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BARRISTER

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By Email

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Dear Nathan

Proposed district plan advice – Minute 21 integration advice

1. In Minute 21, dated 21 October 2026, the Panel seeks further legal advice on the issue of integration of the PDP with the ODP. This was a topic of particular interest to the submitter Forest & Bird (**F&B**), with the directions at paragraph 6 of Minute 21 for my advice to provide any further views on the legal submissions presented on behalf of F&B. Those F&B legal submissions were presented at the hearing on the Renewable Electricity Generation (**REG**) and Infrastructure (**INF**) provisions of the PDP.

2. This advice reaffirms key aspects of my earlier advice, before addressing the primary points raised in the legal submissions by F&B. I then provide general guidance on the Council's role when integrating the PDP and ODP provisions. My conclusion in this advice addresses the primary points highlighted by the Panel from the F&B legal submissions.

Integration advice

3. Paragraph 3 of Minute 21 quotes from my advice to the Panel in response to Minute 2 on 3 March 2026. The highlighted conclusion in that earlier advice was that submissions filed on now withdrawn provisions of the PDP cannot be progressed. On this basis, those submitters do not need to present their submissions at a hearing, as the Panel has no jurisdiction to grant the relief sought through submissions on withdrawn PDP provisions.

4. The details and analysis in support of that conclusion are contained in my 3 March 2026 advice. For context, I note the following additional conclusions on this integration topic as addressed in that advice:

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a. The ODP and the PDP will integrate once decisions on the PDP are made, and any PDP appeals are resolved. That will enable Council to then operate with one integrated ODP, rather than two planning documents.

b. The Panel can amend the PDP to remain within the scope of the exemption granted by the Minister. It is essential for the effective combination of the surviving portions of the PDP and ODP to make the necessary consequential amendments to the PDP that are required to ensure accurate cross referencing and that the combined plan can ultimately operate as a functioning document. If there are no submissions to enable amendments of that nature, the combination of clauses 16(2) and 20A of Schedule 1 of the RMA will enable those form of changes to be made.

c. The Panel is constrained by the subject matters in the PDP that are covered by the exemption granted by the Minister. This means that this PDP process is ring fenced by those exemption topics (and subject to the scope of submissions on those remaining parts of the PDP). In practical terms, this will not enable all higher order documents to be given effect to through this PDP process. The PDP should only give effect to higher order documents (and Part 2 of the RMA requirements) to the extent practicable within the scope of the exemption and submissions on those matters.

5. Minute 21 confirms at paragraph 4 that the Panel considers that their inability to address submissions on withdrawn parts of the PDP to be a non-negotiable position. The F&B legal submissions are then quoted in Minute 21, as they advocate a contrary approach regarding matters raised in the F&B submission. The Panel requests at paragraph 6 that I provide a 'further view on the legal submissions put forward' by F&B. This advice responds to that request.

Forest & Bird position

6. As summarised at paragraphs 7-16 of the F&B legal submissions, the parts of the PDP which protect natural environment values have now been withdrawn (including sensitive environment overlays). While F&B expressly acknowledged in their submissions that this narrows the options available to the Panel, their legal submissions still advocate for changes to the INF and REG provisions to address the matters covered in their submission as filed that were primarily made on now withdrawn parts of the PDP.

7. Paragraph 5 of Minute 21 quotes from the conclusions at paragraphs 61-66 of the F&B legal submissions. The key matters advocated in those legal submissions are:

a. Para 61 - A district plan cannot exclude matters of national importance (such as natural character of the coastal environment, protection of ONFLs, significant vegetation and habitats of indigenous fauna);

b. Para 61 - District plans must give effect to relevant national direction, as far as possible within the scope of the plan change and submissions on that plan change;

c. Para 62 - The plan-stop exemption cannot be the basis to favour positive effects of activities over the adverse effects of those activities on the receiving environment;

d. Para 63 - Wording changes are required to the PDP to manage effects, and to reflect retention of the ODP provisions affecting these matters;

e. Para 64 - There is a concern with the potential permitted activity status of activities within withdrawn PDP overlays;

f. Para 65 - Objectives and policies in the INF and REG subchapters need to be updated to reference national direction;

g. Para 66 - The Introduction to the INF and REG subchapters will need to explain the district wide approach to managing effects on the natural environment.

8. The F&B legal submissions also address the jurisdiction problem that F&B has filed submissions on the REG subchapter provisions of the PDP, but not on the INF subchapter provisions. F&B made detailed submissions on the withdrawn parts of the PDP relating to the natural environment. The legal submissions acknowledge that F&B's submission was primarily on those now withdrawn parts of the PDP, but advocate that the substance of the matters covered by their submissions can still be considered by the Panel by effectively transferring their submission points over to aspects of the PDP that remain before the Panel for consideration. The analysis at paragraphs 31-35 of the F&B legal submissions are that the substance of those submission topics remain submissions 'on' the plan change, as they 'oppose any weakening of effects management compared to the status quo'. The status quo is defined in paragraph16 as the way that these matters are currently managed in the ODP.

Overview of issues

9. In my view, it is understandable why F&B are advocating for the position as summarised above. F&B's filed submission was primarily on PDP provisions that have now been withdrawn, and are not covered by the Minister's exemption for the remaining parts of the PDP to be heard and determined by the Panel. On that basis, if F&B's submission points are not addressed through the remaining parts of the PDP that are to be determined by the Panel, the majority of the F&B submission cannot be taken into account by the Panel. To avoid that outcome, F&B are accordingly proposing to pivot to a workaround approach to address this fundamental jurisdictional problem.

10. As a general proposition, in my view the withdrawn sections of the PDP cannot be bought back to life simply because a submitter is disadvantaged by those withdrawn parts of the PDP, and requests to transfer their submission on a withdrawn part of the PDP to be considered through a part of the PDP that they did not submit on. The jurisdiction of the Panel is limited to those parts of the PDP that are covered by the Minister's exemption, and the submissions as filed in relation to those parts of the PDP.

Submissions made on particular parts of a PDP (and seeking changes to those parts of the PDP) are not simply transferrable to other parts of the PDP. A submission is instead constrained by the scope of that submission, particularly the changes and relief sought to specified provisions. This is the fundamental principle to be applied in response to the F&B legal submissions.

Scope of hearing panel appointment

11. While the scope of the appointment of the Panel is not in dispute by F&B, it is important to address this matter as the F&B legal submissions are requesting that the Panel resolve the substance of their submissions made on now withdrawn parts of the PDP. This raises the jurisdictional ability for the Panel to grant that relief.

12. In October 2025, the Council applied to the Minister for a plan stop exemption under section 80V of the RMA. That application expressly excluded chapters and provisions of the PDP that related to historical and cultural values, natural environment values, and highly productive land. The exemption application stated that, if approved, the exemption will mean that consequential changes will be required to the PDP to ensure that there is a coherent planning framework as a result of the parts of the PDP to be withdrawn.

13. Section 80Q of the RMA required the Council to withdraw, by 15 January 2026, those parts of the PDP for which no exemption application was made. As a result, the Council gave public notice of withdrawal of those relevant parts of the PDP that were not covered by the exemption application. That public notice confirmed that, as a result of the withdrawal of those parts of the PDP, the corresponding provisions in the ODP remain operative and in effect.

14. The Minister granted the exemption as sought by the Council by way of letter dated 13 January 2026. The Minister approved the application in full. In accordance with the statutory process, the Council gave public notice of this Ministerial decision and confirmed to the (already appointed) Panel on the PDP that they could progress with a hearing schedule on those parts of the PDP covered by that exemption.

15. The primary role of the Panel is to hear and determine submissions on the PDP and make recommendations on those submissions. Those recommendations then proceed to the Council for decisions to be made under clause 10 of Schedule 1 of the RMA (which can then be subject to an Environment Court appeal). It is accordingly important that the recommendations of the Panel, and the subsequent decision of the Council, are limited to those matters covered by the scope of the Minister's exemption.

16. It is inevitable that consequential changes may be required to the ODP provisions that remain in force to enable integration with the PDP provisions. Those ODP changes are matters to be addressed by the Council after the PDP provisions are confirmed (through

the Council decision and resolution of any appeals). There may also be consequential changes required to the PDP to reflect that some topics remain covered by the ODP. Those consequential PDP changes are matters for the Panel to address, based on recommendations from officers:

a. In my view, the Panel has no direct involvement in any ODP amendments. That is because the Panel appointment was to hear and determine submissions on the PDP. That appointment was later limited to only those topics of the PDP covered by the exemption granted by the Minister. This means that any consequential changes to the ODP are matters for the Council to progress or resolve, rather than the PDP Panel.

b. In terms of consequential PDP changes, in my view the Council officers should make recommendations on those changes for the Panel to confirm in its recommendations to Council. The role of Council officers is to advise the PDP Panel on how to amend the PDP to remain within the scope of the exemption. It is essential for the effective combining of the surviving portions of the PDP and the ODP to make the necessary consequential amendments to the PDP that may be required to ensure accurate cross referencing and workability, and that the combined plan can operate as a functioning document.

17. If there is no submission on the PDP to make the necessary amendments (which is to be expected given that submissions were filed before the exemption process), clause 16(2) of Schedule 1 of the RMA will enable changes of that nature to be made to the PDP. On the basis that these changes are procedural and necessary consequential changes to make the combined plan workable, in my view no legal risk arises from the Panel confirming this form of change to the PDP. Clause 16(2) of Schedule 1 enables alterations to a proposed plan where the alteration has minor effects or is to correct errors. As this power does not require the normal Schedule 1 RMA notification process, the caselaw has reflected that some caution is required as to when this power is to be exercised. It should not be used for substantive changes or when there may be some opposition. However, it is an important provision when considering such matters as updating cross references and numbering in the PDP and ensuring that procedural (rather than substantive) changes are made to enable the integration of the planning instruments (the PDP as recommended by the Panel and the surviving parts of the ODP).

Making changes to the ODP

18. As a result of the exemption process, the PDP is no longer a complete replacement of the ODP. As some of the ODP provisions will survive (as clearly outlined in the exemption application), there will need to be consequential changes made to the ODP to ensure that the retained provisions of the ODP can be integrated with the PDP in a workable way.

19. I note that many of the necessary ODP changes can be made by the Council officers, subject to the detail of those changes. In particular, clause 20A of Schedule 1 of the

RMA enables changes to be made to the ODP, without going through the notification process in the RMA for 'minor errors'. The key criteria for the exercise of this power is to address matters that are primarily procedural rather than substantive. I anticipate that the nature of these changes will include ensuring correct numbering and cross referencing. Substantive changes to the ODP that submitters may wish to comment on or participate in would need to follow the Schedule 1 RMA process. However, I acknowledge that the current plan stop limitation to that process was previously in force until the end of 2027 under section 80P of the RMA. It has however now been amended by the Planning Act 2026 to be until the 'specified transition date'. The specified transitional date is defined in clause 1 of Schedule 1 of the Planning Act 2026 to be a date yet to be set by Order in Council. This is likely to be a notable extension of time, as it requires regional spatial plans to be decided and proposed land use plans and natural environment plans to notified. In practical terms, substantive changes to existing plans such as the ODP may require an application to the Minister for an exemption under section 80U of the RMA. These are not matters covered by the jurisdiction of the Panel hearing the remaining parts of the PDP.

20. While the scope of these ODP changes may be worked on by officers now, in a practical sense these decisions cannot be confirmed until after the PDP recommendations have been accepted by full Council (given that the primary purpose of these ODP changes is to ensure the workable integration of the PDP and ODP). Any such ODP changes may then need to be reviewed again if any PDP Environment Court appeals are filed, to reflect any PDP amendments through that appeal process.

Jurisdiction to consider F&B submission

21. Against this background, I now turn to consider the matters addressed in the legal submissions on behalf of F&B.

22. Before addressing the substance of the PDP changes sought by F&B, they must first overcome the hurdle that their primary submission was made on now withdrawn parts of the PDP. In particular, F&B did not submit on the INF subchapter provisions. The advocated basis for overcoming this fundamental jurisdictional hurdle is addressed in paragraphs 29-35 of the legal submissions on behalf of F&B.

23. The relevant caselaw on this issue as outlined in F&B's submissions are accepted. In essence, the focus is whether the submission is 'on' the plan change. In my view, there is no doubt that F&B's submissions were on the plan change as reflected in the PDP as notified. That is because it was a complete review of the ODP. However, the practical challenge that F&B now faces in this situation is to establish that their primary matters of submission remain 'on' the now much more limited version of the PDP that the Panel is determining (post the exemption decision of the Minister). The F&B legal submissions do not provide any direct analysis on that issue. After setting out the generic caselaw, the legal submissions simply conclude at paragraph 34 that '*..the Panel must somehow ensure that the exemption- version of the PDP will not change the status quo in terms of*

how effects of activities on the natural environment are managed under the ODP, including by higher order documents where the ODP does not give effect to these.'

24. The difficulty with that submission is that it fails to recognise and address the now withdrawn parts of the PDP. The primary F&B submission is focused on now withdrawn parts of the PDP. Those submissions cannot be easily converted or transferred to now be treated, addressed or accepted as a submission 'on' the remaining PDP provisions. The lack of any legal analysis of that issue, or any caselaw produced on point, is reflected in the hope expressed in the legal submissions that the Panel can 'somehow' find a way to grant the relief sought by F&B. As noted above, the Panel's jurisdiction is limited to the remaining parts of the PDP, rather than any of the ODP provisions. Only submissions that are on those remaining parts of the PDP to be determined by the Panel can now be considered.

25. The thrust of what is sought in paragraph 30 of the F&B legal submissions is that irrespective of the relief that was expressly sought on particular parts of the PDP in F&B's submission, now that those parts of the PDP are withdrawn then the substantive relief that they sought should 'somehow' be transferred to being relief sought to other parts of the PDP, such as the INF provisions. Such a transfer approach to submissions would require substantial redrafting of the PDP to give effect to this request. I am not aware that F&B has produced this proposed PDP redraft for the consideration by the Panel and other parties. More importantly, such an approach would undermine the requirement that submissions must clearly outline what changes are sought, and the opportunity for other parties to make further submissions, and the evaluation of those submissions in the section 42A report. The fundamental process reflected in Schedule 1 of the RMA would be circumvented simply because the substance of the F&B submission was disadvantaged by the subsequent withdrawal of certain parts of the PDP. While I have sympathy for the F&B position, the relief sought in the legal submissions lacks any legal analysis of this issue, is contrary to the caselaw and the process in Schedule 1 of the RMA and would be unfair to other participants in the process.

26. To take a simple example, if (contrary to my advice above) the Panel was to determine that a redraft to the INF provisions is a change that is within the scope of F&B's existing submission and is 'on' the remaining parts of the PDP, procedural fairness would dictate a process such as:

    a. F&B would need to draft the changes to these PDP provisions sought, and the requisite section 32 analysis in support of those changes;

    b. Other submitters would need to be given a chance to comment and submit on those changes. In essence, I anticipate that this would require another hearing on this chapter at some point in the future.

    c. Council officers would need to provide section 42A analysis and advice.

27. The procedural challenges arising from the process summarised above illustrates the difficulties with the fundamental changes that would be required to the PDP to incorporate the matters that F&B seek (based on submissions made to now withdrawn parts of the PDP). In essence, it would require a redraft to the PDP, made by a submitter at a late stage of the process. By comparison, in my view the correct approach is that the remaining PDP provisions will integrate with those ODP provisions on topics that are not covered by the PDP, to ensure that the integrated district plan as a whole has coverage of the necessary matters in Part 2 of the RMA.

Addressing matters of national importance

28. If the procedural and jurisdictional issues addressed above can be overcome, the substance of the changes sought by F&B to the INF provisions of the PDP are matters for the Panel to assess. However, to assist in evaluating those matters I note that one of the primary arguments of F&B is that the absence of PDP provisions in these subchapters addressing matters of national importance (such as natural character of the coastal environment, protection of ONFLs, significant vegetation and habitats of indigenous fauna) is contrary to the RMA. In my view, that argument has limited strength. The relevant context is that the PDP has transitioned from a full district plan review to now being limited to only certain topics (due to the scope of the Minister's exemption). It is no longer a full district plan review. As a result, it does not address all matters of national importance. The overall management of land use matters by the Council will now be achieved through a combination of the PDP and the ODP together, rather than the PDP as a standalone document.

29. This is not a situation where there will be no district plan coverage of the topics of interest to F&B. The residual parts of the ODP that align with the withdrawn parts of the PDP will remain in force. This is the primary answer to the submission that the Council's district plan fails to address these matters addressed in Part 2 of the RMA.

30. The primary thrust of the F&B legal submissions is essentially about the content of the ODP provisions that will survive. While the relevant parts of the ODP that will remain in force are now dated (and likely do not substantively address some of the outcomes that F&B are advocating), they continue to provide protection and consideration of these natural environment topics. How this integration of the two plans together will work in a planning structure and activity status context will be covered by the report to the Panel from Council officers on this integration topic.

31. It is acknowledged that the ODP surviving provisions do not reflect the latest national documents. That is an inevitable consequence of these parts of the PDP being withdrawn, and reverting to the current ODP provisions (which pre-date certain national documents). It is also acknowledged that the Council's ability to update these parts of the ODP is constrained by the current plan stop provisions in sections 80O-80Y of the RMA. However, it is for the Council to subsequently give effect to those higher order documents in three ways:

a. In some situations no Schedule 1 RMA process is required to give effect to national documents, and accordingly that process is not caught by the plan stop provisions. For example, section 44A of the RMA enables a plan to be amended in certain circumstances to give effect to national environmental standards without using the process in Schedule 1, as addressed in my 16 October 2026 advice.

b. Possible plan amendments after the plan stop provisions expire. In this regard I acknowledge that the current plan stop limitation to that occurring was previously until the end of 2027 under section 80P of the RMA. However, this has been amended by the Planning Act 2026 to be until the 'specified transition date'. The specified transitional date is defined in clause 1 of Schedule 1 of the Planning Act 2026 to be a date yet to be set by Order in Council. This is likely to be a notable extension of time, as it requires regional spatial plans to be decided and proposed land use plans and natural environment plans to notified. In practical terms, this may require an application to the Minister for an exemption under section 80U of the RMA. Whether it is viable for the Council to amend the district plan to give effect to national documents will require careful consideration at that time. This will consider the effect of the new legislation that replaces the RMA. New plans will be required to be produced under the new legislation. However, for current purposes it is important to highlight that the statutory plan stop process has a limited statutory timeframe.

c. Irrespective of the content of the district plan, when processing a resource consent the Council must have regard to relevant provisions of all higher order documents under section 104(1)(b) of the RMA. This is often the primary way that higher order documents are taken into account, particularly recent ones that were introduced after the plan stop provisions came into force.

32. I addressed how far the Panel can go through this PDP process to give effect to higher order documents in my advice dated 8 May 2026. I do not repeat the detail of that advice at this stage, however I reiterate the following conclusions:

a. Although there is jurisdiction to make amendments to the PDP to give effect to higher order documents where the amendments sought are within scope of submissions, some caution should be adopted by the Panel as to whether to grant the relief sought. This is due to the lack of any comprehensive review of the district plan by the Council to give effect to these national documents, and notify the proposed amendments accordingly.

b. This means that any changes sought to particular PDP provisions will be piecemeal, and will not enable all those potentially interested submitters to review the changes through a notified proposed plan and submit accordingly.

Conclusions

33. There are significant procedural difficulties with the changes sought to the PDP as requested by F&B. Their primary submission was on now withdrawn parts of the PDP. What they are seeking now would require a redraft to the PDP, and a process to reflect fairness to others. By comparison, in my view the correct approach is that the remaining PDP provisions will integrate with those ODP provisions on those topics that are not covered by the PDP, to ensure that the integrated district plan as a whole has coverage of the necessary matters in Part 2 of the RMA.

34. Even if these procedural problems can be overcome, and the F&B submission is transferred to be considered and assessed as a submission on other surviving parts of the PDP, and the changes sought are clarified, in my view there are some fundamental problems with the rationale and justification for what F&B are seeking as summarised in paragraphs 61-66 of the F&B legal submissions. This covers matters previously addressed in integration advice on combining the remaining sections of the PDP with the surviving parts of the ODP, and the relevant process for giving effect to national documents. I do not consider that the analysis in the F&B legal submissions addresses these matters or justifies the relief sought.

35. I am happy to expand on any of these matters further.

Yours sincerely



Stephen Quinn
Barrister