

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ**

Decision [2025] NZEnvC 23

IN THE MATTER

of the Resource Management Act 1991

AND

appeals under clause 14 of the First
Schedule to the Act

BETWEEN

ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED

(ENV-2023-CHC-111)

TRANSPower NEW ZEALAND
LIMITED

(ENV-2023-CHC-109)

Appellants

AND

SELWYN DISTRICT COUNCIL

Respondent

Environment Judge P A Steven – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 23 January 2025

CONSENT ORDER



TOPIC 13: INDIGENOUS BIODIVERSITY – APPEALS AGAINST THE PROPOSED
SELWYN DISTRICT PLAN

A: Under s279(1)(b) RMA,¹ the Environment Court, by consent, orders that:

- (1) the appeals are allowed to the extent that Selwyn District Council is to amend the proposed Selwyn District Plan as set out in Appendix 1, otherwise attached to and forming part of this consent order;
- (2) the appeal by Royal Forest and Bird Protection Society of New Zealand Incorporated is resolved in its entirety; and
- (3) the appeal by Transpower New Zealand Limited is resolved in part, its appeal otherwise remains extant.

B: Under s285 RMA, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns appeals by Royal Forest and Bird Protection Society of New Zealand Incorporated ('Forest & Bird') and Transpower New Zealand Limited ('Transpower'), (together the 'appellants') against decisions of the Selwyn District Council to accept the Hearing Panel's recommendations in respect of the proposed Selwyn District Plan ('PDP').

[2] Forest & Bird's appeal was assigned to Topic 13: Indigenous Biodiversity (Topic 13) in its entirety.

[3] Transpower's appeal points that were specific to the Ecosystems and Indigenous Biodiversity, Natural Character and Natural Features and Landscapes chapters of the proposed plan were also assigned to Topic 13: Indigenous Biodiversity.² The Topic 13: Indigenous Biodiversity matters were discussed and

¹ Resource Management 1991.

² Transpower's appeal points subject to Topic 13 mediation are ECO-P3; ECO-P4; ECO-P6; ECO-RC; ECO-RD; and NATC-P1.

resolved in a court-facilitated mediation on 23 and 24 September 2024.

[4] I have read and considered the consent memorandum of the parties dated 19 November 2024 which details the agreement reached between the parties to resolve those aspects of the appeals. The agreement reached involves amendments to:

- (a) the National Direction Instruments and the ECO-Overview section of the PDP to acknowledge the National Policy Statement for Indigenous Biodiversity ('NPS-IB');
- (b) ECO-P4 to clarify that the direction within the policy applies only to Significant Natural Areas ('SNAs');
- (c) ECO-P6 to provide an exception for the National Grid;
- (d) ECO-P8 to clarify any potential confusion in relation to the concept of offsetting;
- (e) ECO-P13 to recognise limits to compensation and require consideration of uncertainty and risk of failure;
- (f) ECO-SCHED5 to clarify the difference in approach for activities within and outside SNAs; and
- (g) NATC-P1 to clarify that the exceptions for EI-92 and TRAN-P13 apply in respect of the decisions version of PDP, and to improve the wording of clause 5 of the decisions version.

[5] The parties agreed that no changes should be made to ECO-P3, ECO-RC, ECO-RD and NFL-P3. The parties have also agreed that ECO-P5 should not be reinstated.

[6] I have also read and considered the affidavit of Elizabeth White affirmed 19 November 2024. The affidavit explains the scope to make the changes sought and the rational for the agreed changes in terms of s32AA RMA. Ms White has satisfied me that the agreed amendments will result in better alignment with the NPS-IB and are the most appropriate way to achieve the relevant objectives in the

PDP. I also find that the agreed amendments will provide greater clarity to plan users and will assist in the efficient administration of the PDP.

Other relevant matters

[7] The following parties joined the appeals under s274 RMA:

- (a) Canterbury Regional Council;
- (b) Dairy Holdings Limited;
- (c) Director-General of Conservation;
- (d) Environmental Defence Society Incorporated;
- (e) Federated Farmers of New Zealand Incorporated;
- (f) Horticulture New Zealand ('HortNZ'); and
- (g) Orion New Zealand.

[8] All of the s274 parties to the appeals attended the Topic 13 mediation, with the exception of HortNZ who advised the parties shortly prior to mediation that it wished to withdraw its s274 notice against Forest & Bird's relief on ECO-P4 and would abide by the outcomes reached at mediation.

[9] All parties have signed the consent memorandum setting out the relief sought. HortNZ has not formally withdrawn its s274 notice and therefore is a signatory to the consent memorandum. The parties advise that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements of the RMA including, in particular, Part 2.

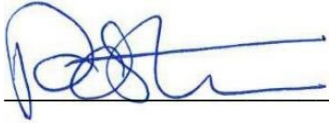
Outcome

[10] The court is making this order under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297.

[11] The court understands for present purposes that all parties to the

proceedings have executed the memorandum requesting this order. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.

[12] There is no order as to costs.

A handwritten signature in blue ink, appearing to read 'P A Steven', written over a horizontal line.

P A Steven
Environment Judge



Appendix 1

The additional text is shown in **bold underlined text** and deletions are shown in ~~strikethrough~~.

NDI1 – National Policy Statements	
<u>National Policy Statement for Indigenous Biodiversity 2023</u>	<u>The National Policy Statement for Indigenous Biodiversity 2023 has not yet been reviewed as of [date of consent order]</u>

ECO-Overview

...

- provide nature based solutions to climate change and resilience to its effects.

The National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB) also contains direction relating to indigenous biodiversity.

The provisions in the ECO Chapter have not yet been reviewed in response to the NPS-IB. The Council will review the District Plan in accordance with the timeframes set out in the NPS-IB.

ECO-Policies	
ECO-P4	<p><u>Within Significant Natural Areas,</u> avoid the clearance of indigenous vegetation, and any earthworks or plantation forestry within Significant Natural Areas where the activity would adversely affect the ecological integrity of the Significant Natural Area, except for important infrastructure managed under EI-P2 and land transport infrastructure managed under TRAN-P13 or where necessary for the clearance of material infected by unwanted organisms.</p>

ECO-Policies	
ECO-P6	<p>Protect Threatened or At Risk Species and their habitats by:</p> <ol style="list-style-type: none"> 1. <u>for National Grid Infrastructure, seeking to avoid significant adverse effects and avoiding, remedying or mitigating other adverse effects of activities, on those species and their habitats, including by considering:</u> <ol style="list-style-type: none"> a. <u>the operational or functional requirements for the location proposed;</u> b. <u>whether the site, route or method selection minimises adverse effects on those species and their habitats; and</u> c. <u>the adequacy of the design measures and management methods to mitigate adverse effects on those species and their habitats;</u> 2. <u>for all activities other than National Grid Infrastructure,</u> avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects of activities on those species and their habitats.

ECO-Policies	
ECO-P8	<p>Consider biodiversity offsets that are offered or agreed by applicants as part of resource consent applications or notices of requirement for a designation where:</p> <ol style="list-style-type: none"> 1. residual adverse effects cannot otherwise be avoided, remedied or mitigated, and 2. the residual adverse effects on biodiversity are capable of being offset and will be fully compensated to ensure at least no net loss of indigenous biodiversity, and 3. the biodiversity offset is consistent with the framework detailed in ECO-SCHED5 – Framework for Biodiversity Offsetting.

ECO-Policies	
ECO-P13	<p>Only consider biodiversity compensation where:</p> <ol style="list-style-type: none"> 1. the compensation is proposed to address residual adverse effects after taking steps to first: <ol style="list-style-type: none"> a. avoid adverse effects; then b. minimise adverse effects as far as practicable; by <ol style="list-style-type: none"> i mitigating effects and then remedying effects that cannot be mitigated; and ii ensuring that any on-site rehabilitation or restoration measures will occur as soon as practicable; then c. offset adverse effects in accordance with ECO-P8; 2. the environmental compensation is as close as possible to meeting the criteria as set out in ECO-SCHED5 – Framework for Biodiversity Offsetting; 3. <u>the indigenous biodiversity values are able to be compensated, recognising the limits to compensation, including where the biodiversity affected is irreplaceable or vulnerable (including effects that must be avoided in accordance with Policy 11(a) of the New Zealand Coastal Policy Statement 2010 and other relevant National Policy Statements and National Environmental Standards);</u> 4. <u>the design and implementation of the compensation includes appropriate provisions to address sources of uncertainty and risk of failure; and</u> 3. <u>5.</u> the positive effects of biodiversity compensation are proportional to the adverse effects.

ECO-SCHED5 – Framework for Biodiversity Offsetting

The following sets out a framework for the use of biodiversity offsets. Any biodiversity offset is to be consistent with this framework. It should be read in conjunction with The New Zealand Government Guidance on Good Practice Biodiversity Offsetting in New Zealand August 2014 (or any successor document).

Framework:

1. Restoration, enhancement, and protection actions will only be considered a biodiversity offset where they are used to offset the anticipated measurable residual effects of activities after appropriate avoidance, remediation, and mitigation actions, in that order, have occurred (i.e. not in situations where they are used to mitigate the adverse effects of activities).
2. A proposed biodiversity offset will contain an explicit loss and gain calculation incorporating biodiversity type, amount and condition, and will demonstrate the manner in which no net loss and preferably a net gain will be achieved.
3. A biodiversity offset will recognise the limits to offsets due to irreplaceable and vulnerable biodiversity (including effects that must be avoided in accordance with Policy 11(a) of the New Zealand Coastal Policy Statement 2010 and other relevant National Policy Statements and National Environmental Standards), and its design and implementation will include provisions for addressing sources of uncertainty and risk of failure of the delivery of no net loss.
4. Restoration, enhancement, and protection actions undertaken as a biodiversity offset are demonstrably additional to what otherwise would occur, including that they are additional to any remediation or mitigation undertaken in relation to the adverse effects of the activity.
5. In relation to a [significant natural area](#) ~~listed in ECO-SCHED4 – Significant Natural Areas~~, offset actions will be undertaken within the [significant natural area](#) as a first priority, or where this is not practicable, as close as possible to the location of development or impact within the same ecological district as a second priority.

105A. Where not in relation to a significant natural area, t~~The~~ biodiversity offset will be implemented as close as possible to the location of impact or development where it will achieve the best ecological outcomes, preferably within the same ecological district.

6. Offset actions will prioritise protection and enhancement of existing areas of biodiversity where those actions produce additional biodiversity gains commensurate with the biodiversity values lost.
7. The values to be lost through the activity to which the offset applies are counterbalanced by the proposed offsetting activity which is at least commensurate with the residual adverse effects on indigenous biodiversity, so that the overall result is no net loss.
8. The offset will be applied so that the ecological values being achieved through the offset are the same or similar to those being lost including over time and spatial contexts, and the values lost are not irreplaceable or highly vulnerable.

9. There is a strong likelihood that the positive ecological outcomes of the offset last at least as long as the impact of the activity, and preferably in perpetuity. Adaptive management responses, including monitoring and evaluation will should be incorporated into the design of the biodiversity offset, to ensure that the positive ecological outcomes are maintained over time.
10. The biodiversity offset will be designed in a landscape context – i.e. with an understanding of both the donor and recipient sites' roles, or potential roles, in the ecological context of the area.
- 10A. The biodiversity offset will be implemented as close as possible to the location of impact or development where it will achieve the best ecological outcomes, preferably within the same ecological district.**
- 10B. The delay between the loss of biodiversity through development and the gain or maturation of ecological outcomes is minimised.
11. Any application that intends to utilise a biodiversity offset will include a biodiversity offset management plan that:
 - a. Sets out quantitative (where possible) baseline information on indigenous biodiversity that is potentially impacted by the proposal at both the donor and recipient sites;
 - b. Demonstrates how the requirements of the framework set out in this appendix will be addressed; and
 - c. Identifies the monitoring approach that will be used to demonstrate how the matters set out in this framework have been addressed, over an appropriate timeframe.

NATC-Policies	
NATC-P1	<p>Recognise the natural character qualities of surface water bodies and their margins described in NATC-SCHED4 – Natural Character Qualities of Surface Waterbodies and preserve and protect those qualities, and Ngāi Tahu cultural values, from inappropriate subdivision, use and development by:</p> <p>4. 1. enabling opportunities to restore and rehabilitate the natural character of surface water bodies and their margins and supporting initiatives for the regeneration of indigenous biodiversity values and cultural values; <u>and</u></p> <p>5. 2. <u>prioritising the maintenance or enhancement of the those qualities and values or environmental mitigation where development, subdivision or changes in use occur, at a scale which is proportional to the scale of the development and any adverse effects created of the subdivision, use or development; and</u></p> <p>3. <u>except for important infrastructure managed under EI-P2 and land transport infrastructure managed under TRAN-P13:</u></p> <p>4. a. ensuring that subdivisions, earthworks, buildings, structures, vegetation planting and signs do not adversely affect taonga species, mahinga kai or Ngāi Tahu customary uses and other cultural values;</p> <p>2. b. ensuring that the location, intensity, scale and form of subdivision, earthworks, buildings, structures, vegetation planting and signs on surface water bodies and/or their margins recognises and preserves the natural character of the surface water body;</p> <p>3. c. minimising, to the extent practicable, indigenous vegetation clearance and modification (including earthworks, disturbance and structures) near surface water bodies and their margins.</p> <p>6. <u>acknowledging that important infrastructure can have a functional need or operational need to locate in the margins of surface water bodies, and if so, must:</u></p> <p>a. <u>demonstrate through site, route or method selection, the minimisation of effects on natural character values; and</u></p> <p>b. <u>integrate design measures and management methods to mitigate adverse effects on natural character values except for important infrastructure managed under EI-P2 and land transport infrastructure managed under TRAN-P13.</u></p>

