

**BEFORE THE HEARINGS PANEL**

**UNDER THE**

Resource Management Act 1991

**IN THE MATTER OF**

the Proposed Kaipara District Plan

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**LEGAL SUBMISSIONS ON BEHALF OF NORTHPOWER  
HEARING STREAMS 17, 18 AND 19 – NATURAL ENVIRONMENT  
VALUES**

5 June 2026

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## **MAY IT PLEASE THE PANEL:**

### **1 INTRODUCTION**

- 1.1 These submissions are provided on behalf of Northpower Limited and Northpower Fibre Limited (**Northpower**). They address Northpower's submission (#283) and further submission (#FS82) on the Proposed Kaipara District Plan (**PDP**) in relation to Hearing Streams 17 (Ecosystems and Indigenous Biodiversity), 18 (Natural Character) and 19 (Natural Features and Landscapes) (together, **Natural Environment Values**).
- 1.2 Northpower acknowledges and appreciates that Kaipara District Council (**Council**) has proposed some changes to the PDP in response to Northpower's submissions on Natural Environment Values. However, Northpower has residual concerns on specific issues, which are addressed in detail in the planning evidence of David Badham and the engineering evidence of Shaun Brown.
- 1.3 As signalled in Mr Badham's evidence, these submissions address the question of scope in relation to the Reporting Officer's recommendations to:
- (a) delete Policy 5 in the Natural Features and Landscapes (**NFL**) chapter (**NFL-P5**) in its entirety;
  - (b) amend Rule 2 in the Natural Features and Landscapes chapter (**NFL-R2**) to remove the permitted activity status for regionally significant infrastructure (**RSI**) within Outstanding Natural Features (**ONF**) and Outstanding Natural Landscapes (**ONL**) within the coastal environment, and replace it with a discretionary activity status for RSI within the coastal environment and restricted discretionary activity status for RSI outside the coastal environment.

### **2 LEGAL TEST FOR SCOPE**

- 2.1 The starting point is that a District Plan must be prepared by the relevant territorial authority "in the manner set out in the relevant Part

of Schedule 1” of the Resource Management Act 1991 (**Act**).<sup>1</sup> In the context of a proposed plan appeal, the Environment Court in *Environmental Defence Society Inc & Ors v Otorohanga District Council*<sup>2</sup> noted:

*A careful reading of the text of the relevant clauses in Schedule 1 shows how the submission and appeal process in relation to a proposed plan is confined in scope. Submissions must be on the proposed plan and cannot raise matters unrelated to what is proposed. If a submitter seeks changes to the proposed plan, then the submission should set out the specific amendments sought. The publicly notified summary of submissions is an important document, as it enables others who may be affected by the amendments sought in submissions to participate either by opposing or supporting those amendments, but such further submissions cannot introduce additional matters. The Council's decisions must be in relation to the provisions and matters raised in submissions, and any appeal from a decision of a council must be in respect of identified provisions or matters.*

- 2.2 The Kaipara District Council is currently holding hearings into submissions on the PDP. Therefore, the relevant provision when considering the question of scope for this matter is Clause 10 of Schedule 1 of the Act. Clause 10 requires that a local authority gives a decision on the provisions and matters raised in submissions, which must include reasons and may include matters relating to any consequential alterations necessary to the proposed plan arising from the submissions.
- 2.3 Where a local authority is considering alterations to its proposed plan, the High Court in *Countdown Properties (Northlands) Limited v Dunedin City Council*<sup>3</sup> provided the following test for determining if the alteration is within the scope of submissions on that proposed plan (or plan change in that case):

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<sup>1</sup> Section 73(1) of the Act.

<sup>2</sup> [2014] NZEnvC 070, at [11].

<sup>3</sup> *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150, [1994] NZRMA 145, at pg 166.

*The local authority or tribunal must consider whether any amendment made to the plan change as notified goes beyond what is reasonably and fairly raised in submissions of the plan change. .... It will usually be a question of degree to be judged by the terms of the proposed change and the content of the submissions.*

- 2.4 The above test is to be approached in a realistic and workable fashion rather than from the perspective of legal nicety.<sup>4</sup> This recognises that the process of public notification, submissions and hearing before the Council is involved and a range of diverse interests and issues can emerge.<sup>5</sup> As explained by the High Court in *Albany North Landowner v Auckland Council*<sup>6</sup>:

*The "workable" approach requires the local authority to take into account the whole relief package detailed in each submission when considering whether the relief sought had been reasonably and fairly raised in the submissions. It is sufficient if the changes made can fairly be said to be foreseeable consequences of any changes directly proposed in the reference.*

- 2.5 Therefore, taking a realistic and workable fashion requires the decision-maker to consider whether an alteration to a proposed plan falls fairly and reasonably within the range of options between what was originally notified by the Council and the relief requested by submitters.

### **3 SCOPE TO DELETE POLICY NFL-P5**

- 3.1 Policy 'NFL-P5 - Regionally significant infrastructure' in the PDP provides:

*Enable the operation, maintenance and upgrading of regionally significant infrastructure in Outstanding Natural Features or Outstanding Natural Landscapes where:*

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<sup>4</sup> *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59, at [59] citing *Royal Forest & Bird Protection Soc Inc v Southland DC* [1997] NZRMA 408, at pg 413.

<sup>5</sup> *Royal Forest & Bird Protection Soc Inc v Southland DC* [1997] NZRMA 408, at pg 413.

<sup>6</sup> *Albany North Landowners v Auckland Council* [2017] NZHC 138, at [115].

- (a) *There is an operational need or functional need to be in that particular location; and*
- (b) *Adverse effects on the characteristics, qualities and values of Outstanding Natural Features and Outstanding Natural Landscapes are avoided, remedied or mitigated in accordance with NFL-P3 and NFL-P4.*

3.2 As explained in Mr Badham's evidence:<sup>7</sup>

- (a) Northpower made a submission seeking amendments to NFL-P5 which sought to enable the establishment of new regionally significant infrastructure, the repair of existing regionally significant infrastructure, as well as the recognition and provision of all infrastructure.
- (b) All other submissions on this policy either supported its retention as notified, or sought additional amendments to the policy.
- (c) The Reporting Officer has recommended the deletion of this policy in its entirety on the basis that policy direction relating to infrastructure (including regionally significant infrastructure and the National Grid) and its effects on 'overlays' should be consolidated in the Infrastructure Chapter.
- (d) The Reporting Officer advised that the matters covered by NFL-P5 are already suitably addressed within the Infrastructure Chapter, in particular INF-P5.
- (e) Mr Badham explained that NFL-P5 and INF-P5 address different concepts and therefore he considers that NFL-P5 cannot be deleted on the basis that INF-P5 addresses it.

3.3 Following the exchange of evidence, the Reporting Officer has in his s42A Addendum recognised that NFL-P5 does differ from the wording in INF-P5. However, he considers that NFL-P5 does not add any substantive policy direction beyond the existing framework.<sup>8</sup>

3.4 The starting point under the PDP is a policy within the NFL chapter that requires the operation, maintenance and upgrading of RSI within ONF

<sup>7</sup> Statement of Evidence of David Badham, dated 22 May 2026, at pg 17-18.

<sup>8</sup> Section 42A Report Addendum for Natural Features and Landscapes, pg 8.

and ONL to be enabled. This gives clear support for RSI activities within the NFL chapter and must be given effect to in the NFL rules. Public submissions on NFL-P5 recognised that the policy was appropriate to have within the NFL chapter in some form. Northpower and Transpower sought to make NFL-P5 more enabling for RSI, and Royal Forest and Bird Protection Society sought to add a requirement that the RSI be demonstrated as having no other feasible alternative locations available outside of ONL and ONF.

- 3.5 The range of options between what was originally notified by the Council and the relief requested by submitters does not include deleting NFL-P5 in its entirety. The Reporting Officer has not proposed an alternative policy to be included in the Infrastructure chapter that would provide the same support for RSI in ONL and ONF. Therefore, it is submitted that the Reporting Officer's recommended change was not foreseeable as a result of the submissions and there is no scope to make that change to the PDP.

#### **4 SCOPE TO DELETE CLAUSE 6 OF NFL-R2**

- 4.1 Clause 6 of Rule NFL-R2 in the PDP provides that within ONL and ONF within the coastal environment, new buildings and structures are a permitted activity where:

*The building or structure is associated with regionally significant infrastructure.*

- 4.2 As explained in Mr Badham's evidence:<sup>9</sup>

- (a) Northpower made a submission seeking amendments to NFL-R2 to clarify that buildings and structures associated with RSI within ONL and ONF outside of the coastal environment are also a permitted activity.
- (b) There were no submissions that sought the deletion or narrowing of the existing NFL-R2 provisions with regard to RSI beyond what was notified.
- (c) The Reporting Officer has rejected Northpower's submission point on the basis that he has concerns about applying a blanket

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<sup>9</sup> Statement of Evidence of David Badham, dated 22 May 2026, at pg 30-31.

permitted activity status to RSI of any scale. The Reporting Officer has recommended deleting clause 6 of NFL-R2 so that if compliance with permitted standards in NFL-R2 is unable to be achieved, new buildings and structures associated with RSI will be a:

- (i) discretionary activity within ONL and ONF within the coastal environment; and
- (ii) restricted discretionary activity within ONL and ONF outside the coastal environment.

4.3 The change to NFL-R2 recommended by the Reporting Officer would take a rule that was partly enabling for RSI within ONL and ONF and make it significantly more restrictive. This is not a foreseeable consequence of Northpower's request that NFL-R2 be more enabling for buildings and structures associated with RSI. Therefore, it is submitted that there is no scope to make the Reporting Officer's recommended change to NFL-R2.

4.4 In his Section 42A Addendum and in response to Mr Badham's comments on scope, the Reporting Officer has argued that the deletion of clause 6 in NFL-R2 is within the scope of the submission of Evolve Planning and Landscape Architecture (**Evolve**) specifically, submission points 50.24 and 50.25.<sup>10</sup> Under those submission points, Evolve sought the following decisions from the Council in relation to the NFL Chapter:

- (a) "Provide for more rules within this chapter – use Whangarei District Plan as an example"; and
- (b) "Require the protection of these features through subdivision and development".

4.5 The Evolve submission does not propose specific amendments or wording to give effect to its relief sought. However, the submission implies that Evolve was seeking the addition of measures, such as permitted activity standards or controls, to manage the effects of subdivisions and development on natural features. The Evolve

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<sup>10</sup> Section 42A Report Addendum for Natural Features and Landscapes, pg 14-15.

submission makes no mention of how infrastructure should be treated in the NFL chapter. It is also important to note that the Council's summary of submissions does not identify the Evolve submission as relating to rule NFL-R2 or affecting RSI. As highlighted in the quote from *Environmental Defence Society Inc & Ors v Otorohanga District Council* above, the summary of submissions is an important document that enables others who may be affected by amendments sought in submissions to either oppose or support those amendments. In this context, there was no indication or the ability to foresee that Evolve's submission would lead to the Reporting Officer's proposed deletion of clause 6 in NFL-R2. Therefore, it is respectfully submitted that the Council cannot rely on the Evolve submission to provide scope for this change.

## **5 CLAUSE 16 OF SCHEDULE 1 IS NOT AVAILABLE**

5.1 For the avoidance of doubt, it is submitted that Subclause 16(2) of Schedule 1 of the Act (which enables a change of minor effect, or to correct minor errors without using the process under Schedule 1) cannot be used to make the Reporting Officer's recommended changes discussed above. This is because both changes make the NFL chapter less enabling for RSI activities, which will likely result in consenting costs for RSI owners. This is a more than minor effect and goes beyond correcting a minor error.

## **6 CONCLUSION**

6.1 It is submitted that the Reporting Officer's recommendations to delete NFL-P5 and to amend NFL-R2 to make the activity status of RSI in ONL and ONF more restrictive are beyond the scope of submissions. Northpower respectfully requests that the Panel decline those recommendations and retain an approach that is within scope and appropriately recognises and enables regionally significant infrastructure as proposed in the evidence of Mr Badham and supported by the evidence of Mr Brown.

**Caroline Sharp**  
**Counsel for Northpower**  
**5 June 2026**