

**BEFORE THE HEARING PANEL**

**IN THE MATTER OF**

**The Proposed Kaipara District Plan**

**Hearings 17 & 18: Ecosystems and Indigenous  
Biodiversity & Natural Character**

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**LEGAL SUBMISSIONS ON BEHALF OF FOREST & BIRD**

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**Dated: 5 June 2026**

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## INTRODUCTION

1. The Royal Forest and Bird Protection Society of New Zealand Inc. (**Forest & Bird**) made submissions (submitter number 149) and further submissions (further submitter number FS93) on the Proposed District Plan (**PDP**).
2. These legal submissions focus on the Ecosystems and Indigenous Biodiversity and Natural Character chapters of the PDP, including addressing certain matters raised by the recommendations contained in Council's s42A report.
3. F&B maintains its original and further submissions, these legal submissions focus on specific issues to be addressed at the hearing, without limiting the general scope of submissions.

## ECOSYSTEMS AND INDIGENOUS BIODIVERSITY

### *Areas of significant indigenous vegetation and significant habitats of indigenous fauna*

4. Despite the time limited modifications to the National Policy Statement for Indigenous Biodiversity (**NPS-IB**) made under s 78 of the Act, the PDP must still implement s 6(c) of the Act and give effect to the Regional Policy Statement for Northland (**RPS**).

### **ECO-O2**

5. Forest & Bird agrees with DOC that the PDP should give effect to the objective of the NPS-IB so far as practicable, and that this can be achieved by amending ECO-P2 as suggested by DOC. The NPS-IB objective of maintaining indigenous biodiversity means "at least no overall reduction",<sup>1</sup> which is equivalent to "no net loss". This objective cannot be achieved unless it is included in plans managing land-use at a district level.
6. The problem with the current drafting of ECO-O2 is that the meaning of "to maintain its extent and diversity" is qualified by the subsequent wording "in a way that provides for the social, economic and cultural well-being of people

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<sup>1</sup> NPS-IB cl 1.7

and communities”. This is reminiscent of the definition of “sustainable management” in Section 5(2) of the Act, which seeks to balance social, economic, and cultural well-being together with intergenerational and environmental interests.

7. An Objective in the ECO chapter of the PDP is not the correct context to reintroduce this broad and high-level balance of considerations. As explained by the Supreme Court in the *King Salmon* case:<sup>2</sup> “the RMA envisages the formulation and promulgation of a cascade of planning documents, each intended, ultimately, to give effect to s 5, and to pt 2 more generally”.
8. The objective of the NPS-IB is “to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date”.<sup>3</sup> The objective then goes on to describe four ways in which this should be achieved, one of which is “... while providing for the social, economic, and cultural wellbeing of people and communities **now and in the future**” (**emphasis added**).
9. It is not appropriate to weaken the PDP Objective by referring to an extract from only one of the ways in which the NPS-IB objective should be achieved. Forest & Bird therefore supports the amendment to ECO-O2 suggested by DOC, because it would ensure that the PDP gives effect to the overall objective of the NPS-IB – which is to achieve no overall (or “net”) loss of indigenous biodiversity. This objective should not be *limited* by reference to economic and other interests, instead the objective describes *how* the PDP should provide for the social, economic, and cultural well-being of people and communities, now and in the future.
10. Forest & Bird does not agree with the s 42A analysis on this point because (a) the “no net loss” objective can be derived directly from the objective of the NPS-IB (i.e. from “no overall loss”, rather than from “net gain” in Appendix 3 of the NPS-IB); and (b) it is clear from the NPS-IB that district councils should

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<sup>2</sup> *Environmental Defence Society Inc. v The New Zealand King Salmon Company Ltd* [2014] NZSC 38, at [30]

<sup>3</sup> NPS-IB cl 2.1

be attempting to understand how this objective is being met at a district level – this may be challenging, but it is required by the NPS-IB.

### ***ECO-P1***

11. In the coastal environment, ECO-P1 must give effect to the New Zealand Coastal Policy Statement 2010 as amended in 2025 (**NZCPS**). It should therefore cover the full list of adverse effects included in Policy 11 of the NZCPS. To achieve this, ECO-P1 should also address Policy 11(ii), (v) and (vi):
  - a. habitats and ecological corridors that are important during the vulnerable life stages of indigenous species;
  - b. habitats, including areas and routes, important for migratory species;
  - c. ecological corridors, and areas important for linking or maintaining biological values identified under Policy 11.
12. These matters are particularly relevant in the Kaipara District which has seen a very high degree of loss of indigenous vegetation and biodiversity and yet is still home to important threatened species such as kauri and tara iti | fairy tern.
13. The operative plan recognises the importance of avoiding fragmentation and loss of ecological corridors (e.g. issue 6.4.2, and outcome 6.8.2), and this emphasis should not be lost in the PDP, especially in the coastal environment.

### ***ECO-P2***

14. The s42A report has not recommended any changes to the notified version of ECO-P2. Forest & Bird considers that there are two ways in which this policy can be improved. The first, and simplest, is to give effect to cl. 3.16 of the NPS-IB by incorporating the effects management hierarchy (**EMH**) into ECO-P2.2. The second, and more complex, is to give effect to cl. 3.10(2) of the NPS-IB in areas of significant indigenous vegetation and significant habitat of indigenous fauna (**significant areas**).

*EMH and significant adverse effects*

15. Forest & Bird agrees with both DOC and Mr Wyeth that the EMH provides a more robust and up-to-date framework for managing adverse effects on indigenous biodiversity.
16. NPS-IB cl 3.16(1) expressly requires **significant adverse effects** outside SNAs to be managed by applying the EMH. Where SNAs have not yet been identified and scheduled in the plan, this applies to all activities that are not occurring on specified Māori land. Therefore, the Council's decision not to include SNAs in the PDP does not mean that application of the EMH can also be postponed.
17. NPS-IB cl 3.16(2) requires **all other adverse effects** to be managed to give effect to the objective and policies of the NPS-IB.
18. The simplest way for the PDP to give effect to these clauses would be for ECO-P2.2 to give effect to cl 3.16(1), and for ECO-P3 to give effect to cl.3.16(2).
19. Clause 3.16(3) states that "every local authority must make or change its policy statements and plans to be consistent with the requirements of this clause". The timing requirements are set out in cl. 4.1 and 4.2, and it is significant that there is a specific timing requirement in clause 4.2 for giving effect to clause 3.16 (indigenous biodiversity outside SNAs) and clause 3.24 (information requirements), which is shorter than the requirement for SNA mapping. For both clauses, changes must be notified as soon as reasonably practicable and no later than 4 August 2028.<sup>4</sup> These requirements are not affected by s 78 of the RMA (time-limited modifications to NPSIB 2023)
20. It is clear from these specific timing requirements that it is anticipated that the PDP can and should give effect to clauses 3.16 and 3.18 without needing to give effect to the rest of the NPS-IB (including SNA mapping) at the same time.<sup>5</sup>

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<sup>4</sup> See NPS-IB cl 1.2: 7 July 2023 (notification date) plus 5 years and 28 days.

<sup>5</sup> Cf. Addendum s42A report at [58]-[59]

21. Forest & Bird considers that it is not appropriate to delay giving effect to these provisions because of concerns that the law may be changed in the future. The PDP must give effect to the law as it now stands.

22. Suggested amendment to ECO-P2.2:

**ECO-P2 Indigenous biodiversity outside the coastal environment**  
**Outside the coastal environment**

...

2. ~~Avoid, remedy, or mitigate, offset or compensate~~ Manage adverse effects of subdivision, land use and development by applying the effects management hierarchy to ensure there are no significant adverse effects on:

- a. Areas of predominantly indigenous vegetation; and
- b. Indigenous species, habitats and ecosystems that are important for recreational, commercial, traditional or cultural purposes or are particularly vulnerable to modification

23. This change would also mean the PDP would need to include the NPS-IB definition of the EMH, together with the NPS-IB guidance on offsetting and compensation.

*Areas of significant indigenous vegetation and significant habitat of indigenous fauna (significant areas)*

24. The question of how to provide appropriate guidance in ECO-P2 to manage adverse effects in significant areas is more complex. The PDP does include provisions for assessment of significant areas, based on the criteria provided in Appendix 5 of the RPS. Forest & Bird is reassured to hear from DOC that, in practice, applying these criteria would be likely to achieve the same outcomes as applying the NPS-IB criteria.

25. Once identified it is important that these significant areas are appropriately protected. CI 3.10(2) of the NPS-IB provides the basis for how this should be achieved.

26. Under the notified version (unchanged in s42A report), adverse effects on significant areas would need to be avoided in the coastal environment (ECO-P1.1(b)), and “no more than minor” outside the coastal environment (ECO-P2.1(b)).
27. Forest & Bird supports the changes suggested by DOC based on cl 3.10 of the NPS-IB. This will also require provisions to address the various exceptions set out in cl 3.10, resulting in some complexity. However, Forest & Bird considers that this level of complexity is justified by the need to protect significant areas from inappropriate use and development, once these areas have been identified as part of a consenting process.

### ***ECO-P3***

28. As currently drafted, ECO-P3 seeks to balance a variety of complex and potentially competing interests and values. There may be an argument for separating the policy into constituent parts, however Forest & Bird notes that ECO-P3 is broadly supported by most infrastructure providers and other submitters.
29. Forest & Bird would also potentially be comfortable with ECO-P3 subject to the following:
  - a. additional wording should be included to make it clearer that ECO-P3 is also intended give effect to cl. 3.16(2) of the NPS-IB and s 31(1)(b)(ii) of the Act
  - b. ECO-P3.2 should refer to “regionally significant infrastructure” (i.e. the Northpower submission on this point should be rejected).
30. Referring only to RSI in ECO-P3.2 is more consistent with the NPS-IB in the context of significant areas; it is also more consistent with s 6(c) of the Act. Given that Northpower assets are bound to meet the criteria for RSI, it is unclear why this issue is particularly important for Northpower. The Northpower submission [283.147] seeks this change only on the basis that “all infrastructure should be recognised in order to be consistent with the

infrastructure enabling provisions in other chapters of the PDP". However, this submission fails to recognise that infrastructure enabling provisions in elsewhere in the PDP will likely not be addressing the management of adverse effects on areas of significant indigenous vegetation and significant habitat of indigenous fauna. Extending ECO-P3.2 to include all infrastructure, including private infrastructure with no real public benefit, would not be appropriate.

31. Forest & Bird agrees with Mr Wyeth's recommendation to reject other changes sought by Northpower to include upgrading in ECO-P3, and to reject the additional objective and policies sought by Northpower. Mr Wyeth's analysis of the new NPS-I and NPS-EN is correct. These new NPS are not intended to override s 6 values.

32. Suggested changes to ECO-P3 (based on s 42A report version):

**ECO-P3 Protection and maintenance of indigenous biodiversity**

Manage subdivision, land use and development to protect significant indigenous vegetation and significant habitat of indigenous fauna and to maintain indigenous biodiversity throughout the district in a way that:

1. Does not unreasonably restrict existing primary production activities, particularly on highly productive land;
2. Recognises the operational need or functional need of regionally significant infrastructure to traverse or locate within areas of significant indigenous vegetation and significant habitat of indigenous fauna where there are no practicable alternative locations;...

**ECO-PY**

33. F&B supports ECO-PY to manage pests and pest plants/animals but also considers it should include the amendments recommended by DOC

**Offsetting and compensation**

34. As discussed above, the PDP already includes consideration of offsetting and compensation. Forest & Bird agrees that NPS-IB guidance on offsetting and

compensation should also be included in the PDP, as has been suggested by DOC (Mr Whitelock) and supported by Mr Wyeth.<sup>6</sup>

### **Indigenous vegetation clearance rules**

#### *ECO-R1*

35. Forest & Bird considers that new fences to exclude stock (**R1.1(c)**) should be around the perimeter of significant areas and should not require vegetation clearance within these areas. Clearing a 7m wide corridor with a significant area, which would be permitted by the proposed rule, would be likely to have more than minor adverse effects and would not be consistent with ECO P1.1 or ECO P2.1.
36. The equivalent rule in the operative plan (12.10.2a(5)(f)) is less permissive in that:
  - a. it requires clearance “using manual methods that do not require the removal of any indigenous tree over 300mm girth”;
  - b. it refers only to “an area which is to be protected for ecological or soil conservation purposes” – as currently drafted R1.1(c) does not require subsequent protection of the significant area.
37. As a bare minimum requirement, the PDP should ensure that it does not result in more extensive clearance of significant areas than would be permitted by the operative plan.
38. **R1.1(e)** should not permit clearance of significant areas. Again, the operative plan is less permissive in that it only permits the “maintenance of any open or clear space” (12.10.2a(5)(c)), i.e. it would not allow new clearance of significant areas. If existing residential units are already located closer than 20m to significant areas, it can safely be assumed that the proposed setback is unnecessary. Rule 1.1(a) already addresses risks to public safety or damage to

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<sup>6</sup> S42A addendum [62].

property. This issue could be addressed by using similar wording to the operative plan.

39. **R1.1(f)** new residential units should be set back at least 20m from significant areas where possible. Permitting residential units to be placed within or directly adjacent to significant areas, thereby enabling these areas to be cleared of vegetation, would be likely to have more than minor adverse effects and is not consistent with ECO P1.1 or ECO P2.1. There are few significant areas remaining in the district and plenty of other land available to use. Permitting 1000m<sup>2</sup> clearance for construction, together with a 20m setback beyond this area, is not appropriate as a permitted activity within significant areas. The operative plan (12.10.2a(5)(b)) is less permissive in that it only allows for 500m<sup>2</sup> clearance for house sites.
40. The rule is presumably intended to address circumstances in which an owner has an existing title to bare land, and where vegetation clearance is necessary to enable construction of a dwelling. There are two issues with this:
  - a. as currently worded, it is not clear whether the rule would permit construction of a single residential unit on land that already has a residential unit. This could be addressed by additional wording such as: “To allow for the construction of a single residential unit on an existing Record of Title dated prior to 28 April 2025 with no existing residential unit...”
  - b. The PDP should still seek to protect significant areas. The Council should be able to manage effects by directing residential development away from significant areas. This could be addressed by making the construction of a residential unit a controlled activity, with matters of control including effects on indigenous biodiversity. It seems likely that consents will be required in any event, and this controlled activity would ensure that owners can build a residential unit while still enabling effects on significant areas to be appropriately managed.

41. Forest & Bird supports the changes to **ECO-R1.1(i)** recommended in the s42A report (i.e. reducing the age of indigenous vegetation for purposes of permitted clearance to 5-yrs).
42. For **ECO-R1.1(k)**, Forest & Bird shares DOC's concerns about the harvesting of indigenous timber under Part 3A of the Forests Act 1949 as a permitted activity and supports amending the activity status to restricted discretionary.
43. Section 67V of the Forests Act 1949 expressly states that "Nothing in this Part derogates from any provision of the Resource Management Act 1991". As explained in DOC's evidence, the remnant indigenous forests in the Kaipara district support disproportionately high biodiversity values, which are intended to be managed under the RMA, rather than the Forests Act. The Forests Act 1949 relies on the RMA to manage these effects, and this would not be achieved by permitted activity status under the PDP.

#### ***ECO-R2***

44. Despite the changes recommended in the s42A report, Forest & Bird considers that the generally permitted indigenous vegetation clearance thresholds remain too high and too indiscriminate.
45. Under the s42A report recommendations, the PDP would permit 500m<sup>2</sup> per calendar year in Māori purpose zone, General rural zone, and Rural lifestyle zone, and 250m<sup>2</sup> per calendar year in all other zones. Most significant areas are likely to be found in the General rural zone, which covers most of the district, including many parts of the coastal environment.
46. The s42A report acknowledges that the proposed thresholds are somewhat arbitrary, and that ECO-R2 is "a planning solution that attempts to provide a balance between indigenous biodiversity protection and practical thresholds that allow for clearance associated with low-risk, common and essential activities to be undertaken without needing a resource consent".<sup>7</sup>

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<sup>7</sup> S 42A at [189]

47. While acknowledging the difficulties in setting a “one size fits all” threshold, Forest & Bird suggests that a more nuanced and targeted approach is justified – particularly in circumstances where SNA mapping has not yet been achieved.
48. Firstly, the proposed clearance threshold of 500m<sup>2</sup> per year in the coastal environment does not give effect to the NZCPS by recognising the distinctive values of the coastal environment. A reduced clearance threshold for the coastal environment would be appropriate, and Forest & Bird would support DOC’s alternative suggestion of a 100m<sup>2</sup> clearance threshold (per annum) in this context.
49. Secondly, in important respects the PDP would be more enabling for indigenous vegetation clearance than the operative plan, which includes greater protections within more extensive overlays and specific protection for large areas of indigenous vegetation. The Wildlands report (attached to DOC’s submission on the PDP) has emphasised that the current regulatory framework has not been effective in preventing ongoing loss of indigenous ecosystems,<sup>8</sup> and it is therefore essential that the PDP does not result in an even less protective planning framework.
50. For example, under the operative plan there is **no generally permitted indigenous vegetation clearance** (i.e. other than for specified purposes):
- a. Within the Kiwi Density overlay (Schedule 5, not carried over into PDP);
  - b. In the general rural zone, where the indigenous vegetation is part of i) a continuous area of predominantly indigenous vegetation over 5 hectares in area; or ii) a continuous area of predominantly indigenous vegetation greater than 6m in height and over 1 hectare in area.
  - c. In East Coast and West Coast and Kaipara Harbour Overlays, where the indigenous vegetation is part of (i) a continuous area of predominantly indigenous vegetation over 1 hectare in area; or (ii) a continuous area of

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<sup>8</sup> See Executive Summary at p 68 of DOC’s submission

predominantly indigenous vegetation greater than 6m in height and greater than 1000m<sup>2</sup>;

d. In the Mangawhai Harbour and Kai Iwi Lakes Overlays, where the indigenous vegetation is part of i) a continuous area of predominantly indigenous vegetation over 1 hectare in area; or ii) a continuous area of predominantly indigenous vegetation greater than 3m in height and greater than 500m<sup>2</sup>.

51. Forest & Bird suggests that, at a minimum, the restrictions on clearance within continuous areas of predominantly indigenous vegetation should be carried over into the PDP.
52. To ensure that the Council can fulfil its statutory functions, it would be helpful to request Wildlands to provide updated advice on how significant areas can best be protected in the absence of SNAs. This may, for example, result in recommendations for different thresholds for continuous areas of predominantly indigenous vegetation – in which there would be no generally permitted vegetation clearance.
53. The s 42A proposed changes to the ECO-R2.2 are concerning, in that they may be interpreted as requiring the Council to assess significance criteria or imply that, where this assessment has not yet occurred, cl ECO-R2.2(f) is not in play. Forest & Bird agrees that cl ECO-R2.2(f) should be included but considers that this should also be accompanied by a clear requirement for applicants to carry out the assessment, as contained in the notified version.
54. Furthermore, the wording proposed in the s42A version for ECO-R2.2(f) does not accurately capture the matters that would need to be assessed. The question should not be whether “any of the indigenous vegetation proposed to be cleared” meets significance criteria, but instead whether the whole or any part of the **area** proposed to be cleared meets significance criteria.

## **NATURAL CHARACTER**

### *NATC-P2*

55. NATC-P2 is likely to be engaged, together with NATC-P1 and NATC-P5, when the consenting authority is considering RDIS applications for activities that exceed the permitted thresholds in NATC-R1 – 4. In this context, NATC-P2 will be relevant to considering “the positive effects of the activity”.
56. Forest & Bird maintains that NATC-P2 needs to include effects management. This is because NATC-P2 uses the highly directive term “enable”. This is likely to be interpreted as requiring an application to be granted, even where adverse effects are not managed in accordance with NATC-P1, i.e. the enabling provision is likely to be construed as a ‘carve-out’ for the specified activities.
57. Instead, the enabling aspect of NATC-P2 should be reflected in the permitted activities under rules NATC-R1 – 4, while the RDIS activities should be subject to appropriate effects management.
58. Suggested amendment to NATC-P2:

#### **NATC-P2 Indigenous vegetation clearance and earthworks**

Enable indigenous vegetation clearance and earthworks within wetland, lake and river margins where it is for:

1. The operation, repair or maintenance of lawfully established activities;...
10. Access necessary for any of the above

While ensuring that adverse effects on natural character are avoided, remedied or mitigated in accordance with NATC-P1.

### *NATC-P5*

59. Forest & Bird maintains that effects on indigenous biodiversity need to be included as an assessment matter in NATC-P5. Provisions relating to natural character must include consideration of indigenous biodiversity, which is an integral part of natural character. For example, Policy 13 of the NZCPS

recognises that natural character may include “natural elements, processes and patterns”<sup>9</sup> and ecological aspects,<sup>10</sup> and in the context of restoration of natural character, Policy 14 refers to “restoring indigenous habitats and ecosystems”,<sup>11</sup> “encouraging natural regeneration of indigenous species”<sup>12</sup> and “creating or enhancing habitat for indigenous species”.<sup>13</sup>

60. Including indigenous biodiversity as a matter to be considered in NATC-P5 is especially important because the chapter introduction and provisions do not provide any direction on the characteristics, qualities and values of natural character.

61. Suggested amendment to NATC-P5:

**NATC-P5 Assessment of resource consents**

Have regard to the following matters when assessing the effects of resource consent applications for subdivision, land use and development on the natural character of wetland, lake and river margins:

1. The presence or absence of buildings, structures or infrastructure...

14. Indigenous biodiversity present – including indigenous vegetation, indigenous species habitat and indigenous species

62. Forest & Bird opposes reducing the defined width of wetland, lake and river margins from 30m to 20m. RMA esplanade reserves are in the context of subdivision, not protection of natural character. It is unclear why FFNZ considers that a reduced margin would be more consistent with the NES-FW or Regional Plan, neither of which appear to address the width of wetland, lake and river margins. Forest & Bird suggests that FFNZ should be asked to clarify which provisions in the NES-FW and Regional Plan it is referring to.

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<sup>9</sup> NZCPS Policy 13(2)(a)

<sup>10</sup> NZCPS Policy 13(2)(b)

<sup>11</sup> NZCPS Policy 14(c)(i)

<sup>12</sup> NZCPS Policy 14(c)(ii)

<sup>13</sup> NZCPS Policy 14(c)(iii)

63. Including generous riparian margins in the PDP is especially important because the PDP would remove the Harbour and Kai Iwi Lakes Overlays, which provide a significantly wider area of protection under the operative plan.



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**5 June 2026**