BEFORE THE HEARING PANEL

IN THE MATTER OF	**The Proposed Far North District Plan**
	Hearing 11: Energy, Infrastructure, Transport and Designations

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LEGAL SUBMISSIONS ON BEHALF OF FOREST & BIRD

Dated: 14 April 2025

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Forest & Bird
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INTRODUCTION

1. The Royal Forest and Bird Protection Society of New Zealand Inc. (**Forest & Bird**) made submissions (submitter number S511) and further submissions (further submitter number FS346) on the Proposed District Plan (**PDP**).

2. Forest & Bird appreciates the opportunity to expand on its submissions on the Renewable Electricity Generation and Infrastructure chapters following the s42A report author's recommendations.

REG chapter

REG-O3

3. The planning objectives should enable the consenting authority to manage adverse effects appropriately. However, the changes recommended in the s42A report would inappropriately limit the way in which adverse environmental effects of REG activities are to be managed, directing decision-makers to manage adverse effects in a way that "recognises and provides for" REG activities rather than "avoiding, remedying or mitigating adverse effects" as required by s 5 RMA.

4. In general terms, objectives should state what is intended to be achieved (in this case appropriate management of adverse effects), and the details of how this is to be achieved (e.g. by recognising and providing for functional and operational needs, and by avoiding, remedying mitigating etc.) should be set out in the policies.

5. The fact that other Part 2: District Wide Matters (including the EIB Chapter) may also be relevant does not adequately address the problems that would be caused by the recommended changes to REG-O3.

6. For example, on a DIS application for large-scale wind generation in the coastal environment under REG-RY, a decision-maker may need to reconcile REG-O3 with the avoidance policies in IB-P2, or CE-P2. However, REG-O3

directs the decision-maker to manage adverse effects in a way that simply ignores these avoidance policies. This problem is then compounded by REG-P11, which does not include the matters referred to in IB-P2 or CE-P2 as matters to be considered when assessing and managing the effects of REG activities in accordance with REG-O3.

7. A similar problem would arise under an RDIS application for large scale solar in an ONL, for example. Again, REG-O3 would limit the management of adverse effects to management only "in a way that recognises and provides for the operational and functional need of renewable electricity resources to be in particular environments". This would contradict NFL-P3 and CE-P2. The problem would then be compounded by REG-P7 (which would require Council to "enable" the activity), because "appropriately managed" in the REG context apparently refers to the approach set out in REG-O3.

8. To address these problems (on the basis that it is not actually the intention to create a stand-alone regime for effects management of REG activities) it would be better for REG-O3 simply to require "appropriate management of adverse effects". This wording would not constrain the consenting authority's ability to manage adverse effects in accordance with other Part 2: District Wide Matters. Alternatively, additional wording could be included as sought in Forest & Bird's submission ("<u>avoid, remedy, or mitigate</u> adverse effects").

REG-P2

9. Use of the word "enable" (recommended in the s42A report) implies that an activity should be permitted and is problematic in circumstances where an activity status defaults to RDIS or DIS where permitted activity conditions are not met.

10. For example, REG-RX would make "upgrading" of existing REG a permitted activity where the upgrading does not result in an overall increase in area or height. "Upgrading" which does result in an increase in area or height

would be an RDIS activity, however REG-P2 would still require the consent authority to "enable" the activity.

11. Top Energy's submission that "this activity should be enabled as a restricted discretionary activity with clear matters of discretion" (see s 42A report at [249]) is inconsistent with the way in which the term "enable" is interpreted in a planning context, because RDIS activity status implies that consent may be declined.

12. A similar problem arises in relation to other REG permitted activity upgrading rules which default to RDIS or DIS activity status (REG-R3, REG-R4, REG-R5, REG-R6, REG-RY)

13. This problem could be addressed by providing a definition of "upgrading" which limits the activity to the existing footprint or area (noting that the recommended definition of "upgrading" in the INF chapter does not achieve this), or alternatively by retaining the "provide for" wording in the notified plan, which would allow a consenting authority to decline consent in appropriate circumstances.

REG-P5

14. The s 42A report recommends deletion of REG-P5 and REG-P6. Forest & Bird supports the approach of including the relevant effects management policies in the EIB chapter, to avoid inconsistencies. However, Forest & Bird is concerned that the problems identified above, specifically in relation to REG-O2 and REG-P11, would substantially undermine the effectiveness of this approach.

REG-P6

15. As above for REG-P5

Note 1

16. Forest & Bird submitted that Note 1 should also state that Area Specific Matters may apply to REG activities.

17. It is acknowledged that REG-P9 requires avoidance of large-scale REG activities outside the Rural Production zone unless it can be demonstrated that effects will be no more than minor. However, Forest & Bird maintains that the approach of excluding all Area Specific Matters is problematic.

18. Within the Rural Production zone, there do not appear to be adequate provisions in the REG chapter to give effect to the NPS Highly Productive Land (HPL), in particular the requirements for functional or operational need and to minimise or mitigate loss of HPL (see Hort NZ submissions). REG-P11 does not include effects on HPL in the matters to be considered.

19. The concerns raised at paragraphs [3] to [8], above, in relation to REG-O2 and REG-P11 apply to REG activities within the Rural Production zone, which will include much of the coastal environment and many areas of significant indigenous vegetation and habitat.

20. Outside the Rural Production zone, as above, it is acknowledged that REG-P9 provides for the avoidance of more than minor adverse effects for large-scale REG activities. In these circumstances, it is not clear why there should be a blanket exemption for REG activities from the Natural Open Space Zone (NOSZ) provisions, with the only other effects management provisions potentially being REG-O2 and REG-P11. Forest & Bird considers that, for proposed large-scale REG activities in the NOSZ, a consenting authority should also be able to consider the matters set out in the NOSZ provisions. These appear to be compatible with the avoidance of more than minor adverse effects (REG-P9), while also providing a more complete description of effects that will be "adverse" in the context of the NOSZ.

21. Forest & Bird is also concerned that the proposed activity rules for small-scale and community-scale REG may not be appropriate within the NOSZ. Provided the activity does not involve indigenous vegetation clearance, the

REG rules would allow an installation covering no more than 5,000m² as a permitted activity within the NOSZ, and installations larger than this as an RDIS activity without reference to the NOSZ objectives and policies. It should not simply be assumed that every REG activity in the NOSZ can be appropriately managed by the IB rules on indigenous vegetation clearance.

REG-R3

22. Forest & Bird notes the recommendation in the s 42A report that "vegetation clearance" be removed from the matters of discretion under REG-R3, REG-R4, and REG-R5. This is on the basis that vegetation clearance is not intended to be included in the activities covered by these REG rules and will instead be managed under the EIB chapter.

23. Forest & Bird considers that there is still a problem with this approach, which again relates to the recommended wording for REG-O3 and REG-P11.

24. As discussed above, REG-O3 limits the way in which adverse effects are to be managed in the context of REG activities, while REG-P11 includes "indigenous vegetation removal" and "adverse effects on areas with cultural and heritage, natural environment values, coastal values or recreational value" within the limited effects management regime for REG that is created by REG-O3.

25. Deleting "vegetation clearance" as a matter of discretion, while retaining "adverse effects on areas with cultural and heritage, natural environment values, coastal values or recreational value", would not adequately address this problem because: (a) simply removing "vegetation clearance" may create the impression that the EIB provisions are only relevant to clearance of indigenous vegetation, when in fact the EIB provisions are more wide-ranging (applying also to other significant habitats of indigenous fauna, and to other adverse effects on Threatened and At-Risk species); and (b) "adverse effects on areas with cultural and heritage, natural environment values, coastal values or recreational value" would encompass "indigenous

vegetation removal", meaning that the latter may still be considered to be part of the activity provided for in the REG rules.

26. One option to address these problems, and to ensure clarity for plan users, could be to expressly reference, and link to, other relevant parts of the plan within the matters of discretion. For example:

> e. vegetation clearance <u>(to be managed in accordance with Part 2 – District-Wide Matters / Natural Environment Values / Ecosystems and indigenous biodiversity)</u>
>
> f. adverse effects on areas with cultural and heritage, natural environment values, coastal values or recreational value <u>(to be managed in accordance with the relevant provisions of Part 2 – District-Wide Matters / Natural Environment Values)</u>

REG-R4

27. As above, for REG-R3.

REG-R5

28. As above, for REG-R3

<u>Infrastructure</u>

I-O4

29. The s42A report has recommended changes to I-O4 that would limit the way in which adverse effects of INF activities can be managed by consenting authorities. Similar problems arise as in relation to REG-O3, discussed above.

30. As observed in relation to REG-O3, above, objectives should state what is intended to be achieved (in this case appropriate management of adverse effects), and the details of how this is to be achieved (e.g. by recognising

and providing for functional and operational needs, and by avoiding, remedying mitigating etc.) should be set out in the policies.

31. Therefore, Forest & Bird suggests that it would be better to recognise and provide for the operational and functional needs of specified infrastructure in a separate policy, rather than as an effects management objective, noting that this has already been recommended by the s42A report author as I-P2.

32. Forest & Bird acknowledges the operational and functional needs of specified infrastructure to locate in certain environments. Forest & Bird also agrees that the district plan should include provisions that recognise and provide for these infrastructure needs in an appropriate way.

33. The approach adopted in the PDP, which Forest & Bird supports in principle, is for management of adverse effects on indigenous flora and fauna to be addressed in the EIB chapter. This should, and already does, include provisions that relate specifically to infrastructure.

34. For example, the s42A version of IB-P5 requires Council to manage adverse effects in a way that "recognises the operational and functional need of regionally significant infrastructure to be located within areas of significant indigenous vegetation and significant habitat of indigenous fauna in some circumstances", and that "allows for maintenance, use and operation of existing structures, including upgrading of regionally significant infrastructure".

35. IB-P10 also requires a consent authority to consider "the functional or operational needs of regionally significant infrastructure" and "the extent to which the proposed activity provides for the social, economic and cultural wellbeing of people and communities" when assessing and managing the effects of indigenous vegetation clearance and associated land disturbance.

36. The recommended changes to I-O4 are therefore not necessary or appropriate. Not only do they extend special treatment based on

operational or functional need to *all* infrastructure (i.e., not only specified infrastructure, see further below), but the recommended changes also limit the way in which a consent authority can manage the adverse effects of infrastructure activities, which is inappropriate because it contradicts s 5 of the Act.

37. Forest & Bird suggests that one solution would be simply to state the objective that "the adverse effects of infrastructure are managed in an appropriate way", which would not constrain Council's ability to manage adverse effects in accordance with other Part 2: District Wide Matters.

38. Alternatively, additional wording could be included, for example: "… in a way that recognises and provides for the operational need or functional need for regionally significant infrastructure to be in particular environments, while avoiding, remedying, or mitigating adverse effects as appropriate".

I-P2

39. Forest & Bird acknowledges the reasons for recommending deletion of the notified versions of I-P2 and I-P3, to avoid inconsistency and conflict with the EIB chapter. Forest & Bird supports this approach in principle, subject to ensuring that I-O4 (in combination with I-P14) does not limit the ability of a consenting authority to apply the EIB chapter when managing the adverse effects of INF activities.

40. Forest & Bird also accepts that it would be appropriate to recognise and provide for the functional and operational needs of regionally significant infrastructure when considering and managing the adverse effects of infrastructure on the environment.

41. However, Forest & Bird does not agree that this special treatment should be extended to all INF activities. The RMA definition of infrastructure is broad, and includes, for example, irrigation systems and drainage or sewerage

systems, and structures for transport on land, or for loading or unloading cargo or passengers “by any means”.

42. These activities are included regardless of whether they are municipal, or regionally significant, and the proposed wording of I-P2 would apply to activities that are pursued for private purposes, without any public benefit.

43. I am not aware of any legislation or national direction that requires adverse effects of all infrastructure activities to be treated differently from adverse effects of other activities in terms of operational or functional need and therefore suggest that it would be appropriate to limit the scope of I-P4 to regionally significant infrastructure.

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