



Forest & Bird

TE REO O TE TAIAO | *Giving Nature a Voice*

Te Tai o Poutini One Plan Hearing Notes – 28 November 2023

- Topic 4 Energy, Infrastructure and Transport

Introduction

1. F&B has considered the officers overview of the Energy, Infrastructure & Transport chapter and relationship with higher order documents.¹ Forest & Bird is concerned that the approach to considering RSI and the lack of consideration of the potential for adverse effects associated with Energy, Infrastructure & Transport activities² in this section of the report has led to recommendations that fail to give effect to those higher order documents.

Key issues

Scope of the chapters

2. Forest & Bird sought amendments to the overview of the Energy, Infrastructure and Transport chapters to clarify the scope of these chapters, in particular with respect to Regionally Significant Infrastructure (RSI). RSI is defined in the Regional Policy Statement (RPS).
3. Clarifying scope is necessary in Forest & Bird's view to ensure appropriate wording is used to distinguish between and capture different types of infrastructure in provisions to give effect to higher order documents, including the NPS-ET, NPS-REG, the NZCPS and the RPS, to effectively manage adverse effects and locational considerations. Clarifying scope is also important to avoid duplication and to provide certainty to plan users.
4. All three plan chapters address types of infrastructure and not all infrastructure is RSI. Forest & Bird understands that some infrastructure is recognised as nationally significant in National Policy Statements (NPS's) and the plan is required to make specific provision for it. The plan must also give effect to the RPS and the NZCPS which set direction for protection of s6 RMA matters of national importance. The RPS also sets direction with respect to RSI.
5. Careful consideration of wording and terminology is needed to resolve or reduce potential conflict in providing for this higher order direction. This means that it is necessary to be specific

¹ Part One: Overview of Energy, Infrastructure & Transport, Page 17, s42A Report

² For example Policy 11 of the NZCPS has not been identified and nor have provisions of Chapter 7 of the RPS been considered of relevance.

about different types of infrastructure in provisions (i.e. the National Grid) and to be clear where provisions would capture infrastructure beyond that defined as RSI.

6. To clarify the scope of the Energy chapter the s42A officers have recommended changes to the definition of “Energy activities” and replacing the definition of “Critical infrastructure” with “Regionally Significant Infrastructure”.
7. Forest & Bird has the following concerns:
 - 7.1. That the amendments to the definition of “energy activity” does not resolve its uncertainty, in terms of what activities it includes and also given the ENG chapter overview whether it is intended to capture activities beyond RSI and renewable electricity generation.
 - 7.2. Simply replacing the definition of “Critical infrastructure” with “Regionally Significant Infrastructure” and consequently replacing the use of that term throughout the plan, would increase the potential for conflict with other plan provisions and for inconsistency with the NZCPS and with Chapter 7 of the RPS.
 - 7.3. The scope of each chapter is still unclear as to whether the chapter includes infrastructure that is not RSI and whether a different approach is taken to such infrastructure.
 - 7.4. The definition of Energy Activity is relied on to understand the scope of the INF chapter.
8. The definition of “Energy activity” is still uncertain in our view as to what activities it captures. For example, does energy generation within the definition include solar heating for individual households (e.g. that does not require conversion to electricity), does energy investigation go beyond that provided for under the NPSREG, does this include for oil and gas?
9. The Energy activity definition appears contrary to the ENG chapter overview which implies all energy activities are RSI.
10. The RSI definition does not go beyond electricity in terms of energy generation and transmission, it includes three clauses specific to electricity, these are:

- a) *The National Grid (as defined by the Electricity Industry Act 2010);*
- b) *Other electricity distribution and transmission networks defined as the system of transmission lines, sub transmission and distribution feeders and all associated substations and other works to convey electricity;*
- c) *Facilities for the generation of more than 1 MW of electricity and its supporting infrastructure where the electricity generated is supplied to the electricity distribution and transmission networks;*

10.1. The officers recommend amendment to the definition on “Energy activity” reads:

ENERGY³ means the use of land, buildings and structures for:

- *Renewable electricity generation activities;*

³ We assume the absence of the word ‘activity’ in the officer's version is in error.

- *Energy investigation, generation, transmission and distribution; and*
- *Non-renewable electricity generation activities.*

- 10.2. The officer’s consideration of RSI suggests they have not considered the full scope of infrastructure included under that definition.⁴ Nor do the officers recognise that the RSI does not necessarily include all Energy activities as they have defined them. RSI only includes facilities generating more than 1 MW of electricity. Whereas Energy activity includes any energy generation, of any scale and potentially generation of energy beyond generation of electricity.
- 10.3. In considering submissions the officers have also relied on the NPSET, the NPSREG and the RPS, in terms of RSI, in considering provision wording for “Energy activities”. However, as we have just explained “Energy activities” are broader. The NPS’s also include different direction on how their matters are to be addressed by plans, and how that direction is included in the plan may also be influenced by other higher order direction such as the NZCPS and other chapters of the RPS.
- 10.4. Forest & Bird is not opposed to a broader definition, so long as the chapter overview explains this and the provisions use other terms, such as national grid, critical infrastructure or renewable electricity generation in appropriate circumstances. What we are saying is that not all energy infrastructure should be treated in the same way.
- 10.5. We consider that refining terminology in this way better gives effect to the NZCPS and the RPS while also giving effect to the NPSET and NPSREG. Whereas treating all energy activities in the same way increases potential for conflicts with the NZCPS and RPS.
- 10.6. For example, there is no policy basis for the development and use of a diesel generator to be provided for in the same way as a proposal for solar generation supplying the national grid.
- 10.7. Forest & Bird has considered the officers amended INF chapter overview wording⁵ but remains concerned that the scope of the chapter is still not clear. This is because:
- a) The overview refers to regionally significant infrastructure but does not explain what aspects of RSI are addressed in this chapter.
 - b) The “range of specified infrastructure” that is addressed in the INF chapter is not set out.⁶ It can only be determined by subtracting the activities that are addressed in other chapters from the definition of Infrastructure.

⁴ At para 71 the reporting officers have considered RSI under the RPS. They lists six types of infrastructure as being RSI with respect to Chapter 6 of the RPS. However, the definition of RSI included in Chapter 6 of the RPS is much broader and no such subset/list is set out in the RPS.

⁵ At 362 the officers have considered submissions, including from Forest & Birds, seeking to clarify the scope of the INF chapter.

⁶ A new sentence is added stating that “**Infrastructure includes a range of** structures, services and activities”. The following sentence states that the chapter contains “the objectives, policies, rules for **managing a range of specified Infrastructure activities**” [emphasis added]. This suggests the full range is not included in this chapter. This is supported by the subsequent sentences setting out that Port activities are in the Port Zone, Airport activities in the Airport Zone and that Energy activities and National Grid in the Energy chapter.

- c) The definition for Energy activities remains uncertain, for the reasons set out above, and it is relied on to understanding the scope of the infrastructure chapter.
- 10.8. At section 3.1.5 of the s42A the officers have considered a number of other RPS provisions in relation to RSI, renewable electricity generation and infrastructure, they do not consider Chapter 7 Ecosystems and Indigenous Biological Diversity of the RPS. The RPS overview for Chapter 6 on RSI is clear that all relevant provisions of the RPS are to be considered in managing adverse effects of RSI activities.
- 10.9. RSI activities may have adverse effects that could conflict with Policies 11, 13 or 15 of the NZCPS. However, by limiting provisions to Critical infrastructure⁷ in such circumstances, the potential for conflict is reduced, particularly when considering critical infrastructure in terms of s6(h) and lifeline services under Method 5, Chapter 11 of the RPS.
- 10.10. The ENG and INF overview needs to be written to explain the scope of the chapter and how it addresses these differences (i.e. through use of different terms).
- 10.11. It is the breadth of infrastructure captured by the term “energy activity”, the scope of the INF chapter as well as lack of consideration of adverse effects in provisions which Forest & Bird’s submissions have tried to address. Forest & Bird seeks to ensure that indigenous biodiversity and natural character, landscapes and features are protected in accordance with the NZCPS and the RPS while making provision for the National Grid and renewable electricity generation and RSI and in the consideration of other infrastructure activities.

Approach to adverse effects

11. Forest & Bird’s submission seeks a number of amendments ENG, INF and TRN provisions to include the words “avoid, remedy or mitigate” with respect to adverse effects and reference to these measures being achieved “in accordance with the Natural Environment and District Wide chapters of this Plan” (or similar wording).
12. These amendments have been rejected throughout the officer’s report. The key reasons appear to be that the chapter overviews can be relied on to provide guidance for considering other chapters and that the officers consider “avoid, remedy or mitigate” are inappropriate words for these chapters.

Guidance in the Chapter overviews

13. The officer’s reasoning is that all chapters of the plan need to be read and overview provides sufficient guidance regarding other chapters to be considered. Specific reference is also made to the “Other relevant Te Tai o Poutini Plan Provisions” section as providing sufficient clarity of the relationship between chapters.

⁷ Critical infrastructure is a subset on regionally significant infrastructure (RSI) as recognised by the reporting officers in the Strategic directions s42A report (paragraph 106), “critical infrastructure represents key lifelines for the West Coast community.”

14. We generally agree that the overview provides helpful guidance in this respect⁸. However, this is just guidance, it does not influence the interpretation of provision wording. If there is no direction to avoid, remedy or mitigate effects or if alternative measures such as “minimise” is directed in the ENG, INF or TRN chapters this would conflict with and could be read to override the direction in other chapter provisions as to how adverse effects are to be addresses.
15. The extent to which other chapters are considered may also be influenced by how other chapters and are referred to within provisions. For example, the restricted discretionary activity rules, discretion is limited to “impacts [] on any overlay”⁹, “significant adverse effects on Overlay Chapters”¹⁰ and to “scheduled overlay chapter areas”¹¹. This is not only problematic in terms of limiting consideration to “significant adverse effects” but also in terms limiting discretion to “overlays” that are mapped or scheduled when there is also policy in those chapters to address adverse effects beyond areas identified as an overlay on plan maps.

Avoid, remedy or mitigate adverse effects

16. Forest & Bird agrees that the ECO chapter should be relied on with respect to adverse effects of ENG, INF and TRN activities on ecosystems and indigenous biodiversity and has not sought to repeat the effects management from that chapter. Forest & Bird’s submission seeks to ensure that provision for activities in these chapters is made in the context of recognizing that adverse effects will need to be “avoided, remedied or mitigated”. Using these words provides for integration and avoids potential for conflicts with provisions in other chapters.
17. In particular Forest & Bird sought to replace the word “minimise” with “avoid, remedy or mitigate”
18. Forest & Bird has concerns with the officer’s assessment in the original s42A report.¹²
19. However, the updated officer report appears to take a different view as the officers now recommend adding “avoid, remedy or mitigate” to ENG-P4. Forest & Bird still has concerns with this policy as summarised in our note on the updated/addendum s42A report below.
20. Forest & Bird agrees with the officers (para 173) to the extent that reference to the specific chapters on how avoid, remedy or mitigate is to be applied may not be necessary, however this does not mean the words “avoid, remedy or mitigate” are not a relevant or necessary addition
21. At 385, with respect to INF-O5 the officers consider that “In our opinion, ‘avoid, remedy or mitigate’ is inconsistent with the RPS and we therefore do not support this amendment.”

⁸ We have some concerns, as set out at Section 10, paragraphs 10.1 to 10.6 of Forest & Birds submission. We also note that the CE chapter is within the “General District Wide Matters” section of the plan and however in the chapter overviews, under the “Other relevant Te Tai o Poutini Plan Provisions” it is not included under the “general district wide” heading.

⁹ ENG-R11(e)

¹⁰ ENG- R11, R12, R13and R14

¹¹ INF-R23

¹² The officers approach appears in some circumstances to consider minimizes as an alternative to avoided, remedy or mitigate, and in other circumstances to equate ‘minimise’ with “avoid, remedy or mitigate”. At paragraph 173 the s42A officers considers ‘minimise’ reflects that there are scenarios where it is not possible or practical to avoid, remedy or mitigate all effects from energy activities. Also at 175 the officers consider “the RMA requires adverse effects on communities and the environment of activities to be minimised.”

22. It is not clear how the officers have reached this conclusion, however, presumably it relates to their interpretation of Chapter 6 RSI provisions in the RPS. However, even on that basis such reasoning does not stack up.
- 22.1. Firstly, Chapter 6 of the RPS specifically sets out that “All relevant provisions in this RPS must be considered in managing the adverse effects of RSI activities.” This means that any plan provisions giving effect to the RPS provisions for RSI must be in the context to addressing adverse effects as directed under other chapters of the RPS, including Chapter 7. Ecosystems and Indigenous Biological Diversity. All three effects management measures “avoid, remedy or mitigate” are relevant to in this context.
- 22.2. Secondly, Infrastructure as defined by the RMA, is broader than RSI as defined by the RPS. INF-O5 refers to the adverse effects of **infrastructure** on the environment.
- 22.3. Thirdly section 5 of the RMA includes “avoiding, remedying or mitigating” adverse effects of activities on the environment.
23. In the recent updated/addendum s42A the officers have suggested that “avoid, remedy or mitigate” is not appropriate in objective ENG-O2 as objectives should be directing an outcome sought and because of the wording of objectives in the NPSREG. Forest & Bird considers that adverse effects being “avoid, remedy or mitigate” is a more appropriate outcome than “minimised”. The former being consistent with the RMA and the latter being uncertain as to the extent adverse effects would be “avoided, remedied or mitigated”. This uncertainty is reinforced in the case of INF-O5 by the lack of INF policy direction to “avoid, remedy or mitigate” adverse effects of infrastructure activities on the environment.

Comment on ENG Chapter provisions

Energy Policies.

24. Policy ENG-P2
- 24.1. Forest & Bird’s reasons for seeking to delete the word “particular” as set out in its submission are that “It is inappropriate to give higher consideration to energy activities than s6 matters or where this regard would conflict with a s7 matter.” It is unclear how this reasoning would be “insufficient” as set out at by the officer paragraph 200 of the s42A.
- 24.2. At 192 the officers have considered s7 of the RMA to the extent that they consider it requires ‘particular regard’ to be given to ‘the benefits to be derived from the use and development of renewable energy’. What the officers fail to consider is that ENG-P1¹³, like ENG-P2 is broader than renewable. This means that “particular regard” is not the appropriate term to use. The officer’s assessment also fails to consider that s7 also requires particular regard with respect to other matters which are relevant in terms of

¹³ ENG-P1 applies to “existing and new electricity transmission, distribution” in addition to renewable electricity generation infrastructure and assets

effects of energy activities. To have “particular regard” only to benefits and extending that beyond renewable creates potential for conflicts with other s7 requirements.

- 24.3. Forest & Bird considers that the officer amendments are similarly problematic as “managing adverse effects” by “having particular regard” to benefits does not “avoid, remedy or mitigate adverse effects.
 - 24.4. Forest & Bird remains of the view that providing for energy activities in the absence of direction on for adverse effects are to be avoided, remedied or mitigated fails to integrate provisions across the plan and creates potential conflicts with s6 and s7.
 - 24.5. Also at 200, we are unclear on the basis for the officer’s rejection (and Transpower’s opposition) to including “opportunities to reduce environmental impacts” as a benefit for considering activities under Policy ENG-P2. The wording aligns with the NPSET and would capture benefits associated with such opportunities, including for other s7 matters (e.g. other than just (j) as recognised by the officers at 192).
 - 24.6. Forest & Bird would remind the panel that Policy ENG-P2 addresses “energy activities” and is broader than renewable electricity generation, broader than the national grid and potentially broader than RSI. For the reasons set out in our submission we consider the proposed wording and the officer recommended wording in both the original and addendum s42A is inappropriate.
25. Policy ENG-P4
- 25.1. At 208 the officer rejects the deletion of Policy ENG-P4 as sought by Forest & Bird.
 - 25.2. The overview wording referred to by the officer does not have the force of policy wording. The officers recommended wording (considered at 211) is also problematic as it would limit the management of adverse effects for energy activities to the matters in a) to d).
 - 25.3. The addendum wording is similarly problematic as the policy would direct that the “avoid, remedy, mitigate adverse effects” is to be achieved by matter listed in the policy. Limiting the policy to renewable electricity generation does not make this approach appropriate.
 - 25.4. These matters listed are not the same requirements as the ECO chapter or chapter 7 of the RPS. For example, the policy direction under a. to “have regard” is a lower level of consideration than s6(c) to recognises and provide for protection.
26. Policy ENG-P5
- 26.1. At 214 the officer rejects amendments to ENG-P5 sought by Forest & Bird. Forest & Bird sought to include recognition for the protection of s6 matters when considering energy activities to ensure integration between these activities and those matters. While this may not need to be captured within all ENG policies, it does need to be captured in ENG policy direction in terms of how these activities are provided for and how effects are to be addressed/managed.
 - 26.2. The officers recommended amendments set out in the s42A appendix 1 make policy ENG-P5 significantly different from that proposed. Forest & Bird considers these problematic

for the same reasons as Forest & Bird opposes ENG-P4 above. That is that the matters listed are inadequate to manage adverse effects.

- 26.3. At 215 the officer accepts Transpower's submission to replacement of 'transmission infrastructure' with 'significant electricity distribution lines.' This does not resolve Forest & Bird's concerns. However, there appears to be an additional issue of consistency with the definition in the plan for "significant electricity distribution lines" which is for "an overhead electricity line that is not part of the national grid".
 - 26.4. It is not clear if the addendum s42A amendments are intended to limit the policy to renewable electricity generation". If this is the intent the inclusion of "energy investigation, distribution and transmission" should be "for renewable electricity generation". Forest & Bird considers that clauses a. and b. are relevant considerations with respect to renewable electricity generation, however policy direction to manage adverse effects by a. and b. is not appropriate.
27. Policy ENG-P6 and ENG-P7. For reasons set out in submission.
 28. Policy ENG-P8
 - 28.1. At 117 the officer has rejected Forest & Bird's amendments to ENG-P8. The officer has accepted some other amendments; however, the policy remains inconsistent with Policy 11(a) of the NZCPS as relying on overlay areas and schedules sites does not give effect to the RPS or Policy 11 of the NZCPS.
 - 28.2. This is because:
 - a) Significant natural areas have not been identified across the districts in accordance with the RPS
 - b) the ECO chapter provisions apply wider than just those areas identified on overlays and in Schedule Four;
 - c) "seeking to avoid" or allowing for "where it is not practical to avoid, to remedy or mitigate" is not consistent with Policy 11(a).
 - 28.3. These concerns remain with respect to the addendum s42A amendments.
 29. ENG permitted activity rules
 - 29.1. F&B sought to "Include requirement to meet the permitted vegetation clearance standards in the ECO chapter, including outside overlays"
 - 29.2. F&B has sought a number of changes to conditions/standards on the ECO permitted activity rules, this includes considering setting out conditions as separate "standards" for permitted activities.
 - 29.3. Forest & Bird will reconsider whether including reference in ENG rules to standards in ECO chapter rules is required when the s42A for the ECO chapter is available.

29.4. Forest & Birds concern is that the Energy chapter permitted rules do not, on their own, ensure adverse effects of the activities are no more than minor. As such there is a reliance on the ECO chapters (and others) to address this gap.

INF and TRN Chapter provisions

30. Forest & Bird has similar concerns with provisions in these chapters as set out in its submission and with respect to s42A amendments as discussed for the ENG chapter above.

Comment on the updated s42A Addendum Report amendments

31. Forest & Bird has not had the opportunity to fully review the s24A addendum, including the reasons for additional changes recommended by the officers. However, we have reviewed the tracked amendments and have the following comments:

31.1. Addition of the word “protection” in the ENG Chapter overview.

- a) Protection for RSI under the RPS is from reverse sensitivity effects. This is not the same as requirement for protection of s6 (a), (b), (c), (f) and (g) matters. The wording in the overview should be clearer in this respect as there is no mandate for Council to protect RSI beyond reverse sensitivity.

31.2. ENG-O2

- a) the amended wording appears intended to limit the objective to renewable electricity generation however on our reading it includes energy investigation, distribution and transmission which may not be for renewable electricity generation. Our reading of the NPSREG is that logistical considerations such as operational or functional need relates to the development and not the investigation considerations of renewable electricity generation.
- b) The amendment of “minimise adverse effects” to “manage adverse effects” in the objective is an improvement. However, this is not adequate without policy direction to “avoid, remedy or mitigate adverse effects”.

31.3. ENG-O3

- a) As for ENG-O2 above it is not clear if the objective is limited to renewable electricity generation activities. Forest & Bird is not opposed to including “energy investigation, if this is amended to be specific to renewable electricity generation.
- b) Addition of the word “enable” makes the objective specific to “renewable electricity generation, energy investigation, distribution and transmission”. However, Forest & Bird is opposed to the inclusion of the term “enable”. Policy G of NPSREG specifically directs that district plans “shall include objectives, policies, [] to **provide for**” (our emphasis). That wording is already in ENG-O3. The word “enable” is particularly directive as considered in the recent Port Otago decision. It is not an appropriate word in the context of the ENG provisions.

31.4. New Policy ENG-Px2.

- a) Forest & Bird is concerned with the approach in this policy that effects management is a way to “discourage” an activity. All activities are required to address adverse effects as part of sustainable management under s5 of the RMA.
- b) In addition, the effects management hierarchy proposed is inappropriate and conflicts with amendments sought by Forest & Bird to the ECO and EC chapters.

31.5. ENG-rule amendment, general comments:

- a) Forest & Bird’s submission seeks to distinguish between minor and major upgrading. Removing the term “minor” from the rule does not clearly signal that only minor upgrades are addressed by the permitted activity rule. That amendment also creates uncertainty with ENG-R15 which is for “large scale” renewable electricity generation.
- b) Forest & Bird is concerned with the scale and extent of activities permitted. It is unclear to what extent this is changed by the officer’s recommended amendments. This makes it unclear, in the absence of time to review all the performance standards listed in zone chapters, whether they are of a scale that ensures adverse effects are no more than minor on indigenous biodiversity including habitats (where indigenous vegetation clearance is not a factor). – ENG-R4
- c) Forest & Bird is concerned with the permitted activity for upgrading of large-scale renewable energy generation in a rule that as proposed was for “small scale use” and where upgrades are no limited to minor – ENG-R5
- d) That there appears to be no limit to the duration of use of a “back up generator” or any standard to address adverse effects other than noise where that is a standard in an underlying zone. – ENG – R9. This rule appears to be repeated in the Infrastructure chapter at INF-RX1

31.6. New ENG-RX1

- a) Forest & Bird is concerned with permitting below ground energy activities with any conditions to ensure adverse effects are no more than minor (ENG-R1 only sets standards for Electric and Magnetic fields).
- b) Below ground activities can have significant adverse effects on indigenous biodiversity, including on stygofauna and ecosystem function.
- c) As discussed above it is also unclear what activities could be captured by the definition of Energy Activities.
- d) We have concerns that the EW rules may not be adequate in managing activities permitted by this rule. For example, the EW-R1 standards do not set scale limits for network utility operators, or limit earthworks to outside significant areas, the coastal environment, or outside bird breeding periods.
- e) The construction of such activities should at least be discretionary activity and potentially non-complying if the definition extends beyond electivity generation.

31.7. New ENG-RX3.

- a) It would be helpful to clarify that the rule relates to electricity and not to some other form of energy and that this does not include underground lines: “The construction of electricity distribution lines and electricity transmission lines. Add a standard, “5 does not include underground lines.”

31.8. New RDA rules - Forest & Bird maintains its view that additional matters of discretion are required.

31.9. New ENG -RX9 – Forest & Bird is generally supportive of a non-complying activity status for the generation of non-renewable electricity generation activities. There may be circumstances of locations where these activities could be identified in the plan as prohibited to provide greater certainty to plan users.

31.10. New INF-RX2

- a) Forest & Bird considers that the rule needs to set a scale limit to ensure adverse effects are no more than minor.

Please contact Forest & Bird if you require clarification or have further questions.

Thank you very much for the opportunity to be heard.

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