



**SUBMISSION BY THE ROYAL FOREST & BIRD PROTECTION SOCIETY OF NEW ZEALAND INC**

**ON PRODUCTIVITY COMMISSION REPORT**

**To: The New Zealand Productivity Commission**

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**Contact person: SALLY GEPP SOLICITOR**  
**PHONE: 03 9227003 / 021 558 241**  
**POST: PO BOX 266, NELSON 7040**

**INTRODUCTION**

1. The Forest & Bird Protection Society of New Zealand Inc. (“Forest & Bird”) is New Zealand’s largest and longest-serving independent conservation organisation, with over 70,000 members and supporters.
2. Forest & Bird works to preserve New Zealand’s natural heritage and native species. Originally formed to protect our native forests and birds, our role has since grown to include protection of all native species and wild places – on land and in our oceans, lakes and rivers.
3. As part of that mission, Forest & Bird is a regular participant in processes under the Resource Management Act 1991 (“RMA”). We routinely submit on regional and district plan provisions relating to biodiversity and other natural heritage protection, and occasionally takes matters on appeal to the Environment Court. Forest & Bird is particularly interested to ensure that the provisions of national planning documents, such as the New Zealand Coastal Policy Statement, are given effect to in regional and district plans.
4. Forest & Bird has also participated in processes under the other legislation that is the subject of reforms under the Conservation Act 1987, Reserves Act 1977 and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.
5. As a result, Forest & Bird has a close working knowledge of the legislation affected by the Productivity Commission Report (“Report”). We welcome the opportunity to comment on the Report and hope that our submission points are of assistance to the Productivity Commission in its consideration of the Report and better urban planning in New Zealand.

**SUMMARY OF SUBMISSION**

6. Forest & Bird recognises that New Zealand’s urban planning framework is under pressure due to major urban areas experiencing rapid population growth. We agree with the Commission that New Zealand needs to be more strategic in its urban planning. Well functioning cities are fundamental for social, cultural, economic and environmental well-being.

7. Forest & Bird considers that the Report provides a helpful analysis of the issues facing urban planning in New Zealand however we are concerned about the lack of clear environmental bottle lines. We consider that the proposed single “Government Policy Statement” identifying biophysical limits is too simplistic.
8. Forest & Bird also has concerns about a roll-out of the Auckland Unitary Plan process that involves a single permanent Independent Hearings Panel with limited rights of public input, access to the Environment Court and appeal opportunities in a very broad range of circumstances, which is entirely unwarranted.
9. The process proposed in the Report restricts public participation and is entirely contrary to the public participatory and local decision-making focus of the RMA. Public participation and representation are fundamental in urban planning in order to protect all sectors in the community from developments that may have an unjust impact on them.
10. Appeals provide a fundamental check and balance in the system, which does not provide for any other forms of oversight of other local authority decisions. Under the RMA very few matters are appealed (less than 1 % of resource consents), and many matters that are appealed are resolved at mediation. Reducing appeal rights is therefore unjustified.
11. We are opposed to allowing central government to have intervening powers that override local plans.

## **ANALYSIS**

### Lack of environmental bottom lines

12. The Report’s proposed ‘future planning framework’ involves a presumption that favours development in urban areas, subject to clear limits. The limits are said to be biophysical limits specified through a single policy document known as the Government Policy Statement (“GPS”) on environment sustainability. The GPS would replace the National Environmental Standards and National Policy Statements. The GPS would establish environmental goals that were quantifiable and measureable and against which progress would be monitored and reported on. This we oppose.
13. We consider that the GPS approach is too simplistic and will not be able to respond to the complexities of the natural environment. We consider that environmental bottom lines need to be included in the future planning framework. Environmental bottom lines are set based on credible science and could then be set as rules that are used as trigger points for further assessment, thereby helping to ensure that when development takes place it does so within the capacity of the natural environment. Setting environmental bottom lines would mean that development would occur within environmental limits.

### Limited rights of public input, access to the Environment Court and appeal

14. Forest & Bird has concerns about the limited role the Environment Court will have under the planning system proposed by the Commission. We are opposed to introducing a permanent

Independent Hearings Panel (“IHP”) thereby limiting access to the Environment Court, as is the same with the Auckland Unitary Plan model.

15. The Report sets out that the future planning system would have a focus on those directly affected by change, not third parties. Its proposed way of providing for this involves limiting the ability for the general public to appeal council decisions on a Plan. The Report proposes that where the council has accepted the recommendations of the IHP on a change or review of a plan, no individual or group could then appeal. This means that there is no ability to challenge the IHP’s recommendations (or the local authority’s decision where it accepts those recommendations). This is opposed.
16. The Report further proposes that only those individuals or groups who could demonstrate that the changes in the policy or rules would directly affect them could bring appeals. It similarly limits notification requirements to be squarely focused on those directly affected by a resource consent application or land use Plan change. This is also opposed.
17. Forest & Bird has five reasons for opposing the above limitations:
  - 1) First, these extremely narrow appeal provisions mark a substantial departure from the RMA’s current public participatory focus, and the broad role given to the Environment Court. Forest & Bird is concerned that these provisions remove one of the RMA’s most important safeguards. Rights of participation in decision-making, including by way of merits appeals, is one of the key quality controls on plan provisions. This is particularly important in the absence of other independent checks such as oversight by a government agency.
  - 2) Second, these limits are also unnecessary given the very few matters that are actually appealed to the Environment Court (and even fewer which proceed to hearing). While most Plans are subject to merits appeals, in our experience the appeals relate to just a few key issues, and the majority of the plan is unchallenged and able to be made operative. Most matters are settled at mediation with very few issues proceeding to hearing. Those matters that do proceed to hearing often relate to whether a plan gives effect to a national instrument. Judicial scrutiny of that issue is imperative.
  - 3) Third, where a decision does not achieve the local authority’s functions, or is inconsistent with Part 2 of the RMA, or fails to give effect to a proposed GPS provision, appeals should not be ousted merely because the same inadequacy has been carried through from the IHP recommendations to the local authority’s decision.
  - 4) Fourth, a better outcome can be achieved not by expressly limiting appeals but by requiring the Court to have particular regard to the recommendations of the IHP. This will in practice limit appeals which seek to challenge the recommendations of the IHP without a strong basis for doing so, because of the higher hurdle the appellant would face in seeking to overturn or review the IHP recommendation.
  - 5) Fifth, there are good reasons for providing for public participation and appeals of planning decisions. It is considered to improve the quality of decision-making, and provides for community buy-in to the process. The exclusion or restriction of the right of the public

generally to participate can lead to dominance by self-interest such as those whose property value or profit are affected by planning decisions.

#### Powers of central government

18. Under the proposed 'future planning framework' central government would become a more active partner in the planning process. While we can understand the need for planning decisions to meet national goals we consider that allowing central government to have intervening powers that include the ability to override local plans, is not the correct approach and we oppose it fully.
19. Allowing central government to have powers that override local plans provides for the politicisation of planning instruments. We are opposed to central government having powers that dictate law to regions across a wide range of issues. We consider that such an approach opens up the potential for arbitrary and anti-democratic results. These proposed powers could be applied in ways that seriously undermine good governance, local decision-making, and a democratic process that involves community consultation. These powers could also prevent local authorities from managing natural and physical resources in a sustainable manner and prevent them from representing the special nature of their communities.
20. We support local authorities in addressing local concerns in decision-making and support their role in managing natural and physical resources in a sustainable manner and to safeguard the interest of their constituents and local communities.