NEW ZEALAND ECOLOGICAL SOCIETY

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Feedback on the discussion document: 'Improving our Resource Management'

The New Zealand Ecological Society (NZES) was formed in 1951 to promote the study of ecology and the application of ecological knowledge in all its aspects. The NZES is the leading professional society for pure and applied ecology and publishes the New Zealand Journal of Ecology, which is the primary peer-reviewed publication for ecological science and research in the country. The NZES currently has a membership of 590, many of whom have provided expert evidence during plan and resource consent hearings. A number of members are accredited independent commissioners under the 'Making Good Decisions' programme. The NZES, and its members, maintained an active involvement and submitted during the development and passage of the Resource Management Act.

Through its activities, the NZES aims to, among other things, "promote sound ecological planning and management of the natural and human environment".

The Resource Management Act (RMA) is the foundation for environmental management in New Zealand and is fundamental to regulation on environmental effects and the protection of indigenous biodiversity on private land. The RMA is internationally recognised due to its innovative approach to environmental management based on sustainable management. New Zealand's unique and highly threatened indigenous biodiversity and ecosystems and its agricultural, tourism, and other export industries rely on strong legislation which promotes best-practice environmental management. The Society would like to express its concern regarding several elements contained within the public discussion document '*Improving our Resource Management*'. The NZES is concerned that the fundamental changes to the RMA proposed in the discussion document will reduce the act's effectiveness and its strategic focus on sustainable environmental management.

The NZES has restricted its comments here to ecological matters of particular relevance to the Society's objectives. However, strong environmental policy and robust planning frameworks go hand-in-glove with ecological outcomes, and where the two are indivisible we have provided feedback.

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With regard to the public discussion on the freshwater reforms running in parallel to this discussion, the NZES has submitted separately on the former discussion document. It is noted here that the NZES submission on the proposed freshwater reforms is generally supportive of those proposals, which build on the good work and sound collaborative processes of the Land and Water Forum to result in a generally well thought-through package that has the potential to improve current processes relating to freshwater management. Those proposals stand in contrast to the RMA reforms discussed below. Indeed one of the NZES' principal concerns with the freshwater reforms is that they would be significantly undermined by the reform of Part II of the RMA proposed here.

Summary of feedback

1. The NZES **supports** improvements to the RMA and guidance to councils on the implementation of the RMA where this results in better ecological outcomes. Likewise, the NZES **supports** intervention from the government (such as to facilitate timely delivery of much needed National Policy Statements) where the motivation for doing so is improved resource management.

2. The NZES **does not** support proposed changes to the RMA that are not justified or supported by evidence, and are simply designed to speed and ease the approval of development with reduced regard to the principles of sustainable management and the protection and maintenance of the environment.

3. The NZES is encouraged to learn there is no intention to subject section 5 (purpose) to review. The NZES considers the promotion of sustainable management to be the cornerstone of sound resource management and **would not** support any dilution to the definition and principles of sustainable management.

4. Proposed changes to section 6 and 7 are generally **not supported.**

5. The NZES **opposes** restrictions of appeals to the Environment Court but **supports** initiatives to improve the efficiency of court proceedings.

General comments

6. The sustainable management of natural resources is complex, and will be increasingly so as these resources become scarcer (e.g. indigenous biodiversity) or the quality of the resource compromised (e.g. fresh water). Natural resources of value to humans are part of a wider and interconnected (complex) biological system and the management of these resources needs to recognise these complexities as well as the social and economic context. Attempts to overly simplify complex issues for expediency rarely results in better resource management.

7. Environmental costs (including the costs associated with the management of the resource being used or impacted on e.g. the costs associated with obtaining a resource consent) should be internalised into the planning and development processes. The cost of resource use should not routinely be carried by the non-users of the resource, or the resource itself. These costs should be fair and just, but reforms that focus merely on making resource management 'cheaper' run a very high risk of externalising the true environmental cost, and thus a continued decline in ecological processes, ecosystem health and indigenous biodiversity.

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8. While the discussion document anecdotally informs us that regulation of natural resource has become an unsustainable inconvenience and expense, there is a lack of evidence to quantify the true cost to development, nor any balanced discussion of the benefits of equitable resource management. The NZES finds that the discussion document does not provide a convincing, substantiated argument for the need for reforms of the nature proposed.

9. New Zealand's social, cultural, and economic wellbeing is dependent on New Zealand's natural resources. The NZES submits that there is not an unequal emphasis on environmental issues at the expense of economic concerns within the RMA as it stands. Rather, there is evidence of continued decline of indigenous biodiversity and environmental quality concurrent with economic growth.

10. Poor plan development or cumbersome implementation of the RMA should be seen for what it is, and not as a consequence of the legislation itself. The NZES supports initiatives that recognise and address these issues (e.g. guidance on plan development and development of NPSs) but does not support changes to fundamental aspects of the RMA (e.g. section 6 and 7) in response to implementation issues.

11. The independent role of the Environment Court should be recognised and not downplayed. The Court plays an important role in implementing the RMA and has developed significant expertise in considering environmental issues over the last two decades. The NZES submits that the court needs to retain its ability to consider environmental issues, not have its scope reduced.

Detailed feedback on discussion document questions

Question 1: Has chapter 1 correctly described the key issues and opportunities with New Zealand's resource management system?

The NZES submits that Chapter 1 is lacking in balance, incompletely describes key issues, and fails to identify the opportunities for useful reform. Specifically:.

12. Chapter 1 is light on evidence to substantiate the reasons it provides for the proposed reforms. Anecdotal evidence provided is contradictory to that provided in Ministry for the Environment publications[1] and referenced elsewhere[2]. Chapter 1 lacks balanced commentary on the positive aspects of the RMA and its implementation.

13. Chapter 1 presents resource management as being a trade-off between the environment and economic growth. The chapter neglects to acknowledge that New Zealand's continued economic and social wellbeing is dependent on our natural capital and the need for sustainable, intergenerational management of this capital.

14. Chapter 1 provides no assessment of the effectiveness of the RMA and of regional and district plans in achieving the matters of national importance including the protection of significant indigenous vegetation, habitats and wetlands and thereby provides no convincing justification for giving economic values greater weight in legislation vs.

[1] Resource Management Act: Survey of Local Authorities 2010/2011

[2] For example, more than 90% of resource consents granted on time in 2010/2011 (MfE data cited in the Business Growth Agenda Progress Reports, December 2012).

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environmental (including biodiversity) values. The NZES considers there is likely to be no defensible justification. For example:

a. a significant omission in Chapter 1 is the lack of reference to the continued decline of indigenous biodiversity on private land linked to loss and modification of habitat through development[3]

b. there is no mention of the failure by many councils to enforce compliance with their plans or conditions on resource consents[4], and associated inappropriate involvement of council governance in compliance and prosecution issues. The implications of these systemic failures are 'losses' for the resource itself, other resource users, and the wider community, and 'wins' for development interests and individual resource users.

15. The NZES agrees that efficiencies in developing plans, consistency in terminology and consent processing, and the provision of national level direction (e.g. National Policy Statements and National Environmental Standards where based on robust science and responsive to resource management need) will aid in the implementation of the RMA. However, the NZES sees these aspects as implementation issues not fundamental failings of the RMA. Because of the complexity of environmental management, it is also important that plans reflect this complexity in dealing with biodiversity and other environmental issues at a regional and local level.

16. NZES also agrees that major resource issues, especially those that are scarce (e.g. indigenous biodiversity[5]) or being stressed by increased intensification of agricultural practices and greater demand by competing users (e.g. wetlands and water[6]), should be dealt with at the plan stage. However it is also important that clear regulation is provided through regional and district plan rules, and implemented at the resource consent stage. An evidence-based policy and regulatory framework for natural resources embedded in a plan (for example the water allocation framework and indigenous biodiversity provisions of Horizons Regional Council's One Plan; the natural resource protection provisions in the Waitakere District Plan), provides a transparent framework for the management of that resource, enabling clarity, consistency, equity and clear thresholds and bottom-lines when processing resource consents.

[3]There is ample evidence of links between accelerating land use change (Walker et al. 2006; Weeks et al. 2013) and the deteriorating threat status of indigenous species (e.g. see Miskelly et al. 2008 for birds; de Lange et al. 2009 and *in press* for plants).

Walker S et al. 2006. Recent loss of indigenous cover in New Zealand. New Zealand Journal of Ecology 30: 169-177.

Weeks ES et al. 2013. Patterns of past and recent conversion of indigenous grasslands in the South Island, New Zealand. New Zealand Journal of Ecology 37(1):127-138.

Miskelly, CM et al. 2008. Conservation status of New Zealand birds, 2008. Notornis 55: 117-135.

de Lange PJ et al. 2009. Threatened and uncommon plants of New Zealand (2008 revision). New Zealand Journal of Botany 47: 61–96.

[4] Marie A. Brown , Bruce D. Clarkson , Barry J. Barton & Chaitanya Joshi (2013): Ecological compensation: an evaluation of regulatory compliance in New Zealand. Impact Assessment and Project Appraisal in press. DOI:10.1080/14615517.2012.762168

[5]Ministry for the Environment 2007. Environment New Zealand 2007. Report No. 847. Wellington.

[6]For example, the intensification of agriculture in the Canterbury Region supported by the Irrigation Acceleration Fund.

Proposal 1: Greater national consistency and guidance

Section 6 Principles

17. The NZES **does not** support the proposed changes to section 6, specifically:

- The substitution of 'Matters of national importance' for '*Principles*' in the section title, and removal of this wording from within section 6.

  This proposed change reduces the value placed on list items in section 6, which are indeed matters of national importance. For example, wetland habitat which has been reduced to 10% of its former extent nationally[7] and the protection of which has been identified as a national priority[8].

- Changes to the principles in section 6 and the addition of non-natural resource elements (e.g. 6(1)(k) referring to the built environment).

  These proposed changes would lead to the downplaying of environmental issues and a less clear hierarchy within the RMA. The NZES is concerned that this would lead to significant confusion regarding the purpose of the RMA in sustainably managing natural and physical resources.

- The removal of the existing hierarchy between section 6 and section 7.

  To remove this hierarchy would be to remove the weighting of elements critical to maintaining the life-supporting capacity of ecosystems over and above other matters, thus undermining the principles of sustainable resource management. The NZES does not support the replacement of the current sections 6 and 7, with a proposed list of principles (proposed section 6) or the increased weighting this proposal offers to economic matters, because this dilutes emphasis on the matters not easily incorporated into balance sheets (i.e. ecological matters). The NZES agrees with the Parliamentary Commissioner for the Environment that the RMA is not an economic development act[9].

  The discussion document claims that the current resource management situation is "uncertain, difficult to predict and highly litigious" (Executive Summary). The NZES contends that proposed reform of section 6, by removing the current hierarchy, would increase rather than decrease the potential for litigation in both plan development and resource consent processes, because the relative importance of a large number of matters raised in the proposed section 6 would need to be established *de novo* for each planning issue and resource application. Removal of the current hierarchy would therefore NOT "support more balanced decision-making" as is claimed without evidence in the discussion document.

[7]Myers, S.C., et al., Wetland management in New Zealand: Are current approaches and policies sustaining wetland ecosystems in agricultural landscapes? Ecol. Eng. (2013), http://dx.doi.org/10.1016/j.ecoleng.2012.12.097

[8]Department of Conservation & Ministry of Environment 2007. The National Priorities for protecting rare and threatened native biodiversity on private land. Ministry for the Environment, Wellington.

[9]http://www.3news.co.nz/RMA-not-economic-tool---watchdog/tabid/1607/articleID/288609/Default.aspx; http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10868534

Therefore, the NZES does not support the addition of section 6(2) [section 6(1) has no internal hierarchy] and submits that the matters of national importance (current section 6) should have greater weighting than other matters currently dealt with in section 7.

- The introduction of the wording 'in making the *overall broad judgment* to achieve the purpose of the Act' into section 6.

  This qualifier is redundant and diluting, and those exercising functions and powers under the RMA and decision makers should be guided by the purpose of the Act when applying their judgment.

- The introduction of the clarifier '*specified*' in section 6(1)(b) [natural features and landscapes] and section 6(1)(c) [significant indigenous vegetation and significant habitats].

  The Discussion Paper does not define what it means by the word '*specified*', but it appears to intend to restrict protection offered by section 6(1)(c) to areas identified in advance in a plan or (as implied by the TAG report[10]) a regional policy statement[11]. The NZES submits that an 'identification in advance' approach would be grossly inadequate because it would capture and protect few significant ecological values.

  The NZES recognises that a schedule of SNAs can provide certainty, and can be useful in identifying areas known to be ecological significant.

  However, we stress that schedules in plans generally do not, and practically cannot, identify all areas of significant indigenous vegetation and fauna habitats in a region or district in advance; indeed many schedules are derisory and are likely to remain so. Therefore the NZES submits that provision and criteria for identifying significant indigenous vegetation and habitats of indigenous fauna beyond reliance solely on a schedule of specified sites is critical.

  Schedules of SNAs have been used in district plans for the last two decades and have been shown time and again to be grossly inadequate in identifying all, or even a reasonable proportion, of SNAs within a district[12],[13]. Most schedules remain substantially incomplete and many are utterly deficient for protecting a region or district's significant sites, for practical reasons[14]. Most district plans or regional policy

[10]RMA Principles Technical Advisory Group (TAG) report, June 2012.

[11]For example, the TAG report recommended that areas of "significant indigenous terrestrial habitat" be defined in the Act as "*areas identified in an operative provision of a regional policy statement which have ecological attributes that are regionally significant*" and that "outstanding natural landscape or feature" be defined as "*features and landscapes that are identified in an operative provision of a regional policy statement as being outstanding on a national or regional scale*".

[12]Examples can be found across the country, but for example Waitaki District Council, Central Otago District Council; New Plymouth District Council to name just a few.

[13]We note that the Discussion Paper does not propose to require authorities to ensure that schedules are complete.

[14]Schedules of significant sites are necessarily incomplete because of existing ecological information and access issues preventing updating that information. Only some components of the ecological information required to schedule significant sites can be provided by remote sensing techniques. Remote techniques (e.g. aerial photographs or satellite images, or vegetation/ecosystem classifications based on interpolation of existing vegetation plot data) can certainly assist in identifying some sites that are significant in some regions and districts (for example areas and habitats that meet the representativeness criteria). However, they are not a

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statements now recognise that comprehensive scheduling of significant sites in advance is impractical, and that case-by-case assessment is needed[15]. Any measures to restrict the identification of significant sites further (e.g. the addition of the wording 'specified' into s6(c)) will build on well-recognised past failures and result in further indigenous biodiversity decline.

The NZES submits that in our experience, information relating to specific sites is not required upfront, and a logical time to undertake the detailed assessment necessary is at the time of a proposed activity. Accepted, ecologically sound assessment criteria[16] allow significance to be tested robustly, consistently, and with a high level of certainty at that time. Such a case-by-case approach to assessment is generally more effective and reliable than 'in advance' identification of specified significant sites across whole regions or districts[17]. It is also considerably more efficient and practical for councils and interested parties than broad scale surveys that cover many areas where no activity will ever be proposed.

Finally, we submit that in our experience the specification of the methods and criteria to be used for significance assessment in a plan or policy statement can result in an acceptable degree of certainty for *all* stakeholders. Explicit delineation in woefully inadequate schedules cannot provide this.

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stand alone tool and must be supported by in-field assessment to capture all significant areas that would meet other significance criteria. This is because they generally do not identify biological composition and function information at the level of detail required to determine significance.
For authorities to complete schedules they must undertake the necessary ecological surveys. But there are inherent and important problems with relying on schedules of specified sites. It is an extremely expensive undertaking that is never complete. Local authorities cannot compel landowners to provide access for survey, and because an unvisited site is unlikely to be identified as significant (unless detailed prior information happens to exist) the proposed amendment would provide an incentive to deny access. Second, even if access were available, undertaking surveys to identify and schedule all significant areas would be beyond the resources of many local authorities. Where councils undertake SNA surveys programmes today, these are typically limited to a few properties or parts of properties where landowners voluntarily offer access, which is usually where no activity will be proposed.

[15]For example, the recently released Canterbury Regional Policy Statement (2013; Chapter 9: Ecosystems and Indigenous Biodiversity) states: "*While areas of significant indigenous vegetation and significant habitats of indigenous fauna are often identified in plans, it is difficult to ensure that all significant sites are included, because of issues with access and ecosystem information. The methods therefore seek that as a minimum, territorial authorities will include indigenous vegetation clearance rules that act as a trigger threshold for significance to be determined on a case-by-case basis*".
It is noted that other plans however are attempting to comprehensively identify significant ecological sites (e.g. Auckland Unitary Plan Draft Discussion Document). However, the workability, accuracy and completeness of the Auckland Council approach has yet to be tested.

[16]For example, representativeness, rarity, distinctiveness, and ecological context which are broadly agreed to (with some regional variation) aided by considerable discussion in the ecological literature and by caselaw over the last two decades.

[17]A one-off, district-wide survey is unlikely to adequately identify all ecosystems and habitats present, because of the dynamic nature of ecosystems (e.g. ephemeral wetlands) and the cryptic and mobile nature of many fauna species (e.g. migratory birds) and threatened species. Furthermore, district- and region-wide surveys and significance assessments can rapidly become out-dated as context changes. This is evident in now-out-dated Protected Natural Area Programme reports for the eastern South Island from the 1980s and 1990s, which failed to envisage increasing representative importance of lowland sites as land use change advanced. National threatened species lists are updated every four years, and respond to recent changes in threat status due to land use activities, pests and weeds and improved ecological understanding and information. Such changes in context and understanding can lead to major adjustments to assessments of significance over time.

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- The NZES is less concerned whether the methods for identifying significant areas is contained in district or regional plans and more concerned with how significance is assessed.

  Assessment of significance should not be limited by the application of a geographical scale (i.e. of local, regional, national or international) at which to test for significance. Significance needs to be assessed against ecologically sound criteria in the first instance. As noted above, use of ecological accepted assessment criteria allows a robust and consistent test of significance regardless of whether areas of significance are identified within a district or regional plan or in a regional policy statement. Areas of habitat either meet these criteria or not, and if they do they should be considered significant[18]. The assessment site quality and condition is not part of the determination of significance but a separate and secondary assessment, useful for management decisions, identifying funding priorities, assessing potential impact of proposed activities (etc.).

- The lack of specific mention of indigenous fish e.g. section 6(1)(n) identifies 'areas of significant aquatic habitats, including trout and salmon'.

  While indigenous fish and other aquatic fauna might inherently be captured in either section 6(1)(c) or indeed section 6(1)(n) the lack of specificity increases the likelihood they will be overlooked when developing plans or processing resource consents.

  Like New Zealand's terrestrial fauna, indigenous freshwater and estuarine fish are in a state of decline (67% of species are Threatened with or At Risk of extinction[19]). Aquatic habitat is increasingly being compromised or lost due to the impacts of intensification of agriculture, industrial discharge and urban development.

  In keeping with the specific mention of trout and salmon, indigenous fish should also be itemised in section 6(1)(n). Alternatively, section 6(1)(c) could explicitly state that 'significant habitats of indigenous fauna' includes aquatic habitats.

- The lack of directive wording within section 6(1)(n). The NZES submits that the words 'the protection of' be inserted into this section.

- The watering down of the matters of national importance by inclusion of non-natural issues (land availability / urban expansion) in the proposed Section 6(1)(k).

  Urban parts of New Zealand contain significant areas of indigenous biodiversity and habitats for flora and fauna (e.g. foothills of Waitakere Ranges and the forested gullies and coast of former North Shore City). The introduction of new matters to be recognised and provided for including availability of land for urban expansion can have significant adverse effects on the environment including indigenous biodiversity and ecosystem services. Regional and district plans need to ensure that expansion does not have significant adverse effects, utilises best practice low impact design, and should not be at the expense of the environment and protecting significant natural areas (e.g. see Environment Court decisions[20,21]). The discussion document provides no direction as to

[18]See *Day v Manawatu Whanganui Regional Council* Interim decision [2012] NZEnvC 182.

[19]Allibone R, David B, Hitchmough R, Jellyman D, Ling N, Ravenscroft P, Waters J 2009. Conservation Status of New Zealand's freshwater fish. Journal of Marine and Freshwater Research 44(4):271-287.

[20] Wairoa River Canal Partnership and Te Arai Coastal Land Ltd vs. Auckland Regional Council (2010 NZEnvC 309)

[21]Auckland Regional Council, Waitakere City Council, North Shore City Council declaration to court regarding

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how competing matters will be recognised and provided for, including urban expansion and protection of the environment. The list of matters to be recognised and provided for provides no prioritisation and will lead to significant conflict between economic and environmental outcomes.

- The removal from the RMA of Section 7(aa) [ethic of stewardship], Section 7(d) [intrinsic value of ecosystems], Section 7(f) [maintenance and enhancement of the environment], and Section 7(g) [any finite characteristics of natural and physical resources.

  The NZES submits that the stated justification for these removals in the Discussion paper – that they reiterate matters implied in Section 5 – is insufficient. To the contrary, we consider that these are particularly important environmental principles and ethics that require explicit expression, rather than the 'implication' alone in Section 5. Specifically, we submit that:

  a. Section 7(aa) [ethic of stewardship], should be retained on the basis that stewardship of indigenous biodiversity and other natural resources is critical to New Zealand's economic and social security. For example, it cannot be assumed that decision makers will have regard to the greater cost effectiveness of retaining, protecting, and enhancing what remains of a natural resource compared to replacing it once the effects of its loss become evident[22].
  b. Section 7(d) [intrinsic value of ecosystems] is important to retain, to emphasise that ecosystems have value beyond anthropocentric values and to ensure decision makers have regard to ecosystems as a whole and not only constituent parts (such as particular valued species).
  c. Section 7(f) [maintenance and enhancement of the environment] is needed to complement the protection of significant indigenous vegetation and fauna habitat as a matter of national importance in Section 6. This is because it cannot be assumed that decision makers will have regard to the need to maintain ordinary and commonplace aspects of the environment in addition to protecting the outstanding (i.e. significant), in order to achieve the purposes of the Act.
  d. Section 7(g) [any finite characteristics of natural and physical resources] should be retained because the permanent loss of resources is a matter that needs to be explicitly regarded as resources become increasingly scarce. It is also needed to offset the susceptibility of decision makers to the phenomenon of shifting baselines[23].

18. The NZES **supports** the following aspects of the proposed changes:

- The retention of the wording 'shall recognise and provide for' within section 6.

- The retention of section 6(1)(a) [natural character of coastal environment, wetlands, lakes, rivers and their margins], and the retention of the directive 'preservation' within this section.

- The retention of sections 6(1)(b) and 6(1)(c), notwithstanding comments above regarding the insertion of the word 'specified'.

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urban tree protection (2011 NZENVC129)

[22]For example, the $15 million dollars of spending under the Fresh Start for Fresh Water Fund which will address water quality issues in only three waterways (Whakaroa, Manawatu River, and Wairarapa Moana).

[23]Shifting baselines describes the redefining of the perceived 'natural' state of a resource by successive generations in concordance with their own experiences of a reduced and degraded state.

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- The inclusion of section 6(1)(i) [climate change] into section 6, although we note the proposed wording offers no directive on how, or which, impacts of climate change are to be recognised and provided for. This needs to be addressed.

- The elevation from section 7 to section 6 for significant aquatic habitat, notwithstanding comments above regarding the need to explicitly include indigenous freshwater biodiversity [in the proposed section 6(1)(n)].

- The NZES strongly supports the unchanged retention of section 5 [purpose of the Act]

Section 7 Methods

19. The NZES does not support the inclusion of section 7(3) which directs that all persons performing functions and exercising powers under the RMA *must*

    Have regard to any voluntary form of environmental compensation, off-setting or similar measure which is not encompassed by section 5(2)(c).

    - The NZES submits that it is entirely inappropriate to consider these matters in section 7 and to elevate such methods (voluntary or not) to the equivalent of Part II of the RMA.

      Environmental compensation (of which off-setting is a subset) is the last step to be taken when considering actual and potential impacts of a proposal for resource consent and they may be used then only to address residual adverse effects of the proposal[24]. It is outside of best practice and sound environmental management to visit these options at the front end of an application. They must certainly should not sit alongside section 5(2)(c); rather, their place is to be embedded into a mitigation hierarchy in which they sit at the bottom.

      Part 5 of the RMA provides for *avoiding, remedying and mitigating any adverse effects on the environment*. The NZES submits that, in line with international best practice, avoidance of effects should always be the first priority, and that environmental compensation of effects (including off-setting) should only be considered once avoidance, remediation and mitigation have been addressed in that hierarchical order.

      The society's view that decision makers should not have express regard to offers of environmental compensation when considering an application is supported by growing documentation of poor outcomes of environmental compensation (including 'off-setting') internationally and in New Zealand. This literature shows that most compensation falls short of that promised at the time of application, or is never implemented at all[25].

      The inclusion of section 7(3) is also unnecessary because the AEE process already allows

[24]Caselaw directing that the mitigation hierarchy be followed confirms this. For example, Transmission Gully.
[25]For example, see:
Brown MA, Clarkson BD, Barton BJ, Joshi C. 2013. Ecological compensation: an evaluation of regulatory compliance in New Zealand. Impact Assessment and Project Appraisal. DOI: 10.1080/14615517.2012.762168.
Walker S et al. 2009. Why bartering biodiversity fails. Conservation Letters 2: 149–157.
Norton DA 2008. Biodiversity offsets: two New Zealand. Case studies and an assessment framework. Environmental Management 43: 698–706.

for the voluntary offer of such methods. Plans can also provide for offsetting.

Proposal 2: Fewer resource management plans

20. While NZES agrees that the principle of fewer resource management plans is a potentially more efficient process, it is important that the RMA retains the ability of plans to deal with all environmental issues at both a regional and local level. The independence and separation of regional and district plans and the role of regional and district councils currently allows regional councils to set minimum standards for district councils on environmental matters. The NZES submits that if this hierarchy and independence is removed there will be the need for an independent body (independent of government influence) to undertake this role.

    - The NZES supports greater efficiency in the preparation of plans, but is concerned that the "preparation of single resource management plans via a joint process and with narrowed appeals to the Environment Court" will take away important local input and debate on environmental issues.

    - The NZES is opposed to a national template for plans that would completely remove the ability for regional or district variance, because there is potential for key environmental issues for individual regions and districts to be overlooked, or responses to them restricted. Environmental issues are often both complex and local, and require attention at regional and district levels, which cannot be provided for in a national template. However, the NZES supports guidance in the form of national policy statements to bring 'low performing' councils up to a minimum standard on environmental issues.

21. The NZES is extremely concerned about the proposal to narrow appeals to the Environment Court, and submits that the breadth of appeals to the Court should be maintained entirely.

    The NZES considers that resource users are already strongly favoured in council decision-making processes. This is because councils tend to gain financially from development through increased rates, but will usually not gain financially from resource protection; therefore development is naturally favoured. Further, plans are not developed, nor resource consents granted, in total absence of political influence from council governance. Many councils have financial investments in areas that stand to gain directly. For these reasons, it is critical that there is an independent and impartial institution to provide more inclusive and democratic decision-making. The Environment Court provides this institution for all New Zealanders and not just resource developers and users.

22. The NZES is extremely concerned about the proposal for appeals to be allowed on points of law only.

    This society considers that this removes the ability for concerned and affected individuals and communities to challenge decisions which adversely affect the environment, and that it would be an unwarranted dilution of the democratic process.

    The NZES notes that the discussion document is unclear regarding appeals on plans and only discusses appeals on resource consents. The ability to appeal on district and regional plans planning provisions is also an extremely important process through which non-users can influence environmental outcomes for the better.

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Proposal 3: More efficient and effective consenting

23. The NZES submits that restricting the scope of consent conditions that can be imposed will not result in better natural resource management, nor necessarily optimise outcomes for the applicant.

    The principle of standard conditions may work where science-based policy frameworks exist (such as water allocation frameworks or earthworks) however it is likely to result in inappropriate consent conditions being imposed, and specific and critical issues at a local level (e.g. effects on the hydrology of dune wetlands) not being addressed. It is important that unique and complex conditions are developed to address the issue at hand (e.g. depth and variety of conditions imposed on recent major infrastructure projects – Waterview Connection and Transmission Gully BOI decisions).

    The use of standard conditions for activities that impact on indigenous biodiversity and ecological processes could restrict the application of avoidance, remedial or restoration techniques to those currently familiar and accepted by resource users. It does not allow for innovation or increased understanding of these techniques – a growing field of knowledge. Restricting the scope of consent conditions may have the perverse outcome of locking applicants into effort and expenditure that is unwarranted. It will likely also not adequately provide for the maintenance and protection of indigenous biodiversity and critical ecological processes.

    The specific adverse effects of a proposal are often very site specific – dependent on the scale, intensity, and duration of the proposal and the nature and values of the area impacted on. It is impossible to anticipate all the likely future situations and thus compile standard conditions that would address all, as yet undetermined, adverse effects.

    The scope to impose consent conditions needs to be broad enough to be effects-based to allow for a raft of measures by which adverse effects (which can not be defined, quantified or delineated until the application has been proposed) could be addressed. It is entirely reasonable for a resource user to manage their adverse impact on a resource by way of consent condition.

24. The NZES disagrees with proposals to limit involvement in the consenting process. The ability to deal with inappropriate submissions is already provided for within the decision making process[26] and we fail to see substantive evidence to support the requirement for this proposal. The ability for public submission on the actual or potential effects of a proposal is imperative. The general community, other resource resources, and environmental advocates have an important role in the resource consent process and can provide a critical independent voice that can assist decision makers in ensuring the application as a whole meets the principles and purpose of the RMA.

25. The proposed ability for central government to direct plan changes will remove the power of local and regional communities to develop plans and to influence sustainable resource management in their area.

[26] E.g. section 27(9)(4) and section 41(c)(7) RMA.

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It is extremely important that objective analysis is undertaken to develop the best resource management outcomes for districts and regions, rather than implement a process that is influenced from a political level and driven outside of sustainable management principles.

While there is some potential for a central government direction to ensure local authorities develop necessary plan provisions for critical resource management issues, the NZES submits that this is best achieved through the implementation of National Policy Statements and National Environmental Standards.

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