Appendix A

EDS supports alternative relief that achieves the same outcome as that it has proposed.
Where no relief is specified EDS seeks that the changes proposed in the Bill be retained.

Clause-by-clause submission on the Resource Legislation Amendment Bill					
Table ref #	**RMA section**	**Bill clause**	**Relief sought**	**Position**	**Reasons and examples**
Part 2 Purposes and Principals					
1	s6 Matters of national importance	cl 5	-	Support.	New subsection (h) aligns with scientific evidence that climate change will result in a significant increase in natural hazard events. It is appropriate that management of these events is identified as a nationally important matter that decision-makers must "recognise and provide for". However, it is not clear how this sits with section 7(i) RMA which requires decision-makers to have "particular regard to" the effects of climate change or section 70A RMA which prevents a regional council from considering the effects of greenhouse gas discharges on climate change in rules in plans. Climate change is the over-riding environmental issue that will increasingly affect people, communities and ecosystems in New Zealand. The effects of activities on climate change are not currently adequately taken into account under the RMA. If New Zealand is to achieve the very significant reduction in carbon emissions that is required to transition to a low carbon future and successfully manage the risks of natural hazards that climate change will present, it cannot take a compartmentalised approach to managing and responding to risks and stimulants. It is essential that carbon emission considerations are built into resource management planning and decision-making in order to manage natural hazard risk and to lower emissions. (See also discussion under ***Gaps*** below).
Part 3 Duties & restrictions under the RMA					
2	s11 Restrictions on subdivision of land	cl 115	Amend cl 115, s11 as follows: *(1A)…* *(a)…* *…(ii) the subdivisions ~~does not contravene~~ is expressly allowed by a national environmental*	Oppose.	The amendment reverses the presumption that subdivision is only permitted if expressly authorised so that subdivision is allowed unless expressly controlled or prohibited. It is one of a series of amendments which provide for fast-tracking of development. Subdivision can have significant direct (i.e fragmentation and urban sprawl) and indirect adverse effects (i.e from development which is generally provided for where subdivision is authorised). The purpose of the presumption against subdivision is to ensure subdivision is exercised as an integrated whole and not on a piecemeal, fragmented basis in order to appropriately address these effects (see: ***Wilbow Corp. Limited v North Shore City Council*** [200] 1 NZLR 114; (2001) 7 ELRNZ 174; [2002] NZRMA 32 (HC). To ensure

			standard, a rule in a district plan, or a rule in a proposed district plan for the same district (if there is one); and…		integrated management of resources, subdivision planning has been moving towards a strategic approach utilising structure/precinct plans and long term planning. An ability to subdivide as of right would undermine this strategic approach. This is importing hard-line political ideology into the RMA which should remain free of such distortions. The amendment is driven by a concern that demand for housing is exceeding supply and that the restriction on subdivision is unnecessary because zoning provides sufficiently clear direction on whether subdivision is or is not acceptable (see *Regulatory Impact Statement* at [118],[275]). Zoning that facilitates subdivision does not need to be paired with a reversal of the presumption. Robust and comprehensive zoning with an appropriate policy framework would achieve the same outcome. Residential zones of different intensities can be determined as part of the planning process with opportunity for public input. A policy framework applying only permitted, controlled or restricted discretionary activity statuses with focused standards, or limited notification requirements, can be applied.
3	New s18A Procedural principles	cl 8	-	Support.	A clear statement that plans and processes be clear, concise and focused is positive.
	Part 4 Functions, powers and duties of central and local government				
4	s30 Functions of regional councils / s31 Functions of territorial authorities	cl 11/cl 12	Amend cl 11, s30 as follows: *(5)…* *…(d) other constraints on the development of the land, including natural and physical constraints and limits.*	Support in part.	Proposed new subsections (1)(ba) and (5) are positive. The amendments promote long term plan-making and focus development toward suitable areas. Part 2 matters including protection and preservation of significant natural areas, natural character and outstanding landscapes, will still be relevant when providing for long-term development capacity. The proposed requirement to consider natural and physical land constraints in determining regional/district development capacity is a further safeguard for highly valued natural areas. However, it should be explicit that in some instances a constraint will be so rigorous so as to impose a non-derogable limit (see ***Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*** [2014] NZSC 38). At times these matters will be over-riding considerations, such that land will not be available for certain development aspirations. (See also discussion under ***Gaps*** below).
5	s35 Duty to gather information, monitor, and keep	cl 18	-	Support.	The proposed amendment inserts a duty to monitor the efficiency and effectiveness of processes used by a local authority in performing its functions. This provides an important focus on implementation. The effectiveness of New Zealand's resource

	records				regulation has suffered from weak implementation: *"Broad use of discretion, reliance on inappropriate or misleading mechanisms, and the individual actions of agency staff can result in outcomes that diverge significantly from the aspirations articulated in policy documents.* (See: Brown M.A, Stephens R.T.T, ***Vanishing Nature: Facing New Zealand's biodiversity crisis*** 2015 at pg 24). Many resource management processes are not working. Process monitoring and the focus on implementation it entails, will provide a mechanism to identify process failures and bridge the implementation gap.
6	s36 Administrative charges	cl 20	Amend cl 20 to specify criteria for determining when or which persons carrying out permitted activities will be subject to the costs of permitted activity monitoring. One method to achieve this would be to require management plans to be lodged with the relevant local authority as part of permitted activity standards for targeted permitted activities, which would then alert the local authority that a person is carrying out	Support in part.	See discussion below re cl 25-29. The proposed change would, to some extent, address the frequent and significant concern with the use of permitted activity standards - that they are unenforced because there are no resources available to do so. Three concerns arise: a. The power is only available when provided for in a NES which unnecessarily limits its application. b. It is difficult to see how the power would apply in practice. A local authority would need to be doing its own monitoring in order to know the relevant activity is being undertaken and monitoring is required. Given the provision focuses on obtaining funding for monitoring it is possible that the authority will not be monitoring the relevant area. c. It is possible that this power could be used as back door means to justify use of permitted activity status when it is not appropriate.

			a permitted activity. Amend cl 20 to extend the power to charge for monitoring permitted activities to any permitted activity.		
7	s41C Directions and requests before or at hearing / New s41D Striking out of submissions	cl 119/ cl 120	Delete proposed s41D.	Oppose in part.	Proposed section 41D(2) inserts a new mandatory strike out test for submissions on resource consents. EDS's concerns are: a. The strike out tests in subsection (2) are unclear and give the decision-making authority wide discretion. For example, what is the ambit of "sufficient factual basis"? What "evidence" is required? How would the authority determine that evidence was not prepared by an "independent" person? These tests lend themselves to bias and politicisation of hearings processes. b. The effect of subsection (2)(b)(iv) is that a submission must be struck out if it is on adverse effects other than an effect that prompted notification. (This aligns with amended section 95A requiring local authorities to identify the particular adverse effects triggering notification). This restriction would limit the matters that can be raised in submissions potentially resulting in adverse environmental effects. It relies on local authorities and applicants identifying all adverse effects of an application. In practice this does not necessarily occur. Frequently adverse effects that have not been identified or addressed are the reason for an opposing submission. Submitters will be excluded from raising valid concerns about the effects of an activity that the local authority may not have been aware of. This would include submitters with a statutory management role, e.g. the Department of Conservation or the regional council on a territorial authority consent. This amendment will result in poorer decision-making with no benefit to the process. c. Subsection (2)(c) is unacceptable. Part 2 sets out the purpose and principles of the RMA. It sets non-derogable bottom lines. Consideration of resource consent applications

					is subject to it. Actions and processes which would compromise to any extent a decision-maker's ability to fulfill its obligations under Part 2 should not be provided for. d. The right of objection is retained. EDS's concerns regarding the proposed amendments to appeals on objections are discussed below.
Part 5 Standards, policy statements, and plans					
New Subpart 1 – National Instruments					
National Environmental Standards					
8	s43-s44A	cl 25-cl 28	Retain cl 26, s43A. Delete cl 27, s43B.	cl 26 – Support. cl 27 – Oppose.	EDS supports the amendment to enable consent authorities to charge for monitoring a permitted activity specified in a NES (see above at 6). EDS supports the amendment in cl 26 empowering NESs to specify how local authorities are to achieve a NES standard. It will help to achieve consistency and certainty in implementation. This will mean that results across the country will be comparable. Any positive impact will depend on the quality and adequacy of the NES. EDS opposes the proposed amendment in cl 27 allowing rules in plans to be more lenient than a NES standard. In EDS's submission this is contrary to the underlying reason for promulgating a NES: to provide nationally consistent baseline standards or parameters to maintain a clean, healthy environment. (see MfE *National Environmental* Standards http://www.mfe.govt.nz/rma/rma-legislative-tools/national-environmental-standards). Although it may result in more stringent NES provisions, the ability to reduce that stringency in a regional or district plan would likely see local authorities come under pressure to include more lenient provisions. EDS does not agree that enabling leniency would support the policy intent of a development focused NPS (such as for Telecommunications) (see *Regulatory Impact Statement* at [48] & [52]). A NES does not stifle or promote development. It sets the bottom line, technical parameters for particular activities. Like other national instruments, NESs achieve a sustainable management purpose by enabling development where limits are not exceeded. Enabling development or activities beyond a limit is not sustainable management. Enabling leniency in plans effectively makes the NES redundant.
National Policy Statements					
9	New s45A	cl 29	Retain cl 29.	cl 29:	Cl 29's new proposed sections 45A(1) and (2) are positive. EDS agrees that clarifying the

				s45A(1)& (2) – Support.	scope of NPSs will enable them to include more specific direction to local planning instruments (see *Regulatory Impact Statement* at [50]). The ability to require consistent provisions and modeling across the country will reduce litigation and assist in building a comparable, national information data base (in situations where a specific model or formula must be applied). The positive impact of the change will turn on the quality of the NPS.
New combined NES/NPS process					
10	New s55A Combined process for NPS and NES	cl 34	-	Support.	The ability to develop a NPS and NES simultaneously is positive. It would allow nationally applicable objectives, policies (NPS) and rules (NES) relating to the same issue to be developed and released in tandem. The ambiguous relationship between NPSs and NESs has not been addressed. There is no direction in the RMA or the Bill requiring NESs to give effect to NPSs (or vice versa). This is discussed below under the heading "***Gaps***".
New Zealand Coastal Policy Statement					
11	s56-s58A	cl 35/cl 36	Retain the existing provisions which require that the NZCPS provisions apply to all parts of the coastal environment.	Oppose in part.	The amendment mirrors the ability for NESs to apply to specified areas. It could have positive and negative consequences. It provides flexibility for tailored provisions for specific highly valued or threatened areas and to respond to those areas needs. Conversely, the ability to focus on specific parts of the coastal environment could be used to erode environmental bottom lines by directing protective provisions to areas not wanted for human activities, which would not necessarily equate with areas most deserving/requiring protection. The bottom line protections provided for in the NZCPS should apply across the entire coastal environment. Sufficient ability to develop national level guidance for particular coastal areas is available through the NPS and NES processes.
New National Planning Template					
12	New s58B-s58J	cl 37	Amend s58B-s58J to: a. Specify that the NPT must accord with Part 2 RMA and give effect to the NZCPS, NPSs, NESs,	Support in part.	The new National Planning Template (**NPT**) is one of the Bill's most significant proposals. The concept of a NPT is a positive one. It would remove the lack of alignment and integration between planning documents. This will make plans more user-friendly and speed up decision-making. The NPT concept arose out of the Land and Water Forum's work and was intended to apply to process. The Bill extends it to policy. In our submission it should be restricted to process matters: structure and form of plans.

			regulations and water conservation orders. b. Specify that the content that may be included in the NPT is limited to specification of types of planning content i.e specification of section headings, definitions and categories of overlay/layer. There may be other types of "template-type content" that could also usefully be included (which should be specified). The NPT should not include objectives, policies and rules. c. Provide for a hearings process on the NPT.		There is adequate power to provide national direction on policy content through the NPS and NES processes. NPSs and NESs are the appropriate instruments for national direction on content to be specified. Notwithstanding support for the NPT in principle EDS holds a number of concerns: a. New Zealand's regions and districts are diverse in population size, natural environment, and industry. The NPT's standardised structure/format will need to be sufficiently broad to ensure it is fit for purpose across the country and to allow for flexibility to respond to local realities. b. The timeframe for implementation of the NPT raises concerns. The Bill provides for a 2 year development phase and a 1 year local authority implementation phase. Both are extremely short given the potential magnitude of each process. How onerous the implementation process would be would depend on the intricacy and specificity of the NPT's standardised format. c. The purpose of the NPT is "to assist in achieving the purpose of the Act". There is no express requirement for it to be developed in accordance with Part 2 RMA (although the Minister in preparing it is subject to Part 2 because he/she is exercising a function/power under the RMA). A purpose statement to "assist" in achieving the purpose of the RMA aligns better with a NPT that is limited to structure and form (e.g. required focus areas), which would, in effect, create a template tool to assist in achieving the Act's purpose. The population of the template must then be in accordance with the RMA. d. The relationship between NPSs, NESs and the NPT is not stated. It is not clear which would prevail in event of a conflict. There is no requirement that NPT provisions must "give effect to" these documents or vice versa. The relationship should be specified. The NPT should be required to give effect to NPSs, NESs and the NZCPS. It appears that this is the intention – *Regulatory Impact Statement* at [88]. e. The NPT can include any rules that could be included in a regional or district plan

					under section 68 or section 76 RMA. It is not clear if the constraints which apply to those rule making provisions (e.g. section 70) apply. It should be made clear that they do.
Subpart 3 – Local authority policy statements and plans					
13	RPS 61/62 RP 66 DP 74/75 Matters to be considered and contents of policy instrument provisions	cl 39 / cl 40	Delete cl 39, s61.	Oppose.	The proposed amendments would result in the RMA including two different directions regarding the relationship of local planning documents and national planning documents. This creates ambiguity and could lead to litigation to determine how the formulations would be reconciled. The purpose of the change is unclear. In ***Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*** [2014] NZSC 38 the Supreme Court considered the relationship between the requirement in section 66(1) that a regional council prepare and change its plan in accordance with Part 2 RMA and that in section 67(3) that the contents of the plan give effect to the NZCPS. The Court found that in giving effect to the NZCPS a local authority is necessarily acting in accordance with Part 2 RMA because the NZCPS supplants Part 2 in the coastal environment. The relationship between Part 2 and NPSs has been clarified. The proposed change creates unnecessary ambiguity.
Combined regional and district documents					
14	s80 Combined regional and district documents	cl 51	Insert a new requirement that in combined planning processes hearings and appeals on higher order provisions must be completed prior to hearings on lower order provisions.	Support in part.	The RMA already provides for combined regional policy statements and plans or combined regional and district plans. A difficulty arises that in order to develop a combined document as an integrated whole it is necessary for the relevant local authority(ies) to be able to prepare proposed lower order provisions that give effect to proposed, but as yet unsettled and untested, higher order provisions. Proposed section 80(6B) attempts to respond to this issue. It states that combined documents "may also" give effect to a proposed RPS and have regard to a operative RPS. This seems intended to change the status quo (which in section 67 and 75 require regional plans/district plans to give effect to the operative RPS) when developing combined plans. EDS's concern with this approach is that the provision would enable local authorities to notify inadequate RPS provisions and give effect to those provisions throughout the balance of the plan before the RPS has been tested through the submission and hearings processes and found fit for purpose.

					A half-way house may be available through providing direction on the hearings and decision-making processes for combined documents. EDS submits that in order to avoid a potentially limitless number of RPS/RP/DP provision variations being argued for and to narrow later appeals, decisions on higher order provisions should be released (and subsequent appeals complete) prior to hearings on lower order provisions.
New Subpart 4 Collaborative Planning Process					
15	New s80A and New Part 4 Schedule 1 collaborative planning process	cl 52	Amend the CCP as follows: a. Amend cl 40 to provide for local authorities to identify relevant stakeholder sectors and allow those sectors to choose their own representatives. If local authority appointment of group members is retained include an express reference in cl 40 to persons with the appropriate knowledge to represent relevant aspects of the public and environmental interest with respect to any relevant aspects of the council's functions	Support in part.	At a conceptual level the CPP is positive. The Bill proposes to extend its application beyond freshwater planning to all planning matters. Collaborative processes are appropriate for discrete and focused issues and arose out of the Land and Water Forum's recommendations. CPPs are especially useful in a catchment planning process where all stakeholders become engaged in setting hard limits for freshwater use. Their application to broader plan-making, with multiple and diverse issues and stakeholders, is not so clearly relevant. We do note that the CPP remains a choice and is not mandatory. Notwithstanding support in principle EDS holds a number of concerns (many of which relate to areas where the proposed process has departed from the process described in the *Second Report of the Land and Water Forum)*: a. There are insufficient safeguards to ensure that the collaborative group comprises of representatives of all interested and appropriate entities (e.g. the public interest in the environment). Appointment of the collaborative group is at the local authority's discretion. There is risk of cherry picking people for inclusion or exclusion from the process (New Sch 1, cl 40). EDS supports the Land and Water Forum's proposal that stakeholder sectors should be identified (eg iwi, environmental, farming, infrastructure) and those sectors should be invited to choose their own representatives. b. There is no requirement to appoint a facilitator/chairperson for the process. A facilitator is critical in ensuring the process does not become stagnated, to resolve stalemates, and to ensure all people in the group are given a chance to participate. The facilitator/chairperson should be neutral and independently appointed. If they are

			(such as freshwater quality and quantity) and any relevant Part 2 matters (such as protection of significant indigenous vegetation and habitat). b. Insert an express requirement that an independent and suitably qualified chairperson be appointed. c. Amend cl 41 (terms of reference for collaborative group) to delete 41(2)(g) under which the collaborative group is directed to establish and use a process for seeking the views of the community. Specify In cl 42 minimum consultation requirements. Provide for the ability to add to these requirements.		elected from the group or selected by the local authority there is a risk of impartiality and bias. c. The requirements of the terms of reference do not ensure that the collaborative group's process or its recommendations will be in accordance with the RMA and give effect to national planning instruments. The terms of reference only require that the collaborative group "consider" these requirements. There is no specific direction that the collaborative group's process or recommendations must comply with them. This is unacceptable. It should be specified in the RMA (rather than left to the terms of reference) that the group must make recommendations on a proposed planning instrument which comply with those matters. This is necessary to ensure the environmental bottom lines in Part 2 and national planning instruments are respected. (New Sch1, cl 41). d. The community consultation process should not be left to the terms of reference. The RMA should specify minimum consultation process requirements to ensure an equal, and adequate process is adopted so that consultation does not become a tick box exercise. e. Provision for and the role of scientific and technical information in the collaborative process should be specified in the RMA. This has 3 elements: i. The RMA should specify that appropriate scientific and technical information should be obtained prior to proceeding. Where possible the scientific parameters of the CPP should be set in order to prevent perverse and absurd outcomes. For example, the attributes and attribute levels experts consider equate to ecosystem health should be provided to the group at the outset. It is possible that for some attributes there will be a spectrum of levels if there is differing expert opinion. The group should be restricted to setting an attribute level within that spectrum. It should not be open to the group to compromise down to an attribute level that experts agree does not in fact achieve ecosystem health.

			d. Amend cl 41 to provide that the terms of reference must direct a collaborative group to make recommendations that are consistent with s62 (for regional policy statements), s67 (for regional plans) or s75 (for district plans). Make consequential amendments to cl 41(2)(c) under which the collaborative group is directed to consider how to comply with the obligations identified by the local authority that arise under the Act. e. After cl 42 insert a requirement that the group determine what evidence will be relevant to its consideration of the		ii. Technical and scientific information should be provided by the relevant local authority. Equal opportunity should then be provided to all parties to provide scientific and technical information. This is necessary to prevent a skewed and biased picture being painted of the state of the environment and the environmental effects of certain activities. This also provides an important check on 'capture' of experts. Financial assistance may be required to ensure that additional information provided is not one-sided. iii. Appropriate time and support needs to be allocated to ensure all members of the group have adequate time to absorb the information and ask questions/seek clarification. This is necessary to ensure all group members are able to participate equally in the process. f. To ensure transparency in decision-making records should be available of the matters/information the group has considered. The collaborative group's report should also record where and how this information has been relied on in its recommendations. g. Provision should be made for entities with a statutory role in relation to resource management and protection (e.g. Department/Minister of Conservation, Fish & Game) to have a formal role in relation to the collaborative process. This could be by way of a review of the collaborative group's recommendations and a formal report to the local authority, which the local authority must have particular regard to when preparing the proposed plan. h. There is no direction regarding provisions on matters on which the collaborative group did not reach consensus. These provisions should be subject to the same requirements as those relating to the consensus position. It should be explicit that the RMA, national planning instruments and water conservations apply (New Sch1, cl 45). i. The Minister may appoint 1 member who can be the chair of the review panel. In the event of equality of votes on a matter the chair has a casting. This risks politicisation of the planning process (New Sch 1, cl 64 & 70).

			specified matters and to obtain from the local authority (and independent experts) that evidence before making recommendations. f. Amend cl 43 to require the collaborative group to first make findings on the scientific information, and to then make recommendations that are consistent with the scientific information (where relevant). g. Amend cl 42 and 43 to provide for entities with a statutory function relating to resource management to review and comment on the collaborative group's recommendations and for the local authority to have		j. The local authority determines whether to accept or reject the review panel's recommendations. If it rejects a recommendation it must come up with alternatives and undertake a section 32 analysis of those. The local authority must "ascertain" whether any inconsistency is necessary to comply with Parts 4 & 5 RMA or any other enactment. There is no requirement that the alternative provisions themselves actually comply with Parts 2, 4 & 5 RMA or any other enactment, or give effect to national policy instruments or water conservation orders (New Sch 1, cl 54). k. The appeal provisions are extremely narrow. They are a marked departure from the RMA's current public participatory focus and its current appeal rights. We accept limited appeal rights are necessary to incentivise collaboration. However, the process includes insufficient checks and balances to ensure that the collaborative group's position is respected and that plan provisions comply with the RMA for the appeal restrictions to be justified. In attempting to prevent undue weight being given to the collaborative group's consensus position (see: *Regulatory Impact Statement* at [189]) the provisions instead allocate the equivalent level of protection to the review panel's final recommendations (with recommendations carried through into the final decision unable to be appealed). This conflicts with the purpose of electing to use the collaborative planning process. The restrictions on merits appeals also provide local authority's with the ability to use reference to/reliance on Parts 4 & 5 RMA as a shield against any potential rehearing (New Sch 1, cl 59). l. Appeals on questions of law are to the Environment Court. This is supported. As a specialist court the Environment Court is better placed to understand the context in which the error has arisen. (New Sch1, cl 61).

			particular regard to those entities' comments when preparing the proposed plan. h. Amend cl 42 and 43 to require that the collaborative group report identify any legal advice, scientific information and community views (not just how these were obtained) considered by the group, and the findings reached on those matters. i. Amend cl 45 to require that the notified policy statement/plan gives effect to Parts 2, 4 and 5 of the RMA, national instruments, regulations, WCOs and any other relevant enactments, as is the case for any other planning instrument.		

			j. Require the review panel to make any changes to be consistent with Parts 2, 4 and 5 RMA. k. Require the local authority in considering the review panel's recommendations to reject any that are inconsistent with Parts 2, 4 and 5 RMA. l. Specify that where the local authority rejects provisions and develops alternatives these must be referred back to the review panel for comment. m. Amend cl 59 to provide for appeal by way of rehearing to be available in respect of any final provision that is inconsistent with the recommendations of		

			the collaborative group. n. Delete cl 59(3). o. Amend Clause 64 to provide that the Minister may nominate a person to the review panel who shall not be the chair.		
New Subpart 5 Streamlined planning process					
16	New s80B & 80C & New Part 5 Schedule 1 streamlined planning process	cl 52	Do not progress the proposed stream-lined planning process. In the alternative: a. Narrow criteria for application of the process. b. Require hearings on submissions as a mandatory part of the process. c. Specify that the Minister must ensure that the instrument he/she approves complies with Parts	Oppose.	The intention behind the SPP is to fast-track plan-making and to facilitate flexible and efficient processes (see *Regulatory Impact Statement* at [160]-[179]. EDS agrees that there is merit in an alternative process which provides flexibility to respond to urgent or unique situations, and to make the plan-making process more efficient. However, the proposed SPP goes too far. The process provides for an excess of Ministerial power and inappropriately compromises public participation. Ministerial discretion is widened and appeal rights removed specifically to reduce the risk of delay. The significant imbalance between Ministerial power and public participation unjustifiably undermines due process and compromises the Rule of Law. Specific concerns are: a. The criteria determining whether the process is available to be used are so broad that any scenario could qualify. b. Control of process design effectively lies with the responsible Minister. There is no specific requirement that the process comply with the RMA. The only mandatory requirement for public input in the process is opportunity for submissions. There is no requirement for further submissions or a hearing in order to comment on other submission points or produce evidence. The planning instrument may be subject to limited notification only, further limiting public input. c. Ministerial review is the only "quality" check on the local authorities proposed plan

			2, 4 and 5 RMA and gives effect to the NZCPS, NPSs and NESs. d. Provide, at the minimum, for appeals on questions of law.		provisions (see *Regulatory Impact* Statement at [165]). There are no checks and balances on the responsible Minister's power to change and rewrite the provisions of the proposed planning instrument. The Minister is only required to have regard to whether the proposed planning instrument provided to him/her by the local authority meets the RMA's requirements when deciding whether to approve, change or decline it (clause 84(2)). There is no requirement that the final planning instrument complies with the RMA or gives effect to national planning instruments and water conservation orders. d. Clause 87(4) requires the local authority to adopt the Minister's specified changes. The local authority is only able to withdraw its proposed planning instrument up until the responsible Minister's decision is made. This means that once the decision and its changes are released the proposed planning instrument must be adopted. There are no rights of appeal. Ability to appeal on points of law was rejected on the basis that the "time taken to resolve appeals could substantially delay the plan becoming operative and negate many of the benefits of streamlining" (see: *Regulatory Impact Statement* at [172]-[173]). This reflects an inappropriate balancing between time efficiency and democratic participation. It unjustifiably restricts access to the courts and in doing so compromises natural justice.
Part 5 Miscellaneous provisions					
17	s 85 Compensation not payable in respect of controls on land	cl 54	Delete cl 54, s85. Retain s85 as presently worded.	Oppose.	The TAG proposal to expressly require that decisions achieve an "appropriate balance between public and private interest in the use of land" has not been carried through. This is supported. Section 85 currently provides that compensation is not payable in respect of controls on land. If however, a planning provision is found by the Environment Court to render land incapable of reasonable use <u>and</u> place an unfair and unreasonable burden on the landowner, the Court can direct that the provision be deleted, amended or replaced. The Bill amends section 85 to empower the Environment Court to direct local authorities to acquire an estate or interest in land (or part of land) affected by a planning provision under the Public Works Act 1981. The new section 85 power is still subject to the same two part reasonableness test and the stringent interpretative case law will apply.

					The proposed change represents a shift in the underlying premise that compensation is not available. This is opposed. There is a risk that local authorities will be hesitant to classify land with protective overlays, or to put in place robust policy frameworks, when faced with a risk of forced purchase. The Court's current powers are adequate to ensure that unduly restrictive planning provisions are addressed. It is submitted that the negative consequences of the amendment outweigh the positives and that the amendment should be deleted.
Part 6 Resource consents					
18	New s87AAB-87AAD	cl 121	Amend cl 12, s87BA to require submission of an assessment of environmental effects and for the consent authority to retain the power to process the consent in the regular manner if that assessment raises concerns. Delete cl 12, s87BB. See comments on amendments to s360F.	Support in part/ Oppose in part.	**Boundary activities – permitted activity process** EDS supports the proposed permitted activity process for boundary activities as a tin principle. However, it has concerns with the process requirements. An applicant is only required to provide a description of the boundary activity, a site plan, their details and those of the affected property owners. It does not have to include an assessment of environmental effects. If consent of the affected property owner(s) is secured the application must be treated as a permitted activity. This assumes that all adverse environmental effects will relate to the amenity of the neighboring property only and so an assessment of environmental effects is not necessary as they have been consented to. This is a narrow interpretation of effects and inconsistent with the RMA definition of effects. It does not sit comfortably with environmental bottom lines. It ignores the risks posed by cumulative effects. An environmental assessment should be required to be submitted by the applicant. The consent authority should retain the power to process the consent in the regular manner if that assessment raises concerns. **Marginal or temporary non-compliance – permitted activity process** This amendment is opposed. This exemption is the antithesis of an environmental bottom line approach which requires identification of a clearly defined trigger point marking when it is no longer certain an activity will not compromise bottom lines and so consent is required. **Fast-track process** In combination with the regulation provisions in section 360F, the Bill empowers the Minister to determine that any activity should be fast-tracked. This is another example

					of politicisation of planning processes in the Bill. The Minister may also make recommendations requiring less information to be required for fast-tracked applications. The *Regulatory Impact Statement* has identified the process's most significant risk is compromised decision-making through hasty decision-making ([246]). EDS agrees. Good decision-making is being overridden by a central Government desire for fast decision-making. EDS agrees there is room for more expedient decision-making in specific scenarios for specific activities, for example straight forward applications in an urban context. As proposed the ambit of application of the process is potentially limitless and determined solely by the Minister's discretion. More stringent controls on the Minister's power to prescribe fast-track activities is required.
19	New s95-95B Notification, limited notification and non-notification of consents	cl 125	a. Amend or delete proposed s95A to provide for the usual statutory discretion over whether to notify in all circumstances. b. Amend s95D to delete the provision that allows consent authorities to disregard an adverse effect of an activity if "*the adverse effect, considered in the context of the relevant plan or proposed plan, is already taken into account by the objectives and policies of that plan".*	Oppose in part.	Clause 125 replaces sections 95 to 95B, which relate to notification of consent applications. a. For controlled, restricted discretionary or discretionary boundary activities, subdivisions or residential activities (construction, alternation, use of dwelling house) no notification is required unless 'special circumstances' apply. Blanket non-notification of this sort will significantly reduce public participation in consenting decisions. Although controlled activities must be granted, conditions are often of real relevance to the community and decisive in the activities' effects being acceptable. Subdivision in particular often has significant environmental effects and community impact (e.g. fragmentation of productive land and highly valued natural areas, significant vegetation removal). A blanket restriction on public participation of this nature is inacceptable. In specific contexts some restrictions may be acceptable. The Bill's suite of fast-track amendments were in direct response to pressures in the urban context. The RMA already provides for local authorities to specify in plans that certain activities will proceed non-notified or subject to limited notification. It is not necessary for the RMA to limit notification as proposed. If a nationally consistapproach to notification in an urban context is sought a combined urban NPS/NES is the most appropriate vehicle for this. b. Other activities may be notified if required by a NES or rule (uncommon) or if the consent authority decides the activity will have more than minor adverse environmental effects. If public notification is triggered because of the latter then the specific effects

			c. Amend s95DA(4) so that it does not limit the consent authority's discretion to limited notify consent applications to entities with a relevant statutory role (Fish & Game, DOC, regional councils).		triggering notification must be identified in the public notice. In isolation this requirement could be helpful in providing a simple snapshot of the issues. However, the amendments to section 41D provide that submissions must be struck out if they are on matters unrelated to the effects for which an activity is notified. This means that a submission could not alert a consent authority to effects of an activity which the authority has not identified and notified. For example, if an application for a non-complying subdivision in an ONL was notified because of its effects on the vegetation, effects on water quality could not be raised. c. Amendments are proposed to the criteria specifying how the consent authority is to determine whether adverse effects are likely to be more than minor. The change enables an authority to disregard adverse effects of an activity if "the adverse effects, considered in the context of the relevant plan or proposed plan, are already taken into account by the objectives and policies of the plan". It is not appropriate that a council planner determine at the notification stage whether adverse effects are taken into account by the objectives and policies. There are competing views on the impact and directiveness of objectives and policies. The views of different parties should be considered by the authority. These provisions often pull in different directions and it is not possible to decide whether an adverse effect is "taken into account" in those circumstances. For example, a subdivision may be provided for and significant vegetation protected simultaneously. d. The amendments to section 360B empower the Minister to identify activities where notification is not required. This is another example of politicisation of planning processes. It provides the Minister with the ability to fast-track activities he or she considers necessary despite the potential impacts on the environment or public. Again, If a nationally consistency approach to notification in an urban context is sought an urban combined NPS/NES is the most appropriate vehicle for this. e. The limited notification provisions are further reduced. This risks precluding entities that have a statutory role or interest in any natural and physical resources affected by the activity (e.g. Department of Conservation, local authorities) from being eligible for limited notification. This will compromise those entities' ability to carry out their

					statutory functions.
20	s120 Right to appeal	cl 135	Delete proposed s120(1A).	Oppose.	New section 120(1A) removes the right of appeal in relation to resource consents for boundary activities, subdivision consents (excluding non-complying subdivision) and certain residential activities. Restrictions in notification and appeal rights have not been focused to respond to the underlying driver for the Government's identified need for expediency – development pressures in a small number of fast-growing urban centres. Instead a wholesale constriction of public participation at all stages has been justified on the basis that that participation has, in all instances, unduly elongated plan-making and consenting. In EDS's submission this is incorrect. Only 3% of resource consents are notified nationally (see Minister for the Environmental local authority statistics – financial year 2012/2013 at Table 2.4). Specifically, only 2% of subdivision consents and 1% of land use consents are publicly notified. In 2012/2013 97% of resource consents were processed in time. Also over that time only 0.7% of resource consent applications were appealed to the Environment Court. These statistics show that majority of consent applications are not held up as a result of public input. EDS submits that whole-sale reductions of public participation are looking to fix a problem the statistics suggest does not exist. Again, an urban combined NPS/NES is a more appropriate vehicle. The amendments also limit the right of appeal to a "provision or matter raised in the person's submission". This is opposed. It would override the High Court decision in ***Simons Hill Station Limited v Royal Forest and Bird Protection Society*** [2014] NZHC 1362; [2014] NZRMA 501 where the Court found that *"all that must be satisfied on appeal is that the matter in issue was before the originating tribunal*". This approach was considered by the Court to accord with the principles of natural justice and consistent with the principles of the RMA.
21	s104 Consideration of applications	cl 62	a. Delete proposed s104(1)(ab) and amend s3 (definition of effect) to include a new subclause (2):	Oppose.	The Bill fails to address the anomaly in section 104 RMA that consent authorities are only required to "have regard to" environmental bottom lines in superior planning instruments when deciding whether to grant a resource consent application and on what terms. This is discussed under the heading "***Gaps***". The proposed amendments elevate NPT provisions above other national planning

			A positive effect can include an effect created by way of an offset or compensation measure. b. Provide national direction specifying and defining the principles of a valid biodiversity offset, and compensation. c. Amend proposed s104(1A)(b) by: i.Changing "*particular regard*" to "*regard*"; and ii.Changing "*considers are*" to "*has specified in the national planning template to be*".		instruments. Proposed amendments to section 104 RMA require consent authorities to have "particular regard" to the NPT. However, the NPT is not required to "give effect" to existing NPSs or NESs. It also indicates that greater weight is attached to objectives and policies in the NPT than in a NPS. This means the NPT could include provisions which contradict or compromise existing national bottom lines. The proposed amendments require mandatory consideration of any measure proposed for the purpose of securing positive effects of the environment to offset adverse effects. The amendment is devoid of any context. No definitions are provided. There is no subject matter line. This means it could be applied to heritage, landscape, culture, biodiversity or any number of other elements of sets of environmental values. In the biodiversity context offsetting is specifically defined with a very specific set of principles attached to its use. The following comments are made from a biodiversity-focused perspective: a. Neither "positive effect" or "offset" are defined. No definition[1] or application framework to ensure the tool is used correctly or to clarify where offsets sit within the mitigation hierarchy[2], is provided. This compromises environmental bottom lines through exacerbating the routine overlooking of the avoidance step. In the absence of an explicit mitigation hierarchy the gradation toward the use of offsets and environmental compensation is absent.[3] Highlighting the latter elements of the hierarchy in section 104 and not the former (avoid, remedy, mitigate which are enshrined in section 5 RMA) risks a much greater focus on addressing effects rather than directly avoiding, remedying or mitigating them. This does not sit comfortably with environmental biophysical bottom lines or limits. A fundamental tenet of the mitigation hierarchy relies on bottom lines and limits that bite where irreversible loss and rare, vulnerable or irreplaceable values are concerned. It also opens the door for offsetting to be implemented incorrectly or used when inappropriate. b. The proposed amendment is devoid of context and there is no national policy

[1] See draft Biodiversity National Policy Statement for offsetting definition and criteria.
[2] See www.thebiodiversityconsultancy.com/approaches/mitigation-hierachy/.
[3] Quertier F & S Lavorel, 2011, *Assessing ecological equivalence in biodiversity offset schemes: Key issues and solutions*, Biological Conservation.

					instrument available to contextualise it. As a result, proponents of development and agencies are likely to take their own interpretations of these terms and apply them in a manner inconsistent with internationally accepted procedure and in a manner that results in adverse environmental effects.
22	s108 Conditions of resource consents and New s108AA Requirements for conditions of resource consents	cl 63-cl 64	Amend cl 64, s108AA as follows: *(1)..* *..(b) the condition is directly connected to 1 or both of the following:* *i. an adverse effect of the activity on the environment.* *Ii an applicable district rule or regional rule, or provision under this Act.* *…* *(3) For the purpose of this section a condition is directly connected to an adverse effect if it is required to (a) avoid, remedy, mitigate that effect inside the area to which the consent application relates; or* *(b) compensate or*	Support in part.	Clarification of the scope of conditions is positive, however: a. The requirement that a condition be directly connected to an applicable district or regional rule is problematic in that some consents are required under the RMA and not a rule (e.g. conditions related to section 15 RMA) and sometimes guidance for how activities should be carried out is in policies and not rules. However, the reference to conditions relating to adverse effects on the environment should address these issues. b. It is not clear whether the requirement that a condition be "directly connected to an adverse effect" would preclude conditions relating to a positive effect on the environment (enhancement, offsetting or compensation) being available unless the applicant agrees or it is provided for in a rule in a plan.

			offset that effect outside the area to which the application relates. Provide national direction specifying and defining the principles of a valid biodiversity offset, and compensation.		
Part 6AA Proposals of national significance					
23	s140 –s150AA	cl 66 – cl 81	Amend cl 73, s149K(4)(c) as follows: *technical expertise in relation to the matter or type of matter and the likely environmental effects the board will be considering.* Delete the proposed amendment in cl 72(1). Amend cl 72(2), s149J(3B) to set parameters for the board of inquiry's terms of reference.	Support in part/ Oppose in part.	A suite of amendments to the provisions in Part 6AA have been proposed. EDS supports or supports in part the following changes: a. The proposed ability for the Minister to call in a proposed plan, or change or variation, which "gives effect to a national policy statement or the national planning template". The proposal is consistent with the importance of national planning instruments. It provides for a more intensive process to be applied to this issue than the council-led Schedule 1 process. b. The proposed extension of the time limit for making a submission on a proposal of national significance from 20 days to 30 days. Matters referred to a board of inquiry are usually complex involving extensive applications, assessment and technical reports which require some time to consider. c. The proposed amendments to the requisite skill-set requirements of the board of inquiry. Requiring the board of inquiry to have knowledge, skill and experience in the legal and technical elements of the relevant matter will help to achieve more robust outcomes. However, technical expertise of the "matter" arguably implies expertise in the development side of the matter only. In order to ensure environmental effects are adequately identified and considered, technical expertise in the environmental effects of

			Amend cl 77 & 78 to retain provision for production, notification and consideration of a draft report.		a proposal are required. For example, the board considering the Ruataniwha Water Storage Scheme did not have any members with technical expertise in freshwater science despite this being a critical issue. EDS opposes or opposes in part the following changes: a. The removal of a mandatory requirement that the board's chairperson be a retired Environment Court or High Court judge and replaced with an unfettered Ministerial power to appoint the chair. This politicises the board of inquiry procedure. Appointment of a member of the judiciary as the chairperson ensures the process is controlled and overseen by a neutral person with skill and knowledge in formal procedure and legal interpretation. b. There is no direction as to how the terms of reference would be derived or how they would relate to the matters the board is required by statute to consider. c. The proposed deletion of the requirement for the board of inquiry to produce a draft report, receive and consider comments on the draft report, and then produce a final report. The board of inquiry is a first instance decision-making body. The process is only utilised in relation to difficult, controversial, large scale proposals. The board will receive extensive information in the form of individual and legal submissions, evidence, and technical reports. The draft/final report process is a useful way of dealing with inaccuracies, errors and differences in opinion in the first decision. It helps to ensure better outcomes. Although it means a slightly longer process at the front end it provides an opportunity for participants to comment on a draft report and for the board to respond lessens the likelihood of an extended appeal process. It is also of particular importance given that there are no merits appeals from board of inquiry decisions. Its deletion compromises public participation and the quality of the final decision.
Part 9 Water conservation orders					
24	s207	cl 87	Delete cl 87, s 207(2).	Oppose.	The proposed amendment elevates the NPT over the other specified matters, including other national planning instruments. The NPT does not and should not have an elevated status over other parts of the RMA. This creates an undesired anomaly for which there is no obvious explanation.

Part 11 Environment Court					
25	s281A	cl 96	Delete cl 96, s 281A.	Oppose.	Pursuant to section 281A the Registrar has the power to waive, reduce or postpone payment of a court fee if he/she is satisfied (1) the person is unable to pay and (2) the case concerns a matter of public interest and would not be brought if the power was not exercised. The Bill introduces a new requirement that the Registrar must first apply "any prescribed criteria" before undertaking steps 1 and 2 above. Amendments are proposed in cl 103 to section 360 RMA empowering the Minister to make regulations specifying the criteria to be applied. The only limitations are that the criteria relate to assessing a person's ability to pay and identifying proceedings that concern a matter of public interest. EDS submits this allocates excessive power to the Minister. It allows for politicisation of what is or is not a public interest matter. It is a back door method of fast-tracking certain applications.
Regulations					
26	s360	cl 108	Amend cl 103(4) by replacing "content" with "structure". Amend cl 103(7) in accordance points made in this submission.	Support in part / Oppose in part.	New (da) empowers the Minister to make regulations prescribing the form and content (including conditions) of water permits and discharge permits. It is not clear how these regulations would interact with the NPSFM and regional plans. There is no express requirement that they give effect to the NPSFM. It is not clear what would occur if there was an inconsistency. Consistency in form and structure provides certainty. It will also help to facilitate trading in the future. National direction on stock exclusion is supported. EDS emphasises that stock exclusion is not in and of itself sufficient to improve New Zealand's water quality. The proposed power is broad, specifically: a. Regulations can apply to any stock. This is supported and consistent with the Land and Water Forum's recommendations. The example "*e.g. dairy cows*" is unnecessary. The Land and Water Forum identified (with cross-sector support) that water quality concerns were not limited to dairy cows. b. Regulations can apply generally in relation to water bodies, estuaries, and coastal lakes and lagoons or to specific water bodies. This is supported. The RMA definition of water body is broad and captures wetlands and intermittent streams. This is consistent with the

					Land and Water Forum's recommendations. c. Regulations can apply different measures to different kinds of stock and different waterbodies. This is consistent with the Land and Water Forum's recommendations and provides necessary flexibility. Provision should also be made for the ability to apply different measures to different topographies. This was identified by the Land and Water Forum as the key driver in determining the practicality, workability and actual positive effect of any exclusion measure. d. Regulations can prescribe technical requirements. This is supported. However again, the examples are unnecessary. Regulations prescribing technical requirements should also include the ability to prescribe set-backs or a set-back calculation tool. Set back distance is critical in ensuring exclusion leads to water quality improvements. National consistency in respect of which models are used is highly desirable. It would allow for the gradual development of a standardised, nationally relevant information source. This power would also have scope to provide direction on how local authorities should deal with model upgrades e.g. upgrading versions of Overseer.
27	New s360D Regulations that permit or prohibit certain rules	cl 105	Delete proposed s360D.	Oppose.	These provisions allow for the politicisation of planning content. The Minister is given inappropriate discretion to determine what land use restrictions do and do not achieve sustainable management. The proposed power creates uncertainty for local authorities, threatens to undermine decision making at a local level, undermines the ability of local authorities to respond to community concerns and prevents councils from effectively representing the aspirations of their communities. Instead it represents planning by decree by the Minister for the Environment. Of particular concern is subsection 1(d). Where-as subsections (1)(a), (b) and (c) are subject to a sunset clause (expiring once the NPT comes into force), subsection 1(d) is an enduring power. It would give the Minister the power to make regulations prohibiting or overriding rules whenever the Minister considers that the rules relate to "the same subject matter" as is included in other legislation and that the duplication is "undesirable".

					While different legislation may deal with the same "subject matter" as matters regulated under the RMA, the purpose of that legislation may differ in such a way that sustainable management is not achieved by relying on the provisions of other legislation and regulation under the RMA is appropriate. The question of whether particular activities or effects should be regulated under the RMA should not come down to whether duplication, overlap or repetition is "undesirable" (which has no clear meaning and is inherently subjective), but rather whether sustainable management is achieved by relying only on the provisions of the other legislation. Given its timing and when viewed in conjunction with other proposed changes, it appears that subsection (1)(d) has been inserted in response to the recent Court decision upholding the right of communities and local authorities to regulate genetically modified organisms (**GMO**) within their regions. GMO's exemplify the problems of preventing plans from addressing specific matters because of "overlap" with other legislation. The purpose and role of Hazardous Substances and New Organisms Act (**HSNO**) is to assess new organisms (including GMOs) before approval can be granted (or not) for their introduction into New Zealand - containment, field trials and releases. Once released into the environment they are no longer considered new organisms and are no longer regulated under HSNO. HSNO is in effect a licensing regime for the introduction of new organisms (including GMOs) into New Zealand. The RMA, on the other hand, is a comprehensive statute that regulates the use of all natural and physical resources (unless expressly exempt) in an integrated manner so as to achieve the sustainable management of those resources. Such integrated management can include GMOsThe two statutes do not result in duplication but rather complement each other. Each has particular functions regarding management of GMOs in the environment (see *Federated Farmers of New Zealand v Northland Regional Council*, 2015 NZEnvC 89). A national policy instrument(s) could provide direction on addressing GMOs in policy statements or plans if national consistency was considered appropriate. Turning to subsections (1)(a)-(c), these provisions again appear to be a reaction to housing and development issues in Auckland. As stated, a urban NPS/NES is a more appropriate vehicle for addressing urban specific issues.
Schedule 1 (plan processes discussed above)					

28	New cl 5A, new cl 6A and amended cl 7	Pages 128-129 of the Bill	Delete New Schedule 1 cl 5A.	Oppose.	New cl 5A empowers local authorities to give limited notify a proposed change to a policy statement or plan if "it is able to identify all the persons directly affected by the proposed change". Only notified persons may submit or further submit on the change. Excluding the public from submitting on a plan change is a significant reduction in RMA public participation. While the potential time and cost reduction where a plan change is highly specific (such as a single property zone change) is evident the test is too loose. Plan changes which affect the environment but not a person (which would be the majority) could be limited notified. It also introduces a new test of "directly affected person". It is difficult to see how this would work in practice and there is a risk of inappropriate exclusion from planning process. For example, if the plan change was to amend water quality limits it is possible that "directly affected" persons could be interpreted to capture only farmers whose nutrient budgets were to be changed and not the wider public. EDS submits that the negative repercussions of the proposed change outweigh the benefits.
Gaps					
29	s 104	-	EDS will table suggested amendments with the Select Committee at hearing.	-	Failure to address the anomaly in section 104 RMA that consent authorities are only required to "have regard to" environmental bottom lines in superior planning instruments when deciding whether to grant a resource consent application and on what terms. This creates a lacuna in the implementation and application of environmental bottom lines in the RMA and national planning documents whereby unlimited resource consents for activities that will result in a breach of a directive bottom line can be granted provided the decision-maker has regard to it. For example, resource consent(s) can be obtained in a catchment that is over-allocated, and where the activity will make the situation worse, despite the freshwater plan setting water quality limits, and the direction in the NPSFM that water quality be maintained or improved. This is a very serious flaw in th RMA that needs urgent fixing.
30	-	-	Amend the RMA to specify that rules and standards in NESs must give effect to NPSs.	-	NPSs set out objectives and policies for matters of national importance. NESs set out rules and technical standards for matters of national importance. In local level planning instruments rules are designed to implement objectives and policies. The same should apply in the national context.
31	s 76 District	-	Amend the definition	-	Section 76 RMA provides specific direction on rules relating to protection of urban trees.

	Rules		of **group of trees** in section 76(4C) to also include: *a. all trees of an identified indigenous species in a defined area or specific planning zone*; and* *b. all trees in a named ecoysystem, habitat or landscape unit, or ecotone*** * for example, all Pohutakawa with the coastal environment line. ** for example, all indigenous trees lining a stream corridor.		Trees or groups of trees must be individually identified for protection in plans to apply. Blanket protective mechanisms which previously applied are prohibited. EDS submits that the protection afforded to urban trees under section 76 is inadequate and does not achieve the purpose of the RMA. Specific identification makes tree protection complex and bureaucratic. The result is that significantly fewer trees are protected than was previously the case. This has adverse environmental effects. Trees provide a number of ecosystem services: they provide habitat for biodiversity, improve water quality, reduce storm water run-off, reduce erosion, and absorb carbon dioxide. Trees also have amenity values: they have intrinsic aesthetic value, create a feeling of relative naturalness within urban areas, contribute to the pleasantness and aesthetic coherence of an area, screen and buffer the effects of obtrusive activities, provide shelter from strong winds, and provide recreational opportunities. Trees have cultural value as they assist with retaining distinctive, endemic natural character of both flora and fauna. Reduced urban tree protection also has socio-economic implications. Research in Auckland has shown that the vast majority of urban trees which qualify for protection are in a small number of wealthy areas. With reduced tree protection this gap will extend. Urban areas, in particular lower socio-economic urban areas, will become 'dull' and 'bleak' without the presence of trees and other biodiversity which they support. Trees are an integral part of maintaining a 'liveable city'. EDS submits that the current restrictions on urban tree protection do not enable people and communities to provide for their social, economic and cultural wellbeing and health (section 5 RMA). They do not safeguard the life-supporting capacity of the environment (section 5 RMA). They do not preserve urban natural character (section 6 RMA). They do not maintain or enhance amenity values or the quality of the environment (section 7 RMA).
32	s30 functions of regional councils / s31 Functions of territorial	-	Insert into s 30 & 31: *(aa) the establishment implementation and*	-	The only climate change relevant amendment is the addition to section 6(g). Climate change is the over-riding environmental issue that will increasingly affect people, communities and ecosystems in New Zealand. The effects of activities on climate change are not adaquately taken into account under the RMA. If New Zealand is to achieve the very significant reduction in carbon emissions that is required to transition to a low

	authorities		*review of objectives, policies and rules to achieve the reductions in carbon emissions required to contribute to a target of holding the increase in global average temperature below 2 degrees above pre-industrial levels.* A climate-related NPS should be planned for to assist local authorities to carry out their climate-related functions.		carbon future and successfully manage the risks of natural hazards that climate change will present, it cannot take a compartmentalized approach to managing and responding to risks and stimulants. Local authorities are able to contribute to the global effort to maintain a safe climate through their planning and decision-making roles. The way in which cities are planned, in particular, can make a huge difference to their emissions profile. The impacts of activities (individually and cumulatively) on climate change should be able to be taken into account alongside their positive effects.
Resource Legislation Amendment Bill Part 4 - Amendments to the Conservation Act 1987					
33	s49	cl 181	Replace the proposed 20 working day time period in s49(2)(b) with 30 working days	Oppose.	The Bill reduces the time frame for comment on concessions from 40 working days to 20 working days. Process and time frame alignment between the Conservation Act 1987 and the RMA is the basis for the change (see The Bill, Explanatory Note, at 4). EDS submits that a 20 working day time frame is inadequate. The Conservation Act 1987 and the RMA apply to very different contexts. The Conservation Act applies to conservation land held for the public benefit and which is home to a significant proportion of New Zealand's most significant and outstanding flora and fauna. The time frame for consideration and submission on the effects of activities on this land should reflect this level of importance. Further, the criteria that apply to a concession decision and which submitters will have to consider in forming their submission is extensive. While for some concession applications this may be straight forward, for many others it will not. Relevantly, the time frame for

					public submission on applications resource in the EEZ is 30 working days. This time frame more appropriately reflects the significance of an application for private use of a highly valued public resource.
Resource Legislation Amendment Bill Part 5 – Amendments to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012					
34	New subpart 2 EEZ national policy statements	cl 188	Amend the EEZPS process to mirror that of NPSs under the RMA.	Support in part Oppose in part.	EDS supports provision for EEZ policy statements (**EEZPS**) in principle. However, in its submission the development process allocates undue discretion to the Minister with insufficient safeguards. a. The provisions are insufficient to ensure that any EEZPS complies with the purpose of the EEZ Act. Unlike the RMA NPS purpose provision, proposed section 37A states that the purpose of a EEZPS is to state objectives and policies to support decision-making. It does not require that it support decision-making to achieve the purpose of the EEZ Act. Similarly, throughout the process the Minister is required to have regard to the purposes and principles of the EEZ Act but there is no direction on the actual relationship between a EEZPS and those provisions. b. Notification is inappropriately restricted. In contrast to the RMA NPS process which requires "public" notification the proposed EEZ process only requires iwi, regional councils and persons whose "existing interests are likely to be affected" to be notified. This is unacceptable. The ocean and the EEZ is a public resource and the public should be notified of and able to participate in how it is used. This restriction will exclude the general public interest in protection of the marine environment from the EEZPS development process. It allows for politicisation of planning processes.
35	s 39 Impact assessments	cl 188	-	Support.	The contents of impact assessments has been extended to include: - Identification of effects on biodiversity, integrity of marine species, ecosystems and processes. - Identification of effects on rare and vulnerable ecosystems and habitats. This is supported. It provides clarity to applicants as to the importance and necessity of

					investigating and addressing these areas. It places appropriate focus on key environmental elements of the marine environment.
36	New proposed board of inquiry process for s20 activities		Retain the EPA process.	Oppose.	The Bill introduces a mandatory board of inquiry process for notified applications for section 20 activities (in summary construction etc of structures, removal of non-living material, disturbance, destruction, damage of and deposit on the sea bed). This is opposed. Under the proposed process the Minister appoints the board of inquiry, including the chairperson, and sets the board's terms of reference. There is extremely limited direction on how the hearings process is to be completed. This new process risks politicisation of the EEZ application process. The EPA process has worked well to date. The EPA is a specialist body with the skill, expertise and resources to consider these applications. EDS submits that there is no benefit in changing the process.