

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

I MUA I TE KOOTI TAIAO O AOTEAROA

ENV- 2025-AKL-

IN THE MATTER

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

AND IN THE MATTER

of the proposed Waitomo District
Plan

BETWEEN

**THE ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED**
Appellant

AND

WAITOMO DISTRICT COUNCIL
Respondent

**NOTICE OF APPEAL BY THE ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND INCORPORATED**

31 July 2025

To: The Registrar
Environment Court
Auckland

NOTICE OF APPEAL

1. The Royal Forest and Bird Protection Society of New Zealand Inc. (“Forest & Bird”) appeals against decisions of Waitomo District Council on the Proposed Waitomo District Plan (the proposed plan).
2. Forest & Bird made a submission on and further submission on the proposed plan.
3. Forest & Bird is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Forest & Bird received notice of the decision on or about 19 June 2025.
5. The decision was made by the Waitomo District Council.
6. Forest & Bird is willing to participate in alternative dispute resolution.
7. The parts of the decision that Forest and Bird is appealing, the reasons and the relief are set out in Table 1. In addition to the reasons set out in the table below, the general reasons for Forest & Bird’s appeal are that the provisions appealed against:
 - a. do not give effect to the National Policy Statement for Indigenous Biodiversity;

- b. do not give effect to the New Zealand Coastal Policy Statement;
 - c. do not give effect to relevant provisions of the Waikato Regional Policy Statement or the Manawatu-Wanganui Regional Policy Statement;
 - d. are not consistent with Part 2 of the Resource Management Act ('the Act');
 - e. do not implement the Council's functions under s 31 of the Act;
 - f. do not represent best resource management practice; or
 - g. any combination of the above matters.
8. Where specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons for its appeal.

Attachments

9. Attached to this Notice of Appeal are the following documents:
- a. A copy of Forest and Bird's original submission;
 - b. A copy of the Waitomo District Council's decisions (on chapters 17 Energy, 19 Network Utilities and 26 Ecosystems and biodiversity).

Dated: 31 July 2025



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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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

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

How to obtain copies of documents relating to appeal

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

Advice

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

TABLE 1 –PART OF DECISION APPEALED, REASONS FOR APPEAL AND RELIEF SOUGHT

	PROVISION	REASONS FOR APPEAL	APPEAL – RELIEF SOUGHT
	Definitions		
1.	Conservation activity	<p>Forest & Bird’s submission sought a number of changes, including the removal of some activities included in proposed definition.</p> <p>The s42A report writers considered that removing these matters would require DOC to get a resource consent for small scale clearances they routinely undertake with minor adverse effects. This was not the intent of the amendments sought, as Forest & Bird’s concerns are for larger-scale removal that may impact on the Council's responsibility under s6(c) or the Council's functions to maintain indigenous biodiversity under s31.</p> <p>The s42A report also considered that an addition to require plants from the same ecological district be used, could not be effectively enforced.</p> <p>Taking these concerns on board, Forest & Bird considers its submission could be addressed by including limits within the definition, but that this would be better addressed by alternative relief in terms of amendments to the rules providing for conservation activities.</p>	<p>Amend rules providing for conservation activities, as set out under the ECO rule section of this appeal.</p> <p>Alternatively amend the definition of Conservation Activities, to set limits on the scale and adverse effects of activities which Forest & Bird’s submission sought to remove from the definition.</p>

2.	New definition for Vegetation clearance	<p>Forest & Bird’s submission sought to define vegetation clearance and removal.</p> <p>The plan uses both clearance and removal with respect to indigenous vegetation, however neither term is defined.</p> <p>The s42A report considers that these terms are commonly understood and a definition is not necessary.</p> <p>However, some activities such as chemical application or overplanting may not be considered by some as clearance or removal if live plant material is not removed.</p> <p>Most council district plans do include a definition for these terms.</p>	<p>Add a definition for vegetation clearance or removal as follows:</p> <p><u>“vegetation clearance or removal means the clearing or removal or destruction of indigenous or exotic vegetation by any means, including cutting, crushing, smothering, cultivation, irrigation, chemical application, drainage, stopbanking, overplanting, or burning.</u></p> <p><u>Indigenous vegetation clearance has the same meaning as it applies to native vegetation”</u></p>
Chapter 17 Energy			
3.	ENRGY-R6, R8, R10	It is uncertain whether there is scope to consider ECO chapter policies where vegetation clearance occurs for these activities outside of SCHED6 SNAs.	Add the following matter of discretion for RDIS rules ENRGY-R6, R8, R10: “effects on indigenous biodiversity”

		Amendments are needed to provide for Council responsibilities under s6(c) and functions under s31.	
Chapter 19 Network Utilities			
4.	NU-P16	<p>Previously NU-P20</p> <p>The decision does not give effect to the NZCPS, the NPSIB, Section 6 of the RMA.</p>	<p>Remove clause under Policy NU-P16:</p> <p>“In the event of any conflict with any other policies within the plan, NU-P16, NUP17 and NU-P18 take precedence.”</p>
5.	NU-P17	<p>Previously NU-P21</p> <p>The decision does not give effect to the NZCPS, the NPSIB, Section 6 of the RMA.</p>	<p>Amend Policy NU-P17 clauses 1 and 6 as follows:</p> <p>“1. Seeking to avoid adverse effects on areas identified in SCHED1 – heritage buildings and structures, SCHED2 - significant archaeological sites, SCHED3 and SCHED 4 - sites of significance to Māori, SCHED6 – significant natural areas, and SCHED8 - outstanding natural features; <u>and otherwise manage adverse effects in accordance with ECO chapter and CE chapter provisions, and in the coastal environment in accordance overlay provisions for areas identified in SCHED7– outstanding natural landscapes, SCHED 10 – outstanding natural character, and SCHED 11 – areas of high and very high natural character.</u>”</p> <p>6. In the event of any conflict with any other policies within the plan, NUP16, NU-P17 and NU-P18 take precedence.</p>
6.	NU-P18	Previously NU-P22	

		<p>The decision does not give effect to the NZCPS, the NPSIB, Section 6 of the RMA.</p>	<p>Amend policy NU-P8 to include reference to consideration of adverse effects under ECO chapter provisions and CE chapters as follows:</p> <p>“2. Seek to avoid the adverse effects of the National Grid within overlays, scheduled sites and features; <u>and to otherwise manage adverse effects on indigenous biodiversity in accordance with ECO Chapter provisions;</u>”</p> <p>3. Where the National Grid...</p> <p><u>(d) managing adverse effects in accordance with CE chapter provisions; and</u>”</p> <p>Alternatively amend Policy NU-P18 to:</p> <p>A. include clauses on the following:</p> <ul style="list-style-type: none"> • seeking to avoid adverse effects on values listed under Policy 11(a) of the NZCPS, in addition to scheduled SNA areas. • Specific direction to “recognise that there may be some areas where avoidance of adverse effects is required to protect the values and characteristics, so that the activity cannot proceed.”
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			B. delete clause 6. “in the event of any conflict with any other policies within the plan, NUP16, NU-P17 and NU-P18 take precedence.”
7.	NU Rules	<p>The decision does not give effect to the NZCPS, the NPSIB, Section 6 of the RMA.</p> <p>The referencing within specific rules is inadequate and creates inconsistencies with the objectives and policies of the ECO chapter (including with amendments Forest & Bird seeks to the ECO chapter to apply district wide).</p>	<p>Amend the third bullet in the statement on the rules that apply to network utilities under the heading Rules:</p> <p>“...To undertake any activity, it must comply with the rules listed in:</p> <ul style="list-style-type: none"> ▪ NU - Table 1 - Activities Rules; and ▪ NU - Table 2 - Performance Standards; and ▪ <u>Any relevant provision in Part 2 District-Wide Matters</u> Unless specifically referenced in a rule, Part 2 District-Wide Matters do not apply except for the following chapters: Strategic direction, urban form and development, contaminated land, hazardous substances, financial contributions, hapori whānui, activities on the surface of water, relocated buildings and temporary activities;” <p>Include “<u>effects on indigenous biodiversity</u>” as a matter of discretion within all RDIS rules</p>
Chapter 26 Ecosystems and Indigenous Biodiversity			

8.	ECO-O1	<p>The objective as drafted fails to provide for the maintenance of indigenous biodiversity. There is a gap which means the plan does not meet the Council's obligations under s 31(1)(b)(iii).</p>	<p>Delete and replace with: "<u>Indigenous biodiversity is maintained and significant indigenous vegetation and the significant habitats of indigenous fauna are protected.</u>"</p>
9.	ECO-P1	<p>Forest & Bird's submission sought changes to this policy to ensure protection of s6(c) matters, to include an effects management hierarchy and to maintain indigenous biodiversity.</p> <p>Forest & Bird is generally not opposed to the decision amendment which replaces the policy with the effects management hierarchy of the NPSIB.</p> <p>However:</p> <ul style="list-style-type: none"> the policy is limited to schedule 6 SNA's, and therefore fails to provide direction on effects management for areas meeting s6(c) including within the Manawatu-Wanganui part of the district. Policy ECO-P1 of the One Plan (RPS) provides that territorial authorities and the regional council both have responsibility to recognise and provide for matters in s6(c). Policy ECO-P1 does not allocate the responsibility for developing objectives and policies with respect to s6(c) solely to the regional council although it does in terms of rules. SNA mapping does not always identify all 	<p>Amend ECO-P1 to:</p> <ul style="list-style-type: none"> Include requirements to avoid adverse effects on the matters listed under clause 3.10(2) of the NPSIB. Include areas meeting s6(c) across the whole district. <p>Add a new policy providing for the maintenance of indigenous biodiversity to give effect to the Council's function under s 31(1)(b)(iii)</p>

		<p>significant areas, due to access issues and changes in natural values. For example native bats, pekapeka change roost sites often, will use exotic trees for roosting and feed over paddocks and along modified watercourses.</p> <ul style="list-style-type: none"> • the policy does not include the effects that must be avoided under clause 3.10(2) of the NPSIB. • It does not extend to the management of adverse effects on indigenous biodiversity beyond schedule 6 SNAs <p>This policy appropriately provides direction for a variety of activities which may require consent under other chapters of the plan. However, there is a gap for activities other than vegetation clearance, such as changes in land use, lighting or noise which can still have adverse effects on indigenous fauna.</p>	
10.	ECO-P2	<p>The decision adds ECO-P2(5) which provides:</p> <p><u>“Recognising the continued operation of lawfully established regionally significant activities.”</u></p> <p>This inclusion does not make sense when read with the chapeau which provides:</p>	Delete ECO-P2(5)

		<p>“Recognise, protect, and enhance the ecological sustainability, indigenous biodiversity values and characteristics of significant natural areas by: “</p> <p>It makes no sense to “recognise, protect, and enhance the ecological sustainability, indigenous biodiversity values and characteristics of significant natural areas by “<u>recognising the continued operation of lawfully established regionally significant activities.</u>”</p> <p>The two concepts are contradictory.</p>	
11.	ECO-P10	<p>Previously ECO-P11 as notified in proposed plan.</p> <p>Forest & Bird’s submission sought amendments to ensure consistency with Policy 11 of the NZCPS.</p> <p>The Decision adds matters from NZCPS policy 11(a)(i) and (ii) to ECO-10(2). Under the NZCPS Policy 11(a) the requirement is to “avoid adverse effects” on those matters. However, the decision amendment means that those matters are the subject of requirements to “avoid <i>significant</i> adverse effects” which is a NZCPS Policy 11(b) requirement.</p> <p>It is not entirely clear from the Decision report whether it is intentional to include the matters under clause (2)</p>	<p>Amend to ECO-P10 by adding a new clause 1(i) and removing the same wording from under clause (2):</p> <p>“1. Avoiding adverse effects on:</p> <p><u>(i) indigenous taxa listed as ‘Threatened’ or ‘At Risk’ in the New Zealand Threat Classification System lists or taxa listed as threatened by the international Union of Nature and Natural Resources; and</u></p> <p>...”</p> <p>Make a consequential amendment to Policy CE-P3 for consistency.</p>

		<p>or not. The Decision report refers to this amendment as being agreed in joint witness statement (JWS). However, our review of the JWS in relation to Chapter 26, is that the experts put this amendment under ECO-P11(1) (renumbered ECO-P10 in the decision).</p> <p>As it stands in the Decision this amendment is inconsistent with Policy 11 of the NZCPS.</p>	
12.	ECO rules	<p>Forest & Bird's submission sought to amend Table 1 so that it applied to activities within Significant Natural Areas including Schedule 6 and areas meeting WRPS criteria, and for a new Table 2 setting out rules for removal of indigenous vegetation outside significant natural areas.</p> <p>The S42A report explains that this chapter does not provide a rule framework for district-wide indigenous biodiversity outside of SNAs. Instead, this is provided for in the GRUZ, natural features and landscapes, natural character and coastal environment chapters and in the natural open space zone.</p> <p>However, our consideration of the rules in those other chapters has identified gaps, uncertainties and potential for more than minor adverse effects at the permitted activity level, as well as gaps in the matters for restriction of discretion in those chapters.</p>	Amend the rules in the GRUZ, natural features and landscapes, natural character and coastal environment chapters as set out for those chapters in this appeal.

13.	ECO Rules Table 1	<p>Forest & Bird also sought to amend the scope of Table 1.</p> <p>With respect to roads, Forest & Bird maintains its relief that the exemption for roads in Table 1 be removed. As worded the exemption could apply to indigenous vegetation clearance for “new” roads. The table already includes a rule relating to clearance within 2 metres of existing roads, suggesting that the table does apply to roads.</p>	Delete the statement at the top of Table 1 that “It does not apply to roads.”
14.	ECO-R1 to ECO-R10	<p>Forest & Bird’s submission sought amendments and deletion of a number of rules.</p> <p>Having considered the s42A report Forest & Bird generally maintains the relief sought in its submission but considers some alternative relief could address its submission.</p> <p>Forest & Bird sought to delete ECO-R10 or amend the definition of “Conservation activities”. Forest & Bird’s submission also sought that limits on clearance be added in relation to specific activities.</p> <p>Having considered the s42A consideration of the definition, alternative relief amending ECO-R10 is preferred. The rule is the more appropriate place to include limits on the scale and effects of activities captured by the definition.</p>	<p>Amend ECO-R4 as follows: “In the general rural, natural open space, open space and rural lifestyle zones to maintain, relocate or construct (outside of natural wetland SNAs) property perimeter fences, or fences outside the perimeter of an SNA, where any trimming, pruning or removal is limited to within 2 m of the fence”</p> <p>Amend ECO-R6 as follows: In the event of a track being destroyed by flooding or landslip or other natural hazard and there are no alternative options to obtain access to undertake existing farming activities, commercial forestry activities or to access an existing residential unit. Vegetation removal is limited to the area necessary to obtain <u>one</u> safe access.”</p> <p>Amend ECO-R9 to apply outside of SNAs as follows: “For pest species management and any other activities</p>

			<p>identified in the Waikato Regional Pest Management Plan and for the removal of material infected by unwanted organisms under the Biosecurity Act 1993, <u>where removed material is disposed of appropriately.</u>”</p> <p>Amend the ECO-R1 to ECO-R10 standards for Conservation activities ECO-R10 as follows:</p> <p>“Activity Status: PER</p> <p>Where:</p> <p>1. From 20 October 2022 to 20 October 2032 any clearance must be no more than either:</p> <p>(i) a maximum of 500 m² or less of indigenous vegetation either at any one time or in total cumulatively per holding:</p> <p>OR</p> <p>(ii) less than 1% of the SNA size either at any one time or in total cumulatively per holding – whichever is the lesser.</p> <p>2. For the avoidance of doubt, should this rule remain operative past 20 October 2032, the rule applies to subsequent 10-year periods; <u>and</u>”</p>
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			<p><u>3. For Conservation activities within a SCHED6 significant natural area:</u></p> <p><u>a. Restoration planting uses indigenous plant species prioritising species from the same ecological district;</u></p> <p><u>b. any clearance for new fencing as part of ecosystem protection, rehabilitation, restoration works or to exclude stock is limited to 1m from the fence line;</u></p> <p><u>c. the establishment of any new public walking or cycling tracks any clearance is limited to a maximum of 2m width and is not within an internationally significant SCHED6 significant natural area;</u></p> <p><u>d. pruning or clearance for the maintenance of existing walking an cycling tracks is limited to within 1m of the track;</u></p> <p><u>e. research and monitoring activities do not include the removal of mature trees;</u></p> <p><u>f. pruning or clearance for the maintenance of existing building or structures (including underground structures on Crown land) is limited to within 3m of the structure.</u></p>
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15.	ECO-R11	A consequential amendment is required to ECO-R11 as a result of Forest & Bird's amendments to the scope of Table 1 rules including all indigenous vegetation clearance.	Amend standard 5 as follows: "5. The activity is <u>not</u> located in a significant natural area – <u>national or regional category</u> – local category .
16.	ECO-R12	<p>Forest & Bird's submission sought to change the rule to RDIS and include further standards. We now consider the scale proposed and the limitation on clearance within an SNA is acceptable.</p> <p>However, a consequential amendment is required to ECO-R12 as a result of Forest & Bird's amendments to the scope of Table 1 rules, including all indigenous vegetation clearance.</p>	<p>Amend ECO-R12 as follows:</p> <p>"Where:</p> <p>...</p> <p>AND in all cases <u>if within a SCHED6 significant natural area</u>:</p> <p>4. The removal of indigenous vegetation does not exceed 100 m²; and</p> <p>5. There are no other suitable sites for the proposed activity."</p>
17.	ECO-R16	<p>Forest & Bird maintains its view that for activities not specifically provided for at appropriate scales within and SNA, the default should be NC.</p> <p>A consequential amendment is also required to ECO-R16 as a result of Forest & Bird's amendments to the scope of Table 1 rules including all indigenous vegetation clearance.</p>	<p>Amend the activity classification of ECO-R16 to non-complying/NC.</p> <p>Amend the ECO-R16 rule description so it applies within SCHED6 significant indigenous vegetation areas.</p>

			Also see amendments to Table 1 to include indigenous vegetation outside of SCHED6 under ECO rules above.
Chapter 27 Natural character			
18.	NATC rules	Amendments are required to address Forest & Bird's submission seeking rules to implement Council's functions to maintain indigenous biodiversity beyond SCHED6 SNAs. Further matters of discretion are also required to provide scope to consider effects in accordance with the ECO chapter objectives and policies.	<p>Amend NATC-R1 to include:</p> <ul style="list-style-type: none"> • Permitted standards setting the purposes for which the department or Waitomo District Council can remove indigenous vegetation. • Permitted standards requiring any material removed for pest management/unwanted organisms is removed from the site and disposed of appropriately. • Permitted activity standards to set a maximum limit of 100m2 removal for conservation activities. <p>Add "adverse effects on indigenous biodiversity" as a matter of discretion for RDIS activities.</p>
Chapter 28 Natural features and landscapes			
19.	NFL rules	The rule is inconsistent with s6(b) and s6(c) and Council's functions to maintain indigenous biodiversity	<p>Amend NFL-R15 by including:</p> <p>Adding a matter of discretion for "<u>effects on indigenous biodiversity</u>".</p>

			Reducing the PER clearance within ONL and Kast overlay to 1000m2 per any ten year period and making consequential amendment to align the RDIS activity.
Chapter 32 Coastal environment			
20.	CE	The rule could permit adverse effects inconsistent with NZCPS Policy 13(1)(b) and does not appropriately manage adverse effects on coastal environment, or allow for consideration of adverse effects necessary to maintain indigenous biodiversity.	<p>Amend CE-R15 by:</p> <p>Reducing the PER clearance within High/very high natural character overlay 1000m2 per holding in any ten year period.</p> <p>Reducing the PER clearance in the general rural zone to “where less than or equal to 1000m2 hectare per holding per <u>any 10 year period calendar</u> year” and making consequential amendment to align the RDIS activity.</p>
Chapter 35 Hapori whānui (Provisions for community wellbeing, safety and amenity)			
21.	HW rules	The explanation in Chapter 35 Hapori whānui on the extent to which indigenous vegetation clearance is managed under the plan is incorrect. The Note under Rule HW-R7 and R8 only refers to GRUZ-R15. However indigenous vegetation clearance is also managed under CE-R15 and NFL-R15.	Amend the note under HW-R7 and R8 to include reference to CE-R15 and NFL-R15.

Chapter 42 General rural zone			
22.	GRUZ rules	<p>The rule is uncertain as to what indigenous vegetation (outside of SCHED6 SNA's) can be cleared as a permitted activity and the extent of that clearance.</p> <p>Under the rule, the permitted activity appears limited to clearance of “indigenous scrub vegetation (manuka, kanuka, tree ferns)”. However, the Plan does not include a definition to clarify what “indigenous scrub vegetation” is.</p> <p>There is also uncertainty as to what clearance may be considered “weed control” or how “reinstatement of nature” may be determined. There are no standards requiring material infected by unwanted organisms to be disposed of appropriately.</p> <p>Greater certainty is needed to implement Council’s function for the maintenance of indigenous biodiversity.</p> <p>These amendments are intended to trigger consent for mineral extraction clearance outside of SNAs (as sought in F&B submission previously to be included in ECO) for indigenous vegetation clearance over 1000m2.</p>	<p>Amend GRUZ-R15 by:</p> <ol style="list-style-type: none"> 1. Changing clause 2. to specifically apply to manuka, kanuka, tree ferns. Alternatively include a definition of “indigenous scrub vegetation” to that effect. 2. Adding a further requirement under clause 2: “(iii) <u>Not be more than 1000m2 per holding per any 10 year period.</u>” 3. Adding a requirement into clause 3. that material infected by unwanted organisms is disposed of appropriately and must not be more than 1000m2 per holding per any 10 year period. 4. Adding a further clause to clarify that clearance of any other indigenous vegetation is either: not provided for as permitted under this rule and defaults to RDIS, or is limited to 1000m2 per holding per any 10 year period. 5. Adding a matter of discretion for “<u>effects on indigenous biodiversity</u>”.
