



Forest & Bird

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

Te Tai o Poutini One Plan Hearing Notes – 31 October 2023

- Introduction & General Provisions
- Strategic Directions

Introduction and General Provisions

1. F&B is generally satisfied with the amendments that have been made to address F&B's submissions in the Introduction and General Provisions. However, where submissions have not been accepted, we retain the view on those matters as set out in our original submission.

Overlays

2. At paragraph 273 and 285, the officer has accepted F&B's submission (S560.409) that Significant Natural Areas (SNA) should be added to the overlay table. F&B supports the description for the Significant Natural Area overlay.

Definitions

3. F&B do not have anything to add with regard to the definitions in this chapter. We will make a comment on the definition of Significant Natural Area (SNA) and any other definition relevant to other chapters of the plan.

Strategic Directions

Strategic Directions Overview

4. At paragraph 41, the officer accepts Forest & Bird's (F&B) submission (s560.085) however the full amendment is not showing in Appendix 1
The words "~~zone or overlay~~" need to be struck out. This makes the statement more general so that district wide matter chapter objectives and policies are also referred to as agreed by the officer.
5. At paragraph 47, the officer accepts the Department of Conservation's (DOC) submission to change "fostering" to "enabling" in clause 4 of the Strategic Directions Overview. F&B has concerns with this change.

- 5.1. While “enabling” may be clearer, as considered by the officer, its use in this context is not consistent with how it is used in s5 of the RMA. Section 5(2) refers to “‘managing’ use, development, and protection of natural and physical resources”
 - 5.2. Under s5(2), the more directive term “enabling” relates to people and communities to provide for their social, economic, and cultural well-being and health and safety. Because the term “enabling” can be interpreted as directive it is very important that its use is in the appropriate context. This would include the matters set out in (a), (b) and (c) of section 5(2) which extend to considerations beyond the matters set out at clause 4 in the Plan.
 - 5.3. F&B considers that “enabling” use and development while protecting matters of importance, sends a different message than “fostering” or “managing” use and development while protecting matters of importance. Under the former the only consideration on when to enable is the protection of important matters, whereas under the latter, the term “managing” does not exclude avoiding, remedying, or mitigating adverse effects on the environment as required by s5(2)(a), (b) and (c).
6. F&B also submitted on clause 4 seeking the inclusion of “protection” of natural and physical resources as a matter to be fostered, as well as some other additional wording. However, this was not supported (or specifically referred to) by the officer.
 - 6.1. Whether “fostering” or enabling” or some other term is used, we consider it is appropriate to include protection, so that it is clear that the plan is actively setting direction for “use, development and protection of natural and physical resources”
 - 6.2. F&B still seeks the addition of the word “protection”. In respect of the other wording it sought, which includes referring to councils’ functions, F&B now considers those amendments would not be necessary if the word “fostering” is retained. Conversely, if the officer’s recommendation to use the word “enabling” is adopted then the additional words are needed.
 7. At paragraph 55, the officer has rejected F&B’s submission to delete or amend the statement about how the Strategic Directions are to be applied.

For the purposes of preparing, changing, interpreting, and implementing Te Tai o Poutini Plan all other objectives and policies in all other chapters of Te Tai o Poutini Plan are to be read and achieved in a manner consistent with these strategic objectives.

- 7.1. In particular the officer has referred to similar direction included in the New Plymouth and Selwyn District Plans. While F&B has also sought to remove the wording in those plans, we consider that the wording of strategic direction objectives in those plans is not comparable to that in Te Tai o Poutini. In those other plans, Strategic Direction objectives are written as outcomes and do not provide any strong direction on implementation. Whereas in the Te Tai o Poutini Plan the strategic directions are worded more like policy direction, they set direction on implementation rather than outcomes and include directive terms that could create conflicts with achieving higher order documents.

7.2. There is better wording for strategic directions to apply, than that used in the examples given by the officer. F&B has suggested wording that comes from Environment Court decisions. This wording has also been used in the recently notified proposed Napier District Plan, which states:

The strategic objectives set the direction for the District Plan for growth, [land](#) use and [development](#) in Napier. The strategic objectives help to implement relevant Council strategies and policies as well as statutory planning documents that the District Plan must give effect to. The strategic objectives will be implemented through future plan changes and complex resource consent applications as follows:

- *For the purpose of plan implementation (including the assessment of resource consents and notices of requirement):*
 - *the strategic objectives may provide guidance on what the objectives and policies in other chapters of the District Plan are seeking to achieve;*
 - *the relevant objectives and policies of the plan (including strategic objectives) are to be considered together, and no fixed hierarchy exists between them, and*
 - *in addition to the specific objectives and policies contained in topic chapters of the District Plan, relevant strategic objectives in this chapter will also need to be assessed for any activity identified as discretionary or non-complying.*
- *For the purposes of plan [development](#) (including future plan changes and variations):*
 - *the strategic objectives form the basis for the [development](#) of more detailed objectives, policies, and rules in Parts 2 and 3 of the District Plan, and*
 - *the strategic objectives should be considered as part of plan change or variation proposals.*

7.3. This is very similar wording to that sought by F&B for Te Tai o Poutini One Plan.

7.4. For these reasons F&B does not support the officer recommendation and seeks the relief set out in its submission.

Agriculture strategic objectives

8. The F&B submission sought to amend AG-O2 by deleting the word “enable” which relates to “support industries and services needed to maintain agricultural viability within rural areas”.

8.1. At paragraphs 65-66, the officer does not recommend any changes to AG-O2 as a result of the submissions.

8.2. F&B sought the deletion of the word ‘enable’. The word enable is particularly directive. Considering that “support industries and services” and the environmental effects are vague, they should not be enabled carte-blanche.

8.3. F&B remains of the view that its amendment sought is appropriate.

Climate change strategic objectives

9. At paragraph 299, F&B is supportive of the officer’s recommendation to include strategic direction objectives relating to climate change.

9.1. The objectives proposed largely address F&B’s submission (S560.003), with the exception of clear objectives responding to the Emissions Reduction Plan (ERP) and the Adaptation Plan (NAP), and for displacement of habitat for threatened and at-risk native species.

9.2. F&B considers a key response under the NAP that should be captured in the strategic objectives is the incorporation of nature-based solutions in infrastructure and urban

development. Having considered the recommendations of the officer, we consider that this matter would fit better in the Connections and Resilience Strategic Objectives and the Urban Form and Development Strategic Objective.

9.3. We suggest the following amendments:

CR- O1 To build greater resilience in West Coast/Te Tai o Poutini communities and infrastructure, including critical infrastructure¹ recognising the effects of climate change and the need to adapt to the changes associated with those effects, including through the use of nature-based solutions.

Include the following definition for “Nature Based solutions”:

The National Adaptation Plan (NAP) contains a priority for Nature Based Solutions. In the NAP Nature-based solutions are defined as:

*Solutions that are inspired and supported by nature and are cost effective, and at the same time provide environmental, social, and economic benefits and help build resilience. Such solutions bring more, and more diverse, nature and natural features (e.g., vegetation and water features) and processes into cities, landscapes, and seascapes, through locally adapted, resource-efficient, and systemic interventions. For example, using vegetation (e.g., street trees or green roofs) or water elements (e.g., rivers or water treatment facilities) can help reduce heat in urban areas or support stormwater and flood management.*²

UDF – O1 Promote the use of nature-based solutions to provide resilience to the effects of climate change

To address the climate and biodiversity crises together, nature-based solutions need to be prioritised in planning and regulations, and where possible, for both carbon removals and climate change adaptation. Economic and urban development and climate change policy should ideally use a biodiversity lens to prioritise nature-based solutions to reduce emissions and to build resilience into communities.

9.4. With respect to displacement of habitat for threatened and at-risk native species which occurs as a result of climate change and land use and development activities, for example, by building sea walls in response to extreme weather-related erosion, can prevent the inland migration of coastal/sea bird breeding and forage habitats. This displacement can occur both as a result of climate change and the response to it. F&B considers an objective to capture this sits best with the strategic direction objectives on climate change. The following objective is suggested:

CC – O4 Provision is made for inland migration and habitat requirements of threatened and at-risk indigenous species displaced by the impacts of climate change.

9.5. We consider that how this objective is implemented is a matter for other chapters of the plan, including activity-based chapters e.g. as a matter of control/discretion to consider these impacts within subdivision rules. As those chapters are not addressed in this hearing stage, we have not set out specific amendments in this respect.

Connections and Resilience strategic objectives

10.At paragraph 111, the officer rejects F&B’s submission (S560.089) to delete CR-O4.

¹ Amended as per officer s42A recommendation

² National Adaptation Plan Action 5.9 Prioritise Nature Based Solutions. Accessed 30 October 2023 at <https://environment.govt.nz/publications/aotearoa-new-zealands-first-national-adaptation-plan/>

- 10.1. In its original submission, F&B was unsure what the objective was trying to achieve in terms of an outcome, given that CR-O2 already addresses resilience of critical infrastructure.
- 10.2. F&B remain concerned with this objective as it is directive, it could enable activities without consideration for when/where such activities may not be appropriate.

Mineral extraction strategic objectives

11. F&B has not opposed the inclusion of strategic direction for this activity, it has sought amendments to reduce potential conflicts with higher order documents and considers that the provisions are not appropriate as strategic direction objectives but include aspects that may be appropriate as policy direction in other parts of the plan.
12. F&B's submission seeks the deletion of MIN-O1 (S560.091), MIN-O2 (S560.092), MIN-O6, the deletion or amendment of MIN-O3 (S560.093), the amendment of MIN-O4 (S560.094) and the retention of MIN-O5 (S560.095).
 - 12.1. The officer has rejected those submission points seeking deletion. The recommended amendments in the officer's report do not resolve our concerns. F&B maintains its view for the reasons set out in its submission that these objectives be deleted.
13. At paragraph 148, the officer summarises F&B's submission on MIN-O3 as including an amendment to refer to "the effects management hierarchy". However, F&B's amendment sought uses the words "appropriately avoided, remedied and mitigated" which is different, as explained below.
 - 13.1. F&B's submission does not seek to include the wording "effects management hierarchy." This is intentional as F&B did not seek to include by implication any specific provision for offsetting or compensation considerations in strategic direction. In addition, the plan does not include an Effects Management Hierarchy with respect to biodiversity or any other effects.
 - 13.2. We recognise that the new NPSIB includes an effects management hierarchy with respect of managing adverse effects on indigenous biodiversity, however we do not consider that MIN-O3 should be limited to that given the overarching nature of strategic directions. The objective is not limited to considering only effects on indigenous biodiversity or to activities outside the coastal environment.
 - 13.3. Further we consider reference to the NPSIB effects management hierarchy should be addressed with respect to ECO chapter hearing topics.
 - 13.4. F&B disagrees with the officer's amendment (156) which would retain the words: "in a range of locations outside specified zones" and adds the words "can be appropriate." F&B has sought that the specified zones be deleted, and we consider that referring to "a range of locations" and the words "can be appropriate" makes the objective less certain and is not necessary.

13.5. F&B seeks that the amended wording set out in its submission is adopted or the objective is deleted.

MIN-O3 To recognise that mineral resources are widespread and fixed in location throughout the West Coast/Te Tai o Poutini and that extraction of them may provide economic and social benefits to the region and nationally provided adverse effects can be appropriately avoided, remedied, and mitigated ~~are managed, mineral extraction activities can be appropriate in a range of locations outside specified zones and precincts.~~

14. At paragraph 162, the officer has rejected the amendment sought to MIN-O4. The officer has considered that the words “lawfully established” are not needed.

14.1. We note that the officer’s recommended amendments include adding the words “lawfully established” into NENV-O3. In addition, Appendix 1 Introduction and General Provisions amends the definition of “Lawfully established” which includes mineral extraction and adds “lawfully established” into the definition of Reverse Sensitivity. There is no basis for MIN-O4 objective to use a different term.

Natural environmental strategic objectives

15. F&B's key concern with the NENV provisions is that they are not adequate with respect to s6 (in particular s6(c)) or the West Coast Regional Policy Statement (WCRPS). Therefore, the approach to reading and achieving the Plan in a manner consistent with strategic objectives is problematic (as discussed for the Strategic Directions Overview). These problems are compounded by the exemptions or restrictions on when and how ECO chapter provisions apply across other chapters of the plan.

16. At paragraph 191, the officer has noted that F&B’s (\$560.098) support for NENV O1 is subject to the implementation of other changes to the ECO chapter. In its submission F&B also seeks that those ECO provisions are implemented and relevant across all chapters of the Plan.

It is unclear at this time whether additional changes are required to NENV objectives to address F&B’s submission. This will depend on whether the statement on how to read and achieve the Plan with respect to Strategic directions is amended and amendments on other chapters, including the ECO chapter.

17. At paragraph 198, F&B considers that the recommended amendment of the officer which add the words “outstanding” and “significant” to NENV O1 are inappropriate.

17.1. F&B’s reading of NENV O1 is that it is intended as an overarching objective with respect to S6 matters as they relate to the West Coast. As such this includes the coastal environment where the addition of “outstanding” and significant” in NENV O1 would potentially exclude aspects of Policies 11, 13 and 15 of the NZCPS.

17.2. For example, the protection of natural character that is not “outstanding.” In particular we note that ecological values are an aspect of natural character and natural landscapes and features, thus the wording as notified, better captures those outcomes within the context of their contribution to the West Coast.

- 17.3. F&B's reading of the notified wording is that the objective is about recognising and protecting what contributes to the West Coast's character and identity is not necessarily the same as protection for matters of national importance under s6 so does not need to be limited to "outstanding" or "significant". F&B is also concerned that the officers recommended amendments would mean that recognition and protection of "significant" indigenous biodiversity would be limited to the circumstances set out in this objective, i.e. matters that contribute to the West Coast's character and identity and to Poutini Ngāi Tahu's cultural and spiritual values. F&B has supported the overarching strategic objective on the basis that amendments are made to other chapters in respect of protecting "significant" indigenous biodiversity, where values meet the significance criteria of the WCRPS.
- 17.4. The officer has also recommended including the term "enhance." While we are not opposed to the inclusion of "enhance" as an additional outcome, we consider "restore" is a more appropriate term.
18. At paragraph 202, the officer has agreed with F&B (S560.099) to clarify NENV O2 by removing the words "areas and features".
19. At paragraph 207, the officer has disagreed with F&B's request to delete NENV O3.
- 19.1. F&B maintains its view for the reasons set out in its submission. Even if it were appropriate to set an objective with respect to public conservation land within the NENV objectives, F&B considers that the objective wording is uncertain as it is not clear what outcome is to be achieved and appears to be setting direction. Further the direction to recognise that matters set out is open to interpretation and as such is entirely subjective as to what the outcome sought by the objective is.
20. At paragraph 212, the officer has recommended accepting Federated Farmer's submission to add a new clause (c) to NENV O3.
- 20.1. The purpose of the NENV strategic objectives are to set out board overarching objectives for the natural environment. For that reason, they do not need to reflect a "reality" on the ground but rather set an outcome for the natural environment.
- 20.2. The Agriculture Strategic Objectives set direction in respect of agriculture. The amendments sought by F&B to those objectives (to delete the word "enable") and to the NENV objectives remove any potential conflict between these objectives. Direction as to recognising existing lawfully established activities within Significant Natural Areas (SNA) is more appropriately considered with respect to the ECO chapter topic, which we note, already includes policy along such lines.
- 20.3. F&B considers the amendment sought by Federated Farmers is not appropriate for NENV strategic objectives.
21. At paragraphs 223 and 225, the officer rejects F&B's submission (S560.101 and S560.436) on clause (a) and accepts amendments to such that the clause would apply specifically to "Significant and outstanding natural environment areas and features" to address Westpower Limited

submission, and for protection “from inappropriate subdivision, use and development” to address DOC’s submission, on NENV O4.

21.1. F&B’s submission sought to delete the words “unique and.” F&B’s submission explains that if the objective is intended to capture RMA s6(a), (b) and (c) matters the clause is inconsistent with the terms used in those sections and those used in the NZCPS. F&B considers that limiting the identification under NENV-O4 to Significant and Outstanding detracts from the overarching nature of strategic objectives and would be inconsistent with Policy 13 of the NZCPS which requires the identification of high natural character. In addition, those amendments combined with the amendment to address DOC’s submission is inconsistent with s6(c) which does not limit protection to that from “inappropriate subdivision, use or development;”.

21.2. F&B recommends that the hearing panel consider the wording put forward in its submission which would retain a more general overarching objective to natural environment areas and features that are important on the West Coast that need to be identified for protection.

22. At paragraph 224, in respect of clause (b) the officer has also rejected F&B’s submission (S560.101) to refer to appropriate activities and activities that are appropriate with conditions. Instead, the officer has recommended including reference to the effects management hierarchy to address the submission of Te Mana Ora.

22.1. F&B disagrees with this amendment. As set out above:

- i. the plan does not include an Effects Management Hierarchy with respect to biodiversity or any other effects.
- ii. The objective is not limited to considering only effects on indigenous biodiversity or to activities outside the coastal environment.
- iii. Consideration on the inclusion of reference to the NPSIB effects management hierarchy should be addressed with respect to ECO chapter hearing topics.

Poutini Ngāi Tahu Strategic Policies

1. F&B has some concerns with the officer recommendation that would extend the policy direction to provide for Māori purpose activities to apply throughout the West Coast/Te Tai o Poutini rather than in specific areas. This is because some locations could be more appropriate than others and because the definition is very board. For example, this could potentially conflict with zoning provisions such as for Natural Open Space zones. To avoid conflict, it may be necessary to retain the wording of the notified version.

Urban form and development

2. At paragraph 283, for UFD-O1 the officer accepts part of F&B’s submission (S560.106) with regard to the location of new urban development away from identified hazards and the use of low

environmental impact practices, materials, and designs. As discussed above at paragraphs 9.1 to 9.3 relating to the impacts of climate change and building resilience into communities, F&B seeks an additional clause for urban form and development:

UDF – O1 Promote the use of nature-based solutions to adapt to climate change

3. The officer disagrees with F&B's other submission points relating to the consideration of indigenous biodiversity in the urban environment. F&B sought additional clauses to UFD-O1 to incorporate space for indigenous biodiversity values to be retained and to support natural inland migration of indigenous flora and fauna to adapt to sea level rise, climate change and natural hazards as a result of extreme weather events. The officer acknowledges these points respond well to the National Policy Statement for Indigenous Biodiversity (NPS-IB) however considers they are not relevant because of the size of the West Coast's communities. Given that many of the West Coast's larger communities are located in the coastal environment F&B maintains the view that these points should be considered at a strategic level.

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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