

## **FNDC Proposed District Plan – Mineral Extraction – Hearing 8**

### **Speaking notes on behalf of Forest & Bird**

1. Forest & Bird is grateful for the opportunity to speak to its written submissions on the Mineral Extraction provisions in the proposed plan. Forest & Bird made three submission points on the Natural Open Space Zone provisions, and these submissions are maintained. However, these speaking notes focus on the proposed Mineral Extraction provisions, about which Forest & Bird has much more substantial concerns.
2. Overall, Forest & Bird considers that the current approach inappropriately advantages ME activities at the expense of environmental values. This appears to result in a more permissive regime for ME activities than for INF activities. Forest & Bird's position on each of the proposed policies and rules is set out below.

#### **ME-P2      Enable new and provide for the expansion of existing mineral extraction activities where significant adverse effects are avoided.**

3. The s42A report recommends ME-P2 remains as per the notified version. Forest & Bird maintains its submission that this policy should only apply to the Mineral Extraction Zone ("ME zone").
4. The s42A author appears to have misunderstood the Forest & Bird submission. The submission is not there should be no mineral activities outside the ME zone, but rather that ME-P2 should only apply within the ME zone.
5. The general problem perceived by Forest & Bird, which is encountered in relation to several of the proposed plan provisions discussed below, is that district wide policies contained in the ME chapter will need to be consistent with other district wide policies, including those contained in the IB chapter, and will need to give effect to higher order policy documents.
6. The problem with ME-P2 as an enabling district-wide policy is that it only refers to avoidance of significant adverse effects and is therefore likely to undermine other policies which require a more comprehensive effects management approach or hierarchy.
7. For example, Council's proposed IB-P10 specifies various matters considered to be relevant when assessing and managing the effects (not only significant effects) of

indigenous vegetation clearance and associated land disturbance. Forest & Bird considers that these matters are also relevant to ME activities.

8. The enabling policy in ME-P2 is also inconsistent with, and undermines, the more detailed policy direction in ME-P3 to ME-P7. Whereas ME-P2 would require ME activities throughout the district to be enabled subject only to avoiding significant adverse effects:
  - 8.1 ME-P3 requires ME activities to be provided for outside the Coastal and Natural Environment Overlays where significant adverse effects are avoided **and other adverse effects are avoided, remedied or mitigated;**
  - 8.2 ME-P4 only requires farm quarries to be enabled **outside specified sensitive environments;**
  - 8.3 ME-P5 requires ME activities in sensitive environments to **avoid, remedy or mitigate other adverse effects;**
  - 8.4 ME-P6 requires ME activities within ONFLs and areas of Outstanding Natural Character within the Coastal Environment to **avoid other adverse effects;**
  - 8.5 ME-P7 requires ME activities in other areas of the Coastal Environment to **avoid, remedy or mitigate other adverse effects.**
9. In terms of higher order policies, under s 75 of the Act, the district plan must give effect to the Northland Regional Policy Statement (**RPS**) and the New Zealand Coastal Policy Statement (**NZCPS**).
10. The Council also has an obligation to give effect to the National Policy Statement on Indigenous Biodiversity (**NPS-IB**) as soon as reasonably practicable. This is especially relevant to provisions in the proposed plan that address adverse effects on areas of significant indigenous vegetation and significant habitat of indigenous fauna (i.e., areas that meet the significance criteria in RPS Appendix 5, and would also therefore qualify as SNAs under the NPS-IB).
11. Policy 4.4.1 of the Northland RPS provides as follows:
  - 4.4.1 Policy – Maintaining and protecting significant ecological areas and habitats**
    - (1) In the coastal environment, avoid adverse effects, and outside the coastal environment avoid, remedy or mitigate adverse effects of subdivision, use and development so they are no more than minor on:
      - (a) Indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;

- (b) Areas of indigenous vegetation and habitats of indigenous fauna, that are significant using the assessment criteria in Appendix 5;
  - (c) Areas set aside for full or partial protection of indigenous biodiversity under other legislation.
- (2) In the coastal environment, avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of subdivision, use and development on:
  - (a) Areas of predominantly indigenous vegetation;
  - (b) Habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes;
  - (c) Indigenous ecosystems and habitats that are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass, northern wet heathlands, coastal and headwater streams, floodplains, margins of the coastal marine area and freshwater bodies, spawning and nursery areas and saltmarsh.
- (3) Outside the coastal environment and where clause (1) does not apply, avoid, remedy or mitigate adverse effects of subdivision, use and development so they are not significant on any of the following:
  - (a) Areas of predominantly indigenous vegetation;
  - (b) Habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes;
  - (c) Indigenous ecosystems and habitats that are particularly vulnerable to modification, including wetlands, dunelands, northern wet heathlands, headwater streams, floodplains and margins of freshwater bodies, spawning and nursery areas.
- (4) For the purposes of clause (1), (2) and (3), when considering whether there are any adverse effects and/or any significant adverse effects:
  - (a) Recognise that a minor or transitory effect may not be an adverse effect;
  - (b) Recognise that where the effects are or maybe irreversible, then they are likely to be more than minor;
  - (c) Recognise that there may be more than minor cumulative effects from minor or transitory effects.

- (5) For the purpose of clause (3) if adverse effects cannot be reasonably avoided, remedied or mitigated then it may be appropriate to consider the next steps in the mitigation hierarchy i.e. biodiversity offsetting followed by environmental biodiversity compensation, as methods to achieve Objective 3.4.
12. As currently drafted Policy ME-P2 would not give effect to this RPS Policy, because it only refers to avoiding significant adverse effects, whereas the RPS Policy also requires other effects to be appropriately managed by Council.
13. In terms of the NZCPS, Policies 11, 13, and 15 are all relevant. As above, the District Plan must give effect to these policies.
14. Policy 11(a) requires Council to avoid adverse effects (not only significant adverse effects) on:
- (i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
  - (ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
  - (iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
  - (iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
  - (v) areas containing nationally significant examples of indigenous community types; and
  - (vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation
15. Policy 11(b) requires Council to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:
- (i) areas of predominantly indigenous vegetation in the coastal environment;
  - (ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
  - (iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
  - (iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;

- (v) habitats, including areas and routes, important to migratory species; and
  - (vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.
16. A policy, such as ME-P2, which enables activities having the adverse effects identified in Policy 11 will clearly not give effect to the NZCPS.
  17. Policies 13 and 15 of the NZCPS require the Council to avoid adverse effects (not only significant adverse effects) of activities on areas of outstanding natural character, outstanding natural features and outstanding natural landscapes in the coastal environment.
  18. Policies 13 and 15 of the NZCPS also require Council to avoid, remedy or mitigate other adverse effects of activities on natural character, natural features and natural landscapes in all other areas of the coastal environment
  19. Again, a policy, such as ME-P2, which enables activities having the above adverse effects will clearly not give effect to the NZCPS.
  20. Finally, the NPS-IB requires Council to avoid the following adverse effects (not only significant adverse effects) on areas that qualify as SNAs:
    - (a) loss of ecosystem representation and extent;
    - (b) disruption to sequences, mosaics, or ecosystem function;
    - (c) fragmentation of SNAs or the loss of buffers or connections within an SNA;
    - (d) a reduction in the function of the SNA as a buffer or connection to other important habitats or ecosystems;
    - (e) a reduction in the population size or occupancy of Threatened or At Risk (declining) species that use an SNA for any part of their life cycle
  21. All other adverse effects on SNAs must be managed by applying the effects management hierarchy.
  22. Clause 3.11(1)(a) of the NPS-IB does provide an exception for mineral extraction and aggregate extraction "... that provides a significant public benefit that could not otherwise be achieved using resources within New Zealand". In such cases, adverse effects must be managed by applying the effects management hierarchy.
  23. In conclusion, Policy ME-P2 would not ensure that adverse effects of ME activities are appropriately managed. A policy which enables ME activities to have adverse effects on sensitive environments, so long as those effects are not significant, is

inconsistent with both higher order policy and with other policies in the proposed plan. There are no advantages to this approach, which will only result in legal challenges and confusion for plan users.

**ME-P3 Provide for mineral extraction, and processing outside a Mineral Extraction Zone where:**

- a. there is a public benefit derived from the activity;**
- b. it is located outside of the Coastal and Natural Environment Overlays;**
- c. the location is sufficiently away from Urban zones, Carrington Estate, Kauri Cliffs, Orongo Bay, Quail Ridge and Māori Purpose Special Purpose zones and Settlement and Rural Residential zones;**
- d. significant adverse effects are avoided; and**
- e. other adverse effects are avoided, remedied or mitigated**

- 24. No changes to the notified version of ME-P3 have been recommended in the s42A report. Forest & Bird's submission remains that mineral extraction activities should not be expressly provided for outside the Mineral Extraction Zone. Instead, the effects of ME activities should be managed appropriately under the relevant policies and rules contained in other chapters of the plan.
- 25. For example, ME-P3 is inconsistent with proposed IB-P3, which applies outside the Coastal Environment and requires Council to ensure that adverse effects on Threatened or At-Risk indigenous species, and on areas of significant indigenous vegetation and significant habitat of indigenous fauna, are no more than minor.
- 26. ME-P3 is also inconsistent with IB-P4 (as recommended in the relevant s42A report), which requires Council to manage adverse effects by applying the effects management hierarchy.
- 27. Further, as noted above, Council's proposed IB-P10 specifies various matters considered to be relevant when assessing and managing the effects (not only significant effects) of indigenous vegetation clearance and associated land disturbance. Forest & Bird considers that these matters are also relevant to ME activities.
- 28. For reasons stated above, the proposed policy also fails to give effect to the RPS and NPS-IB, both of which require adverse effects to be avoided outside the Coastal and Natural Environment overlays in some cases, and in other cases require adverse effects to be no more than minor, or for the NPS-IB effects management hierarchy to be applied.

29. Finally, Forest & Bird maintains its submissions on the proposed conditions in ME-P3, specifically:
- 29.1 In condition a, requiring “a public benefit” represents an inappropriately low threshold; and
- 29.2 In condition c, the meaning of “sufficiently away from” is unclear and likely to result in inconsistent outcomes. It would be better to specify the effects on other areas that the policy is intended to avoid.

**ME-P4 Enable farm quarries within the Rural Production zone where they are limited in scale and operation, and located outside of the following sensitive environments:**

- a. coastal environment;**
- b. outstanding and high natural character areas;**
- c. sites and areas of significance to māori;**
- d. historic heritage sites and areas; and**
- e. outstanding natural landscapes and features.**

30. The s42A report has not recommended any changes to ME-P4. Forest & Bird maintains its submission that it would be more appropriate to provide for farm quarries in the Rural Production Zone (RPZ) within the RPZ chapter.
31. If retained, Policy ME-P4 also needs to give effect to the RPS. As above, this requires adverse effects on Threatened or At-Risk Species, significant areas of indigenous vegetation and habitats of indigenous fauna, and on other protected areas, to be “no more than minor”. It also requires adverse effects on other specified areas to be avoided, remedied or mitigated so that the adverse effects are not significant.
32. Forest & Bird considers that the condition in ME-P4 requiring farm quarries to be “limited in scale and operation” would not give effect to the RPS.

**ME-P5 Avoid adverse effects, and avoid, remedy or mitigate other adverse effects from new and the expansion of existing mineral extraction activities on the characteristics and qualities of the following, where located outside of the Coastal Environment Overlay:**

- a. Outstanding Natural Landscapes;**
- b. Outstanding Natural Features;**
- ~~c. Outstanding Natural Character;~~**

- c. Areas of significant indigenous vegetation and significant habitat of indigenous fauna;
- ~~d. Significant Natural Area;~~
- d. Historic and cultural values; and
- e. Sites and Areas of Significance to Māori.

- 33. Policy ME-P5 applies to specified sensitive environments outside the Coastal Environment. The s42A report has recommended replacing reference to SNAs and deleting reference to areas of Outstanding Natural Character.
- 34. It is assumed that the word “significant” has been unintentionally omitted from the chapeaux to the policy, which was presumably intended to begin by stating “avoid significant adverse effects”.
- 35. However, this does not give effect to the RPS, again because it does not require specified adverse effects to be reduced so that they are “no more than minor”.
- 36. ME-P5 would also be inconsistent with the obligation to give effect to the NPS-IB. Again, this is because, within areas of significant indigenous vegetation and significant habitats of indigenous fauna, it is not only significant effects that must be avoided, and because the NPS-IB effects management hierarchy needs to be applied.

**ME-P6      Avoid adverse effects of new, and the expansion of existing, mineral extraction activities, within the characteristics and qualities which make up the following within the Coastal Environment:**

- a. Outstanding Natural Landscapes;
- b. Outstanding Natural Features; and
- c. Outstanding Natural Character.

**ME-P7      Where ME-P6 does not apply avoid significant and avoid, remedy or mitigate other adverse effects of new, and the expansion of existing mineral extraction activities on natural character, natural features and natural landscapes within the Coastal Environment.**

- 37. Policies ME-P6 and ME-P7 are intended to manage effects within the Coastal Environment, and therefore must give effect to the NZCPS.
- 38. As currently drafted, the policies fail to do this. While they accurately reflect, and give effect to, Policies 13 and 15 of the NZCPS, they fail to give effect to Policy 11 of the NZCPS



39. The protected areas, taxa, indigenous ecosystems and habitats referred to in Policy 11(a) are not confined to areas of Outstanding Natural Character, Outstanding Natural Landscapes and Features. Furthermore, it is not necessarily the case that these would be considered as “characteristics and qualities which make up” ONFL and / or ONC.
40. Similarly, in relation to NZCPS Policy 11(b), adverse effects on the matters specified would not necessarily be adverse effects on ONFL and / or ONC.
41. Policies to give effect to the NZCPS therefore also need to make specific provision for the matters in Policy 11.

#### **Notes on application of the ECO chapter**

42. Forest & Bird’s submission requested that the notes to the rules now located in the Mineral Extraction Zone need to make it abundantly clear that the EIB rules will apply to ME activities.
43. In the s42A version, the “Mineral Extraction Chapter” (Appendix 1B) no longer contains any rules or standards. The chapter states that “Rules for Mineral Extraction are located in other chapters including Rural Production Zone and the Mineral Extraction Zone”. Reference to the EIB chapter should also be included here.
44. In the s42A version, the “Mineral Extraction Zone Chapter” (Appendix 1C) contains rules that apply within the ME Zone. Note 5 states that “The Earthworks Chapter rules do not apply to Mineral Extraction Activities. Rules for Mineral Extraction Activities are contained within each zone chapter”. This advice is incomplete and potentially confusing or misleading for plan users. This is because, although the district wide Earthworks Chapter rules may not apply, rules for ME Activities *are* contained in the district wide EIB chapter as well as within zone chapters.

#### **ME-R2**

45. A permitted rule for “farming” activities has been recommended in the s42A report. Forest & Bird considers that this proposed permitted rule is very imprecise. On its face, it appears to permit clearance of indigenous vegetation, and other adverse effects on the environment, where these are associated with farming activities. As above, the plan needs to make it clear that the EIB rules will apply to such activities.

#### **ME-R3**

46. The s42A report recommends removing the reference to hand-tools in the permitted activity rule for mineral prospecting and exploration within the ME zone.

This results in a general permitted activity status for all mineral prospecting and exploration activities.

47. Similarly to the proposed permitted rule for farming activities, on its face this appears to result in zero protection for significant values within the ME zone. It appears that the presence or absence of such values has not yet been assessed.
48. As above, Forest & Bird considers that the plan needs to make it clear that the EIB rules will apply to mineral prospecting and exploration activities within the ME zone.

#### **ME-R4**

49. This rule provides for a controlled activity status for the expansion of mineral extraction activities within the ME zone. However, Forest & Bird considers that Council should retain the ability to refuse consent for expansion within the ME zone.
50. As above, there appears to be a lack of evidence as to the values that may exist within the zone. As far as Forest & Bird is aware, no ecological evidence was provided to council prior to setting the boundaries of the ME zone.
51. Furthermore, the matters of control contain no reference to ecological values. This would be consistent with an inability for Council to refuse consent for the expansion of ME activities. However, Forest & Bird considers that this is not appropriate in circumstances where the existence of such values has not been identified or assessed, and that appropriately providing for ecological values would require a change in activity status under ME-R4.

**DATED**            **13 November 2024**



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**Tim Williams** on behalf of  
**Royal Forest and Bird Protection  
Society Incorporated**