

BEFORE THE HEARING PANEL

IN THE MATTER OF

The proposed Hutt District Plan

Hearing Stream #6: Infrastructure

LEGAL SUBMISSIONS ON BEHALF OF FOREST & BIRD

Dated: 17 September 2026

**The Royal Forest and Bird Protection Society of New Zealand
Incorporated**

Solicitor: Tim Williams

t.williams@forestandbird.org.nz / 027 3018975



Introduction

1. These submissions are made on behalf of the Royal Forest & Bird Protection Society of New Zealand Incorporated (Forest & Bird) in relation to Hearing Stream #6 – Infrastructure on proposed changes to the Lower Hutt District Plan.
2. The Proposed District Plan for Lower Hutt (PDP) was notified for submissions on 6 February 2025. The Royal Forest and Bird Protection Society of New Zealand Inc. (Forest & Bird) made a submission (424) and further submission (F23) on the PDP.
3. On 20 August 2025, the Resource Management (Consenting and Other System Changes) Amendment Act came into force.¹ The Amendment Act introduced “plan-stop” provisions, which meant the Council needed to seek an exemption from the Minister for RMA Reform to allow parts of the PDP to be progressed.
4. On 15 January 2026, the Minister approved the Council’s application for an exemption for parts of the PDP, and subsequently the Council withdrew those parts of the PDP for which an exemption had not been granted (or applied for).
5. The withdrawn parts of the PDP included provisions relating to Natural Environment Values, specifically the following parts of the PDP:
 - Ecosystems and Indigenous Biodiversity
 - Natural Character
 - Natural Features and Landscapes
 - Public Access
 - Coastal Natural Character components of the Coastal Environment chapter
 - All related schedules and overlays
6. To identify and avoid the pitfalls associated with the exemption-version of the PDP, it is necessary to begin by returning to first principles. The Panel will be

¹ This was by amendment to the RMA by adding sections 80O – 80Y, as passed in the Resource Management (Consenting and Other System Changes) Amendment Act 2025.

familiar with the integrated approach to sustainable management that is required by the Act,² and with the matters of national importance and other matters that must be applied in accordance with ss 6 and 7 of the Act.

7. As above, parts of the PDP which protect natural environment values (ecosystems and indigenous biodiversity, natural character etc.) have been withdrawn. However, the purpose and principles of the Act, the Council functions in the Act, and relevant national direction still apply to those environmental values. This includes, *inter alia*, the preservation of natural character in accordance with s6(a), the protection of outstanding natural features and landscapes (s6(b)), the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (s6(c)), the maintenance of indigenous biological diversity (s31((b)(ii)) and giving effect to the NZCPS and NPSIB.
8. The effect of the withdrawal of various parts of the PDP is to narrow the options available to the Panel, but it does not remove the obligations under the Act and higher order documents. To the extent possible within the scope of the exempt provisions and submissions, the district plan is still required to give effect to those protective elements of the Act and higher order documents.
9. A significant problem that arises in the context of Hearing #6 is that the PDP infrastructure (INF) and renewable electricity generation (REG) subchapters relied heavily on sensitive environment overlays to manage effects on the natural environment. These overlays were contained in chapters of the PDP that have now been withdrawn.
10. A further problem is that the plan-stop exemption goes beyond just requiring the parts of the PDP listed above to be withdrawn. The exemption application (granted in full by the Minister) states that:³

In addition, parts of other chapters that address historical heritage, sites of significance to Māori, ecosystems and indigenous biodiversity, natural character of coastal and riparian margins, natural features and landscapes, public access, coastal natural character areas and highly productive land would also be withdrawn.

² RMA, ss 5, 31(1)(a)

³ Application for plan stop exemption – Hutt City Council, pp 3 – 4

The provisions of the current Operative District Plan that address these matters would be retained and continue to have effect alongside the Proposed District Plan (effectively retaining the existing District Plan approach for these matters while introducing the new approach of the Proposed District Plan for all other matters).

11. This aspect of the plan-stop exemption is likely to be very challenging for the Panel to implement. This is essentially because the proposed new INF and REG provisions *will* change how effects on the natural environment are managed by the ODP, because of their directive and one-sided nature, and because they expand the range of activities that would have Permitted activity status under the plan.
12. When addressing this challenge, the Panel should recognise that “the provisions of the current Operative District Plan that address these matters”⁴ – here, Forest & Bird is especially concerned with ecosystems and indigenous biodiversity, natural character of coastal and riparian margins, natural features and landscapes, and coastal natural character areas – can be found throughout the ODP, including in parts of the ODP, such as the Network Utilities and Renewable Energy Generation chapters, that would be replaced by the exemption-version PDP.
13. The Panel should also recognise that, where the ODP does not currently give effect to higher order documents, such as the NZCPS, NPSIB and Wellington RPS, so that that these higher order documents need to be directly considered in consenting applications, this direct consideration also forms part of the “existing District Plan approach” which needs to be retained according to the plan-stop exemption.
14. The implications of the exemption-version PDP do not appear to have been evaluated under s 32 of the Act.⁵
15. These legal submissions proceed on the understanding that – as relevant to Hearing Stream #6 – the exemption-version of the PDP is intended to replace INF and REG provisions in the ODP without changing the way that the effects of these activities on the natural environment are managed under the ODP.

⁴ Application for plan stop exemption, above

⁵ Council’s original s 32 evaluation considered the PDP provisions as an integrated package.

16. The way that the effects of INF and REG activities on the natural environment are currently managed under the ODP (including by direct reference to higher order documents where appropriate) is referred to in these submissions as the 'status quo'.
17. Against this background, there are at least two fundamental problems with the exemption-version of the PDP.

Problem One – retaining the status quo while achieving the intentions of the PDP

18. Problem One arises because the integrated approach to sustainable management under the Act means that the management of specific activities (here INF / REG) must include consideration of the effects of these activities on the natural environment. It is simply not possible to argue that provision for certain activities is within scope, but that consideration of the adverse effects on the natural environment (including higher order direction on how to manage such effects) of these activities is not within scope.
19. Arguably, retaining the 'status quo' is the only approach available to the Council under the plan-stop exemption because, if the Council intends to change the way that effects on the natural environment are managed, then other submissions, including those of Forest & Bird, which relate to withdrawn provisions seeking to manage effects of INF and REG on the natural environment, will become relevant and "on" the plan change (see further below).
20. As Forest & Bird explained in its submissions at Hearing Stream #1, one consequence of the 'status quo' approach is that the proposed scale of REG and INF activities at the permitted level will need to be reduced, so that effects on the natural environment can be managed through consent processes in the same way that they currently are under the ODP – including direct consideration of higher order planning documents in consenting processes.
21. In this context, it is important to remember that the 'rule trigger' which means a resource consent is currently required may be found anywhere in the ODP.
22. Another consequence of the 'status quo' approach would be that, where chapters of the ODP that will be replaced include Objectives and Policies that

manage effects on the natural environment, the direction contained in these Objectives and Policies will also need to be retained. For example:

- a. Policy 14L 1.1.e., requires adverse effects of REG to be managed “by recognising that these activities have the potential to cause significant adverse effects on the environment... and may be inappropriate in some locations”; and
 - b. Policy 13.1.4.a requires network utilities to be “designed, located, developed, constructed, upgraded, operated and maintained to avoid, remedy or mitigate any actual or potential effects on the environment”.
23. The Panel would also need to ensure that activity statuses and matters of discretion are not changed in a way that would prevent the consent authority from considering higher order documents, such as the Wellington RPS and the NZCPS for example, where this would currently be required under the ODP.
24. The essence of Problem One is that it potentially makes the current process somewhat futile. It tends to undermine the original intention of the PDP to give effect to higher order documents while providing a more enabling framework for infrastructure activities.

Problem Two – giving effect to higher order documents

25. Problem Two arises because we cannot assume that the ODP manages effects appropriately – in fact, we know that the ODP does not give effect to various higher order documents. The question then becomes whether the exemption-version of the PDP can give effect to these documents, even though crucial elements of the PDP that were intended to achieve this, such as sensitive area overlays, have been withdrawn.
26. As stated above, to the extent possible within the scope of the exempt provisions and submissions, the district plan must give effect to relevant higher order documents. Whether this is possible will depend on the scope of the exempt provisions.
27. In the context of Hearing Stream #6, it may be helpful for the Panel to think of the exemption-version PDP as if it were a discrete plan change (for example, part of a rolling plan-review) intended to update the INF and REG provisions in the plan. If this were the case, then Forest & Bird’s submissions seeking to give effect to the NZCPS, for example, would clearly be within scope, and

could be addressed by broad alternative wording in INF and REG Objectives and Policies that requires matters such as natural character in the coastal environment to be considered by decision-makers. More specific provisions to fully give effect to the NZCPS could then be considered when the rolling plan-review moves on to the Natural Environment chapters of the plan.

28. It is submitted that Problem Two is much easier for the Panel to address, and that the approach suggested above – i.e. including general wording in INF and REG Objectives and Policies directing decision-makers to consider matters that are required to be considered by higher order documents – would be within the scope of the plan-stop exemption and also appropriate. The alternative – i.e. finding that such wording is not within scope or would not be appropriate – is fundamentally inconsistent with the integrated sustainable management required by the Act.

Scope of submissions

29. Forest & Bird made detailed submissions on the Renewable Electricity Generation (REG) subchapter provisions, but not on the Infrastructure (INF) subchapter provisions. Forest & Bird also made detailed submissions on the withdrawn Natural Environment provisions, made general submissions on the importance of protecting significant indigenous flora and fauna, and further submitted in support of the D-G Conservation's submissions.
30. The general thrust of Forest & Bird's submissions is that adverse effects on the natural environment should be managed appropriately. To this extent, Forest & Bird's submissions, including those on withdrawn provisions, remain relevant to Hearing Stream #6. For example, where Forest & Bird sought the inclusion of provisions protecting indigenous biodiversity, the fact that the specific clauses Forest & Bird sought relief on have been withdrawn does not change what is fairly and reasonably within the scope of its submission.
31. Having determined what is fairly and reasonably within the scope of a submission, the next question is whether the submission is within the scope of the plan change itself. The High Court established the test for determining whether a submission is "on" a plan change in *Clearwater Resort Limited v*

Christchurch City Council,⁶ which has been further developed in cases such as *Palmerston North City Council v Motor Machinists Limited*.⁷

32. *Clearwater Resort Limited* established a two-limb test for assessing scope as follows:

A submission can only be fairly regarded as “on” a plan change if it is addressed to the extent to which the variation changes the pre-existing status quo.

But if the effect of regarding a submission as “on” a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly “on” the variation.

33. Whether the s 32 report addresses, or ought to have addressed, the relief sought in a submission is indicative of whether it is in scope. The High Court in *Motor Machinists* stated that:⁸

Persons affected, especially those “directly affected”, by the proposed change are entitled to have resort to that report to see the justification offered for the change having regard to all feasible alternatives. Further variations advanced by way of submission, to be “on” the proposed change, should be adequately assessed already in that evaluation. If not, then they are unlikely to meet the first limb in *Clearwater*.

34. These High Court authorities provide further support for the argument 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. On this basis, Forest & Bird’s submissions are “on” the proposed plan change to the extent that they oppose any weakening of effects management compared to the status quo.

35. Alternatively, if the status quo approach to managing effects on the natural environment is not followed – i.e. if changes to the way these effects are

⁶ *Clearwater Resort Limited v Christchurch City Council* HC Christchurch, William Young J, 14/3/2003.

⁷ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, [2014] NZRMA 519

⁸ *Motor Machinists*, at [76]

managed are considered “on” the plan change and are therefore available to the Panel, then this would mean that Forest & Bird’s submissions about how these effects should be managed (i.e. including its submissions relating to withdrawn provisions) must also be “on” the plan change.

Activity status - general

36. Where retained parts of the PDP, such as the Energy, Infrastructure and Transport Chapter, refer or relate to withdrawn provisions, the s 42A report for Hearing Stream #1 indicates that this will be addressed in each hearing stream as required.⁹
37. For example, the exemption-version of the PDP currently still includes provisions such as INF-P11, which seeks to manage the adverse effects of INF activities in the coastal environment, and INF-R3, which makes upgrading of most infrastructure a Restricted Discretionary, Discretionary or Non-complying activity within coastal overlays. Simply removing all reference to overlays would mean that the same activities would default to Permitted activity status in sensitive areas, subject to compliance with standards which are not designed for these areas.
38. For the purposes of Hearing Stream #6, it has not been possible for Forest & Bird to carry out a full comparative assessment of the exemption-version of the PDP against the ODP, to determine the extent to which current activity statuses and controlled or discretionary decision-making processes may be affected. However, at least where the same activities would currently require a resource consent – for example because of earthworks or vegetation clearance standards in the ODP – that mean effects on the natural environment can be managed by consent conditions, it is submitted that this status quo must be retained under the exemptions-version of the PDP.
39. It is also important to recognise that changing activity statuses to PER would not be consistent with the Strategic Direction on Natural Character, Natural Features and Landscapes, Ecosystems and Indigenous Biodiversity, which Forest & Bird understands is intended to be included in the proposed plan change.

⁹ S 42A report for HS#1, at [50]

40. Without prejudice to the generality of the above submissions, Forest & Bird makes the following more specific submissions on certain proposed provisions.

Infrastructure Subchapter

Introduction

41. The introduction to the INF subchapter – “Relationship with other chapters” – needs to be amended due to the plan-stop. To be consistent with the ‘status quo’ approach to managing effects on the natural environment, the INF chapter can no longer be a “one-stop-shop” for INF activities, “with rules for these activities mostly excluded from other chapters in the PDP”.¹⁰
42. Instead, clear wording is needed to explain that the INF chapter is not a standalone chapter, and that all objectives, policies, and rules of area-wide chapters, together with area-specific rules which manage adverse effects on the natural environment (such as those controlling indigenous vegetation clearance) may be relevant to INF activities.¹¹

INF-P5

43. The “as far as practicable” wording in the chapeau to INF-P5 is not consistent with the ‘status quo’ approach to managing adverse effects on the natural environment, and this wording therefore needs to be deleted.
44. For example, Policy 13.1.4.a. of the ODP requires decision-makers “to ensure that network utilities are designed, located, developed, constructed, upgraded, operated and maintained to avoid, remedy or mitigate any actual or potential adverse effects on the environment”. The direction contained in this policy must be retained to keep within the scope of the plan-stop exemption.

INF-P8

45. INF-P8, which manages the effects of upgrading and developing the National Grid, has been severely undermined by the plan-stop. This policy as notified relied heavily on sensitive area overlays. The s 42A report recommendation, which deletes those parts of the policy that refer to overlays, would mean

¹⁰ Cf. INF s 42A report at [115]

¹¹ Cf. INF s 42A report at [182]

that upgrading and development of the National Grid within sensitive areas such as the coastal environment must simply be “provided for” without avoiding, or seeking to avoid, adverse effects.

46. This would be inconsistent with both the NZCPS and NPS-ET. It also appears to be a substantial departure from the status quo under the ODP, where the National Grid is subject to the same Objectives and Policies as other network utilities and it appears, for example, that the construction of new structures more than 2.5m in height, or outside the National Grid Yard, is a Non-Complying Activity (13.4.2).
47. It is not obvious how this issue should be addressed by the Panel, but it is submitted that more general policy wording which enables direct consideration of higher order documents (as suggested above in relation to Problem Two) may provide a solution.

INF-P11 to INF-P13

48. In the notified PDP, each of these Policies sought to manage the effects of INF activities within sensitive area overlays. The s 42A report simply recommends that these Policies are deleted.
49. As discussed, this would also mean that the activity status for INF activities in these areas would default to Permitted. This would be inconsistent with the NPS-INF, NZCPS and s 6 of the Act. It is also likely to be a departure from the status quo under the ODP in many cases, although this does not appear to have been formally assessed or evaluated by the Council.
50. Again, it is submitted that introducing general policy wording directing decision-makers to consider higher order documents, together with reducing the scale and extent of Permitted activity status in the Rules table, could help the Panel to address this issue.

INF-S20

51. INF-S20 provides standards for the removal of indigenous vegetation. It relies on sensitive area overlays, and the s42A report recommends that it should be deleted from the exemption-version of the PDP.

- 52. The ODP includes various rules that restrict the removal of indigenous vegetation in residential areas. The Panel should ensure that these rules will continue to apply to INF activities under the exemption-version of the PDP.
- 53. It is submitted that the Panel should also ensure that the deletion of INF-S20 will not result in the general clearance of indigenous vegetation within areas of significant indigenous vegetation and significant habitats of indigenous fauna (s 6(c) of the Act) and the coastal environment (Policies 11 and 13 of the NCPS) becoming a Permitted activity under the district plan.

Renewable Electricity Generation Subchapter

- 54. The ODP went through a plan change process in about 2016 to give effect to the NPS-REG 2011.
- 55. The s 32 report on REG activities [85] recognised that “providing for the benefits of renewable electricity generation needs to be balanced with appropriate management of effects”, and that these effects can vary greatly depending on the scale of the activity and the sensitivity of the receiving environment.
- 56. The notified PDP would have made changes to address how the adverse effects of REG are managed in sensitive area overlays that were to be introduced by the PDP. These overlays have now been withdrawn under the plan-stop exemption.
- 57. It is submitted that the approach recommended in the s 42A report which, in general terms, is to retain those parts of policies that are more enabling for REG activities while deleting the parts of policies that manage adverse effects on sensitive areas, is inconsistent with the NPS-REG and s 6 of the Act. The REG chapter cannot require REG activities to be provided for without reference to adverse effects on s 6 matters.
- 58. Also, as discussed in relation to Problem One, above, the plan-stop exemption states that the provisions of the ODP that address ecosystems and indigenous biodiversity, natural character of coastal and riparian margins, natural features and landscapes, and coastal natural character areas will be retained and will continue to have effect.
- 59. For the REG Policies, this means that:

- a. district-wide ODP rules that manage effects on the natural environment, such as those in the Significant Natural Resources, Notable Trees and Earthworks chapters, must continue to apply to REG activities – i.e. the proposed ‘stand-alone’ status of the REG chapter under the notified PDP cannot be retained.
- b. the Objectives and Policies in the ODP which simply require adverse effects on the environment to be avoided, remedied or mitigated must be retained – i.e. REG-P4 cannot require the Council to “provide for [REG activities], while... avoiding, remedying or mitigating other adverse effects to the extent practicable”.
- c. ODP Policy 14L 1.1.e., which recognises that REG activities may be inappropriate in some locations, must also be retained or incorporated into REG-P2 or REG-P4.

60. For the REG Rules, this means that:

- a. activities that were previously permitted only outside of specified overlays (for example under REG-P6 – community-scale REG not otherwise provided for) should become RDIS activities in all zones and locations;
- b. general matters of discretion requiring the consent authority to consider adverse effects on natural character, natural features and landscapes, indigenous vegetation and biodiversity, should be included for all RDIS activities

Conclusions

- 61. A district plan that does not have any provisions implementing matters of national importance – such as preservation of the natural character of the coastal environment, and protection of ONFLs and areas of significant vegetation and significant habitats of indigenous fauna – is untenable. Similarly, the district plan must give effect to relevant national direction so far as possible within the scope of the plan change and submissions.
- 62. The plan-stop exemption cannot be used as justification for considering some effects of activities (such as positive effects of INF and REG) but not others (such as adverse effects of INF and REG activities on sensitive receiving environments). This is not possible under the Act.

63. The 'status quo' approach to managing effects on the natural environment under the plan-stop exemption means that wording such as "so far as practicable" must be deleted from the exemption-version PDP, which must retain the ODP's "avoid, remedy or mitigate" approach to managing effects on the natural environment across the district.
64. Activities that were only Permitted outside sensitive area overlays must not become Permitted activities by default within these areas due to the withdrawal of the overlays. Instead, it seems likely that these activities will need to become RDIS across the district, with appropriate matters of discretion, to ensure that effects of activities within these sensitive areas can be appropriately managed.
65. Objectives and Policies in the INF and REG subchapters will need to include general wording that refers to matters of national importance and national direction, such as the NZCPS and NPSIB, to direct decision-makers to consider these matters and higher order documents when considering resource consent applications. The plan will need to explain that it does not give effect to these higher order documents, and that this would need to be achieved by a further plan review.
66. To comply with the 'status quo' approach to the plan-stop exemption, the INF and REG subchapters can no longer be treated as 'standalone' chapters. The Introduction to the Infrastructure chapter will need to explain that district-wide Objectives, Policies and Rules, and area-specific Rules that manage effects on the natural environment such as indigenous vegetation clearance rules, will also apply to these activities.

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Tim Williams

Counsel for Forest & Bird