

BEFORE THE HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Central Hawke's Bay
District Plan

**MEMORANDUM ON BEHALF OF THE ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND INCORPORATED – RESPONSES TO PANEL
QUESTIONS**

HEARING STREAM 1: NATURAL AND COASTAL ENVIRONMENT

18 March 2022

MEMORANDUM RESPONDING TO COMMISSIONERS' QUESTIONS

1. At the hearing on 15 March 2022 Forest & Bird was given the opportunity to provide written responses to questions from the Commissioners. These questions and responses are set out below. Forest & Bird provides further clarification on its position on Policy NFL-P5.

Question 1 (addressed to Tom Kay): Forest & Bird's further submission says that "Forest & Bird is concerned that a number of amendments sought [by Transpower] go beyond the NPS ET and would result in the loss and degradation of indigenous biodiversity. That the amendments sought fail to give effect to the NZCPS and NPSFM." Can Forest & Bird clarify what these amendments are?

2. Transpower have sought new or amended provisions to bring in the "seek to avoid" approach from the NPSET. Forest & Bird is concerned that the wording proposed for a standalone provision, or that may be used for amendments within existing provisions, to address Transpower's submission would apply this approach more broadly than stated in the NPSET. For example, the NPSET does not specify that approach should be used for significant indigenous biodiversity under s6(c) of the RMA, or that it would override the directives to avoid effects and avoid significant effects in the coastal environment set out in Policies 11, 13 and 15 of the NZCPS.
3. Amendments sought would also limit consideration of adverse effects to scheduled SNAs. The obligation in s 6(c) of the RMA is not limited to scheduled SNAs. Therefore, Forest & Bird's position is that any adverse effects generated from national grid development (new or major upgrades) must extend to all areas that meet the significance criteria.

Question 2 (addressed to Tom Kay): Can Forest & Bird expand on why they oppose Federated Farmers amendments? i.e. beyond "The amendments and decisions sought would result in continued loss of indigenous biodiversity in Hawke's Bay, would not give effect to the RPS, NZCPS and NPSFM or would not achieve the purpose of the RMA."

4. Forest & Bird has a broad submission in opposition to the Federated Farmers submission as its interest often overlap with (and contradict) those of Federated Farmers. This broad submission enables Forest & Bird to continue to participate in the plan development process should provisions change.
5. Forest & Bird has provided an example of this in speaking notes in relation to the s42A report's recommendation to address Federated Farmers submission on ECO-P2 (where the officer recommended the policy provide for "limited trimming and clearance..."). Another example is in relation to CE-O2 (where the officer has recommended recognising 'rural character'). In both instances it is outlined, in speaking notes, why we consider these to be inconsistent with the overarching legislation (RMA, NZCPS, etc). We consider

similar rationale to that put forward for these examples can generally be applied to other provisions where we have opposed Federated Farmers' proposed amendments.

6. In other cases, the s42A officer has agreed with Forest & Bird that amendments sought would not be consistent with the overarching legislation (RMA s6, NZCPS, etc). For example, in relation to Federated Farmers submissions on identification criteria for and protection of SNAs, including S121.018, S121.019, S121.252, S121.021. In these cases, the position in Forest & Bird's further submission is legitimised by the view of the s42A officer, and as Forest & Bird agrees with the officer there is no need to expand on these points further.

Question 3 (addressed to counsel): At paragraph 41 of the legal submissions on behalf of Forest & Bird it is noted that the District Plan must not be inconsistent with the Regional Plan. Were there any specific provisions in the Regional Plan this relates to?

7. Paragraph 41 of the legal submissions on behalf of Forest & Bird state:

While the NPSFM does not address outstanding natural character, features, and landscapes per se, it is nevertheless applicable. The NPSFM articulates matters of national significance that are relevant to achieving the purpose of the RMA in relation to freshwater management. While freshwater management is largely a regional council function under s 30(1), district plans must not be inconsistent with regional plans or any matter specified in s 30(1).

8. Provisions under the Hawke's Regional Resource Management Plan bearing some relevance can be found in chapter 5.9 "Tukituki River Catchment". The whole chapter is not provided however key objectives are set out as follows:

5.9.1 FRESH WATER OBJECTIVES

OBJ TT1 To sustainably manage the use and development of land, the discharge of contaminants including nutrients, and the taking, using, damming, or diverting of freshwater in the Tukituki River catchment so that:

- (a) Groundwater levels, river flows, lake and wetland levels and water quality maintain or enhance the habitat and health of aquatic ecosystems, macroinvertebrates, native fish and trout;
- (b) Water quality enables safe contact recreation and food gathering; (ba) Water quality and quantity enables safe and reliable human drinking water supplies;
- (c) The frequency and duration of excessive periphyton growths that adversely affect recreational and cultural uses and amenity are reduced;
- (d) The significant values of wetlands are protected;
- (e) The mauri of surface water bodies and groundwater is recognised and adverse effects on aspects of water quality and quantity that contribute to healthy mauri are avoided, remedied or mitigated; and
- (f) The taking and use of water for primary production and the processing of beverages, food and fibre is provided for.

OBJ TT2 Where the quality of fresh water has been degraded by human activities to such an extent that Objective TT1 is not being achieved, water quality shall not be allowed to degrade further and it shall be improved progressively over time so that OBJ TT1 is achieved by 2030.

OBJ TT4 To manage the abstraction of surface water and groundwater within a minimum flow regime and allocation limits that achieve OBJ TT1 while recognising that existing takes support significant investment.

OBJ TT4A To recognise that industry good practice for land and water management can assist with achieving Objectives TT1, TT2 and TT4.

OBJ TT5 Subject to Objectives TT1, TT2 and TT4, to enable the development of on-farm storage and Community Irrigation Schemes that improve and maximise the efficient allocation and efficient use of water

9. However as noted in legal submissions, the Hawke's Bay Regional Policy Statement and Regional Resource Management Plan predate the National Policy Statement for Freshwater Management (NSPFM 2020) and therefore do not provide complete coverage.¹ The Panel's focus should therefore be on the NPSFM 2020.

10. The NSPFM 2020 also directs regional councils to include specific objectives and policies in their regional plans without using the process in Schedule 1 of the RMA.² The Hawke's Bay Regional Council has done so, and the relevant provisions that have been inserted in the Hawke's Bay Regional Resource Management Plan are set out below:

OBJ 37A Fish passage

The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats.

POL 66B Loss of river extent and values

The loss of river extent and values is avoided, unless the council is satisfied:

- (a) that there is a functional need for the activity in that location; and
- (b) the effects of the activity are managed by applying the effects management hierarchy.

11. "Functional need" is defined in the NPSFM 2020 to mean "the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment."³

12. Both Obj 37A and Pol 66B would apply to all activities that impede fish passage or may adversely affect the extent and the values of rivers, including water storage facilities.

¹ Forest & Bird Legal Submissions at [36]-[37]. Also acknowledged in the Opening Legal Submissions for Central Hawke's Bay District Council Dated 9 March 2022 at [33].

² NSPFM 2020 clause 1.7, per s 55(2A) of the Resource Management Act 1991.

³ NPSFM 2020, clause 3.21.

13. For completeness the relevant regional council functions the Proposed Central Hawke's Bay District Plan must not be inconsistent with are as follows:

- a. Control of land for the purpose of:
 - i. the maintenance and enhancement of the quality of water in water bodies and coastal water;⁴
 - ii. the maintenance of the quantity of water in water bodies and coastal water;⁵
 - iii. The maintenance and enhancement of ecosystems in waterbodies and coastal water;⁶
- b. Controlling taking, use, damming and diversion of water;⁷

14. Both regional and district councils have responsibilities for preservation of natural character.

Additional matter queried – moving Policy NFL-P5 to the Strategic Direction chapter

15. For clarity, moving Policy NFL-P5 would not address Forest & Bird's submission. Further, Forest & Bird notes that any amendment or enlargement of the terms of NPL-P5 to give it broader application would be beyond the scope of any submissions on the Proposed District Plan.

⁴ RMA, s 30(1)(c)(ii).

⁵ RMA, s30(1)(c)(iii)

⁶ RMA, S30(1)(c)(iiia).

⁷ RMA, s 30(1)(e).