in their plans.

Question 11: Does the proposal provide clarity and certainty for local authorities and forestry planning?

- 4.15 No.
- 4.16 EDS opposes the proposed repeal of Regulation 6(4A). Regulation 6(4A) was included in the 2023 NES-CF update to empower councils to apply greater control over afforestation in accordance with recommendations of the Ministerial Inquiry into Land Use ("**MILU**") in Tairāwhiti and Wairoa. To remove it now is to disregard that Inquiry and its evidence base.
- 4.17 EDS disputes that the "wide discretion" conferred by Regulation 6(4A) has resulted in industry or sector uncertainty.
- 4.18 Removal of this regulation will require that councils use amended Regulation 6(1)(a) to impose stringency relating to afforestation. Application of stringency will therefore suffer the same problems as outlined above.
- 4.19 Rather than delete Regulation 6(4A), EDS seeks that the regulation be strengthened to require councils to prevent unsafe planting or harvesting in vulnerable areas and unsuitable landscapes.

- 4.20 EDS opposes any further weakening of Regulation 6 of the NES-CF, on the basis that this would result in significant adverse effects to protected values and ecosystems.

Regulation 69 and Schedules

Question 15: Is the draft slash mobilisation risk assessment template (provided in attachment 2.2.1 to this document) suitable for identifying and managing risks on a site-specific basis?

- 4.21 No.
- 4.22 Regulation 69 was amended as part of the NES-CF 2023 review to provide for better slash and debris management.
- 4.23 It is worth noting at the outset that the 'pipeline' of slash currently *in situ* is significant. Radio NZ reported that 400,000 m³ of slash has been left in the Uawa catchment as at January 2025.¹⁸ This is an enormous amount of dormant material that has the potential to result in severe consequences for downstream environs if mobilised. Any amendments to the NES-CF need to be carefully assessed with these potential effects in mind.
- 4.24 The new slash mobilisation risk assessment ("**SMRA**") set out in the Discussion Document seeks to focus effort and cost on areas where there is a high risk of slash mobilisation.
- 4.25 EDS supports a risk-based approach to harvest management. However, the SMRA has multiple issues. EDS has reviewed Gisborne District Council's draft submission on this matter, and supports the specific concerns raised which include, in summary:
- a. The SMRA focuses only on likelihood of mobilisation, ignoring the severity of potential outcomes. This is EDS's main concern with the SMRA. It is too narrowly focused and does not adequately address the full ambit of risks associated with forestry activities on erosion-prone land and landforms at high risk of severe or accelerated erosion.
 - b. The SMRA fails to capture the risk of cumulative slash buildup across connected catchments; there must be an ability to manage risk on a wider area basis.
 - c. It is unclear who completes a SMRA, and will it be certified by a qualified expert? Allowing high-risk forestry activities to proceed as permitted activities based on self-assessed SMRAs will lead to poor outcomes and reduced oversight. The inclination for some foresters to downplay the risks will compound the issue.
 - d. There is no clarity on thresholds that determine whether slash must be removed or what mitigation is required.

¹⁸ <https://www.rnz.co.nz/news/national/539078/forestry-giant-ernslaw-one-delays-cyclone-damage-repairs-court-extends-deadlines>

- 4.26 In addition, SMRA's initial gateway relies on the ESC mapping which, as noted above, is too coarse to accurately reflect risk at an operational scale.
- 4.27 The NES-CF does not have a formal system for assessing risk and one is required to properly manage discharges (including slash and sediment) from forestry earthworks and harvesting activities.
- 4.28 However, the SMRA misses the mark. EDS considers that it should be re-designed to ensure that erosion susceptibility, hazard and risk are addressed in a unified framework. This will widen the scope of the SMRA and enable matters such as consequences of mobilisation to be considered. The assessments should be carried out by qualified terrain stability professionals to a scale of 1:10,000 or larger.
- 4.29 Councils should also be able to request further information and require changes to earthworks, harvesting, replanting and afforestation plans as a result of any risk assessment.
- 4.30 Finally, EDS opposes the Discussion Document's proposal to remove the term "woody debris" from planning requirements. Doing so risks creating a lacuna, whereby discharge is not captured by the definition of slash, but is nonetheless mobilised and requires management. Instead, EDS supports defining the term to ensure operators are responsible for all material mobilised as a consequence of their activity.

Cutover definition

Question 19: Do you support the proposed definition of cutover to read "cutover means the area of land that has been harvested"?

- 4.31 No.
- 4.32 The cutover definition relates to slash removal requirements in the NES-CF. The Discussion Document proposes that the definition be amended to only relate to the area harvested (and that it links to the new slash requirements and SMRA).
- 4.33 The proposed change excludes the area of land between the harvested area and land covered by the 5% AEP event. If any slash has mobilised downslope between the "harvested area" and area covered by the 5% AEP event, it may not be caught by the permitted activity standard proposed to require removal of slash or be covered by the consent required (if not removed) on high-risk sites. Further, where the SMRA requires mitigation measures to manage risk, this area may not be covered.
- 4.34 EDS seeks clarification of the management of risk in this area. Any slash created on the harvested area that migrates outside of that area must still be accounted for and managed to remove any, or substantively reduce the risk of mobilisation downstream.

- 4.35 EDS considers that the NES-CF should include a limit on cutover size as a percentage of catchment. The MILU Report stated:¹⁹

There should be a limit to the total area within a catchment that can be clear-felled each year. We suggest that an appropriate area is no more than five per cent of a catchment per year.

We suggest that an appropriate maximum staged coupe size is 40 hectares. A minimum 'green-up' period of five years between staged harvest coupes will minimise the risk of large-scale erosion events.

- 4.36 Although this was in the context of Tarāwhiti and Wairoa, it has broader application. A limit on cutover size would significantly reduce the risk of discharge from forestry activities during the 'window of vulnerability' post-harvest on orange and red ESC land.
- 4.37 This cutover size should be specifically included within matters for control in Regulations 70 and 71 of the NES-CF.

Afforestation and planting planning

- 4.38 EDS opposes proposals in the Discussion Document to repeal afforestation and replanting plans. This is a retrograde proposition. These requirements are not duplicatory; rather they require a forward-looking consideration of forest vulnerabilities and identification of key risks. This assessment minimises risks across the life-span of the forest, including by not exacerbating adverse environmental outcomes later. They are particularly important with respect to permanent carbon forests, which present significant long-term risks that need to be planned for and managed.
- 4.39 EDS seeks that these provisions be retained in Regulations 10A and 77A and Schedule 3.

Section 2.3: New Zealand Coastal Policy Statement ("NZCPS")

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

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

Question 24: Are there any further changes to the proposed provisions that should be considered?

- 4.40 No, no and no, respectively.

¹⁹ MILU report pg 22

4.41 The NZCPS states “objectives and policies in order to achieve the purpose of” the RMA.²⁰ As explained by the Supreme Court in *King Salmon*,²¹ it is Part 2 of the RMA for the purposes of the coastal environment. A detailed assessment of whether the changes to the NZCPS set out in the Discussion Document will achieve sustainable management, and recognise and provide for the matters of national importance, must be undertaken before any changes are adopted.

4.42 EDS opposes the changes to the NZCPS set out in the Discussion Document because:

- a. No assessment has been undertaken as to how they will comply with the statutory obligation to achieve the purpose of the RMA, including, for example:
 - i. Changes to Policy 6 cannot be assessed against the sustainable management purpose of the RMA because they include the undefined and wide-ranging terms of “specified infrastructure” and “resource extraction activities”. The activities these terms capture have potentially significant adverse environmental effects.
 - ii. Proposed changes to Policy 6 to widen the ‘gateway’ for activities occurring in the coastal marine area (“**CMA**”) to include those with an operational need, will make it easier for activities and their ancillary activities to locate in the CMA. No assessment has been undertaken as to whether these possible activities would meet the purpose of the RMA.
 - iii. Proposed changes to Policy 8 to provide for aquaculture activities within aquaculture settlement areas may result in new areas of the CMA being opened up to activities without a proper effects assessment or assessment against the sustainable management purpose of the RMA. The extent to which this may occur has not been assessed for compliance with Part 2 of the RMA.
- b. The CMA is home to numerous indigenous species, many of which are threatened with extinction. It is also a common resource, incapable of ownership, enjoyed and used by the people of New Zealand. In this context, activities within the CMA that have the potential for significant adverse environmental effects, and/or activities that may exclude public use of the CMA, should be subject to careful evaluation. For this reason, EDS opposes:
 - i. Widening the scope and breadth of activities (including open-ended and undefined activities such as “resource extraction”) supported by Policy 6.
 - ii. The inclusion of “operational” need in Policy 6. Enabling policy support should only be given to activities with a “functional need” to locate in the

²⁰ RMA, s 56

²¹ Ibid fn 5

CMA. If the activity does not need to be located in the CMA, it should locate elsewhere.

- iii. The requirement to “recognise” activities that may have a functional need to be located in the CMA. Rather, decision-makers should be required to “take into account” the potential functional need for these activities to locate there. A direction to “take into account” enables the decision-maker to look at that factor alongside others and give it appropriate weight in the context. That is the appropriate way to deal with a claim of functional need to locate in a particular area.

- 4.43 Question 24 invites ideas for any further changes to the NZCPS. EDS is opposed to any suggestion that Policies 11, 13 and 15 be amended to remove the “avoid” requirement.

Section 2.4: National Policy Statement on Highly Productive Land (“NPS-HPL”)

Question 25: Should LUC 3 land be exempt from NPS-HPL restrictions on urban development (leaving LUC 3 land still protected from rural lifestyle development) or, should the restrictions be removed for both urban development and rural lifestyle development?

- 4.44 No.
- 4.45 LUC 3 land should not be exempt from the NPS-HPL for any reason, including urban development. The adverse consequences for primary production of removing LUC 3 land from the NPS-HPL vastly outweigh the benefits.
- 4.46 Class LUC 1-3 land only comprises 15% of New Zealand but it is critical for arable cropping. LUC 3 land may be at the lower end of suitability for arable cropping, but it makes up a significant portion (64%) of the overall 15% of LUC 1-3 land. This means removing the NPS-HPL protections from LUC 3 land would see only 36% of the starting 15% of New Zealand’s best agricultural land protected.
- 4.47 There has been no analysis of how this proposal would safeguard the life-supporting capacity of soil as required by the purpose of the RMA, based on those statistics.
- 4.48 The creation of ‘special agricultural areas’ is not an appropriate compromise for removal of LUC 3 land. The very fact that such areas would be required signals the importance of LUC 3 land and why it should be afforded the protections of the NPS-HPL.
- 4.49 There are limited alternative options for arable cropping and for other primary production activities; it is locationally constrained by LUC 1-3 land. In contrast, urban development has multiple design methods that can be employed to maximise existing urban zoned land and brownfields areas. Urban development should not be enabled in greenfields sites with high productive land value. EDS does not support urban sprawl as a policy outcome, particularly when it comes at the expense of a limited food producing resource.

Question 32: Should timeframes for local authorities to map highly productive land in regional policy statements be extended based on revised criteria? Alternatively, should the mapping of HPL under the RMA be suspended to provide time for a longer-term solution to managing highly productive land to be developed in the replacement resource management system?

- 4.50 No and no, respectively.
- 4.51 The replacement resource management system proposes to use spatial planning as a tool to provide greater certainty about where development can locate. Constraints (mapped high value areas) are a critical input into spatial plans and are required to ensure that such plans meet statutory requirements to protect (or equivalent) specific parts of the natural environment.
- 4.52 Highly productive land is a constraint that should be mapped in spatial plans. It makes no sense to delay the mapping of highly productive land that councils are currently required to do. Doing so will only exacerbate the time and resource required to promulgate spatial plans under the new system.

Section 2.5: Multiple instruments for quarrying and mining provisions

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

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

Question 35: Should “operational need” be added as a gateway test for other activities controlled by the NPS-FM and NES-F?

- 4.53 No, no and no respectively.
- 4.54 EDS does not support the changes set out in the Discussion Document.
- 4.55 The changes are intended to align definitions, ‘gateway’ tests and consenting pathways for mining and quarrying activities across different national direction instruments.
- 4.56 This approach is misconceived and contrary to the effects-based approach of the RMA. It reflects a failure to understand the considerations relevant to determining how particular classes of activities should be provided for, or how their effects should be managed across quite different locations.
- 4.57 Each class of activity has a different spectrum of potential environmental effects that need to be avoided, remedied or mitigated under the RMA. These effects will depend on the nature

and extent of the activity and its environmental context. It is these factors which should determine the policy and rules applying to the activity, because they determine whether the activity is in accordance with the RMA.

- 4.58 A general desire to “align” the approach for one activity with that of another is not relevant to that exercise.

National Policy Statement for Indigenous Biodiversity (“NPS-IB”)

- 4.59 The Discussion Document proposes changes to the NPS-IB which would allow for greater mineral and aggregate extraction with a likely increase in adverse impacts on significant indigenous vegetation and significant habitat of indigenous fauna (“SNAs”).²²
- 4.60 Protecting SNAs is a matter of national importance under s 6(c) of the RMA and how they are managed is central to maintaining indigenous biodiversity so that there is at least no overall loss of indigenous biodiversity. Identification of “a system of protected areas or areas where special measures need to be taken to conserve biological diversity” is also consistent with New Zealand’s obligations under the Convention on Biological Diversity.²³
- 4.61 The NPS-IB protects SNAs as part of maintaining indigenous biodiversity by requiring activities to avoid the adverse effects listed in Clause 3.10(2). Those effects are a sub-set of the effects that were identified by the *Critical Factors* report²⁴ as needing to be avoided to maintain indigenous biodiversity and protect SNAs. Avoiding them is therefore necessary to meet the statutory obligations in s 6(c) and ss 30 and 31 of the RMA, and to safeguard the life-supporting capacity of ecosystems which is required to achieve sustainable management in accordance with s 5(2) of the RMA. It is also “vital to ... prevent and attack the causes of significant reduction or loss of biological diversity”,²⁵ in a context where New Zealand’s indigenous biodiversity is in steep decline.²⁶
- 4.62 Clause 3.11 of the NPS-IB exempts some activities from the avoid requirement in Clause 3.10(2) by providing a consenting pathway for those activities. Activities currently listed in Clause 3.11 and their consenting pathways (including their ‘gateway’ tests) have been carefully crafted to ensure compliance with statutory obligations in the context of indigenous biodiversity loss. Any adjustment to the activities exempted from the avoid requirement, or to the consenting pathway provided for those activities, needs to be similarly assessed. There is no evidence to suggest this assessment has been undertaken here.
- 4.63 Proposed changes in the Discussion Document widen the ‘gateway tests’ for mineral and aggregate extraction in significant ways:

²² Attachment 2.5 of Discussion Document, p2

²³ Article 7(a)-(c)

²⁴ See Table A of the report

²⁵ Convention of Biological Diversity, Preamble

²⁶ See Section 1 of this submission

- a. Deleting the requirement that the benefit provided by these activities be a “public” benefit. The “public benefit” component is essential for ensuring that New Zealand’s most significant indigenous biodiversity, which has social and cultural values and provides important ecosystem-services, is not sacrificed for individual or commercial gain. That outcome would not be consistent with Part 2 of the RMA. Further, the Environment Court has recently confirmed that “public benefits” can be diverse. They can range from employment opportunities to the extent of supply, to infrastructure demands (e.g. road wear and tear). The concept of “public benefit” offers sufficient flexibility to provide a pathway for those wanting to undertake mineral and aggregate activities in SNAs. It should be retained in Clause 3.11 of the NPS-IB.
- b. The introduction of a “regionally significant benefit” threshold to mineral extraction. The protection of SNAs is a “matter of national importance”. The public benefit to be gained from enabling harm to SNAs must be of equal magnitude. Introducing a regionally significant benefit pathway in that context elevates mineral extraction above s 6(c) which the RMA does not provide for.

National Policy Statement for Freshwater Management 2020 (“NPS-FM”) and National Environmental Standards for Freshwater (“NES-F”)

- 4.64 The Discussion Document proposes to expand the ‘gateway test’ for mining and quarrying activities in natural inland wetlands by providing for these activities when there is an “operational need” (as opposed to just when there is a “functional” need).
- 4.65 This will enable more mining and quarrying activities to bypass the NPS-FM Clause 3.22 requirement to avoid the loss of extent of natural inland wetlands and access a consenting pathway to locate there. There has been no assessment of the potential environmental effects of this proposal (e.g. attempting to understand the increased loss of extent and values), nor its consistency with the RMA.
- 4.66 The change is being proposed to “improve consistency and alignment across national direction”. This reflects a fundamental failure to recognise the practical consequences of the change. More mining or quarrying activities in natural inland wetlands has the potential to further degrade or destroy the small number of these important habitats that New Zealand has left.
- 4.67 The extent of wetland loss nation-wide, and the degraded state of the small percentage that remains, demands a precautionary approach to managing activities in and around them. Only those activities that functionally need to be in that location should be given consideration. Providing opportunity for activities for which it is simply operationally convenient to be located within a wetland, but it is not necessary, is providing for use and development at the expense of the needs of future generations and at the expense of safeguarding the life supporting capacity of wetland ecosystems. EDS opposes the proposed change.

- 4.68 “Operational need” should not be added as a gateway test for other activities controlled by the NPS-FM and NES-F simply on the basis of alignment for the reasons outlined above.

Section 2.6: Stock exclusion regulations

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

- 4.69 No.
- 4.70 As framed, the question does not accurately represent Regulation 17 of the Stock Exclusion Regulations. Regulation 17 does not require stock to be excluded from all natural wetlands in extensive farming systems. Rather, it requires stock to be excluded from any natural wetland “that supports a population of threatened species as described in the compulsory value for threatened species in the National Policy Statement for Freshwater Management 2020”.
- 4.71 The threatened species value is in Appendix 1A clause 3 of the NPS-FM. A natural wetland that supports a population of threatened species “has the critical habitats and conditions necessary to support the presence, abundance, survival, and recovery of the threatened species”. This is a specific, and narrow sub-set of natural wetlands. It will not be all wetland areas given the degraded state of the majority of remaining wetlands.
- 4.72 Further, wetland ecosystems provide vital ecosystem-services as natural filtration systems, carbon sinks, and habitat for a diverse range of species.²⁷ 90% of wetlands have been lost since European settlement and loss is ongoing.²⁸ The consequence of human development is that approximately 60% of the 10% of remaining wetlands are degraded.²⁹ Many indigenous freshwater bird and plant species are threatened with extinction or at risk of becoming extinct.³⁰
- 4.73 The situation could not be put more aptly than it is in the 2025 Our Environment report: “the small fraction that remains is vital for the survival of many threatened plant and animal species, including several treasured (taonga) bird species.” It is imperative that we protect and restore what is left of wetlands.
- 4.74 Regulation 17 is therefore entirely justified given the deleterious state of New Zealand’s wetland ecosystems and the known adverse effects of allowing stock within them.

²⁷ <https://environment.govt.nz/assets/publications/Environmental-Reporting/6.1-Wetland-extent.pdf>;

https://www.wetlandtrust.org.nz/wp-content/uploads/2021/04/ROOT-CAUSES-OF-WETLAND-LOSS-IN-NZ_1-STATISTICS-AND-BACKSTORIES_Jan-2021.pdf

²⁸ <https://www.stats.govt.nz/indicators/wetland-area/>; <https://environment.govt.nz/assets/publications/Environmental-Reporting/6.1-Wetland-extent.pdf>

²⁹ Ibid fn 14

³⁰ <https://environment.govt.nz/publications/our-environment-2025/freshwater/>

- 4.75 Limiting Regulation 17 to exclude non-intensively grazed beef cattle and deer is directly contrary to RMA direction in sections 6(a) and (c). It is also directly contrary to providing for use and development “while” (at the same time as) sustaining the potential for natural wetlands to meet the reasonably foreseeable needs of future generations and safeguarding the life-supporting capacity of wetland ecosystems.

5. Conclusion

- 5.1 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.