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. Forest & Bird has been involved in planning and consent processes in the MacKenzie District for many years, reflecting the highly significant flora and fauna, and outstanding natural landscape, of the Mackenzie Basin. A recent example is Forest & Bird's involvement in Plan Change 18 to the Mackenzie District Plan (PC18), which introduced "Section 19 – Ecosystems and Indigenous Biodiversity".

3. The Environment Court's interim decision[1] in PC18 is concerned with the clearance of indigenous vegetation within the Basin due to farming activities such as over-sowing and topdressing. The Court found that the distinctive ecology and biodiversity of the Basin warrant bespoke planning controls over vegetation clearance.[2]

4. In making this finding, the Court rejected the evidence of Dr Peter Espie that conservation areas in the Basin are sufficient for indigenous biodiversity

[1] Decision No. [2025] NZEnvC 125
[2] Decision No. [2025] NZEnvC 125 at [79]

protection of all identified ecological values,[3] and that uncultivated Basin floor communities do not generally retain significant values.[4]

5. As described in the attached evidence of Mr Head, whose evidence on similar subject matter was accepted and relied on by the Environment Court in PC13[5] and PC18,[6] the Haldon site forms part of the Tekapo-Haldon outwash ecosystem, which represents one of the largest and most intact fluvio-glacial sequences remaining in New Zealand, and is nationally significant for both plants and fauna, including numerous threatened species. Mr Head considers that the Haldon Solar project would result in major and largely irreversible loss of habitat.

6. Similarly, the evidence of Dr McClellan explains that the Haldon site provides important habitat for Threatened and At Risk avifauna, including the kakī | black stilt, and that the development of the project is likely to cause significant adverse impacts on these birds as well as other birds that fly over the site thereby creating a risk of mortality caused by bird-strike. The application fails to identify or address these risks to avifauna.

7. For these reasons, Forest & Bird has serious concerns about the quality and reliability of the ecological assessments that have been carried out by AgScience Ltd (Dr Espie) on behalf of the Applicant. These concerns are set out in more detail below and in the expert evidence of Mr Head and Dr McClellan which is attached to these comments.

8. Based on this evidence, Forest & Bird considers that significant terrestrial ecology and avifauna values present at the Haldon site have not been identified by the Applicant, and that approving the application would result in significant adverse effects which have not been identified or addressed in the application. The substantive application is therefore inconsistent with (or has failed to demonstrate

[3] Statement of Evidence of Peter Espie for the Farming Stations, dated 4 July 2024, at [16] and [123]
[4] Statement of Evidence of Peter Espie for the Farming Stations, dated 4 July 2024, at [122]
[5] *Federated Farmers of New Zealand Inc v Mackenzie District Council* [2017] NZEnvC 53
[6] Decision No. [2025] NZEnvC 125

consistency with) important resource management policies, including the policy and rule framework for renewable electricity generation (REG) set out in the Mackenzie District Plan.

9. The regional and national benefits of the Haldon Solar proposal (together with associated adverse impacts) need to be considered in the context of numerous applications for approval under the FTAA for solar farms in the Mackenzie Basin. Forest & Bird has not been able to find detailed information in the substantive application about the ability of the electricity market and existing transmission lines to support these proposed projects in combination but has been informally advised by the Applicant that the electricity market can probably only support one or two of these proposed projects.[7]

10. Because of the expedited nature of the fast-track process, it is essential for applicants to ensure that they provide panels with comprehensive and accurate information. Where adequate information is not provided by an applicant, and significant risks of adverse impacts are subsequently identified, the panel should take a precautionary approach.[8]

11. Forest & Bird considers that the actual and potential adverse impacts of the Haldon Solar project are sufficiently significant to be out of proportion to the project's regional or national benefits, and that a decline of approval would therefore be appropriate.[9]

12. Should the Panel decide not to decline the application, the footprint and design of the solar installation should be reduced and tailored to minimise adverse effects,

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[7] In its Response to Panel Minute 1, 12 December 2025, the Applicant states at [19.5] that "the Mackenzie Basin grid can host only a limited number of large-scale generators without significant transmission curtailment as available transmission capacity gets used by the first projects built" and that "coincident generation will have a depressing effect on nodal prices and hence be detrimental to the economics of future projects", concluding that "the likelihood that all Basin proposals will be built is extremely low. Economic and grid constraints operate as natural limits on cumulative development".

[8] Clause 5 Schedule 7 FTAA, Convention on Biological Diversity (1992) and Principle 15 Rio Declaration

[9] Section 85(3) FTAA

and it is important that the proffered conditions are substantially improved, including by adopting an adaptive management approach where possible, together with offsetting and compensation requirements as appropriate.

EVIDENCE

13. Forest & Bird's comments are supported by evidence from Nicholas Head and Dr Rachel McClellan. The conclusions of both witnesses are in stark contrast to the evidence presented by the Applicant.

Nicholas Head

14. Mr Head's evidence is that the Mackenzie Basin is New Zealand's largest and most ecologically significant inter-montane basin, containing nationally rare dryland ecosystems formed by glacial processes and shaped by extreme climatic conditions. These outwash, moraine, dune, and braided river systems support a unique assemblage of threatened and at-risk flora and fauna, including more than 100 plant taxa, endemic invertebrates such as the robust grasshopper and Tekapo ground wētā, and ground-nesting birds like kakī and banded dotterel.

15. The Haldon Solar site lies on the lower end of the Tekapo–Haldon outwash sequence, one of the most intact fluvio-glacial systems remaining in New Zealand. Mr Head considers this ecosystem nationally significant, ecologically irreplaceable, and critical for maintaining connectivity across the Basin floor. Its loss would represent a major and irreversible reduction in the extent and integrity of a critically endangered ecosystem type.

16. Mr Head concludes that the Applicant's ecological assessments are fundamentally inadequate and materially understate the site's ecological values. Bird surveys were limited and failed to detect sp

17. cies known to be present; no invertebrate survey was undertaken despite the near-certain presence of nationally threatened taxa; lizard surveys used

inappropriate methods; and botanical sampling covered only a small fraction of the 320-hectare site.

18. A brief DOC/ECan visit subsequently recorded threatened plants, invertebrates, and banded dotterel, confirming that the Applicant's work missed key values. The conclusion that the site is not ecologically significant is, in Mr Head's view, scientifically indefensible and inconsistent with the Canterbury RPS criteria and Environment Court findings. He considers the proposed solar farm would cause major, largely irreversible habitat loss, sever ecological connectivity, and threaten the persistence of multiple threatened species, while the proposed mitigation measures amount to landscaping rather than meaningful ecological restoration.

Dr Rachel McClellan

19. Dr McClellan's evidence is that the Haldon site is within an ecologically significant area which provides habitat for multiple Threatened and At-Risk bird species, including kakī | black stilt which are now thought to number only 140 birds and are endemic to the Mackenzie Basin.

20. The location of the site, adjacent to the Takapō delta, would not only result in substantial modification of important bird habitat but would also present a novel threat (i.e. mortality through bird strike) for multiple bird species already severely threatened by introduced predators, extensive modification of rivers by hydrological management, and ongoing weed invasion of rivers and development of terrestrial habitats.

FTAA DECISION-MAKING FRAMEWORK

21. The Panel must, for each approval sought in a substantive application, decide whether to:[10]

[10] Section 81(1) FTAA

a. grant the approval and set any conditions to be imposed on the approval; or

b. decline the approval.

22. The Panel:[11]

a. must apply the applicable clause for the approval type, as set out in s 81(3);

b. must comply with s 82;

c. must comply with s 83 in setting conditions;

d. may impose conditions under s 84;

e. may decline the approval only in accordance with s 85.

23. When taking the purpose of the FTAA into account under one of the "applicable clauses" for the approval type, the panel must consider the extent of the project's regional or national benefits.[12]

24. The substantive application does not seek wildlife approval for the proposed activity. As DOC has pointed out in the application for The Point Solar Farm, it is likely that wildlife approvals will be required in respect of the disturbance, taking and incidental killing of lizards, avifauna, and any terrestrial invertebrates that are included in Schedule 7 of the Wildlife Act 1953. Accordingly, separate approval would need to be obtained through 'business as usual' processes under the Wildlife Act 1953

[11] Section 81(2)(b) FTAA
[12] Section 81(4) FTAA

25. The Haldon Solar application is for an approval described in section 42(4)(a) (resource consent), meaning that clauses 17 to 22 of Schedule 5 of the FTAA are applicable.

26. Clauses 17 to 22 of Schedule 5 apply to decisions seeking approval for a resource consent. When considering a consent application and conditions, the Panel must take into account, giving the greatest weight to paragraph (a):[13]

    a. the purpose of the FTAA; and

    b. the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and

    c. the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.

27. We address the meaning of this provision below. In doing so, we have referred to decisions on the Maitahi Village and Bledisloe Wharf projects made under the FTAA.[14] While the Panel is not bound by the approach to interpretation taken by other panels, it may assist to understand how other panels have approached the key FTAA provisions.[15]

"Take into account"

28. The interpretation of "take into account" taken by the panel that determined the Bledisloe Wharf substantive application was:[16]

[13] Clause 17(1) Schedule 5 FTAA
[14] Record of Decision of the Expert Panel on the Maitahi Village application, dated 18 September 2025; Record of Decisions of the Expert Panel on the Bledisloe Wharf application [FTAA-2503-1028], 21 August 2025 (amended 8 September 2025)
[15] Forest & Bird notes also the requirement to use "consistent" processes in the procedural principles (s 10 FTAA).
[16] Bledisloe decision, at [119]

> We understand the phrase "take into account" as requiring us to directly consider the matters so identified and give them genuine consideration; rather than mere lip service, such as by listing them and setting them aside: *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 ["*East West Link*"] at [169], [224].

29. While the *East West Link* case cited by the Bledisloe panel concerned the phrase "have regard to" rather than "take into account", Forest & Bird submits that approach is correct. The Court in *East West Link* said that the duty to have regard to relevant provisions of planning instruments in s 104 does not invest consent authorities with a broad discretion to "give genuine attention and thought" to directive policies, only to then refuse to apply them.[17] A relevant plan provision is not properly had regard to if it is simply considered for the purpose of putting it to one side.[18]

Weighting

30. The weighting to be accorded to relevant considerations by a statutory decision maker is normally for that decision maker to determine[19] (subject to unreasonableness). However, where a statute directs the weight to be given to a matter, that direction must be followed.[20]

31. Clause 17 specifies that the greatest weight is to be given to paragraph (a), the purpose of the FTAA. A legislative weighting was also used in s 34 of the Housing Accords and Special Housing Areas Act 2013 ("HASHAA"), and that provision was considered by the Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council ("Enterprise Miramar")*.[21]

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[17] 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].
[18] *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [73].
[19] *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR (HC) 188 at 223.
[20] *Quarantine Waste (New Zealand) Ltd v Waste Resources Ltd* [1994] NZRMA 529 (HC) at 540.
[21] *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541

32. The Court in *Enterprise Miramar* set out the hierarchy of matters in s 34 and said:

> [41] The plain words indicate, therefore, that greatest weight is to be placed on the purpose of HASHAA, namely enhancing affordable housing supply in certain districts. That said, other considerations have been deliberately included. Decision-makers must be careful not to rely solely on the purpose of HASHAA at the expense of due consideration of the matters listed in (b) – (e).

33. The Court found that the decision-maker was required to assess the matters listed in subs (1)(b) – (e) (i.e. the matters other than the Act's purpose) uninfluenced by the purpose of HASHAA, before standing back and conducting an overall balancing.[22] As a result, environmental effects "may be outweighed by the purpose of enhancing affordable housing supply, or they may not".[23]

34. This indicates that a statutory requirement to give an Act's purpose the most weight does not mean that it will always outweigh other considerations. The same must be correct in relation to the FTAA. That interpretation is supported by s 85(3) of the Act (addressed below).

35. As the Panel must under the FTAA, the HASHAA decision-maker was required to consider Part 2 of the RMA. The Court saw the decision-maker's "cursory analysis" of Part 2 matters in *Enterprise Miramar* as an example of the decision-maker having allowed the purpose of HASHAA to neutralise or minimise the other matters that arose for consideration, which resulted in those matters not being given due consideration and weight. Rather than merely treating the purpose of HASHAA as the most important and influential matter to be weighed, the decision-maker used the purpose of HASHAA to eliminate or greatly reduce its consideration and weighting of the other s 34(1) factors, and that was a "significant error of law".

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[22] *Enterprise Miramar* at [53]
[23] *Enterprise Miramar* at [55]

36. Accordingly, Forest & Bird submits that the correct approach under cl 17 is to carefully consider each of the listed matters on their own terms, before moving to the weighing exercise. In that exercise, environmental effects or other impacts may be outweighed by the FTAA's purpose, or they may not.

37. The Bledisloe panel applied *Enterprise Miramar* in the FTAA context.[24] It noted that there is a difference between s 34 HASHAA and cl 17 in that "the HASHAA created a hierarchy of criteria, with the greatest weight to be given to criterion (a) and the least weight to be given to criterion (e), whereas in the FTAA the requirement is simply for the decision maker to give the greatest weight to criterion (a). The implication, therefore, is that in the FTAA the criteria in (b)-(c) are to have equal statutory weight".[25] Subject to bearing that distinction in mind, the Bledisloe panel considered that Enterprise *Miramar* provided helpful guidance, which it adapted to apply to the FTAA:[26]

    a. While the greatest weight is to be placed on the purpose of the FTAA, we must be careful not to rely solely on that purpose at the expense of due consideration of the other matters listed in (b) to (c): *Enterprise Miramar*, at [41].

    b. Clause 17 requires us to consider the matters listed in clause 17(1)(a)-(c) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified direction: *Enterprise Miramar*, at [52] – [53].

    c. The purpose of the FTAA is not logically relevant to an assessment of environmental effects. Environmental effects do not become less than minor simply because of the purpose of the FTAA. **What changes is the weight to be placed on those more than minor effects; they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects**

[24] In contrast, the Maitahi panel "did not find reference to section 34(1) HASHAA to be of much assistance" (at [68])
[25] Bledisloe decision at [121]
[26] Bledisloe decision at [121]

> **with significant regional or national benefit, or they may not**: *Enterprise Miramar*, at [55]
>
> (our emphasis)

Clause 17(1)(a) of Schedule 5: purpose of the FTAA

38. Clause 17(1)(a) refers to the purpose of the FTAA, that is, "to facilitate the delivery of infrastructure and development projects with significant regional or national benefits". When taking into account this criterion, panels must consider the extent of the project's national or regional benefits.[27]

39. The panel considering the Maitahi project described this as "essentially a forensic exercise".[28] Panels must reach their own assessment of the extent of benefits and are not required or obliged to treat a project as having significant regional or national benefits on the basis of its listing or referral. The Maitahi panel rejected the applicant's submissions that the panel could rely on the fact that the Project is listed in Schedule 2 for any finding that it has significant regional or national benefits:[29]

> [86] … these findings were made by bodies other than the Panel which has statutory responsibility for making decisions on approvals sought in a substantive application under s 81. By virtue of s 81(4) it falls to the Panel, when taking the purpose of the FTAA into account, to consider the extent of the regional or national benefits. This is something the Panel itself must do in the context of its analysis of, and findings on, regional or national benefits.
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> [87] The notion that a panel could rely on findings of another body is also inconsistent with the statutory requirement for the Panel to undertake a proportionality test under s 85(3). ...

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[27] Section 81(4) FTAA
[28] At [84]
[29] At [86] – [87]

40. For all matters of interpretation, s 10(1) of the Legislation Act 2019 will apply. It provides that "the meaning of legislation must be ascertained from its text and in the light of its purpose and its context". The Maitahi panel found that purpose and context was "conveniently summarized in the Legislative Statement outlining the Parliamentary intention for decision making by expert panels" as follows:[30]

> The purpose and provisions of the Bill will take primacy over other legislation in decision making. This means that approvals can be granted despite other legislation not allowing them, such as, projects that are prohibited activities or those which are inconsistent with RMA National Direction. This approach is intended to ensure key infrastructure and other development projects with significant benefits for communities are not declined where the benefit of approving the project outweighs any issue identified.

41. The Maitahi panel considered that the "extent" of benefits should be assessed or quantified "depending on their nature as varying between modest and meaningful, substantial or of real value".[31] It later noted that the word "extent" is not defined and that the dictionary definition refers variously to terms such as "assessment" or "assessed value" or degree, size, magnitude, dimensions or breadth of the thing being measured. The panel took that approach to its evaluative task, "bearing in mind that not all benefits are able to be calculated in precise financial or monetary terms. Sometimes expression of quantification or value in absolute terms may simply not be possible".[32]

42. Any factual assessment of regional or national benefits, particularly in relation to infrastructure or development projects, will be informed by related economic and social factors. The relevant regional context will therefore be important.

43. Both the Maitahi and Bledisloe panels also took some guidance from s 22 FTAA which relates to the criteria for assessing a referral application, because the first

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[30] At [51], citing the Legislative Statement, para 17.
[31] Executive Summary at ix.
[32] At [819]

criterion is whether "the project is an infrastructure or development project that would have significant regional or national benefits".[33] The Maitahi panel described the s 22 matters as providing "some useful guidance … a flavour of what is required", but with the question of whether a project is in fact one with significant benefits still being "an intensely factual determination turning on the particular circumstances of the Application".[34]

44. With respect to the term "significant" in the phrase significant national or regional benefits, the Maitahi panel noted the dictionary definition of "significant" as "full of meaning or import, and "important, notable", and was content to use "sufficiently great or important to be worthy of attention; noteworthy" as a working definition.[35] While the Maitahi project's contribution to housing and construction jobs was considered undeniably regionally significant, the panel did not consider upgrades to increase the capacity of downstream wastewater pipe infrastructure and a new shared commuter path to be significant:[36]

> While these are undoubtedly benefits of the development, arguably they do not classify as being of regional significance. They are amenities which will serve to enhance the environment for those who live there. At best the benefits will accrue to visitors who seek to enjoy the environment and amenities associated with proposed walking tracks and cycleways.

Clause 17(1)(b) of Schedule 5: RMA provisions

45. Clause 17(1)(b) refers to the provisions of Parts 2, 3, 6, and 8 to 10 of the RMA that direct decision making on an application for a resource consent (but excluding section 104D of that Act). Clauses 17(3) and (4) provide that, where any provision of the RMA requires a decision maker to decline any application for a resource

[33] Maitahi decision at [513]-[515], Bledisloe panel draft decision at [285]
[34] Maitahi decision at [515]
[35] Maitahi decision at [516]
[36] Maitahi decision at [525]

consent, the Panel must take such a provision into account, but "must not treat the provision as requiring the panel to decline the application".

46. The FTAA does not specify which provisions direct decision-making. It is "left to the Panel to determine which such provisions ought to be taken into account".[37] The Maitahi panel saw procedural RMA provisions as not "directing" decision making,[38] which must be correct. It considered ss 5, 6 and 7, and s 104 to be relevant "because they do operate to direct decision making in the RMA context".[39] In addition to those provisions, Forest & Bird submits that ss 104G, 105, 106, 107, 217 and 230 RMA will be relevant (where the circumstances make them so) as they also direct decision-making.

47. In the RMA context, the Courts have identified that it will likely not be necessary to directly consider Part 2 RMA where a national policy statement or regional/district plan has already fully implemented Part 2. In those cases, significant reliance is placed on the planning instruments instead.[40] However, that concept does not apply to the FTAA because of the different structure of cl 17, under which directive planning instruments do not have the same force and effect as they would under the RMA. It will be necessary for panels to directly consider Part 2 in these circumstances.

48. The Maitahi panel considered that:[41]

> In summary the statutory direction for a panel to take into account key provisions of the RMA brings into focus the question of whether the Application promotes sustainable management (s 5 of the RMA). It also requires consideration of how the Proposal recognises and provides for the matters of national importance in s

[37] Maitahi decision at [73]
[38] Maitahi decision at [73]
[39] Maitahi decision at [74]
[40] *EDS v New Zealand King Salmon Company Limited* [2014] NZSC 38; *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [70] – [74].
[41] Maitahi decision at [76] – [77]

6(a) to (h) of the RMA.… Decision makers must also take into account the matters referred to in s 7(a) to (j) of the RMA.

49. The Bledisloe panel also carefully considered Part 2 matters.[42]

50. Although the planning instruments that are a matter to have regard to under s 104(1)(b) RMA / cl 17(1)(b) FTAA may have less impact on decisions than they would under the RMA, the approach to interpretation and reconciliation of planning instruments described in *King Salmon* and *East West Link* remains relevant when they are being applied under the FTAA. That approach provides, in summary, that:

    a. Directive policies, such as policies requiring particular environmental impacts to be avoided, have greater potency than other non- or less directive policies.[43] Policies that provide for use and development, through terms such as "ensure", "require" and "recognise," can also be directive, depending on how those terms are used in the policy.[44]

    b. "Avoid" means "not allow" or "prevent the occurrence of".[45] However, prohibition of minor or transitory effects is not likely to be necessary.[46] The standard is protection from material harm. The concepts of mitigation and remedy may serve to meet the "avoid" standard by bringing the level of harm down so that material harm is avoided. To be consistent with the concept of avoidance, decision-makers must either be satisfied there will be no material harm or alternatively be satisfied that conditions can be imposed that mean material harm will be avoided; or any harm will be mitigated so that the harm is no longer material; or any harm will be

[42] Bledisloe decision at [324]
[43] *East West Link* at [72]; *King Salmon* at [129] and [152].
[44] *Port Otago* at [28] and [69]
[45] King Salmon at [93]
[46] Ling Salmon at [145]

remedied within a reasonable timeframe so that, taking into account the whole period harm subsists, overall the harm is not material.[47]

c. In applying s 104(1)(b), the consent authority must undertake a fair appraisal of the objectives and policies read as a whole. Isolating and de-contextualising individual provisions in a manner that does not fairly reflect the broad intent of the drafters must be avoided. Attention must be paid to the relevant objectives and policies both on their own terms and as they relate to one another in the overall policy statement or plan. Relevant objectives and policies cannot "simply be put in a blender with the possible effect that stronger policies are weakened and weaker policies strengthened".

d. There may be instances where policies pull in different directions. This is likely to occur infrequently, and an apparent conflict may resolve if close attention is paid to the words used.[48] Where directive policies conflict, a "structured analysis" should be adopted. The appropriate balance between the directive policies depends on the particular circumstances, considered against the values inherent in the various objectives and policies. All relevant factors must be considered to assess which of the conflicting policies should prevail in the particular circumstances of the case (for example, the nature and importance of ports' safety and efficiency requirements, and the environmental values at issue).[49]

Cumulative effects and the "first in time" principle under the FTAA

51. The Panel is considering the Haldon Solar FTAA application in the context of multiple other project referrals for solar farms in the Mackenzie Basin and, in particular, a concurrent substantive application by The Point that is being

[47] *Port Otago* at [65]-[66], applying *Trans-Tasman Resources* [2021] NZSC 127, at [252] per Glazebrook J, [292]—[293] per Williams J and [309]—[311] per Winkelmann CJ and [5]—[6] of the summary
[48] King Salmon at [129]
[49] Port Otago at [77] – [81]

considered by a similarly constituted panel. The Applicant has suggested that the 'first in time' principle which is applied under the RMA should also apply to its FTAA application,[50] meaning that the Haldon application would be considered on its own merits without any comparative analysis of other similar projects (especially The Point) or any consideration of cumulative effects.

52. The first in time principle under the RMA was confirmed by the Court of Appeal in *Fleetwing*.[51] There are some similarities in the present case with the situation in *Fleetwing*, in that multiple applications under the FTAA are competing for the same limited resource in (broadly) the same receiving environment. Limitations that are created by transmission capacity and electricity markets, together with cumulative effects on landscape and ecology, will very likely mean that all these project referrals cannot be delivered.

53. There were two limbs to the decision in *Fleetwing*. Firstly, the Court referred to s 272 RMA (which requires the Environment Court to hear and determine all proceedings as soon as practicable after the date on which the proceedings were lodged) and the timetable set for Council decision-making under the RMA. Secondly, with reference to ss 102 – 105 RMA, the Court held that "the statute requires each applicant's application or applications to be determined on their own merits. It does not allow for a comparative assessment of competing claims to the same resource".[52] The Court found that this conclusion accords with the primacy attached to s 5 RMA, noting that there is "nothing in the Act to warrant refusing an application on the ground that another applicant would or might meet a higher standard than the Act specifies".[53]

54. However, under the FTAA different statutory considerations apply.[54] The timing of panel decisions is governed by s 79 FTAA, and the timeframes set by the panel

[50] Response to Minute 1
[51] Fleetwing Farms Ltd v Marlborough District Council
[52] Fleetwing at 7-8
[53] Fleetwing at 8
[54] S 40 FTAA

convenor. The consideration of concurrent applications being heard by the same panel can be anticipated by the panel convenor so as not to interfere with timely decision making.

55. Perhaps most importantly, the touchstone of the FTAA is the assessment of significant regional or national benefits of projects[55] including a proportionality assessment of these benefits against any adverse impacts.[56] This invites a broader consideration of the way in which limited resources should be used in the context of competing applications.

56. The reference in s 3 FTAA to "infrastructure and development projects" (plural) is an important difference from the RMA provisions considered in *Fleetwing*, and implies that the Panel should not necessarily only focus on a single application. In circumstances where the Panel can compare the benefits and adverse effects of different projects, the strict application of an implied 'first in time' rule would not help to achieve the purpose of the FTAA.

57. Similarly, the Panel should not be precluded from considering cumulative adverse impacts of the two proposed projects in the Tekapo delta, simply because of the order in which substantive applications were filed with the EPA. If management options can be found to reduce adverse impacts by considering the applications together, then such options should be open to the Panel.

58. If the Panel considers that that the cumulative effects of both projects would be unacceptable, or that only one of the projects can be delivered due to electricity transmission or market constraints, then, in accordance with the purpose of the FTAA, the Panel must decide which of the two projects should be approved (based on the Panel's assessment of respective benefits and adverse impacts).

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[55] S 3
[56] S 85(3)

Conditions

59. When setting conditions on a resource consent, RMA provisions that are relevant to setting conditions apply (subject to all necessary modifications).[57] Section 108AA RMA is particularly relevant. It provides that consent conditions must:

    a. be agreed to by the applicant;

    b. be directly connected to an adverse effect of the activity on the environment, or applicable rule, national environmental standard or environmental performance standard; or

    c. relate to administrative matters that are essential for the efficient implementation of the resource consent.

60. This RMA cross-reference indicates that case law on condition-setting under the RMA is also likely to be relevant (subject to s 83 FTAA which is discussed below). The following principles relevant to setting conditions on resource consents were applied by the Bledisloe[58] and Maitahi[59] panels:

    a. a resource consent condition must be for a resource management purpose, not an ulterior one; must fairly and reasonably relate to the development authorised by the resource consent or designation; and must not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties could not have approved it.[60]

    b. The underlying purpose of the conditions of a resource consent is to manage environmental effects by setting outcomes, requirements or limits to that activity, and how they are to be achieved.[61]

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[57] Clause 18 of Schedule 5
[58] Bledisloe decision at [305]
[59] Maitahi decision at [682]-[684]
[60] *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL), at 739
[61] *Summerset Village (Lower Hutt) Ltd v Hutt City Council* [2020] MZEnvC 31 at [156].

c. Conditions must be certain and enforceable.[62]

d. A condition must not delegate the making of any consenting or other arbitrary decision to any person, but may authorise a person to certify that a condition of consent has been met or complied with or otherwise settle a detail of that condition.[63] Such authorisation is subject to the following principles:

   i. the basis for any exercise of a power of certification must be clearly set out with the parameters for certification expressly stated in the relevant conditions;

   ii. the power of certification does not authorise the making of any waiver or sufferance or departure from a policy statement or plan except as expressly authorised under the RMA;

   iii. the power of certification does not authorise any change or cancellation of a condition except as expressly authorised under the RMA.

e. Deferring issues to management plans where there is a lack of sufficient information deprives the public of their participation rights, since they would not have the ability to participate in the development of the management plans.[64]

f. Where management plans are proposed, it is imperative that conditions of consent identify the performance standards that are to be met and that the management plans identify how those standards can be achieved.[65]

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[62] *Bitumix Ltd v Mt Wellington Borough Council* [1979] 2 NZLR 57.
[63] *Turner v Allison* (1970) 4 NZTPA 104.
[64] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 at [277] and [278] per Glazebrook J, at [294] per Williams J, at [329] per Winkelmann CJ. While in this was in the context of marine consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the principles are equally applicable to resource consents under the RMA
[65] *Re Canterbury Cricket Association* [2013] NZEnv C 184 at [125]

61. For all approvals under the FTAA, panels must also comply with s 83 in setting conditions.[66] This provides:[67]

> 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.

62. The ordinary meaning of "onerous" is "difficult to carry out".[68] This provision will not generally set a higher standard than would otherwise apply to conditions under the RMA, which must already "directly relate" relate to an environmental effect or applicable rule (etc). It will require a panel to check that proposed conditions are not more "difficult to carry out" than is necessary to address the reason for the condition, and in some circumstances it may have a substantive impact, e.g. where there are two equally effective alternative methods of controlling an effect proposed by participants and one is more onerous than the other.

Section 81(2)(f): decline only in accordance with s 85

63. A panel may decline an approval only in accordance with s 85.[69] A panel may decline an approval if it forms the view 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 –

[66] Section 81(2)(d) FTAA
[67] Section 83 FTAA
[68] Collins New Zealand Dictionary, 2017 Harper Collins.
[69] Section 81(2)(f).

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.

64. "Impacts" is not limited to adverse effects, and includes any matter considered by the panel under s 81(2) that weighs against granting the approval.[70] It is not met solely on the basis that an impact is inconsistent with the RMA or a planning document.[71] This means that the threshold for decline is not met where a project is inconsistent with an objective or policy in a planning document. However, it could be met where a project has one or more adverse effects and is also inconsistent with a planning instrument.

65. Section 85(3) should be approached by a panel as a four-stage assessment:[72]

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

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[70] Section 85(5).
[71] Section 85(4).
[72] The Maitahi panel approached this as a 3-stage assessment: first assessing the extent of the project's regional or national benefits, second identifying the significance of adverse impacts (after applying conditions), and thirdly assessing whether any were sufficiently significant to be out of proportion to the project's regional or national benefits. It did not need to exercise the discretion to decline or not, as it did not find any adverse impact to be sufficiently significant. However, it noted that "even if the adverse impacts are significantly out of proportion to the anticipated benefits, it appears that the Panel still has a discretion to allow the approval(s) to proceed. That discretion will necessarily be informed by the purposes of the Act" (at [94]).

66. This provision has been described as the "proportionality test"[73] because of the proportionality assessment required by step 3. That assessment was described by the Maitahi panel as "[not] formulaic or mathematical ... Rather, because the impacts are not always such as to allow precise quantification (particularly when taking into account conditions), the process has been treated as inherently evaluative".[74]

67. The term "out of proportion" can be distinguished from "out of all proportion"[75] and "grossly disproportionate",[76] and indicates that it is met where one or more adverse impacts is more significant (at all) than the project's benefits, rather than requiring a larger degree of disproportionality.

68. In terms of step 4, any statutory discretion must be exercised in accordance with the statutory purpose. The statutory purpose of "facilitating" (meaning "to make easier the progress of"[77]) developments with significant national or regional benefits is implemented by the expedited process and enabling consenting framework provided by the FTAA, and does not indicate that decisions will necessarily result in an approval. If that were not correct, the FTAA could have taken an approach that guaranteed approval, subject only to an assessment of what conditions should apply.

69. Speaking to the Bill in committee, the provision (previously numbered cl 24WD) was described as "a very clear decline clause" by Minister Bishop, which demonstrates the intention was not "development at all costs":[78]

> … the various pieces of underlying legislation are in the schedules and all of the environmental considerations as part of those statutes are part of the bill. The

[73] Maitahi decision at [101].
[74] Maitahi decision at [101].
[75] For example, s 107 Sentencing Act 2002 regarding discharge without conviction.
[76] For example, s 22 Health and Safety at Work Act 2015 regarding the meaning of "reasonably practicable" in relation to a duty.
[77] Collins New Zealand Dictionary, Harper Collins 2017.
[78] Fast-track Approvals Bill – In Committee – Part 1 10 December 2024

> member says, "Is the Government's position development at all costs?" No it isn't. And I point him to clause 24WD, which is "When panel must or may decline approvals", which is the panel must decline an approval if the panel forms the view that there are one or more adverse impacts in relation to the approval sought. And this is the key issue: those adverse impacts are sufficiently significant to be out of proportion for the project's regional or national benefits that the panel has considered under section 24W(3)(a) after taking into account conditions, etc. So there's a very clear decline clause.

70. Returning to the purpose indicated by the Legislative Statement,[79] it is "to ensure key infrastructure and other development projects with significant benefits for communities are not declined where the benefit of approving the project outweighs any issue identified".[80] Where the benefit of approving *is* outweighed by issues identified, that statutory purpose is implemented by declining the approval.

ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

71. Clause 17(1)(b) of Schedule 5 FTAA imports s 104(1)(a) of the RMA, which requires consideration of the actual and potential effects on the environment of allowing the activity.

72. The Applicant's assessment of the proposed activity's effects on ecosystems is set out in section 6.5 of the substantive application and in the Ecological Assessment prepared by Dr Espie at Appendix 7 of the substantive application.

Indigenous vegetation

73. The substantive application ignores or understates the presence and significance of indigenous vegetation at the Haldon site. For example, at 3.12 (Landscape and Natural Character):

[79] As noted by the Maitahi panel (Draft decision at 50)
[80] Legislative Statement, para 17.

> The vegetation on the Haldon Solar Project Site is introduced low-fertility grassland with a low density of introduced shrub, founded on very shallow (<20 cm) soils (stony silt loam to sandy loam).

And at 3.13 (Ecological Values):

> Overall, the ecological value of the Haldon solar site is considered to be low. Bare soil and stones averaged 36% of the site ground cover. The vegetation on the site is introduced low-fertility grassland with a low density of an introduced shrub, which has replaced the former indigenous vegetation.

74. This characterisation of the Haldon site enables the Applicant to reach the conclusion that the project would have a "minimal effect on significant indigenous vegetation values".[81]

75. However, the information on SNA status provided in the Application is inconsistent and contradictory. For example, while the Applicant acknowledges that the site meets the RPS criteria for a significant natural area,[82] it nonetheless also relies on the contradictory conclusion in the Ecological Assessment that the site does not qualify as a significant natural area.[83]

76. Elsewhere, the Applicant states that "although the Site triggers the RPS criteria for determining significant indigenous vegetation (owing to the presence of threatened or at-risk indigenous plants), the ecological assessment undertaken for the project finds that adverse effects are minor".[84] However, the Applicant does not address the fact that the ecological assessment of "minor" effects is based on the incorrect assumption that the site is *not* an SNA.

[81] Application at [6.5] p 85
[82] Application at [9.2] p 109
[83] Application at [9.9.9] p 144
[84] Application at [9.9.12] p 149

77. As explained by Mr Head in his attached evidence, the Haldon site does meet SNA criteria. The failure to properly consider the SNA status of the site substantially undermines both the Ecological Assessment and the Application more generally.

78. Mr Head details serious deficiencies in the botanical survey methods relied on by the Applicant and explains that the Applicant's survey results reflect these deficiencies rather than providing an accurate account of indigenous vegetation present at the site.

79. Forest & Bird submits that these are matters that should be properly addressed by the Applicant (requiring a revised Ecological Assessment and AEE including appropriate proposals for mitigation, offsetting and compensation).

80. A particular concern that has been raised by Mr Head is that the Applicant has failed to consider the likely adverse effects of construction and operation of the proposed solar farm on rare and threatened indigenous plant species. The Applicant's conclusion that adverse effects on indigenous vegetation will be "less than minor", and that intrinsic values will be "maintained or possibly enhanced"[85], is apparently based on the assumption that "existing ground cover will be largely maintained beneath the solar arrays… (with some enhancement possible through shading effects)".[86] These assumptions are incorrect.

81. Firstly, in reaching this conclusion, the Applicant ignores the adverse effects of substantial earthworks during the construction phase, together with adverse effects of vehicle movements and other potential disturbance during the operational period. For example, the proposed cleaning of panels using a tractor with a mounted water tank[87] would likely result in further loss of indigenous vegetation, topsoil disturbance and ground compaction.

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[85] Both at [9.2] p 109
[86] Application at [9.6.4] p 120
[87] AEE at [4.5] p 58

82. The application states that the establishment of the substation would require around 6,000m^2 of topsoil stripping and replacement with bulk fill,[88] and that total earthworks are estimated to have a surface area of 132,000m^2. [89] There is likely to be a total loss of any indigenous vegetation within this area.

83. The application states that the relatively flat nature of the site "minimises the need for grading and topsoil disturbance",[90] but a precise assessment does not appear to have been carried out, and it may be that grading for panel installation would result in a greater area of vegetation removal and topsoil disturbance than has been estimated. The proposed conditions do not place any limits at all on the volume or area of earthworks that can be carried out during construction.

84. Secondly, the assumption that shading would be beneficial for rare and threatened species of indigenous vegetation is wrong. The evidence of Mr Head is that "solar arrays cast shade and alter microclimates, reducing light, modifying temperature and moisture regimes, which can suppress or eliminate low-growing native plants, impede seedling recruitment, and fundamentally change the sparsely vegetated habitats required by many rare and threatened species. Many of these species are small, poor competitors with taller, denser exotic vegetation, and rely on open, high-light habitats that are highly vulnerable to invasion".[91]

85. Similar expert evidence was accepted and referred to by the Environment Court in its recent PC18 interim decision, where the Court found that many indigenous plant species of dryland parts of the Basin floor are "adapted to open ecosystems over evolutionary time and have distinct traits, including high light requirements and low abilities to compete for light because their photosynthetic rates drop away steeply as light reduces".[92]

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[88] AEE at [4.2.5] p 52
[89] AEE at [4.4.1] p 57
[90] AEE at [4.4.1] p 56, and at [6.4] p 79 – "minimising earthworks to reduce 'smoothing' of landforms on the Site"
[91] Evidence of Mr Head at [54]
[92] Decision No. [2025] NZEnvC 125, at [21]

86. These evolutionary characteristics of the indigenous vegetation present at the Haldon site also point to the conclusion that rabbit fencing of the solar installation will not be effective in terms of protecting and restoring this vegetation. The shading caused by the solar panels would enable exotic species to outcompete indigenous plants within the proposed rabbit exclosures.

Avifauna

87. Surprisingly, given the proximity of the proposed site to highly significant habitat for avifauna, the application does not identify actual and potential effects on indigenous birds as a relevant matter for consideration.[93] The Applicant's assessment concludes that "effects on avifauna are considered negligible".[94]

88. As Mr Head and Dr McClellan both explain, this assessment of effects on avifauna is based on very limited monitoring and contains errors that are indicative of methodological failures and lack of relevant expertise.

89. Dr McClellan notes that the Haldon site provides habitat for numerous Nationally Threatened and At Risk bird species, including kakī | black stilt (Threatened-Nationally Critical), one of the rarest bird species in the world, which is now largely restricted to the Mackenzie Basin with a population of approximately 140 wild birds.

90. The Haldon site is also likely to be overflown by all 33 indigenous bird species known from the immediately adjacent habitats (which include the Takapō River and delta and Lake Benmore). This creates risk of significant adverse effects from birds colliding with solar panels and associated infrastructure, which is explained in Dr McClellan's evidence, but which has not been adequately addressed in the Applicant's assessment of ecological effects.

[93] Application at [6.1] p 74
[94] Application at [6.5] p 85

Invertebrates

91. In relation to invertebrates, the Applicant's assessment has concluded that "any adverse effects on invertebrates are also considered to be negligible, given that their habitat will remain under and between solar panels and the site has no known unique habitat features".[95]

92. However, the substantive application does not include an invertebrate survey and, as Mr Head explains, this deficiency seriously undermines the Applicant's ecological evaluation.

Herpetofauna

93. Similarly, the Applicant's failure to identify and address effects on lizards appears to be the result of methodological failures in the Applicant's ecological assessment. The Applicant's assessment concludes that "no adverse effects on lizards, geckos or skinks are anticipated as the site survey revealed they are either absent from the site or have an extremely low population density".[96] However, as Mr Head explains, the Applicant's methodology does not follow recommended survey protocols. Lizards are known to be present in the wider area, and further work would be required before reaching a reliable conclusion as to their presence or absence at the Haldon site.

Minute 1 and the Applicant's response on ecological matters

94. In Minute 1, the Panel sought further information on the impacts on ecology. This included queries about:

    a. the evaluation of the methodology used to assess ecological effects, specifically how the assessment determined the level of impact on nationally Threatened or At-Risk flora and fauna.

[95] Application at [6.5] p 86
[96] Application at [6.5] p 86

b. whether the assessment properly accounted for the likely presence of such species, how it balanced species' threat status against the magnitude of potential effects.

c. whether the Applicant considered impacts arising from livestock exclusion and rabbit-proof fencing, particularly for moisture-sensitive at-risk plants and threatened farmland birds near braided rivers or lakes.

d. how uncertainty, risk, and potential consequences, especially for threatened species such as black stilt, were incorporated into the overall effects conclusions.

95. The Applicant's response is inadequate. The response to the first query referred to above was:

> Factoring in likely/potential presence – The assessment began with regional species lists and screened the solar footprint for potential habitat. Where At-Risk species were not detected but could occur sparsely, the assessment assumed possible presence and evaluated effects accordingly.

96. This approach is not reflected in either the Ecological Assessment or the substantive application, which only considered adverse effects on flora and fauna observed at the site. For example, the ecological assessment of At-Risk avifauna only considered the black-fronted tern,[97] and the assessment of effects on indigenous vegetation relies on the premise that "existing vegetation is highly modified and dominated by introduced species".[98]

97. The response to the second query was that the adverse effects are "very low". In reaching this conclusion, the assessment relied on the vegetation being highly modified, the project's small footprint compared with extensive similar habitat

[97] Ecological Assessment at p 38
[98] Application at [6.5], p 85

nearby, and the very low densities at which at-risk species occur. The evidence of Mr Head at [115] – [121] contradicts this assessment.

98. In relation to the third query, the Applicant accepted that stock and rabbit exclusion does not restore indigenous communities, as exotic herbs tend to dominate. The Applicant proposed to manage this risk through active groundcover management, such as mowing or short-duration grazing, and targeted weed control. While this approach may provide some ecological benefit, there are currently no conditions requiring these measures to occur.

99. In relation to the query about birds, the Applicant maintains that the site provides no suitable habitat for black stilt or other braided-river specialists, none were recorded in surveys, and abundant alternative habitat exists nearby, making any effect extremely unlikely. They say remaining uncertainty is managed through a conservative effects rating.

100. This conclusion is contrary to the evidence of Dr McClellan. It is also difficult to see how an effects rating of "very low" is conservative.

101. The Applicant was also asked to comment on whether the application demonstrates "best endeavours" to protect and maintain habitat meeting ecological significance criteria under the CRPS.

102. Mr Head has criticised the Applicant's response to this question from an ecological perspective, based on "avoidance", "footprint enhancement", "targeted protection" and "enhancement".[99]

103. It is also unclear why the Panel Minute refers to "best endeavours" as this is not a statutory test. As will be discussed in more detail below, MDP REG-P6 contains detailed provisions for effects management, including offsetting and compensation

[99] Mr Head at [122] – [128]

with reference to Policy 4 and Appendix Z, which do not include trade up compensation.

104. In response to the query about offsetting and compensation, the Applicant advises that it does not consider this is required, given the very low level of effect. The Applicant did provide some compensation options if the Panel considered further compensation was necessary.

105. This response is problematic. The approach relies on the finding of a very low level of effect. The Applicant's provision of some offsetting options appears to be a tacit acknowledgment that this “very low” level of effect position may not withstand scrutiny.

106. A significant problem arises if the Panel accepts the evidence of Dr McClellan and Mr Head that the adverse effects will be significant and does not accept the "very low" level of effect advanced by the Applicant. In particular, there would be an expectation that offsetting or compensation would be required to respond to the significant adverse effects.

107. The Applicant has provided a high-level indication of possible offset/compensation options but has not assessed them against Policy 4 of Section 19 and Appendix Z of the MDP. No conditions for implementation are proposed.

108. This creates a serious problem. If the Panel agrees with Mr Head and Dr McClellan that there are significant adverse effects, then the planning documents require that offset or compensation are considered (including considering Policy 4 in Section 19 and Appendix Z). It would create an unfortunate and undesirable precedent if the Applicant in this case was able to proceed without proper consideration of offsetting or compensation, when this will be required for equivalent applications both in the Mackenzie Basin and elsewhere (under the NPS-REG and relevant plans). It would encourage applicants to understate adverse effects as this would mean that they would not be required to offset or compensate for the adverse effects.

Natural character

109. The Applicant's assessment of "low-moderate levels of natural character"[100] is at odds with the ONL status of the Haldon site. In this context, the Applicant's assessment relies on other modification that has already occurred to the landscape (e.g. hydro development and farming activities) to minimise the landscape effects of the proposed solar installation.[101] This approach to the assessment of landscape effects is unorthodox and incorrect. The ONL status was introduced despite existing modifications, which cannot be relied on to justify further reductions in natural character caused by new activities.

General

110. The assertion that "most effects are reversible in the longer term in the event the Solar Project is decommissioned and removed"[102] is speculative and does not account for the fact that the activity may result in irreversible loss of indigenous vegetation.

111. The Applicant's assertion that there would be no cumulative effects on terrestrial ecology or avifauna caused by numerous large solar installations on dryland terraces in the Mackenzie Basin is cursory and implausible,[103] and is contradicted by the evidence of Mr Head and Dr McClellan who explain the shared ecological habitats and values that would be affected and the pressure these naturally rare ecosystems are already under as a result of human activities.

112. Decommissioning of the site in the future will result in further disturbance and loss of remaining or reestablishing indigenous vegetation. This has not been

[100] Application at [3.12] p 38
[101] Application at [9.6.7] p 122
[102] Application at [9.6.7] p 122
[103] Applicant's response to Panel Minute 1, 12 December 2025, at [19.3]

addressed in the application, which relies on management plans that would be prepared later, but without including standards that must be adhered to.[104]

113. There is very little information in the substantive application about the proposal to include a large battery (BESS) as part of the solar installation.[105] The plan to include a battery may have implications in terms of managing hazardous substances at the site.

PLANNING FRAMEWORK

114. Section 104(1)(b) of the RMA requires consideration of planning documents, including national policy statements, notably the National Policy Statement on Renewable Energy (NPS-REG), the Canterbury Regional Policy Statement (CRPS) and the Mackenzie District Plan (MDP).

115. As discussed below, these planning documents provide for the consideration of the benefits of renewable energy generation projects alongside the consideration of the adverse effects. The planning framework does not contain any provisions that are so directive that they provide a definitive answer that approval should be granted or declined. The evaluation of whether to grant consent involves a weighing of the benefits of the renewable electricity generation against the adverse effects of the activity, including on the outstanding landscape and indigenous biodiversity.

116. This approach aligns with the proportionality test in s 85(3) of the FTAA.

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[104] The proposal is for site rehabilitation to be addressed by a decommissioning plan to be prepared no later than 12 months prior to decommissioning [4.5] p 58

[105] Cf Application at [6.9] p 89, advising that diesel and oil will be handled in compliance with the Hazardous Substances and New Organisms Act 1996 and the Health and Safety at Work (Hazardous Substances) Regulations 2017

National Policy Statement on Renewable Energy Generation

117. The NPS-REG was recently amended with changes coming into force on 15 January 2026.[106] Policy F(1) now requires decision-makers to enable REG assets and activities in all locations and environments. However, this direction is qualified by Policy F(2) which provides:

> 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.

118. The effect of Policy F(2) is that the provisions of the MDP are considered alongside the policy direction to enable REG assets. This is different from the usual approach where the provisions of an NPS would prevail over a lower order document, such as a district plan, if there was any inconsistency. Policy F(2) effectively elevates the provisions of the MDP[107] so they are considered alongside, rather than sub-ordinate to the NPS-REG.

119. The Haldon Solar project will have adverse effects on significant indigenous vegetation and an outstanding natural landscape. Therefore, the enabling provisions in the NPS-REG must be read alongside the relevant provisions in the REG chapter of the MDP.

120. Policy F(4) of the amended NPS-REG also requires decision-makers to have particular regard to the use of adaptive management measures.

121. Policy F(5) requires that regard be had to offsetting and compensation:

> When considering any residual adverse effects of REG assets and activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to offsetting measures or environmental compensation, including measures or compensation that benefit the local environment and community affected.

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[106] National Policy Statement for Renewable Electricity Generation 2011 Amended 2025

[107] The MDP is the key decision making document as it can be considered to give effect to the CRPS. This is discussed below.

122. The NPS-REG raises the following issues:

a. the Applicant's failure to assess Policy C2 / F(5) of the NPS-REG (offsetting and compensation); and

b. the Applicant's failure to consider adaptive management measures

Failure to consider offsetting and compensation policy C2/F(5)

123. The application's assessment of the NPS-REG[108] fails to refer to the offsetting and compensation policy, which was Policy C2 of the NPS-REG when the application was lodged. Offsetting is now addressed by Policy F(5) in the amended NPS-REG.

124. The proposed conditions do not include offsetting or compensation because the Applicant concluded these measures were unnecessary given its assessment that adverse effects would be limited.

125. If the site is significant under s 6(c) RMA, then consideration must be given to offsetting and compensation for the adverse effects of the activity. If the Panel accepts the adverse effects are significant, the failure to properly address offsetting and compensation is a serious problem.

Canterbury Regional Policy Statement (CRPS)

126. Chapter 9 of the CRPS relates to ecosystems and indigenous biodiversity and has objectives and policies that seek to halt the decline of,[109] and restore and enhance,[110] indigenous biodiversity in the region, including by protection of significant indigenous vegetation and habitats.[111]

[108] Application at [9.5.1] p 112-3

127. Chapter 16 of the CRPS relates to energy, and contains provisions providing for the local, regional and national benefits of renewable electricity generation (REG).

128. The recent review of the ecosystem and biodiversity and REG provisions in the Mackenzie District Plan (MDP) is intended to give effect to the CRPS in a land use context. The Panel can rely on the MDP as giving effect to the relevant provisions in the CRPS.[112]

Mackenzie District Plan

129. Section 19 of the MDP (Ecosystems and Indigenous Biodiversity) is not operative in its entirety. However, the objectives and policies that relate to REG were finalised in a consent order dated 14 December 2024.[113] The consent order records that there are outstanding issues relating to the farming provisions, which were the subject of hearings and decisions in 2024 and 2025.

130. The provisions in Section 19 relating to renewable energy primarily apply to the Waitaki and Opuha Schemes. Other REG, including this application, is managed under the REG Chapter.

131. The Haldon site is within the Mackenzie Basin ONL and is also a lakeside protection area, area of high visual vulnerability, and SASM. As acknowledged by the Applicant,[114] and supported by expert advice from Mr Head and Dr McClellan, it is also an area of significant indigenous vegetation and significant habitat of indigenous fauna.

132. This means that the proposed activity has discretionary activity status under REG-R7, and Policy REG-P6 applies. Policy REG-P6 provides guidance on assessing an application for REG activities in specified areas (including areas of significant indigenous vegetation and significant habitats of indigenous fauna) and is similar

[112] *Thumb Point Station v Auckland Council* [2015] NZHC 1035
[113] *Meridian Energy Ltd v Mackenzie District Council* [2023] NZEnvC 273
[114] For example, at [9.9.2.3] p 137

to s85(3) of the FTAA in that it includes a proportionality test to determine whether consent should be granted.

133. REG-P6 states that REG activities should be provided for where:

1. There is a functional need or operational need for the activity to be in the proposed location;

2. Adverse effects on the values of the area are avoided as far as practicable, including through site, route or method selection, design measures and other management methods;

3. Adverse effects on the values of the area that cannot be avoided are remedied or mitigated, where practicable;

4. Other adverse effects (that do not affect the values of the area) are avoided, remedied or mitigated as far as practicable;

5. Regard is had to any proposed offsetting measures or environmental compensation (including considering Policy 4 in Section 19 and Appendix Z), where there are significant adverse effects that cannot be avoided, remedied or mitigated; and

6. Particular regard is had to the practical constraints associated with renewable electricity generation activities, including the:

    a. location and efficient use of existing electricity generation, transmission and distribution infrastructure; and

    b. the need to locate the renewable electricity generation activity where the renewable energy resource is located;

7. Following application of 1-6 above, consideration is given to whether the benefits of the activity outweigh any significant residual adverse effects on the values of the area.

134. Later in the Application, reference is made to REG-P6. However, Clause 7 of Policy REG-P6 is not included when quoting the policy.[115]

135. The Applicant goes on to assert that consideration of offsetting or compensation under REG-P6(5) is not engaged because residual adverse effects are not considered to be significant.[116] As discussed above, this should not be accepted. The Applicant's assessment is unreliable and incomplete. Mr Head and Dr McClellan consider the adverse effects are significant. On this basis, the Panel needs to consider Policy 4 of Section 19 and Appendix Z of the Mackenzie District Plan.[117]

136. Policy 4 of Section 19 – Ecosystem and Indigenous Biodiversity [118] sets out criteria for biodiversity offsets.

a) where an adverse effect on indigenous biodiversity is required to be avoided in accordance with Policy 2, indigenous biodiversity offsetting cannot be used;

b) offsetting is not appropriate where:

   i. there are more than minor residual adverse effects in the values or extent of irreplaceable or vulnerable indigenous biodiversity; or

   ii. the effects of the proposed activity on indigenous biodiversity are uncertain, unknown or little understood, but potentially significantly adverse;

c) the more than minor residual adverse effects on indigenous biodiversity are capable of being offset to ensure no net loss of indigenous biodiversity;

d) where the area to be offset is identified as a national priority for protection in accordance with Policy 9.3.2 of the Canterbury Regional Policy Statement 2013 or its successor, the offset must deliver a net gain for indigenous biodiversity;

e) there is a strong likelihood that the offsets will be achieved in perpetuity;

[115] Application at [9.9.2.3] p 137
[116] Application at [9.9.2.3] p 138
[117] The Environment Court approved Policy 4 in the consent order dated 14 December 2024
[118] Discussed above

f) where the offset involves the ongoing protection of a separate site, it will deliver no net loss, and preferably a net gain for indigenous biodiversity;

g) the offset applies as close as possible to the site incurring the effect, recognising that benefits can diminish with distance from the site;

h) the offset re-establishes or protects the same type of ecosystem or habitat that is adversely affected;

i) the offset is additional to what otherwise would occur in the absence of the offset, and additional to any remediation or mitigation undertaken in relation to the adverse effects of the activity on indigenous biodiversity; and

j) the offset describes and measures indigenous biodiversity at the impact and offset sites using calculations that allow for indigenous biodiversity losses and gains to be quantified.

137. Appendix Z is a biodiversity compensation schedule, which sets out criteria that must be met for an action to qualify as biodiversity compensation:

1. Adherence to effects management hierarchy:

Biodiversity compensation is a commitment to redress more than minor residual adverse effects and should be contemplated only after the management hierarchy steps in Policy 5 have been demonstrated to have been sequentially exhausted.

2. When biodiversity compensation is not appropriate:

Biodiversity compensation is not appropriate where indigenous biodiversity values are not able to be compensated for, including where:

a. The indigenous biodiversity affected is irreplaceable or vulnerable;

b. There are no technically feasible options by which to secure gains within acceptable timeframes; and

c. Effects on indigenous biodiversity are uncertain, unknown or little understood, but potential effects are significantly adverse.

3. Scale of biodiversity compensation:

The extent or values to be lost through the activity to which the biodiversity compensation applies are addressed by positive effects on indigenous biodiversity that outweigh the adverse effects on indigenous biodiversity.

4. Additionality:

Biodiversity compensation achieves gains in indigenous biodiversity above and beyond gains that would have occurred in the absence of the compensation, such as gains that are additional to any remediation, mitigation or offsetting undertaken in relation to the adverse effects of the activity.

5. Leakage:

Biodiversity compensation design and implementation avoids displacing harm to indigenous biodiversity in other locations and existing indigenous biodiversity at the compensation site.

6. Landscape context:

Biodiversity compensation actions are undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same ecological district. The actions consider the landscape context of both the impact site and the compensation site, taking into account interactions between species, habitats and ecosystems, spatial connections and ecosystem function.

7. Long-term outcomes:

The biodiversity compensation is managed to secure outcomes of the activity that last at least as long as the effects, and preferably in perpetuity. Consideration must be given to long term issues around funding, location, management and monitoring.

8. Time lags:

The delay between loss of indigenous biodiversity at the impact site and the gain or maturity of indigenous biodiversity at the compensation site is minimised.

9. Trading up:

When trading up forms part of biodiversity compensation, the proposal demonstrates that the indigenous biodiversity values gained are demonstrably of higher indigenous biodiversity value than those lost. The proposal also shows that

the values lost are not to Threatened, or At Risk species (as defined in the New Zealand Threat Classification System but excluding matagouri and manuka) or species considered vulnerable or irreplaceable.

10. Financial contribution:

A financial contribution is only considered if it directly funds an intended indigenous biodiversity gain or benefit that complies with the rest of these principles.

11. Science and mātauranga Māori:

The design and implementation of biodiversity compensation is a documented process informed by science and mātauranga Māori where available.

12. Tangata whenua and stakeholder participation:

Opportunity for the effective and early participation of tangata whenua and stakeholders is demonstrated when planning biodiversity compensation, including its evaluation, selection, design, implementation, and monitoring.

13. Transparency:

The design and implementation of biodiversity compensation, and communication of its results to the public, is undertaken in a transparent and timely manner..

138. Policy REG-P6 does not require the strict avoidance of adverse effects in all circumstances. As noted above, where there will be significant residual adverse effects despite any appropriate offsetting or compensation measures, REG-P6.7 provides for a proportionality assessment of whether the benefits of the activity outweigh any significant residual adverse effects on the values of the area.

REGIONAL AND NATIONAL BENEFITS

139. The assessment of regional or national benefits is pivotal to decision-making under the FTAA. The Act'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 the project's adverse impacts.

140. The draft decision of the Delmore panel,[119] provides an example of a listed project which was found not to deliver any significant net regional benefits. This was a material factor in the panel's draft decision to decline approval.

141. In the present application, the Applicant has provided an economic assessment which considers there are two regionally and nationally significant benefits. These are the "significant contribution to the economy and enhanced environmental outcomes through the generation of renewable electricity".

142. There are economic benefits associated with the proposed activity, as well as public benefits from increased renewable electricity generation. The assessment required under the FTAA is the extent to which these are regionally and nationally significant. The potential benefits also need to be considered in the wider context of other FTAA applications for solar projects in the Mackenzie Basin.

143. The Applicant's application asserts that the proposal will generate regional and national benefits.[120] However, this assertion is not referenced. The Applicant relies on the economic assessment attached to the application. However, the economic assessment does not conclude that the application will have significant regional or national benefits.

144. The summary of the economic assessment says that the solar farm will "deliver significant economic, environmental and energy system benefits".[121] The economic assessment does not say that these benefits will be regionally or nationally significant.

[119] 17 September 2025
[120] Section 6.3
[121] Page 5

145. The conclusion of the economic assessment makes a similar statement when it concludes that the proposed solar farm will deliver measurable benefits.[122] Again, this is not a conclusion that the benefits will be regionally or nationally significant.

146. The absence of a finding of regional or national benefit is unsurprising as the economic assessment did not provide a basis for determining whether benefits were regionally or nationally significant. Without explaining how such an assessment would be undertaken, it could not credibly have made a finding that the proposed solar farm would have regionally or nationally significant benefits.

147. The application's claim of regional and national benefits is an assertion unsupported by evidence. While there are undoubtedly benefits from the proposed solar farm, there is no evidence that these benefits will be regionally or nationally significant. In addition, some of the benefits claimed in the economic assessment appear questionable.

148. The benefits that the Applicant is claiming relating to economic impact and benefits from renewable generation are now discussed.

Economic impact

149. An issue regarding the economic benefits is whether a gross or a net assessment is appropriate. That is, whether a cost-benefit analysis is needed to determine net economic benefits.

150. A similar issue arose for the Delmore panel, whose draft decision provides useful guidance.[123] The Delmore panel considered an urban development in Auckland. The draft decision noted that there was no specific definition of significant

[122] The first paragraph of the conclusion says "The proposed Haldon Solar Project represents a significant opportunity to enhance New Zealand's renewable energy capacity while delivering measurable economic benefits at local, regional and national levels. This assessment demonstrates that the project will generate substantial positive impacts across multiple dimensions, including employment, value added, emissions reductions and energy security. "

[123] There is no final decision as the application was withdrawn after the draft decision was issued.

regional or national benefits in the context of listed projects.[124] A key issue that the Delmore panel considered was whether the assessment of economic benefits was gross or net. Delmore's economic analysis, like that prepared for the Applicant here, was based on gross economic impact.

151. Delmore presented economic evidence that took a gross-benefit approach, claiming substantial regional economic benefits in terms of GDP, job creation, and ongoing household expenditure. The Council's economist raised significant concerns about this approach, noting that these figures are presented without any assessment of costs, opportunity costs, or the redirection of infrastructure investment from other growth areas. The panel engaged its own economic expert, Dr Denne, who agreed with the Council's net benefit approach:

> Dr Denne also notes that Mr Thompson has conducted a form of Economic Impact Analysis to estimate GDP effects rather than a cost benefit analysis. He references Treasury's comparison of Economic Impact Analysis and cost benefit analysis, that concludes while Economic Impact Analysis can provide useful contextual information for decision-makers, it is not suitable as a tool for measuring the balance of costs and benefits of a decision to society. By contrast a cost benefit analysis would also identify the opportunity costs of land and labour, as well as infrastructure costs and environmental effects.

152. The panel concluded that a net approach was appropriate and the gross benefits approach adopted by the applicant was not sufficiently robust:[125]

> Based on the reports by the four economists, the Panel agrees that the methodology adopted by Mr Thompson is not sufficiently robust to analyse and consequently value benefits. The Panel finds that in the absence of a detailed cost-benefit analysis, it would be imprudent to suggest that economic benefits of the proposed development are of such significance that it needs to be developed in advance of the timing and availability of appropriate supporting infrastructure.

[124] Paragraph 478
[125] Paragraph 500

> As such the Panel agrees with Messrs Stewart and Meade and Dr Denne that the benefits have been overstated.

153. The same applies here. The economic report adopts a gross benefits approach, which is insufficient to identify the overall benefits of the application. A cost-benefit analysis is required to accurately identify the economic benefits.

154. Even if the gross approach adopted by the Application was appropriate, it does not demonstrate regionally significant economic benefits. While $134m direct and $189m induced are not insignificant, they are not regionally significant in the context of a region with an annual GDP of $47B.[126]

Generation of renewable energy

155. Forest & Bird acknowledges the benefits provided by renewable electricity generation (REG) generally. However, it is important that REG projects are in the right locations, both to minimise adverse environmental effects and to minimise losses in the electricity transmission process.

156. While acknowledging the benefits of renewable electricity generation, Forest & Bird takes issue with some aspects of the information put forward by the Applicant.

157. The discussion of "abated emissions" in the economic assessment does not assist in establishing significant regional or national benefits under the FTAA. While the economic assessment notes that solar marginally outperforms wind in terms of emissions abatement, and performs significantly better than coal, nuclear or additional hydro,[127] this comparison is largely artificial. The principal benefit of renewable generation is its contribution to climate change mitigation, and in the New Zealand context the only realistic alternative to new solar generation is new wind generation.

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[126] Applicants Economic Assessment, page 9
[127] Section 3.5.2

158. There is no credible prospect of new coal or nuclear generation given the stigma associated with both. Additional hydro generation is prohibitively expensive and constrained to few locations. As such, the relevant comparison is between solar and wind, and the marginal emissions advantage claimed for solar does not, on its own, demonstrate that this project delivers significant regional or national benefits of the scale required by the FTAA.

159. The presentation given by Daniel Cunningham at the expert panel overview conference emphasised that solar farms do not need to be at such a large scale as the proposed Haldon project,[128] and solar should predominantly be sized for the towns and communities that are being supplied.[129]

160. The Applicant has suggested that locating solar farms close to hydro-lakes provides the "perfect natural hedge" against the risk of a dry year (as "virtual rain").[130] However, Forest & Bird questions the rationale behind this suggestion. The location of large hydro-schemes in the Mackenzie Basin, far from the major electricity markets they supply, is a disadvantage in terms of electricity transmission losses. Locating solar generation closer to the electricity markets being supplied would therefore appear to provide a better (more efficient) "hedge" against the risk of a dry year.

161. The Panel needs to understand the overall capacity for new solar projects in the district, both in market terms and in terms of the capacity of the transmission network. Where this means that there is effectively a cap on regional and national benefits, and where one project is likely to have greater adverse environmental effects than another, the Panel should be able to consider whether it is likely that

[128] Expert panel overview conference, 10 December 2025. Mr Cunningham also talked about the substation requirements for connecting to the 220 kV transmission line that traverses the site, and corresponding economies of scale (you need to build things to "a slightly larger scale"). However, there is no detailed information on this subject in the substantive application.
[129] Expert panel overview conference, 10 December 2025
[130] Expert panel overview conference, 10 December 2025, presentation by Daniel Cunningham.

greater benefit would accrue from declining or limiting one application to enable another to proceed (either as applied for, or in a limited way).

162. Forest & Bird understands the limitations on the Panel in this context, given that the Panel cannot consider all the referred solar farm applications together. However, the appointment of similarly constituted panels for Haldon Solar and The Point, and the timing of these two processes, means that there is potential for the Panel to evaluate and compare at least these two projects and weigh their likely adverse effects in the context of overarching constraints on the potential benefits that can be achieved.

Section 85(3) Assessment

163. Section 85(3) of the FTAA requires the Panel 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.

164. The evidence demonstrates that the adverse environmental effects are substantial. The project would cause major and largely irreversible loss of nationally significant dryland ecosystems, disrupt ecological connectivity across the Tekapo–Haldon outwash sequence, and pose significant risks to Threatened and At Risk avifauna, including the nationally critical kakī. These effects have not been adequately identified, assessed, or addressed in the application, and the ecological evidence relied upon by the Applicant is materially deficient.

165. By contrast, the benefits claimed for the proposal are uncertain, unsubstantiated, and in several respects overstated. The Applicant asserts that the project will deliver regionally and nationally significant benefits, but this assertion is unsupported by the economic assessment relied upon. The assessment does not conclude that the benefits are regionally or nationally significant, nor does it

provide any framework for determining significance. Instead, it adopts a gross-impact approach that inflates the apparent benefits by omitting costs, opportunity costs, and displacement effects.

166. As the Delmore Panel recently confirmed, a net assessment is required to determine whether benefits are significant at the regional or national scale, and a gross approach is insufficiently robust. Even on its own terms, the Applicant's figures do not demonstrate regionally significant economic benefits when viewed against the scale of the Canterbury regional economy.

167. The claimed benefits from renewable electricity generation are also overstated. The discussion of "abated emissions" relies on comparisons with coal, nuclear and new hydro generation that are not realistic alternatives in the New Zealand context. The only credible comparator is wind generation, and the marginal emissions advantage claimed for solar does not establish regional or national significance in terms of renewable energy generation.

168. When weighed under s 85(3), the significant and irreversible ecological impacts, together with the deficiencies in the Applicant's information clearly outweigh the speculative and limited benefits advanced for the project. Forest & Bird therefore considers that the statutory threshold for declining approval under s 85(3) is met. Consent should be declined.

CONDITIONS

169. 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 Appendix 2 of the substantive application. Overall, Forest & Bird considers that the conditions currently proposed by the Applicant are inadequate in terms of ensuring the appropriate management of adverse impacts.

170. If the Panel decides to approve the application, strict and enforceable conditions should ensure effective monitoring of effects (especially on indigenous vegetation and avifauna). Such monitoring can then feed into an adaptive management approach, enabling site modifications or other management responses if monitoring demonstrates that adverse effects are greater than expected.

171. The likely adverse impacts of the Haldon Solar project are significant enough to support conditions requiring offsetting and compensation. Such conditions could include, for example, the establishment of protected areas outside the footprint of the site, including weed and pest control.

172. The proposed condition requiring rabbit fencing and pest control only applies within the site (i.e. the actual footprint of the solar installation),[131] which means that setbacks will be left unfenced and without pest control. For the reasons provided by Mr Head, this is likely to result in suppression of indigenous vegetation by exotic species better adapted to shaded conditions. Rabbit fencing and pest control would provide more effective protection of indigenous vegetation and biodiversity values if it is applied outside areas that would be shaded by solar panels (for example within setbacks, or in other locations).

173. The proposed Earthworks conditions[132] do not include any limitations on location, volume or area of earthworks. They also do not address the need to avoid, remedy or mitigate adverse effects of earthworks on ecological values.

174. Forest & Bird considers that deemed certification of management plans (e.g. as proposed in conditions 9 and 13 – Construction Management Plan, and condition 32 – Plant and Avifauna Monitoring Plans) is not appropriate. The Environment Court has found that deemed certification is not consistent with sound environmental management:[133]

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[131] MDC conditions – Landscaping and Ecology – conditions 28 & 29

[132] MDC conditions – Earthworks – conditions 40-42

[133] For example, *Re New Zealand Transport Agency – Waka Kotahi* [2024] NZEnvC 133

[126] We do not agree with the general proposition and proposed approach advanced by NZTA. We see no reason to depart from our findings in *Meridian Energy Ltd v Wellington City Council*:[45]

> It is essential that there is no uncertainty about the approved proposal and what the consent conditions require, including the details to be approved as part of the certification process in the future. The conditions referred to the process for approval of management plans which were intended to provide environmental protections. Meridian sought that if it did not hear back from the Council as to approval of a management plan within a specified time period then the management plan was deemed to be approved. This approach is not sound environmental management (or we suspect good project management), and we do not accept Meridian's approach.

[127] The principle is the same for the approach advanced by NZTA for management plans and their amendment. It is not the risk to NZTA that is of concern, it is the risk to the environment. Given the risk to the environment we find it better to require the independent check of the outline plan and related documents and the certification process before work commences. We have a real concern about the persistence of NZTA that the Environment Court should authorise NZTA to proceed without that regulatory check.

175. The same applies here. The deemed certification sought in the proposed conditions should be deleted from the conditions

176. The Applicant has proposed conditions to develop several management and monitoring plans. Preliminary comments on these conditions are set out below.

Construction Management Plan

177. The proposed Construction Management Plan (CMP) must include identification of activities with potential effects on the environment, and management procedures (including triggers) "to deal with any potential effects".[134] However, no

[134] MDC conditions, Construction Management Plan (CMP) cl 9(c) and (d).

performance standards, thresholds or guidance for effects management are included, therefore the Panel cannot have confidence that adverse effects will be appropriately managed under the CMP.

178. The absence of standards in the conditions renders the certification conditions unlawful. Certification is appropriate where the standards are set out in the condition. However, where the certifier is certifying what appropriate standards are, the certifier is performing the role of the Panel in a way that is unlawful.

Plant and Avifauna Monitoring Plans

179. Due to the lack of information in the application, and the uncertainty as to the effects of the proposed activity on an area of significant indigenous vegetation, if approval is to be granted then both the proposed Plant Monitoring Plan (PMP)[135] and the Avifauna Monitoring Plan[136] would need to provide for effective adaptive management.[137] This means that, if approval is to be granted:[138]

(a) the identification and location of representative plant communities and the identification of bird species using the site must be completed before commencement of any other works on site to provide the necessary baseline information for monitoring and reporting and setting triggers and limits (this provision of baseline information should have been completed by the applicant prior to the substantive FTAA application being made).

(b) the activity must be allowed to commence on a small scale, or for a short period, or in stages, to allow its effects to be monitored.

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[135] MDC conditions – Landscaping and Ecology – condition 30

[136] MDC conditions – Landscaping and Ecology – condition 31

[137] As noted above, Policy F of the amended NPS-REG now requires decision-makers to "have particular regard to the use of adaptive management measures".

[138] The requirements for adaptive management have been explained by the Supreme Court in ⋯ The panel may wish to note that the Natural Environment Bill 2025 (234–1) cl 167 currently includes detailed requirements for permit conditions that require or form an adaptive management approach, which are broadly consistent with Supreme Court authority. The requirements at ⋯ above largely reproduce the requirements as set out in cl 167 of the Bill.

(c) there must be ongoing monitoring and reporting which is effective in terms of identifying adverse impacts. This is especially important in relation to the risk of bird strike. Dr McClellan has identified that the use of trained dogs would be best practice for finding bird carcasses.

(d) approval conditions may require the activity to step back to a previous stage or cease temporarily where triggers are met, to allow for management practices or monitoring requirements to be adapted accordingly

(e) approval conditions may allow for an activity to be discontinued permanently (in circumstances where the effects are found to be unanticipated at the time the approval was granted)

180. For an adaptive management approach to be appropriate, there must be sufficient monitoring of the receiving environment to enable appropriate indicators and compliance limits to be set. Conditions must provide for effective monitoring of adverse effects using appropriate indicators, and the indicators must be set to prompt remedial action before adverse effects occur or reach unacceptable levels. The Panel should be satisfied that any effects that might arise can be remedied before they become irreversible.

Decommissioning

181. The proposed conditions for decommissioning of the site are extremely limited.[139] All that is proposed is for a Decommissioning Plan to be prepared no later than 12 months prior to decommissioning, with the objective that the land is left "in a condition that is safe and stable". The proposed conditions would allow the applicant to leave infrastructure on site, so long as a reason for doing so is provided. They would not require the Applicant to take any action that may be required to address long-term soil changes and potential contamination. The proposed conditions are silent about managing adverse effects of

[139] MDC conditions – Decommissioning – conditions 52-53

decommissioning on any remaining ecological values or natural character, or on ecological values that may have developed during the period of operation.

ASSESSMENT UNDER S 85(3)

182. Section 85(3) of the FTAA provides that a panel may decline an approval only where the adverse effects of the proposed activity outweigh its regional or national benefits. This is a structured balancing exercise that evaluates the scale and significance of environmental impacts and the extent of any regional or national benefits claimed for the project.

183. The evidence shows that the adverse effects are significant. The project would result in major and largely irreversible loss of nationally significant dryland ecosystems, fragmentation of the Tekapo–Haldon outwash sequence, and significant risks to threatened and at-risk avifauna, including kakī. These effects have not been adequately identified or addressed in the application, and the ecological assessments relied on by the Applicant are materially deficient.

184. By contrast, the claimed regional or national benefits are uncertain, unquantified, and in several respects overstated. The Applicant acknowledges that the Mackenzie Basin grid can support only a limited number of large-scale generators, meaning that the economic and electricity-market benefits of this project are contingent, potentially marginal, and may displace other proposals.

185. When weighed under s 85(3), the significant and irreversible ecological impacts—combined with the deficiencies in the Applicant's information and the precautionary approach required where uncertainty is high—outweigh the speculative and limited benefits advanced for the project. On this basis, Forest & Bird considers that the statutory threshold for declining approval under s 85(3) is met. Consent should be declined.

CONCLUSIONS

186. The test as to whether consent should be granted or decline is ultimately one of proportionality between regional and national benefits and negative impacts.

187. The Haldon site forms part of one of the most intact and nationally significant outwash ecosystems remaining in Aotearoa, providing critical habitat for Threatened and At-Risk plant and bird species, including kakī. These values are described in the independent evidence of Mr Head and Dr McClellan and have been recognised in multiple Environment Court decisions concerning the Mackenzie Basin.

188. The assessments provided by the Applicant are deficient. The ecological assessments fail to identify key ecological values, rely on incomplete or inappropriate survey methods, and do not acknowledge the significance of the indigenous biodiversity present. As a result, the application does not provide a reliable basis for understanding the scale of adverse effects, nor does it propose credible measures to avoid, remedy, mitigate, offset, or compensate for those effects.

189. The failure to consider offsetting and compensation measures means that the application does not manage environmental effects as directed by the RMA and in line with the relevant RMA policy statements and plans (in particular, the NPS-REG and MDP Policy REG-P6).[140]

190. The Panel should be sceptical about the extent of the economic benefits that have been asserted by the Applicant, which have been calculated on a gross-benefits rather than a net-benefits basis. The Applicant's assertion that the Haldon Solar project would have significant regional and national benefits is not supported by the Applicant's own technical evidence included in the substantive application.

[140] Cf. Application at [11] p 155

191. When making its assessment, the Panel should also consider the limitations on regional and national benefits that can be provided by new solar installations in the Mackenzie Basin, and whether the Haldon Project would represent an appropriate use of this limited resource. In this context, and as part of its proportionality assessment, the Panel can also consider whether other proposed projects (especially The Point) would provide greater benefits and fewer adverse impacts.

192. The Applicant has suggested that it sees the Haldon Solar project as a "conservation effort".[141] Unfortunately, however, the Applicant has not provided reliable information and advice about the conservation values that are present at the Haldon site, and the adverse effects that the project is likely to have.

193. The failure of the substantive application to recognise the significant indigenous biodiversity values of the Haldon site, and the consequential failure to formulate an appropriate management response, means that the Panel should adopt a precautionary approach where other expert evidence identifies the potential for significant adverse effects.

194. The high ecological values of the Haldon Solar site (especially for terrestrial vegetation and avifauna) mean that the likely adverse impacts of the Haldon project should be avoided by declining the application. The following adverse impacts (addressed in detail above and in the evidence of Mr Head and Dr McClellan) are sufficiently significant to be out of proportion to the projects regional or national benefits, even after taking into account potential conditions:

    a. effects on Threatened and At Risk plant species that cannot be avoided, remedied, offset or compensated for; and

    b. effects on Threatened and At Risk bird species that cannot be avoided, remedied, offset or compensated for.

[141] Expert panel overview conference, 10 December 2025, presentation by Daniel Cunningham.

195. If, the Panel is minded to grant consent, it should only do so at a substantially reduced scale, with materially larger setbacks and a footprint that avoids the most sensitive ecological areas. The conditions offered by the Applicant would also require complete rewriting. As currently drafted, the proposed conditions are not fit for purpose and do not provide a credible or enforceable framework for managing the significant ecological risks associated with the proposal.

196. Conditions should also be included that would enable an effective adaptive management approach. To achieve this, the Panel should try to be specific about what sort of effects might trigger a need for the Applicant to change, or cease, its operations (for example, mortality of black stilt | kakī and other Threatened and At-Risk avifauna caused by bird strike).