

## COMMENTS OF THE ROYAL FOREST & BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED

### INTRODUCTION

1. The Royal Forest and Bird Protection Society Incorporated (Forest & Bird) has been Aotearoa New Zealand's independent voice for nature since 1923. Forest & Bird's constitutional purpose is:

To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.

2. The most concerning aspects of The Point solar farm project relate to its proximity to extremely significant habitat for Threatened and At-Risk species of avifauna. The proposed site is bordered on three sides by habitat including the Lake Ruataniwha Conservation Area (Department of Conservation), the Ohau River (identified as an Area of Natural Significance for avifauna values in the Mackenzie District Plan), the Lower Takapō and Twizel Rivers, the Ohau-Takapō Delta, and Lake Benmore.
3. The substantive application (the **Application**) acknowledges that “ecological features and values adjacent to the site, associated with the rivers and their margins, are extremely high”.<sup>1</sup> However, the Application down plays the potential adverse effects on avifauna on the grounds that there is only limited survey evidence of Threatened and At-Risk bird species directly foraging or breeding at the site.
4. The Application fails to address the resulting risk of avifauna mortality caused by bird-strike in an adequate way. If adaptive management is proposed then this

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<sup>1</sup> Application at 3.6, p22

would require conditions that would enable construction of the project to be staged, with effective monitoring and the ability to draw back the project to avoid any significant unexpected effects before they become irreversible, for example, population-level effects on species such as black stilt | kakī.

5. More fundamentally, Forest & Bird considers that the proposed location for The Point is not an appropriate place to test the impacts of utility-scale solar installations<sup>2</sup> on so many of Aotearoa's Threatened and At-Risk bird species. The potential for population-level effects on species such as black stilt | kakī because of bird-strike mortality means that the Application should be declined.
6. Because of the relatively undeveloped nature of the site, within a nationally significant ecological context, the project is also likely to have significant effects on other indigenous flora and fauna. Based on the ecological evidence currently available, it appears that these adverse effects may potentially be adequately mitigated, offset or compensated for, by an appropriately conditioned Ecological Enhancement Plan (**EEP**).
7. However, provision of adequate environmental baseline data is an essential component of an application such as this one. The Panel needs to be able to understand the existing environment in which the EEP is intended to operate, and there needs to be an adequate baseline of information against which the success or failure of the EEP) can be assessed by ongoing monitoring.
8. Forest & Bird is also highly concerned about the adverse effects of utility-scale solar installations, including the cumulative effects of multiple projects, on the outstanding natural landscape of the Mackenzie Basin.

## **EVIDENCE**

9. Forest & Bird provides expert evidence on avifauna from Dr Rachel McClellan, which is attached as **Appendix A**.

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<sup>2</sup> i.e. Solar installations feeding directly into the National Grid.

## **Dr Rachel McClellan**

10. Dr McClellan provides expert evidence about the extremely significant values of the site and surrounding area for numerous species of Threatened and At-Risk birds.
11. Dr McClellan considers that the proposed Solar Farm is likely to impact on species that are currently likely to use the site for foraging and breeding. In addition, she is concerned about the risk of avifauna mortality caused by bird-strike.
12. Although the reasons for bird-strike at solar farms are not yet very well understood, bird-strike is a well-documented phenomenon at large-scale solar farms overseas. There is evidence that many species of birds are attracted to or confused by solar panels, potentially mistaking them for water bodies (the 'lake hypothesis'), or feeding on insects that are drawn to the panels, or disoriented by polarised reflected light from the panels. This results in mortality when birds collide with panels, or (for water obligate species) land amongst the panels and cannot take flight again. The information available on native bird behaviour suggests that similar effects are likely in New Zealand.
13. Regardless of whether birds are actively attracted to the panels, there remains a significant risk of incidental collision (especially for juveniles) given the very large scale of the proposed solar farm in a largely undeveloped landscape, so close to extremely significant populations of native birds.

## **FTAA DECISION-MAKING FRAMEWORK**

14. The FTAA decision-making framework is the same as for the Haldon Solar application, being heard by a similarly constituted panel, on which Forest & Bird also provided comments. For the convenience of the Panel, those comments are attached as **Appendix B**.

## **Summary of key points**

15. Under clause 17(1) of Schedule 5 of the Fast-track Approvals Act 2024 (**FTAA**), the Panel must give the greatest weight to the purpose of the FTAA when considering the Application.

16. However, this does not mean that the Application must be approved. Under section 85(3), the Panel may decline the Application if it finds that:
  - a. There are 1 or more adverse impacts in relation to the approval sought; and
  - b. Those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account –
    - i. Any conditions that the panel may set in relation to those adverse impacts; and
    - ii. Any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.
17. This should be approached by the Panel as a four-stage assessment:
  - a. Assess the extent of the project's regional or national benefit;
  - b. Assess the significance of adverse impacts;
  - c. Assess whether any adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits;
  - d. Exercise the discretion to decline (or not) the approval.
18. When assessing the significance of adverse impacts, the relevant provisions of the RMA and planning instruments must be given genuine consideration by the Panel, meaning that they cannot merely be considered for the purpose of setting them aside.<sup>3</sup>

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<sup>3</sup> See: *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 (*East West Link*) at [72], [79], [80], [167] and fn. 157, at [169]; *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [73]

19. Because of the structure of clause 17, which does not employ the RMA approach of a cascading hierarchy of planning instruments,<sup>4</sup> the Panel does need to directly consider Part 2 of the RMA.
20. The Panel should consider and apply the relevant provisions of the RMA and planning instruments uninfluenced by the purpose of the FTAA, before standing back and conducting an overall balancing.<sup>5</sup> The purpose of the FTAA should not be used to neutralize or minimise the other matters that need to be considered.
21. For the Application, this is especially relevant to information requirements, and the need for adequate environmental baseline information and monitoring to support decision-making, including on adaptive management.
22. When considering planning instruments, the Panel should take an orthodox approach to the interpretation of directive language, recognising that directive policies (and especially “avoid” policies) have greater potency.<sup>6</sup>
23. As an important proviso to this, where any provision under the RMA would require a decision-maker to decline an application, the Panel must take this into account but “must not treat the provision as requiring the panel to decline the application”.<sup>7</sup>
24. The significance of regional or national benefits, and accordingly the weight that should be placed on these benefits, are factual matters for the Panel to determine.
25. Well-established principles relating to the setting of consent conditions remain applicable under the FTAA. It is especially important to recognise that deferring issues to management plans where the Panel has not been provided with sufficient information to reach a decision is not appropriate,<sup>8</sup> and that conditions of consent must identify the performance standards that must be met in a measurable and enforceable way.<sup>9</sup>

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<sup>4</sup> Cf. *EDS v New Zealand King Salmon Company Limited* [2014] NZSC 38

<sup>5</sup> See *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541, at [53]

<sup>6</sup> *King Salmon*, at [93]

<sup>7</sup> Clause 17(4) FTAA

<sup>8</sup> *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 at [277]

<sup>9</sup> *Re Canterbury Cricket Association* [2013] NZEnvC 184 at [125]

26. For all approvals under the FTAA, panels must also comply with section 83 in setting conditions.<sup>10</sup> However, this does not set a higher standard than would otherwise apply under the RMA; section 83 of the FTAA provides:<sup>11</sup>

When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

### **Cumulative effects and the “first in time” principle**

27. As set out in our comments on the Haldon Solar application, Forest & Bird maintains that the purpose of the FTAA, being “to facilitate the delivery of infrastructure projects with significant regional or national benefits”, invites a broader consideration of cumulative effects and the merits of competing applications. The reference to multiple projects, combined with the focus on relative benefits and the ability of the Panel Convenor to manage cases and timeframes, represents a different approach to the RMA.
28. If delivery of all proposed projects is not possible due to cumulative effects or other environmental constraints, and these proposed projects are being heard concurrently by the same Panel, then the purpose of the FTAA indicates that the project with greater regional and national benefits should be the one approved (if it is appropriate to approve any project).
29. The adverse impacts of each project will also be relevant to this comparative assessment, because these negative impacts will help the Panel to understand the overall net benefits of the respective projects.
30. Alternatively, if multiple approvals are being considered for projects that together would have significant cumulative adverse effects, then the Panel must be able to manage these cumulative effects by including appropriate conditions for each project (which may include limitations on the scale of the activities).

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<sup>10</sup> Section 81(2)(d) FTAA

<sup>11</sup> Section 83 FTAA

## **ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT**

31. The proposed site is classified entirely as a 'critically underprotected' land environment, with more than 30% indigenous vegetation left and less than 10% indigenous vegetation protected.<sup>12</sup> It also meets the Canterbury Regional Policy Statement (**CRPS**) criteria for a significant natural area.<sup>13</sup> Furthermore, the site is located within the Mackenzie Basin outstanding natural landscape, as recognised by the Mackenzie District Plan (**MDP**).
32. The proposed site is also immediately adjacent to extremely significant habitat for numerous Threatened and At-Risk bird species, and it is the potential adverse effects on these populations due to bird-strike that is of the greatest concern for Forest & Bird.
33. In relation to other adverse effects on indigenous flora and fauna, the Panel is being asked to accept that the Applicant is taking a precautionary approach to managing residual uncertainty due to a lack of information in the Application about the existing environmental baseline.<sup>14</sup> This precautionary approach (i.e. assuming that effects on fauna may occur) should also be applied to the risk of avifauna mortality caused by bird-strike.

### **Indigenous vegetation**

34. Forest & Bird's understanding is that, in terms of indigenous vegetation within the footprint of the proposed solar installation, adverse effects are likely to be lower than for the Haldon Solar project, but not immaterial/inconsequential. This is due to modification from the farming activities (ploughing and cultivation) that have been happening on the site.
35. Some of the statements made by or on behalf of the Applicant potentially exaggerate the modified nature of the site. For example, the statement in the

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<sup>12</sup> Ecological Enhancement Plan (Appendix P) at 4.5

<sup>13</sup> Wildlands AEE at [10.1]

<sup>14</sup> For example, Wildlands Response to Ecological Issues Raised by the Panel at [3.0], p 2

substantive application that the entire site is “intensively tilled” to support agricultural activities,<sup>15</sup> and that the entire site is “intensively farmed”.<sup>16</sup>

36. Descriptions of the site should not be misinterpreted. For example, the DOC description of the site as “ecologically depauperate” from 24 November 2023<sup>17</sup> means “reduced in numbers or variety of species” and should not be interpreted as implying that no important values were present at the time.
37. Wildlands recommended more detailed vegetation surveys to ensure that Threatened and At-Risk plant species are avoided wherever possible. A subsequent 7-hour survey by Wildlands did find some At Risk - Declining indigenous vegetation<sup>18</sup>, contrary to the Applicant’s AgScience report that there was nothing to be found.<sup>19</sup>
38. It is understood that significant indigenous vegetation values are most likely to be found around the perimeter of the site. Forest & Bird also understands that the Applicant is now proposing for all areas of indigenous vegetation around the perimeter of the site to be excluded from the footprint of the installation.
39. Forest & Bird supports the Panel’s request for more targeted surveys to occur before a decision is made.

### **Avifauna**

40. The 2023 Wildlands report identified “more than minor” effects on various Threatened and At-Risk species of birds, caused by habitat modification or loss, displacement caused by construction during breeding season, death or injury during construction, ongoing disturbance, and risk of bird-strike.
41. Bird-strike is a particular concern for Forest & Bird, because it is a poorly understood phenomenon that could potentially have catastrophic adverse effects in a location such as The Point.

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<sup>15</sup> Application at [3.1], p 14

<sup>16</sup> Application at 4.1, p 23

<sup>17</sup> Application at [3.1], pp 14, 23

<sup>18</sup> Wildlands vegetation and habitat survey 2026 at [6.0]

<sup>19</sup> Based on the AgScience survey of 17 December 2025

42. The Wildlands report stated that more information and further investigation would be needed to assess potential adverse effects.<sup>20</sup> In relation to the risk of bird-strike, the Applicant relies on the subsequent Ecological Solutions report.<sup>21</sup> There are problems with this report. Firstly, there are inconsistencies with the Wildlands assessment of the birds that use the site (Wildlands say that black-fronted tern do use the site for feeding, whereas Ecological Solutions say this is uncertain). Secondly, there are some unwarranted assumptions (e.g. that the entire site would be cropped, mowed and grazed, so as to prevent nesting – the fact that certain farming activities may be permitted does not mean they are or have been occurring). Most importantly, the Ecological Solutions report does not adequately consider effects on the significant avifauna values associated with adjacent rivers, wetlands and deltas – it focuses on temporary effects caused by construction activities and does not adequately assess the risk of bird-strike during operation of the solar farm.
43. Essentially, the Ecological Solutions assessment of low risk presented by bird-strike appears to be based on the premise that other anthropogenic activities (such as “building windows, roads, power plants, power lines, communication towers and wind farms”), are generally much more significant in terms of overall bird mortality.<sup>22</sup> This is the wrong approach for several reasons.
44. Firstly, it seems likely that the scale ratio of solar farms to other risky anthropogenic activities would support the conclusion that solar farms are relatively high risk (i.e. there are very many more roads and windows, for example, than solar farms, so one would naturally expect them to be a higher cause of collision mortality overall).
45. Secondly, the proposed site is in an environment where there are currently relatively few structures presenting a strike-risk, and where there are very high populations of Threatened and At-Risk bird species. In this context, it is difficult to

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<sup>20</sup> Wildlands AEE at 11.3, p 31

<sup>21</sup> Application, Appendix T

<sup>22</sup> Ecological Solutions at p 11-12 “On the basis of North American research, it would appear that the relative risk of solar farms is low when compared to other human caused mortality”

see how introducing a relatively high strike-risk activity covering 670ha directly adjacent to critical bird habitat could be assessed as low risk.

46. Similarly, it would be wrong to find that, because introduced mammals and loss or modification of habitat are clearly implicated in population decline, or because there are already HV transmission lines crossing the site,<sup>23</sup> the Panel should not be concerned about the creation of an additional risk factor. This would also ignore cumulative effects which the Panel is required to consider.
47. Finally, in its comparison between “incidental” collision mortality and the “lake hypothesis”, the Ecological Solutions report seems to assume that the Panel should not be particularly concerned about “incidental” collision because it is not peculiar to solar farms. This is despite the report finding that:

Collision with clear and reflective sheet glass and plastic is a major killer of birds, with Klem (2009) estimating 1 billion birds may die per year in the United States from collisions of this type alone. Birds are unable to detect the presence of these materials and collide with them while attempting to fly to what they perceive through the translucence or in the reflection.

48. Dr McClellan’s evidence is that there are good reasons for concluding that solar farms do present significant risks to avifauna, and that using The Point as a testing ground for the effects of utility-scale solar on Threatened and At-Risk avifauna would be a high-risk approach.
49. The Ecological Solutions report itself finds that further research and monitoring would be appropriate given the conservation status of birds present at and around the site.<sup>24</sup> Unless it is possible to adopt a genuine precautionary adaptive management approach, which would need to include staged development and the ability to draw back from the activity if necessary by removing panels, this research and monitoring should be carried out before approval for the project is granted.

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<sup>23</sup> Ecological Solutions at p 12

<sup>24</sup> Ecological Solutions at p 12

50. In *Crest Energy*,<sup>25</sup> the Environment Court emphasised the need for robust baseline monitoring *before* embarking on an adaptive management approach.<sup>26</sup> The Court acknowledged that it would be unreasonable to expect an applicant to carry out all necessary research on all possible hypotheses,<sup>27</sup> but maintained that:<sup>28</sup>

... the applicant must establish sufficient of a case to persuade the Court to grant consent on the basis of allowing the adaptive management processes to be embarked upon. That is, the Court must be satisfied that the environmental management plan can operate in a way that will serve the purpose of the Act.

51. In *Sustain Our Sounds*,<sup>29</sup> the Supreme Court confirmed that a precautionary approach to adaptive management proposals is needed where there is a lack of baseline information and adverse effects may be significant. The Supreme Court also referred to DOC guidance on Policy 3 of the New Zealand Coastal Policy Statement, which states that adaptive management will not be appropriate where effects cannot be remedied before they become irreversible.

52. The Supreme Court referred with approval to several factors that are relevant to the ability of an adaptive management regime to deal appropriately with risk and uncertainty:

- a. there will be good baseline information about the receiving environment;
- b. the conditions provide for effective monitoring of adverse effects using appropriate indicators;
- c. thresholds are set to trigger remedial action before the effects become overly damaging; and
- d. effects that might arise can be remedied before they become irreversible.

53. To meet these requirements, a staged approach to the project would be needed, together with the ability to draw back from the activity if significant adverse

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<sup>25</sup> *Crest Energy Kaipara Limited v Northland Regional Council* A132/09

<sup>26</sup> *Crest Energy*, at [100]

<sup>27</sup> *Crest Energy*, at [228]

<sup>28</sup> *Crest Energy*, at [229], referred to at [382] of Decision.

<sup>29</sup> *Sustain Our Sounds Inc v The New Zealand King Salmon Company Limited* [2014] NZSC 40

effects are identified through monitoring. While it is understood that the Applicant's experts have been carrying out further avifauna surveys during February 2026, Dr McClellan points out that this will not assist in a greater understanding of the use of the site by Threatened and At-Risk bird species as it is outside of the breeding season, and most braided river birds will have dispersed from the Mackenzie Basin. This work should have been done by the Applicant during breeding season and prior to lodging the Application.

### **Lizards & Invertebrates**

54. The Wildlands report identifies "more than minor" adverse effects on lizards and invertebrates, and anticipated targeted surveys once plans for the site had been finalised.<sup>30</sup>
55. Forest & Bird understands that the Applicant has now agreed to carry out some targeted surveys, and that the results will be communicated to the Panel by 23 February 2026.
56. Forest & Bird will do its best to engage with this new information once provided, in the limited time available, while observing that there was ample opportunity for the Applicant to carry out the necessary surveys (as advised by its own ecologists) prior to making its substantive application.

### **Landscape**

57. Appendix F of the Application (Landscape and Visual Assessment) identifies that the project would be located within an area of High Visual Vulnerability<sup>31</sup> and would have moderate-high adverse landscape effects.<sup>32</sup>
58. The Applicant has addressed some of the recent changes to the Mackenzie District Plan in the Appendix F Addendum report but has omitted reference in REG-P6 to consideration of Policy 4 in Section 19 and Appendix Z, in relation to offsetting and compensation, and has not referred at all to REG-P6.7.

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<sup>30</sup> Wildlands report at 11.4, p 31

<sup>31</sup> Application, Appendix F at p 4

<sup>32</sup> Application, Appendix F Addendum, at p 9

59. Adverse landscape effects would clearly be exacerbated if multiple solar farms within the Mackenzie Basin ONL are approved, to the point where adverse effects may be significant, and this issue of cumulative effects is one that the Panel has raised with the applicants for both The Point and Haldon Solar projects.
60. The response provided by the Applicant on cumulative effects is unconvincing. The report from Rough Milne Mitchell states that “at a local scale, [Twizel, The Point and Haldon Solar] will collectively contribute to a significant change to the character of the southern part of the Mackenzie Basin, due to their size and extent, and how they will be perceived from their surrounds”.<sup>33</sup>
61. However, the report’s conclusions, which are unclear, seem to suggest that, together (and in the absence of Haldon Solar), the Twizel and The Point solar farms would only have a “low degree” of adverse effect on the landscape of the Mackenzie Basin ONL. This conclusion is contradicted by the Applicant’s own assessment of the effects of The Point in isolation.
62. Forest & Bird does not presently have the resources to provide further expert evidence on landscape effects and therefore relies on the Panel’s own expertise and resources to address these matters, either by requesting further information from the Applicant or by commissioning its own expert advice.
63. If approval is to be granted, then consent conditions should ensure a strong, durable and extensive ecological enhancement programme (EEP), which can help to address potentially significant adverse effects on landscape as well as ecology.<sup>34</sup>

### **Proposed mitigation**

64. As above, Forest & Bird understands that the proposed mitigation through the EEP is likely to be substantially revised following further engagement with Wildlands, DOC and the Panel. Forest & Bird will endeavour to provide further comments when it has the chance to do so.

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<sup>33</sup> RMM Fast-track RFI Response 1 – Landscape, 9 February 2026, p 14

<sup>34</sup> Application, Appendix F Addendum, at p 9; The Environment Court in *Federated Farmers of New Zealand Inc v Mackenzie District Council* [2017] NZEnvC 53 (PC13), at [540] - [542] also recognised the interconnectedness of landscape and indigenous vegetation values in the Mackenzie Basin.

65. In general terms, any proposed conditions (including the revised EEP) should maintain a commitment to specific recommendations previously made by Wildlands, such as:<sup>35</sup>
- a. At least a 100m buffer zone around the proposed site (see Fig 4 p 35).
  - b. Legal protection (e.g. QEII) of restoration areas.
  - c. Avoidance of areas of significant vegetation.
  - d. Using locally sourced, clean fill.
  - e. Surveys and ongoing control of invasive exotic flora and fauna throughout the site.
  - f. Avoidance of lizard habitat based on targeted surveys.
  - g. Further studies to determine the presence of Threatened and At-Risk species of invertebrates throughout the site, and an appropriate management plan for invertebrates.
66. For **avifauna**, the original Wildlands report included only very limited consideration of mitigation measures to reduce potential adverse effects of bird-strike.<sup>36</sup> Given the lack of information on the risk of bird-strike in the New Zealand context, and given the close proximity to the proposed site of very significant populations of Threatened and At-Risk bird species, it is possible that effects will be significant.
67. Some possible mitigation measures are mentioned in the Ecological Solutions report, such as:
- a. Non-reflective panels – required to potentially mitigate collision risk.
  - b. Patterned and UV-reflected film coatings – these have had proven success in other contexts and should be utilised.

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<sup>35</sup> Wildlands report at 12

<sup>36</sup> Table 7, p 46, indicates that the risk of bird strike could be reduced to Minor with mitigation, but the mitigation required is not specified in the report. This is a major omission, as identified by Dr McClellan.

- c. Wide spacing of panel arrays, and programming of vertical resting positions.
  - d. Deterrents – such as lasers, could be appropriate if the Panel can be satisfied that such measures would not result in additional loss of valuable habitat.
68. However, the success of such mitigations remains uncertain in a New Zealand context.
69. The Application refers to support for DOC's Kākī Recovery Programme having been agreed in principle, with a proffered contribution of \$1 million.<sup>37</sup>
70. The Application also refers to the development of an avian mortality monitoring programme.<sup>38</sup> However, Table 15<sup>39</sup> simply proposes that the details of this programme would be determined in an Avifauna Management Plan. If the Panel is minded to grant approval, it is essential that the avian mortality monitoring programme is strengthened in accordance with the recommendations of Dr McClellan, and that enforceable performance standards are included in consent conditions.

## **OTHER MATTERS**

### **Subdivision**

71. Contrary to what is said in the Application,<sup>40</sup> it appears that both freehold and leasehold subdivision consents are now being sought by the Applicant.
72. Section 43 of the FTAA states that a substantive application must be lodged in the form and manner approved by the EPA, and (for resource consents) must comply with the requirements in clauses 5 to 9 of Schedule 5. There do not appear to be any provisions in the FTAA enabling an applicant to apply for additional consents (i.e. consents not sought in the substantive application) once the matter is before the Panel.

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<sup>37</sup> Application at [4.1] p 23

<sup>38</sup> Application at [4.1] p 23

<sup>39</sup> Application at [7.3.1] p 58

<sup>40</sup> Application at [7.6], Table 16, p 65

73. The substantive application briefly addresses the detail of planning provisions relevant to the proposed subdivision in Table 16,<sup>41</sup> but does not meaningfully engage with the requirements of the MDP.
74. MDP SUB-R8 makes subdivision in the Basin (outside of a Farm Base Area) a discretionary activity, which is acknowledged by the Applicant. The MDP (SUB-P7) states that subdivision in the Mackenzie Basin will not be encouraged except:
- a. In Farm Base Areas
  - b. Where subdivision is for the purposes of enabling the recognition of and provision for the Ngāi Tahu relationship with Te Manahuna / the Mackenzie Basin.

Neither of these criteria apply to the application.

75. SUB-P7 also states that all subdivision in the Mackenzie Basin “shall address the need to remove exotic wildings from the land being subdivided”. Contrary to what is said in the application, the question is not whether the subdivision will “trigger any physical works in site, such as vegetation removal” (although it seems likely that it will do so, given that subdivision is sought for the purpose of enabling construction of the solar farm and ancillary infrastructure). The discretionary grant of consent for subdivision provides an opportunity for the consent authority to mitigate the likely effects of intensified land use by including appropriate conditions, and conditions relating to wilding conifer control are expressly anticipated by the MDP.
76. The proposed subdivision would include Lot 1 (289 ha) to enable farm operations. Any subdivision consent should therefore include conditions to ensure ongoing removal of wilding conifers within Lot 1, and ongoing removal of wildings within the remaining lots including following decommissioning of the solar installation.

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<sup>41</sup> Application at [7.6], Table 16, p 65

## **Stormwater**

77. It appears that the Applicant may need a consent for construction phase stormwater discharges that has not been applied for. Forest & Bird encourages the Panel to consider this issue carefully because, as above, it does not appear to be possible to include additional consent applications under the FTAA. Because we do not know what changes might be needed to ensure compliance with a discharge consent, a variation to the approval may be needed. This is poor resource management because a decision maker should have all the information before it so that it can fully assess the effects.

## **Roading**

78. It also seems that consent for a road linking the site to SH15, including earthworks and vegetation clearance, may not have been sought in the Application. As above, the FTAA does not appear to include provisions allowing for new consent applications to be added after the matter has been referred to the Panel.

## **RMA PLANNING FRAMEWORK**

79. The RMA planning framework is the same as for the Haldon Solar project and has been set out by Forest & Bird in its comments on the Haldon Solar project (attached as Appendix 2).
80. The very close proximity of the proposed site for The Point to nationally and internationally significant bird habitat (recognised in the CRPS<sup>42</sup>) raises additional concerns about potential adverse effects on these habitats.
81. Objective 9.2.1 of the CRPS is to halt the decline in the quality and quantity of Canterbury's ecosystems and indigenous biodiversity and to safeguard their life-supporting capacity and mauri. The development of a utility-scale solar installation in the middle of some of Canterbury's most significant bird habitat would fail to achieve this objective.

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<sup>42</sup> Important habitats of "acutely threatened birds such as wrybill/ngutu-pare, black-fronted tern/tara and black stilt/kakī" are specifically mentioned in the Introduction to Chapter 9 of the CRPS.

82. Objective 9.2.3 of the CRPS is the protection of the values and ecosystem functions of significant indigenous vegetation and habitats, with the habitats of Threatened and At-Risk species identified as a national priority for protection under Policy 9.3.2. Granting approval for The Point would fail to achieve this objective and policy.
83. In terms of land use and the Mackenzie District Plan, the Applicant has correctly identified REG-R7, which classifies the activity as discretionary.<sup>43</sup> But has provided only a limited analysis of Policy REG-P6, which is the policy guiding discretionary decision-making in this context.<sup>44</sup> Inexplicably, the Applicant has also failed to quote the policy in full, omitting REG-P6.7, which requires consideration of “whether the benefits of the activity outweigh any significant residual adverse effects on the values of the area”.<sup>45</sup>
84. As for the Haldon Solar project, Policy 4 of Section 19 of the MDP (biodiversity offsets) and Appendix Z (biodiversity compensation) are relevant matters for the Panel to consider but have not been addressed in the Application.
85. In relation to RMA s 6, the application states that “the site does not currently have significant indigenous vegetation or habitats of indigenous fauna”.<sup>46</sup> This is misleading for several reasons. First, the site is more extensive than the footprint of the installation and has been confirmed to include significant indigenous vegetation at least around the perimeter. Second, the site is used as habitat by Threatened and At-Risk Bird species. Third, targeted surveys have not yet been undertaken to identify Threatened and At-Risk species (lizards, invertebrates) for which the site may provide habitat. Fourth, the site is immediately adjacent to extremely significant avifauna habitat, and the protection of these ecological values from activities on the site must also be considered under s 6.

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<sup>43</sup> REG-R7 is no longer subject to appeal (Cf. Application at [5.2], p 33)

<sup>44</sup> Application at [7.6], Table 16, p 64

<sup>45</sup> Noting that the applicant in the Haldon Solar application, being heard by the same Panel, also failed to refer to this clause in the policy.

<sup>46</sup> Application at [7.2.2], p 55

86. The Applicant’s assertion is also contradicted by the Wildlands AEE, which states that the entire site meets the Canterbury RPS significance criteria for rarity/distinctiveness and ecological context.<sup>47</sup>

**Amended NPS-REG.**

87. The Application refers to the Government’s proposal to strengthen the NPS-REG to enable renewable electricity applications.<sup>48</sup>
88. The amended NPS-REG does place renewed emphasis on enabling renewable electricity generation (REG) activities. Policy B requires decision-makers to “recognise and provide for the importance of ... enabling cumulative increases of REG capacity and output at any scale and any location, including small-scale and community-scale REG assets and activities”. This national direction will weigh in favour of a grant of consent in specific cases. However, it is important to note that it is entirely possible to “recognise and provide for the importance of” enabling REG activities in general, while also ultimately concluding that a specific activity would not be appropriate for a specific place or time.
89. Policy F is particularly relevant to the Application, as it relates both to enabling, and managing the adverse effects of, REG activities. Policy F provides:

**Enabling and managing the effects of REG assets and activities on the environment**

- (1) Decision-makers must enable REG assets and activities in all locations and environments.
- (2) Where REG assets and activities are proposed to locate in or are likely to have adverse effects on environments and values provided for in section 6 of the Act, the provisions of this policy must be read alongside other relevant national direction, regional policy statements and regional and district plans.
- (3) Where (2) does not apply, the adverse effects of REG assets and activities must be, where practicable, avoided, remedied or mitigated.

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<sup>47</sup> Wildlands AEE at [10.1], p 23-24

<sup>48</sup> Application at [7.5.1], p 59

(4) Decision-makers must have particular regard to the use of adaptive management measures.

90. The Policy F(1) direction to enable REG is a strong direction. However, it is qualified. Firstly, the direction to “enable” REG activities in all locations would preclude decisions that would rule out any kind of REG activity in specific locations (for example in SNAs or the coastal environment). However, it cannot mean that all applications for REG activities must be approved, regardless of their benefits and adverse effects. Secondly, Policy F(2) provides that where, as here, s 6 matters of national importance are engaged, Policy F must be “read alongside” the CRPS and MDP.
91. It is also relevant that Policy F(4) directs decision-makers to “have particular regard to the use of adaptive management measures”. The legal requirements for an adaptive management approach have already been discussed above, and these are not currently reflected in the Applicant’s proposed approach to effects management.
92. Policy F(5) requires that consideration be given to offsetting and compensation measures. The NPS-REG and MDP must be read together. Accordingly, offsetting and compensation measures relating to ecology values, such as the EEP and proposed financial contribution to DOC, should be prepared in a manner consistent with Policy 4 of Section 19 (biodiversity offsets) and Appendix Z (biodiversity compensation) of the MDP.

## **REGIONAL AND NATIONAL BENEFITS**

93. As pointed out in Forest & Bird’s comments on the Haldon Solar project, the assessment of regional or national benefits is pivotal to decision making under the FTAA. The FTAA’s purpose is to facilitate the delivery of projects with significant regional or national benefits, and s 85(3) establishes a proportionality test requiring those benefits to be weighed against a project’s adverse impacts.
94. Despite the obvious need for the Panel to be able to assess and quantify the regional and national benefits of the project, the Application does not include an

economic assessment. In section [6.2], the Application discusses positive effects in general terms, for example pointing out that the project would contribute to New Zealand's commitment to reducing greenhouse gas emissions, would enhance the security and resilience of New Zealand's electricity network, and would generate enough electricity to meet the annual demand of approximately 100,000 homes, "providing significant economic and social benefits". However, the Applicant has not provided expert evidence to support these points, nor has it provided any detailed analysis of the way in which the project would operate in practice within New Zealand's electricity market.

95. "Significant national benefits" are asserted twice in the Application, once in the Overview at [2.1], and once at [7.2.3] in relation to RMA section 7 matters, with reference to section [6.2]. However, as above, these assertions are not supported or quantified by expert economic evidence.
96. It is also concerning that assertions made in the Application about the carbon efficiency of solar installations are not supported by the referenced literature.<sup>49</sup> The NREL 2024 publication "Energy and Carbon Payback Times for Modern U.S. Utility Photovoltaic Systems" referred to in the application states that the achievement of carbon neutrality ranges from 0.8 to 20 years (not between 0.5 and 1.2 years as implied in the Application), depending on various factors including the existing carbon-intensity of the local grid the solar installation offsets.
97. Similarly, assertions made by the Applicant at the Expert Panel overview conference in relation to benefits that would be achieved from holding back water in hydro lakes do not appear to be supported by evidence about how the hydro power stations operate in practice and are likely to operate into the future.
98. While there would undoubtedly be benefits from the proposed solar farm, the Panel has not been provided with evidence to support a finding that these benefits would be regionally or nationally significant.

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<sup>49</sup> Application at [6.2], p 42

## **SECTION 85(3) ASSESSMENT**

99. Section 85(3) of the FTAA requires the Panel to undertake a structured weighing exercise, declining an approval only where the adverse effects of a proposal outweigh its regional or national benefits. This weighing exercise involves an evidence based evaluation of both the scale and significance of the environmental impacts and the extent of any significant regional or national benefits.-
100. When weighed under s 85(3), the significant and potentially irreversible ecological impacts, including potentially population-level effects on the only remaining population of kakī | black stilt in the world, outweigh the poorly explained benefits advanced for the project. The significant risks of the project are compounded by deficiencies in the environmental baseline information provided by the Applicant, which is indicative of a lack of careful attention and a rushed approach to the Application. Forest & Bird therefore considers that the statutory threshold for declining approval under s 85(3) is met, and that approval should be declined.

## **CONDITIONS**

101. Forest & Bird understands that conditions will be developed further by the Applicant during the approval process and that a further opportunity will be provided to comment on draft conditions before a decision is made. The comments below are preliminary comments on the conditions proposed by the Applicant in the substantive application and amended conditions provided by the Applicant on 9 February 2026 (Appendices 11 & 12) in response to the Panel's request for further information.
102. Overall, Forest & Bird considers that the conditions currently proposed by the Applicant are inadequate in terms of ensuring the appropriate management of adverse impacts.
103. It is not appropriate to defer the management of adverse effects of the proposed activity to future management plans that have not yet been formulated where the consent conditions themselves do not clearly include objectives and parameters that the consent holder must meet. The appropriate management of adverse

effects is a key function of the Panel when considering whether to grant approval subject to conditions.

A condition must be certain. The Panel can leave the certifying of detail to a delegate but cannot delegate the making of substantive decisions. Objectives and parameters to be achieved must be set in conditions and not left to management plans. Failure to set objectives and parameters or standards in consent conditions amounts to an unlawful delegation of judicial function.<sup>50</sup>

104. This deficiency in the Application is exemplified in the proposed conditions relating to an Avifauna Management Plan (AMP).<sup>51</sup> The proposal is that the Applicant should develop the AMP, in consultation with DOC, after approval has been granted, and the AMP would then be certified by MDC. However, the consent conditions should include clearer parameters that must be met by the AMP. For example, only at the stage of certification would the frequency and methods for carcass detection be decided. Essentially, decisions on carcass monitoring would be deferred and delegated to the Applicant's own appointed ornithologist. MDC would potentially have some ability to challenge the Applicant's proposals if they are clearly inconsistent with the Applicant's own Literature Review Report, but MDC may not have either the resources or inclination to do so. All this work should have been completed by the Applicant prior to lodging the substantive application, so that it could be considered by the Panel.

105. Dr McClellan and the Applicant's avifauna experts have already made recommendations about mortality monitoring which the Panel can act on. For example, there appears to be some degree of consensus that effective monitoring of bird strike would require carcass recovery and autopsy.<sup>52</sup>

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<sup>50</sup> *Turner v Allison* [1971] NZLR 833, at 856-7; *Royal Forest and Bird Protection Society v Gisborne District Council* W26/2009; *Mount Field Ltd v Queenstown-Lakes District Council* [2012] NZEnvC 262; *Re Canterbury Cricket Association Inc* [2013] NZEnvC 184 at [125]-[130]; *West Coast Environmental Network Inc v Royal Forest and Bird Protection Society of New Zealand Inc* [2013] NZEnvC 253 at [79]; *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37, at [175]-[177]; *Remediation (NZ) Ltd v Taranaki Regional Council* [2024] NZEnvC 213 at [27] and [466]-[468].

<sup>51</sup> Applicant's response to Panel RFI, Appendix 12, proposed conditions 57 – 67.

<sup>52</sup> See Ecological Solutions report at p 6: without autopsy it is "difficult to reliably estimate the proportion of fatalities resulting from impact/collision with panels versus mortality due to other associated facilities at solar farms (such as powerlines) or the proportion of fatalities

106. One of the objectives of the AMP would be to:<sup>53</sup>

Guide an appropriate management response in the event of collisions of indigenous bird species with the solar arrays and ancillary infrastructure within the site, particularly those classified as nationally Threatened or At Risk, to reduce the ongoing risk of exceeding the thresholds of unacceptable adverse effects in Table 2.

This means that decisions on the appropriate management response to bird mortality would also be deferred and delegated to those preparing and certifying the AMP.

107. It is unclear on what basis the thresholds in Table 2 that would trigger an unspecified management response have been determined. However, Dr McClellan's evidence is that the proposed thresholds would be appropriate, if Nationally Endangered species have the same one carcass threshold as Nationally Critical species.
108. Another objective of the AMP is to ensure that effects on indigenous birds "do not exceed the thresholds of unacceptable adverse effect in Table 1". This is presumably a mistake, because Table 1 sets out the various management plans that the Applicant seeks to prepare after approval is granted. If the intention was to refer again to Table 2, then this creates something of an internal contradiction whereby the Applicant would need to "ensure" that thresholds are not exceeded but, if they are, would only be required to "reduce the ongoing risk" that they are exceeded again.
109. Perhaps most concerningly, the proposed response to exceeding the thresholds in Table 2 would be for the Applicant to prepare another plan – this time a "Bird Collision Management Plan (BCMP)".<sup>54</sup> It therefore is only at this stage that the Applicant would need to consider applying mitigation measures such as anti-reflective coatings, deterrent devices, limitations on panel orientation, and monitoring to test the effectiveness of these measures.

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relative to the background mortality"

<sup>53</sup> Appendix 12, proposed condition 60.

<sup>54</sup> Appendix 12, proposed condition 66

110. As Dr McClellan has pointed out, it may be that construction and fabrication methods will limit the ability to apply mitigation measures after construction has been completed. For example, it may be that framing does not enable panels to be stored vertically overnight, or that a requirement for anti-reflective coatings would require entirely new panels to be manufactured.
111. Forest & Bird considers that the Panel can have no real confidence that this approach would ensure appropriate management of adverse effects or would ensure that significant adverse effects on bird populations can be avoided before they become irreversible. Far too much is left to future processes and for the Applicant to determine. To put it bluntly, the Panel should not wash its hands of effects management in this way.
112. Genuine adaptive management (which would need to include a staged approach to development) is expected to be financially challenging for the Applicant. Nonetheless Forest & Bird recommends that solar projects in a highly sensitive receiving environment such as this should be staged, beginning at a limited scale with effective monitoring, to ensure that significant adverse effects can be addressed before they become irreversible.
113. The Applicant has proposed to contribute \$1million to DOC. Dr McClellan's preference would be to put this money towards pest control that covers the Takapō River and the delta. This alternative option would help to ensure additionality and landscape context (criteria 3 and 6 of Appendix Z to the MDP) and would better link to effects of the proposal.
114. There also needs to be a very careful approach in conditions to construction to avoid irreversible loss of habitat and disturbance during bird breeding and juvenile stages.

### **Ecological Enhancement Plan**

115. The Applicant's Ecological Enhancement Plan (EEP) has undergone several iterations. Forest & Bird understands that the original proposal was for approximately 500,000 indigenous plants to be initially planted in the

enhancement zone.<sup>55</sup> In addition to this, a 40 metre wide strip surrounding the entire development footprint was to form the visual screening zone, and was also anticipated to be revegetated with species typical of the Ecological District resulting in further benefits for local fauna.<sup>56</sup>

116. The 2023 Wildlands report recommended an ecological reserve of at least 89 hectares (The Point reserve), including indigenous plantings, weed control, habitat creation, and control of mammalian pests.<sup>57</sup> Funding of \$2 million over 5 years was proposed, plus ongoing funding for predator control and maintenance.<sup>58</sup>
117. In its FTAA application, the Applicant instead proposed that The Point reserve would cover approximately 80ha of the site, with approximately 66,100 plants for ecological enhancement.<sup>59</sup> The number of proposed plantings has therefore been reduced by about a factor of 8 since the Applicant made its original application under the RMA.
118. It is also noted that the site plan appears to have changed since the FTAA application was lodged, with larger proposed setbacks around the margins of the site. Forest & Bird supports larger setbacks and the avoidance of adverse effects on the significant indigenous vegetation and habitats found around the margins of the site. However, this does raise the question of whether this change has resulted in an overall reduction in the proposed number of panels. If not, then the proposed use of the rest of site must have become more intensive, and the potential effects of such intensification do not appear to have been assessed by the Applicant.
119. As above, it is acknowledged that the most significant terrestrial ecology values are to be found close to the perimeter of the site. It will be important to ensure that these areas are protected from all activities, not just from the effects of solar panel installation. Other activities that could have adverse effects include, for

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<sup>55</sup> Wildlands report at 12.8.2, p 41

<sup>56</sup> Wildlands report at 12.8.2, p 42

<sup>57</sup> Ecological Enhancement Plan (Appendix P) at 1.0

<sup>58</sup> Ecological Enhancement Plan (Appendix P) at 3.2

<sup>59</sup> Application at [6.3], p 44

example, access tracks for fire appliances (also proposed for the perimeter of the site).<sup>60</sup>

120. Forest & Bird understands that the proposed EEP will be substantially revised again following engagement with DOC and Mr Baber, and will now take a “smaller scale, but more intensively managed approach”. Details of the new EEP will not be made available until 23 Feb, with only a further 4 days for comments.
121. In general terms, and subject to overriding concerns about potential effects on avifauna, a smaller scale but more intensive approach to the EEP does appear to have potential for longer term positive outcomes. The key to achieving this will be to include clear and enforceable conditions requiring demonstrable and measurable outcomes, which apply for the duration of the consent period.
122. Both pest animal and plant control require regular and long-term monitoring and maintenance conditions to be effective.<sup>61</sup> Forest & Bird recommends that such conditions should apply to the entire duration of consent, not just the first 5 years.
123. It is also crucial that the enhancement areas are provided with legal protection in perpetuity, for example through a QEII covenant.
124. The Panel should be satisfied that the financial commitment required from the Applicant towards these measures is at least equivalent to the originally proposed EEP (which included 500,000 plants plus indigenous planting for visual screening purposes).
125. Wildlands original report observed that:<sup>62</sup>

Relatively little is known about the management and restoration of dryland ecosystems in Aotearoa New Zealand and restoration will likely be challenging and will require adaptive management that is informed by long-term monitoring. Ongoing monitoring will assess the success of the EEP and ensure that management adapts to achieve the desired outcomes.

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<sup>60</sup> Application at [4.5.3], p 29

<sup>61</sup> See Wildlands report at 12.8.3, p 42

<sup>62</sup> Wildlands report 12.8, p 40

Forest & Bird considers this to be an important observation, which should guide the Panel's consideration of conditions relating to the EEP. As Wildlands pointed out, if done properly the EEP could also provide valuable information to enhance the management of dryland ecosystems elsewhere in Aotearoa.<sup>63</sup>

## CONCLUSIONS

126. The proposed site for The Point Solar Farm is surrounded by nationally and internationally significant avifauna habitat, including bird species already at risk of extinction. This habitat is already under severe pressure, caused by anthropogenic factors such as the diversion of braided rivers for hydro-generation, the introduction of exotic mammalian predators and invasive plant species, and intensive farming practices. Forest & Bird considers that the Panel should be extremely cautious about introducing additional pressure on habitat and risk to avifauna at the scale now being proposed.
127. Based on the information available, there is a real risk of population-level effects caused by bird-strike mortality in such a sensitive receiving environment. As explained by Dr McClellan, experience in other countries demonstrates that the same species of birds (including Threatened and At-Risk species) are likely to be affected in a New Zealand context.<sup>64</sup>
128. For this reason, Forest & Bird considers that approval for the project should not be granted. The information contained in the Application is deficient in terms of surveys, monitoring and risk assessment, and is lacking in support for its broadly asserted economic and social benefits. Overall, the risk of significant adverse effects outweighs any significant regional or national benefits established in the Application.
129. The Point is undoubtedly a good location for solar generation in the sense that it offers low cost, flat land and high solar irradiance close to existing transmission lines. However, the Panel should not ignore the fact that equivalent solar generation benefits can be achieved elsewhere in New Zealand (and closer to

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<sup>63</sup> Wildlands report 12.8.5, p 45

<sup>64</sup> Also confirmed by the Applicant's Ecological Solutions report (Table 1)

electricity users) without such significant risks to Threatened and At-Risk indigenous species.

130. The FTAA offers a streamlined and expedited process for applicants. However, it should not be seen as an opportunity for applicants to forego basic steps that are needed to enable a meaningful assessment, and appropriate management, of adverse environmental effects. If, as in this case, expert panels are put in the position of needing to direct applicants on how to present an adequate application, the FTAA process will become very difficult to manage and unreliable. Rather than spending its limited time assessing the Application, the Panel has almost been put in the position of needing to prepare the Application itself.
131. Without adequate environmental baseline information and data-based risk analysis, the Panel is unable to determine whether effects may be significant, consider appropriate conditions to address significant effects, develop adaptive management approaches, or perform the weighing exercise ultimately required by the FTAA.
132. Forest & Bird is concerned that there appears to have been a race to lodge substantive applications, in the context of multiple proposed solar projects in the Mackenzie Basin with obvious implications for cumulative effects, with applicants apparently assuming that the 'first in time' principle would be applied under the FTAA. In the present application, this concern arises due to the failure to carry out certain basic steps that have been anticipated (and described as necessary) by the Applicant's own ecological assessment.
133. Solar projects now appear to be proceeding at pace across New Zealand. In general terms, Forest & Bird supports increasing REG capacity by utilising solar resources. However, these projects should be placed in the right locations. There will be no net regional or national benefit for New Zealand if we fail to protect our Threatened and At-Risk indigenous species by rushing to place utility-scale solar farms in ecologically inappropriate locations such as The Point and Haldon Station.