



Forest & Bird

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

Forest & Bird's submissions on the proposed Waimakariri District Plan hearings - Stream 4

Written speaking notes 17 July 2023

These written notes are provided on behalf of Forest & Bird by Nicky Snoyink, Regional Conservation Manager, Canterbury and West Coast, for Forest & Bird.

Forest & Bird made a submission S192 and Further Submission FS 78. These submissions include relief sought in relation to proposed provisions for the Activities on the Surface of Water, Natural Character of Freshwater bodies, Natural Features and Landscapes, Coastal Environment chapters of the proposed plan.

Forest & Bird are pleased to see a number of its concerns are addressed and its relief sought is recommended to be accepted or accepted in part by the s42A reporting officers. Some of these are identified in the notes below.

However, there are still matters of concern that are not addressed or accepted by the reporting officer. We have identified the following matters to provide additional reasoning on for the panel to consider and rely on our submissions for other matters not further addressed here.

NATC Chapter

1. NATC-R2

Forest & Bird accepts the officer's recommendation to decline our submission seeking to remove the date of the Pest Plan Accord for the reasons set out in the S42A report. However, we have concerns with amendments recommend by the officer to condition 3 of that rule, which appear to go beyond the scope of relief sought by the Canterbury Regional Council (CRC).

We consider that rather than delete condition 3 entirely, it should be amended so that it does not apply to flood control planting as sought by the CRC but remains a requirement for other purposes that would be permitted by the rule.

For example, amend condition 3 as follows:

"3. for 1.b. and 1.c. the activity complies with NATC-S1."

We are also concerned with the officers' recommended changes to NATC S1 Figure 1. It reads to us as if the setbacks would now apply from some point within the bed rather than from the bank. A bank provides more certainty in our view that a setback will apply from the edge of the riverbed. It is

uncertain under the recommended wording whether plantings would be permitted within the bed and/or on the bank and thus adversely impacting on natural character values.

NFL chapter

2. ONL related submissions

Forest & Bird supported the North Canterbury Fish & Game submission [362.5] that Lees Valley be included as an ONL until the Significant natural Area (SNA) mapping process is completed. While we understand the officers' reasons for declining this submission, that they consider the areas does not meet ONL criteria, we are concerned that the protection offered though unmapped SNA provisions is inadequate to protect the significant biodiversity values of the area. Forest & Bird has set out a number of amendments to the Indigenous biodiversity chapter provisions that are intended to achieve and improve protection. We also note that the newly gazetted National Policy Statement for Indigenous Biodiversity (NPSIB) 2023 requires unmapped indigenous biodiversity meeting the criteria for significance to be treated the same as a mapped SNA until mapping is undertaken in accordance with the NPSIB. While these are matters more relevant to the indigenous biodiversity hearing topic, we raise them here because excluding the protection that would have been afforded Lees Valley floor through identification as ONL, will need to be addressed through amendments to the proposed indigenous biodiversity provisions.

3. Inappropriate activities

The officer has discussed submissions on this topic at section 3.3 of the S42A report and recommended the inclusion of the word "inappropriate" into NFL -O1, NFL -O2 and NFL – P1 and NFL-P3. Forest & Bird has made submissions on these policies and made a further submission supporting the Department of Conservation that these objectives and policies be retained as worded.

In our view the amendments to include this wording are not consistent with the New Zealand Coastal Policy Statement (NZCPS). The amended wording confuses what protection is from with how protection is to be achieved. The King Salmon decision addresses this. As such "inappropriate" is to be determined by what is to be protected. Thus, activities that have adverse effects on values to be protected would not be appropriate.

The objectives are already worded to capture activities that would adversely affect the values of an ONF and ONL which aligns with King Salmon and the NZCPS.

Similar with the policies that are already worded to protect ONFs and ONLs from adverse effects of activities. It is not appropriate to limit the consideration of effects to whatever someone may consider is an inappropriate activity. Protection is to be from inappropriate activities, not from the adverse effects of an inappropriate activity. The latter makes the presumption that adverse effects on the values are acceptable if an activity is appropriate. This creates uncertainty in the application of the provisions and may be subjective as to what is an inappropriate activity.

Please retain the objective and policy wording as proposed.

4. NFL- P1

The officer has rejected Forest & Birds submission to add reference to ECO-P7 within the policy. While we accept this recommendation, we have concerns that about the inclusion of the word "inappropriate" as discussed above.

Please retain the policy wording as proposed.

5. NFL – R4

Forest & Bird support the officer's recommendation (at 3.17.1.3 of the S42A) to add a condition specifying a maximum width for cycle and walkways to address concerns that there was no limit in the regard within the rule.

Forest & Bird considers that a consequential amendment is required to the matters of discretion where the condition is not met. This is needed to give the council discretion to consider the effects on natural features and landscapes from cycle and walking tracks. The current matter of discretion NFL-MD1 is limited to new buildings structures and access tracks.

We recommend adding a matter of discretion to NFL—R4 as follows:

“Matters of discretion are restricted to:

NFL-MD1 - New buildings and structures, additions to buildings and access tracks; and
Effects on natural features and natural landscapes.”

6. Appendix A: Ashley River/Rakahuri Saltwater Creek Estuary - Outstanding Natural Feature

Forest & Bird supports the officer's recommendation (at 320 of the S42A) to include 4x4s; quad bikes; side by sides; and motorbikes to clarify the vehicles that are likely threats.

CE- Coastal Environment Chapter

7. Public Amenities definition, CE-R2 permitted and RDIS activities

There was an error Forest & Birds submission which was clarified with the officer (see para 192 S42A).

Forest & Bird sought to amend the definition for Public Amenities because it included amenities that are or may not be considered as buildings or structures. This is because the rules relating to Public Amenities only include conditions/standards and matters of discretion for buildings and structures.

In summary, our concern is that those public amenities that are not “buildings or structures” would have no conditions associated with them and could cause adverse effects that were not adequately managed by a permitted activity rule.

Forest & Bird generally agrees with the officer (see para 66 S42A) that an amendment to the definition is not needed and its concerns can be addressed through amendments to the rule which use the term.

Forest & Bird's concern is that the rules as proposed do not ensure the effects of walking and cycle ways (and any other non-structure public amenities) would be no more than minor and appropriate within the Coastal Environment (CE) and natural character overlays.

Forest & Bird generally supports the officer's recommendation to add a condition for walking and cycling paths recommended in CE-R2. However, we still consider that a setback is appropriate for these activities and seek the same set back as in condition 1 for Buildings and structures. This is because public paths bring people and dogs. As recognised by the officer paths are often close to water (see 201 S42A). It is important to recognise that such areas may be habitat for bird breeding and feeding. Given the sensitive natural values of the coastal environment and potential for impacts on its natural values, it is appropriate in our view, for resource consent to be sought when close to

overlays. It may also be appropriate to have a setback for formed cycle and walking paths from the Coastal Marine Area (CMA) for similar reasons.

As a consequential amendment is also needed for an additional matter of discretion to reflect non-compliance with the new condition for walking and cycling paths. The wording suggested below also addresses our submission on CE-MD1 which is discussed below.

Forest & Bird's concerns also apply to the RDIS rule in CE-R2. While a condition is not needed, a matter of discretion for council to be able to consider the effects on natural character of public amenities more broadly is. The wording suggested below also addresses our submission on CE-MD1.

It also appears that the walking and cycleways condition has not been carried through to the NATC rules or any other rules that may address public amenities, a concern also raised in our submission.

Suggested amendments:

Add the following Condition to CE-R2 PER (wording different to that recommended by the officer is highlighted in blue):

"4. the use of land for any walking or cycling path for public amenities shall be limited to 2.5m maximum width, with a 20m minimum setback from any identified coastal natural character area, as listed in CE-SCHED1 or CE-SCHED2."

As a consequential amendment, Forest & Bird also seeks an additional matter of discretion to reflect non-compliance with the new condition.

"Matters of discretion are restricted to:

- CE-MD1 - Buildings and structures
- Effects on natural character

Add the following matter of discretion to CE-R2 RDIS:

"Matters of discretion are restricted to:

- CE-MD1 - Buildings and structures
- Effects on natural character

Make further consequential amendments to add a walking and cycleways condition and a related matter of discretion to the NATC rules or any other rules that may address public amenities.

8. CE-O1 Use of motor vehicles

We generally support the officer's amendment to NATC-O1, however unlike the CE chapter, that chapter relates only to freshwater bodies and does not capture the natural character of the terrestrial coastal environment. We consider the for the reasons of being explicit as explained by the officer [see para 92 of the CE S42A], restored and rehabilitated should be included into EC-O1. We also consider the "and" is the appropriate conjunctive term for an objective as ultimately all outcomes of the objective are to be achieved.

Forest & Bird also seeks that the word "protect" be included in CE-O1. It makes the objective much clearer in terms of the plan giving effect to Policy 13 which is for the "preservation of natural character of the coastal environment *and* to protect it from inappropriate subdivision, use and development."

There should also be a consequential change to the CE introduction to correct the first sentence in line with Policy 13 of the NZCPS. That is that “protection” is from inappropriate activities. This is not the appropriate wording for “preservation”.

We support the officer’s consequential amendment to add “restoration or rehabilitation” as a matter for discretion under CE-MD1 Buildings and structures. However, this limits consideration to RDIS activities relating to buildings and structures. For example, under CE-R2 where Public amenities are RDIS within Te Kōhanga Wetlands - HNC area there would be no discretion for restoration and rehabilitation relating to planting or cycle and walkways (where these are not structures). Further the wording of the clause proposed by the officer would limit consideration to “whether” restoration or rehabilitation is proposed and not leave scope to consider whether such proposals are appropriate or adequate.

Suggested wording:

CE Introduction

“The preservation of the natural character of the coastal environment and the protection of it from inappropriate subdivision, use and development is a matter of national importance under the RMA.”

CE-O1

“The natural character attributes of the coastal environment of the District are preserved, ~~maintained~~ protected, ~~and enhanced~~ restored and rehabilitated.”

New CE matter of discretion to replace officer recommendation [94]:

“CE-MD2 measures for the ~~Whether any~~ restoration or rehabilitation of the natural character of the coastal environment ~~is proposed;~~”

Add CE-MD2 to RDIS rules relating to the coastal environment

9. CE-P2 Preservation of natural character

Having considered the officers assessment (at para 131 s42A) to accept Forest & Birds submission in part, and the similar submission from the CRC (at para 128 s42A), we have alternative wording to suggest. We agree with CRC that the provision should be tied to natural character, but we consider that natural character may include other aspects of biodiversity beyond just vegetation.

Suggested wording:

6. maintaining indigenous biodiversity, that contributes to natural character of the coastal environment, including remnant vegetation and habitats of indigenous species.

In addition, Forest & Bird is concerned with the approach being recommended by the officer(s) (at paras 135- 137 S42A) that rules in other chapters including the CE would **not** apply to energy and infrastructure activities. While Forest & Bird’s submission raises concerns with the EI chapter with respect to Policy 11 of the NZCPS and the need to consider EIB chapter. Changing the relationship of the EI chapter to the CE chapter, would prevent the application of CE rules on activities that Forest & Bird considered to be within those rules in making our submission. Excluding the CE rules makes that scope of CE-R2 and CE-R3 which relate to structures, uncertain as to whether these CE rules apply. It seems likely that many public amenity activities and structures could also be considered infrastructure.

Forest & Bird has made its submission on the basis that the CE rules apply to energy and infrastructure activities, in addition to any relevant rules in the CE chapter.

We consider this relationship a key issue for the panel to consider given the structure of the plan that the CE chapter and overlay chapters give effect to the NZCPS. This is also the basis on which Forest & Bird has made its submissions on the CE chapter.

10. CE-P7 Infrastructure in the coastal environment

While we accept that the amendment to the definition of Public amenities sought by Forest & Bird may not be necessary, we remain concerned about the scope of this policy applying to all infrastructure. This is because of the directive nature of the policy wording to “recognise and provide for” being in relation to infrastructure. That wording reflects s6 of the RMA and is specific to natural character of the coastal environment (amongst other things) but not to “infrastructure”.

Forest & Bird’s submission effectively sought to narrow the application of the policy to regionally significant infrastructure. We agree with the officers that NZCPS Policy 6 recognises the benefits infrastructure more broadly.

However, Policy 6 of the NZCPS does not use directive wording, rather it sets out a number of considerations for the location, rate, and effects of development/infrastructure. Whereas Policy 13 of the NZCPS is directive for avoidance of adverse effects on Outstanding Natural Character and the avoidance of significant adverse effects (etc) on other natural character for the preservation and protection of natural character of the coastal environment; this is given effect to in CE-P2.

Forest & Bird consider that the officers recommended amendment to address Transpower’s submission is contrary to NZCPS Policy 13. This is because the wording of CE-P7 being made specific to “infrastructure” could be read over CE-P2.

Forest and Bird consider alternative wording to address its submission as follows:

“CE-P2 ~~Recognise and provide~~ Consider providing for the maintenance, upgrade and development of infrastructure that has a functional need or operational need to be located in the coastal environment, where this does not create adverse effects to the identified coastal natural character areas.”

11. CE-MD1 Buildings and structures

While the officer (see para 240 S42A) has accepted Forest and Bird’s submission to add matters to CE-MD1 there is no recommended wording included in the officer’s report.

Forest & Bird considers that CE-MD1 matters of discretion for Buildings and structures is inadequate as there is no clear consideration of effects on natural character.

The matters listed in MD1 and its focus on Buildings and structures mean the matters listed are inadequate to give scope for council to consider the CE policies. For example, CE-P2 which includes direction for how adverse effects on HNC are to be considered.

While Forest & Bird has sought an additional matter be added to MD1, we now consider that the new matter could alternatively be added directly to the RDIS rules using the same wording now sought above (see point 7 of the notes above) for matters of discretion at CE-R2 and applying this to all RDIS activities in the coastal environment.

Amend CE-M1 as follows:

“2. Measures to ~~minimise~~ avoid, remedy, or mitigate any adverse effects on sensitive habitats such as dunes, rivers, lakes, or wetlands.

x. Measures to avoid, remedy, and mitigate adverse effects on natural character values.”

In addition to the amendments sought to CE-R2 above, and in the alternative to adding “x” to MD1, add a new matter of discretion to CE-R3:

Add the following matter of discretion to CE-R3 RDIS:

“Matters of discretion are restricted to:

- CE-MD1 - Buildings and structures
- Effects on natural character

12. CE-SCHED1 - Outstanding Natural Character Areas in the Coastal Environment

Forest & Bird supports the officer’s recommendation to accept its submission to include “dunes”, for the Ashworth Spit in the Ashley/Rakahuri estuary in SCHED1.

Thank you very much for considering the notes in lieu of me speaking on behalf of Forest & Bird at the hearing today.

Nāku noa, nā

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Forest & Bird, Canterbury/West Coast