

**BEFORE THE ENVIRONMENT COURT
WELLINGTON REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

IN THE MATTER

**of an appeal under Clause 14 of
Schedule 1 of the Resource
Management Act 1991**

BETWEEN

**Royal Forest and Bird Protection
Society of New Zealand Inc
Appellant**

AND

**Greater Wellington Regional Council
Respondent**

NOTICE OF APPEAL BY THE ROYAL FOREST AND

BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED

Dated 18 November 2024

Royal Forest & Bird Protection Society Inc

Solicitor Acting: May Downing/Erika Toleman

E: m.downing@forestandbird.org.nz / e.toleman@forestandbird.org.nz

Ph: 022 048 1970 / 021 988 315

**To: The Registrar
Environment Court
Wellington**

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird or the Society**) appeals against the decision of the Greater Wellington Regional Council (**'GWRC or Council'**) in respect of the non-freshwater planning instrument parts of Proposed Change 1 and variation 1 to the Regional Policy Statement for the Wellington Region (**PC1**).
2. Forest & Bird made a submission and further submission on PC1.
3. Forest & Bird is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. The decision was publicly notified on 4 October 2024.
5. The decision was made by the Greater Wellington Regional Council which adopted the recommendations in the report of the Hearings Panel appointed by the Council on the non-freshwater parts of PC1.
6. Forest & Bird is willing to participate in alternative dispute resolution.
7. The parts of the decision that Forest & Bird is appealing are provisions under chapters on "definitions", "natural hazards," "regulatory policies – direction to district and regional plans the Regional Land Transport Plan", and "regulatory policies – matters to be considered".

The reasons for appeal, and relief sought

8. In addition to the reasons set out in Table 1 below, the general reasons for Forest & Bird's appeal are that the provisions appealed against:
 - a. do not give effect to the New Zealand Coastal Policy Statement (**NZCPS**);
 - b. do not give effect to the National Policy Statement on Freshwater management (**NPSFM**);
 - c. do not give effect the National Policy Statement for Indigenous Biodiversity (**NPSIB**).
 - d. are not consistent with Part 2 of the Resource Management Act (**the Act or RMA**);
 - e. do not implement the Council's functions under s 30 of the Act;
 - f. do not represent the most appropriate way to achieve the objectives of the PC1 in accordance with s 32 of the RMA;

g. do not represent best resource management practice.

9. The provisions of PC1 appealed, reasons for the appeal and relief sought are set out in Table 1 below. Where specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons for its appeal. Forest & Bird also seeks any consequential changes made necessary by the relief sought below.

TABLE 1: ADDITIONAL REASONS FOR APPEAL AND RELIEF SOUGHT TO PROPOSED CHANGE 1 AND VARIATION 1 TO THE REGIONAL POLICY STATEMENT FOR THE WELLINGTON REGION

Specific provisions to the matters appealed	Reasons for appeal (in addition to those set out in paragraph 8 and 9 above)	Relief sought (Forest & Bird changes are shown in <u>underline</u> and strike through to the decision version of PC9)
Chapter 2A: Definitions		
Regionally significant infrastructure	<p>The additional activities associated with Wellington International Airport are overbroad and should be addressed in the policy framework rather than definition.</p> <p>The reference to “infrastructure and any buildings, installations, and equipment required to operate, maintain, upgrade and develop the airport located on, or adjacent to, land and water used in connection with the airport” is overbroad. “Infrastructure, buildings, installations, and equipment not located on airport land” may also capture infrastructure that is not regionally significant. It creates uncertainty for related provisions in PC1 and results in some provisions no longer giving effect to the NZCPS, the NPSFM and ultimately lack of protection for indigenous biodiversity under s6(c) of the RMA.</p>	<p>Wellington International Airport <u>including infrastructure and any buildings, installations, and equipment required to operate, maintain, upgrade and develop the airport located on, or adjacent to, land and water used in connection with the airport.</u> This includes infrastructure, buildings, installations and equipment not located on airport land.</p>
Chapter 3.8 Natural hazards		
Objective 19	Objective 19 fails to give effect to NZCPS Policies 24-27. There is no good resource management reason to protect infrastructure from the effects of climate change, but not the environment.	<p>Amend as follows:</p> <p>The risks to people, communities, businesses, property, and <u>infrastructure and the environment</u> from natural hazards and the effects of climate change are avoided or minimised.</p>
Objective 21	As above. Further, there will be instances where the resilience of infrastructure, including hard protection structures, should not be “improved” and will require de-commissioning. NZCPS Policy 25(c) encourages “development, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including	<p>Amend as follows:</p> <p>The resilience of our communities, infrastructure, and the natural environment to natural hazards is</p>

	<p>managed retreat by relocation or removal of existing structures or their abandonment in extreme circumstances, and designing for relocatability or recoverability from hazard events.” (Emphasis).</p> <p>The NZCPS prioritises the resilience of the natural environment over infrastructure, and Objective 21 does not reflect this. NZCPS Policy 25 directs that redevelopment that would increase the risk of adverse effects from coastal hazards is avoided, and that hard protection structures should be discouraged. Policy 26 that provision is made for the restoration or enhancement of natural defences.</p>	<p>improved, including to the short, medium, and long-term effects of climate change, and sea level rise and people are better prepared for the consequences of natural hazard events.</p>
<p>Chapter 4.1 Regulatory policies – direction to district and regional plans the Regional Land Transport Plan</p>		
<p>Policy CC.7</p>	<p>The natural environment can best respond to climate impacts if it is intact, connected, and its ecological and physical processes, are maintained and enhanced. Despite this, Policy CC.7 was downgraded to a non-regulatory policy, which leaves a gap in implementing NZCPS Policy 25, fails to reflect the objectives in Aotearoa New Zealand’s first national adaptation plan, and ultimately fails to achieve Part 2 of the RMA.</p>	<p>Reinstate/recast the notified version of Policy CC.7 as a regulatory policy:</p> <p><u>Policy CC.7: Protecting, restoring, and enhancing ecosystems and habitats that provide nature-based solutions to climate change – district and regional plans</u></p> <p><u>District and regional plans shall include objectives, policies, rules and/or methods that provide for nature-based solutions to climate change to be part of development and infrastructure planning and design.</u></p>
<p>Policy CC.8</p>	<p>The planting of indigenous vegetation should be preferred over exotics, and this accords with Policy 4 of the NPSIB.</p>	<p>Add an additional clause:</p> <p><u>x) where offsets are used, prioritise the planting of indigenous vegetation over plantation forestry</u></p>

<p>Policy 24 and Policy 24A</p>	<p>A carve-out for renewable energy generation and electricity transmission from the considerations under Policy 24A (and as reflected in Policy 24) is contrary to the NPSFM and section 6(c) of the RMA. There is nothing in the NPSFM that precludes renewable energy generation and electricity transmission activities from the effects management approach contained in the NPSFM.</p> <p>The explanation to 24A also states offsetting and compensation apply in the coastal environment. This could mislead and is inaccurate in that:</p> <ol style="list-style-type: none"> a. the NZCPS, which applies in the coastal environment: <ol style="list-style-type: none"> i. makes no express reference to offsetting and compensation. ii. applies exclusively in the coastal marine area. b. “Terrestrial environment” in the NPSIB includes land and associated natural and physical resources above mean high-water springs¹ – therefore the coastal marine area is outside the purview of the NPSIB. c. Use of these measures in the coastal marine area could have implications on other legislation, for example the Fisheries Act 1996. 	<p>Amend Policy 24(c) as follows:</p> <p>(c) Policy 24D to manage the adverse effects of REG activities and ET activities on significant indigenous biodiversity values (these activities are not subject to Policy 24A and Policy 24B)</p> <p>Amend the heading of Policy 24A as follows:</p> <p>Policy 24A: Principles for biodiversity offsetting and biodiversity compensation – (except for REG and ET activities) - regional and district plans</p> <p>Amend the explanation to Policy 24A as follows:</p> <p><u>Explanation</u> Policy 24A recognises that the outcomes achievable through the use of biodiversity or aquatic offsetting and compensation are different. A ‘net gain’ outcome from offsetting is expected to achieve an objectively verifiable increase in the target values, while a compensation outcome is more subjective and less preferable. This policy applies to the use of biodiversity offsetting and biodiversity compensation to address the residual adverse effects on indigenous biodiversity in the terrestrial and coastal environments <u>above mean high-water springs</u> and aquatic offsetting and aquatic compensation to address the loss of extent or values of natural inland wetlands and rivers.</p>
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¹ NPSIB, clause 1.6

		<p>Policy 24A is to be read with Policy 24C(1) which sets out adverse effects on indigenous biodiversity in the coastal environment that need to be avoided, meaning that applications for biodiversity offsetting or biodiversity compensation cannot be considered. These ecosystems and species are also listed in Table 17 and Appendix 1A. Policy 24A does not apply to REG activities and ET activities which are subject to 24D. Instead, Policy 24D(3) requires REG activities and ET activities to have regard to the principles for biodiversity offsetting and biodiversity compensation.</p>
Policy 24C	<p>The explanation states that Policy 24D applies to renewable energy generation activities in terrestrial, freshwater, and coastal environments, when it can only apply in terrestrial environments to give effect to higher order direction. This appeal point relates to that for Policy 24D. The NZCPS and NPSFM apply to renewable energy generation activities and do not contain the same exception as the NPSIB to warrant any bespoke (and weaker) approach in coastal and freshwater environments. The approach taken does not achieve section 6(c) of the RMA.</p>	<p>Amend the Explanation as follows:</p> <p>Explanation: This policy applies to provisions in district and regional plans. This requires district and regional plans to manage adverse effects on indigenous biodiversity in the coastal environment by applying a hierarchy approach based on the values of the indigenous species, ecosystem or habitat. Policy 24C is to be read together with:</p> <ul style="list-style-type: none"> • Policy 24A which sets out principles for biodiversity offsetting and biodiversity compensation which apply in the coastal environment <u>above mean high water springs</u>. • Policy 24B in relation to the coastal environment above mean high water springs, with Policy 24C to prevail where there is conflict that cannot be resolved.

		<ul style="list-style-type: none"> • Policy 24CC which relates to existing regionally significant infrastructure and existing REG activities in the coastal environment. • Policy 24D which applies to REG activities in terrestrial, freshwater and coastal environments.
Policy 24CC	Policy 24CC does not give effect to the NZCPS, in particular, Policies 6 and 11. Policy 24CC creates a pathway for regionally significant infrastructure to compromise NZCPS Policy 11(a) values, where there is no justification for this in the NZCPS or any other national policy statement.	<p>As soon as reasonably practicable, and by no later than 4 August 2028, district and regional plans shall include policies, rules and methods to consider providing for the operation, maintenance, upgrade and extension of existing regionally significant infrastructure and existing REG activities in the coastal environment that may have any of the adverse effects referred to in clause (1) and (2) of Policy 24C where:</p> <p>(1) There is a functional need or <u>and</u> operational need for the regionally significant infrastructure or REG activities to be in the area; and</p> <p>(2) There is no practicable alternative on land or elsewhere in the coastal environment for the activity to be located; and</p> <p>(3) The activity provides for the maintenance and, where practicable, the enhancement or restoration of the affected significant indigenous biodiversity values and attributes at, and in proximity to, the affected area, taking into account any consultation with the Wellington Regional Council, the Department of Conservation and mana whenua.</p>
Policy 24D	Aquatic biodiversity is subject to different policies under the NPSFM which does not provide an exception for renewable energy generation and electricity transmission in the same way as the NPSIB. The NZCPS also prevails where there is any conflict	<p>Amend the heading and chapeau of 24D as follows:</p> <p><u>Policy 24D: Managing the effects of REG activities and ET activities on indigenous ecosystems and</u></p>

	<p>between the NPSIB and the NZCPS.² Renewable energy is also a third order priority under the NPSFM.</p> <p>Policy 24D needs to be confined to terrestrial biodiversity if it is to give effect to the NPSIB, NZCPS and the NPSFM. Otherwise, it ultimately fails to recognise and provide for section 6(c) of the RMA, and compromises the ability for regional council and local authorities to undertake their respective functions regarding indigenous biodiversity under ss 30-31 of the RMA.</p> <p>The twin crises of climate change and biodiversity loss are intertwined. Policy 24D may provide for the former, at the expense of the latter. The benefits of renewable energy resources must be recognised within ecological limits.</p>	<p><u>habitats with significant indigenous biodiversity values and other significant habitats of indigenous fauna in the terrestrial environment – district and regional plans</u></p> <p>As soon as reasonably practicable, and by no later than 4 August 2028, district and regional plans shall include policies, rules and methods to manage the effects of REG activities and ET activities on indigenous ecosystems and habitats with significant indigenous biodiversity values and other significant habitats of indigenous fauna <u>in the terrestrial environment</u> to:</p>
Policy 29	<p>The reference to “operational need” in Policy 29 is a low threshold and does give effect to the NZCPS, in particular, NZCPS Policy 6 (including Policy 6(2)(d)): which is to “recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there.”</p>	<p>Amend Policy 29(d) as follows:</p> <p>(d) include hazard overlays, objectives, policies and rules to avoid new and minimise or not increase the risks to existing subdivision, use and development and hazard sensitive activities in areas where the hazards or risks are assessed as high, unless there is a functional or and operational need to be located in these areas.</p>
Chapter 4.2 Regulatory policies – matters to be considered		
Policy 39	<p>Policy 39 contains amendments that result in renewable energy and regionally significant infrastructure being recognised and provided for above critical environmental considerations in other policies (i.e. Policies 40, 47), where there was no scope to do so, and in a way that results in wider policies no longer giving effect to higher order direction. The Respondent adopted the position held by the Panel that</p>	<p>Amend Policy 39 as follows:</p> <p>When considering an application for a resource consent, notice of requirement or a change, variation</p>

² NPSIB, clause 1.4(2)

	<p>the statutory weight given to matters could not be changed through Change 1, and that the chapeaus followed the construction of s 104 of the RMA.³</p> <p><i>18. Consideration policies are contained in section 4.2 of the Operative RPS. They contain a range of directions to decision-makers to have regard to, particular regard to, or recognise and provide for specific matters when 7 Legal submissions of Counsel for PCC, para 3.2. 8 Statement of evidence of Torrey James McDonnell on behalf of Porirua City Council, Planning, Natural hazards, 14 August 2023, para 37. HS 1 General submissions 5 considering resource consents, NoRs, or the change/variation of planning documents. Proposed Change 1 proposes the inclusion of 14 new consideration policies, and other policies were recommended through Officers' s 42A Reports or in Rebuttal or Reply Evidence.</i></p> <p><i>19. The issue of the scope and drafting of consideration policies came up in all hearing streams and we wish to make some general comments here. We accept the legal submissions of Ms Anderson for the Counsel setting out the rationale for consideration policies. They are not 'new' to the Change proposal and exist in the Operative RPS. The statutory weighting to be given to matters (for example, to 'have regard' to provisions in an RPS in a s 104 consent assessment) cannot be amended through the Change 1 provisions.</i></p> <p>...</p> <p><i>439. We think that this same reasoning applies to Policy 40. The Policy itself gives effect to Te Mana o te Wai, and therefore the chapeau should be consistent with the requirements of s 104 of the RMA, which require a consent authority to "have regard to" the provisions of the RPS.</i></p> <p>(footnotes omitted)</p>	<p>or review of a district or regional plan, particular regard shall be given to:</p> <p>(a) recognise and provide for the social, economic, cultural, and environmental benefits of energy generated from renewable energy resources and its transmission through the electricity transmission network; and</p> <p>(b) recognise the social, economic, cultural, and environmental benefits of other and/or regionally significant infrastructure, including where it contributes to reducing greenhouse gas emissions and provides for climate change mitigation, climate change adaptation and climate-resilience; and</p> <p>(c) have particular regard to protecting regionally significant infrastructure from incompatible subdivision, use and development occurring under, over, or adjacent to the infrastructure; and</p> <p>(d) recognise and provide for the operational need and functional the need for renewable electricity generation activities to be in particular locations, including the need facilities to locate where the renewable energy resources exist; and</p> <p>(e) recognise the benefits of utilising the significant wind, solar and marine renewable energy resources within the Wellington Region and the development of the electricity transmission network to connect the renewable energy resource to distribution networks and end-users.</p> <p>In the alternative, amend all other chapeaus under Chapter 4.2 to accurately reflect the verbs employed</p>
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³ Report and recommendations of the Freshwater and Part 1, Schedule 1 Independent Hearings Panels 21 June 2024

		and statutory weight to be given to matters as prescribed in the higher order policy statements.
Policy 47	For similar reasons provided for relief sought for Policies 24-24D, Policy 47 fails to give effect to the NZCPS and the NPSFM by extending the carve-out provided to renewables under the NPSIB to coastal and freshwater environment. It ultimately fails to recognise and provide for section 6(c) of the RMA, and compromises the ability for regional council and local authorities to undertake their respective functions regarding indigenous biodiversity under ss 30-31 of the RMA.	<p>Amend Policy 47 as follows:</p> <p>When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, a determination shall be made as to whether an activity may affect indigenous ecosystems and habitats with significant indigenous biodiversity values, other significant habitats of indigenous fauna, and the ecosystem processes that support these ecosystems and habitats, and in determining whether the proposed activity is inappropriate particular regard shall be given to:</p> <ul style="list-style-type: none"> (a) maintaining connections within, or corridors between, habitats of indigenous flora and fauna and/or enhancing the connectivity between fragmented indigenous habitats; and (b) providing adequate buffering around areas of significant indigenous ecosystems and habitats from other land uses; and (c) managing natural wetlands for the purpose of aquatic ecosystem health, recognising the wider benefits, such as for indigenous biodiversity, water quality and holding water in the landscape; and (d) avoiding the cumulative adverse effects of the incremental loss of indigenous ecosystems and habitats; and e) providing seasonal or core habitat for indigenous species; and


		<p>(f) protecting the life supporting capacity of indigenous ecosystems and habitats; and</p> <p>(g) minimising or remedying adverse effects on the indigenous biodiversity values where avoiding adverse effects is not possible practically achievable except where Clause (i) and (j) apply; and</p> <p>(h) the need for a precautionary approach to be adopted when assessing and managing the potential for adverse effects on indigenous ecosystems and habitats, where;</p> <p>(i) the effects on indigenous biodiversity are uncertain, unknown, or little understood; and</p> <p>(ii) those effects could cause significant or irreversible damage to indigenous biodiversity; and</p> <p>(i) the provisions to protect significant biodiversity values in Policy 24B, and Policy 24C and the principles for biodiversity offsetting and biodiversity compensation in Policy 24A, except that Policy 24A and Policy 24B do not apply to REG activities and ET activities; and</p> <p>(j) the provisions to manage the adverse effects of REG activities and ET activities on significant biodiversity values in Policy 24D; and</p> <p>(k) protecting indigenous biodiversity values of significance to mana whenua / tangata whenua, including those associated with a significant site for mana whenua / tangata whenua identified in a regional or district plan; and</p> <p>(l) enabling established activities affecting significant biodiversity values in the terrestrial environment to continue, where the effects of the activities:</p>
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		<p>(i) are no greater in intensity, scale and character; and</p> <p>(ii) do not result in loss of extent, or degradation of ecological integrity, of any significant biodiversity values; and</p> <p>(m) ensuring that the adverse effects of plantation forestry activities on significant indigenous biodiversity values in the terrestrial environment are managed in a way that:</p> <p>(i) maintains significant indigenous biodiversity values as far as practicable, while enabling plantation forestry activities to continue; and</p> <p>(ii) where significant biodiversity values are within an existing plantation forest, maintains the long-term populations of any Threatened or At Risk (declining) species present in the area over the course of consecutive rotations of production.</p>
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Attachments

10. The following documents are attached to this notice of appeal:
- a. A copy of the of Council's decision (Appendix A);
 - b. A copy of the Hearing Panel's recommendation report (Appendix B)
 - c. A list of names and addresses of persons to be served with a copy of this notice (Appendix C); and
 - d. A copy of Forest & Bird's submission (Appendix D).
 - e. A copy of Forest & Bird's further submission (Appendix E).
11. Parties served with a copy of this notice of appeal will not be served with the attachments and may obtain a copy from the Appellant on request.

Dated: 18 November 2024



M Downing / E Toleman
Counsel for the Royal Forest and Bird Protection Society of New Zealand Incorporated

Address for Service

May Downing / Erika Toleman
PO Box 631, Wellington

Telephone: 022 048 1970 / 021 988 315

E-mail: m.downing@forestandbird.org.nz / e.toleman@forestandbird.org

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

You may apply to the Environment Court under [section 281](#) of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* [form 38](#)).

***How to obtain copies of documents relating to appeal**

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

- Schedule 1 form 7 heading: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 June 2006, by [regulation 10\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).