

# **Section 42A Hearing Report**

## **Proposed Otago Regional Policy Statement 2021**

### **Chapter 10:**

#### **ECO-Ecosystems and indigenous biodiversity**

**Melanie Hardiman**

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# 10 Ecosystems and indigenous biodiversity

## 10.1 Introduction

1. This section of the report assesses the requests for amendment through submissions on provisions proposed in the pORPS related to ecosystems and indigenous biodiversity. Biodiversity means the variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems. The Otago region contains a varied biological diversity, from albatrosses and yellow-eyed penguins on the Otago Peninsula to endangered skinks of Central Otago and kea of the Southern Alps, as well as internationally rare, braided rivers. The Otago region, like other areas in New Zealand, has experienced significant loss of indigenous biodiversity, including mahika kai and taoka species, and continues to be subject to significant pressure.
2. The RMA contains specific provisions relating to indigenous biodiversity and there are a number of national policy statements that contain direction relating to the management of indigenous biodiversity, such as the NZCPS and the NPSFM, the government is also proposing a new national policy statement with the purpose of identifying, protecting, managing and restoring indigenous biodiversity. Indigenous biodiversity is present in terrestrial, freshwater and marine environments. Section 62(1)(i)(iii) requires that the RPS sets out which local authority is responsible for specifying provisions that control the use of land to maintain indigenous biodiversity. Local authorities have duties under sections 30 and 31 of the RMA 1991 to have objectives, policies and methods to maintain indigenous biological biodiversity. This creates a need to be clear about the responsibilities for each local authority, as well as ensuring an integrated approach is taken across the policy statement.
3. The following provisions are contained in the ECO-Ecosystem and indigenous biodiversity chapter:
  - ECO-O1– Indigenous *biodiversity*
  - ECO-O2 – Restoring or enhancing
  - ECO-O3 – *Kaitiakitaka* and stewardship
  - ECO-P1 – *Kaitiakitaka*
  - ECO-P2 – Identifying *significant natural areas* and taoka
  - ECO-P3 – Protecting *significant natural areas* and taoka
  - ECO-P4 – Provision for new activities
  - ECO-P5 – Existing activities in *significant natural areas*
  - ECO-P6 – Maintaining indigenous *biodiversity*
  - ECO-P7 – Coastal indigenous *biodiversity*
  - ECO-P8 – Enhancement
  - ECO-P9 – *Wilding conifers*
  - ECO-P10 – Integrated management
  - ECO-M1 – Statement of responsibilities
  - ECO-M2 – Identification of *significant natural areas*

- ECO-M3 – Identification of taoka
  - ECO-M4 – *Regional plans*
  - ECO-M5 – *District plans*
  - ECO-M6 – Engagement
  - ECO-M7 – Monitoring
  - ECO-M8 – Other incentives and mechanisms
  - ECO-E1– Explanation
  - ECO-PR1 – Principal reasons
  - ECO-AER1
  - ECO-AER2
  - ECO-AER3
  - ECO-AER4
  - APP2 – Significance criteria for indigenous biodiversity
  - APP3 – Criteria for biodiversity offsetting
  - APP4 – Criteria for biodiversity compensation
  - APP5 – Species prone to *wilding conifer* spread
4. The provisions in this report are not structured in chronological order. They have been organised to help the reader understand the relationship between ECO-P3, ECO-P4, ECO-P5 and ECO-P6 which deal with the management of effects on indigenous biodiversity and are considered the wheelhouse of the ECO chapter. The submissions and analysis on these four provisions have been moved to the front end of the discussion on the ECO policies and follows on from the discussion on the ECO objectives. There is also a summary on the management framework of ECO-P3, ECO-P4, ECO-P5 and ECO-P6 under the general themes header, this summary precedes the write up on the summary of submissions and analysis of ECO-P3, ECO-P4, ECO-P5 and ECO-P6.
5. A number of submissions received on the ECO provisions are very technical and require expert advice from an ecologist. Expert advice was supplied by Wildlands and ecologists from Otago Regional Council. This advice was received in the form of a memo, report and email correspondence all of which has been attached to the Ecosystems and Indigenous Biodiversity report as appendices.

## 10.2 Author

6. My full name is Melanie Kate Hardiman. I hold the following qualifications, Bachelor of Urban Planning (Honours) from The University of Auckland. I am a graduate member of the New Zealand Planning Institute.
7. I am employed by Otago Regional Council in the role Policy Analyst which I have held for over one year. In that role, I have been responsible for writing submissions on TA resource consent applications where Otago Regional Council has been determined an affected party, plan administration and policy lead for Upper Lakes Rohe for the new Land and Water Regional Plan. With regard to the pORPS21 my role to date has involved assisting with clause 3 feedback on the ECO-Indigenous Biodiversity chapter and summarising decisions requested.

8. I am the author of the ECO-Indigenous Biodiversity Chapter of this Section 42A Report.
9. I confirm that I have read the Code of Conduct for expert witnesses as contained in the Environment Court Practice Note 2014. I have complied with the Code of Conduct when preparing my chapters of the s42A Report.

### 10.3 Definitions

10. There are a range of submissions relating to defined terms in this section, some of which are addressed in other parts of this report. In summary:

- Defined terms used throughout the pORPS21, including in this section, are addressed in report one of the s.42 report.
- Defined terms used only in the ECO chapter, but across two or more of the sections within the ECO chapter, are addressed in this section of this report.

#### 10.3.1 Biodiversity offsetting

##### 10.3.1.1 Submission

11. QLDC seeks amendments to ‘biodiversity offsetting’ to align with the draft NPSIB as follows<sup>1</sup>:

- “Means a measurable conservation outcome resulting from actions designed to compensate for residual, adverse biodiversity effects arising from activities after appropriate avoidance, remediation, and mitigation measures have been applied. The goal of a biodiversity offset is to achieve no – net – loss, and preferably a net – gain, of indigenous biodiversity values.”

##### 10.3.1.2 Analysis

12. I do not recommend accepting QLDC’s submission as APP3 qualifies what biodiversity offsetting is and the draft NPSIB holds no legal weight.

##### 10.3.1.3 Recommendation

13. I recommend no change.

#### 10.3.2 Ecological district

##### 10.3.2.1 Submission

14. QLDC seeks a definition for ‘ecological district’ is included as follows<sup>2</sup>:

- Means the ecological districts as shown in McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation.”

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<sup>1</sup> 00137.028 Queenstown Lakes District Council

<sup>2</sup> 00137.027 QLDC

10.3.2.2 Analysis

15. I do not recommend accepting QLDC’s submission to include a definition of ‘ecological district’ as I do not consider the definition provides ample clarity on what the term means. I do, however, consider the inclusion of a footnote directing readers to the document, Ecological Regions and Districts of New Zealand, would be beneficial in helping readers to understand the term.

10.3.2.3 Recommendation

16. I recommend no change to include a new definition but reference to a footnote to the following at each reference of Ecological District. The following footnote is recommended to be included: McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation<sup>3</sup>

10.3.3 Effects management hierarchy

10.3.3.1 Submission

17. DOC seeks amendments to the definition of ‘effects management hierarchy’ in ECO-P6 so it is consistent with the definition in clause 3.21 of the NPSFM<sup>4</sup>.

10.3.3.2 Analysis

18. The purpose of the effects management hierarchy set out in ECO-P6 is to manage the effects on indigenous biodiversity, while the effects management hierarchy referenced in the LF chapter manages the effects on freshwater and wetlands. It was intentional for the two chapters to have different effects management hierarchies as they are managing different domains. The biodiversity effects management hierarchy is more stringent than the effects managements hierarchy contained in the LF chapter; therefore, I do not recommend accepting DOC’s submission. I do, however, recommend specifying that the effects management hierarchy applies to indigenous biodiversity by creating a new definition for effects management hierarchy in relation to indigenous biodiversity as to avoid confusion between the two hierarchies. This approach is also supported in section 9.1.10.3 of the LW-FW chapter under the analysis on LF-FW-P9, and further in Chapter one of the s.42 (section 1.6.7) .

10.3.3.3 Recommendation

19. I recommend including the following definition for *effects management hierarchy (in relation to indigenous biodiversity)*:

<u>Effects management hierarchy (in relation to indigenous biodiversity)</u> <sup>5</sup>	<u>Means the effects management hierarchy set out in ECO-P6.</u>
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<sup>3</sup> 00138.027 QLDC

<sup>4</sup> 00137.009 DOC

<sup>5</sup> 00137.009 DOC

10.3.4 Enhancement

10.3.4.1 Submission

20. Wise Response seeks a definition for 'enhancement' is included as follows<sup>6</sup>:

- To facilitate species recruitment, co-existence and succession processes by stabilising ecological functioning through time (Ulrich, 2021).

10.3.4.2 Analysis

21. I do not recommend accepting the submission of Wise Response Society as enhancement is a general term that is used throughout the pORPS21 and as it relates to biodiversity, ECO-P8 qualifies its meaning.

10.3.4.3 Recommendation

22. I recommend no change.

10.3.5 Indigenous fauna

10.3.5.1 Submission

23. DOC seeks a definition for 'indigenous fauna' is included as follows<sup>7</sup>:

- means animals, including fish and invertebrates, that, in relation to a particular area, are native to the ecological district in which that area is located

10.3.5.2 Analysis

24. DOC seeks an amendment to include a definition for 'indigenous fauna'. I do not consider it is necessary to include a definition for indigenous fauna as this term is well understood in Resource Management. Furthermore, ecological advice is that they have never seen 'indigenous fauna' requiring a definition<sup>8</sup>. Therefore, I do not recommend accepting DOC's submission.

10.3.5.3 Recommendation

25. I recommend no change.

10.3.6 Indigenous flora

10.3.6.1 Submission

26. DOC seeks a definition for 'indigenous flora' is included as follows<sup>9</sup>:

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<sup>6</sup> 00509.021 Wise Response

<sup>7</sup> 00137.011 DOC

<sup>8</sup> Appendix 10a

<sup>9</sup> 00137.012 DOC

- Replace references to “indigenous flora” with “indigenous vegetation;” or Insert a new definition of “indigenous flora” as follows or words to like effect:  
 “has the same meaning as indigenous vegetation”

10.3.6.2 Analysis

27. DOC seek an amendment to include a definition for ‘indigenous flora’ that has the same meaning as ‘indigenous vegetation’. The two terms are not the same as indigenous vegetation is an assemblage of different plant species and indigenous flora refers to the plant species themselves<sup>10</sup>. Furthermore, s6c of the RMA refers to indigenous vegetation indicating that it is a well understood term in Resource Management. Therefore, I do not recommend accepting DOC’s submission.

10.3.6.3 Recommendation

28. I recommend no change.

10.3.7 Indigenous species

10.3.7.1 Submissions

29. Yellow-eyed Penguin Trust seeks to add a definition of ‘indigenous species’, but does not provide any reasoning (apart from the absence of their being a definition) or specific wording to implement the request<sup>11</sup>.

10.3.7.2 Analysis

30. Ecological advice recommends that a definition of ‘indigenous species’ could be provided as The Aotearoa Biodiversity Strategy defines ‘indigenous species’ as ‘indigenous species refers to species that occur naturally in Aotearoa New Zealand’. The ecological advice recommends ‘indigenous species’ could be defined to fit within the context of the pORPS by defining the term as follows ‘Indigenous species that occur naturally in Otago’<sup>12</sup>. Therefore, I recommend providing a definition of ‘indigenous species’.

10.3.7.3 Recommendation

31. I recommend including the following definition for *indigenous species*:

Indigenous species <sup>13</sup>	Means species that occur naturally in Otago.
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<sup>10</sup> Appendix 10a

<sup>11</sup> 00120.009 Yellow-eyed Penguin Trust

<sup>12</sup> Appendix 10c, section 5.1, para. 1

<sup>13</sup> 00120.009 Yellow-eyed Penguin Trust



### 10.3.8 Indigenous vegetation

#### 10.3.8.1 Submission

32. DOC seeks amendments to the definition ‘indigenous vegetation’ as follows<sup>14</sup>:

- means vascular and non – vascular plants that, in relation to a particular area, are native to the ecological district in which that area is located and freshwater and marine plants and seaweed.

33. QLDC seeks a replacement definition for ‘indigenous vegetation’ as follows<sup>15</sup>:

- Means vegetation that occurs naturally in New Zealand or arrived in New Zealand without human assistance including both vascular and non – vascular plants.

The submitter considers this new definition should be used as it has recently been through a publicly notified plan review process on QLDC’s Proposed District Plan.

#### 10.3.8.2 Analysis

34. I do not recommend accepting QLDC’s suggested amendments to indigenous vegetation because it can capture indigenous species that are not naturally found in an area, for example Pohutukawa in Dunedin<sup>16</sup>. Therefore, to prevent this from occurring the current definition states that the vegetation occurs naturally in the relevant ecological district. I do not recommend accepting DOC’s submission to include ‘and freshwater and marine plants and seaweed’ because the term ‘indigenous vegetation’ is referenced in the CE, LF and ECO chapter which therefore qualifies that it applies to both freshwater and marine plants.

#### 10.3.8.3 Recommendation

35. I recommend no change.

### 10.3.9 Naturally rare

#### 10.3.9.1 Submissions

36. DOC seeks to have the definition of ‘Naturally Rare’ amended as it reflects the definition within the NZCPS, but they state has been used in the pORPS across all domains and topics<sup>17</sup>. The submitter considers it is not clear that the definition will be effective for such wider use.

#### 10.3.9.2 Analysis

37. Naturally rare is used in CE-P5 and in APP4 – Criteria for Biodiversity Compensation – which excludes the coastal environment. I can appreciate the point raised by the submitter, but do not consider it necessary to amend the definition as it is appropriate to

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<sup>14</sup> 00137.013 DOC

<sup>15</sup> 00138.026 Queenstown Lakes District Council

<sup>16</sup> Appendix 10b

<sup>17</sup> 00137.014 DOC

be used within the Coastal Environment chapter. Rather, there needs to be a rationalisation of its use within APP4. I note that DOC has submitted on APP4 seeking a replacement with their requested framework. Within this submission point DOC retain the term naturally rare, but do not provide a definition for it.

38. There are a number of other terms which may be appropriate for use within APP4, and which apply to terrestrial biodiversity, these may include 'historically rare', 'originally rare', 'naturally rare' and 'naturally uncommon'. Advice from the ecologist identifies that these terms are synonymous and all refer to ecosystems that were naturally uncommon in New Zealand prior to the arrival of humans. However, more recently the term 'naturally uncommon' has been used and is probably the most suitable term to use in APP4<sup>18</sup>. Therefore, I do not recommend accepting DOC's submission, I do, however recommend amending 'naturally rare' to 'naturally uncommon' in APP4.

#### Recommendation

39. I recommend no change to the definition of naturally rare, but recommend a consequential change to APP4 to replace naturally rare with naturally uncommon.

#### 10.3.10 Net ecological gain

##### 10.3.10.1 Submission

40. Wise Response seeks a definition for 'Net ecological gain' is included as follow<sup>19</sup>:

- **Net ecological gain is a significant improvement in an ecological function that might be expressed in one or more of the following attributes: scale, type, resilience, diversity, redundancy, variability. The term is introduced in this policy statement primarily as an alternative approach to development with "minor adverse effect"**

##### 10.3.10.2 Analysis

41. I do not recommend accepting their submission to include a definition of 'net ecological gain' in the pORPS21 as this term is not used in the pORPS21 and it has not been recommended to be used in any of the provisions contained in the pORPS 21.

##### 10.3.10.3 Recommendation

42. I recommend no change.

#### 10.3.11 Significant natural area

##### 10.3.11.1 Submission

43. Meridian seeks amendments to the definition of 'Significant natural area' as follows<sup>20</sup>:

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<sup>18</sup> Appendix 10c

<sup>19</sup> 00509.018 Wise Response Society Inc

<sup>20</sup> 00306.009 Meridian

- means areas of significant indigenous vegetation and significant habitats of indigenous fauna that are identified by applying the criteria set in APP2 and are located outside the coastal environment.

44. Beef & Lamb and DINZ seek amendments to the definition of ‘Significant natural area’ to include the coastal environment so that it is consistent with the draft NPSIB when it is made operative<sup>21</sup>.

45. DOC submits s6(c) of the RMA applies to significant areas regardless of their location and so by excluding the coastal environment it could result in perverse outcomes for the coastal environment<sup>22</sup>. Kāi Tahu ki Otago considers there is a lack of clarity between the ECO and CE provisions; therefore, the submitter seeks SNAs to include the coastal environment<sup>23</sup>. Forest and Bird considers the identification of SNAs in the coastal environment is necessary to protect the coastal environment from plantation forestry under the NESPF<sup>24</sup>. Yellow-eyed Penguin Trust also seeks the definition of SNAs includes the coastal environment. The four submitters seek the definition is amended as follows:

- means areas of significant indigenous vegetation and significant habitats of indigenous fauna ~~that are located outside the coastal environment.~~

#### 10.3.11.2 Analysis

I agree with DOC that s6(c) of the RMA should apply to the coastal environment, therefore I recommend accepting the submission to include the coastal environment. I agree with Kāi Tahu that clarity between the ECO and CE chapter is needed, therefore I recommend accepting the submission to include the coastal environment. I agree with Forest and Bird that the NESPF should apply to SNAs located in the coastal environment, therefore, I recommend accepting the submission. I recommend accepting the submissions of Beef & Lamb, Deer Industry and Yellow-eyed Penguin Trust to include the coastal environment in the definition of SNA. Furthermore, it is consistent with APP2 to include the coastal environment in the definition for SNA as APP2 provides for the identification of SNAs within the coastal environment. The coastal environment was included in APP2 so that there was direction from a RPS level to the Coast Plan to manage significant natural areas within the coastal environment. Therefore, I do not recommend accepting Meridian’s submission. The amendment to the definition of SNA will require consequential amendments to ECO-P7, which are discussed in the ECO-P7 section.

#### 10.3.11.3 Recommendation

46. I recommend amending the definition for significant natural areas as follows:

Significant natural area	Means areas of significant indigenous vegetation and significant habitats of indigenous
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<sup>21</sup> 00237.007 Beef & Lamb and DINZ

<sup>22</sup> 00137.016 DOC

<sup>23</sup> 00226.035 Kāi Tahu ki Otago

<sup>24</sup> 00230.016 Forest and Bird

	fauna that are located outside the coastal environment. <sup>25</sup>
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## 10.4 General themes

47. This section addresses the general themes identified in submissions on the ECO-Indigenous Biodiversity chapter.

### 10.4.1 Draft National Policy Statement for Indigenous biodiversity

48. A number of submissions submitted that various provisions within the ECO chapter are inconsistent with the draft NPSIB. However, as set out in the s32 report of the pORPS 21<sup>26</sup>, the provisions of the ECO chapter were drafted to align more closely with the policy framework of the draft NPSIB, rather than reflect its direction in its entirety as it has no legal weight until it is gazetted:

*‘...and aligning the policy framework more closely with the draft NPSIB. It is acknowledged that this document is currently in draft form and has no legal weight, however it does indicate the Government’s most recent policy position on managing indigenous biodiversity and has been developed over many years with input from a range of stakeholders and experts.’*

### 10.4.2 National Policy Statement for Renewable Electricity Generation

49. Meridian considers the effects management hierarchy set out in ECO-P6 is inconsistent with Policy C2 of the NPSREG because the provision establishes a hierarchy between adopting offsetting and compensation<sup>27</sup>. Under Policy C2 of the NPSREG when considering any residual environmental effects of renewable electricity generation activities decision-makers shall have regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected. There is no inconsistency between ECO-P6 and Policy C2 because ECO-P6 does not prevent a decisionmaker from having: “regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected” as required under policy C2. The effects management hierarchy set out in ECO-P6 specifies the order in which these things are to be considered, and the nature of offsetting measures or environmental compensation required in the specific context of indigenous biodiversity. ECO-P6 gives effect to policy C2. The effects management hierarchy requires that offsetting and compensation is stepped through and has bottom lines and that during the stepping through process, an applicant must show that each step cannot be demonstrably achieved before offsetting and compensation can be accessed. Therefore, in my view, ECO-P6 is not inconsistent with policy C2 of the NPSREG.

<sup>25</sup> 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>26</sup> Proposed Otago Regional Policy Statement s32 report, paragraph 440.

<sup>27</sup> 00306.045 Meridian

#### 10.4.3 Management framework

50. There are a number of submissions that seek to ease the stringency of the management framework which manages the effects resulting from activities within SNAs, areas of taoka species and ecosystems, and areas of indigenous biodiversity. This management framework is made up of the following provisions: ECO-O1, ECO-O2, ECO-P3, ECO-P4, ECO-P5 and ECO-P6. ECO-O1 seeks to protect Otago's indigenous biodiversity by halting any further decline in indigenous biodiversity and ECO-O2 sets out restoration or enhancement as mechanisms to safeguard indigenous biodiversity. At the top of the policy management framework is ECO-P3, which sets out SNAs and areas of taoka species and ecosystems are to be protected by, firstly avoiding adverse effects in these areas, and then applying the effects management hierarchy set out in ECO-P6. The policy also requires the adoption of a precautionary approach where the identification of SNAs and taoka has not yet occurred. ECO-P4 maintains indigenous biodiversity by requiring the effects management hierarchy in ECO-P6 to be applied instead of ECO-P3 for a specific list of activities that can occur within SNAs or where they may adversely affect indigenous species and ecosystems that are taoka. While ECO-P5 allows for existing activities to continue within SNAs and where they may adversely affect indigenous species and ecosystems that are taoka, provided they meet the criteria set out in the policy. ECO-P6 sets out how indigenous biodiversity (excluding the coastal environment, SNAs and taoka species and ecosystems) is to be maintained through decisions on applications for resource consents and notices of requirement. The policy requires, in sequential steps, adverse effects to be avoided, remedied, mitigated, offset or compensated for if offsetting is not possible.
51. The Otago region has seen a decline in the state of indigenous biodiversity as discussed in a report by ecologists contained in the s32 report of the pORPS21<sup>28</sup>. This report highlights a number of pressures and issues facing indigenous biodiversity in the Otago region resulting from the loss and modification of habitats, thus reflecting the current effects management framework is failing to protect and maintain indigenous biodiversity in the Otago region. The goal of biodiversity offsetting is to achieve no net loss and preferably a net gain of biodiversity on the ground resulting from actions designed to compensate for significant residual adverse effects on biodiversity arising from activities after appropriate prevention and mitigation measures have been taken<sup>29</sup>. Therefore, the pORPS21 has adopted a more stringent approach for managing the effects on indigenous biodiversity in Otago to halt any further decline in the quality, quantity and diversity of indigenous biodiversity.

#### 10.4.4 Mining

52. Mineral extraction can cause a range of environmental effects including direct impacts on biological diversity through the clearance of vegetation and removal of soil in open cast mines, the diversion or modification of waterways, and the dumping of soil and rock

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<sup>28</sup> Lloyd, K. (2021). An overview of the state of indigenous biodiversity in the Otago Region (pp. 11-14). Wildlands

<sup>29</sup> *Guidance on Good Practice Biodiversity Offsetting in New Zealand*. (2014) (p. 3). Retrieved from <https://www.doc.govt.nz/globalassets/documents/our-work/biodiversity-offsets/the-guidance.pdf>

overburden. These activities result in the displacement or loss of indigenous biodiversity<sup>30</sup>.

53. The degree of environmental effects depends on a number of factors such as, the type of mineral being extracted, the mining process, the vulnerability of the surrounding area, and the timeframe over which the effects are considered. For example, gold deposits can be accompanied by arsenic, lead and mercury, and when mining for gold they can leach into nearby land and waterways<sup>31</sup>. Open cast mining is far more environmentally detrimental than underground mining as it can take tens to hundreds of years for vegetation to regenerate after being cleared away. In comparison, underground mining may displace a small number of species but will not affect their long-term survival or breeding success<sup>32</sup>. Environmental impacts will also depend on a mine's location and climate. For example, high rainfall increases the chances of contaminants being discharged into waterbodies. Lastly, the timescale of effects needs to be considered as some environmental impacts may be short term, while others may be permanent<sup>33</sup>.

#### 10.4.4.1 Oceana Gold's submission

54. Oceana Gold considers the provisions relating to the management of effects on indigenous biodiversity and taoka should be deleted or amended to provide for mineral extraction due to the functional and operational needs of mining activities. The submitter is concerned when ECO-P2 is combined with the criteria in APP2 it will result in a large portion of the Otago region, and areas within the Macreas Ecological District, being identified as a SNA<sup>34</sup>. It submits ECO-P3 will constrain significant development within the Otago region as the policy does not allow for a physical reduction of SNAs and that there is no ability for remediation, mitigation, offsetting or compensation in accordance with s104(1)(ab), the submitter also considers the provision is inconsistent with section 5 of the RMA and so the submitter seeks ECO-P3 is deleted<sup>35</sup>.
55. Oceana Gold is concerned ECO-P4 will be inconsistent with Policy 3.9(2) of the Draft NPSIB which recognises the need to retain a consenting pathway for mineral extraction and provides for these activities through allowing them to access the effects management hierarchy, but only where such proposals will affect medium SNAs. It

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<sup>30</sup> The Parliamentary Commissioner for the Environment. (2010). *Making difficult decisions: Mining the conservation estate*. The Parliamentary Commissioner for the Environment. Retrieved from <https://www.pce.parliament.nz/media/1301/making-difficult-decisions.pdf>

<sup>31</sup> The Parliamentary Commissioner for the Environment. (2010). *Making difficult decisions: Mining the conservation estate*. The Parliamentary Commissioner for the Environment. Retrieved from <https://www.pce.parliament.nz/media/1301/making-difficult-decisions.pdf>

<sup>32</sup> The Parliamentary Commissioner for the Environment. (2010). *Making difficult decisions: Mining the conservation estate*. The Parliamentary Commissioner for the Environment. Retrieved from <https://www.pce.parliament.nz/media/1301/making-difficult-decisions.pdf>

<sup>33</sup> The Parliamentary Commissioner for the Environment. (2010). *Making difficult decisions: Mining the conservation estate*. The Parliamentary Commissioner for the Environment. Retrieved from <https://www.pce.parliament.nz/media/1301/making-difficult-decisions.pdf>

<sup>34</sup> 00115.018 Oceana Gold (New Zealand) Ltd

<sup>35</sup> 00115.019 Oceana Gold (New Zealand) Ltd

submits the approach in ECO-P4 fails to recognise the locationally constrained nature of mining, which is a regionally important activity that cannot be re-directed to other areas, which the submitter considers is a departure from the pORPS 2019. Oceana Gold notes minerals are only located in certain areas and in some instances mineral resources may be co-located with areas of indigenous biodiversity classified as SNAs under the pORPS 21. Therefore, the pORPS needs to recognise in these instances there is a need to strike a balance and that avoidance of activities which may have adverse effects on SNAs, may not always be the optimal solution and might not always lead to the protection of significant biodiversity or the maintenance of indigenous biodiversity generally. The submitter also considers that without the ability to access the full effects management hierarchy it is very likely that mineral extraction activities will not be able to occur and that with regard to the Macreas operation, it will result in the loss of hundreds of jobs and the loss of economic benefit of investment in biodiversity. The submitter seeks the policy is deleted or amended to provide for the construction, operation, maintenance and rehabilitation of any mineral and aggregate extraction activity<sup>36</sup>.

56. Oceana Gold seeks ECO-P5 is deleted or amended to provide more certainty that all activities, new and existing, could be developed within an appropriately zoned area. It considers the provision is unclear as to what an 'existing activity' is and there is no certainty as to whether this policy would only apply to the general continuation of a legally authorised activity or whether it would be applicable to the development of new activities, for example a new mine in an appropriately zoned area<sup>37</sup>.
57. Oceana Gold has concerns that the effects management hierarchy set out in ECO-P6 is not available to mineral extraction and mining activities, where significant biodiversity is unavoidably impacted, due to the locational and functional constraints associated with mineral extraction and mining activities and submits it should have full access to the effects management hierarchy. The submitter has provided evidence, which they consider, demonstrates that Oceana Gold is able to use strategies to achieve positive environmental outcomes for biodiversity, while also significantly supporting economic growth and development with the Otago region. It is unclear what strategies contained in their submission the submitter is referring to. The submitter considers when ECO-P6 is considered alongside APP3 and APP4 the policy becomes unworkable in certain circumstances. Oceana Gold submits ECO-P6 and its references to APP3 and APP3 are inconsistent with national direction such as the Draft NPSIB and the NPSFW as to when and under what circumstances the full effects management hierarchy can be considered. And that ECO-P6 is inconsistent with s104(1)(ab) of the RMA . It seeks ECO-P6 is amended to enable other regional significant activities such as mineral extraction to have access to the effects management hierarchy<sup>38</sup>.
58. As discussed in section 10.4.3 of this chapter, the ECO provisions from ECO-P3 to ECO-P6 are a framework and need to be read together, not individually. This framework adopts a more stringent approach for managing the effects on indigenous biodiversity in Otago,

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<sup>36</sup> 00115.020 Oceana Gold (New Zealand) Ltd

<sup>37</sup> 00115.021 Oceana Gold (New Zealand) Ltd

<sup>38</sup> 00115.022 Oceana Gold (New Zealand) Ltd

the rationale for this stringency is discussed in section 10.4.3 of this chapter. The analysis on Oceana Gold's submissions is contained in the relevant provision sections of this chapter.

#### 10.4.5 Significant natural areas and the coastal environment

59. Several submitters have requested the definition of significant natural area includes the coastal environment<sup>39</sup>. DOC submits s6(c) of the RMA applies to significant areas regardless of their location and so by excluding the coastal environment it could result in perverse outcomes for the coastal environment. Kāi Tahu ki Otago considers there is a lack of clarity between the ECO and CE provisions; therefore, the submitter seeks SNAs to include the coastal environment. Forest and Bird considers the identification of SNAs in the coastal environment is necessary to protect the coastal environment from plantation forestry under the NESPF and Beef and Lamb seeks the definition of SNA to include the coastal environment so that it is consistent with the draft NPSIB.
60. I have recommended amending the definition of SNA to include the coastal environment because APP2 includes the identification of SNAs within the coastal environment. From this change consequential amendments to ECO-P3, ECO-P4 and ECO-P5 have arisen. These three provisions relate to protecting and maintaining indigenous biodiversity in SNAs through providing specific management frameworks. However, indigenous biodiversity in the coastal environment must be managed in accordance with the management framework contained in Policy 11 of the NZCPS. Therefore, ECO-P3, ECO-P4 and ECO-P5 are inconsistent with Policy 11 of the NZCPS because coastal indigenous biodiversity is now protected and maintained under the management frameworks set out ECO-P3, ECO-P4 and ECO-P5 because the new definition of SNA includes the coastal environment. To avoid this inconsistency with the NZCPS it has been recommended to make the following amendments to the chapeaus of the three provisions '...significant natural areas (outside the coastal environment)...' meaning coastal indigenous biodiversity contained in SNAs will be managed under CE—P5 and not ECO-P3, ECO-P4 and ECO-P5.
61. The amendment to the definition of significant natural area has resulted in ECO-P7 being redrafted to clarify the relationship between the ECO and CE chapters for managing coastal indigenous biodiversity. This suggested redrafting is discussed in the ECO-P7 section.

#### 10.4.6 General submissions

62. This section addresses the general submission made on the ECO-Indigenous Biodiversity chapter.

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<sup>39</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird  
Proposed Otago Regional Policy Statement 2021



#### 10.4.6.1 Submissions

63. Fish and Game and Ngāi Tahu ki Murihiku support the ECO chapter, subject to their relief sought elsewhere<sup>40</sup>. Moutere Station supports the ECO chapter but submits landowners need to be recognised for the work they carry out to manage biodiversity on their properties<sup>41</sup>.
64. DCC seeks amendments to the provisions as necessary, so they are in accordance with the NPSIB when it is gazetted<sup>42</sup>. Toitu Te Whenua submits the current development of the NPSIB may impact how SNAs are identified in the future<sup>43</sup>.
65. City Forests Limited seeks amendments to acknowledge the obligations of the Wilding Tree Risk Calculator<sup>44</sup>.
66. Beef + Lamb and DINZ seek the ECO chapter is deleted and redrafted when NPSIB has been made operative<sup>45</sup>.
67. Calder Stewart seeks the following amendments to the ECO method section:
- Clarify in the methods section that resource consents are not specifically required for land users in the agricultural and forestry sectors<sup>46</sup>.
  - Amend to include: 'The encouragement of Best Practice adaptive management approaches to Land users as a means of ensuring values are identified and protected, and to build connections between land users and any cultural and ecological values'<sup>47</sup>.
68. Kāi Tahu ki Otago and Minister for the Environment seek the following amendments to the ECO method section:
- Amend to better reflect the kaitiaki role of mana whenua in relation to indigenous biodiversity, particularly in the methods<sup>48</sup>.
  - Amend ECO-Methods to give ORC an explicit role of providing initial spatial data and expertise for identifying SNAs<sup>49</sup>.
69. Several submitters seek the following amendments to the ECO chapter<sup>50</sup>:
- Ensure polices do not unfairly penalise or restrict landowners from use and development of resources where they have added to indigenous biodiversity voluntarily in the past.

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<sup>40</sup> 00231.068 Otago Fish & Game Council and the Central South Island Fish & Game Council, 00223.097 Te Ao Marama

<sup>41</sup> 00026.017 Moutere Station

<sup>42</sup> 00139.129 Dunedin City Council

<sup>43</sup> 00101.045 Toitū Te Whenua, Land Information New Zealand

<sup>44</sup> 00024.014 City Forests Limited

<sup>45</sup> 00237.049 Beef + Lamb NZ and Deer Industry NZ

<sup>46</sup> 00027.003 Calder Stewart

<sup>47</sup> 00027.004 Clader Stewart

<sup>48</sup> 00226.021 Kāi Tahu ki Otago

<sup>49</sup> 00136.009 Minister for the Environment

<sup>50</sup> 00211.016-00211.022 LAC Properties Trustees Limited, 00210.016-00210.022 Lane, Hocking, 00209.016-00209.022 Universal Developments Hawea Limited

- Include in this chapter, consideration of indigenous biodiversity enhancements as a positive effect resulting from growth and development proposals, or the potential for this to be used as offsetting where necessary / appropriate.
- Clarify where and when restoration may be appropriate, rather than requiring it.
- Amend provisions to recognise some circumstances where development is appropriate that has an effect on biodiversity, or in SNAs where this gives effect to national direction, such as the NPS – UD 2020.
- Ensure that landscape mitigation and biodiversity offsetting are taken into account as positive matters when considering improvements to natural character and landscapes.
- Amend the provisions to remove a preference for retaining landscapes in their current form, and recognise the benefits of change to landscape values and character as a result of growth and planning (for example through mitigation, landscaping, planting, and biodiversity enhancement).
- Ensure that biodiversity to be protected (e.g. SNAs) only happens following fair and reasonable consultation processes, and incentives and mechanisms relating to control of pests take a collaborative approach with landowners.

70. Similarly, New Zealand Infrastructure Commission considers that to improve fairness on landowners for protecting and improving indigenous biodiversity the following amendments should be made to the ECO chapter<sup>51</sup>:

- Incentivise or compensate private landowners for SNAs.
- Additional development rights for private landholders in exchange for protecting areas of high ecological value (e.g. via covenants).

71. Calder Stewart seeks the ECO chapter is amended to acknowledge positive human activities as the potential and actual genesis for significant values in SNAs<sup>52</sup>.

72. Forest and Bird seeks the following amendments to the ECO chapter<sup>53</sup>:

- Ensure all areas meeting the APP2 significance criteria are to be protected.
- That values identified through mapping will be included in schedules in the plan but will not be used as a comprehensive list.
- That resource consents will include assessments to identify values of any area which meets the significance criteria to provide the best and most recent information.
- Provisions direct regional and district councils to map significant natural areas within the coastal environment.

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<sup>51</sup> 00321.0103 New Zealand Infrastructure Commission

<sup>52</sup> 00027.002 Calder Stewart

<sup>53</sup> 00230.096 Forest and Bird

73. Maryhill Limited and Mt Cardrona Station submitted the same submission on ECO-01, ECO-02, ECO-P4, ECO-P5, ECO-P6, ECO-P7, ECO-P8, ECO-P10, ECO-M2 and ECO-M8, as follows<sup>54</sup>:

- Ensure policies do not unfairly penalise or restrict landowners from use and development of resources where they have added to indigenous biodiversity voluntarily in the past.
- Include in this chapter, the consideration of indigenous biodiversity enhancements as a positive effect resulting from growth and development proposals, or the potential for this to be used as offsetting where necessary/appropriate.
- Clarify where and when restoration may be appropriate, rather than requiring it.
- Amend provisions to recognise some circumstances where development is appropriate that has an effect on biodiversity, or in SNAs where this gives effect to national direction, such as the NPS—UD 2020.
- Ensure that biodiversity to be protected (e.g. SNAs) are only designated in accordance with fair and reasonable consultation processes, and incentives and mechanisms relating to control of pests take a collaborative approach with landowners.
- Amend the provision to remove a preference for retaining landscapes in their current form, and recognise the benefits of change to landscape values and character as a result of growth and planning (for example through mitigation, landscaping, planting and biodiversity enhancement).
- Ensure that landscape mitigation and biodiversity offsetting are taken into account as positive matters when considering improvements to natural character and landscapes.

The submitters have not requested any specific amendments.

74. Sanford seeks the inclusion of a statement in either the CE or ECO chapter to clarify the ECO provisions do not apply to the coastal environment<sup>55</sup>.

75. Port of Otago seeks amendments to remove the duplication of provisions between the CE and ECO chapters and to provide clarity on when ECO provisions apply to the coastal environment<sup>56</sup>. Similarly, Ngāi Tahu ki Murihiku seeks amendments to improve the clarity between the CE and ECO chapters<sup>57</sup>.

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<sup>54</sup> 00118.032 Maryhill Limited, 00014.032 Mt Cardrona Station, 00118.033 Maryhill Limited, 00014.033 Mt Cardrona Station, 00118.034 Maryhill Limited, 00014.034 Mt Cardrona Station, 00118.035 Maryhill Limited, 00014.035 Mt Cardrona Station, 00014.036 Mt Cardrona Station, 00118.036 Maryhill Limited, 00118.037 Maryhill Limited, 00014.037 Mt Cardrona Station, 00118.038 Maryhill Limited, 00014.038 Mt Cardrona Station, 00118.039 Maryhill Limited, 00014.039 Mt Cardrona Station, 00118.040 Maryhill Limited, 00014.040 Mt Cardrona Station, 00118.041 Maryhill Limited, 00014.041 Mt Cardrona Station

<sup>55</sup> 00122.024 Sanford Ltd

<sup>56</sup> 00301.029 Port of Otago Ltd

<sup>57</sup> 00223.098 Te Ao Marama

76. Wayfare seeks a new provision or amendment to the current provisions to provide clear policy direction on pest control, namely from rabbits and possums, to maintain and enhance vegetation cover<sup>58</sup>.
77. Kāi Tahu ki Otago seeks amendments to recognise the fundamental nature of mahika kai and kaimoana activities as part of Kāi Tahu identity<sup>59</sup>.
78. Greenpeace Aotearoa seeks consequential amendments to the ECO chapter to deliver on IM – P4<sup>60</sup>.
79. New Zealand Infrastructure Commission seeks clarity on infrastructure definitions and submits that infrastructure should be broader than ‘nationally and regionally significant infrastructure’ to include infrastructure such as schools<sup>61</sup>. The submitter also seeks the evidence that supports certain statements in the pORPS21 about the protection of biodiversity should be provided, and if the pORPS21 seeks to call out “resource use, land use change and development” in the way it does, then a strong evidence base needs to be provided to justify this claim, and this evidence base ought to set out a hierarchy of factors so that it is clear to councils interpreting the pORPS21 what the greatest priorities should be<sup>62</sup>.
80. Matthew Sole seeks allowance for the consideration and protection of beneficial non-native flora and fauna that positively contribute to native ecosystems<sup>63</sup>.
81. Port Blakely supports the views of collaborative engagement for the management of ecosystems and biodiversity as proposed in the ECO chapter<sup>64</sup>.
82. Meridian seeks the following specific amendments to the title of the ECO chapter title because all the objectives refer to indigenous biodiversity<sup>65</sup>:
  - ‘ECOBIO— Ecosystems and indigenous biodiversity’
83. The submitter also seeks an explanatory note to clarify the relationship between indigenous biodiversity and significant natural areas<sup>66</sup>.

#### 10.4.7 Analysis

84. I do not recommend accepting City Forest’s submission to amend the ECO chapter to acknowledge the wilding tree risk calculator as I consider this matter is dealt definitively in the NESPF and should not sit in a RPS.
85. I disagree with Sanford’s submission as some ECO provisions apply in the coastal environment. Therefore, I do not recommend accepting the submission.

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<sup>58</sup> 00411.006 Wayfare Group Ltd

<sup>59</sup> 00226.020 Kāi Tahu ki Otago

<sup>60</sup> 00407.013 Greenpeace Aotearoa

<sup>61</sup> 00321.023 New Zealand Infrastructure Commission

<sup>62</sup> 00321.101 New Zealand Infrastructure Commission

<sup>63</sup> 00508.007 Sole, Matthew

<sup>64</sup> 00033.004 Port Blakely NZ Limited

<sup>65</sup> 00306.041 Meridian

<sup>66</sup> 00306.041 Meridian

86. I agree with Ngāi Tahu ki Murihiku and Port of Otago, that the clarity between the CE and ECO chapter could be improved. I note amendments to the definition of SNA, CE—O1 and ECO-P7 have been recommended to improve the clarity.
87. It is not clear what duplication of provisions Port of Otago is referring to, therefore I do not recommend accepting the submission. The submitter may wish to provide more information in their evidence.
88. I do not recommend accepting Meridian’s submission to remove ‘ECO’ and ‘ecosystems’ from the chapter title as the notified title gives effect to the National Planning Standards direction as set out in part 2 of the standards and the definition of biological diversity under s2 of the RMA includes ‘ecosystem’.
89. I do not recommend accepting Matthew Sole’s submission as protecting indigenous biodiversity takes precedence over non-native flora and fauna, which is consistent with s6 and s7 of the RMA.
90. Greenpeace Aotearoa submits IM—P4 must be followed using instruments that include triggers for action against current ecological benchmarks, and pathways so that necessary responses are timely and foreshadowed to affected communities. The submitter requests this is achieved through consequential amendments to the ECO chapter<sup>67</sup>. IM—P4 sets out the requirements for achieving healthy ecosystems and ecosystem services through the planning framework. The ECO chapter delivers on IM—P4 through the effects management hierarchy set out in ECO-P6, which puts avoid first. As the submitter has requested no specific amendments, I do not recommend accepting the submission.
91. I do not recommend accepting New Zealand Infrastructure Commission’s submission as their concerns relating to ‘infrastructure’ definitions are dealt with in the Chapter 10: EIT of the s.42a report. In regard to the submitter’s second point, the ECO chapter has adopted a more stringent approach towards managing indigenous biodiversity as a result of the importance of maintaining what indigenous biodiversity is left in the Otago region, as set out in section 10.4.3 of this chapter.
92. I do not recommend accepting the submissions of Mary Hill Limited and Mt Cardrona Station as the submissions are very general in nature and it is difficult to ascertain which comment within the submission relates to what provision. I do, however, note that some recommendations I may have suggested to the ECO chapter, arising from other submitters recommendations, might satisfy the general intent of submissions of Mary Hill Limited and Mt Cardrona Station.
93. I do not recommend accepting the submission of Wayfare to include additional provisions to provide direction for pest control. The management of pests is already dealt with in this chapter by ECO-P10 which requires an integrated and co-ordinated approach to regulatory and non-regulatory pest management programmes. This policy is implemented by ECO-M8 which includes implementing the Regional Pest Management Plan. It is this plan which contains the details of specific pest management programmes,

and I consider this to be appropriate rather than adding further policy direction at an RPS level as requested by Wayfare.

94. The remaining general submissions have been considered. However, as there are no specific amendments requested, it is unclear to me what additional relief the submitters seek and so without further clarification I do not recommend accepting these submission points. However, I have recommended a number of amendments to specific ECO provisions in response to other submissions, which may, to some extent, address the matter raised in these submissions.

#### 10.4.8 Recommendation

95. I recommend amendments to improve the clarity between the ECO and CE chapter, as such amendments have been made to the following and are dealt with in detail within the corresponding section:

- Update the definition of the SNA to apply to Coastal areas (see discussion and recommendation within section 10.3.11 of this report)
- Amend ECO-P7 to improve the clarity of the relationship between the ECO and CE chapter (see discussion and recommendation within section 10.14.3 of this report)
- Consequential amendment to CE-01 which has been dealt with in the s.42 report for the Coastal Chapter (chapter 8).

### 10.5 ECO-01 – Indigenous *biodiversity*

#### 10.5.1 Introduction

96. As notified, ECO-01 reads:

#### **ECO-01 – Indigenous *biodiversity***

Otago's indigenous *biodiversity* is healthy and thriving and any decline in quality, quantity and diversity is halted.

97. ECO-01 seeks that Otago's indigenous biodiversity is protected from any further loss through halting any decline in quality, quantity and diversity of indigenous biodiversity.

#### 10.5.2 Submissions

98. There are eleven submissions on ECO-01. Three submitters seek the provision is retained as notified.<sup>68</sup>

99. City Forest consider this objective is unrealistic and it needs to be clarified that the net extent of populations and representative habitats are retained, for example some will be enhanced and some may be changed because of economic activity<sup>69</sup>. They seek the following amendment:

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<sup>68</sup> 00138.031 Queenstown Lakes District Council, 00230.097 Forest and Bird, 00510.029 Z Energy Limited, BP Oil NZ Limited, Mobil Oil NZ Limited

<sup>69</sup> 00024.010 City Forests Limited

- ‘Otago’s indigenous *biodiversity* is healthy and thriving and any net decline in quality, quantity and diversity is halted.’

100. Meridian submits ECO-O1 is unclear, and its implementation could be unnecessarily restrictive. It considers under the RMA definition of ‘*biological diversity*’ there can be a decline in biodiversity, which ECO-O1 seeks to halt with the use of ‘quality, quantity and’ and so it requests that ‘quality, quantity and’ is removed and ‘diversity’ is replaced with ‘indigenous biodiversity’. The submitter considers the reference to ‘indigenous biodiversity’ in ECO-O1 is sufficient, and clearer, given the definition of the same in the pORPS 21<sup>70</sup>.
101. Federated Farmers submit it is inconsistent with the draft NPSIB to ‘halt any decline in quality, quantity and diversity of indigenous biodiversity’ and seeks the following specific amendments to ECO-O1 ‘Otago’s indigenous biodiversity is healthy and thriving and any decline in quality, quantity and diversity is halted’<sup>71</sup>.
102. Kāi Tahu ki Otago submits the provision should encompass all species and ecosystem types indigenous to Otago and seeks the following specific amendment ‘The full range of Otago’s indigenous biodiversity is healthy and thriving and any decline in quality, quantity and diversity is halted’<sup>72</sup>.
103. Fish and Game submit the importance of ecosystems and the role they play in supporting the health and well-being of indigenous biodiversity should be recognised. The submitter seeks the following amendment to the provision<sup>73</sup>:
- ‘Otago’s ecosystems and indigenous biodiversity...’
104. DOC seeks the following new clauses are included in the provision:<sup>74</sup>
- (x) That there is no worsening of the threat classification of indigenous threatened species in Otago;
  - (x) In the term of the RPS the threat classification of threatened indigenous species in Otago will be improved;
  - (x) Areas of significant indigenous biodiversity will be mapped and protected; and
  - (x) Threatened ecosystems will be protected in Otago

### 10.5.3 Analysis

105. City Forest Limited seeks ‘decline’ is amended to ‘net decline’. I recommend accepting the submission because it would allow the condition, quantity, and diversity of indigenous biodiversity to decline in some way, provided it is offset by an improvement in another way, meaning there would be no overall net decline<sup>75</sup>.
106. Meridian seeks to remove ‘quality, quantity and’ and replace ‘diversity’ with ‘indigenous biodiversity’. I agree with the submitter that the use of the term ‘quality’ is unclear and

<sup>70</sup> 00306.042 Meridian

<sup>71</sup> 00239.096 Federated Farmers of New Zealand

<sup>72</sup> 00226.214 Kāi Tahu ki Otago

<sup>73</sup> 00231.069 Otago Fish & Game Council and the Central South Island Fish & Game Council

<sup>74</sup> 00137.083 DOC

<sup>75</sup> Appendix 10c

would be difficult to measure; therefore, supported by ecological evidence, I recommend using the term ‘condition’ instead as condition can be measured by assessment of structure and composition<sup>76</sup>. However, I do not recommend accepting the submission point to remove ‘quantity’ and ‘diversity’ because the intent of including these two terms in ECO-O1 is to cover all aspects of indigenous biodiversity and to ensure that in the future all aspects are attained as per the objective.

107. Federated Farmers requests that the words ‘in quality, quantity and diversity’ be removed from ECO-O1 because retaining them is inconsistent with the draft NPSIB. The intent of including ‘quality, quantity and diversity’ in ECO-O1 is to cover all aspects of indigenous biodiversity and to ensure that in the future all aspects are attained as per the objective. Excluding these three terms would result in a vague objective that would be difficult to measure. Therefore, I do not recommend accepting the submission.
108. Fish and Game seeks an amendment to include ‘ecosystems’ to ECO-O1. The definition of *biodiversity* has the same meaning as *biological diversity* contained in the RMA, which includes ecosystems. Coupled with this, a report authored by Wildlands<sup>77</sup> in the s32 report notes that the term ‘indigenous biodiversity’ encompasses both ecosystems and species. Therefore, I do not recommend accepting this submission. For the same reasons, I do not recommend accepting Kāi Tahu ki Otago’s submission point.
109. DOC seeks the inclusion of four new clauses in ECO-O1. I do not recommend accepting the first two clauses as threat classification is a nationwide assessment, therefore the threat classification of a species found in Otago might not always be dependent on what occurs within the Otago Region. Furthermore, a memo by ORC ecologists advised<sup>78</sup> that the existing wording of ECO-O1 can apply to threatened species. I do not recommend accepting the remaining two clauses as they do not reflect the language that is typically used in an objective and would sit more appropriately in a policy, coupled with this, the third clause is captured in ECO-P2. For these reasons, I do not recommend accepting their submission.

#### 10.5.4 Recommendation

110. I recommend the following amendment to ECO-O1:

##### **ECO–O1 – Indigenous *biodiversity***

Otago’s indigenous *biodiversity* is healthy and thriving and any net<sup>79</sup> decline in quality condition<sup>80</sup>, quantity and diversity is halted.

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<sup>76</sup> Appendix 10c

<sup>77</sup> Lloyd, K. (2021). *Ecological advice on indigenous biodiversity provisions in the proposed Otago regional policy statement*. Wildlands, page. 1

<sup>78</sup> Appendix 10d

<sup>79</sup> 00024.010 City Forests Limited

<sup>80</sup> 00306.042 Meridian



## 10.6 ECO-O2 – Restoring or enhancing

### 10.6.1 Introduction

111. As notified ECO-O2 reads as:

#### **ECO–O2 – Restoring or enhancing**

A net increase in the extent and occupancy of Otago’s indigenous *biodiversity* results from restoration or enhancement.

112. ECO-O2 seeks a net increase in Otago’s indigenous biodiversity through restoration or enhancement.

### 10.6.2 Submissions

113. Ngāi Tahu ki Murihiku seeks ‘occupancy’ is replaced or provide a definition/clarity<sup>81</sup>. Kāi Tahu ki Otago also seeks that a definition of ‘occupancy’ is provided<sup>82</sup>.

114. Federated Farmers seeks the provision is achieved through non-regulatory methods such as advice, support, incentives, and partnerships<sup>83</sup>.

115. Fulton Hogan submits it is not clear if the outcomes are to be achieved through restoration and enhancement, and that the term ‘occupancy’ is assumed to mean ‘relative proportion of species.’ The submitter seeks the following specific amendments<sup>84</sup>:

‘Restoration or enhancement results in A a net increase in the extent and occupancy of Otago’s indigenous biodiversity, and an increase in the relative proportion of indigenous species. results from restoration or enhancement.’

116. Forest and Bird submits the relationship between ECO-O1 and ECO-O2 is unclear, and it could be improved with the following amendment<sup>85</sup>:

- ‘...extent, quality, quantity and occupancydiversity....’
- Replace ‘or enhancement’ with ‘and improvement.’

117. QLDC submits the clarity and intent of ECO-O2 could be improved and requests the following specific amendments<sup>86</sup>:

‘A net increase in the extent and occupancy of Otago’s indigenous biodiversity has a net increase. results from restoration or enhancement.’

118. Kāi Tahu ki Otago seeks ‘restoration or enhancement’ is amended to ‘restoration and enhancement’<sup>87</sup>

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<sup>81</sup> 00223.099 Ngāi Tahu ki Murihiku

<sup>82</sup> 00226.215 Kāi Tahu ki Otago

<sup>83</sup> 00239.097 Federated Farmers of New Zealand

<sup>84</sup> 00322.026 Fulton Hogan Limited

<sup>85</sup> 00230.098 Forest and Bird

<sup>86</sup> 00138.032 Queenstown Lakes District Council

<sup>87</sup> 00226.215 Kāi Tahu ki Otago

### 10.6.3 Analysis

119. Kāi Tahu Ki Otago and Ngāi Tahu ki Murihiku seek a definition of ‘occupancy’ is provided. Fulton Hogan has also raised concerns over the use of ‘occupancy’ and seeks it is replaced with ‘relative proportion of indigenous species.’ I agree with the submitters it is unclear what is meant by ‘occupancy.’ However, I do not consider Fulton Hogan’s interpretation of ‘occupancy’ is correct and ‘occupancy’ is an ecological term. Therefore, I recommend providing the following definition of occupancy: *Means the number of sites occupied in Otago*<sup>88</sup>.
120. Forest and Bird seeks ‘occupancy’ is removed from the provision and is replaced with ‘quality, quantity and diversity’ to clarify the relationship between ECO-O1 and ECO-O2. I do not agree the provision should be amended to include these terms as ‘extent and occupancy’ are ecological terms and the focus of ECO-O1 is different to that of ECO-O2. The two objectives are related but they have different outcomes. Coupled with this, four further submitters submitted on the suggested amendment stating it lacks clarity, the terms are too subjective, and ‘extent and occupancy’ are recognised ecological terms. Therefore, I do not recommend accepting the submission.
121. Kāi Tahu ki Otago and Forest and Bird seek amendments to replace ‘or’ with ‘and.’ I recommend accepting the submissions, in part, to only amend the title to ‘enhancement and restoration’. I consider the title should cover both concepts equally and be equally inclusive because the purpose of the objective can be achieved through implementing one of these mechanisms, they do not need to be carried out concurrently. I acknowledge that this recommended amendment alters the purpose of the provision.
122. Forest and Bird seeks to replace ‘enhancement’ with ‘improvement.’ I do not recommend accepting the submission because ‘enhancement’ is a well-used term in the pORSP 21 and ECO-O2 links to ECO-P8. Therefore, I do not recommend accepting this submission point.
123. Fulton Hogan seeks amendments to improve the clarity of the provision by moving ‘restoration or enhancement’ to the beginning of the provision. I consider this suggested amendment is more akin to the language of an objective; therefore, I recommend accepting this submission point.
124. For clarity purposes, QLDC seeks amendments to move the actions required to achieve the objective, to the policy suite. QLDC’s submission has been captured, in part, through the recommended changes to ECO-O2 that have arisen from Fulton Hogan’s submission point on moving ‘Restoration or enhancement’ to the beginning of the objective. I note that the mechanisms to implement the objective are contained in ECO-P8. Therefore, I do not recommend accepting this submission point.
125. Federated Farmers seeks ECO-O2 is achieved through non-regulatory methods. ECO-P8 sets out the actions to achieve ECO-O2 and ECO-M8 lists a range of non-regulatory incentives and mechanism that local authorities are encouraged to consider adopting to assist with achieving the outcomes of the ECO chapter. Coupled with this, it is not good

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<sup>88</sup> Appendix 10e

planning to include methods in an objective as objectives are goals or outcomes; therefore, I do not recommend accepting the submission.

#### 10.6.4 Recommendation

126. I recommend the following amendment to ECO-O2:

#### **ECO-O2 – Restoring ~~or~~<sup>89</sup> enhancing**

~~Restoration or enhancement activities result in a~~ net increase in the extent and occupancy<sup>90</sup> of Otago’s indigenous *biodiversity* ~~results from restoration or enhancement.~~<sup>91</sup>

127. I also recommend adding a new definition to the pORPS, for the term occupancy, as set out below:

<u>Occupancy</u> <sup>92</sup>	<u>Means the number of sites occupied in Otago.</u> <sup>93</sup>
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#### 10.7 ECO-O3 – *Kaitiakiaka* and stewardship

##### 10.7.1 Introduction

128. As notified, ECO-O3 reads as:

#### **ECO-O3 – *Kaitiakiaka* and stewardship**

*Mana whenua* are recognised as kaitiaki of Otago’s indigenous *biodiversity*, and Otago’s communities are recognised as stewards, who are responsible for:

- (1) te hauora o te koiora (the health of indigenous *biodiversity*), te hauora o te taaka (the health of species and ecosystems that are taaka), and te hauora o te taiao (the health of the wider *environment*), while
- (2) providing for te hauora o te takata (the health of the people).

129. ECO-O3 recognises the role of *Mana whenua* as kaitaki, and Otago’s communities as stewards, with the two working together. The provision outlines their responsibilities for managing Otago’s indigenous biodiversity.

##### 10.7.2 Submissions

130. Te Rūnanga o Ngāi Tahu seeks the header is amended from ‘*Kaitiakiaka*’ to ‘*Kaitiakitaka*’<sup>94</sup>.

131. Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu seek the chapeau is amended from ‘recognised as’ to ‘able to exercise their role as’<sup>95</sup>. The submitters note this amendment

<sup>89</sup> 00226.215 Kāi Tahu ki Otago

<sup>90</sup> 00223.099 Ngāi Tahu ki Murihiku, 00226.215 Kāi Tahu ki Otago

<sup>91</sup> 00322.026 Fulton Hogan Limited

<sup>92</sup> 00223.099 Ngāi Tahu ki Murihiku, 00226.215 Kāi Tahu ki Otago

<sup>93</sup> Appendix 10e

<sup>94</sup> 00234.031 Te Rūnanga o Ngāi Tahu

<sup>95</sup> 00226.216 Kāi Tahu ki Otago, 00234.031 Te Rūnanga o Ngāi Tahu

is consistent with s7(a) of the RMA, MW – P2(6) of the pORPS21 and outcome 4 in Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020.

132. Federated Farmers submits the draft NPSIB recognises that we all have a role as stewards or kaitiaki of indigenous biodiversity and the amendments they seek to clause (1) are consistent with the draft NPSIB. The submitter seeks the following specific amendments as follows<sup>96</sup>:

- Chapeau: amend to ‘To recognise the role of landowners, communities and mana whenua as stewards and kaitiaki of indigenous biodiversity, in contributing towards:’
- Clause (1): replace ‘while’ with ‘alongside’
- Clause (2): replace ‘providing’ with ‘provision’

133. Forest and Bird raises concerns there is potential for inconsistency in the wording of ECO-O3, where biodiversity intersects with freshwater NPSFM priorities and s5 of the RMA. The submitter considers this could be addressed by removing the suggestion of a priority between clause (1) and (2) through the following specific amendments<sup>97</sup>:

- Clause (1): replace ‘while’ with ‘and’
- Clause (2): remove the term ‘providing’.

#### 10.7.3 Analysis

134. I accept Te Rūnanga o Ngai Tahu’s submission to amend the spelling error of ‘Kaitiakiaka’ to ‘Kaitiakitaka.’

135. Section 7(a) and Section 8 of the RMA speak to the relationship of the suggested amendment and helps to achieve this; therefore, I recommend accepting Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu submissions.

136. I do not recommend accepting Federated Farmers submission to amendment ECO-O3 to recognise mana whenua, landowners and the community as kaitiaki as the objective already recognises the community as stewards.

137. Te Mana o te Wai is a concept that relates to the importance of water and is relevant to decision making on freshwater management. I do not consider the NPSFM priorities apply to ECO-O3 as this objective outlines the responsibilities of mana whenua and the community for managing indigenous biodiversity, it does not relate to decision making. I disagree that the provision is inconsistent with s5 of the RMA as ECO-O3 outlines the responsibilities of mana whenua and the community for managing indigenous biodiversity, which is consistent with s6(c) in achieving the purpose of the RMA. Therefore, I do not recommend accepting the submission.

#### 10.7.4 Recommendation

138. I recommend the following amendments to ECO-O3:

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<sup>96</sup> 00239.098 Federated Farmers of New Zealand

<sup>97</sup> 00230.099 Forest and Bird

## ECO–03 – *Kaitiakitaka*<sup>98</sup> and stewardship

*Mana whenua* are able to exercise their role recognised<sup>99</sup> as kaitiaki of Otago’s indigenous *biodiversity*, and Otago’s communities are recognised as stewards, who are responsible for:

- (1) te hauora o te koiora (the health of indigenous *biodiversity*), te hauora o te taoka (the health of species and ecosystems that are taoka), and te hauora o te taiao (the health of the wider *environment*), while
- (2) providing for te hauora o te takata (the health of the people).

## 10.8 Protecting and maintaining

### 10.8.1 Introduction

139. As set out in the introduction to this report, policies ECO-P3, ECO-P4, ECO-P5 and ECO-P6 deal with the management of effects on indigenous biodiversity and are considered the wheelhouse of the ECO chapter. Many of these policies cross-refer to each other. For these reasons, these policies have been considered together in this section.

### 10.8.2 ECO-P3 – Protecting *significant natural areas* and taoka

#### 10.8.2.1 Introduction

140. ECO-P3 as notified, reads as:

#### **ECO–P3 – Protecting *significant natural areas* and taoka**

Except as provided for by ECO–P4 and ECO–P5, protect *significant natural areas* and indigenous species and ecosystems that are taoka by:

- (1) avoiding adverse *effects* that result in:
  - (a) any reduction of the area or values (even if those values are not themselves significant) identified under ECO–P2(1), or
  - (b) any loss of Kāi Tahu values, and
- (2) after (1), applying the *biodiversity effects management hierarchy* in ECO–P6, and
- (3) prior to *significant natural areas* and indigenous species and ecosystems that are taoka being identified in accordance with ECO–P2, adopt a precautionary approach towards activities in accordance with IM–P15.

141. ECO-P3 supports all three ECO objectives by requiring the protection of SNAs and taoka through avoiding adverse effects that result in either a reduction of the identified area or values of a SNA or loss of taoka values, and then the effects management hierarchy in ECO-P6 can be applied. The policy also requires the adoption of a precautionary approach (set out in Policy IM–P14) where identification has not occurred.

<sup>98</sup> 00234.031 Te Rūnanga o Ngāi Tahu

<sup>99</sup> 00226.216 Kāi Tahu ki Otago, 00234.031 Te Rūnanga o Ngāi Tahu

#### 10.8.2.2 Submissions

142. There are twenty-six submissions ECO-P3. One submitter seeks the provision is retained as notified<sup>100</sup>. Four submitters seek the provision is deleted<sup>101</sup>.
143. Forest and Bird submits the exceptions of ECO-P4 and ECO-P5 are not appropriate as ECO-P3 and should apply as far as possible, and that these provisions should not be exempt because all policies must be implemented. The submitter seeks the chapeau is amended as follows<sup>102</sup>:
- ~~‘Except as provided for by ECO-P4 and ECO-P5, protect significant natural areas and indigenous species...’~~<sup>103</sup>.
144. A number of submitters consider the effects management pathway in ECO-P3 is overly restrictive and fails to provide for or constrain the following activities: fixed in location mineral resources; activities which supply materials for nationally and regionally significant infrastructure; the development, operation, and maintenance of regionally significant infrastructure. They seek various specific amendments as follows:
- Clause 1 (a) amend to: ~~‘any reduction a net loss of the area or values (even if those values are not themselves significant) identified under ECO-P2(1), or’~~<sup>104</sup>.
  - Clause 2 amend to: ‘after (1), applying the *biodiversity effects management hierarchy sequential steps set out* in ECO-P6, and’<sup>105</sup>. New Zealand Infrastructure Commission seeks clarity on which effects management hierarchy applies<sup>106</sup>.
145. Aurora Energy submits ECO-P3 would constrain the ability to install regionally significant infrastructure and will prohibit the operation, maintenance and upgrade of Aurora Energy’s network and so seeks the following new clause is included: ‘or, in the case of infrastructure, adverse effects are managed in accordance with EIT-INF-P13’<sup>107</sup>. Similarly, Network Waitaki Limited and PowerNet Ltd also seek amendments to the provision to provide for the development, and the ongoing operation, maintenance, and upgrade of their companies’ networks<sup>108</sup>.
146. New Zealand Infrastructure Commission seeks amendments to ECO-P3 to provide a broad carve out for infrastructure to access the effects management hierarchy<sup>109</sup>.
147. DOC seeks ‘...1. avoiding direct and indirect adverse effects that result in...’ The submitter considers the loss of values and extent can result indirectly and directly and so this should

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<sup>100</sup> 00510.030 Z Energy, BP Oil NZ Limited, Mobil Oil NZ Limited

<sup>101</sup> 00115.019 Oceana Gold (New Zealand) Ltd, 00121.068 Ravensdown Limited, 00122.026 Sanford Ltd, 00221.012 Sliver Fern Farms

<sup>102</sup> 00230.102 Forest and Bird

<sup>103</sup> 00230.102 Forest and Bird

<sup>104</sup> 00322.028 Fulton Hogan Limited

<sup>105</sup> 00016.013 Alluvium Ltd and Stoney Creek Mining Ltd, 0017.011 Danny Walker, Peter Hall, Cold Clutha Ltd and AWA Koura Mining Ltd

<sup>106</sup> 00321.022 New Zealand Infrastructure Commission

<sup>107</sup> 00315.035 Aurora Energy Limited

<sup>108</sup> 00320.017 Network Waitaki Limited, 00511.017 PowerNet Ltd

<sup>109</sup> 00321.022 New Zealand Infrastructure Commission

be explicitly addressed in clause (1) to provide greater certainty and protection<sup>110</sup>. Similarly, Forest and Bird seeks the following amendments to clause 1 ‘avoiding adverse effects that have potential to result in:’ They consider the policy lacks protection as waiting until an adverse effect results in any reduction is too late<sup>111</sup>.

148. Several submitters seek clarity on the term ‘Kāi Tahu’ with specific amendments as follows:
- Fulton Hogan considers the term ‘Kāi Tahu values’ is too board and seeks it is amended to ‘taoka’ as the pORPS21 provides guidance on what taoka encompasses. The submitter seeks the following amendment ‘(b) any ~~loss of Kāi Tahu~~ reduction of the area or values that have been identified as being taoka under ECO-M3(1), and’<sup>112</sup>.
  - QLDC considers the interpretation of the provision could be improved by amending clause 1 (b) to ‘...Kāi Tahu values identified under ECO-M3, and’ and clause 3 to ‘...and ECO-M3, adopt a precautionary...’<sup>113</sup>.
  - DCC seeks a definition of ‘Kāi tahu values’ in the context of ECO-P3 is provided<sup>114</sup>.
149. Fish and Game considers clause (3) to be ambiguous as to whether the precautionary approach refers to identifying the areas, species and ecosystems or protecting them from activities and so seeks the following amendment: ‘...activities in accordance with IM–P15, including as to whether values identified may be considered as significant natural areas and indigenous species and ecosystems that are taoka.’<sup>115</sup>.
150. City Forests submits a precautionary approach does not commit to permitting the future management and harvesting of forests and will have a detrimental effect on forestry as an economic land use in Otago. The submitter seeks the precautionary approach with respect to plantation forestry is removed from ECO-P3<sup>116</sup>.
151. Ngāi Tahu ki Murihiku seeks the following amendment to clause 1 ‘...(1) first avoiding...’<sup>117</sup>.
152. Trojan Holdings Limited & Wayfare Group Ltd seek the following amendment to clause 1(a): ‘any discernible reduction...’. The submitters consider the provision does not accord with the concept of sustainable management, as some removal of vegetation within an identified SNA can have an indiscernible or an appropriate extent of adverse effects<sup>118</sup>.
153. Waitaki Irrigators considers ‘avoid’ means ‘not allow’ or ‘prevent the occurrence of’<sup>119</sup> and that this type of language in a policy statement is too directive. The provision could

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<sup>110</sup> 00137.086 Director General of Conservation

<sup>111</sup> 00230.102 Forest and Bird

<sup>112</sup> 00322.028 Fulton Hogan Limited

<sup>113</sup> 00138.033 Queenstown Lakes District Council

<sup>114</sup> 00139.129 Dunedin City Council

<sup>115</sup> 00231.072 Otago Fish & Game Council and the Central South Island Fish & Game Council

<sup>116</sup> 00024.005 City Forests Limited

<sup>117</sup> 00223.100 Ngāi Tahu ki Murihiku

<sup>118</sup> 00206.043 Trojan Holdings Limited (Trojan), 00411.055 Wayfare Group Ltd

<sup>119</sup> Environmental Defence Society Inc v New Zealand King Salmon Company Limited [2014] NZSC 38.

prohibit activities that may result in the loss of (currently unspecified) Kāi Tahu values in (as yet unspecified) areas<sup>120</sup>. They seek the following amendment.

~~‘(1) avoiding minimising effects that results in...’.~~

154. Kāi Tahu ki Otago seeks the following amendment to ECO-P3 ‘(a) any reduction of the area or biodiversity values...’ to improve the clarity of the provision so that it is clear biodiversity values of SNAs are being managed under clause 1(a)<sup>121</sup>.

155. Forest and Bird seeks the following amendments to ECO-P3<sup>122</sup>:

- Clause 1 (a): amend to ‘any reduction decline of the area ~~or values (even if those values are not themselves significant)~~ identified under ECO-P2(1) or the values that contribute to the area being identified as significant, or and’. The term reduction does not provide a clear link to the objectives. The submitter considers adverse effects must be avoided in both cases of (1)(a) and (b) as an area could hold values for both.
- Clause 2: amend to ‘after (1), for any other adverse effects applying the biodiversity effects management hierarchy in ECO-P6, and’.
- Clause 3: amend to ‘~~prior to~~ including mapped significant natural areas and indigenous species and ecosystems that are taoka as overlays in plans, and’. The submitter considers the mapping of areas to be important for achieving protection, particularly to assist strategic planning.
- Clause (3)(a): providing policy and methods in plans for protection measures including: pest control, fencing and covenants; and’
- Clause (a): including provision for identification of significant natural areas in accordance with APP2 in consenting processes where adverse effects on indigenous biodiversity have potential to be more than minor; and’. The submitter notes that an assessment to determine whether other areas meet the criteria through the consenting processes needs to exist.
- Clause (a): ‘~~being identified in accordance with ECO-P2,~~ adopt a precautionary approach towards activities in accordance with IM-P15.’

156. Matakanui Gold Ltd considers ECO-P3 is inconsistent with s6(c) of the RMA and seeks amendments to provide for a clear consenting pathway for activities to occur within identified SNAs. The submitter seeks the following amendments<sup>123</sup>:

~~‘...taoka by~~ ensuring:

(1) indigenous biodiversity values that contribute to its significance as identified in APP2 are not reduced and significant adverse effects on other values of the area or habitat are avoided.

~~avoiding adverse effects that result in:~~

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<sup>120</sup> 00213.025 Waitaki Irrigators Collective Limited

<sup>121</sup> 00226.219 Kāi Tahu ki Otago

<sup>122</sup> 00230.102 Forest and Bird

<sup>123</sup> 00021.007 Matakanui Gold Limited



~~(a) any reduction of the area or values (even if those values are not themselves significant) identified under ECO-P2(1), or~~

~~(b) any loss of Kāi Tahu values, and~~

(2) Allow the clearance of indigenous vegetation within Significant Natural Areas only where clearance is undertaken in a manner that retains the indigenous biodiversity values that contribute to the significance of the Significant Natural Area.

(3) after (1) and (2), applying...'

157. DCC considers ECO-P3 could be ultra vires because it relates to values that are not yet identified and so you cannot avoid an effect on a value that you have no information on. Therefore, the submitter seeks providing an exemption from the policy in this case<sup>124</sup>.
158. Several submitters seek amendments to the provision as necessary to give effect to the draft NPSIB<sup>125</sup>. Federated Farmers considers ECO-P3 is inconsistent with the draft NPSIB as the policy statement does not dictate that all adverse effects on areas or values must be avoided, therefore the submitter seeks the provision is deleted and aligned with the NPSIB when it is gazetted<sup>126</sup>. Raynoir Matariki Forests seeks amendments to the provision to note that ECO-P3 is subject to the provisions of the NESPF and that the NESPF would prevail<sup>127</sup>.
159. Federated Farmers seeks that any reference to the adoption of the precautionary approach is removed as the submitter considers the pORPS 21 already highly precautionary. The submitter also seeks that any reference to ECO-M3 is deleted as they oppose any attempt to set out an entirely different (additional) regime for indigenous biodiversity<sup>128</sup>.

#### 10.8.2.3 Analysis

160. Forest and Bird seeks a range of specific amendments to ECO-P3.
- I do not recommend accepting its submission point to remove the exemption of ECO-P4 and ECO-P5 from the chapeau as ECO-P3, ECO-P4 and ECO-P5 operate as an effects management framework, with ECO-P3 being the overarching controller. This provision seeks to protect, by first avoiding adverse effects from new and existing activities that result in a reduction in the extent of an SNA or its values or any loss of taoka species, and then the effects management hierarchy set out in ECO-P6 can be applied. ECO-P4 seeks to maintain indigenous biodiversity by allowing specific new activities, set out in clause (1) to (5), to occur within a SNA or where they may adversely affect taoka by following the effects management hierarchy in ECO-P6. While ECO-P5 allows for existing activities to occur within

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<sup>124</sup> 00139.129 Dunedin City Council

<sup>125</sup> 00315.035 Aurora Energy Limited, 00511.017 PowerNet Ltd, 00320.017 Network Waitaki Limited, 00139.129 Dunedin City Council

<sup>126</sup> 00239.101 Federated Farmers of New Zealand

<sup>127</sup> 00020.019 Raynoir Matrkik Forests

<sup>128</sup> 00239.101 Federated Farmers of New Zealand

SNAs and that may adversely affect taoka, provided the parameters in clauses (1) to (2) are met.

- I do not recommend accepting the submission to replace 'reduction' with 'decline' as I consider the term 'reduction' clearly links to ECO-O1, which sets out any decline in quality, quantity and diversity of Otago's indigenous biodiversity is halted. Furthermore, the purpose of clause (1)(a) is to avoid the area of a SNA from reducing in size; therefore, I consider the term 'reduction' is more appropriate<sup>129</sup>. I do not consider the term 'decline' articulates the purpose of clause (1)(a) which is to avoid SNAs from reducing in size.
- For clarity, I recommend accepting their submission point, to include 'values that contribute to the area being identified as significant' to clause 1(a) but suggest slightly different wording.
- I do not consider amending clause (2) to include 'for any other adverse effects' will add value to the provision as it is unclear what is gained by including the additional words; therefore, I do not recommend accepting this submission point.
- I do not recommend accepting the submission point in clause 5 to remove 'being identified in accordance with ECO-P2 (located in clause 3). The intent of including this is to protect areas that contain significant indigenous biodiversity before they are identified and mapped. Therefore, I do not recommend accepting the submission point to include mapping to clause 3.

161. Matakanui Gold Ltd seeks amendments to the provision to better achieve s(6)(c) of the RMA. I do not consider allowing for the clearance of indigenous biodiversity in SNAs will be consistent with s6(c) of the Act as the protection of SNAs is set out under s6(c) as a matter of national importance. The purpose of ECO-P3 is to protect SNAs and taoka by avoiding adverse effects that result in either a reduction of the identified area or values or loss of taoka. The suggested amendment by the submitter will not achieve the purpose of ECO-P3 and in my view it fails to meet s6(c) and s6(e) of the Act. The suggested removal of clause (1)(b) is inconsistent with s6(e) of the Act as it fails to provide for the relationship of Māori with taonga as a matter of national importance. Therefore, I do not recommend accepting the submission.

162. DCC considers the provision could be ultra vires and so seeks amendments to provide an exemption. I do not recommend accepting the submission as the submitter's concerns are captured in clause (3) of ECO-P3, in which at the decision-making process a precautionary approach will be adopted and there will be information. Further, under the RMA, planning ( including designations ) and consenting require assessments of effects on the environment which identify ecological and cultural matters and actual or potential effects of proposals on them. P3 is in accordance both with the Act and with practice.

163. For duplication reasons, I do not consider it necessary to include a note referring to the NESPF and so I do not recommend accepting Raynoir Matariki Forests submission to note that ECO-P3 is subject to the provisions of the NESPF and that the NESPF would prevail.

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<sup>129</sup> Appendix 10a

Furthermore, under regulation 6 of the NESPF, protection of SNASs may prevail over the NESPF.

164. Federated Farmers seeks the precautionary approach is removed from the provision. The purpose of clause (5) is to protect SNAs and taoka before they are identified in accordance with ECO-P2, which is consistent with s6(c) and s6(e) of the RMA and so I do not recommend accepting this submission point. The submitter also seeks to remove any reference to ECO-M3, I do not recommend accepting this submission point as under s6(e) of the RMA local authorities are required to recognise and provide for the relationship of Māori and their culture and traditions with taonga.
165. City Forest Limited seeks long-term forestry is exempt from the precautionary approach. The precautionary approach is there to protect SNAs and taoka before they are formally identified in plans, which is consistent with s6(c) and s6(e). Therefore, I do not recommend accepting the submission.
166. For clarity purposes, I accept in part, Kāi Tahu ki Otago submission to amend 'values' to 'biodiversity values'. However, I consider it should be amended to 'indigenous biodiversity values' as the ECO-P3 relates to indigenous biodiversity.
167. I do not consider the amendments Waitaki Irrigators seeks will result in the protection of significant indigenous vegetation and significant habitats of indigenous fauna, which is a matter of national importance s6(c). I consider the suggested amendments will allow for some reduction of an SNA or values or loss of taoka. Therefore, I do not recommend accepting the submission.
168. Trojan Holdings Limited & Wayfare Group Ltd seek clause 1(a) is amended to 'any discernible reduction...'. I disagree with the submitters that clause 1 does not meet the purpose of the RMA. Further, 'discernible' allows for some loss which is inconsistent with the protective nature of the objective and the requirements of s6(c), s30(ga) and 31(b)(iii) of the RMA. Therefore, I do not recommend accepting the submission.
169. For clarity purposes between the language used in ECO-P3 and ECO-P6, Ngāi Tahu ki Murikiku seeks clause (1) is amended to 'first avoiding...'. I recommend accepting the submission as it reflects the sequential steps to be followed in ECO-P3.
170. Fish and Game seeks amendments to clause 3 as it considers the clause is unclear. I consider the provision is perfectly clear regarding adopting an approach which steps through a process ending in a precautionary approach where SNA and taoka have not yet been identified; therefore, I do not recommend accepting the submission.
171. Several submitters seek clarity on the term 'Kāi Tahu values'. For clarity purposes, I recommend accepting QLDC's submission point to specify Kāi Tahu values in accordance with ECO-M3; however, I recommend referencing ECO-P2(2) instead because the purpose of ECO-P2 is to identify taoka, while ECO-M3 implements ECO-P2. I do not recommend accepting DCC's submission to provide a definition for 'Kāi Tahu values' as I consider 'Kāi Tahu values' should be amended to 'taoka values' as this clarifies ECO-P3 (1)(b) refers to ECO-P2(2) and not the list of Kāi Tahu values contained in the front end of the pORPS 21. I do not recommend accepting QLDC's submission point on clause 3 to reference ECO-M3 as ECO-P2 directs you to ECO-M3.

172. Aurora Energy seeks amendments to include a new clause for infrastructure activities to be assessed under EIT—INF—P13. I do not recommend accepting the submission as I consider the provisions of the EIT—INF and ECO chapter should be read together and applied according to the particular circumstances. Where a provision requires a more stringent approach, I consider the more stringent one should prevail over the less directive one. Therefore, I do not recommend accepting the submission. For similar reasons, I do not recommend accepting the submissions of New Zealand Infrastructure Commission, Network Waitaki and PowerNet Ltd to provide for the development, and the ongoing operation, maintenance, and upgrade of their companies' networks. Furthermore, ECO-P4 provides a pathway for a list of activities of which 'development or upgrade of nationally significant infrastructure and regionally significant infrastructure' has been provided for.
173. Fulton Hogan seeks amendments to clause 1(a) to allow for offsetting. The submitter considers local authorities have a duty under s30 & 31 of the RMA to have provisions that maintain biodiversity, but it does not require effects on SNAs to be avoided and that avoiding effects on values that are not significant is not required under s6(c). The purpose of clause (1)(a) is not to offset the effects on SNAs but to protect SNAs, which is consistent with s6(c) of the RMA. Amending clause (1)(a) to 'any net loss' would weaken the provision as it would allow remediation, mitigation, offsetting and compensation to be used to address any loss to the area of a SNA<sup>130</sup>. The submitter also seeks clause 2 is deleted as it will fail to provide for activities which supply materials for nationally and regionally significant infrastructure<sup>131</sup>. I do not recommend accepting the submission as it is inconsistent with section s6(c) of the RMA and will frustrate the attainment of ECO-O1 and ECO-O2.
174. A number of submitters consider the provision seeks to apply the effects management hierarchy where it is not possible to avoid adverse effects on SNAs, which is particularly important for fixed in location mineral resources. They also submit the reference to the NPSFM effects management hierarchy results in a lack of clarity for extraction activities<sup>132</sup>. The effects management hierarchy set out in ECO-P6 is intentionally different to the effects management hierarchy described in the definition section of the pORPS 21 because ECO-P6 manages adverse effects on indigenous biodiversity, not freshwater and wetlands. For clarity purposes, I accept in part, the submissions of Alluvium Ltd and Stoney Creek Mining Ltd, Danny Walker, Peter Hall, Cold Clutha Ltd, AWA Koura Mining Ltd and New Zealand Infrastructure Commission. However, I recommend accepting consequential amendments from DOC's submission in the definition section on 'effects management hierarchy' to amend 'biodiversity effects management hierarchy' to 'effects management hierarchy (in relation to indigenous biodiversity) in clause 2 of ECO-P3<sup>133</sup>.

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<sup>130</sup> Appendix 10c

<sup>131</sup> 00322.028 Fulton Hogan Limited

<sup>132</sup> 00016.013 Alluvium Ltd and Stoney Creek Mining Ltd, 0017.011 Danny Walker, Peter Hall, Cold Clutha Ltd and AWA Koura Mining Ltd

<sup>133</sup> 00137.009 DOC

175. There are consequential amendments relating to ECO-P3 to amend the reference to from IM—P15 to IM—P6(2) to reflect recommendations contained within the IM chapter.<sup>134</sup>

176. I recommend accepting consequential amendments to the chapeau of ECO-P3 that have arisen from amending the definition of SNA to include the coastal environment<sup>135</sup>.

#### 10.8.2.4 Recommendation

##### **ECO-P3 – Protecting significant natural areas and taoka**

Except as provided for by ECO-P4 and ECO-P5, protect *significant natural areas* (outside the coastal environment)<sup>136</sup> and indigenous species and ecosystems that are taoka by:

- (1) first<sup>137</sup> avoiding adverse *effects* that result in:
  - (a) any reduction of the area or indigenous biodiversity<sup>138</sup> values identified and mapped under ECO-P2(1),<sup>139</sup> (even if those values are not themselves significant but contribute to an area being identified as a significant natural area<sup>140</sup>) identified under ECO-P2(1), or<sup>141</sup> and
  - (b) any loss of ~~Kāi Tahu~~ taoka<sup>142</sup> values identified and mapped under ECO-P2(2)<sup>143</sup>, and
- (2) after (1), applying the biodiversity effects management hierarchy (in relation to indigenous biodiversity)<sup>144</sup> in ECO-P6, and
- (3) prior to *significant natural areas* and indigenous species and ecosystems that are taoka being identified and mapped<sup>145</sup> in accordance with ECO-P2, adopt a precautionary approach towards activities in accordance with ~~IM—P15~~ IM—P6(2)<sup>146</sup>.

#### 10.8.3 ECO-P4 – Provision for new activities

##### 10.8.3.1 Introduction

177. As notified, ECO-P4 reads:

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<sup>134</sup> 00139.040 DCC, 00121.027 Ravensdown

<sup>135</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>136</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>137</sup> 00223.100 Ngāi Tahu ki Murihiku

<sup>138</sup> 00226.219 Kāi Tahu ki Otago

<sup>139</sup> 00230.102 Forest and Bird

<sup>140</sup> 00230.102 Forest and Bird

<sup>141</sup> 00230.102 Forest and Bird

<sup>142</sup> 00139.129 Dunedin City Council

<sup>143</sup> 00138.033 Queenstown Lakes District Council

<sup>144</sup> 00016.013 Alluvium Ltd and Stoney Creek Mining Ltd, 0017.011 Danny Walker, Peter Hall, Cold Clutha Ltd and AWA Koura Mining Ltd, 00321.022 New Zealand Infrastructure Commission, 00137.009 DOC

<sup>145</sup> 00020.018 Raynoir Matarki Forests

<sup>146</sup> 00139.040 DCC, 00121.027 Ravensdown

#### ECO-P4 – Provision for new activities

Maintain Otago’s indigenous *biodiversity* by following the sequential steps in the effects management hierarchy set out in ECO-P6 when making decisions on plans, applications for resource consent or notices of requirement for the following activities in *significant natural areas*, or where they may adversely affect indigenous species and ecosystems that are taoka:

- (1) the development or upgrade of *nationally* and *regionally significant infrastructure* that has a *functional* or *operational* need to locate within the relevant significant natural area(s) or where they may adversely affect indigenous species or ecosystems that are taoka,
- (2) the development of papakāika, marae and ancillary facilities associated with customary activities on Māori land,
- (3) the use of Māori land in a way that will make a significant contribution to enhancing the social, cultural or economic well-being of takata whenua,
- (4) activities that are for the purpose of protecting, restoring or enhancing a significant natural area or indigenous species or ecosystems that are taoka, or
- (5) activities that are for the purpose of addressing a severe and immediate risk to public health or safety.

178. ECO-P4 sets out what new activities are allowed to take place in SNAs and areas with indigenous biodiversity that are taoka, provided the sequential steps in ECO-P6 are followed.

#### 10.8.3.2 Submissions

179. There are 24 submissions on ECO-P4. Six submitters seek the provision is retained as notified<sup>147</sup>.

180. Four submitters seek amendments to the header as follows:

- ‘Provision for new activities in Significant Natural Areas<sup>148</sup>.’
- ‘Provision for new activities in Significant Natural Areas and taoka<sup>149</sup>.’
- ‘Provision for new activities: significant natural areas and taoka<sup>150</sup>.’
- ‘Provision for specified new development and use in significant natural areas identified in accordance with APP2, and taoka identified in accordance with ECO-M3<sup>151</sup>.’

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<sup>147</sup> 00307.013 Christchurch International Airport Limited (CIAL), 00314.029 Transpower New Zealand Limited, 00305.026 Waka Kotahi NZ Transport Agency, 00510.031 Z Energy Limited, BP Oil NZ Limited, Mobil Oil NZ Limited, 00318.018 Contact Energy Limited, 00306.043 Meridian

<sup>148</sup> 00239.102 Federated Farmers of New Zealand

<sup>149</sup> 00226.220 Kāi Tahu ki Otago/ Aukaha

<sup>150</sup> 00138.034 Queenstown Lakes District Council

<sup>151</sup> 00230.103 Forest and Bird

181. Two submitters seek ‘in the effects management hierarchy’ is removed from the chapeau<sup>152</sup>. They submit the policy seeks to apply the effects management hierarchy to activities where it is not possible to avoid adverse effects on SNAs and indigenous biodiversity, in particular activities related to fixed mineral extraction. Coupled with this, they believe the provision uses the NPSFM 2020 definition for ‘effects management hierarchy’ and so is only applicable to wetlands and rivers, which causes uncertainty for extraction activities as to whether the effects management hierarchy applies only to freshwater locations.

182. Forest and Bird submits ECO-P4 applies to all new activities and so seeks the following specific amendments<sup>153</sup>:

‘When making decisions on plans, applications for resource consents or notices of requirement recognised that for the following specified development and use activities are more likely to be appropriate than other activities in significant natural areas, or where ~~they activities~~ may adversely affect indigenous species and ecosystems that are taoka by following the sequential steps in the effects management hierarchy set out in ECO-P6:’

(1)...or where ~~they~~ activities may adversely...

(5)...restoring ~~or enhancing~~ and improving’

183. Thirteen submitters seek various amendments to the provision as follows:

- Clause (1): amendments to allow for the following activities: infrastructure generally<sup>154</sup>, mining<sup>155</sup>, mineral extraction<sup>156</sup>, aggregate extraction<sup>157</sup> and significant electricity distribution infrastructure<sup>158</sup>.
- Clause (1): amend ‘development’ to ‘development, operation and maintenance’ to ensure consistency with NPS — REG<sup>159</sup>.
- Clause (1) & (2): clarify that the term ‘Māori land’ applies to land in native reserves and that are held under Te Ture Whenua Māori Act 1993<sup>160</sup>.
- Clause (3): amend ‘takata whenua’ to ‘mana whenua’<sup>161</sup>.
- Clause (3): amend to ‘the use of Māori land in ~~a way that will make significant contribution to~~ enable takata whenua to maintain their connection to their whenua and enhance the social, cultural or economic well-being,’ as tangata whenua should not need to meet a threshold or test to develop their ancestral land<sup>162</sup>

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<sup>152</sup> 00016.014 Alluvium Ltd and Stoney Creek Mining, 00017.012 Danny Walker, Peter Hall, Cold Clutha Ltd and Awa Koura Mining Ltd

<sup>153</sup> 00230.103 Forest and Bird

<sup>154</sup> 00235.121 OWRUG

<sup>155</sup> 00021.008 Matakanui Gold Limited, 00239.102 Federated Farmers of New Zealand

<sup>156</sup> 00015.003 Aggregate and Quarry Association

<sup>157</sup> 00239.102 Federated Farmers of New Zealand

<sup>158</sup> 00511.018 PowerNet Ltd, 00320.018 Network Waitaki Limited

<sup>159</sup> 00311.022 Trustpower Limited

<sup>160</sup> 00226.220 Kāi Tahu ki Otago

<sup>161</sup> 00226.220 Kāi Tahu ki Otago

<sup>162</sup> 00234.032 Te Rūnanga o Ngāi Tahu

- Clause (5) amend ‘severe and immediate’ to ‘severe or immediate’ because the risk might be severe but not immediate, for example essential hazard mitigation work<sup>163</sup>.

184. Three submitters seek a range of new clauses as follows:

- ‘(1)(a) The construction, operation, maintenance and rehabilitation of any mineral and aggregate extraction activity,’ Without the inclusion of this new clause the provision is inconsistent with the draft NPSIB (3.9(2)) as the NPSIB recognises the need to retain a ‘consenting pathway’ for mineral extraction<sup>164</sup>.
- Kāi Tahu ki Otago seeks the insertion of a new clause (2): ‘...2. the sustainable use of mahika kai and kaimoana by mana whenua, ...’ This is in line with MW-P2, MW-P3, ECO-P1, Kāi Tahu aspirations set out in the iwi management plans and also Outcome 4 of Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020<sup>165</sup>.
- Amend the provision to include a carve out for infrastructure in which the policy framework of EIT—INF applies as follows: ‘or, in the case of infrastructure, adverse effects are managed in accordance with EIT- INF - P13’<sup>166</sup>.

185. Two submitters seek amendments to give effect to the NPSIB<sup>167</sup>. Federated Farmers seeks the provision is deleted and aligned with the NPSIB as the list provided within ECO-P4 is inconsistent with the draft NPSIB<sup>168</sup>.

186. Federated Farmers seeks an amendment to provide a pathway for activities within Significant Natural Areas where they are consistent with retaining the ecological integrity of the SNA and can be shown to be appropriate and without any detrimental effect<sup>169</sup>.

#### 10.8.3.3 Analysis

187. Four submitters seek various specific amendments to the header as set out in paragraph 179. I do not recommend accepting the submissions as SNAs and areas where taoka exist are already captured in the text of the provision.

188. Alluvium and Stoney Creek and Danny Walker and Others seek ‘in the effects management hierarchy’ is removed from the chapeau. The effects management hierarchy set out in ECO-P6 is intentionally different to the effects management hierarchy described in the definition section of the pORPS 21 because ECO-P6 manages adverse effects on indigenous biodiversity, not freshwater. For clarity purposes, I accept in part, these submissions. However, I recommend accepting consequential amendments from DOC’s submission in the definition section on ‘effects management hierarchy’ to amend

<sup>163</sup> 00139.130 Dunedin City Council

<sup>164</sup> 00115.020 Oceana Gold (New Zealand) Ltd

<sup>165</sup> 00226.220 Kāi Tahu ki Otago

<sup>166</sup> 00315.036 Aurora Energy Limited

<sup>167</sup> 00315.036 Aurora Energy Limited, 00139.130 Dunedin City Council

<sup>168</sup> 00239.102 Federated Farmers of New Zealand

<sup>169</sup> 00239.102 Federated Farmers of New Zealand



‘biodiversity effects management hierarchy’ to ‘effects management hierarchy (in relation to indigenous biodiversity) in clause 2 of ECO-P3<sup>170</sup>.

189. Forest and Bird seeks the chapeau is amended to clearly state ECO-P4 applies to specified new developments. I do not consider it is unclear that the provision applies to all new activities as clause 1 to 5 specify the new activities which are allowed under ECO-P4; therefore, I do not recommend accepting this submission point. However, for clarity purposes I recommend including ‘despite ECO-P3’ at the beginning of the chapeau of ECO-P4. I do not recommend accepting Forest and Bird’s submission point to amend ‘or enhancing’ to ‘and improving’ because ‘enhancing’ is a well-used term in the pORSP ‘or’ to ‘and’ in clause 5 as this aligns with the language used in ECO-P8.
190. Several submitters<sup>171</sup> seek amendments to the provision to allow for infrastructure generally, mining, aggregate extraction, and significant electricity distribution infrastructure. Similarly, Oceana Gold seeks the inclusion of a new clause to provide a consenting pathway for mineral and aggregate extraction activities to ensure consistency with clause 3.9(2) of the draft NPSIB. I do not consider it is appropriate to create a planning pathway for these activities. To do so, in my view, will weaken the key purpose of the provision which is to “maintain Otago’s indigenous biodiversity”. Widening the planning pathway in the manner requested could increase the risk of biodiversity loss and cumulative effects and will jeopardise ECO-O1 being achieved.
191. The current activities provided for in ECO-P4 are supported by higher order statutory documents, such as the RMA and NPSs. Inclusion of the activities listed under clause (1), which provides for nationally significant infrastructure and regionally significant infrastructure, is supported by the NPSUD, NPSREG, NPSET and sections 6(h) and 7(j) of the RMA. The activities listed under clause (2) assist with provision for the matters in s6(e) of the RMA and responds to RMIA-MKB-I2. The activities listed under clause (3) are consistent with s6(e) of the RMA and are also consistent with MW-P1, MW-P3, MW-P4 which responds to RMIA-MKB-I2. The activities listed under clause (4) assist with providing for the matters in s6(c) and s7(d) and 7(f) of the RMA as well as responding to a number of significant resource management issues identified in Part 2 of the pORPS, these are:
- SRMR-I2- Climate change is likely to impact our economy and environment
  - SRMR-I3- Pest species pose an ongoing threat to indigenous biodiversity, economic activities and landscapes
  - SRMR-I7- Rich and varied biodiversity has been lost or degraded due to human activities and the presence of pests and predators
  - SRMR-I10 - Economic and domestic activities in Otago use natural resources but do not always properly account for the environmental stresses or the future impacts they cause

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<sup>170</sup> 00137.009 DOC

<sup>171</sup> 00235.121 OWRUG, 00021.008 Matakanui Gold Limited, 00239.102 Federated Farmers of New Zealand, 00015.003 Aggregate and Quarry Association, 00511.018 PowerNet Ltd, 00320.018 Network Waitaki Limited

- SRMR-I11- Cumulative impacts and resilience – the environmental costs of our activities in Otago are adding up with tipping points potentially being reached

192. The activities under clause (5) assist with providing for the matters in s6(h) of the RMA as well as responding to a number of significant resource management issues identified in Part 2 of the pORPS.

193. Furthermore, there are only a limited number of activities provided with a planning pathway in ECO-P4 because a wider list would weaken the provision and result in potential further loss to Otago’s indigenous biodiversity, which would result in the attainment of ECO-O1 being compromised.

194. Oceana Gold seeks the inclusion of a new clause to provide a consenting pathway for mineral and aggregate extraction activities to ensure consistency with clause 3.9(2) of the draft NPSIB. While I acknowledge that mining has a functional and operational need to locate where the resource is present, ECO-P4 applies to SNAs which are of the highest importance to maintaining Otago’s indigenous biodiversity and so require the highest practicable level of protection. In preparing my evaluation of submissions on this Chapter of the pORPS advice was sought from an ecologist. On this particular topic he advised:

*“Mineral extraction, particularly open-cast mining, has the potential to generate significant adverse effects on the ecological values and areas of SNAs, and these would often require offsetting or compensation. As noted earlier in this report, the quality of offsetting and compensation approaches has often been very poor in New Zealand. As such, there would be a significant risk in providing a specific pathway for kinds of mineral extraction that cannot avoid, remedy, or mitigate adverse effects on SNA values and areas.*

*Oceana Gold Ltd raises a number of concerns about this. In Otago, the company currently operates in the Macraes Ecological District, which is a ‘hotspot’ for Threatened and At Risk plant species. Wildland Consultants assisted Waitaki District Council with surveys of prospective SNAs in Macraes Ecological District, but these are yet to be scheduled in the Waitaki District Plan. The areas Wildlands assessed as SNAs in Macraes Ecological District are mostly relatively small, discrete areas, and collectively cover only a small part of the ecological district. Many landholders refused to provide access for SNA surveys, and no surveys were undertaken on land owned by Oceana Gold. SNAs were assessed as the best remaining sites for indigenous biodiversity on the properties surveyed, and as such is it not likely that adverse effects of mining on these significant values could be easily mitigated, offset, or compensated. The Deepdell North Stage III project, which the submitter notes was consented, did not affect any SNAs<sup>172</sup>”*

195. As noted in the Section 32 Evaluation Report on the pORPS, the Otago region has seen a decline in the state of indigenous biodiversity<sup>173</sup>. This report identifies a number of

<sup>172</sup> Appendix 10c, section 5.7, para. 3-4

<sup>173</sup> Lloyd, K. (2021). An overview of the state of indigenous biodiversity in the Otago Region (pp. 11-14). Wildlands

pressures and issues facing indigenous biodiversity in the Otago region resulting from the loss and modification of habitats. As a consequence, a conservative approach to maintaining SNAs to avoid the further loss of Otago's indigenous biodiversity is justified. In reliance upon the ecological advice (both that cited in the s32 Report and that cited above), and in light of the significance of the issue of biodiversity loss throughout Otago and the need for a positive and clear planning response, I do not recommend amending ECO-P4 to create a planning pathway in the pORPS for infrastructure generally, mining, aggregate extraction, and significant electricity distribution infrastructure activities.

196. Trustpower seeks 'operation and maintenance' is included in clause (1) as it considers the current drafting is inconsistent with the NPS—REG. I do not consider ECO-P4 is inconsistent with the NPSREG as a pathway for with offsetting or compensation has been provided for through ECO-P6. For clarity and consistency, I recommend accepting their submission point to include 'operation and maintenance' to clause (1) because EIT—EN—P1 provides for the operation and maintenance of *renewable electricity generation activities* and EIT—EN—P2 recognises *renewable electricity generation activities* in decision making.
197. I recommend accepting Kāi Tahu ki Otago's request to clarify the term 'Māori land' and to replace 'takata whenua' with 'mana whenua'.
198. I recommend accepting Te Rūnanga o Ngāi Tahu's requested amendments to clause 3 but suggest slightly different wording so that it is consistent with Kāi Tahu ki Otago's submission.
199. I agree with DCC that a risk might be severe but immediate, for example essential hazard mitigation work; therefore, I recommend accepting the submission to amend 'severe and immediate' to 'severe or immediate'.
200. Kāi Tahu ki Otago seeks a new clause be included in ECO-P4 to provide for the sustainable use of mahika kai and kaimoana by mana whenua. I recommend accepting the submission as it aligns with MW—O1, MW—P2, MW—P3 and ECO-P1.
201. Aurora Energy seeks the inclusion of a new clause to provide a carve out for infrastructure which is managed in accordance with EIT—INF—P13. I do not recommend accepting the submission as I consider the provisions of the EIT—INF and ECO chapter should be read together and applied according to the particular circumstances. Where there is a tension between provisions IM-P2 (or as recommended in Report 6 of the s.42 an updated IM-P1) provides a pathway for resolving the tension. IM—P1 reads as follows:

"Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise:

(1) the life-supporting capacity and mauri of the natural environment and the health needs of people, then

(2) the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.”

202. Federated Farmers seeks a pathway for other new activities within SNAs where the ecological integrity of the SNA can be retained. The submitter has not provided specific amendments to demonstrate which activities should be considered. Alternatively, I do not consider it appropriate to introduce a broad clause based on an assessment of retainment of ‘ecological integrity’ in an SNA. This could introduce the risk of biodiversity loss being eroded overtime and cumulative effects which may jeopardise ECO-O1 being achieved. I do not recommend accepting the submission. Furthermore, ecological advice is that: *“Federated Farmers seeks that other new activities are provided for within ECO-P4 where they would be consistent with retaining the ecological integrity of the SNA. The key values of SNAs that need to be maintained are the significant values; ‘ecological integrity’ does not translate very well to significant values, so if a new activity pathway was allowed within SNAs, that maintained ecological integrity, this would not protect significant values.”*<sup>174</sup>
203. I recommend consequential amendments from the EIT—INF chapter to amend ‘nationally and regionally significant infrastructure’ to *‘nationally significant infrastructure and regionally significant infrastructure’*<sup>175</sup>.
204. I recommend consequential amendments from the EIT—INF chapter to amend ‘functional’ to *‘functional need’*<sup>176</sup>.
205. I recommend accepting consequential amendments to the chapeau of ECO-P4 that have arisen from amending the definition of SNA to include the coastal environment<sup>177</sup>.
206. I recommend consequential amendments to italicise *‘mahika kai’* because it has been recommended to define this term.

#### 10.8.3.4 Recommendation

207. I recommend the following amendments to ECO-P4:

##### **ECO–P4 – Provision for new activities**

Maintain Otago’s indigenous *biodiversity* by following the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*<sup>178</sup> set out in ECO–P6 when making decisions on plans, applications for *resource consent* or notices of requirement for the following activities in *significant natural areas* (outside the coastal

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<sup>174</sup> Appendix 10c section 5.7, para. 3

<sup>175</sup> 00314.001 Transpower

<sup>176</sup> 00315.046 Aurora, 00138.116 QLDC

<sup>177</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>178</sup> 00016.013 Alluvium Ltd and Stoney Creek Mining Ltd, 0017.011 Danny Walker, Peter Hall, Cold Clutha Ltd and AWA Koura Mining Ltd, 00321.022 New Zealand Infrastructure Commission, 00137.009 DOC

environment)<sup>179</sup>, or where they may adversely affect indigenous species and ecosystems that are taoka:

- (1) the development, operation, maintenance<sup>180</sup> or upgrade of *nationally significant infrastructure*<sup>181</sup> and *regionally significant infrastructure* that has a *functional need*<sup>182</sup> or *operational need* to locate within the relevant *significant natural area(s)* or where they may adversely affect indigenous species or ecosystems that are taoka,
- (2) the development of *papakāika*, marae and ancillary facilities associated with customary activities on Māori land<sup>183</sup>,
- (2A) the sustainable use of *mahika kai*<sup>184</sup> and kaimoana (seafood) by *mana whenua*,<sup>185</sup>
- (3) the use of Māori land ~~in a way that will make a significant contribution~~<sup>186</sup> to enable *mana whenua* to maintain their connection to their whenua and enhancing the<sup>187</sup> social, cultural or economic well-being ~~of *takata whenua*~~<sup>188</sup>,
- (4) activities that are for the purpose of protecting, restoring or enhancing a *significant natural area* or indigenous species or ecosystems that are taoka, or
- (5) activities that are for the purpose of addressing a severe ~~and/or~~<sup>189</sup> immediate risk to public health or safety.

#### 10.8.4 ECO-P5 – Existing activities in *significant natural areas*

##### 10.8.4.1 Introduction

208. As notified, ECO-P5 reads as:

#### **ECO-P5 – Existing activities in *significant natural areas***

Except as provided for by ECO-P4, provide for existing activities within *significant natural areas* and that may adversely affect indigenous species and ecosystems that are taoka, if:

- (1) the continuation of an existing activity will not lead to the loss (including through cumulative loss) of extent or *degradation* of the ecological integrity of any *significant natural area* or indigenous species or ecosystems that are taoka, and

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<sup>179</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>180</sup> 00311.022 Trustpower Limited

<sup>181</sup> 00314.001 Transpower New Zealand Limited

<sup>182</sup> 00315.046 Aurora, 00138.116 QLDC

<sup>183</sup> 'Māori land' applies to land in native reserves that are held under Te Ture Whenua Māori act 1993

<sup>184</sup> 00226.0038 Kāi Tahu ki Otago

<sup>185</sup> 00226.220 Kāi Tahu ki Otago

<sup>186</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>187</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>188</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>189</sup> 00139.130 Dunedin City Council

(2) the adverse *effects* of an existing activity are no greater in character, spatial extent, intensity or scale than they were before this RPS became operative.

209. ECO-P5 sets out what existing activities are allowed to continue in SNAs and areas with indigenous biodiversity that are taoka provided that the continuation will not lead to the loss of extent or degradation of the SNA and indigenous biodiversity that are taoka, and the adverse effects are no greater in character, intensity or scale than they were before the RPS becoming operative.

#### 10.8.4.2 Submissions

210. There are nineteen submissions on ECO-P5. Three submitters seek the provision is retained as notified<sup>190</sup>.

211. Three submitters seek amendments to the header as follows:

- ‘ECO-P5 – Existing activities in significant natural areas and taoka’. Kāi Tahu ki Otago seeks clarification on the scope of the policy by amending the title to show where it applies<sup>191</sup>.
- ‘Existing activities: significant natural areas and taoka.’ QLDC seeks the policy title format between ECO-P4 and ECO-P5 should be consistent<sup>192</sup>.
- ‘ECO-P5 – Maintenance and operation of activities in significant natural areas’. Forest and Bird seeks the maintenance and operation of lawfully established activities within SNAs should continue, provided it does not lead to the loss or degradation of these areas<sup>193</sup>.

212. Federated Farmers seeks ‘and that may adversely affect indigenous species and ecosystems that are taoka’ is removed as Policy 10 of the draft NPSIB provides for existing activities that have already modified indigenous vegetations and habitats of indigenous fauna<sup>194</sup>. The submitter seeks the following specific amendments<sup>195</sup>:

- Clause (1): remove ‘or indigenous species or ecosystems that are taoka’. Federated Farmers considers there is no need to set out a different regime for biodiversity as proposed within the ECO-M3 framework.
- Clause (2): amend to ‘...before the applicable plan rule became this RPS became operative.’

213. Trojan Holdings Ltd and Wayfare Group Ltd consider some new land uses can be appropriate in certain SNAs. The submitters seek the following specific amendments<sup>196</sup>:

- Chapeau: amend from ‘existing activities’ to ‘existing activities and land uses’

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<sup>190</sup> 00314.030 Transpower New Zealand Limited, 00510.032 Z Energy Limited, BP Oil NZ Limited, Mobil Oil NZ Limited

<sup>191</sup> 00226.221 Kāi Tahu ki Otago

<sup>192</sup> 00138.035 Queenstown Lakes District Council

<sup>193</sup> 00230.104 Forest and Bird

<sup>194</sup> 00239.103 Federated Farmers of New Zealand

<sup>195</sup> 00239.103 Federated Farmers of New Zealand

<sup>196</sup> 00206.044 Trojan Holdings Limited, 00411.056 Wayfare Group Ltd

- Clause (1): amend to ‘continuation or expansion’ and ‘existing or anticipated activity/land use’
  - Clause (2): amend to ‘existing activity/land use’ and ‘overall spatial extent’.
214. Forest and Bird submits it is unclear what is meant by ‘existing activity’ but accepts the maintenance and operation of lawfully established activities within SNAs should continue, provided there is no further loss or degradation to these areas. The submitter seeks the following specific amendments<sup>197</sup>:
- Chapeau: amend to ‘~~Except as provided for by ECO-P4, provide for the maintenance and continuing operation of~~ existing lawfully established...’
  - Clause (1): amend to ‘the maintenance and continuing operation ~~continuance of an existing lawfully established...~~’.
  - Clause (2): amend to ‘...effects of the maintenance and continuing operation of an existing activity...’.
215. Trustpower Ltd considers the provision is too restrictive as existing activities are unable to change or adapt but are fixed in time. The submitter considers this is inappropriate as it does not recognise or provide for the continuation of the existing activities sufficiently and so they seek the following amendments<sup>198</sup>:
- Clause (1): amend to ‘continuation and minor upgrading’
  - Clause (2): amend to ‘existing activity and any minor upgrades are ~~no greater the same or similar~~’
216. Two submitters seek amendments to include the following new clauses:
- Aurora Energy considers it unclear if ECO-P5 applies to the operation, maintenance and upgrade of existing infrastructure and so seeks the following new clause to be included: ‘(3) or, in the case of infrastructure, adverse effects are managed in accordance with EIT – INF – P13.’<sup>199</sup>.
  - ‘(3) the activity is not within 10m of a freshwater body or within the coastal environment’<sup>200</sup>.
217. Kāi Tahu ki Otago seeks a date as to when the policy takes effect is included because the provision has legal effect prior to this date. The submitter recommends the date of notification of pORPS21 should be considered for inclusion in this policy<sup>201</sup>.
218. Waka Kotahi considers the provision is too restrictive and needs to provide greater clarity on ‘existing activities.’ The submitter seeks the operational and functional needs of infrastructure are provided for by using similar wording in ECO-P4(1)<sup>202</sup>. Similarly, NZ

<sup>197</sup> 00230.104 Royal Forest and Bird Protection Society of New Zealand

<sup>198</sup> 00311.023 Trustpower Limited

<sup>199</sup> 00315.037 Aurora Energy Limited

<sup>200</sup> 00230.104 Forest and Bird

<sup>201</sup> 00226.221 Kāi Tahu ki Otago

<sup>202</sup> 00350.027 Waka Kotahi NZ Transport Agency

Infrastructure Commission seeks amendments to provide for the operation, maintenance, and minor upgrading of existing infrastructure<sup>203</sup>.

219. Oceana Gold seeks the provision is deleted or amended to provide for the development of new and existing activities in appropriately zoned areas. The submitter considers the policy is unclear because 'existing activities' is not defined in the pORPS21. There is uncertainty as to whether 'existing activities' refers to those that have s10 and s20 rights under the RMA, or whether it would apply to areas zoned for a particular activity. There is no certainty as to whether this policy would only relate to the general ongoing of a legally authorised activity or whether it would be applicable to the development of new activities (e.g. a new mine) in an appropriately zoned area<sup>204</sup>.
220. Similarly, Waitaki District Council is concerned the provision may impact existing activities that operate in a special zone under a district plan e.g., Macraes Mining Operation in the Waitaki District Plan. They submit it is unclear whether the provision applies to s10 of the Act and that the pORPS 21 cannot be more stringent on existing activities under s10 of the Act. The submitter seeks amendments to ECO-P5 to provide for existing activities within SNAs<sup>205</sup>.
221. Port of Otago Ltd seeks the provision is amended to apply to the coastal environment or add a similar provision in the CE chapter that enables the continuation of existing activities where there is no further loss of ecosystem values<sup>206</sup>.

#### 10.8.4.3 Analysis

222. Several submitters seek various amendments to the title of ECO-P5, as set out in para. 210. For reasons discussed above in the discussion on ECO-P4, I do not recommend accepting the submissions to amend the title to include SNAs and areas where taoka exist as this is already captured in the provision. I do not consider it necessary to include 'maintenance and operation' in the title because it has been recommended to include this in the provision and so it is not necessary to include this in the title.
223. Federated Farmers seeks 'and that may adversely affect indigenous species and ecosystems that are taoka' is removed as it is inconsistent with the draft NPSIB. I do not recommend accepting the submission as the suggested amendment is inconsistent with s6(e) of the Act that requires the relationship of Māori and taoka to be recognised and provided for as a matter of national importance.
224. Federated Farmers seeks 'or indigenous species or ecosystem that are taoka' is removed. For reasons stated above in the discussion on ECO-P2, I do not recommend accepting the submission. The submitter also seeks amendments to clause 2 but has not provided any reasoning. The purpose of clause 2 is to provide a benchmark for clause 1; therefore, I do not consider it appropriate to amend the date in clause 2 to when a lower order plan rule becomes operative as this would extent the date in which further degradation could

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<sup>203</sup> 00321.024 New Zealand Infrastructure Commission

<sup>204</sup> 00115.021 Oceana Gold (New Zealand) Ltd)

<sup>205</sup> 00140.028 Waitaki District Council

<sup>206</sup> 00301.030 Port of Otago Ltd.



occur and would lower the benchmark. Therefore, I do not recommend accepting the submission.

225. For duplication purposes, I do not consider it necessary to include a NPSFM clause to ECO-P5. Therefore, I do not recommend accepting Forest and Bird's submission to include their new suggested clause to ECO-P5. I consider the provision should be amended to allow for the maintenance of an existing activity, provided the criteria in clauses (1) and (2) met. For legitimacy reasons, I recommend accepting, in part, Forest and Bird's submission to amend 'existing activity' to 'lawfully established' because the current wording could legitimise activities that have been unlawfully established. However, I suggest slightly different wording of 'existing activities that are lawfully established'.
226. Trustpower Ltd seeks amendments to the provision to allow for minor upgrades. I recommend accepting this submission as I consider it appropriate to allow for minor upgrades, provided the parameters in clauses (1) and (2) are satisfied. Furthermore, this supports the purpose of EIT—EN—P1 which provides for the operation and maintenance of existing renewable electricity generation activities.
227. Similarly, Aurora Energy Ltd seeks a new clause, that cross references EIT—INF—P13, to provide a carve out for infrastructure as it considers it unclear if ECO-P5 applies to the operation, maintenance and upgrade of existing infrastructure. I do not recommend including the suggested new clause because EIT—INF—P13 refers to new activities, not existing. I do, however, recommend amending clauses (1) and (2) to include 'maintenance and minor upgrades', provided the parameters in clause (1) and (2) are met. Therefore, I recommend accepting NZ Infrastructure Commission's submission to amend ECO-P5 to provide for maintenance and minor upgrades.
- ~~228.~~ Waka Kotahi seeks the operational and functional needs of infrastructure are provided for by including a clause similar to ECO-P4(1). As discussed above, I recommend amending clauses (1) and (2) to provide for the maintenance and upgrading of an activity, which satisfies, in part, Waka Kotahi's submission. I do not consider it necessary to specify infrastructure activities as this matter is best left to lower order plans where those subjects can be debated in relation to a specified rule and notices of requirements for designations. However, if an infrastructure activity satisfies the criteria set out in ECO-P5 then it can continue, therefore, in some instances ECO-P5 allows for the continuation of infrastructure activities.
229. Trojan Holdings and Wayfare Group Ltd seek amendments to provide for certain new land uses which can be appropriate in some SNAs. I do not recommend accepting the submission because the pORPS 21 establishes a policy framework. Specific zone provisions are the preserve of district and regional plans.
- ~~230.~~ Oceana Gold seeks ECO-P5 provides for new and existing activities within an appropriately zoned area. Firstly, I do not recommend accepting the submission because ECO-P5 deals with existing activities, not new activities, as this is dealt with in ECO-P4. Secondly, ECO-P5 provides a policy framework for lower order plans where specific zone provisions will sit; therefore, I consider the suggested amendment to be too detailed for a RPS and do not recommend accepting the submission.

231. Waitaki District Council seeks ECO-P5 provides for existing activities within SNAs. The provision does allow for existing activities to occur within a special zone area under a district plan, provided clause (1) and (2) are met. I would note, that under s10(1)(a)(ii) of the Act land may be used in a manner that contravenes a rule in a district plan if the effects of the use are the same or similar in character, intensity, and scale to those which existed before the rule became operative or the proposed plan was notified. Therefore, I do not recommend accepting Waitaki District Council's submission.
232. Port of Otago Ltd seeks ECO-P5 is amended to apply to the coastal environment. It has been recommended to amend the definition of SNA to include the coastal environment. Therefore, under this suggested amendment to the definition of SNA, ECO-P5 would apply to areas of the coastal environment that are identified as SNAs. However, coastal indigenous biodiversity must be managed in accordance with Policy 11 of the NZCPS and so to ensure consistency with the NZCPS, coastal indigenous biodiversity must be managed under CE—P5.
233. I do not recommend accepting Kāi Tahu ki Otago's submission to include the date of notification of the pORPS 21 as it will not add value to the clause (2) unless the commencement date of the pORPS 21 is delayed.
234. Under Schedule 1, Clause 16(2) of the RMA remove the italics from 'degradation' as this term is not defined in the pORPS 21.
235. Under Schedule 1, Clause 16(2) of the RMA remove 'except as provided for by ECO-P4'. The notified cross reference to ECO-P4 is incorrect as the cross-reference was originally intended to be ECO-P3. However, ECO-P3 provides an exception to ECO-P5, thus making a circle of expectations. Therefore, I recommend the removal of exception from the chapeau of ECO-P5.
236. I recommend accepting consequential amendments to the chapeau of ECO-P5 that have arisen from amending the definition of SNA to include the coastal environment<sup>207</sup>.

#### 10.8.4.4 Recommendation

237. I recommend the following amendments to ECO-P5:

**ECO-P5 – Existing activities in *significant natural areas***

~~Except as provided for by ECO-P4, p~~Provide<sup>208</sup> for existing activities that are lawfully established<sup>209</sup> within *significant natural areas* (outside the coastal environment)<sup>210</sup> and that may adversely affect indigenous species and ecosystems that are taoka, if:

- (1) the continuation, maintenance and minor upgrades of an existing activity that is lawfully established<sup>211</sup> will not lead to the loss (including through cumulative loss)

<sup>207</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>208</sup> Under RMA Schedule 1, Clause 16(2) of the RMA amend the cross-referencing error

<sup>209</sup> 00230.104 Royal Forest and Bird Protection Society of New Zealand

<sup>210</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>211</sup> 00230.104 Royal Forest and Bird Protection Society of New Zealand

of extent or degradation<sup>212</sup> of the ecological integrity of any *significant natural area* or indigenous species or ecosystems that are taoka, and

- (2) the adverse *effects* from the continuation, maintenance and minor upgrades of an existing activity that is lawfully established<sup>213</sup> are no greater in character, spatial extent, intensity or scale than they were before this RPS became operative.

10.8.5 ECO-P6 – Maintaining indigenous *biodiversity*

10.8.5.1 Introduction

238. As notified ECO-P6 reads as:

**ECO–P6 – Maintaining indigenous *biodiversity***

Maintain Otago’s indigenous *biodiversity* (excluding the coastal environment and areas managed under ECO–P3) by applying the following *biodiversity* effects management hierarchy in decision-making on applications for *resource consent* and notices of requirement:

- (1) avoid adverse *effects* as the first priority,
- (2) where adverse *effects* demonstrably cannot be completely avoided, they are remedied,
- (3) where adverse *effects* demonstrably cannot be completely avoided or remedied, they are mitigated,
- (4) where there are residual adverse *effects* after avoidance, remediation, and mitigation, then the residual adverse *effects* are offset in accordance with APP3, and
- (5) if *biodiversity* offsetting of residual adverse *effects* is not possible, then:
  - (a) the residual adverse *effects* are compensated for in accordance with APP4, and
  - (b) if the residual adverse *effects* cannot be compensated for in accordance with APP4, the activity is avoided.

239. ECO-P6 sets out how indigenous biodiversity is to be maintained through decisions on applications for resource consent and notices of requirements. The policy requires, in sequential steps, adverse effects to be avoided, remedied, mitigated, offset or compensated for. Biodiversity offsets or compensation can only be accepted if the actions comply with the criteria set out in APP3 and APP4.

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<sup>212</sup> Under RMA Schedule 1, Clause 16(2) of the RMA remove the italics from ‘degradation’ as this term is not defined in the pORPS21

<sup>213</sup> 00230.104 Royal Forest and Bird Protection Society of New Zealand

#### 10.8.5.2 Submissions

240. There are twenty-eight submissions on ECO-P6. One submitter seeks the provision is retained as notified<sup>214</sup>. Two submitters seek the provision is deleted<sup>215</sup>.
241. Alluvium and Stoney Creek and Danny Walker and Others seeks the chapeau is amended to ‘...by sequentially applying the following *biodiversity* effects management steps hierarchy...’. The submitters consider the provision seeks to apply the effects management hierarchy where it is not possible to avoid adverse effects on indigenous biodiversity. They consider the policy uses the NPSFM “effects management hierarchy” definition which causes confusion as to whether this provision only applies to matters in relation to freshwater<sup>216</sup>.
242. Forest and Bird seeks the chapeau is amended to ‘...areas ~~managed-protected~~ under ECO-P3 by applying the following biodiversity effects management hierarchy order...’. The submitter considers the term ‘effects management hierarchy’ is confusing as it is defined in the NPSFM and there are inconsistencies between the two<sup>217</sup>. DOC seeks that the definition of ‘effects management hierarchy’ used in ECO-P6 is amended to be consistent with the one defined in the NPSFM<sup>218</sup>. Similarly, OWRUG seeks amendments to ensure consistency between the effects management hierarchies<sup>219</sup>.
243. Christchurch International Airport Limited seeks clause(5)(b) is deleted. The submitter considers it is inappropriate to prohibit an activity entirely because it may generate a residual effect as residual effects will in the vast majority of cases be less than minor or de minimis<sup>220</sup>.
244. New Zealand Infrastructure Commission seeks amendments to the ‘effects management hierarchy’ as the threshold of ‘cannot’ is too high and should be replaced with ‘cannot practicably’ and ECO-P6 should apply broadly to infrastructure e.g., schools<sup>221</sup>.
245. Meridian considers ECO-P6 (4) and (5) create an effects management hierarchy that is inconsistent with Policy C2 of the NPSREG as there is no hierarchy between adopting offsetting or environmental compensation under policy C2. The submitter seeks the following specific amendments and the inclusion of a new clause<sup>222</sup>:
- Clause 1: amend to ‘where practicable first avoid adverse effects ~~as the first priority,~~’
  - Clauses 2 & 3: remove ‘demonstrably’ and replace ‘completely’ with ‘practicably’. Meridian submits the terms ‘demonstrably’ and ‘completely’ are too complete and should be removed from the provision.

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<sup>214</sup> 00122.027 Sanford Ltd.

<sup>215</sup> 00239.104 Federated Farmers of New Zealand, 00322.029 Fulton Hogan Limited

<sup>216</sup> 00016.015 Alluvium Ltd and Stoney Creek Mining Ltd, 00017.013 Danny Walker, Peter Hall, Cold Clutha Ltd and Awa Koura Mining Ltd

<sup>217</sup> 00230.105 Forest and Bird

<sup>218</sup> 00137.089 Director General of Conservation

<sup>219</sup> 00235.122 OWRUG

<sup>220</sup> 00307.014 Christchurch International Airport Limited (CIAL)

<sup>221</sup> 00321.025 New Zealand Infrastructure Commission

<sup>222</sup> 00306.045 Meridian

- Clause 5: replace ‘possible’ with ‘practicable, then’
- The submitter considers ‘residual adverse effects’ is too inclusive and seeks it is amended to ‘significant residual adverse effects’ as this amendment will recognise effects that are less than minor to be considered as ‘acceptable’ and therefore not require offsetting or mitigation and is consistent with the definition of the NPSFM ‘effects management hierarchy’
- Add a new clause: ‘despite (1) to (5) inclusive, when considering any significant residual environmental effects of renewable electricity generation activities or electricity transmission activities that cannot be avoided, remedied, or mitigated, have regard to offsetting, measures, or environmental compensation, including measures or compensation that benefits the local environment and community affected.’

246. Ravensdown Limited seeks the provision is amended to reflect the effects management hierarchy under the RMA, as now provided in clause 3.21(1) of the NPSFM. The submitter considers under clause 1 that if an activity is not able to avoid adverse effects, then it means there is no ability, under this policy, to then move to clause (5) as indicated by the provision<sup>223</sup>.
247. Oceana Gold seeks amendments to allow for regional significant activities such as mineral extraction to have access to the effects management hierarchy. The submitter is concerned the effects management hierarchy is not available to mineral extraction and mining activities where significant biodiversity is unavoidably impacted due to the locational and functional constraints of mining. The submitter generally agrees with the cascading approach of ECO-P6 but submits when the policy is considered alongside APP3 and APP4, the provision becomes unworkable. Oceana Gold also considers ECO-P6 is inconsistent with the draft NPSIB and NPSFM as to when and under what circumstances the full effects management hierarchy can be considered, and that it is inconsistent with 104(1)(ab) of the RMA which requires decision-makers to have regard to any measure proposed or agreed to by the applicant<sup>224</sup>.
248. Transpower submits ECO-P6 is inconsistent sections 104(1) and 171(1B) of the RMA as it considers under these sections offsetting and compensation measures must be proposed or agreed by an applicant or requiring authority respectively. The submitter also considers ECO-P6 is inconsistent with, and does not give effect to, the NPSET because the NPSET does not include a direction that effects from the development of the National Grid on indigenous biodiversity should be avoided. The submitter seeks ECO-P6 is amended to confirm that offsetting or compensation must be proposed or agreed. The submitter also seeks that a ‘seek to avoid’ requirement is included in the policy as it considers this amendment is consistent with the approach of the NPSET and s6 of the RMA. The submitter seeks clause (5)(b) is deleted because it considers the RMA is not a ‘no effects’ statute and there may be situations where an activity can achieve the protection of areas of significant indigenous biodiversity that is consistent with section(d)

<sup>223</sup> 00121.069 Ravensdown Limited

<sup>224</sup> 00115.022 Oceana Gold (New Zealand) Ltd

of the RMA without compensating for all residual effects. Transpower seeks the following specific amendments to ECO-P6<sup>225</sup>:

1. avoid adverse effects as the first priority, or seek to avoid adverse effects in the case of the National Grid,  
...
4. where there are residual adverse effects after avoidance, remediation, and mitigation, then an applicant or requiring authority may offer or agree to offset the residual adverse effects are offset in accordance with APP3, and
5. if biodiversity offsetting of residual adverse effects is not possible, then:
  - a. an applicant or requiring authority may offer or agree to compensate for the residual adverse effects are compensated for in accordance with APP4, and
  - b. ~~if the residual adverse effects cannot be compensated for in accordance with APP4, the activity is avoided."~~

249. Waka Kotahi submits there are inconsistencies in the use of the term 'avoid' throughout ECO-P6 and seeks 'avoid' is replaced with 'minimised' and include recognition of the functional and operational needs for infrastructure<sup>226</sup>.

250. Forest and Bird seeks the following specific amendments to the provision<sup>227</sup>:

- Chapeau: replace 'managed' with 'protected'
- Clause 3: amend to '...they are mitigated, and'
- Clause 4: amend to 'beyond the coastal environment where...'
- Clause 5: amend to 'beyond the coastal environment if biodiversity offsetting of residual adverse effects is not possible in accordance with APP3,'
- The submitter seeks amendments to provide clear direction that policies relating to wetlands or activities within and within 10m of them are not able to access offsetting or compensation.

251. Kāi Tahu ki Otago seeks amendments to make allowances for the Kāi Tahu mahika kai practices and to have regard to the potential for the social, cultural, and economic wellbeing of Māori. The submitter seeks the addition of the following new clause <sup>228</sup>:

In assessing effects in the implementation of this policy, have particular regard to:  
(a) mahika kai practices of mana whenua, and

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<sup>225</sup> 00314.031 Transpower New Zealand Limited

<sup>226</sup> 00305.028 Waka Kotahi NZ Transport Agency

<sup>227</sup> 00230.105 Forest and Bird

<sup>228</sup> 00226.222 Kāi Tahu ki Otago

(b) the potential of land and resources held within native reserves and land held under Te Ture Whenua Māori Act 1993 to provide for the social, cultural and economic wellbeing of Māori.

252. Aurora Energy Limited seeks the term ‘demonstrably’ is removed from the provision and the following new clause is included to provide a carve out for infrastructure ‘or, in the case of infrastructure, adverse effects are managed in accordance with EIT-INF-P13’<sup>229</sup>.
253. Trustpower Limited seeks ‘adverse effects’ is replaced with ‘significant adverse effects’ as the current wording assumes that all adverse effects need to be managed and that a nil adverse effect outcome is sought. The submitter considers this is not a requirement of the RMA as significant adverse effects are the key outcome to be controlled<sup>230</sup>.
254. Queenstown Airport considers the policy, when assessed against APP3 and APP4, does not provide for regionally significant infrastructure as the criteria are written as a bottom line or hard limit. Coupled with this, Queenstown Airport considers ECO-P6 is inconsistent with the draft NPSIB and NPSFM as to when and under what circumstances the full suite of the effects management methods can be applied, and that it is also inconsistent with section 104(1)(ab) of the RMA. The submitter seeks amendments to ECO-P6 to ensure that regionally significant infrastructure is appropriately provided for<sup>231</sup>.
255. City Forest Limits seeks the provision is amended to clarify that it is not intended to apply to the future regulation of economic activity which has created the habitat in which indigenous species live. The submitter considers that the region’s plantation forests provide habitat for indigenous biodiversity, such as the Karearea and South Island Robin. Therefore, it is important to acknowledge and support the ongoing role of plantation forests that provide habitats for indigenous biodiversity<sup>232</sup>.
256. QLDC submits the intent of ECO-P4 is not represented in ECO-P6 regarding its application to plan change processes and seeks amendments to ECO-P6 to identify its role in considering plan change processes<sup>233</sup>.
257. Dunedin City Council seeks a range of amendments to the provision as follows<sup>234</sup>:
- Clarification on whether ECO-P6 applies to all plans. If so, this would require an AEE on biodiversity values for all resource consents required under Dunedin’s 2GP. The submitter seeks amendments to clarify what types of activity are intended to be assessed against this policy, and to amend the policy so that only activities that have potential to have effects on biodiversity values are required to be assessed against it.
  - Amendments to clarify, if DCC is required to assess consents, are they to be assessed directly against ECO-P6 or undertake a plan change to incorporate the provision into the 2GP.

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<sup>229</sup> 00315.038 Aurora Energy Limited

<sup>230</sup> 00311.024 Trustpower Limited

<sup>231</sup> 00313.013 Queenstown Airport

<sup>232</sup> 00024.011 City Forests Limited

<sup>233</sup> 00138.036 Queenstown Lakes District Council

<sup>234</sup> 00139.132 Dunedin City Council

- Amend cross-referencing to clarify the relationship between ECO-P3 and ECO-P6. DCC submits ECO-P3 indicates that certain effects in SNAs are to be assessed against ECO-P6, however ECO-P6 excludes areas managed under ECO-P3.

### 10.8.5.3 Analysis

Multiple submitters seek amendments to the chapeau to distinguish between the effects management hierarchy used in ECO-P6 and the NPSFM hierarchy. While DOC, Ravensdown and OWRUG seek amendments to ensure consistency between the two. The two hierarchies are different because ECO-P6 is designed specifically for the management of indigenous biodiversity; it stands on its own. Therefore, I do not recommend accepting the submissions to ensure consistency between the two hierarchies. I do, however, recommend accepting consequential amendments to ECO-P6 from DOC's submission on 'effects management hierarchy' in the definition section of this chapter to amend 'biodiversity effects management hierarchy' to 'effects management hierarchy (in relation to indigenous biodiversity)' in the chapeau of ECO-P6. This suggested amendment will satisfy the clarity issue regarding the use of 'effects management hierarchy' in ECO-P6 raised by some submitters.

258. Meridan seeks amendments to ECO-P6 so it is consistent with Policy C2 of the NPSREG. As per my discussion in section 10.4.2 of this chapter, I consider ECO-P6 is not inconsistent with the NPSREG as a pathway for offsetting and compensation is provided for and it does not prevent a decisionmaker from having: "regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected" as required under policy C2. Although, I can appreciate the logistics of a renewable electricity generation activity having to manage their site when indigenous biodiversity is present, I do not consider it appropriate to change the provision to recognise for this situation. The amendments requested by the submitter, in my view contradict the purpose of the policy. I do not recommend accepting the submission. For the same reasons, I do not recommend accepting Trustpower's submission.
259. Aurora Energy seeks 'demonstrably' is removed from the provision and a carve out for infrastructure is provided. The term 'demonstrably' is used to make it clear that the applicant must show that adverse effects cannot be avoided before the applicant can move onto the next step in the hierarchy; therefore, to remove 'demonstrably' it would weaken the provision and the purpose and so I do not recommend accepting this submission point. For reasons stated above in respects to Meridian's submission, I do not recommend accepting Aurora Energy's submission point on creating a carve out for infrastructure.
260. Oceana Gold seeks amendments to allow for mineral extraction to have access to the effects management hierarchy in areas where significant biodiversity is unavoidably impacted due to locational and functional constraints. I do not recommend accepting the submission to create a carve out for mining in ECO-P6 because it will weaken the provision and its purpose. Ecological advice is that: *"Policy ECO-P6 requires the mitigation hierarchy to be applied, and if residual adverse effects cannot be offset or compensated*



*for, then the activity should be avoided. The ecological justification for this approach is that it will require potential adverse effects on irreplaceable and vulnerable indigenous biodiversity to be avoided, and this is consistent with the principles of biodiversity offsetting. The policy complements the limits to offsetting and compensation that are expressed in APP3 and APP4.”<sup>235</sup>. The effects management hierarchy in ECO-P6 is intentionally different to the NPSFM hierarchy because it manages indigenous biodiversity and so the approach is more stringent than the NPSFM hierarchy. I do not consider ECO-P6 is inconsistent with s104(1)(ab) of the RMA as a pathway has been provided for offsetting and compensation. An applicant may propose something else, and it will be tested against what is in the pORPS or lower order plans, and a decisionmaker may prefer what the applicant has proposed in a particular case. Therefore, I do not consider there is any inconsistency between s104(1)(ab) and ECO-P6 and so I do not recommend accepting the submission.*

261. I do not recommend accepting Meridian’s submission to amend ‘residual adverse effects’ to ‘significant adverse effects’ because the current terminology in ECO-P6 is similar to what is used in the Operative West Coast RPS and the Draft NPSIB. Further, ecological advice recommends: “Offsetting was originally conceived as relating to significant residual effects, but there are no practical reasons why it cannot address all residual effects.”<sup>236</sup>
262. I do not recommend accepting Transpower’s submission to amend ECO-P6(1) to include a ‘seek to avoid’ requirement as I consider this amendment is inconsistent with s30(1)(ga) and s31(1)(b)(iii) of the RMA because it will allow for the loss of indigenous biodiversity. I do not consider ECO-P6 is inconsistent with section 104(1) and 171(1B) of the RMA because a pathway has been provided for offsetting and compensation. An applicant may propose something else, and it will be tested against what is in the pORPS 21 or lower order plans, and a decisionmaker may prefer what the applicant has proposed in a particular case. For similar reasons, I do not consider ECO-P6 is inconsistent with section 171(1B) of the RMA because a pathway has been provided for offsetting and compensation. A requiring authority may propose something else, and it will be tested against what is in the pORPS 21 or a district plan, and a decisionmaker may prefer what the requiring authority has proposed in some cases. Therefore, I do not recommend accepting Transpower’s suggested amendment to clauses (4) and (5)(a). I disagree with the submitter that clause (5)(b) should be deleted as I consider the amendment is inconsistent with s30(1)(ga) and s31(1)(b)(iii) of the RMA because it will allow for the loss of indigenous biodiversity.
263. Similarly, Queenstown Airport considers ECO-P6 is inconsistent with the draft NPSIB, NPSFM and s104(1)(ab) of the RMA. The submitter also seeks amendments to provide for nationally and regionally significant infrastructure. For reasons stated above in reply to Oceana’s submission, I do not consider ECO-P6 is inconsistent with the draft NPSIB, NPSFM and s104(1)(ab) of the RMA. I consider ECO-P6 does provide for regionally and

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<sup>235</sup> Appendix 10c, section 5.8, paragraph 2

<sup>236</sup> Appendix 10c paragraph. 3.12

nationally significant infrastructure, in some instances, provided the parameters in the provision are met.

264. I disagree with Christchurch International Airport Limited's submission to delete clause (5)(b) as I consider the hierarchy is logical, with prohibition being the very last step, when all other options have been exhausted.
265. New Zealand Infrastructure Commission seeks 'cannot' is replaced with 'cannot practicably' and infrastructure is provided for in ECO-P6. I do not recommend amending 'cannot' to 'cannot practicably' as this would allow for some discretion when avoiding adverse effects, which would then allow for the next step of remediation to be more readily accessible, and potentially weaken the opportunity for appropriate measures to be demonstrated. Therefore, I do not recommend accepting this submission point. The provision does not restrict infrastructure from accessing the effects management hierarchy in ECO-P6, however the parameters in which an infrastructure activity can occur are clearly defined in ECO-P6.
266. Kāi Tahu ki Otago seeks the inclusion of a new clause to make allowances for Kāi Tahu mahika kai practices and to have regard to the potential for the social, cultural and economic wellbeing of Māori. I do not recommend accepting the submission as it does not fit within the scope and purpose of the provision.
267. Forest and Bird seeks 'managed' is replaced with 'protected' in the chapeau. I recommend accepting this submission point as it is consistent with the language used in ECO-P3. For duplication reasons, I do not recommend accepting the submission point to include 'in accordance with APP3' as clause 4 indicates offsetting is carried out in accordance with APP3. The submitter seeks 'beyond the coastal environmental' is added to clauses 4 and 5. I do not recommend accepting this submission point as the chapeau states ECO-P6 does not apply to the coastal environment and coastal indigenous biodiversity is covered in CE—P5 in accordance with planning standards. The submitter also seeks amendments to clearly note that policies relating to wetlands or activities in or within 10m of a wetland are not able to access offsetting or compensation. I do not recommend accepting this submission point as Regulation 56(e) of the NESFW allows for offsetting or compensation in some limited instances.
268. It is unclear what inconsistencies throughout ECO-P6 Waka Kotahi is referring to, therefore without further clarification, I do not recommend accepting this submission point. I do not recommend accepting the amendment to recognise the functional and operational needs for infrastructure because I do not consider it appropriate to recognise for this situation. The suggested amendment, in my view, contradict the purpose of the policy.
269. City Forest Limited seeks amendments to clarify the provision is not intended to apply to the future regulation of economic activity which has created habitats for indigenous biodiversity. I do not recommend accepting the submission as it does not fit within the scope and purpose of the provision. ECO-P6 sets out how indigenous biodiversity is to be maintained through decisions on applications for resource consents and notices of requirements by employing an effects management hierarchy approach. Furthermore,

the suggested amendment is too detailed for a RPS and is more suited for lower order plans.

270. I do not recommend accepting QLDC's submission to amend ECO-P6 to identify its application to plan change processes. As the provision sets out how indigenous biodiversity is to be maintained through decisions on applications for resource consents and notices of requirement. The intent for not including plan changes in ECO-P6 is that it could trigger a convoluted process for permitted activities. However, ECO-M4 and ECO-M5 provide for plan change processes as required to address the requirements of ECO-P6.
271. DCC seeks clarity as to whether ECO-P6 applies to all plans and what activities are intended to be assessed against it. The provision applies to regional and district plans as indicated by ECO-M5, and the provision applies to any activity requiring a resource consent that could cause adverse effects and residual effects on indigenous biodiversity. Regarding DCC's second submission point, the chapeau of ECO-M5 states TAs must prepare or amend and maintain their district plans to require resource consent applications to illustrate that they have followed the sequential steps in the effects management hierarchy in ECO-P6. I do not consider the cross-referencing between ECO-P3 and ECO-P6 is confusing. Therefore, I do not recommend accepting the submission point.

#### 10.8.5.4 Recommendation

272. I recommend the following amendments to ECO-P6:

#### **ECO-P6 – Maintaining indigenous biodiversity**

Maintain Otago's indigenous *biodiversity* (excluding the coastal environment,<sup>237</sup> and areas ~~managed protected~~<sup>238</sup> under ECO-P3) by applying the following *biodiversity-effects management hierarchy (in relation to indigenous biodiversity)*<sup>239</sup> in decision-making on applications for *resource consent* and notices of requirement:

- (1) avoid adverse *effects* as the first priority,
- (2) where adverse *effects* demonstrably cannot be completely avoided, they are remedied,
- (3) where adverse *effects* demonstrably cannot be completely avoided or remedied, they are mitigated,
- (4) where there are residual adverse *effects* after avoidance, remediation, and mitigation, then the residual adverse *effects* are offset in accordance with APP3, and
- (5) if *biodiversity* offsetting of residual adverse *effects* is not possible, then:

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<sup>237</sup> Clause 16(1), Schedule 1 RMA

<sup>238</sup> 00230.105 Forest and Bird

<sup>239</sup> 00016.013 Alluvium Ltd and Stoney Creek Mining Ltd, 0017.011 Danny Walker, Peter Hall, Cold Clutha Ltd and AWA Koura Mining Ltd, 00321.022 New Zealand Infrastructure Commission

- (a) the residual adverse *effects* are compensated for in accordance with APP4, and
- (b) if the residual adverse *effects* cannot be compensated for in accordance with APP4, the activity is avoided.

## 10.9 ECO-P1 – *Kaitiakitaka*

### 10.9.1 Introduction

273. As notified ECO-P1, reads as:

#### **ECO-P1 – Kaitiakitaka**

Recognise the role of Kāi Tahu as kaitiaki of Otago’s indigenous *biodiversity* by:

- (1) involving Kāi Tahu in the management of indigenous *biodiversity* and the identification of indigenous species and ecosystems that are taaka,
- (2) incorporating the use of mātauraka Māori in the management and monitoring of indigenous *biodiversity*, and
- (3) providing for access to and use of indigenous *biodiversity* by Kāi Tahu, including mahika kai, according to tikaka.

274. ECO-P1 supports ECO-O3 by outlining how the kaitiaki role of Kāi Tahu will be recognised, through involving Kāi Tahu in the management of indigenous *biodiversity*, incorporating mātauraka Māori in the management and monitoring of indigenous *biodiversity* and providing for access to and use of indigenous biodiversity by Kāi Tahu.

### 10.9.2 Submissions

275. Kāi Tahu ki Otago seeks specific amendments to the chapeau for Kāi Tahu to exercise their role as kaitiaki, which aligns with the approach in the Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020. The submitter seeks the following amendments to the chapeau<sup>240</sup>:

- ‘Enable Kāi Tahu to exercise their role as kaitiaki of Otago’s indigenous biodiversity by:’

276. For readability purposes and clarity of Kāi Tahu’s roles, Kāi Tahu ki Otago seeks clause 1 is split into two clauses as follows<sup>241</sup>:

- ‘...management of indigenous biodiversity,’
- ‘(X) working with Kāi Tahu in the identification of indigenous species and ecosystems that are taaka,...’

277. Forest and Bird seeks amendments to provide greater clarity that ‘in accordance with tikaka’ will recognise and protect significant values<sup>242</sup>.

<sup>240</sup> 00226.217 Kāi Tahu ki Otago

<sup>241</sup> 00226.217 Kāi Tahu ki Otago

<sup>242</sup> 00230.100 Forest and Bird

278. Federated Farmers seeks clause (3) is deleted as access for Kāi Tahu to mahika kai and other cultural practices is provided for throughout the pORPS21 and access across private land is not a right<sup>243</sup>.

### 10.9.3 Analysis

279. I recommend accepting Kāi Tahu ki Otago’s submission to amend the chapeau, so it aligns with s7(a) of the RMA, Policy MW – P2(6) in the pORPS21 and outcome 4 in Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020. The submitter also seeks to split clause (1) to create an additional clause. I recommend accepting this submission point for clarity purposes.

280. Federated Farmers seeks to delete clause 3. I agree with the submitter that ECO-P1(3) does not give access over private land. However, I do not recommend deleting clause (3) as kaitiaki need to be able to access mahika kai, which is consistent with s5, s6(e) and s7(a) of the RMA, and clause (3) supports ECO-M3, ECO-M5 and ECO-M6. Therefore, instead I recommend amending ‘providing for’ to ‘facilitate’.

281. I disagree with Forest and Bird that clarity on ‘in accordance with tikaka’ should be provided in ECO-P1 because the policy is not meant to provide an explanation. The pORPS needs to be read as a whole, because provisions in other chapters preceding the ECO chapter provide clarity on what tikaka is. This explanation is provided in the Mana Whenua chapter, through MW—P1 which is implemented by MW—M1 which links to ECO-M3. Therefore, I do not consider it necessary to provide an explanation as it is dealt with in the front end of the pORPS21 and so I do not recommend accepting the submission.

282. I recommend consequential amendments to italicise ‘mahika kai’ because it has been recommended to define this term.

### 10.9.4 Recommendation

283. I recommend the following amendments to ECO-P1:

#### **ECO-P1 – Kaitiakitaka**

~~Recognise the role of~~ Enable<sup>244</sup> Kāi Tahu to exercise their role<sup>245</sup> as kaitiaki of Otago’s indigenous *biodiversity* by:

- (1) involving Kāi Tahu in the management of indigenous *biodiversity*, ~~and~~
- (1A) working with Kāi Tahu in<sup>246</sup> the identification of indigenous species and ecosystems that are taoka,
- (2) incorporating the use of mātauraka Māori in the management and monitoring of indigenous *biodiversity*, and

<sup>243</sup> 00239.099 Federated Farmers of New Zealand

<sup>244</sup> 00226.217 Kāi Tahu ki Otago

<sup>245</sup> 00226.217 Kāi Tahu ki Otago

<sup>246</sup> 00226.217 Kāi Tahu ki Otago

- (3) ~~providing for~~ facilitating<sup>247</sup> access to and use of indigenous biodiversity by Kāi Tahu, including mahika kai<sup>248</sup>, according to tikaka.

## 10.10 ECO-P2 – Identifying *significant natural areas* and taoka

### 10.10.1 Introduction

284. As notified ECO-P2, reads as:

#### **ECO-P2 – Identifying *significant natural areas* and taoka**

Identify:

- (1) the areas and values of *significant natural areas* in accordance with APP2, and
- (2) indigenous species and ecosystems that are taoka in accordance with ECO-M3.

285. ECO-P2 supports the objectives of the ECO chapter by requiring the areas and values of SNAs to be identified under APP3. It also requires indigenous biodiversity that are taoka to be identified in accordance with ECO-M3.

### 10.10.2 Submissions

286. There are fifteen submissions on ECO-P2. Fish and Game seeks the provision is retained as notified<sup>249</sup>. Fulton Hogan seeks ECO-P2 is deleted<sup>250</sup>.

287. Several submitters raise concerns that when ECO-P2 is combined with APP2 it could result in a large portion of Otago being identified as a SNA. They also submit that ECO-P2 does not require mapped areas to be scheduled in any lower order plans. The submitters seek the provision is deleted or replaced with the following<sup>251</sup>:

- ‘Significant natural areas will be identified by local authorities using the criteria in APP2 and these areas will be mapped at an appropriate scale in the relevant regional and district plans.
- Indigenous species and ecosystems that are taoka will be identified by local authorities in accordance with ECO-M3, and these areas will be mapped in the relevant regional and district plans.’

288. Sliver Ferns Farms submits similar concerns and seeks ECO-P2 is deleted or amended to ensure that<sup>252</sup>:

- Land identified in accordance with APP2 is appropriate for management as a Significant Natural Area; and,

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<sup>247</sup> 00239.099 Federated Farmers of New Zealand

<sup>248</sup> 00226.0038 Kāi Tahu ki Otago

<sup>249</sup> 00231.071 Otago Fish & Game Council and the Central South Island Fish & Game Council

<sup>250</sup> 00322.027 Fulton Hogan Limited

<sup>251</sup> 00318.017 Contact Energy Limited, 00320.016 Network Waitaki Limited, 00115.018 Oceana Gold (New Zealand) Ltd, 00511.016 PowerNet Ltd

<sup>252</sup> 00221.011 Silver Fern Farms

- The identification of Significant Natural Areas is implemented through detailed mapping included in district and regional plans.
289. Forest and Bird submits that APP2 sets out criteria to determine the significance of areas and values, it does not identify areas and values. The submitter seeks the following specific amendments:<sup>253</sup>
- Clause (1): replace with 'Areas identified in accordance with Appendix 2 are appropriate for management as Significant Natural Areas, and
  - Clause (2): 'Identify indigenous species...'
290. Federated Farmers seeks clause (2) is deleted as they consider the approach in which two different biodiversity assessment regimes are proposed is inconsistent with the draft NPSIB<sup>254</sup>.
291. Kāi Tahu ki Otago seeks the following specific amendments<sup>255</sup>:
- Clause (1): amend 'values' to 'biodiversity values' to improve clarity.
  - Clause (2): amend to 'where appropriate, indigenous...' as it will not always be appropriate to identify taoka species and ecosystems due to cultural sensitivity or protection of at-risk species.
292. To improve clarity, Raynoir Matarki Forests requests the provision be amended to include mapping and verification as part of the identification process<sup>256</sup>.
293. Two submitters seek that a minimum size area for *significant natural areas* is included in ECO-P2 unless the SNA contains endangered species<sup>257</sup>.
294. Waitaki District Council notes that the pORPS has been drafted around the draft NPSIB and there is potential for this national direction to shift, resulting in the provisions of the pORPS being more stringent than national direction, and the reasons for this possible stringency are not contained in the s32 report<sup>258</sup>. There is no specific amendment requested.

### 10.10.3 Analysis

295. Several submitters seek amendments to ECO-P2 to specify it is the responsibility of local authorities to identify and map the areas subject to clauses (1) and (2). As stated in ECO-M2 and ECO-M3, local authorities are required to work collaboratively together to identify and map SNAs and to work collaboratively together with mana whenua to identify and map taoka, ECO-M2 also indicates that SNAs can be identified through ecological assessments at the resource consenting stage. Therefore, I do not consider it necessary to specify the responsibility of local authorities to identify and map areas

<sup>253</sup> 00230.101 Royal Forest and Bird Protection Society of New Zealand

<sup>254</sup> 00239.100 Federated Farmers of New Zealand

<sup>255</sup> 00226.218 Kāi Tahu ki Otago

<sup>256</sup> 00020.018 Raynoir Matarki Forests

<sup>257</sup> 00319.010 McCall, Lloyd, 00207.008 Pomahaka Water Care Group

<sup>258</sup> 00140.024 Waitaki District Council

subject to clauses (1) and (2) as it is contained in the methods section. I do not recommend accepting these submission points<sup>259</sup>.

296. I disagree with Forest and Bird that APP2 does not identify areas and values of indigenous biodiversity as these areas and values are identified using the significance criteria of APP2; therefore, I do not recommend accepting this submission point. However, I consider the clarity of clause (1) could be improved by amending 'values' to 'indigenous biodiversity values'. I do not consider 'identify' should be added to clause (2) as it is in the chapeau of the provision and so I do not recommend accepting this submission point.
297. Kāi Tahu ki Otago seeks an amendment to clause (2) to include 'where appropriate' as it will not always be suitable to identify the location of taoka species and ecosystems due to culturally sensitivity or at-risk species, I recommend accepting this submission point. The submitter seeks 'values' is amended to 'biodiversity values.' I recommend accepting this submission point for the same reasons stated above, subject to different wording.
298. For clarity purposes, Raynoir Matariki Forest seeks amendments to ECO-P2 to include mapping and verification. I recommend accepting the submission point to include mapping to the identification process. However, I do not consider it appropriate to include 'verification' to ECO-P2 as it would be more suitable in a method. Therefore, I recommend including 'verify' to ECO-M2(2).
299. I do not recommend accepting Federated Farmers submission to delete clause (2) because under s6(e) of the RMA local authorities are required to recognise and provide for the relationship of Māori and their culture and traditions with taonga as a matter of national importance.
300. Lloyd McCall and Pomahaka Water Care Group seek amendment to ECO-P2 to include a minimum size area for SNAs. Section 6(c) of the RMA requires the protections of areas of significant indigenous vegetation and significant habitats of indigenous fauna. I consider including a minimum size area for SNAs would be inconsistent with s6(c). Therefore, I do not recommend accepting the submission.

#### 10.10.4 Recommendation

301. I recommend the following amendments to ECO-P2:

##### **ECO-P2 – Identifying *significant natural areas* and taoka**

Identify and map<sup>260</sup>:

- (1) the areas and indigenous biodiversity<sup>261</sup> values of *significant natural areas* in accordance with APP2, and

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<sup>259</sup> 00318.017 Contact Energy Limited, 00320.016 Network Waitaki Limited, 00115.018 Oceana Gold (New Zealand) Ltd, 00511.016 PowerNet Ltd

<sup>260</sup> 00020.018 Raynoir Matarki Forests

<sup>261</sup> 00226.218 Kāi Tahu ki Otago, 00230.101 Royal Forest and Bird Protection Society of New Zealand



(2) where appropriate,<sup>262</sup> indigenous species and ecosystems that are taoka in accordance with ECO-M3.

## 10.11 ECO-P7 – Coastal indigenous *biodiversity*

### 10.11.1 Introduction

302. As notified ECO-P7, reads as:

#### **ECO-P7 – Coastal indigenous *biodiversity***

Coastal indigenous *biodiversity* is managed by CE-P5, and implementation of CE-P5 also contributes to achieving ECO-O1.

303. ECO-P7 recognises that the management of coastal indigenous biodiversity is located in the CE chapter but still contributes to the attainment of ECO-O1.

### 10.11.2 Submissions

304. There are 10 submissions on ECO-P7. One submitter seeks the provision is retained as notified<sup>263</sup>. Two submitters seek the provision is deleted<sup>264</sup>.

305. DCC seeks the provision is retained with consequential amendments required due to changes made to CE-P5<sup>265</sup>.

306. Transpower seeks a further cross-reference is included to ECO-P7, subject to their relief sought in CE-P1, to clarify there are other provisions in the pORPS that manage activities in the coastal environment. The submitter seeks the following amendments<sup>266</sup>:

‘Coastal indigenous biodiversity is managed by CE – P1 and CE – P5...’

307. Forest and Bird submits the current wording does not accurately reflect the intent of CE – P5 which sets direction on protecting indigenous biodiversity in the coastal environment. The submitter seeks amendments to ECO-P7 to recognise that other CE policies are also relevant to managing adverse effects of activities on indigenous biodiversity in the coastal environment. The submitter seeks the following amendments<sup>267</sup>:

‘ECO-P7 – ~~Coastal~~ indigenous biodiversity in the coastal environment

~~Coastal~~ indigenous biodiversity in the coastal environment is managed by protected under CE – P5, and implementation of CE – P5 also contributes to achieving ECO-O1’.

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<sup>262</sup> 00226.218 Kāi Tahu ki Otago

<sup>263</sup> 00122.028 Sanford Ltd

<sup>264</sup> 00121.070 Ravensdown Limited, 00126.038 Harbour Fish, Southern Fantastic and Fantastic Holdings

<sup>265</sup> 00139.133 Dunedin City Council

<sup>266</sup> 00314.032 Transpower New Zealand Limited

<sup>267</sup> 00230.106 Forest and Bird

308. Waka Kotahi seeks amendments to include recognition of the functional and operational needs for infrastructure, but no specific amendments are provided<sup>268</sup>.

309. Kāi tahu ki Otago seeks amendments to integrate the management of indigenous biodiversity and ecosystems in the coastal environment into the ECO chapter. The submitter considers it is unclear if ECO policies apply to coastal biodiversity<sup>269</sup>

### 10.11.3 Analysis

310. I do not consider ECO-P7 is an appropriate place to include recognition of the functional and operational needs for infrastructure as this is dealt with in the EIT and Coastal environment chapters of the pORPS. Therefore, I do not recommend accepting Waka Kotahi's submission.

311. I agree the clarity between the CE and ECO chapters could be improved. Therefore, I recommend accepting Kāi Tahu ki Otago's and Forest and Bird's submissions in part; however, I suggest different wording to Forest and Bird's suggested amendment because it has been recommended to include the coastal environment in the definition of SNA, which has resulted in consequential amendments to ECO-P7. I recommend the following amendments to ECO-P7 to clarify the relationship between the ECO and CE chapters for managing coastal indigenous biodiversity:

- Indigenous biodiversity in the coastal environment is managed by the relevant provisions of this chapter, except that:
  - (1) significant natural areas in the coastal environment are managed by CE—P5(1) instead of ECO-P3 to ECO-P5, and
  - (2) other indigenous biodiversity in the coastal environment that is not part of a significant natural area are also managed by CE—P5(2).

312. I do not recommend accepting DCC's submission to include consequential amendments to ECO-P7 because the submitter's suggested amendments to CE—P5 have not been recommended.

313. I do not recommend accepting Trustpower's submission because their request for amendments to CE—P1 was not recommended for acceptance.

### 10.11.4 Recommendation

314. I recommend the following amendments to ECO-P7:

#### **ECO—P7 – Coastal indigenous biodiversity**

~~Coastal indigenous biodiversity is managed by CE—P5, and implementation of CE—P5 also contributes to achieving ECO—O1.~~

Indigenous biodiversity in the coastal environment is managed by the relevant provisions of this chapter, except that:

<sup>268</sup> 00305.029 Waka Kotahi NZ Transport Agency

<sup>269</sup> 00226.223 Kāi Tahu ki Otago

(1) significant natural areas in the coastal environment are managed by CE—P5(1) instead of ECO-P3 to ECO-P5, and

(2) other indigenous biodiversity in the coastal environment that is not part of a significant natural area are also managed by CE—P5(2).<sup>49</sup>

## 10.12 ECO-P8 – Enhancement

### 10.12.1 Introduction

315. As notified, ECO-P8, reads as:

#### **ECO—P8 – Enhancement**

The extent, occupancy and condition of Otago’s indigenous *biodiversity* is increased by:

- (1) restoring and enhancing habitat for indigenous species, including taoka and mahika kai species,
- (2) improving the health and *resilience* of indigenous *biodiversity*, including ecosystems, species, important ecosystem function, and *intrinsic values*, and
- (3) buffering or linking ecosystems, habitats and ecological corridors.

316. ECO-P8 supports ECO-O2 by setting out the actions required to improve the extent, occupancy and condition of Otago’s indigenous biodiversity.

### 10.12.2 Submissions

317. Kai Tahu ki Otago seeks that the intent of the provision reflects both restoration and enhancement. The submitter seeks the following amendment to the header<sup>270</sup>:

- ‘ECO-P8: Restoration and Enhancement’.

318. Forest and Bird considers ‘enhancement’ is too subjective and it would allow for adverse effects or loss of indigenous biodiversity values. The submitter seeks the following amendments<sup>271</sup>:

- Header: ‘ECO-P8 – ~~Enhancement~~ Restoration and improvement’
- Clause 1: replace ‘enhancing’ with ‘improving’

319. QLDC submits the provision should consider how the resiliency and health of intrinsic values can be measured and achieved. The submitter seeks the following amendments<sup>272</sup>:

- Chapeau: ‘The intrinsic values, extent, occupancy...’
- Clause 2: remove ‘and intrinsic values’
- Clause 3: ‘...and recognising the interaction ki uta ki tai’

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<sup>270</sup> 00226.224 Kāi Tahu ki Otago

<sup>271</sup> 00230.107 Forest and Bird

<sup>272</sup> 00138.037 Queenstown Lakes District Council

320. Meridian considers ECO-P8 is too directive and that increasing Otago’s indigenous biodiversity should be enabled and not be a requirement and so the provision is inconsistent with s6(c) of the RMA. The submitter seeks the following amendment<sup>273</sup>:
- ‘Enable increases in the extent, occupancy and condition of Otago’s indigenous biodiversity is increased by including by:’.
321. DOC submits enhancement should apply to all elements of indigenous biodiversity and so seeks the following amendment<sup>274</sup>:
- Clause 2: amend ‘important ecosystem function’ to ‘ecosystem function’<sup>275</sup>.
322. Harbour Fish, Southern Fantastic and Fantastic Holdings seeks ‘restore’ is amended to ‘improve’<sup>276</sup>.
323. Two submitters consider it is appropriate to promote certain activities which will support the intent of clauses 1 to 3. The submitters seek the following new clause is included to ECO-P8<sup>277</sup>:
- ‘(4) promoting subdivision, use and development of resources which support 1-3 above.’
324. Similarly, Fish and Game considers there should be provision for the use and development of natural resources in ECO-P8 as it provides for economic, cultural, recreational and social needs. The submitter seeks the following new clause<sup>278</sup>:
- ‘(4) promoting the use and development of resources which support 1-3 above’.
325. Kāi Tahu ki Otago seeks a definition of ‘occupancy’ is included as it is unclear what the meaning of this term is <sup>279</sup>. Similarly, Fulton Hogan considers the term ‘occupancy’ is unclear and seeks the following amendments so that the provision is consistent with their sought in ECO-O2<sup>280</sup>:
- ‘The extent, ~~occupancy~~ and condition of Otago’s indigenous biodiversity, and relative proportion of indigenous species is increased by:’

### 10.12.3 Analysis

326. I agree the header should be amended to reflect the purpose of the provision, which is to restore and enhance, therefore I recommend accepting Kāi Tahu ki Otago’s submission.

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<sup>273</sup> 00306.046 Meridian

<sup>274</sup> 00137.091 DOC

<sup>275</sup> 00137.091 DOC

<sup>276</sup> 00126.039 Harbour Fish, Southern Fantastic and Fantastic Holdings

<sup>277</sup> 00411.057 Wayfare Group Ltd, 00206.045 Trojan Holdings Limited (Trojan)

<sup>278</sup> 00231.073 Otago Fish & Game Council and the central South Island Fish & Game Council

<sup>279</sup> 00226.224 Kāi Tahu ki Otago

<sup>280</sup> 00322.030 Fulton Hogan Limited

327. I do not recommend accepting Forest and Bird’s submission to replace ‘enhancing’ with ‘improving’ because enhance is a well-used term in the pORPS and ECO-P8 links to ECO-O2.
328. QLDC seeks ‘intrinsic values’ is included in the chapeau to provide direction as to how the resilience and health of intrinsic values can measured and achieved. Ecological advice is: *“Use of the term ‘intrinsic values’ would therefore improve how health and resilience can be measured, by specifying biological and genetic diversity and essential characteristics, which are the building blocks of ecosystem integrity, form, function, and resilience”*<sup>281</sup>. Therefore, I recommend accepting the submission to include ‘intrinsic values’ to the chapeau.
329. I recommend accepting QLDC’s submission, in part, to include ‘recognising the interaction ki uta ki tai’ to clause 3 as this aligns with IM-O2 of the pORPS. However, I recommend only including ‘ki uta ki tai’ to the provision because kit uta ki tai means mountain to the sea. It is not about interaction. Rather, it encapsulates that, and much more.
330. I agree with Kāi Tahu ki Otago that a definition of occupancy is needed as it is unclear what is meant by ‘occupancy.’ I do not recommend accepting Fulton Hogan’s submission as I do not consider Fulton Hogan’s interpretation of ‘occupancy’ is correct. Therefore, I recommend providing the same definition which has been recommended within the discussion in Section 10.6.4, ECO-O2: *Means the number of sites occupied in Otago*<sup>282</sup>.
331. I do not recommend accepting Meridian’s submission as ECO-P8 is consistent with s30(1)(ga) of the Act which states regional councils, as part of their functions, shall establish, implement, and review objectives, policies, and methods for maintaining indigenous biological diversity. While s31(1)(b)(iii) of the Act states territorial authorities, as part of their functions, shall maintain indigenous biological diversity. The submitter also considers the provision is inconsistent with s6(c) of the RMA. ECO-P8 implements ECO-O2 and so its directive nature is appropriate to achieve the objective. Therefore, I do not consider the provision is too directive.
332. I agree with DOC that enhancement should apply to all ecosystem functions not just important ecosystem functions. Furthermore, ecological advice is: *“the suggested wording DOC recommended is appropriate as ecosystem functions are generally held to be important per se in any case and that referring to the resilience of indigenous biodiversity in ECO-P8(2) addresses pressures such as climate change and pest and weed invasion”*<sup>283</sup>. Therefore, I recommend removing ‘important’ from clause (2).
333. Harbour Fish, Southern Fantastic and Fantastic Holdings seek ‘restore’ is replaced with ‘improve’. I do not recommend accepting this submission because it would remove the action of restoration from the provision, which would hinder achieving ECO-O2.
334. Given the purpose of ECO-P8 is to enhance the extent, occupancy and condition of indigenous biodiversity through actions set out in clauses (1) to (3), I consider it inappropriate to create a carve out for promoting subdivision, use and development of

<sup>281</sup> Appendix 10c, section 5.9, para. 4

<sup>282</sup> Appendix 10e

<sup>283</sup> Appendix 10f

resources which support 1-3. Such an amendment would contradict the purpose of the provision. Therefore, I do not recommend accepting these submissions<sup>284</sup>.

335. I recommend consequential amendments to italicise 'mahika kai' because it has been recommended to define this term.

#### 10.12.4 Recommendation

336. I recommend the following amendments to ECO-P8:

#### **ECO-P8 – Restoration and Enhancement**<sup>285</sup>

The extent, *occupancy*<sup>286</sup> and condition of Otago's indigenous *biodiversity* is increased by:

- (1) restoring and enhancing habitat for indigenous species, including taoka and *mahika kai*<sup>287</sup> species,
- (2) improving the health and *resilience* of indigenous *biodiversity*, including ecosystems, species, ~~important~~<sup>288</sup> ecosystem function, and *intrinsic values*, and
- (3) buffering or linking ecosystems, habitats and ecological corridors, *ki uta ki tai*<sup>289</sup>.

### 10.13 ECO-P9 – *Wilding conifers*

#### 10.13.1 Introduction

337. As notified, ECO-P9 reads as:

#### **ECO-P9 – Wilding conifers**

Reduce the impact of *wilding conifers* on indigenous *biodiversity* by:

- (1) avoiding *afforestation* and *replanting* of *plantation forests* with *wilding conifer* species listed in APP5 within:
  - (a) areas identified as *significant natural areas*, and
  - (b) buffer zones adjacent to *significant natural areas* where it is necessary to protect the *significant natural area*, and
- (2) supporting initiatives to control existing *wilding conifers* and limit their further spread.

338. ECO-P9 supports the attainment of ECO-O1 by avoiding the *afforestation* and *replanting* of *plantation forests* with *wilding conifer* species listed in APP5 within SNAs and buffer zones adjacent to SNAs.

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<sup>284</sup> 00231.073 Otago Fish & Game Council and the central South Island Fish & Game Council, 00411.057 Wayfare Group Ltd, 00206.045 Trojan Holdings Limited (Trojan)

<sup>285</sup> 00226.224 Kāi Tahu ki Otago

<sup>286</sup> 00223.099 Ngāi Tahu ki Murihiku, 00226.215 Kāi Tahu ki Otago

<sup>287</sup> 00226.0038 Kāi Tahu ki Otago

<sup>288</sup> 00137.091 DOC

<sup>289</sup> 00138.037 Queenstown Lakes District Council

### 10.13.2 Submissions

339. Wayfare Group considers ECO-P9 should not just be exclusive to wilding conifers and replanting or plantation forestry as other tree species are also pests. The submitter seeks the following amendments<sup>290</sup>:
- ‘ECO-P9 – Wilding ~~conifers~~ tree species’
  - Clause 1: ‘...afforestation and replanting of ~~plantation forests with wilding conifer tree species...~~’.
  - Clause 2: ‘...wilding trees ~~conifers...~~’.
340. Similarly, two other submitters consider the provision should include all invasive species of trees, not just wilding pines<sup>291</sup>.
341. City Forest Limited seeks amendments to ECO-P9 to exempt increased buffer zones around SNAs beyond those already enacted in the NESPF without clear scientific evidence of their efficacy<sup>292</sup>. Similarly, Port Blakely NZ Ltd seeks amendments to acknowledge that the regulatory framework for meeting ECO-P9 already exists through the afforestation rule in the NESPF and associated wilding risk calculator, and that they should remain regulated under the NESPF, unless substantial evidence and analysis is provided proving the current rule is ineffective, and so more stringency is required<sup>293</sup>.
342. Kāi Tahu ki Otago submits the protection of taoka should also be included in this provision to ensure consistency throughout the pORPS . As effects on cultural values are not covered by the NESPF, it is considered that the management of afforestation to control the effects of wilding conifers in and adjacent to taoka environments should be included in ECO-P9. The submitter seeks amendments to clause 1 (a) and (b) to include ‘or ecosystems that are taoka<sup>294</sup>.
343. Raynoir Matariki Forests submits wilding conifers occur from other uses, not just plantation forests. The submitter seeks the following amendments<sup>295</sup>:
- Clause 1 (b): amend to ‘...*significant natural area*, and any forests, shelter belts and amenity planting, and’.
344. Forest and Bird submits it is inappropriate for any exotics to be established in SNAs or buffer zones. The submitter considers wilding conifers should not be planted in areas of high values or where they could spread to areas that would adversely affect indigenous biodiversity. The submitter seeks the following amendments to ECO-P9<sup>296</sup>:
- Clause 1: remove ‘with wilding conifer species listed in APP5’
  - Clause 3: amend to ‘...control and eliminate...’ and remove ‘their’

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<sup>290</sup> 00411.058 Wayfare Group Ltd

<sup>291</sup> 00319.008 McCall, Lloyd, 00207.006 Pomahaka Water Care Group

<sup>292</sup> 00024.012 City Forests Limited

<sup>293</sup> 00033.006 Port Blakely NZ Ltd

<sup>294</sup> 00226.225 Kāi Tahu ki Otago

<sup>295</sup> 00020.021 Raynoir Matariki Forest

<sup>296</sup> 00230.108 Forest and Bird

345. Forest and Bird seeks the following new subsections are included to Clause 1<sup>297</sup>:
- (1) avoiding the afforestation and replanting of plantation forests with wilding conifer species listed in APP5 within:
    - x) areas identified in a district plan as being of high amenity values;
    - x) outstanding natural features and landscapes; and
    - x) the coastal environment; and
    - x) within other areas, including prevailing upwind of such areas, where wilding spread would have adverse effects on indigenous biodiversity, ecosystem health or restoration where degraded; and.'
346. Similarly, DCC seeks amendments to the provision to include the management of wilding conifers within areas of indigenous vegetation/habitat that are not identified as SNAs<sup>298</sup>. DCC considers the threat of wilding conifers should be avoided next to potential SNAs, not just scheduled SNAs, because the schedules are very incomplete and are unlikely to be completed for a decade or longer.
347. QLDC seeks ECO-P9 be amended by adding the following new policy limb to ensure more effective and efficient management of wilding species<sup>299</sup>:
- (x) 'Ensure that any planting and ongoing management of conifer species listed in APP5 is effective and can be practicably managed to avoid the adverse effects of the spread of wilding conifers.
  - (x) That any proposal for the planting and ongoing management of conifer species listed in APP5 shall consider the following to ensure the spread of wilding trees can be contained:
    - a) The location and potential for wilding take-off, having specific regard to the slope and exposure to wind;
    - b) The surrounding land uses and whether these would reduce the potential for wilding spread;
    - c) The ownership of the surrounding land and whether this would constrain the ability to manage wilding spread;
    - d) Whether management plans are proposed for the avoidance or containment of wilding spread;
    - e) Whether a risk assessment has been completed and the results are favourable to the proposal.'
348. DOC seeks a range of amendments to ECO-P9 as follows<sup>300</sup>:

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<sup>297</sup> 00230.108 Forest and Bird

<sup>298</sup> 00139.134 Dunedin City Council

<sup>299</sup> 00138.038 Queenstown Lakes District Council

<sup>300</sup> 00137.092 Director General of Conservation



- Move ECO-P9 to the LF – LS section and review the content of the policy to address other values which can be affected by wilding conifers. The submitter considers this policy implies that wilding conifers are only an issue for biodiversity when they can also significantly impact other matters such as agricultural land use and catchment hydrology.
- Provide buffer distances as the provision is ineffective without specifying distances.
- ECO-P9 should cover other types of plantings.

### 10.13.3 Analysis

349. The purpose of ECO-P9 is to protect Otago’s indigenous biodiversity from wilding conifers, not the full suite of invasive tree species. Therefore, I do not recommend accepting Pomahaka Water Care Group, Lloyd McCall and DOCs submissions on this matter.
350. I do not recommend accepting the submissions of City Forest Limited and Port Blakely NZ Ltd because ECO-P9 does not stipulate buffer zone distances. The specifics of any buffer zone distances will sit with lower order plans and as such will be appropriately justified, if their rules are more stringent than the NESPF. Furthermore, the NESPF requires buffer zones around SNAs<sup>301</sup>, ECO-P9 reiterates this requirement and so is consistent with the NESPF.
351. I do not recommend accepting Kāi tahu ki Otago’s submission to protect ecosystems that are taoka under ECO-P9, as it is inconsistent with regulation 6 of the NESPF, which only permits a rule in a plan to be more stringent than the NESPF for the protection of SNAs or outstanding natural features and landscapes. For the same reason, I do not recommend accepting DCC’s submission to include the management of wilding conifers within areas of indigenous vegetation/habitat that are not yet identified as SNAs as this is inconsistent with regulation 6 of the NESPF. I also do not recommend accepting Raynoir’s submission to include ‘any forests, shelter belts and amenity planting’ as this is inconsistent with regulation 6 as well.
352. Forest and Bird seeks ‘with wilding conifer species listed in APP5’ is removed from clause 1. Not all wilding conifer species have the same invasive characteristics, therefore I do not consider it appropriate to prohibit all wilding conifer species. Further, the submitter has not provided any information to support the amendment it seeks. It is not achievable to eliminate wilding conifer spread in Otago as this would mean prohibiting the planting, afforestation and replanting of wilding conifer species throughout the Otago region. Therefore, I do not recommend accepting the submission point to replace ‘limit’ with ‘eliminate’. The submitter also seeks the provision be amended to ‘protect’ other areas beside SNAs. This is inconsistent with regulation 6 of NESPF, although I note that outstanding natural features and landscapes are covered under NFL—P5. Therefore, I do not recommend accepting this submission point.

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<sup>301</sup> Clause 14(3)(b) of the NESPF

353. I do not recommend accepting QLDC’s submission to include a new policy limb for managing wilding species as I consider this new policy limb would sit more appropriately in a district or regional plan because it is too directive and detailed for a RPS.
354. The purpose of the provision is to protect indigenous biodiversity from specified wilding conifers species in APP5, not the full suite of wilding trees; therefore, I do not recommend accepting this submission point from Wayfare Group. I do not consider ‘plantation forests’ and ‘replanting’ should be removed from the provision as this would detract from the purpose of ECO-P9. I do not recommend accepting Wayfare Group’s suggested amendment to clause (1) to include ‘planting’ because under the NESPF afforestation includes planting.
355. I do not recommend accepting DOC’s submission to include buffer distances as it will require a more local and nuanced approach and so it is more appropriate for this to sit in lower order plans. I do not recommend DOC’s submission to replicate ECO-P9 in the LF—LS chapter as LF—LS—M12 addresses the submitter’s concerns. It is unclear what DOC means by ‘cover other types of plantings’. I agree with DOC that ECO-P9 should cover other types of plantings because carbon forestry also poses a risk to wilding conifer spread due to its permanent nature. Therefore, to ensure the effects from forestry and carbon forestry are captured by this policy, I recommend amending clause (1) to read “avoiding the planting and replanting of plantation forestry and permanent forestry with conifer species listed in APP5 within...” as per the analysis on carbon forestry in section 1.6.5.3 of the Intro and general themes chapter.

#### 10.13.4 Recommendation

356. I recommend the following amendments to ECO-P9

##### **ECO-P9 – Wilding conifers**

Reduce the impact of wilding conifers on indigenous biodiversity by:

- (1) avoiding ~~afforestation~~ the planting<sup>302</sup> and replanting of plantation forests and permanent forests<sup>303</sup> with wilding conifer species listed in APP5 within:
  - (a) areas identified as significant natural areas, and
  - (b) buffer zones adjacent to significant natural areas where it is necessary to protect the significant natural area, and
- (2) supporting initiatives to control existing wilding conifers and limit their further spread.

#### 10.14 ECO-P10 – Integrated management

##### 10.14.1 Introduction

357. As notified, ECO-P10, reads as:

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<sup>302</sup> 00137.092 DOC

<sup>303</sup> 00137.092 DOC

## ECO-P10 – Integrated management

Implement an integrated and co-ordinated approach to managing Otago’s ecosystems and indigenous *biodiversity* that:

- (1) ensures any permitted or controlled activity in a *regional or district plan* rule does not compromise the achievement of ECO-O1,
- (2) recognises the interactions *ki uta ki tai* (from the mountains to the sea) between the terrestrial *environment, fresh water*, and the *coastal marine area*, including the migration of fish species between *fresh and coastal waters*,
- (3) promotes collaboration between individuals and agencies with *biodiversity* responsibilities,
- (4) supports the various statutory and non-statutory approaches adopted to manage indigenous *biodiversity*,
- (5) recognises the critical role of people and communities in actively managing the remaining indigenous *biodiversity* occurring on private *land*, and
- (6) adopts regulatory and non-regulatory regional pest management programmes.

358. ECO-P10 requires adopting an integrated and co-ordinated approach that recognises the many interactions and interconnections both in the environment and in the administration of any management regime. This policy recognises the important role of people and communities, including landowners, in managing biodiversity, reflecting the stewardship concept in ECO-O3.

### 10.14.2 Submissions

359. There are 11 submissions on ECO-P10. Two submitters seek it is retained as notified<sup>304</sup>.

360. Kāi Tahu ki Otago considers it is unclear how the integrated management of coastal biodiversity will be achieved and that clause 2 should signal the need to consider effects such as sediment flows to reef systems and kelp beds. The submitter seeks the following amendments to ECO-P10<sup>305</sup>:

~~‘(2) ...fresh water, and the coastal marine area, including the migration of fish species between fresh and coastal waters,~~

- a) the migration of fish species between fresh and coastal waters, and
- b) the effects of land-based activities on coastal ecosystems, for example from sedimentation or contaminant flows,’

<sup>304</sup> 00201.021 Central Otago District Council (CODC), 00321.026 New Zealand Infrastructure Commission

<sup>305</sup> 00226.226 Kāi Tahu ki Otago

361. Te Rūnanga o Ngāi Tahu considers climate change needs to be better provided for throughout the pORPS 21 and seeks the following new clause is included to ECO-P10 after clause 2<sup>306</sup>:

'acknowledges that climate change will affect indigenous biodiversity, and manages activities which will exacerbate the effects of climate change,...'

362. QLDC submits Otago Regional Council has the right expertise and experience to implement the intent of ECO– P10 and so ORC should lead the approach to regional integrated management. The submitter seeks the following amendments<sup>307</sup>:

Chapeau: amend to 'Otago Regional Council will implement an integrated and co-ordinated...'<sup>308</sup>.

363. Forest & Bird seeks the following amendments to ECO– P10<sup>309</sup>:

- Clause 1: '...district plan rule which has potential for adverse effects on indigenous biodiversity would not result in a more than minor adverse effect and would protect significant natural areas in accordance with ECO-P3 does not compromise the achievement of ECO-O1'.
- Clause 6 amend to '...management programmes and other pest management necessary to protect significant natural areas.'.

364. Fish & Game considers that without the inclusion of the habitat of trout and salmon, it is difficult to manage indigenous biodiversity and ecosystems as these species are a part of Otago's ecosystems. The submitter seeks the following amendments to the provision<sup>310</sup>:

- Chapeau: amend to '...,and indigenous biodiversity and the habitat of trout and salmon...'
- Clause 4: amend to '...indigenous biodiversity and the habitat of trout and salmon,'

365. Meridian considers the reference to supporting various statutory and non-statutory approaches is redundant and vague and so seeks clause 4 is deleted. For the same reasons, the submitter also seeks clause 6 is deleted.

### 10.14.3 Analysis

366. I consider it appropriate for ECO-P10 to signal the need to consider the effects on coastal biodiversity from land-based activities as it is in accordance with clause 3.5 of the NPSFM regarding ki uta ki tai and it is also in accordance with IM—O2 around Ki uta ki tai. Therefore, I recommend accepting Kāi Tahu ki Otago's submission, subject to different wording.

367. I agree with Te Rūnanga o Ngāi Tahu that the provision should acknowledge the effects of climate change on indigenous biodiversity because this is an issue that was highlighted

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<sup>306</sup> 00234.033 Te Rūnanga o Ngāi Tahu

<sup>307</sup> 00138.040 Queenstown Lakes District Council

<sup>308</sup> 00138.040 Queenstown Lakes District Council

<sup>309</sup> 00230.109 Forest and Bird

<sup>310</sup> 00231.074 Otago Fish & Game Council and the Central South Island Fish & Game Council

in SRMR—12 and is also addressed in IM—P8, therefore I recommend accepting the submission.

368. I do not recommend accepting Meridian’s submission to delete clauses (4) and (5) as these two clauses provide for mechanisms that will help to achieve the objectives of the ECO chapter, in particular ECO-O2 relating to restoration or enhancement.
369. I disagree with QLDC that Otago Regional should implement ECO-P10. Managing indigenous biodiversity is complex and requires an integrated approach across different types of resources and organisations. This policy also recognises the key role everyone plays in managing biodiversity and reflects the concept of stewardship in ECO-P3. Further ECO-M1 explicitly states the responsibilities of Regional Councils and Territorial Authorities, and the remaining methods clearly setting out responsibilities as they relate to plan making and technical tasks. Therefore, I do not recommend accepting the submission.
370. I do not recommend accepting Forest and Bird’s submission to remove the statement in clause (1) that any permitted activity rules in a plan must not compromise ECO-O1. This clause addresses the gap left by ECO-P6 which only applies to decision-making on resource consents and notice of requirements because of the practical difficulties of attempting to implement an effects management hierarchy through permitted activity rules. I do not consider Forest and Bird’s suggested amendment to clause (6) adds any value because what the submitter seeks is already contained in clause (6) as regional pest management programmes will capture pest management in SNAs; therefore, I do not recommend accepting the submission.
371. I consider Fish and Game’s submission to create a carve out for the habitat of trout and salmon in ECO-P10 is inappropriate as this chapter relates to protecting and maintaining Otago’s indigenous biodiversity. As per the discussion in section 1.6.9.2 of the Intro and general themes chapter, I do not recommend accepting the submission to create a carve out for the habitat of trout and salmon. The discussion in section 1.6.9.2 of the Intro and general themes chapter explains: *“The ECO chapter is focused on indigenous biodiversity and responds to the requirements set out in sections 6(c), 30(1)(ga), and 31(1)(b)(iii). I do not consider that expanding the scope of this chapter to incorporate the habitats of trout and salmon is appropriate for this reason. Those habitats are relevant to freshwater management primarily, as set out in the NPSFM, and I consider that any provisions for their management are best located in that chapter. Additionally, the proposed amendments would require the development of a new management plan which will necessarily have cost implications for councils, however no evaluation of the costs and benefits of the proposal are provided by the submitter. I do not consider that sufficient evidence has been provided to warrant including these amendments. I do not recommend accepting these submission points.”* Further, ecological advice is that *“Policies that generally aim to maintain, enhance, or restore freshwater habitats have the potential to benefit both indigenous freshwater biodiversity and exotic trout and salmon. Hence specific reference to trout and salmon is not needed in such policies.”*

*Trout and salmon are predators that can have major adverse effects on indigenous freshwater biota (for example, many endangered inland galaxiid fish species are now restricted to streams that do not have salmonid fish). Policy should therefore focus on the protection of indigenous freshwater biodiversity above protection of the habitats of trout or salmon.*<sup>311</sup>

372.

373. Under Schedule 1, Clause 16(2) of the RMA amend 'regional' to 'regional plan' in clause (1).

#### 10.14.4 Recommendation

374. I recommend the following amendments to ECO-P10:

#### **ECO-P10 – Integrated management**

Implement an integrated and co-ordinated approach to managing Otago's ecosystems and indigenous biodiversity that:

- (1) ensures any permitted or controlled activity in a *regional plan*<sup>312</sup> or *district plan* rule does not compromise the achievement of ECO-O1,
- (2) recognises the interactions ki uta ki tai (from the mountains to the sea) between the terrestrial *environment, fresh water*, and the *coastal marine area*, including:
  - (a) the migration of fish species between *fresh* and *coastal waters*, and<sup>313</sup>
  - (b) the effects of land-use activities on the coastal environment,<sup>314</sup>
- (2A) acknowledges that *climate change* will affect indigenous *biodiversity*, and manages activities which exacerbate the effects of *climate change*,<sup>315</sup>
- (3) promotes collaboration between individuals and agencies with *biodiversity* responsibilities,
- (4) supports the various statutory and non-statutory approaches adopted to manage indigenous *biodiversity*,
- (5) recognises the critical role of people and communities in actively managing the remaining indigenous *biodiversity* occurring on private *land*, and
- (6) adopts regulatory and non-regulatory regional pest management programmes.

### 10.15 ECO-M1 – Statement of responsibilities

#### 10.15.1 Introduction

375. As notified ECO-M1, reads as:

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<sup>311</sup> Appendix 10c, section 5.10

<sup>312</sup> Schedule 1, Clause 16(2) of the RMA

<sup>313</sup> 00226.226 Kāi Tahu ki Otago

<sup>314</sup> 00226.226 Kāi Tahu ki Otago

<sup>315</sup> 00234.033 Te Rūnanga o Ngāi Tahu

## ECO–M1 – Statement of responsibilities

In accordance with section 62(1)(i)(iii) of the RMA 1991, the *local authorities* responsible for the control of *land* use to maintain indigenous *biological diversity* are:

- (1) the Regional Council and *territorial authorities* are responsible for specifying objectives, policies and methods in *regional* and *district plans* for managing the margins of *wetlands, rivers* and *lakes*,
- (2) the Regional Council is responsible for specifying objectives, policies and methods in *regional plans*:
  - (a) in the *coastal marine area*,
  - (b) in *wetlands, lakes* and *rivers*, and
  - (c) in, on or under the *beds of rivers* and *lakes*,
- (3) in addition to (1), *territorial authorities* are responsible for specifying objectives, policies and methods in *district plans* outside of the areas listed in (2) above if they are not managed by the Regional Council under (4), and
- (4) the Regional Council may be responsible for specifying objectives, policies and methods in *regional plans* outside of the areas listed (1) above if:
  - (a) the Regional Council reaches agreement with the relevant *territorial authority* or *territorial authorities*, and
  - (b) if applicable, a transfer of powers in accordance with section 33 of the RMA 1991 occurs from the relevant *territorial authority* or *territorial authorities* to the Regional Council.

376. ECO-M1 contains the statement of responsibilities for managing indigenous biodiversity as required by section 62(1)(i)(iii) of the RMA 1991. This method establishes a fairly traditional division of responsibilities in accordance with regional and territorial authority functions, however it does provide ORC with the opportunity to adopt some of the territorial authority responsibilities and any relevant transfer of functions.

### 10.15.2 Submissions

377. CODC seeks amendments to provide more clarity on territorial authorities' responsibilities and to specifically identify areas of responsibility rather than referencing these them as 'outside the areas listed'<sup>316</sup>.

378. Forest and Bird seeks the following amendments to the provision to provide more clarity on responsibilities<sup>317</sup>:

- Clause 1: amend to '...district plans for ~~managing~~ maintain indigenous biological diversity within...'.

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<sup>316</sup> 00201.022 Central Otago District Council (CODC)

<sup>317</sup> 00230.110 Forest and Bird

- Clause 3: amend to ‘~~in addition to (1),~~ territorial authorities...’.
- Clause 4: amend to ‘...Regional Council may be solely responsible...outside of the areas listed (~~13~~) above if:...’.

379. DOC submits ECO-M1 does not support integrated management as regional and district councils under the provision undertake their responsibilities separately and that the land and water regional plan should provide an overall framework. The submitter seeks the following new sub clause to be added to clause 2:

‘(d) on land, where those objectives, policies and methods are relevant to the overall Otago Region and/or provide a framework for territorial authority plans.’<sup>318</sup>

380. Kāi Tahu seeks amendments to address how local authorities will achieve integrated management of cross-jurisdictional effects on indigenous biodiversity and ecosystems<sup>319</sup>.

### 10.15.3 Analysis

381. I do not recommend accepting CODC’s submission as I consider clause (3) provides sufficient clarity on territorial authorities’ responsibilities under ECO-M1.

382. I do not consider Forest and Bird’s requested amendment to clause (1) will improve the clarity of the provision as the amendments they seek are already contained in the chapeau of the provision. I do not recommend accepting their amendment to clause (3) because under the RMA territorial authorities are also responsible for managing the margins of wetlands, rivers and lakes. I do not recommend accepting their amendment to clause (4) as it already states the responsibilities are of the Regional Council only.

383. Kāi Tahu ki Otago seeks an amendment to the provision to address the integrated management of cross-jurisdictional effects on indigenous biodiversity. I consider this is already provided for in ECO-M6(1) and the IM chapter, specifically IM—P7 and IM—M1(5), with the two IM provisions applying to the ECO chapter, coupled with this, the pORPS21 needs to be read as a whole. Therefore, I do not recommend accepting the submission.

384. I do not recommend accepting DOC’s submission to include a new clause on integrated management because when the pORPS is read as a whole it achieves integrated management.

### 10.15.4 Recommendation

385. I recommend no change, retain as notified.

## 10.16 ECO-M2 – Identification of *significant natural areas*

### 10.16.1 Introduction

As notified, ECO-M2 reads as:

<sup>318</sup> 00137.094 Director General of Conservation

<sup>319</sup> 00226.227 Kāi Tahu ki Otago



## ECO–M2 – Identification of *significant natural areas*

*Local authorities* must:

- (1) in accordance with the statement of responsibilities in ECO–M1, identify the areas and values of *significant natural areas* as required by ECO–P2, and
- (2) map the areas and include the values identified under (1) in the relevant *regional* and *district plans*,
- (3) recognise that indigenous *biodiversity* spans jurisdictional boundaries by:
  - (a) working collaboratively to ensure the areas identified by different *local authorities* are not artificially fragmented when identifying *significant natural areas* that span jurisdictional boundaries, and
  - (b) ensuring that indigenous *biodiversity* is managed in accordance with this RPS,
- (4) require ecological assessments to be provided with applications for resource consent and notices of requirement that identify whether affected areas are *significant natural areas* in accordance with APP2,
- (5) in the following areas, prioritise identification under (1) no later than 31 December 2025:
  - (a) intermontane basins that contain indigenous vegetation and habitats,
  - (b) areas of dryland shrubs,
  - (c) braided *rivers*, including the Makarora, Mātukituki and Lower Waitaki Rivers,
  - (d) areas of montane tall tussock grasslands, and
  - (e) limestone habitats.

386. ECO-M2 supports ECO-P2 by setting out how SNAs will be identified, including the local authorities responsible for the identification process. As areas of significance may be identified during the resource consent as well as planning processes, ECO-M2 requires ecological assessments to be provided with consent applications and notices of requirement that identify whether affected areas are SNAs in accordance with APP4.

### 10.16.2 Submissions

387. There are fifteen submissions on ECO-M2. One submitter seeks the provision is retained as notified<sup>320</sup>.

388. Federated Farmers seeks ECO-M2(4) is deleted. The submitter opposes the requirement for all landowners to provide an ecological assessment to indicate whether their property is an SNA as this information should already be on Council’s files following appropriate assessments and the cost should not fall upon landowners<sup>321</sup>.

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<sup>320</sup> 00013.013 Canterbury Regional Council (Environment Canterbury)

<sup>321</sup> 00239.105 Federated Farmers of New Zealand

389. CODC seek longer timeframes as they have concerns regarding resourcing<sup>322</sup>. DCC seeks amendments to clause (5) to include a date to complete the identification of unidentified SNAs by e.g., 2030<sup>323</sup>.
390. Forest & Bird seeks specific amendments to ECO-M2 as follows<sup>324</sup>:
- Clause 1: amend to ‘...with ~~the statement of~~ responsibilities...’.
  - Clause 2: amend to ‘...include ~~the any~~ attributes and values identified in applying the APP2 criteria under (1) in the relevant regional and district plans, and’.
  - ‘(x) provide for the identification of other areas meeting the criteria in APP2 through consenting processes;’
  - Clause 4: amend to ‘...affected areas include indigenous biodiversity that meets criteria for are...’.
  - Clause 5: amend to ‘...identification under (1) and (2) ...’.
  - Clause 5 ‘(f) the coastal environment.’
391. Queenstown Airport seeks amendments to the provision to identify what types of resource consents and notices of requirement would trigger the need or an ecological assessment<sup>325</sup>.
392. Two submitters seek amendments to include minimum size areas for SNAs as small areas are troublesome to protect and have low impact on overall biodiversity<sup>326</sup>.
393. Kāi Tahu ki Otago seeks ‘values’ in clause 1 and 2 is amended to ‘biodiversity values’. The submitter seeks clarification of the reason for prioritisation of areas in clause 5 and whether ECO-M2 covers the identification of SNAs in the coastal environment<sup>327</sup>.

### 10.16.3 Analysis

394. I agree with DCC that a date to complete the identification of SNAs should be included, therefore I recommend accepting the submission. As CODC has not included a new date in their submission, I do not recommend accepting that submission.
395. I recommend accepting Kāi Tahu ki Otago’s submission because it will improve clarity of the provision, however I suggest amending ‘values’ to ‘indigenous biodiversity values’. I do not recommend accepting the submitter’s submission point to include an explanation for prioritising the areas listed in clause 5 as this is explained in the s32 report, ECO chapter, para 452. The definition of SNAs has been amendment to include the coastal environment, as per the discussion in the definition section, which would satisfy the submitter’s request.
396. I do not recommend accepting Forest and Bird’s submission on clause (1) as the current wording is consistent with ECO-M1. I do not recommend their suggested amendments to clause (2) because they are not consistent with ECO-P2(1). I do not recommend accepting

<sup>322</sup> 00201.023 Central Otago District Council (CODC)

<sup>323</sup> 00139.036 Dunedin City Council

<sup>324</sup> 00230.111 Forest and Bird

<sup>325</sup> 00311.014 Queenstown Airport

<sup>326</sup> 00319.009 McCall, Lloyd, 00207.007 Pomahaka Water Care Group

<sup>327</sup> 00226.228 Kāi Tahu ki Otago

their suggested new clause because it is already captured in clause (4). I do not recommend their requested amendment to clause (5) to include 'under (1) and (2)' because clause (2) relates to the mapping of a SNA, not identification. I do not recommend the inclusion of the new subclause to clause (5) because it is not considered a priority as the coastal plan is the vehicle for this.

397. I agree in part with Queenstown Airport, that a list of the activities that would trigger an ecological assessment might be useful, but to do so would add an unnecessary level of detail to ECO-M2 and goes beyond the role of a RPS and would sit more appropriately with lower order plans. I do, however, think some clarity could be provided that ecological assessments to identify whether affected areas are SNAs will only be required until the identification and mapping process of SNAs are completed clauses (1) and (2) are met.
398. Similarly, Federated Farmers opposes the requirement of ecological assessments and seek clause (4) is deleted. I do not recommend accepting Federated Farmers submission as Council's do not have the full suite of information on SNAs within their districts. Furthermore, ecological assessments will provide for stronger protection of SNAs and only apply where a resource consent is required for activities, zonings and notices of requirements that might affect SNAs. I do, however, note the recommended amendment to clause (4) that has arisen from Queenstown Airport's submission addresses Federated Farmers concerns.
399. I do not recommend accepting Lloyd McCall and Pomahaka Water Care Group's submissions to include a minimum size area for SNAs. Section 6(c) of the RMA requires the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. I consider including a minimum size area for SNAs would be inconsistent with s6(c).
400. I recommend consequential amendments from Raynoir Matariki Forest's submission on ECO-P2 to include 'verify' to ECO-M2(2).
401. Under Schedule 1, Clause 16(2) of the RMA include 'and' at the end of clause (4).
402. Under Schedule 1, Clause 16(2) of the RMA amend 'regional' to 'regional plan' in clause (2).

#### 10.16.4 Recommendation

403. I recommend the following amendments to ECO-M2:

#### **ECO-M2 – Identification of *significant natural areas***

*Local authorities* must:

- (1) in accordance with the statement of responsibilities in ECO-M1, identify the areas and indigenous biodiversity<sup>328</sup> values of *significant natural areas* as required by ECO-P2, and

- (2) map and verify<sup>329</sup> the areas and include the indigenous biodiversity<sup>330</sup> values identified under (1) in the relevant regional plans<sup>331</sup> and district plans, no later than 31 December 2030,<sup>332</sup>
- (3) recognise that indigenous *biodiversity* spans jurisdictional boundaries by:
  - (a) working collaboratively to ensure the areas identified by different *local authorities* are not artificially fragmented when identifying *significant natural areas* that span jurisdictional boundaries, and
  - (b) ensuring that indigenous *biodiversity* is managed in accordance with this RPS,
- (4) until *significant natural areas* are identified and mapped in accordance with (1) and (2),<sup>333</sup> require ecological assessments to be provided with applications for resource consent and notices of requirement that identify whether affected areas are *significant natural areas* in accordance with APP2, and<sup>334</sup>
- (5) in the following areas, prioritise identification under (1) no later than 31 December 2025:
  - (a) intermontane basins that contain indigenous vegetation and habitats,
  - (b) areas of dryland shrubs,
  - (c) braided *rivers*, including the Makarora, Mātukituki and Lower Waitaki Rivers,
  - (d) areas of montane tall tussock grasslands, and
  - (e) limestone habitats.

## 10.17 ECO-M3 – Identification of taoka

### 10.17.1 Introduction

404. As notified, ECO-M3, reads as:

#### **ECO–M3 – Identification of taoka**

Local authorities must:

- (1) work together with *mana whenua* to agree a process for:
  - (a) identifying indigenous species and ecosystems that are taoka,
  - (b) describing the taoka identified in (1)(a),
  - (c) mapping or describing the location of the taoka identified in (1)(a), and
  - (d) describing the values of each taoka identified in (1)(a), and

<sup>329</sup> 00020.018 Raynoir Matarki Forests

<sup>330</sup> 00226.228 Kāi Tahu ki Otago

<sup>331</sup> Schedule 1, Clause 16(2) of the RMA

<sup>332</sup> 00139.036 Dunedin City Council

<sup>333</sup> 00311.014 Queenstown Airport

<sup>334</sup> Schedule 1, Clause 16(2) of the RMA

(2) notwithstanding (1), recognise that *mana whenua* have the right to choose not to identify taoka and to choose the level of detail at which identified taoka, or their location or values, are described, and

(3) to the extent agreed by *mana whenua*, amend their *regional* and *district plans* to include matters (1)(b) to (1)(d) above.

405. ECO-M3 supports ECO-P2 and all of the policies that apply to indigenous biodiversity by requiring local authorities to work together with takata whenua to agree on a process for identifying indigenous species and ecosystems that are taoka, then describing them and their values and mapping or describing their location in regional and district plans to the extent agreed by takata whenua.

#### 10.17.2 Submissions

406. There are seven submissions on ECO-M3. One submitter seeks the provision is retained as notified<sup>335</sup>. Federated Farmers seeks the provision is deleted<sup>336</sup>.

407. Toitū Te Whenua state it is unclear if mapped taoka information will be shared publicly and considers that by publicly sharing this information it could be used in such a way to protect taoka<sup>337</sup>.

408. Fulton Hogan Limited seek ECO-M3(2) is deleted as it is uncertain what this clause means for the implementation of ECO-P3 and any subordinate policy or rules within a district and regional plan. The submitter also seeks clarity on whether areas not identified using the ECO-M3(1) process are afforded the same protection as ECO-P3<sup>338</sup>.

409. Similarly, Jim Hopkins seeks amendments to the provision to explicitly state the requirements to provide for taoka, the level of protection required, how to define taoka and address the cost and resource implications of this requirement on councils<sup>339</sup>.

410. Forest & Bird seek the following amendment<sup>340</sup>:

- Clause 1 (c): amend to ‘...taoka identified in (1)(a) throughout the region, and’

411. QLDC considers Otago Regional Council should lead the identification of taoka with mana whenua or alternatively provide financial and technical support to local authorities through the taoka identification and plan implementation process. The submitter seeks the following amendments to the provision<sup>341</sup>:

- Chapeau: amend to ‘~~Local authorities~~ Otago Regional Council must:’.
- Clause 3: amend to ‘...amend their regional ~~and district~~ plans...and’

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<sup>335</sup> 00226.229 Kāi Tahu ki Otago

<sup>336</sup> 00239.106 Federated Farmers of New Zealand

<sup>337</sup> 00101.048 Toitū Te Whenua, Land Information New Zealand

<sup>338</sup> 00322.031 Fulton Hogan Limited

<sup>339</sup> 00420.017 Hopkins, Jim

<sup>340</sup> 00230.112 Forest and Bird

<sup>341</sup> 00138.041 Queenstown Lakes District Council

- Add a new Clause 4: ‘ aid local authorities through financial and technical support in the amendment of district plans if deemed necessary to include matter (1)(b) to (1)(d) above.’

### 10.17.3 Analysis

412. As stated in clause (2), mana whenua have the right not to provide information on the mapped location of taoka. Therefore, I do not recommend accepting Toitū Te Whenua’s submission as mana whenua may choose not to publicly identify and map taoka due to reasons of cultural sensitivity or because the species is at-risk.
413. I do not recommend accepting Fulton Hogan’s submission to delete clause (2) because it is at the discretion of mana whenua as to whether they want to publicly provide information on taoka, which is consistent with s6(e) of the Act to provide for the relationship of Māori with their culture and traditions with taonga as a matter of national importance. Fulton Hogan seeks clarity on the protection status of unidentified taoka, until taoka is identified under ECO-M3(1) a precautionary approach must be adopted in accordance with IM—P15 as stated in ECO-P3(3).
414. I consider Jim Hopkins’s submission to include the requirements to provide for taoka, the level of protection required, how to define taoka and to address the cost resource implications to be too detailed for a RPS and should sit with junior plans. Furthermore, it would be a duplication of s6(e) of the Act to include the requirements to provide for taoka and ECO-P3 sets out the level of protection required for taoka.
415. I do not consider Forest and Bird’s submission will add to the purpose of clause (4) and ECO-M3 implicitly states it applies to the entire Otago region.
416. I disagree with QLDC that the onus of ECO-M3 should fall entirely on ORC because under s6(e) of the Act all persons exercising functions and powers under it shall recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. Furthermore, the identification of taoka will require a more local and nuanced approach. Therefore, I do not recommend accepting the submission as I consider it entirely appropriate that the obligation sits with all local authorities in the Otago region.

### 10.17.4 Recommendation

417. I recommend no change, retain as notified.

## 10.18 ECO-M4 – *Regional plans*

### 10.18.1 Introduction

418. As notified, ECO-M4 reads as:

#### **ECO–M4 – Regional plans**

Otago Regional Council must prepare or amend and maintain its *regional plans* to:

- (1) if the requirements of ECO–P3 and ECO–P6 can be met, provide for the use of *lakes* and *rivers* and their *beds*, including:
  - (a) activities undertaken for the purposes of pest control or maintaining or enhancing the habitats of indigenous fauna, and
  - (b) the maintenance and use of existing *structures* (including *infrastructure*), and
  - (c) *infrastructure* that has a *functional* or *operational need* to be sited or operated in a particular location,
- (2) require:
  - (a) resource consent applications to include information that demonstrates that the sequential steps in the effects management hierarchy in ECO–P6 have been followed, and
  - (b) that consents are not granted if the sequential steps in the effects management hierarchy in ECO–P6 have not been followed, and
  - (3) provide for activities undertaken for the purpose of restoring or enhancing the habitats of indigenous fauna.

419. ECO-M4 sets out the requirements for ORC’S regional plans. The direction is more general than specific due to the high degree of specificity in the ECO policies.

#### 10.18.2 Submissions

420. There are thirteen submissions on ECO-M4.

421. Trustpower Limited seeks clause 2(b) is deleted as they consider it inappropriate for the pORPS to state circumstances in which a consent application may be declined because any decision on a resource consent application should be determined through the appropriate process specified in the RMA or any subsequent legislation<sup>342</sup>. Fulton Hogan considers the effects management hierarchy goes beyond what is necessary to achieve s6(c) of the RMA and so seeks clause (2) is deleted<sup>343</sup>.

422. Similarly, Aurora Energy Limited seeks that any reference to ECO-P3 is deleted as the submitter considers ECO-P3 acts as a prohibition on the operation, maintenance, and upgrade of its network<sup>344</sup>.

423. DCC seeks that ECO-M4(1) is deleted as they consider it a duplication to have a ‘provide for’ statement for activities that meet ECO-P3 and ECO-P6 as the policies themselves imply that if they are met, the activity is acceptable<sup>345</sup>.

424. Kāi Tahu ki Otago considers it is unclear why regional plans cannot provide for the control of clearance or modification of indigenous vegetation in those areas of regional

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<sup>342</sup> 00311.025 Trustpower Limited

<sup>343</sup> 00322.032 Fulton Hogan Limited

<sup>344</sup> 00315.039 Aurora Energy Limited

<sup>345</sup> 00139.137 Dunedin City Council

jurisdiction specified under ECO-M1. The submitter seeks the inclusion of the following new clause 2<sup>346</sup>:

‘control the clearance or modification of indigenous vegetation, while allowing for mahika kai and kaimoana activities’.

425. Alluvium and Stoney Creek and Danny Walker and Others do not support an effects management hierarchy approach where avoidance is not possible and consider the NPSFM definition has been used and so they seek ‘in the effects management hierarchy in’ is removed from clause 2(a) and (b)<sup>347</sup>.
426. To give effect to ECO-P8, Meridian considers that ECO-M4(3) should be amended to<sup>348</sup>:
- ~~‘provide for enable activities...’~~ and that such activities should not be limited to habitats of indigenous fauna ‘...enhancing ~~the habitats of indigenous fauna~~ biodiversity fauna’<sup>349</sup>.
427. Forest and Bird seeks the inclusion of a new clause and specific amendments to ECO-M4 as follows<sup>350</sup>:
- Clause 1: amend to ‘...their beds in appropriate locations and circumstances, including:’
  - Clause 1(b): amend to ‘...use of existing lawfully established structures...’
  - Clause 3: amend to ‘...restoring ~~or enhancing~~ and improving...’
  - New clause: ‘in all cases consider whether it may be appropriate to grant consent with conditions or for consent to be declined due to locational circumstances and to achieve other policy and objectives of the RPS.’
428. Fish and Game seeks amendments to ECO-M4 to appropriately recognise and provide a pathway to implement the additional provisions as recommended in the submission. The submitter seeks the following amendments<sup>351</sup>:
- Clause (1) to ‘...requirements of ECO-P3, ECO-P6 and ECO-P11...’
  - Clause 1(a) to ‘...control or ~~maintaining~~ protecting or enhancing restoring the habitats of indigenous fauna and trout and salmon, and’

### 10.18.3 Analysis

429. I do not recommend accepting Trustpower’s submission to delete clause (2)(b) because it does not “make the decision” on resource consent applications, it provides a policy framework for lower order plans. ECO-M4 and ECO-M8 simply repeat the statutory direction that lower order plans must implement. Furthermore, under s104 of the RMA decision-makers must have regard to a proposed RPS, while in theory the weight to be

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<sup>346</sup> 00226.230 Kāi Tahu ki Otago / Aukaha

<sup>347</sup> 00016.016 Alluvium Ltd and Stoney Creek Mining Ltd, 00017.014 Danny Walker, Peter Hall, Cold Clutha Ltd and AWA Koura Mining Ltd

<sup>348</sup> 00306.049 Meridian

<sup>349</sup> 00306.049 Meridian

<sup>350</sup> 00230.113 Forest and Bird

<sup>351</sup> 00231.076 Otago Fish & Game Council and the Central South Island Fish & Game Council



attached to the provisions in a proposed RPS is for the decision-makers, meaning the stronger and more directive the provisions, the more likely they are to be decisive.

430. I do not recommend accepting Fulton Hogan’s submission to delete clause (2) because it is consistent with s30(1)(ga) of RMA in which regional councils establish, implement, and review provisions for maintaining indigenous biodiversity.
431. Aurora Energy seeks that any reference to ECO-P3 is deleted. I do not recommend accepting the submission as ECO-P3 provides a pathway for the operation, maintenance, and upgrade of its network through ECO-P6, and ECO-P4 allows for the development or upgrade of nationally significant infrastructure and regionally significant infrastructure, provided the criteria in the provision is met.
432. I do not recommend accepting the submissions of Alluvium and Stoney Creek and Danny Walker and Others as ECO-P6 does not use the NPSFM effects management hierarchy, which is deliberate because ECO-P6 relates to the management of indigenous biodiversity, not freshwater. However, I recommend accepting consequential amendments from DOC’s submission in the definition section on ‘effects management hierarchy’ to amend ‘biodiversity effects management hierarchy’ to ‘effects management hierarchy (in relation to indigenous biodiversity)<sup>352</sup>.
433. I do not recommend accepting DCC’s submission to delete ECO-M4(1) as ECO-M4(1) provides a policy framework within which regional plans are developed. The policy must be given effect to by regional plans, with the real effect of policy and its implementation occurring through regional plan provisions. For clarity, it has been made clear that ECO-P3 and ECO-P6 must be given effect to.
434. I agree with Kāi Tahu ki Otago’s that regional plans should provide for the control of clearance or modification of indigenous vegetation. Therefore, I recommend accepting the submission.
435. I do not recommend accepting Meridian’s submission to amend ECO-M4 so that it is consistent with their requested amendments to ECO-P8. The submitter’s amendments sought were not accepted because the notified version of ECO-P8 is consistent with s30(1)(ga) of the Act which states regional councils, as part of their functions, shall establish, implement, and review objectives, policies, and methods for maintaining indigenous biological diversity. While s31(1)(b)(iii) of the Act states territorial authorities, as part of their functions, shall maintain indigenous biological diversity. Therefore, I do not consider ECO-P8 is too directive.
436. I consider Fish and Game’s submission to create a carve out for the habitat of trout and salmon because the ECO chapter relates to protecting and maintaining Otago’s indigenous biodiversity. As per the discussion in section 1.6.9.2 of the Intro and general themes chapter, I do not recommend accepting the submission to create a carve out for the habitat of trout and salmon. The discussion in section 1.6.9.2 of the Intro and general themes chapter explains: *“The ECO chapter is focused on indigenous biodiversity and responds to the requirements set out in sections 6(c), 30(1)(ga), and 31(1)(b)(iii). I do not*

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<sup>352</sup> 00137.009 DOC

*consider that expanding the scope of this chapter to incorporate the habitats of trout and salmon is appropriate for this reason. Those habitats are relevant to freshwater management primarily, as set out in the NPSFM, and I consider that any provisions for their management are best located in that chapter. Additionally, the proposed amendments would require the development of a new management plan which will necessarily have cost implications for councils, however no evaluation of the costs and benefits of the proposal are provided by the submitter. I do not consider that sufficient evidence has been provided to warrant including these amendments. I do not recommend accepting these submission points.”*

437. I recommend accepting Forest and Bird’s submission on clause (1)(b) as it will improve its clarity, however I suggest slightly different wording. I do not recommend accepting the amendment to clause (1) as the request is already captured in clause (1) as the requirements of ECO-P3 and ECO-P6 must be given effect to. For consistency purposes, I do not recommend accepting the amendment to clause (3). I do not recommend accepting the inclusion of the new clause as I consider it to be too detailed for an RPS.
438. I recommend consequential amendments from the EIT—INF chapter to amend ‘functional’ to ‘functional need’<sup>353</sup>.
439. I recommend consequential amendments to italicise ‘mahika kai’ because it has been recommended to define this term.

#### 10.18.4 Recommendation

440. I recommend the following amendments to ECO-M4:

#### **ECO–M4 – Regional plans**

Otago Regional Council must prepare or amend and maintain its *regional plans* to:

- (1) if the requirements of ECO–P3 and ECO–P6 can be met, provide for the use of *lakes* and *rivers* and their *beds*, including:
    - (a) activities undertaken for the purposes of pest control or maintaining or enhancing the habitats of indigenous fauna, and
    - (b) the maintenance and use of existing structures that are lawfully established<sup>354</sup> (including *infrastructure*), and
    - (c) infrastructure that has a *functional need*<sup>355</sup> or *operational need* to be sited or operated in a particular location,
- (1A) control the clearance or modification of *indigenous vegetation*, while allowing for *mahika kai*<sup>356</sup> and kaimoana (seafood) activities,<sup>357</sup>

<sup>353</sup> 00315.046 Aurora, 00138.116 QLDC

<sup>354</sup> 00230.113 Forest and Bird

<sup>355</sup> 00315.046 Aurora, 00138.116 QLDC

<sup>356</sup> 00226.0038 Kāi Tahu ki Otago

<sup>357</sup> 00226.230 Kāi Tahu ki Otago / Aukaha

- (2) require:
  - (a) resource consent applications to include information that demonstrates that the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*<sup>358</sup> in ECO–P6 have been followed, and
  - (b) that consents are not granted if the sequential steps in the effects management hierarchy *(in relation to indigenous biodiversity)*<sup>359</sup> in ECO–P6 have not been followed, and
- (3) provide for activities undertaken for the purpose of restoring or enhancing the habitats of indigenous fauna.

## 10.19 ECO-M5 – *District plans*

### 10.19.1 Introduction

441. As notified, ECO-M5 reads as:

#### **ECO–M5 – District plans**

*Territorial authorities* must prepare or amend and maintain their *district plans* to:

- (1) if the requirements of ECO–P3 and ECO–P6 are met, provide for the use of *land* and the surface of *water bodies* including:
  - (a) activities undertaken for the purposes of pest control or maintaining or enhancing the habitats of indigenous fauna, and
  - (b) the maintenance and use of existing *structures* (including *infrastructure*), and
  - (c) *infrastructure* that has a *functional* or *operational need* to be sited or operated in a particular location,
- (2) control the clearance or modification of indigenous vegetation,
- (3) promote the establishment of *esplanade reserves* and *esplanade strips*, particularly where they would support ecological corridors, buffering or connectivity between *significant natural areas*,
- (4) require:
  - (a) resource consent applications to include information that demonstrates that the sequential steps in the effects management hierarchy in ECO–P6 have been followed, and
  - (b) that consents are not granted if the sequential steps in the effects management hierarchy in ECO–P6 have not been followed, and
- (5) provide for activities undertaken for the purpose of restoring or enhancing the habitats of indigenous fauna, and

<sup>358</sup> 00016.013 Alluvium Ltd and Stoney Creek Mining Ltd, 0017.011 Danny Walker, Peter Hall, Cold Clutha Ltd and AWA Koura Mining Ltd, 00321.022 New Zealand Infrastructure Commission, 00137.009 DOC

<sup>359</sup> 00016.013 Alluvium Ltd and Stoney Creek Mining Ltd, 0017.011 Danny Walker, Peter Hall, Cold Clutha Ltd and AWA Koura Mining Ltd, 00321.022 New Zealand Infrastructure Commission, 00137.009 DOC

(6) prohibit the planting of *wilding conifer* species listed in APP5 within areas identified as *significant natural areas*.

442. ECO-M5 sets out the requirements for district plans, in a similar direction to ECO-M4.

#### 10.19.2 Submissions

443. There are nineteen submissions on ECO-M5. Two submitters seek the provision is retained as notified<sup>360</sup>.

444. Alluvium and Stoney Creek and Danny Walker and Other seek any reference to ‘in the effects management hierarchy’ is removed from the provision. The submitters consider the definition of “effects management hierarchy” contained in the pORPS21 is adopted from the NPSFM 2020 and therefore only applies to wetlands and rivers, which causes confusion as to whether it applies to non-freshwater SNAs and indigenous biodiversity<sup>361</sup>.

445. Similarly, Fulton Hogan seeks any reference to ‘effects management hierarchy’ is removed from the provision and clause 4 is deleted. The submitter considers the hierarchy includes no discretion as to what effects management path is taken and goes beyond what is necessary to achieve s6(c) of the RMA<sup>362</sup>. Trustpower Limited also seeks that clause 4 is deleted because it considers it inappropriate for a RPS to state circumstances in which a consent application may be declined<sup>363</sup>.

446. DCC considers it unnecessary to have a “provide for” statement in clause 1 for activities that meet policies ECO-P3 and ECO-P6 as it is a duplication, because the policies themselves imply that if they are met, the activity is acceptable. The submitter seeks that clause 1 is deleted. The submitter also seeks clarity on whether resource consents triggered by district plans are assessed directly against ECO-P6 or if territorial authorities are to incorporate this policy into their district plans<sup>364</sup>.

447. Forest & Bird seeks the inclusion of a new clause and specific amendments to ECO-M5 as follows<sup>365</sup>:

- Clause 1: ‘...water bodies in appropriate locations and circumstances, including:’.
- Clause 1(a): replace ‘enhancing’ with ‘improving’.
- Clause 5: replace ‘or enhancing’ with ‘and improving’.
- New clause: ‘in all cases consider whether it may be appropriate to grant consent with conditions or for consent to be declined due to locational circumstances and to achieve other policy and objectives of the RPS.’

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<sup>360</sup> 00321.028 New Zealand Infrastructure Commission, 00305.031 Waka Kotahi NZ Transport Agency

<sup>361</sup> 00016.017 Alluvium Ltd and Stoney Creek Mining, 00017.015 Danny Walker, Peter Hall, Cold Clutha Ltd and Awa Koura Mining Ltd

<sup>362</sup> 00322.033 Fulton Hogan Limited

<sup>363</sup> 00311.026 Trustpower Limited

<sup>364</sup> 00139.138 Dunedin City Council

<sup>365</sup> 00230.114 Forest and Bird

448. Trojan Holdings Limited considers district plans should provide for activities which promote as well as undertake the restoration or enhancement of habitats of indigenous flora and fauna. The submitter seeks the following specific amendments<sup>366</sup>:
- Clause 5: ‘...activities which promote or undertaken for the purpose of restoring or enhancing the habitats of indigenous flora and fauna...’<sup>367</sup>.
449. For the same reasons, Wayfare Group Ltd seeks the following specific amendments<sup>368</sup>:
- Clause 5: ‘...activities which promote or undertake the n for the purpose of restorationing or enhancing the habitats of indigenous flora and fauna...’<sup>369</sup>
450. Waitaki District Council seeks carbon forestry is referenced in ECO-M5 as this activity can also contribute to wilding conifer spread. The submitter also seeks the inclusion of a new clause to protect SNAs. The submitter seeks the following specific amendments<sup>370</sup>:
- Clause 6: ‘...planting of wilding conifer species as listed in APP5 that have the ability to spread, including those associated with carbon forestry’.
  - New clause: ‘Provide buffer zones adjacent to significant natural areas where it is necessary to protect the significant natural area.’.
451. QLDC seeks the following specific amendments to the chapeau<sup>371</sup>:
- ‘Territorial authorities must prepare or amend and maintain their district plans and will be aided by Otago Regional Council through technical and financial assistance to:’.
452. Meridian considers the activities listed under clause 5 should not be limited to the habitats of indigenous fauna but should address indigenous biodiversity in its fullness. The submitter seeks the following specific amendments<sup>372</sup>:
- Clause 5: ‘provide for enable activities undertaken for the purpose of restoring or enhancing the habitats of indigenous biodiversity fauna’<sup>373</sup>
453. Kāi Tahu ki Otago seeks the following specific amendments to ECO-M5<sup>374</sup>:
- Clause 2: ‘...vegetation, while allowing for mahika kai activities,’.
  - Clause 3: ‘...natural areas, or access to mahika kai,’
  - Clause 6: ‘...within or adjacent to areas identified as significant natural areas or ecosystems that are taoka.’

<sup>366</sup> 00206.046 Trojan Holdings Limited (Trojan)

<sup>367</sup> 00206.046 Trojan Holdings Limited (Trojan)

<sup>368</sup> 00411.059 Wayfare Group Ltd

<sup>369</sup> 00411.059 Wayfare Group Ltd

<sup>370</sup> 00140.026 Waitaki District Council

<sup>371</sup> 00138.042 Queenstown Lakes District Council

<sup>372</sup> 00306.050 Meridian

<sup>373</sup> 00306.050 Meridian

<sup>374</sup> 00226.231 Kāi Tahu ki Otago

454. Aurora Energy seeks that any reference to ECO-P3 is deleted as the submitter considers the policy acts as a prohibition on the operation, maintenance and upgrade of its network. The submitter seeks the following amendments<sup>375</sup>:
- Clause 2: ‘...vegetation, including where required to provide for the ongoing operation, maintenance and upgrade of infrastructure.<sup>376</sup>’.
455. Fish and Game seeks consequential amendments to ECO-M5<sup>377</sup>:
- Clause 1: ‘...ECO-P3, and ECO-P6 and ECO-P11...’
  - Clause 1(a): ‘...control or maintaining protecting or enhancing restoring the habitats of indigenous fauna and trout and salmon, and’.

### 10.19.3 Analysis

456. I do not recommend accepting the submissions of Alluvium and Stoney Creek and Danny Walker and Others to remove the reference to ‘effects management hierarchy’ as ECO-P6 set out an effects management hierarchy for maintaining indigenous biodiversity, it does not use the NPSFM effects management hierarchy. However, I recommend accepting consequential amendments from DOC’s submission in the definition section on ‘effects management hierarchy’ to amend ‘biodiversity effects management hierarchy’ to ‘effects management hierarchy (in relation to indigenous biodiversity)<sup>378</sup>’.
457. For reasons stated above in response to Alluvium and Stoney Creek and Danny Walker and Others submission, I do not recommend accepting Fulton Hogan’s submission to remove any reference to the effects management hierarchy and to delete clause because I consider the reference to ECO-P6 is consistent with s31(b)(iii) as territorial authorities have a function to maintain indigenous biodiversity. I do not recommend accepting Trustpower’s submission to delete clause (4) because the clause does not decline a resource consent instead it provides the policy framework within which district plans are developed. ECO-M5(4) must be given effect to by district plans and a district plan provision will state the circumstances in which a consent application may be declined. Further ECO-M5(4) requires a process to be followed, to ensure that ECO-P6 is met, it does not provide an assessment on what is acceptable, but rather the process that is to be followed appropriately.
458. I do not recommend accepting DCC’s submission to delete ECO-M5(1) as ECO-M5(1) provides a policy framework within which district plans are developed. The policy must be given effect to by district plans, with the real effect of policy and its implementation occurring through district plan provisions. For clarity, it has been made clear that ECO-P3 and ECO-P6 must be given effect to.
459. I do not recommend accepting Forest and Bird’s requested amendments to clause (1) as the request is already captured in clause (1) as the requirements of ECO-P3 and ECO-P6 must be given effect to. For consistency purposes with ECO-P8 and because enhance is

<sup>375</sup> 00315.040 Aurora Energy Limited

<sup>376</sup> 00315.040 Aurora Energy Limited

<sup>377</sup> 00231.077 Otago Fish & Game Council and the Central South Island Fish & Game Council

<sup>378</sup> 00137.009 DOC

well-used term in the pORPS21, I do not recommend accepting the requested amendments to clauses (1)(a) and (5). I do not recommend accepting the inclusion of the new clause as I consider it to be too detailed for an RPS.

460. As per the discussion in section 1.6.9.2 of the Intro and general themes chapter, I do not recommend accepting Fish and Game's submission to create a carve out for trout and salmon as the purpose of the ECO chapter is to protect and maintain indigenous biodiversity in the Otago region.
461. I do not recommend accepting the submissions of Trojan and Wayfare to amend clause 5 to provide for activities which promote and undertake the restoration or enhancement of habitats of indigenous flora and fauna as clause (5) implements ECO-P8 and I consider the notified wording of ECO-M5(5) already captures what the submitters seek.
462. I do not recommend accepting QLDC's submission to amend the chapeau to state that territorial authorities will be aided by ORC as ECO-M6 encourages local authorities to work collaboratively with each other.
463. I agree with Waitaki DC that buffer zones adjacent to SNAs should be provided for in district plans and so I recommend accepting the submission point. I do not recommend accepting the submitter's suggested amendments to clause (6) to reference carbon forestry as it has been recommended to include carbon forestry in ECO-P9; therefore, this recommended amendment to ECO-P9 satisfies Waitaki DC's submission on ECO-M5(6). Furthermore, the amendment to include buffer zones adjacent to SNAs in ECO-M5, to the discretion of TAs, will restrict locations for carbon forestry.
464. I do not recommend accepting Meridian's submission to amend ECO-M5 so that it is consistent with their requested amendments to ECO-P8. The submitter's amendments sought were not accepted because the notified version of ECO-P8 is consistent with s30(1)(ga) of the Act which states regional councils, as part of their functions, shall establish, implement, and review objectives, policies, and methods for maintaining indigenous biological diversity. While s31(1)(b)(iii) of the Act states territorial authorities, as part of their functions, shall maintain indigenous biological diversity. Therefore, I do not consider ECO-P8 is too directive.
465. I disagree with Aurora Energy that a carve out for infrastructure should be included under clause 2 as it is inconsistent with s31(1)(b)(iii) of the RMA that requires territorial authorities to maintain indigenous biological diversity.
466. I do not recommend accepting Kāi Tahu ki Otago's submission to include ecosystems that are taoka to clause (6) as it is not permitted by regulation 6 of the NESPF. I recommend accepting their submission to clause (6) to include 'or adjacent to', however, I suggest slightly different wording.
467. I recommend consequential amendments to italicise 'mahika kai' because it has been recommended to define this term.

#### 10.19.4 Recommendation

468. I recommend the following amendments to ECO-M5:

## ECO–M5 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* to:

- (1) if the requirements of ECO–P3 and ECO–P6 are met, provide for the use of *land* and the surface of *water bodies* including:
  - (a) activities undertaken for the purposes of pest control or maintaining or enhancing the habitats of indigenous fauna, and
  - (b) the maintenance and use of existing *structures* (including *infrastructure*), and
  - (c) *infrastructure* that has a *functional* or *operational need* to be sited or operated in a particular location,
- (2) control the clearance or modification of indigenous vegetation, while allowing for *mahika kai*<sup>379</sup> activities,<sup>380</sup>
- (3) promote the establishment of *esplanade reserves* and *esplanade strips*, particularly where they would support ecological corridors, buffering or connectivity between *significant natural areas*, or access to *mahika kai*,<sup>381</sup>
- (4) require:
  - (a) resource consent applications to include information that demonstrates that the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*<sup>382</sup> in ECO–P6 have been followed, and
  - (b) that consents are not granted if the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*<sup>383</sup> in ECO–P6 have not been followed, and
- (5) provide for activities undertaken for the purpose of restoring or enhancing the habitats of indigenous fauna, ~~and~~<sup>384</sup>
- (6) prohibit the planting of *wilding conifer* species listed in APP5 within areas identified as *significant natural areas* and buffer zones adjacent to *significant natural areas*, and<sup>385</sup>
- (7) require buffer zones adjacent to *significant natural areas* where it is necessary to protect the *significant natural area*.<sup>386</sup>

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<sup>379</sup> 00226.0038 Kāi Tahu ki Otago

<sup>380</sup> 00226.231 Kāi Tahu ki Otago

<sup>381</sup> 00226.231 Kāi Tahu ki Otago, 00226.0038 Kāi Tahu ki Otago

<sup>382</sup> 00016.013 Alluvium Ltd and Stoney Creek Mining Ltd, 0017.011 Danny Walker, Peter Hall, Cold Clutha Ltd and AWA Koura Mining Ltd, 00321.022 New Zealand Infrastructure Commission, 00137.009 DOC

<sup>383</sup> 00016.013 Alluvium Ltd and Stoney Creek Mining Ltd, 0017.011 Danny Walker, Peter Hall, Cold Clutha Ltd and AWA Koura Mining Ltd, 00321.022 New Zealand Infrastructure Commission, 00137.009 DOC

<sup>384</sup> 00140.026 Waitaki District Council

<sup>385</sup> 00226.231 Kāi Tahu ki Otago

<sup>386</sup> 00140.026 Waitaki District Council



## 10.20 ECO-M6 – Engagement

### 10.20.1 Introduction

469. As notified, ECO-M6 reads as:

#### **ECO–M6 – Engagement**

*Local authorities*, when implementing the policies in this chapter, will:

- (1) work collaboratively with other *local authorities* to adopt an integrated approach to managing Otago’s *biodiversity* across administrative boundaries,
- (2) engage with individuals (including landowners and *land* occupiers), community groups, government agencies and other organisations with a role or an interest in *biodiversity* management, and
- (3) consult directly with landowners and *land* occupiers whose properties potentially contain or are part of *significant natural areas*.

470. ECO-M6 encourages local authorities to work collaboratively together, engage with others with a role or interest in biodiversity management and consult directly with landowners whose properties potentially contain or are part of a SNAs.

### 10.20.2 Submissions

471. There are seven submissions on ECO-M6. Five submitters seek the provision is retained as notified<sup>387</sup>. Moutere Station seeks ECO-M6(3) is retained as notified <sup>388</sup>.

472. Kāi Tahu ki Otago submits the provision does not indicate how Kāi Tahu will be involved in biodiversity management. The submitter considers that for ECO-M6 to be in line with ECO-P1 and IM—M2 the provision needs to be amended to clarify the Kāi Tahu partnership role in the management of indigenous biodiversity, particularly mahika kai and taoka species and ecosystems, and also in relation to supporting the use of mātauraka in management and monitoring<sup>389</sup>

### 10.20.3 Analysis

473. The Mana Whenua chapter addresses how Kāi Tahu will be involved in managing the natural environment. The provisions contained in the Mana whenua chapter that are of particular relevance to Kāi Tahu’s involvement under ECO-M6 are MW—M3 and MW—M4. As Kāi Tahu ki Otago have made no specific amendments, it is recommended to note the submission. The submitter may wish to provide specific amendments in their evidence.

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<sup>387</sup> 00013.014 Canterbury Regional Council (Environment Canterbury), 00201.024 Central Otago District Council (CODC), 00239.109 Federated Farmers of New Zealand, 00014.064 Highton, John, 00230.115 Forest and Bird

<sup>388</sup> 00026.018 Moutere Station

<sup>389</sup> 00226.232 Kāi Tahu ki Otago

#### 10.20.4 Recommendation

474. I recommend no change, retain as notified.

### 10.21 ECO-M7 – Monitoring

#### 10.21.1 Introduction

475. As notified, ECO-M7, reads as:

#### **ECO–M7 – Monitoring**

Local authorities will:

- (1) establish long-term monitoring programmes for areas identified under ECO–P1 that measure the net loss and gain of indigenous *biodiversity*,
- (2) record information (including data) about the state of species, vegetation types and ecosystems,
- (3) to the extent possible, use mātauraka Māori and tikaka Māori monitoring methods, as well as scientific monitoring methods, and
- (4) regularly report on matters in (1) and (2) and publish these reports.

476. ECO-M7 requires local authorities to establish a long-term monitoring programme (including cultural health) and regularly report on its outcomes.

#### 10.21.2 Submissions

477. DOC and Kāi Tahu ki Otago note that there is an incorrect reference in clause 1 and seek ‘ECO-P1’ to be amended to ‘ECO-P2’<sup>390</sup>.

478. QLDC and CODC seek amendments to the chapeau to state that the responsibilities of monitoring ecosystems will sit with the regional council. The submitters consider the regional council is the most appropriate to undertake monitoring due to its technical expertise<sup>391</sup>, or alternatively provide financial and technical support to local authorities<sup>392</sup>.

479. Kāi Tahu ki Otago seeks the following amendments to clause 2 to specify that monitoring will include mahika kai species and ecosystems<sup>393</sup>:

- Clause 2: amend to ‘(2) record information (including data) over time about the state of species, vegetation types and ecosystems, including mahika kai species and ecosystems’.

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<sup>390</sup> 00137.095 Director General of Conservation, 00226.233 Kāi Tahu ki Otago

<sup>391</sup> 00201.025 Central Otago District Council (CODC), 00138.043 Queenstown Lakes District Council

<sup>392</sup> 00138.043 Queenstown Lakes District Council

<sup>393</sup> 00226.233 Kāi Tahu ki Otago

480. Forest & Bird seeks the following amendments to ECO-M7 as the submitter considers that monitoring should also assist in measuring the success of protection of significant natural areas<sup>394</sup>:
- Clause 1: amend to ‘...ECO-P1 and ECO-P2...’
  - Clause 2: amend to ‘...vegetation types and ecosystems and in a way that over time can measure success of ECO-P3,’

### 10.21.3 Analysis

481. I disagree with QLDC and CODC that the onus of ECO-M7 should sit entirely with ORC as monitoring and reporting requires a more local and nuanced approach, therefore the onus should fall on all local authorities, not solely on ORC. Therefore, I do not recommend accepting the submissions of QLDC and CODC.
482. I recommend accepting the submissions of DOC and Kāi Tahu ki Otago to update the cross reference error from ECO-P1 to ECO-P2. Therefore, I recommend accepting Forest and Bird’s submission to include ECO-P2 but note that ECO-P1 is the incorrect cross reference.
483. I do not recommend accepting Forest and Bird’s submission point on clause (2) as measuring the success of the protection of significant natural areas is already captured in the provision.
484. For clarity purposes, I recommend accepting Kāi Tahu ki Otago’s submission to include ‘over time’ in clause (2). I also recommend accepting their submission point to include mahika kai species and ecosystems as this is consistent with recognising the relationship of Māori with their taonga under s6(e) of the Act.
485. I recommend consequential amendments to italicise ‘mahika kai’ because it has been recommended to define this term.

### 10.21.4 Recommendation

486. I recommend the following amendments to ECO-M7:

#### **ECO-M7 – Monitoring**

*Local authorities will:*

- (1) establish long-term monitoring programmes for areas identified under ~~ECO-P1~~ECO-P2<sup>395</sup> that measure the net loss and gain of indigenous *biodiversity*,
- (2) record information (including data) over time<sup>396</sup> about the state of species, vegetation types and ecosystems, including mahika kai<sup>397</sup> species and ecosystems,<sup>398</sup>

<sup>394</sup> 00230.116 Forest and Bird

<sup>395</sup> 00137.095 Director General of Conservation, 00226.233 Kāi Tahu ki Otago

<sup>396</sup> 00226.233 Kāi Tahu ki Otago

<sup>397</sup> 00226.0038 Kāi Tahu ki Otago

<sup>398</sup> 00226.233 Kāi Tahu ki Otago

- (3) to the extent possible, use mātauraka Māori and tikaka Māori monitoring methods, as well as scientific monitoring methods, and
- (4) regularly report on matters in (1) and (2) and publish these reports.

## 10.22 ECO-M8 – Other incentives and mechanisms

### 10.22.1 Introduction

487. As notified, ECO-M8 reads as:

#### **ECO-M8 – Other incentives and mechanisms**

*Local authorities* are encouraged to consider the use of other mechanisms or incentives to assist in achieving Policies ECO-P1 to ECO-P10, including:

- (1) providing information and guidance on the maintenance, restoration and enhancement of indigenous ecosystems and habitats,
- (2) funding assistance for restoration projects (for example, through Otago Regional Council's ECO Fund),
- (3) supporting the control of pest plants and animals, including through the provision of advice and education and implementing regulatory programmes such as the Regional Pest Management Plan,
- (4) financial incentives,
- (5) covenants to protect areas of *land*, including through the QEII National Trust,
- (6) advocating for a collaborative approach between central and local government to fund indigenous *biodiversity* maintenance and enhancement, and
- (7) gathering information on indigenous ecosystems and habitats, including outside *significant natural areas*.

488. ECO-M8 lists a range of non-regulatory incentives and mechanisms that local authorities are encouraged to consider to assist with achieving the outcomes in the ECO chapters.

### 10.22.2 Submissions

489. Kāi Tahu ki Otago considers the provision should encourage information gathering and dissemination related to taoka and mahika kai species and ecosystems. The submitter seeks the following specific amendments<sup>399</sup>:

- Clause 1: '...ecosystems and habitats, including taoka and mahika kai species and ecosystems,'.
- Clause 7: '...significant natural areas and including taoka and mahika kai species and ecosystems.'.

490. Federated Farmers considers local authorities should be encouraged to use the range of mechanisms listed under ECO-M8, rather than only encouraged to consider using them. The submitter seeks amendments to reflect this as follows<sup>400</sup>:
- Chapeau: 'Local authorities are encouraged to ~~consider the use of~~'.
491. Fish and Game seeks the following amendments to clause 7 '...gathering information on ~~indigenous~~ ecosystems, indigenous biodiversity and...'. The submitter considers these amendments better reflect the objectives of the ECO chapter and align with higher order documents such as the NPSFM 2020 and the RMA<sup>401</sup>.
492. Forest and Bird seeks the following specific amendments to ECO-M8<sup>402</sup>:
- Clause 1 & 5: replace 'enhancement' with 'improvement',
  - Clause 2: '...Regional Council's ECO fund) and fencing of significant natural areas.',
  - Clause 4: amend to '...protect indigenous biodiversity areas of land,...'
  - New clause: '(x) financial incentives'.

### 10.22.3 Analysis

493. For reasons stated above in ECO-O1, I do not recommend accepting Forest and Bird's submission point to replace 'enhancement' with 'improvement' because enhancement is a well-used term in the pOPRS21 and links to ECO-P8. For clarity purposes, I recommend accepting their submission point regarding clause (4). I do not recommend accepting their submission point on clause (2) as I consider it too detailed for a RPS and would be more appropriate in a junior plan. I do not recommend accepting their new clause as this would be a duplication of ECO-M8(4).
494. I agree with Kāi Tahu ki Otago that ECO-M8 should include taoka and mahika kai species and ecosystems.
495. The types of mechanisms listed under ECO-M8 generally require funding which is a matter for consideration under local authorities' long-term plans and annual plans. Therefore, I do not recommend accepting Federated Farmers submission to remove 'consider the use of' from the chapeau.
496. I do not recommend accepting Fish and Game's submission to amend 'indigenous ecosystems' to 'ecosystems and indigenous biodiversity' in clause 7 as it will broaden scope beyond indigenous biodiversity, which is inconsistent with the purpose of the ECO chapter.
497. I recommend consequential amendments to italicise 'mahika kai' because it has been recommended to define this term.

### 10.22.4 Recommendation

I recommend that following amendments to ECO-M8:

<sup>400</sup> 00239.110 Federated Farmers of New Zealand

<sup>401</sup> 00231.078 Otago Fish & Game Council and the Central South Island Fish & Game Council

<sup>402</sup> 00230.117 Forest and Bird

## ECO–M8 – Other incentives and mechanisms

Local authorities are encouraged to consider the use of other mechanisms or incentives to assist in achieving Policies ECO–P1 to ECO–P10, including:

- (1) providing information and guidance on the maintenance, restoration and enhancement of indigenous ecosystems and<sup>403</sup> habitats, taoka and mahika kai<sup>404</sup> species and ecosystems,<sup>405</sup>
- (2) funding assistance for restoration projects (for example, through Otago Regional Council’s ECO Fund),
- (3) supporting the control of pest plants and animals, including through the provision of advice and education and implementing regulatory programmes such as the Regional Pest Management Plan,
- (4) financial incentives,
- (5) covenants to protect areas of indigenous biodiversity land<sup>406</sup>, including through the QEII National Trust,
- (6) advocating for a collaborative approach between central and local government to fund indigenous *biodiversity* maintenance and enhancement, and
- (7) gathering information on indigenous ecosystems, ~~and~~<sup>407</sup> habitats, and taoka and mahika kai<sup>408</sup> species and ecosystems,<sup>409</sup> including outside *significant natural areas*.

### 10.23 ECO-E1 – Explanation

498. As notified the Explanation reads as:

#### ECO–E1 – Explanation

The first policy in this chapter outlines how the kaitiaki role of Kāi Tahu will be recognised in Otago. The policies which follow then set out a management regime for identifying *significant natural areas* and indigenous species and ecosystems that are taoka and protecting them by avoiding particular adverse effects on them. The policies recognise that these restrictions may be unduly restrictive for some activities within *significant natural areas*, including existing activities already established. To maintain ecosystems and indigenous *biodiversity*, the policies set out mandatory and sequential steps in an effects management hierarchy to be implemented through decision making, including providing for *biodiversity* offsetting and compensation if certain criteria are met.

Although the objectives of this chapter apply within the coastal environment, the specific management approach for *biodiversity* is contained in the CE – Coastal environment chapter. Given the *biodiversity* loss that has occurred in Otago historically, restoration or enhancement will play a part in achieving the objectives of this chapter and these activities are promoted.

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<sup>403</sup> 00226.234 Kāi Tahu ki Otago / Aukaka

<sup>404</sup> 00226.0038 Kāi Tahu ki Otago

<sup>405</sup> 00226.234 Kāi Tahu ki Otago / Aukaka

<sup>406</sup> 00230.117 Forest and Bird

<sup>407</sup> 00226.234 Kāi Tahu ki Otago / Aukaka

<sup>408</sup> 00226.0038 Kāi Tahu ki Otago

<sup>409</sup> 00226.234 Kāi Tahu ki Otago / Aukaka

*Wilding conifers* are a particular issue for *biodiversity* in Otago. Although *plantation forestry* is managed under the NESPF, the NESPF allows plan rules to be more stringent if they recognise and provide for the protection of *significant natural areas*. The policies adopt this direction by requiring *district* and *regional plans* to prevent *afforestation* within *significant natural areas* and establish buffer zones where they are necessary to protect *significant natural areas*.

The policies recognise that managing ecosystems and indigenous *biodiversity* requires co-ordination across different areas and types of resources, as well as across organisations, communities and individual landowners. This articulates the stewardship role of all people and communities in Otago in respect of indigenous *biodiversity*.

### 10.23.1 Submissions

499. Federated Farmers seeks the following specific amendments to ECO-E1<sup>410</sup>:

- Paragraph 1: '...kaitiaki and stewardship role of Kai Tahu, landowners and communities...'. The submitter considers the biodiversity regime, over and above SNAs, in which indigenous species and ecosystems that are taoka have different, contradictory, or duplicated obligations and therefore seek 'and indigenous species and ecosystems that are taoka' is deleted from the first paragraph.
- Paragraph 1: 1 '...already established where the ecological integrity of the significant natural area is at risk. To maintain...' and '...providing for voluntary biodiversity offsetting...'.
- Paragraph 3: 'In addition to the threats from pests and weeds, wilding conifers are a...', '...under the NESPF a gap remains around carbon forestry, and the NESPF allows...' and '...prevent inappropriate plantation or carbon afforestation...'.
- Paragraph 4: '...indigenous biodiversity requires active management by landowners, and co-ordination...'

### 10.23.2 Analysis

500. ECO — E1 must align with other provisions in the ECO chapter. As I have not recommended accepting Federated Farmers other submissions points that relate to the changes requested in ECO-E1, I do not recommend accepting the submission. I do, however, recommend accepting the submission point to acknowledge the "gap" remaining around carbon forestry in ECO-E1.

501. Under Schedule 1, Clause 16(2) of the RMA amend 'district' to 'district plan'.

### 10.23.3 Recommendation

502. I recommend the following amendments to ECO-E1:

#### **ECO-E1 – Explanation**

The first policy in this chapter outlines how the kaitiaki role of Kāi Tahu will be recognised in Otago. The policies which follow then set out a management regime for identifying *significant natural areas* and

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<sup>410</sup> 00239.111 Federated Farmers of New Zealand  
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indigenous species and ecosystems that are taoka and protecting them by avoiding particular adverse *effects* on them. The policies recognise that these restrictions may be unduly restrictive for some activities within *significant natural areas*, including existing activities already established. To maintain ecosystems and indigenous *biodiversity*, the policies set out mandatory and sequential steps in an effects management hierarchy to be implemented through decision making, including providing for *biodiversity* offsetting and compensation if certain criteria are met.

Although the objectives of this chapter apply within the coastal environment, the specific management approach for *biodiversity* is contained in the CE – Coastal environment chapter. Given the *biodiversity* loss that has occurred in Otago historically, restoration or enhancement will play a part in achieving the objectives of this chapter and these activities are promoted.

*Wilding conifers* are a particular issue for *biodiversity* in Otago. Although *plantation forestry* is managed under the NESPF, the NESPF allows plan rules to be more stringent if they recognise and provide for the protection of *significant natural areas*. The policies adopt this direction by requiring *district plans*<sup>411</sup> and *regional plans* to prevent ~~afforestation~~ *planting of conifer species*<sup>412</sup> within *significant natural areas* and establish buffer zones where they are necessary to protect *significant natural areas*.

The policies recognise that managing ecosystems and indigenous *biodiversity* requires co-ordination across different areas and types of resources, as well as across organisations, communities and individual landowners. This articulates the stewardship role of all people and communities in Otago in respect of indigenous *biodiversity*.

## 10.24 ECO-PR1 – Principal reasons

503. As notified, ECO-PR1 reads as:

### **ECO-PR1 – Principal reasons**

The health of New Zealand's *biodiversity* has declined significantly since the arrival of humans and remains under significant pressure. Mahika kai and taoka species, including their abundance, have been damaged or lost through resource use, *land* use change and development in Otago. The provisions in this chapter seek to address this loss and pressure through providing direction on how indigenous *biodiversity* is to be managed.

The provisions in this chapter assist in maintaining, protecting and restoring indigenous *biodiversity* by:

- stating the outcomes sought for ecosystems and indigenous *biodiversity* in Otago,
- requiring identification and protection of *significant natural areas* and indigenous species and ecosystems that are taoka, and
- directing how indigenous *biodiversity* is to be maintained.

This chapter will assist with achieving the outcomes sought by *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*. Implementation of the provisions in this chapter will occur primarily through *regional* and *district plan* provisions, however *local authorities* may also choose to adopt additional non-regulatory methods to support the achievement of the objectives.

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<sup>411</sup> Schedule 1, Clause 16(2) of the RMA

<sup>412</sup> 00239.111 Federated Farmers of New Zealand  
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#### 10.24.1 Submissions

504. Forest and Bird seeks clarity on the relationship between the ECO and CE chapters and the extent to which the ECO chapter gives effect to the NZCPS and NPSFM by adding the following new material<sup>413</sup>:

The provisions in this chapter apply within the coastal environment in addition to those in the:

(i) CE chapter and assist in giving effect to the NZCPS; and

(ii) LF-FW and assist in giving effect to the NPSFM.

505. The submitter also submits ECO-PR1 confuses the management of activities with responsibilities and functions for the protection and maintenance of indigenous biodiversity. The submitter seeks the following specific amendments:

- Paragraph 1: ‘...direction on how land use, development and subdivision activities are indigenous biodiversity is to be managed.’

506. For the same reasons stated above in the submission on ECO-P2, Federated Farmers seeks ‘and indigenous species and ecosystems that are taoka’ is deleted from the second bullet point of the second paragraph<sup>414</sup>.

507. Fish and Game seeks the inclusion of the following new sentence after the third bullet point<sup>415</sup>:

- ‘The provisions in this chapter also provide guidance on the protection and restoration of the habitat of trout and salmon, including how to manage issues that may rise when this conflicts with outcomes sought for indigenous biodiversity.’

#### 10.24.2 Analysis

508. I do not recommend accepting Federated Farmers submission because under s6(e) of the RMA local authorities are required to recognise and provide for the relationship of Māori and their culture and traditions with taonga.

509. As per the discussion in section 1.6.9.2 of the Intro and general themes chapter, I do not recommend accepting Fish and Game’s submission to provide for the protection and restoration of trout and salmon because the purpose of the ECO chapter is to protect and manage indigenous biodiversity and so it the suggested amendment would widen the scope of the provision. Furthermore, ecological advice is that *“Policies that generally aim to maintain, enhance, or restore freshwater habitats have the potential to benefit both indigenous freshwater biodiversity and exotic trout and salmon. Hence specific reference to trout and salmon is not needed in such policies. Trout and salmon are predators that can have major adverse effects on indigenous freshwater biota (for example, many*

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<sup>413</sup> 00230.118 Forest and Bird

<sup>414</sup> 00239.112 Federated Farmers of New Zealand

<sup>415</sup> 00231.08 Otago Fish & Game Council and the Central South Island Fish & Game Council

*endangered inland galaxiid fish species are now restricted to streams that do not have salmonid fish). Policy should therefore focus on the protection of indigenous freshwater biodiversity above protection of the habitats of trout or salmon.”<sup>416</sup>*

510. I do not recommend accepting Forest and Bird’s submission to include the new bullet points regarding the relationship of the ECO chapter with the CE and LW—FW chapters because it has been recommended in the CE chapter to amend CE—O1 to clarify the linkage between the CE and ECO chapter. I disagree with the submitter regarding the amendments they request to the first paragraph because the provisions in the ECO chapter assist in maintaining, protecting, and restoring indigenous biodiversity. Yes, there are provision relating to the management of development and land use activities to reduce the loss of indigenous biodiversity. However, there are also provisions relating to the identification, protection, and enhancement of indigenous biodiversity. Therefore, I do not consider this submission is appropriate to narrow the scope of this section and so I do not recommend accepting the submission.
511. I recommend consequential amendments to italicise ‘mahika kai’ because it has been recommended to define this term.

#### 10.24.3 Recommendation

512. I recommend the following amendments to ECO-PR1:

##### **ECO-PR1 – Principal reasons**

The health of New Zealand’s *biodiversity* has declined significantly since the arrival of humans and remains under significant pressure. *Mahika kai*<sup>417</sup> and taoka species, including their abundance, have been damaged or lost through resource use, *land* use change and development in Otago. The provisions in this chapter seek to address this loss and pressure through providing direction on how indigenous *biodiversity* is to be managed.

The provisions in this chapter assist in maintaining, protecting and restoring indigenous *biodiversity* by:

- stating the outcomes sought for ecosystems and indigenous *biodiversity* in Otago,
- requiring identification and protection of *significant natural areas* and indigenous species and ecosystems that are taoka, and
- directing how indigenous *biodiversity* is to be maintained.

This chapter will assist with achieving the outcomes sought by *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*. Implementation of the provisions in this chapter will occur primarily through *regional* and *district plan* provisions, however *local authorities* may also choose to adopt additional non-regulatory methods to support the achievement of the objectives.

#### 10.25 ECO-AER1

513. As notified ECO-AER-1, reads as:

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<sup>416</sup> Appendix 10c, section 5.10

<sup>417</sup> 00226.0038 Kāi Tahu ki Otago

## ECO–AER1

There is no further decline in the quality, quantity or diversity of Otago’s indigenous *biodiversity*.

### 10.25.1 Submissions

514. Federated Farmers seeks that ‘the quality, quantity or diversity of’ is deleted from ECO-AER1. The submitter considers it unrealistic and inconsistent with higher order guidance from the draft NPSIB to ‘halt any decline in quality, quantity and diversity of indigenous biodiversity’<sup>418</sup>.

515. Fish and Game seeks the following amendment to ECO-AER1 to better reflect the objectives of the ECO chapter and to recognise the interconnectedness of ecosystem health and indigenous biodiversity ki uta ki tai: ‘...diversity of ecosystems and indigenous...’<sup>419</sup>.

### 10.25.2 Analysis

516. Federated Farmers submits it is inconsistent with the draft NPSIB to ‘halt any decline in quality, quantity and diversity of indigenous biodiversity. The intent of including ‘quality, quantity and diversity’ is to cover all aspects of indigenous biodiversity and to ensure that in the future all aspects are attained. Therefore, I do not recommend accepting the submission.

517. For reasons stated above in response to Fish and Game’s submission on ECO-PR1, I do not consider it is appropriate to create a carve out for ecosystems as the purpose of the ECO chapter is to protect and manage indigenous biodiversity. Therefore, I do not recommend accepting Fish and Game’s submission.

### 10.25.3 Recommendation

518. I recommend no change, retain as notified.

## 10.26 ECO-AER2

519. As notified ECO-AER2, reads as:

### ECO–AER2

The quality, quantity and diversity of indigenous biodiversity within Otago improves over the life of this Regional Policy Statement.

### 10.26.1 Submissions

520. Fish and Game seeks the following amendment to ECO-AER2 to better reflect the objectives of the ECO chapter and to recognise the interconnectedness of ecosystem

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<sup>418</sup> 00239.113 Federated Farmers of New Zealand

<sup>419</sup> 00231.081 Otago Fish & Game Council and the Central South Island Fish & Game Council

health and indigenous biodiversity ki uta ki tai: ‘...diversity of ecosystems and indigenous...’<sup>420</sup>.

#### 10.26.2 Analysis

521. For the same reasons set out above in the discussion on ECO-AER1, I do not recommend accepting Fish and Games submission.

#### 10.26.3 Recommendation

522. I recommend no change, retain as notified.

### 10.27 ECO-AER4

523. As notified, ECO-AER4, reads as:

#### **ECO–AER4**

Within *significant natural areas*, the area of *land vegetated by wilding conifers* is reduced.

#### 10.27.1 Submissions

524. Forest and Bird seeks the following specific amendments to ECO-AER4 to reflect the amendments they seek to ECO-P9:

- ~~‘Within significant natural areas, the area of land vegetated by wilding conifers is reduced~~ and efforts for elimination of wilding conifers are increased throughout the region.<sup>421</sup>

#### 10.27.2 Analysis

525. The amendments to ECO-P9 that Forest and Bird seeks have not been recommended and ECO-AER4 is not a policy, it is a summary of the combined overall effect of the implementation of the provisions of the ECO chapter and is stated as if they are being viewed at some time in the future. Therefore, I do not recommend accepting this submission.

#### 10.27.3 Recommendation

526. I recommend no change, retain as notified

### 10.28 APP2 – Significance criteria for indigenous *biodiversity*

527. As notified, APP2 reads as:

#### **APP2 – Significance criteria for indigenous *biodiversity***

An area is considered to be a *significant natural area* if it meets any one or more of the criteria below:

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<sup>420</sup> 00231.082 Otago Fish & Game Council and the Central South Island Fish & Game Council

<sup>421</sup> 00230.119 Royal Forest and Bird Protection Society of New Zealand

**Representativeness**

(a) An area that is an example of an indigenous vegetation type or habitat that is typical or characteristic of the original natural diversity of the relevant ecological district or coastal marine biogeographic region. This may include *degraded* examples of their type or represent all that remains of indigenous vegetation and habitats of indigenous fauna in some areas.

(b) An indigenous marine ecosystem (including both intertidal and sub-tidal habitats, and including both faunal and floral assemblages) that makes up part of at least 10% of the natural extent of each of Otago's original marine ecosystem types and reflecting the environmental gradients of the region.

(c) An indigenous marine ecosystem, or habitat of indigenous marine fauna (including both intertidal and sub-tidal habitats, and including both faunal and floral components), that is characteristic or typical of the natural marine ecosystem diversity of Otago.

**Rarity**

(d) An area that supports:

- i. An indigenous species that is threatened, at *risk*, or uncommon, nationally or within an ecological district or coastal marine biogeographic region, or
- ii. Indigenous vegetation or habitat of indigenous fauna that has been reduced to less than 20% of its former extent nationally, regionally or within a relevant *land environment*, ecological district, coastal marine biogeographic region or *freshwater environment* including *wetlands*, or
- iii. Indigenous vegetation and habitats within originally rare ecosystems, or
- iv. The site contains indigenous vegetation or an indigenous species that is endemic to Otago or that are at distributional limits within Otago.

**Diversity**

(e) An area that supports a high diversity of indigenous ecosystem types, indigenous *taxa* or has changes in species composition reflecting the existence of diverse natural features or gradients.

**Distinctiveness**

(f) An area that supports or provides habitat for:

- (i) Indigenous species at their distributional limit within Otago or nationally, or
- (ii) Indigenous species that are endemic to the Otago region, or
- (iii) Indigenous vegetation or an association of indigenous species that is distinctive, of restricted occurrence, or has developed as a result of an unusual environmental factor or combinations of factors.

**Ecological context**

(g) The relationship of the area with its surroundings (both within Otago and between Otago and the adjoining regions), including:

- (i) An area that has important connectivity value allowing dispersal of indigenous flora and fauna between different areas, or

(ii) An area that has an important buffering function that helps to protect the values of an adjacent area or feature, or

(iii) An area that is important for indigenous fauna during some part of their life cycle, either regularly or on an irregular basis, e.g. for feeding, resting, nesting, breeding, spawning or refuges from predation, or

(iv) A *wetland* which plays an important hydrological, biological or ecological role in the natural functioning of a *river* or coastal ecosystem.

#### 10.28.1 Submissions

528. There are eighteen submissions on APP2. Four submitters seek APP2 is deleted<sup>422</sup>.
529. Contact, Stanford and Sliver Fern Farms submit the criteria of APP2 will result in large parts of Otago being identified as a SNA due to the broad framing of the significance criteria for indigenous biodiversity. In particular, the criterion Rarity (d), Distinctiveness (f) and Ecological context (g)(iii) all have a low threshold. The submitters have concerns that under Rarity (d)(i) urban areas, weed-infested areas and even buildings could be classified as significant. They also consider the terms ‘support’, ‘habitat’ and ‘important for’ are open to interpretation. The submitters seek the criteria is amended to be specific and targeted to avoid the inclusion of inappropriate areas being identified as SNAs<sup>423</sup>.
530. Similarly, Queenstown Airport considers the criteria is framed too broadly and areas that ‘support’, ‘provide habitat for’ or are ‘important for’ indigenous species will be identified as SNAs and this approach is inconsistent with the draft NPSIB. The submitter seeks APP2 is amended to align with best practice or national direction and the criteria are specific and targeted to avoid the classifications of inappropriate areas as SNAs<sup>424</sup>.
531. Network Waitaki and PowerNet consider the criteria are likely to capture extensive parts of Otago and seek it is amended to be more specific and targeted<sup>425</sup>.
532. Seven submitters seek amendments to APP2 to ensure the criteria are consistent with best practice or national policy direction<sup>426</sup>.
533. Straterra submits the Rarity criterion thresholds is too low and seeks the threshold is raised by referring to important populations of ‘at risk’ and ‘uncommon’ species, not just ‘at risk’ and ‘uncommon’ species<sup>427</sup>.

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<sup>422</sup> 00016.026 Alluvium Ltd and Stoney Creek Mining Ltd, 00237.067 Beef & Lamb and DINZ, 00017.024 Danny Walker, Peter Hall, Cold Clutha Ltd and Awa Koura Mining Ltd, 00322.044 Fulton Hogan Limited, 00239.185 Federated Farmers of New Zealand

<sup>423</sup> 00318.020 Contact Energy Limited, 00122.032 Sanford Ltd., 00221.018 Silver Fern Farms

<sup>424</sup> 00313.033 Queenstown Airport

<sup>425</sup> 00320.020 Network Waitaki Limited, 00511.023 PowerNet Ltd

<sup>426</sup> 00318.020 Contact Energy Limited, 00239.185 Federated Farmers of New Zealand, 00320.020 Network Waitaki Limited, 00115.023 Oceana Gold (New Zealand) Ltd, 00511.020 PowerNet Ltd, 00311.063 Trustpower Limited, 00120.003 Yellow-eyed Penguin Trust

<sup>427</sup> 00019.005 Straterra

534. Forest & Bird seeks 'distributional limits' is removed from rarity (d)(iv) to avoid duplication as it is covered in Distinctiveness (f)(i)<sup>428</sup>.
535. DOC agrees with the majority of the ecological significance criteria in APP2, but seeks amendments for the purposes of completeness, clarity and effectiveness. The submitter has suggested APP2 is replaced with a different set of criteria contained within their submission<sup>429</sup>.
536. Yellow-eyed Penguin trust seeks amendments to the criteria to provide for assessing the ecological significance of areas across terrestrial, freshwater, and coastal environments and submit the guidelines should be consistent between regions<sup>430</sup>.
537. Meridian seeks the title is amended to 'Criteria for identifying significant natural areas' as APP2 is exclusively referenced in provisions relating to the management of SNAs. The submitter seeks that the criteria for representative (a) is amended to 'An area of significant indigenous vegetation and significant habitats of indigenous fauna that is an example of an indigenous vegetation type, or habitat that is...' and also seeks amendments to Representativeness (b) to clarify the intent of the criteria<sup>431</sup>.

#### 10.28.2 Analysis

538. Contact, Stanford and Sliver Fern Farms seek the criteria is amended to be specific and target to avoid the inclusion of inappropriate areas being identified as SNAs. Ecological advice is that Representativeness (a) uses the term 'original' which requires comparison against the standard of the original natural vegetation. While the use of the term 'important' in the Ecological context criteria only captures important context factors. In comparison, the draft NPSIB has a lower threshold for representativeness as it does not contain a historic baseline, which could result in large areas of current typical vegetation being captured as significant<sup>432</sup>. I agree with the submitters, and on ecological advice, that the criterion of Rarity (d)(i) could be raised by amending the clause to '...,or an important populations of species that are at risk...' because ecological advice is that, as notified the clause is reasonable for non-mobile species classified as Threatened, but is a low threshold for some At Risk species. For example, matagouri (*Discaria toumatou*) is currently classified as At Risk-Declining (de Lange *et al.* 2018), but it is widespread and abundant in parts of Otago and so a higher threshold for At Risk species may be warranted. The issue with highly mobile Threatened or At Risk species, is that the simple presence of these in an area may not indicate significant habitat. Important habitats of highly mobile species would be those referred to ecological context criteria (g) (i) and (g) (iii)<sup>433</sup>. Ecological advice is, the terms 'supports', 'habitat' and 'important for' are plain English terms that ecologists should have no difficulty understanding or interpreting. Use of both 'supports' and 'provides habitat for' is required in some criteria, as sub criteria

<sup>428</sup> 00230.147 Forest and Bird

<sup>429</sup> 00137.157 Director General of Conservation

<sup>430</sup> 00120.003 Yellow – eyed Penguin Trust

<sup>431</sup> 00306.081 Meridian

<sup>432</sup> Appendix 10c, section 2.7, para. 3

<sup>433</sup> Appendix 10c, section 2.7, para. 4

relate to both vegetation and species. An area would logically support vegetation and provide habitat for a species. 'Important for' is used in the ecological context sub criteria, and creates a higher threshold, that necessarily requires informed judgement from an experienced ecologist. As the ecological context criteria relates to matters that are context-dependent, this informed judgement is necessary<sup>434</sup>.

539. I agree with Queenstown Airport that, in some instance, the criteria in APP2 should be raised, such as Rarity (d)(i) as discussed in the discussion on Contact, Stanford and Silver Fern Farms submission on APP2. I do not consider the terms 'supports', 'habitat' and 'important for' are inappropriate, for reasons discussed in the discussion on Contact, Stanford and Silver Fern Farms submissions on APP2.
540. Network Waitaki and PowerNet submit the threshold for identifying SNAs is too low and will likely result in large parts of Otago being identified as SNAs. As discussed in response to Contact, Standford and Sliver Fern Farms submissions, the threshold for Rarity (d)(i) is low and could be raised by amending the Rarity (d)(i).
541. Seven submitters seek APP2 is aligned with the draft NPSIB or best practice. Ecological advice is that, the criteria contained in APP2 are similar to second generation criteria in other plans, for example the Canterbury Regional Policy Statement<sup>435</sup>. The criteria in APP2 are also similar to those contained in the draft NPSIB, however APP2 has a higher threshold for significance compared to the NPSIB<sup>436</sup>.
- ~~542.~~ For reasons mentioned in the discussion on Contact, Standford and Silver Fern Farms submissions, I recommend accepting Straterra's submission to raise the threshold of Rarity (d)(i), I suggest amending Rarity (d)(i) to '...,or an important populations of species that are at risk....
543. Forest and Bird seeks 'distributional limits' is removed from Rarity (d)(iv). Ecological advice is, to remove the duplication of 'distributional limits' from Rarity (d)(iv) as it is contained in the criterion for Distinctiveness<sup>437</sup>. Therefore, I recommend accepting the submission.
544. DOC seeks APP2 is replaced with a new set of criteria contained in their submission. The submitter seeks large examples is included in the criterion for Representativeness. Ecological advice is that, large examples would generally be identified as being significant by other criteria, for example the standard definition of representativeness or ecological context. Most large areas of indigenous habitat would also provide important habitat for indigenous fauna<sup>438</sup>. For these reasons, I do not recommend accepting this submission point. DOC seeks separate criteria for marine, freshwater and terrestrial habitats. I do not recommend accepting this submission point because the ecological advice is that the standard definition of representativeness covers all of these ecosystems. The term 'representativeness' relates to the structure and composition of vegetation or a fauna

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<sup>434</sup> Appendix 10c, section 2.7, para 5

<sup>435</sup> Appendix 10c, section 2.6, para 3

<sup>436</sup> Appendix 10c, section 2.11, para 1

<sup>437</sup> Appendix 10c, section 2.13, para 2

<sup>438</sup> Appendix 10c, section 2.14, para. 2



assemblage against a benchmark of intact structure and composition<sup>439</sup>. The submitter seeks a criterion for 'naturalness' is included in APP2. Ecological advice is that sites which are highly natural would generally be captured as representative examples of indigenous vegetation and habitat<sup>440</sup>. Therefore, I do not recommend accepting this submission point.

545. DOC also seek the inclusion of a new criterion for sensitive and vulnerable habitat, which would capture species and habitats that are very susceptible to anthropogenic effects, or which have slow recovery timeframes. Ecological advice is that, the current criteria does not comprehensively capture these values; therefore, I recommend accepting the submission. Although some values would be captured under the criterion for Rarity<sup>441</sup>. The submitter also seeks Rarity attributes focus on rare and 'one of a kind' values. Ecological advice is that this is captured by the Distinctiveness criterion or the Rarity criterion focussing on naturally uncommon ecosystems<sup>442</sup>. Therefore, I do not recommend accepting the submission.
546. DOC also seeks the inclusion of a new criterion of importance for Threatened and Declining species and habitats, however, ecological advice is that there are already existing criteria for vegetation and habitats supporting Threatened and At Risk taxa<sup>443</sup>. Therefore, I do not recommend accepting the submission. The submitter seeks the inclusion of a new criterion for 'special importance for life history stages' as per ecological advice, I do not recommend accepting this submission because these habitats are captured by the Ecological context criteria<sup>444</sup>. As per ecological advice, I do not recommend accepting the inclusion of a new criterion under Diversity for areas that contain diverse ecosystem services, because these would generally be captured by the Diversity criteria or by the Ecological Context criteria<sup>445</sup>.
547. DOC have suggested additional criterion to the Distinctiveness criteria including, species and populations that have higher natural productivity, distinctive or notable marine habitats and an incomplete criterion (d). I do not recommend accepting the criterion that is incomplete (criterion d), because I do not understand the intent of it. Ecological advice is that high productivity sites in marine or freshwater ecosystems may be recognised by the Ecological context criteria for indigenous fauna, whereas high productivity sites have no equivalents in terrestrial habitats. Criteria that address indigenous vegetation and habitat on high productivity sites would have merit because most high productivity terrestrial ecosystems are now dominated by exotic vegetation, high productivity terrestrial sites could include alluvial terraces and limestone ecosystems<sup>446</sup>. Overall, ecological advice is that DOC's new suggested criteria for APP2 are elaborate and there are duplicates of the existing criteria contained in APP2<sup>447</sup>. Therefore, I recommend

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<sup>439</sup> Appendix 10c, section 2.14, para. 3

<sup>440</sup> Appendix 10c, section 2.14, para. 4

<sup>441</sup> Appendix 10c, section 2.14, para. 5

<sup>442</sup> Appendix 10c, section 2.14, para. 6

<sup>443</sup> Appendix 10c, section 2.14 para. 7

<sup>444</sup> Appendix 10c, section 2.14, para. 8

<sup>445</sup> Appendix 10c, section 2.14, para. 9

<sup>446</sup> Appendix 10c, section 2.14, para 10

<sup>447</sup> Appendix 10c, section 2.14, para. 11

including the following criterion to Distinctiveness “Vegetation, habitats, species, populations, and species assemblages that have relatively high natural productivity”.

548. Yellow Eyed Penguin Trust seeks amendments to the criteria to cover terrestrial, freshwater, and coastal environments. The criteria in APP2 assesses these three domains; therefore, I do not recommend accepting the submission point. Ecological advice is that the significance criteria in APP2 are built on similar criteria used in the Canterbury and Southland region, however as regional plan reviews do not occur concurrently, it is expected that the significance criteria of SNAs between different regions will slight differ<sup>448</sup>.
549. I disagree with Meridian that the title of APP2 should be amended as APP2 does not identify areas and values. Rather, it provides the criteria to determine the significance of areas and values of indigenous biodiversity. I do not recommend accepting their submission to Representativeness (a) as the criterion is used to assess whether an area is a SNA, therefore it does not make sense to include the term SNA in the criterion. I agree with the submitter, and ecological advice<sup>449</sup>, that the intent of Representativeness (b) is unclear. As per ecological advice, ‘...reflecting the environmental gradients of the region’ should be removed because it could be interpreted as a qualifier to limit the assessment only to marine ecosystems that are part of marine gradients, and it is captured under the Diversity criterion<sup>450</sup>.
550. I recommend un-italicising ‘degraded’ in APP2(a) so that it is consistent with DOC’s submission on ‘degraded’ found in the definition chapter<sup>451</sup>.
551. I recommend a consequential amendment to APP2 to add a footnote to ‘ecological district’ because it has been recommended in section 10.3.2 of this chapter to not define the term, but instead footnote the term referencing a document which provides further information on ecological districts.

552. .

### 10.28.3 Recommendation

553. I recommend the following amendments to APP2:

#### **APP2 – Significance criteria for indigenous *biodiversity***

An area is considered to be a *significant natural area* if it meets any one or more of the criteria below:

- Representativeness** (a) An area that is an example of an *indigenous vegetation* type or habitat that is typical or characteristic of the original natural diversity of the relevant ecological district<sup>452</sup> or coastal marine

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<sup>448</sup> Appendix 10c, section 2.12, para. 2

<sup>450</sup> Appendix 10c

<sup>451</sup> 00137.008 DOC

<sup>452</sup> McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation

biogeographic region. This may include degraded<sup>95</sup> examples of their type or represent all that remains of *indigenous vegetation* and habitats of indigenous fauna in some areas.

- (b) An indigenous marine ecosystem (including both intertidal and sub-tidal habitats, and including both faunal and floral assemblages) that makes up part of at least 10% of the natural extent of each of Otago's original marine ecosystem types ~~and reflecting the environmental gradients of the region~~<sup>453</sup>.
- (c) An indigenous marine ecosystem, or habitat of indigenous marine fauna (including both intertidal and sub-tidal habitats, and including both faunal and floral components), that is characteristic or typical of the natural marine ecosystem diversity of Otago.
- Rarity**
- (d) An area that supports:
- i. An *indigenous species*<sup>454</sup> that is threatened, or uncommon, or an important population of species that is<sup>455</sup> at risk, ~~or uncommon~~<sup>456</sup>, nationally or within an ecological district or coastal marine biogeographic region, or
  - ii. *Indigenous vegetation* or habitat of indigenous fauna that has been reduced to less than 20% of its former extent nationally, regionally or within a relevant *land environment*, ecological district, coastal marine biogeographic region or *freshwater environment* including *wetlands*, or
  - iii. *Indigenous vegetation* and habitats within originally rare ecosystems, or
  - iv. ~~The site contains *indigenous vegetation* or an indigenous species that is endemic to Otago or that are at distributional limits within Otago.~~<sup>457</sup>
- Diversity**
- (e) An area that supports a high diversity of indigenous ecosystem types, indigenous taxa or has changes in species composition reflecting the existence of diverse natural features or gradients.
- Distinctiveness**
- (f) An area that supports or provides habitat for:
- (i) Indigenous species at their distributional limit within Otago or nationally, or
  - (ii) Indigenous species that are endemic to the Otago region, or
  - (iii) *Indigenous vegetation* or an association of indigenous species that is distinctive, of restricted occurrence, or has developed as a result of an unusual environmental factor or combinations of factors.
- (fA) Vegetation, habitats, species, populations, and species assemblages that relatively high natural productivity.<sup>458</sup>

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<sup>453</sup> 00306.081 Meridian

<sup>454</sup> Consequential amendment 00120.009 Yellow-eyed Penguin Trust

<sup>455</sup> 00318.020 Contact Energy Limited, 00122.032 Sanford Ltd., 00221.018 Silver Fern Farms, 00313.033 Queenstown Airport, 00019.005 Straterra, 00320.020 Network Waitaki Limited, 00511.023 PowerNet Ltd

<sup>456</sup> 00318.020 Contact Energy Limited, 00122.032 Sanford Ltd., 00221.018 Silver Fern Farms, 00313.033 Queenstown Airport, 00019.005 Straterra, 00320.020 Network Waitaki Limited, 00511.023 PowerNet Ltd

<sup>457</sup> <sup>98</sup> 00230.147 Forest and Bird

<sup>458</sup> 00137.008 DOC

## Ecological context

- (g) The relationship of the area with its surroundings (both within Otago and between Otago and the adjoining regions), including:
- (i) An area that has important connectivity value allowing dispersal of indigenous flora and fauna between different areas, or
  - (ii) An area that has an important buffering function that helps to protect the values of an adjacent area or feature, or
  - (iii) An area that is important for indigenous fauna during some part of their life cycle, either regularly or on an irregular basis, e.g. for feeding, resting, nesting, breeding, spawning or refuges from predation, or
  - (iv) A *wetland* which plays an important hydrological, biological or ecological role in the natural functioning of a *river* or coastal ecosystem.

**Vulnerable and sensitive species** (h) An area that contains sensitive habitats or species that are fragile to anthropogenic effects or have slow recovery from anthropogenic effects. <sup>459</sup>

## 10.29 APP3 – Criteria for *biodiversity* of offsetting

554. As notified, APP3, read as:

### **APP3 – Criteria for *biodiversity* offsetting**

(1) *Biodiversity* offsetting is not available if the activity will result in:

- (a) the loss of any individuals of Threatened *taxa*, other than kānuka (*Kunzea robusta* and *Kunzea serotina*), under the New Zealand Threat Classification System (Townsend et al, 2008), or
- (b) reasonably measurable loss within the ecological district to an At Risk-Declining *taxon*, other than manuka (*Leptospermum scoparium*), under the New Zealand Threat Classification System (Townsend et al, 2008).

(2) *Biodiversity* offsetting is available if the following criteria are met:

- (a) the offset addresses residual adverse *effects* that remain after implementing the sequential steps required by ECO-P6(1) to (3),
- (b) the offset achieves no net loss and preferably a net gain in indigenous *biodiversity*, as measured by type, amount and condition at both the impact and offset sites using an explicit loss and gain calculation,
- (c) the offset is undertaken where it will result in the best ecological outcome, and as the first priority be:
  - (i) close to the location of the activity, and
  - (ii) within the same ecological district or coastal marine biogeographic region,

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<sup>459</sup> 0137.008 DOC

(d) the offset is applied so that the ecological values being achieved are the same or similar to those being lost,

(e) the positive ecological outcomes of the offset endure at least as long as the impact of the activity and preferably in perpetuity,

(f) the offset achieves *biodiversity* outcomes beyond results that would have occurred if the offset was not proposed,

(g) the time delay between the loss of *biodiversity* and the realisation of the offset is the least necessary to achieve the best possible outcome,

(h) the outcome of the offset is achieved within the duration of the *resource consent*, and

(i) any offset developed in advance of an application for *resource consent* must be shown to have been created or commenced in anticipation of the specific *effect* of the proposed activity and would not have occurred if that *effect* was not anticipated.

#### 10.29.1 Submissions

555. There are 17 submissions on APP3. One submitter seeks APP3 is deleted<sup>460</sup>.

556. Aurora Energy Limited, Contact, Network Waitaki, Oceana Gold, PowerNet and Queenstown Airport seek amendments to APP3 as they consider the criteria to be too restrictive and are written as a bottom line or hard limit, which will make the policy, in some instances, unworkable when assessing an activity against the criteria in APP3 and APP4<sup>461</sup>. Oceana Gold considers offsetting approaches, and their merits should be determined at the consenting stage<sup>462</sup>. The submitters seek the limits as to when offsetting can be offered in clause (1) are removed because they consider the threshold is too high and will unduly limit biodiversity offsetting as an available environmental effects management option<sup>463</sup>. The submitters also seek the offsetting requirements and outcomes are either removed or amended to align with national direction through the draft NPSIB or best practice<sup>464</sup>.

557. Similarly, Silver Fern Farms and Trustpower seek amendments to APP3 to align the criteria with best practice or the Draft NPSIB<sup>465</sup>. Federated Farmers seeks APP3 is amended to align with recently resolved offsetting principles but have not specified what these are<sup>466</sup>.

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<sup>460</sup> 00237.068 Beef & Lamb and DINZ

<sup>461</sup> 00318.019 Contact Energy Limited, 00320.019 Network Waitaki Limited, 00115.022 Oceana Gold (New Zealand) Ltd, 00511.019 PowerNet Ltd, 00315.083 Aurora Energy Limited, 00313.034 Queenstown Airport

<sup>462</sup> 00115.022 Oceana Gold (New Zealand) Ltd

<sup>463</sup> 00318.019 Contact Energy Limited, 00320.019 Network Waitaki Limited, 00115.022 Oceana Gold (New Zealand) Ltd, 00511.019 PowerNet Ltd, 00315.083 Aurora Energy Limited, 00313.034 Queenstown Airport

<sup>464</sup> 00318.019 Contact Energy Limited, 00320.019 Network Waitaki Limited, 00115.022 Oceana Gold (New Zealand) Ltd, 00511.019 PowerNet Ltd, 00315.083 Aurora Energy Limited, 00313.034 Queenstown Airport

<sup>465</sup> 00221.019 Silver Fern Farms, 00311.064 Trustpower Limited

<sup>466</sup> 00239.186 Federated Farmers of New Zealand  
Proposed Otago Regional Policy Statement 2021

558. Queenstown Airport and Contact consider APP3 is inconsistent with section 104(1)(ab) of the Act which requires a decision maker to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate adverse effects<sup>467</sup>.
559. DOC supports the inclusion of specific direction on offsetting and compensation but considers for APP3 to be effective it must be reasonably achievable and incentivise positive measures and must accord with best practice. The submitter has proposed a new set of criteria, which is contained within their submission. The new set of criteria suggest new limits to offsetting and bottom line relating to loss from ecological district, loss of viability of a naturally rare ecosystem or fauna habitat, loss of irreplaceable indigenous biodiversity, worsening of conservation status, impractical or socially-prohibitive options, uncertainty, contradiction of anticipated results and two criterion relating to compensation<sup>468</sup>.
560. Fulton Hogan submits that the criteria in APP3 have been derived from a guidance document and so seeks that the title of APP3 is amended to 'Principles for biodiversity offsetting' as it is inappropriate to translate this guidance into the criteria used in APP3. The submitter also seeks the following specific amendment<sup>469</sup>:
- clause (2)(a) to align with the guidance document 'the offset addresses the significant residual adverse effects that remain after implementing the sequential steps required by ECO-P6(1) to (3) cannot otherwise be avoided, remedied or mitigated'.
561. Fulton Hogan considers it problematic to achieve an offsetting outcome for certain construction activities due to their short resource consent duration period and so seeks the following amendment<sup>470</sup>:
- clause (2)(h) 'where practicable, the outcome of...'. The submitter considers some construction related resource consents have a relatively short consent duration, which makes achieving an offset within the duration of the resource consent potential problematic and that this should not rule out offsetting as an option.
562. DCC considers without a definition for 'reasonably measurable loss' it will be difficult to implement and may result in inconsistent outcomes and so the submitter seeks that a definition is provided. The submitter also seeks that in clause (2)(f) 'beyond results' is replace with 'that are demonstrably additional to those'<sup>471</sup>.
563. Meridian seeks the following specific amendments to APP3<sup>472</sup>:
- Replace 'biodiversity' with 'indigenous biodiversity' throughout APP3.
  - Clause 1(b): Replace 'reasonably measurable' with 'measurable' as it is unclear how reasonably measurable would differ from measurable.

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<sup>467</sup> 00318.019 Contact Energy Limited, 00313.034 Queenstown Airport

<sup>468</sup> 00137.158 Director General of Conservation

<sup>469</sup> 00322.045 Fulton Hogan Limited

<sup>470</sup> 00322.045 Fulton Hogan Limited

<sup>471</sup> 00139.139 Dunedin City Council

<sup>472</sup> 00306.082 Meridian

- Clause 2(a): Replace ‘residual adverse effects’ with ‘significant residual adverse effects’
- Clause 2(e): Replace ‘positive ecological outcomes’ with ‘ecological outcomes’. The submitter considers this is suggested amendment recognises that the other criteria require, as a minimum, no-net loss in indigenous biodiversity and prevents criteria 2(e) being read as if enhancement of indigenous biodiversity outcomes is a compulsory requirement of offsetting.
- Clause 2(f): Amend to ‘...outcomes ~~beyond results~~ that would not have occurred if ~~the~~ without the offset ~~was not proposed~~’,. The submitter considers offsetting should be an option to achieve no-net loss; and/or enhancement of indigenous biodiversity.
- Clause 2(g): Replace ‘possible outcome’ with ‘practicable outcome’ as this term is used in LF—WAI—P3.

564. Fish and Game seeks clause 2(b) is amended to ‘...indigenous biodiversity and the habitat of trout and salmon where consistent with ECO-P11,...’<sup>473</sup>.

565. Ngāi Tahu ki Murihiku seeks that the exception for mānuka and kānuka is removed from clause (1)(b) as they are recognised species in the Ngāi Tahu Claims Settlement Act and must be appropriately treated as taonga<sup>474</sup>.

566. Forest & Bird seeks specific amendments to APP3 to ensure offsetting achieves the ECO objectives, gives effect to the NZCPS, NPSFM, s6(c) of the RMA and has regard to the draft NPSIB as follows<sup>475</sup>:

- Clause 1(b): ‘...district or coastal marine biogeographic region to an At Risk-Declining taxon, ~~other than manuka (Leptospermum scoparium),~~ under...’.
- Add new subclause to clause 2: ‘(j) limits to offsetting have been observed, including where the loss of rare or vulnerable species or a naturally rare or uncommon ecosystem type makes an offset inappropriate or where there is uncertainty of success’. Include a footnote to the word “observed” that this means the decision maker must take these considerations into account.

## 10.29.2 Analysis

567. DOC submitted that APP3 could be improved so that it could be reasonably achieved and accord with best practice. Ecological advice on DOC’s submission on APP3 is that “*DOC submitted a comprehensive list of offsetting criteria that incorporate and add to the proposed APP3 criteria. These are more robust than the proposed APP3 criteria. The DOC criteria do not support exceptions for mānuka or kānuka, which is an outcome sought by other submitters, but as explained above, exceptions for these species are warranted. As noted above, poor offsetting practice has often been used in New Zealand. APP3 could therefore provide more prescriptive guidance to offsetting, particularly with respect to choice of offsetting attributes, and how their condition is assessed. This could include:*

<sup>473</sup> 00231.093 Otago Fish & Game Council and the Central South Island Fish & Game Council

<sup>474</sup> 00223.134 Te Ao Mararma

<sup>475</sup> 00230.148 Forest and Bird

- *Objective counts and measures should be used wherever possible*
- *All high value species or vegetation types should be included as components.*
- *High value components should be disaggregated, so that no trade-offs between them can occur*

*High value species and vegetation/habitat types have been defined by Wildland Consultants (2012), and include:*

- *Naturally uncommon ecosystems*
- *Wetlands and indigenous sand dune vegetation*
- *Important indigenous fauna habitats*
- *Species classified as Threatened or At Risk-Declining*
- *Species with important ecosystem functions, for example pollination, seed dispersal, and provision of fauna habitat.*

*A definition should be provided for ‘high value species and ecosystems’<sup>476</sup>.*

Ecological advice is that APP3 could be amended, based on DOCs suggested amendments, to<sup>477</sup>:

- Provide more specificity for the additionality principle
- Provides more specificity on choice of offsetting attributes
- Retains the exemptions for mānuka and kanuka

568. Based on this ecological advice, I recommend incorporating three new clauses under clause (1). Further, ecological advice is that *“DOC’s bottom lines are much more extensive and have merit. In practice, offsetting in New Zealand has not been very constrained by limits, but this has led to offsetting approaches that adversely affect irreplaceable and vulnerable indigenous biodiversity”<sup>478</sup>*. I do not agree with DOC that the bottom lines should be moved to the end of APP3. I consider it is more logical to have the bottom lines listed at the beginning of APP3, so that the first step when assessing the criteria is to understand whether offsetting measures can be accessed, like a hierarchy. I also recommend amending clause(2)(b), clause (2)(c), clause (2)(f) and clause (2)(f) to incorporate DOC’s new offsetting criteria. However, I do not recommend incorporating the submitter’s suggested new criteria on ‘trading up’ because ecological advice is that:

*“Trading up does not fit well in biodiversity offsetting, because offsetting relies on like for like exchanges of impacts and positive actions. There are no metrics currently available that could evaluate like for unlike exchanges, so trading up relies on subjective opinion and societal preferences (Maseyk et al. 2018). Controls on trading up are better placed in APP4 which deals with compensation.”<sup>479</sup>*

569. Based on the above ecological advice to improve offsetting practice, I recommend including new criteria that covers matters which must be addressed in any application for

<sup>476</sup> Appendix 10c, section 3.15, para. 4-5

<sup>477</sup> Appendix 10c, section 3.12, para. 6

<sup>478</sup> Appendix 10c, section 3.10, para. 3

<sup>479</sup> Appendix 10c, section 3.10, para. 4



resource consent, plan change or notice of requirement. This includes six new sub clauses under a new clause 3.

570. DOC's suggested amendments that are recommended to be incorporated into APP3 have been redrafted to improve readability and to better align with the approach of the pORPS. Therefore, I consider the intent of DOC's submission to have been implemented and recommend accepting this submission point in part

571. I recommend a consequential amendment to that has arisen from DOC's submission to include a definition for 'High values species and vegetation types'. The definition reads as follows:

*High valued species and vegetation types include:*

- Naturally uncommon ecosystems
- Wetlands and indigenous sand dune vegetation
- Important indigenous fauna habitats
- Species classified as Threatened or At Risk-Declining
- Species with important ecosystem functions, for example pollination, seed dispersal, and provision of fauna habitat.

572. Aurora Energy Limited, Contact, Network Waitaki, Oceana Gold, PowerNet and Queenstown Airport consider the threshold in APP3 for offsetting is too high and seek the offsetting requirements are removed or aligned the Draft NPSIB. The Draft NPSIB states in APP3(2)(i) that offsetting is not available where residual adverse effects cannot be offset because of their irreplaceability or vulnerability of the indigenous biodiversity affected. Ecological advice is that the criteria in APP3(1) of the pORPS are consistent with APP3(2)(i) of the Draft NPSIB but are specific for Otago. The remaining offsetting criteria in the pORPS are similar to those in the Draft NPSIB<sup>480</sup>. Therefore, I do not recommend accepting the submissions. Ecological advice is that offsetting approaches should be determined at the consenting stage because offsetting models used in resource consent applications to date have, mostly, not represented good practice, as they tend to use too much subjectivity in predicting gains, and use qualitative, aggregated metric that conceal losses of indigenous biodiversity and are difficult to verify. Therefore, it is appropriate to place limits on the use of biodiversity offsetting to avoid it being used inappropriately when vulnerable or irreplaceable indigenous biodiversity is potentially affected<sup>481</sup>. I do not recommend accepting Oceana Gold's submission.

573. Silver Fern Farms, Trustpower and Federated Farmers seeks APP3 is amended to either align with best practice, recently resolved offsetting principles or the Draft NPSIB. As discussed above in response to Aurora Energy, Contact, Network Waitaki and Others, clause (2)(i) of APP3 in the Draft NPSIB refers to 'vulnerability and irreplaceability', while clause (1) of APP3 in the pORPS are consistent with this but are more specific to Otago. The remaining offsetting criteria are similar to those in the Draft NPSIB. Furthermore,

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<sup>480</sup> Appendix 10c, section 3.5, para. 2

<sup>481</sup> Appendix 10c, section 3.7, para. 3

ecological advice is that the criteria in APP3 are similar to the criteria being used in second generation plans such as the West Coast RPS<sup>482</sup>. Therefore, I do not recommend accepting the submissions.

574. I disagree with Queenstown Airport and Contact that APP3 is inconsistent with s104(1)(ab) because a pathway has been provided for offsetting. An applicant may propose something else, and it will be tested against what is in the pORPS or lower order plans, and a decisionmaker may prefer what the applicant has proposed in a particular case.
575. Fulton Hogan seeks the title of APP3 is amended to ‘Principles for biodiversity offsetting’ as the submitter considers the criteria in APP3 have been derived from a guidance document and it is inappropriate to translate this guidance into criteria contained in APP3. Ecological advice is that *“Good practice guidance of offsetting in New Zealand has been developed for offsetting practitioners<sup>483</sup> but does not provide specific guidance for policy makers. The criteria for offsetting in APP3 are based on consultation with the community and submitters and the outcome of an Environment Court hearing. With some exceptions, offsetting models developed in recent years for resource consent in New Zealand have not been robust and have not assisted decision-making. It is therefore important that reasonably strong criteria are used to determine when offsetting is available and what it should comprise”<sup>484</sup>*. Therefore, I do not recommend accepting the submission to amend the title of APP3, because APP3 is a standard by which offsetting will be decided against. I do not recommend accepting the submission to remove the reference to ECO-P6 in clause (2)(a) because APP3 implements ECO-P6, and ECO-P6(1) to (3) relates to avoiding, remediating, and mitigating. The submitter seeks ‘residual adverse effects’ is amended to ‘significant residual adverse effects’. I do not recommend accepting the submission because ecological advice is that *“offsetting originally applied to significant residual adverse effects, but there are no practical reasons why offsetting cannot be applied to all residual adverse effects”<sup>485</sup>* I do not recommend accepting the submission to insert ‘where practicable’ at the beginning of clause (2)(h) because ecological advice is that this would allow for some resource consent holders to not fulfil their offsetting requirements within the specified time of their resource consent, which could lead to a loss of positive outcomes for the environment<sup>486</sup>.
576. DCC seeks ‘reasonably measurable’ is amended to ‘reasonably’ in clause (1)(b). Ecological advice is that the current wording is difficult to interpret, therefore I recommend removing ‘reasonably’<sup>487</sup>. DCC seeks ‘beyond results’ is replaced with ‘that are demonstrably additional to those’ as it provides more clarity to the meaning of clause (2)(f). Ecological advice is that this suggested amendment will provide more clarity to the meaning of the criterion<sup>488</sup>. Therefore, I recommend accepting the submission.

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<sup>482</sup> Appendix 10c, section 3.8, para. 2

<sup>483</sup> New Zealand Government 2014: Guidance on good practice biodiversity offsetting in New Zealand.

<sup>484</sup> Appendix 10c, section 3.3, para.4

<sup>485</sup> Appendix 10c, section 3.3, para. 4

<sup>486</sup> Appendix 10c, section 3.3, para. 5

<sup>487</sup> Appendix 10c, section 3.11, para. 2

<sup>488</sup> Appendix 10c, section 3.11, para. 2

577. For conciseness, I do not recommend accepting Meridian’s submission to amend ‘biodiversity’ to ‘indigenous biodiversity’. Furthermore, ecological advice is that amending ‘biodiversity’ to ‘indigenous biodiversity’ *“does not appear necessary as the subsequent clauses make it clear that indigenous biodiversity is the focus”*<sup>489</sup>. For reasons stated above in response to Fulton Hogan’s submission on APP3, I do not recommend accepting the submission to replace ‘residual adverse effects’ with ‘significant residual adverse effects’. For clarity purposes, I recommend accepting the submission point to amend ‘reasonably measurable’ with ‘measurably’ and for reasons mentioned in response to Fulton Hogan’s submission on APP3. I do not recommend accepting Meridian’s submission to remove ‘positive’ from clause (e) as I consider the suggested amendments will reduce the degree of offsetting measures and will result in the loss of indigenous biodiversity. Further, ecological advice is that *“removal of the word ‘positive’ from clause (e) is not supported, as offsetting outcomes could be positive or negative, and it is only the positive outcomes that that should endure for long timeframes”*<sup>490</sup>. I do not recommend accepting the submitters suggested amendments to clause (2)(f) because ecological advice is that *“The submitters concerns about the additionality clause are supported, and addressed under similar concerns from the Dunedin City Council”*<sup>491</sup>
578. I do not recommend accepting Fish and Game’s submission to amend clause (2)(b) to include reference to the habitat of trout and salmon because APP3 is only referenced in the ECO chapter and is used to implement ECO-P3, ECO-P4 and ECO-P6. As per the discussion in section 1.6.9.2 of the Intro and general themes chapter, I do not recommend accepting Fish and Game’s submission to create a carve out for trout and salmon as the purpose of the ECO chapter is to protect and maintain indigenous biodiversity in the Otago region.
579. Ngāi Tahu ki Murihiku seeks the exception for mānuka and kānuka is removed from clause (1)(b). I presume the submitter is referring to clause (1)(a) and clause (1)(b) as clause(1)(b) only refers to manuka. Ecological advice is that *“the threat classification for mānuka and species of kānuka were raised as a precautionary approach to threat myrtle rust poses to the species. All species of kānuka are now classified as Threatened and mānuka is classified as At- Risk Declining. The two species of kānuka in Otago have unknown susceptibility to myrtle rust, while mānuka is known to be susceptible. Myrtle rust has been recorded as far south as Christchurch and Hokitika and but to date has not been recorded in Otago. Therefore, the elevated threat status of mānuka and kānuka would trigger the bottom lines in APP3. However, the reason for the elevated threat status does not apply in Otago because of the absence of the threat of myrtle rust in Otago”*<sup>492</sup>. Furthermore, *“the loss of Kānuka would not necessarily be significant and there would be practical options for offsetting such loss given the ability of this species to regenerate naturally in suitable environments and the ease of propagating and planting kānuka”*<sup>493</sup>. Therefore, I do not recommend the submission.

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<sup>489</sup> Appendix 10c, section 3.12, para. 2

<sup>490</sup> Appendix 10c, section 3.12, para.2

<sup>491</sup> Appendix 10c, section 3.12, para.2

<sup>492</sup> Appendix 10c, section 3.14, para. 2

<sup>493</sup> Appendix 10c, section 3.14, para.2

580. I do not recommend accepting Forest and Bird’s submission to include ‘coastal marine biogeographic region’ to clause (1)(b) because it was recommended in ECO-P3 and ECO-P4 to remove the application of the effects management hierarchy, in ECO-P6, to the coastal environment because coastal indigenous biodiversity must be managed under CE—P5 to ensure consistency with Policy 11 of the NZCPS. I do not recommend accepting the submission to include the submitters suggested new clause to APP3 because ecological advice is that it lacks specificity in regard to rare and vulnerable species, it would be more suitable to reference them as categories of the New Zealand Threat Classifications, and the loss of rare or vulnerable species or ecosystems would only qualify if it made the offset inappropriate, and this is arguable<sup>494</sup>. Furthermore, ecological advice is that the proposed new clause refers to uncertainty of the offsetting success, but it does not specify the degree of uncertainty that would trigger an offset being inappropriate<sup>495</sup>. For the same reasons discussed in response to Ngāi Tahu ki Murihiku submission, I do not recommend accepting Forest and Bird’s submission to remove the exception of mānuka from clause(1)(b).
581. I recommend consequential amendments to remove ‘or coastal marine biogeographic region’ from clause (c)(ii) because it has been suggested in ECO-P3 and ECO-P4 to exclude the coastal environment from accessing the effects management hierarchy set out in ECO-P6 and so APP3 no longer applies to ‘coastal marine biogeographic region’.
582. I recommend a consequential amendment to APP3 to add a footnote to ‘ecological district’ because it has been recommended in section 10.3.2 of this chapter to not define the term, but instead footnote the term referencing a document which provides further information on ecological districts.

583.

#### 10.29.3 Recommendation

584. I recommend the following amendments to APP3:

#### **APP3 – Criteria for *biodiversity* offsetting**

(1) *Biodiversity* offsetting is not available for an<sup>496</sup> ~~if the~~ activity that<sup>497</sup> will result in:

- (a) the loss from an ecological district<sup>498</sup> of any individuals of Threatened *taxa*, other than kānuka (*Kunzea robusta* and *Kunzea serotina*), under the New Zealand Threat Classification System (Townsend et al, 2008), or
- (b) ~~reasonably~~<sup>499</sup> measurable loss within an ecological district to an At Risk-Declining *taxon*, other than manuka (*Leptospermum scoparium*), under the New Zealand Threat Classification System (Townsend et al, 2008), or

<sup>494</sup> Appendix 10c, section 3.9, para. 4

<sup>495</sup> Appendix 10c, section 3.9, para. 4

<sup>496</sup> Consequential change to 00137.158 DOC

<sup>497</sup> Consequential change to 00137.158 DOC

<sup>498</sup> Consequential change to 00137.158 DOC

<sup>499</sup> 00306.082 Meridian, 00139.139 Dunedin City Council

(c) the worsening of the conservation status of any indigenous biodiversity as listed under the New Zealand Threat Classification System (Townsend et al, 2008), or<sup>500</sup>

(d) the removal or loss of viability of a naturally uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna, or<sup>501</sup>

(e) the loss (including cumulative loss) of irreplaceable or vulnerable indigenous biodiversity.<sup>502</sup>

(2) *Biodiversity* offsetting may be ~~is~~<sup>503</sup> available if the following criteria are met:

(a) the offset addresses residual adverse *effects* that remain after implementing the sequential steps required by ECO–P6(1) to (3),

(b) the proposal demonstrates that<sup>504</sup> the offset can reasonably<sup>505</sup> achieves<sup>506</sup> no net loss and preferably a net gain in indigenous *biodiversity*, as measured by type, amount and condition at both the impact and offset sites using an explicit loss and gain calculation,

(c) the offset is undertaken where it will result in the best ecological outcome, and is preferably as the first priority be<sup>507</sup>:

(i) close to the location of the activity, and

(ii) within the same ecological district<sup>508</sup> ~~or coastal marine biogeographic region~~<sup>509</sup>,

(d) the offset is applied so that the ecological values being achieved are the same or similar to those being lost,

(e) the positive ecological outcomes of the offset endure at least as long as the impact of the activity and preferably in perpetuity,

(f) the proposal demonstrates that the offset achieves *biodiversity* outcomes beyond results that are clearly additional to those<sup>510</sup> that would have occurred if the offset was not proposed, and are additional to any remediation or mitigation undertaken in relation to the adverse effects of the activity,<sup>511</sup>

(g) the time delay between the loss of *biodiversity* and the gain or maturation of the biodiversity outcomes of the ~~realisation of the~~<sup>512</sup> offset is the least necessary to achieve the best possible outcome,

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<sup>500</sup> 00137.158 DOC

<sup>501</sup> 00137.158 DOC

<sup>502</sup> 00137.158 DOC

<sup>503</sup> Consequential change to 00137.158 DOC

<sup>504</sup> 00137.158 DOC

<sup>505</sup> 00137.158 DOC

<sup>506</sup> 00137.158 DOC

<sup>507</sup> 00137.158 DOC

<sup>508</sup> 00138.027 QLDC

<sup>509</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>510</sup> 00139.139 Dunedin City Council

<sup>511</sup> 00137.158 DOC

<sup>512</sup> 00137.158 DOC

(h) the outcome of the offset is achieved within the duration of the *resource consent*, and

(i) any offset developed in advance of an application for *resource consent* must be shown to have been created or commenced in anticipation of the specific *effect* of the proposed activity and would not have occurred if that *effect* was not anticipated.

(3) Biodiversity offsetting proposed in any application for resource consent, plan change or notice of requirement, must address all matters in APP3(2), and:

(a) use objective counts and measures wherever possible,

(b) include high value species or vegetation types as components,

(c) disaggregate components of high value species and vegetation types, so that no trade-offs between them can occur,

(d) evaluate the ecological context, including the interactions between species, habitats and ecosystems, spatial connections and ecosystem function at the impact site and offset site,

(e) include consideration of mātauraka Māori, and

(f) include a separate biodiversity offset management plan prepared in accordance with good practice and which incorporates a monitoring and evaluation regime. <sup>513</sup>

### 10.30 APP4 – Criteria for *biodiversity* compensation

585. As notified, APP4 reads as:

#### **APP4 – Criteria for *biodiversity* compensation**

(1) *Biodiversity* compensation is not available if the activity will result in:

(a) the loss of an indigenous *taxon* (excluding *freshwater* fauna and flora) or of any ecosystem type from an ecological district or coastal marine biogeographic region,

(b) removal or loss of viability of habitat of a Threatened or At Risk indigenous species of fauna or flora under the New Zealand Threat Classification System (Townsend et al, 2008),

(c) removal or loss of viability of a *naturally rare* or uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna, or

(d) worsening of the New Zealand Threat Classification System (Townsend et al, 2008) conservation status of any Threatened or At Risk indigenous fauna.

(2) *Biodiversity* compensation is available if the following criteria are met:

(a) compensation addresses only residual adverse effects that remain after implementing the sequential steps required by ECO-P5(1) to (4),

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<sup>513</sup> 00137.158 DOC

(b) compensation is undertaken where it will result in the best practicable outcome and preferably:

(i) close to the location of the activity, and

(ii) within the same ecological district or coastal marine biogeographic region,

(c) compensation achieves positive *biodiversity* outcomes that would not have occurred without that compensation,

(d) the positive *biodiversity* outcomes of the compensation are enduring,

(e) the time delay between the loss of *biodiversity* through the proposal and the gain or maturation of the compensation's *biodiversity* outcomes is the least necessary to achieve the best possible outcome,

(f) the outcome of the compensation is achieved within the duration of the *resource consent*,

(g) *biodiversity* compensation developed in advance of an application for *resource consent* must be shown to have been created or commenced in anticipation of the specific *effect* of the proposed activity and would not have occurred if that *effect* was not anticipated, and

(h) the *biodiversity* compensation is demonstrably achievable.

#### 10.30.1 Submissions

586. There are 17 submissions on APP4. One submitter seeks APP4 is deleted<sup>514</sup>.

587. Aurora Energy Limited, Contact, Network Waitaki, Oceana Gold, PowerNet and Queenstown Airport seek amendments to APP4 as they consider the criteria to be too restrictive and are written as a bottom line or hard limit, which will make the policy, in some instances, unworkable when assessing an activity against the criteria in APP3 and APP4<sup>515</sup>. The submitters seek the limits as to when offsetting compensation can be offered in clause (1) are removed as they consider the threshold is too high and will unduly limit biodiversity compensation as an available environmental effects' management option. The submitters seek the compensation requirements and outcomes are either removed or amended to align with national direction through the draft NPSIB or best practice<sup>516</sup>.

588. Similarly, Federated Farmers and Trustpower seek APP4 is aligned with current best practice or recently resolved compensation principles<sup>517</sup>.

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<sup>514</sup> 00237.069 Beef & Lamb and DINZ

<sup>515</sup> 00318.019 Contact Energy Limited, 00320.019 Network Waitaki Limited, 00115.022 Oceana Gold (New Zealand) Ltd, 00511.019 PowerNet Ltd

<sup>516</sup> 00315.084 Aurora Energy Limited, 00318.022 Contact Energy Limited, 00320.022 Network Waitaki Limited, 00115.025 Oceana Gold (New Zealand) Ltd, 00511.022 PowerNet Ltd, 00313.035 Queenstown Airport

<sup>517</sup> 00311.065 Trustpower Limited, 00239.187 Federated Farmers of New Zealand, 00313.035 Queenstown Airport

589. Queenstown Airport considers APP4 is inconsistent with section 104(1)(ab) of the Act which requires a decision maker to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate adverse effects<sup>518</sup>.
590. Oceana Gold referenced the Deepdell North Stage III Project resource consent which involved the destruction of the habitat of At Risk lizards in which all experts agreed that the compensation package was acceptable, however this would be inconsistent with APP4<sup>519</sup>
591. DOC seeks APP4 is replaced with a new set of criteria contained within their submission in which compensation is reasonably achievable and incentivises positive measures, and to be consistent with best practice scientific practice, incorporating the existing APP4 principles but adding new limits to compensation. The submitter suggests replacing the criteria with a new set and incorporating the existing APP4 criteria but including new limits to compensation. DOC's suggested new bottom lines relate to the loss of an ecological district, loss of viability of a naturally rare ecosystem or fauna habitat, loss of irreplaceable indigenous biodiversity, worsening of conservation status, impractical or socially prohibitive options, uncertainty, contradiction of anticipated results, demonstration of feasibility, and displacement of harmful activities<sup>520</sup>.
592. DCC seek amendments to clause 2(f) by replacing 'enduring' with 'maintained in perpetuity'<sup>521</sup>.
593. Fish and Game seek the reference to ECO-P5(1) to (4) is amended to ECO-P6(1) to (4) because it is the incorrect reference<sup>522</sup>.
594. Fulton Hogan requests that the title is amended to 'Principles for biodiversity compensation' to align with their suggested amendments to the title of APP3. The submitter also seeks the following specific amendments to clause (2) as follows<sup>523</sup>:
- Clause 2: replace 'criteria' with 'principles' to align with their suggested amendments to APP3
  - Clause 2(a): '...only significant residual adverse effects that ~~remain after implementing the sequential steps required by ECO-P5(1) to (4) to where offsetting is not demonstrably possible~~'.
  - Clause 2(f): amend to 'where practicable, the outcome...'. The submitter considers some construction related resource consents have a relatively short consent duration, which makes achieving compensation within the duration of the resource consent potentially problematic and that this should not rule out compensation as an option.

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<sup>518</sup> 00318.019 Contact Energy Limited, 00313.034 Queenstown Airport

<sup>519</sup> , 00115.022 Oceana Gold (New Zealand) Ltd

<sup>520</sup> 00137.159 Director General of Conservation

<sup>521</sup> 00139.140 Dunedin City Council

<sup>522</sup> 00231.094 Otago Fish & Game Council and the Central South Island Fish & Game Council

<sup>523</sup> 00322.046 Fulton Hogan Limited



595. Meridian seeks the following specific amendments to APP4 as follows<sup>524</sup>:
- Replace 'biodiversity' with 'indigenous biodiversity' throughout APP4.
  - Replace 'ecosystem' with 'indigenous ecosystem' throughout APP4.
  - Remove from clause 1(c) the words 'that is associated with indigenous vegetation or habitat of indigenous fauna'
  - In clauses 2(e) and (d) replace 'positive biodiversity outcomes' with 'indigenous biodiversity outcomes', as this prevents the criteria in clause 2(e) and (d) being read as though enhancement of indigenous biodiversity outcomes is a compulsory requirement of compensation.
  - Replace 'possible outcome' with 'practicable outcome' in clause (2)(e).
  - Replace 'ECO-P5' with 'ECO-P6' in clause 2(a)<sup>525</sup>
596. QLDC submits that species choice should be listed as a criterion of assessment and so seek the inclusion of the following new clause to clause 2(b)<sup>526</sup>:
- (iii) that appropriate ecological choices for compensation are made, including species choice
597. Forest and Bird submits that APP4 needs to be consistent with achieving ECO-O1 and so seeks the following specific amendments to clause (1)(c): 'removal, ~~or~~ loss or decline in the quality of viability of a naturally rare...'. The submitter also seeks the inclusion of a new subclause under clause (2) as follows<sup>527</sup>:
- limits to compensation have been observed, including where the loss of rare or vulnerable species or a naturally rare or uncommon ecosystem type makes an offset inappropriate or where there is uncertainty of success

### 10.30.2 Analysis

598. DOC seeks APP4 is replaced with a new set of criteria in which compensation is reasonably achievable and incentivises positive measures, and to be consistent with best practice scientific practice. Ecological advice on DOC's submission is that<sup>528</sup>:

*"APP4 contains bottom lines as well as principles which compensation should adhere to. The four bottom lines relate to loss of an indigenous taxon from an ecological district, removal or loss of viability of habitat of a Threatened or At Risk species, removal or loss of viability of a naturally rare or uncommon ecosystem, or worsening of conservation status. The submitter's bottom lines are more extensive, but have a lower threshold for habitat of Threatened and At Risk species, yet have merit. Compensation in New Zealand has not been very constrained by limits, and this has*

<sup>524</sup> 00306.082 Meridian

<sup>525</sup> 00231.094 Otago Fish & Game Council and the Central South Island Fish & Game Council

<sup>526</sup> 00138.045 Queenstown Lakes District council

<sup>527</sup> 00230.149 Forest and Bird

<sup>528</sup> Appendix 10c, section 4.11, para. 3-4

*led to compensation approaches that, overall, adversely affect irreplaceable and vulnerable indigenous biodiversity.*

*Restricting trading up to Not Threatened species narrows its scope considerably. Some At Risk species, for example matagouri (*Discaria toumatou*), are widespread in Otago and trading up would likely be accepted to address impacts on it. It is suggested that this restriction relating to species is removed, but the values lost should not be vulnerable or irreplaceable.”*

In reliance upon this ecological advice, I recommend including a new criterion under clause (1) regarding the loss (including cumulative loss) of irreplaceable or vulnerable indigenous biodiversity. Two new criterion under clause (2) relating to financial contributions and trading up. A new criteria that covers matter which must be addressed in any application for resource consent, plan change or notice of requirement, which includes three new criterion.

DOC’s suggested amendments that are recommend to be incorporated into APP4 have been redrafted to improve readability and to better align with the approach of the pORPS. Therefore, I consider the intent of DOC’s submission to have been implemented and recommend accepting this submission point in part.

599. I recommend a consequential amendment to that has arisen from DOC’s submission to include a definition for ‘High values species and vegetation types’. The definition reads as follows:

*High valued species and vegetation types include:*

- *Naturally uncommon ecosystems*
- *Wetlands and indigenous sand dune vegetation*
- *Important indigenous fauna habitats*
- *Species classified as Threatened or At Risk-Declining*
- *Species with important ecosystem functions, for example pollination, seed dispersal, and provision of fauna habitat.*

600. Aurora Energy Limited, Contact, Network Waitaki, Oceana Gold, PowerNet and Queenstown Airport consider the criteria in APP4 is too stringent and seeks the bottom lines contained in clause (1) are removed or amended to align with best practice or the Draft NPSIB. The Draft NPSIB states in APP4(2)(a) that compensation is unavailable if the indigenous biodiversity affected is irreplaceable or vulnerable. Ecological advice is that the bottom lines under APP4(1) are consistent with this but are specific to Otago and are also similar to the relevant bottom lines in the West Coast RPS<sup>529</sup>. While the remaining compensation criteria in the pORPS are similar to those in the Draft NPSIB<sup>530</sup>. Therefore, I do not recommend removing the criteria under clause (1).

601. Federated Farmers and Trustpower seek APP4 is aligned with current best practice or recently resolved compensation principles. Ecological advice is that the bottom lines

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<sup>529</sup> Appendix 10c, section 4.12, para.2

<sup>530</sup> Appendix 10c, section 4.9, para.2

contained in APP4 are similar to the relevant bottom lines in the latest 2<sup>nd</sup> generation plans such as the West Coast RPS<sup>531</sup>. While the remaining compensation criteria in APP4 is similar to those in the Draft NPSIB<sup>532</sup>.

602. I disagree with Queenstown Airport that APP4 is inconsistent with s104(1)(ab) because a pathway has been provided for compensation. An applicant may propose something else, and it will be tested against what is in the pORPS or lower order plans, and a decisionmaker may prefer what the applicant has proposed in a particular case.
603. Oceana Gold considers the reference the reference to At Risk species in clause (1)(b) represents a relatively low threshold. Ecological advice is that *“the reference to At Risk species in offsetting criterion (1)(b) represents a relatively low threshold. This is particularly an issue where national threat classifications classify species that are common in Otago as At Risk, for example matagouri. Consideration could be given to limiting criterion 1b to Threatened taxa”*<sup>533</sup>. Therefore, I recommend removing the reference to ‘At Risk’ species in clause (1)(b).
604. DCC seeks to replace ‘enduring’ with ‘maintained in perpetuity’. Ecological advice is that *“‘Maintained in perpetuity’ is much stronger than ‘enduring’. BBOP Principle 8<sup>534</sup> refers to long term outcomes that are at least as long as the project’s impacts, and preferably in perpetuity. The criterion could be reframed accordingly.”*<sup>535</sup>. Therefore, I recommend accepting the submission.
605. I recommend accepting Fish and Game’s submission to amend the incorrect reference in clause(2)(a) from ECO-P5 to ECO-P6.
606. I do not recommend accepting Fulton Hogan’s submission to replace ‘criteria’ with ‘principles’ in the title and throughout APP4, because APP4 is a standard by which compensation will be decided against. I do not recommend accepting the submission point to amend ‘residual adverse effects’ to ‘significant residual adverse effects’ because I consider there are no practical reasons why compensation cannot be applied to all residual adverse effects, and this terminology is similar to what is contained in the Operative West Coast RPS and the Draft NPSIB. The submitter seeks to include ‘where practicable’ at the beginning of clause 2(f). Ecological advice is that this will weaken the criterion and it may be difficult to enforce the achievement of the compensation outcome if it takes longer to achieve than the duration of the consent<sup>536</sup>.
607. Ecological advice is that indigenous biodiversity doesn’t need to be specified in general in APP4, as the subsequent clauses focus on indigenous biodiversity<sup>537</sup>. Therefore, I do not recommend accepting the submission. Regarding Meridian’s other submission points, ecological advice is that *“Removal of ‘indigenous vegetation and habitats’ from*

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<sup>531</sup> Appendix 10c, section 4.9, para. 2

<sup>532</sup> Appendix 10c, section 4.5, para. 2

<sup>533</sup> Appendix 10c, section 4.8, para. 2

<sup>534</sup> [https://www.forest-trends.org/wp-content/uploads/2018/10/The-BBOP-Principles\\_20181023.pdf1023.pdf](https://www.forest-trends.org/wp-content/uploads/2018/10/The-BBOP-Principles_20181023.pdf1023.pdf)  
([forest-trends.org](https://www.forest-trends.org))

<sup>535</sup> Appendix 10c, section 4.13, para. 2

<sup>536</sup> Appendix 10c, section 4.3, para.6

<sup>537</sup> Appendix 10c, section 4.4, para.2

*clause 1 (c) is not supported, as only those naturally uncommon ecosystem types that support indigenous vegetation and habitat are relevant in this context. Positive outcomes do need to be specified in clause 2 (c), as negative outcomes are also possible. Replacing ‘possible’ with ‘practicable’ in clause 2 (e) is supported, as the best possible outcomes may not be practicable”<sup>538</sup>. Therefore, I do not recommend accepting the submissions. I recommend accepting the suggested amendment to amend the incorrect reference in clause (2)(a).*

608. I do not recommend accepting QLDC’s submission to include a new sub clause under clause (2)(b) because I consider what the submitter seeks is already included in the clause (2) under ‘will result in the best practicable outcome’.
609. Forest and Bird seeks that a more suitable term is used instead of ‘viability’ in clause(1)(f) to fulfil the outcomes of the ECO chapter. Ecological advice is that *“It is agreed that the reference to ‘viability’ in the proposed criterion is problematic, but ‘decline in the quality’ is arguably equally problematic. Under the proposed Policy ECO-P8(2), the ‘health and resilience’ of indigenous biodiversity is referred to, and it is suggested that offsetting criterion (1) (c) is amended to refer to ‘removal or loss of the health or resilience of a naturally rare or uncommon ecosystem”<sup>539</sup>* Therefore, I recommend ‘viability’ is be amended to ‘health and resilience’ as it is more measurable and links to ECO-O2. I do not recommend accepting the submitter’s suggested new subclause under clause (2) because ecological advice is that it lacks specificity with regards to rare and vulnerable species, which would be better referred to as categories of the New Zealand Threat Classification System. Further, the proposed clause refers to uncertainty of success, but does not specify the degree of uncertainty that would trigger an offset being inappropriate<sup>540</sup>.
610. I recommend consequential amendments to remove ‘or coastal marine biogeographic region’ from clause (c)(ii) because it has been suggested in ECO-P3 and ECO-P4 to exclude the coastal environment from accessing the effects management hierarchy set out in ECO-P6 and so APP3 no longer applies to ‘coastal marine biogeographic region’.
611. I recommend a consequential amendment to APP4 to replace ‘naturally rare’ with ‘naturally uncommon’.

### 10.30.3 Recommendation

612. I recommend the following amendments to APP4:

#### **APP4 – Criteria for *biodiversity* compensation**

(1) *Biodiversity* compensation is not available if the for an<sup>541</sup> activity that<sup>542</sup> will result in:

<sup>538</sup> Appendix 10c, section 4.4, para. 2

<sup>539</sup> Appendix 10c, section 4.10, para. 3

<sup>540</sup> Appendix 10c

<sup>541</sup> Consequential change from 00137.158 DOC

<sup>542</sup> Consequential change from 00137.158 DOC

(a) the loss from an ecological district<sup>543</sup> of an indigenous *taxon* (excluding *freshwater* fauna and flora) or of any ecosystem type ~~from an ecological district or coastal marine biogeographic region,~~<sup>544</sup>

(b) removal or loss of viability of the<sup>545</sup> habitat of a Threatened ~~or At Risk~~<sup>546</sup> indigenous species of fauna or flora under the New Zealand Threat Classification System (Townsend et al, 2008),

(c) removal or loss of ~~viability~~ health and resilience<sup>547</sup> of a ~~naturally rare or naturally~~<sup>548</sup> uncommon ecosystem type that is associated with *indigenous vegetation*<sup>549</sup> or habitat of indigenous fauna, ~~or~~<sup>550</sup>

(d) worsening of the conservation status of any Threatened or At Risk indigenous biodiversity listed under the<sup>551</sup> New Zealand Threat Classification System (Townsend et al, 2008), ~~conservation status of any Threatened or At Risk indigenous fauna,~~<sup>552</sup> or<sup>553</sup>

(e) the loss (including through cumulative loss) of irreplaceable or vulnerable indigenous biodiversity.<sup>554</sup>

(2) *Biodiversity* compensation may be<sup>555</sup> available if the following criteria are met:

(a) compensation addresses only residual adverse effects that remain after implementing the sequential steps required by ECO-P65(1) to (4),

(b) compensation is undertaken where it will result in the best ecological outcome and preferably:

(i) close to the location of the activity, ~~and~~<sup>556</sup>

(ii) within the same ecological district<sup>557</sup> ~~or coastal marine biogeographic region~~<sup>558</sup>, and<sup>559</sup>

(iii) delivers indigenous biodiversity gains on the ground,<sup>560</sup>

<sup>543</sup> 00138.027 QLDC, and consequential change from 00137.158 DOC

<sup>544</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Royal Forest and Bird

<sup>545</sup> Clause 16(2), Sch 1 RMA

<sup>546</sup> 00115.022 Oceana Gold

<sup>547</sup> 00230.149 Royal Forest and Bird

<sup>548</sup> Consequential to 0137.014 DOC

<sup>549</sup> Clause 16(2), Sch 1 RMA

<sup>550</sup> Clause 16(2), Sch 1 RMA

<sup>551</sup> 00137.158 DOC

<sup>552</sup> 00137.158 DOC

<sup>553</sup> Clause 16(2), Sch 1 RMA

<sup>554</sup> 00137.158 DOC

<sup>555</sup> 00137.158 DOC

<sup>556</sup> 00137.158 DOC

<sup>557</sup> 00158.027 QLDC

<sup>558</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Royal Forest and Bird

<sup>559</sup> 00137.158 DOC

<sup>560</sup> 00137.158 DOC

(ba) where criterion (2)(b)(iii) is not met any financial contributions considered must be directly linked to a specific indigenous biodiversity gain or benefit.<sup>561</sup>

(c) compensation achieves positive *biodiversity* outcomes that would not have occurred without that compensation, and are additional to any remediation, mitigation or offset undertaken in response to the adverse effects of the activity,<sup>562</sup>

(d) the positive *biodiversity* outcomes of the compensation are enduring and are commensurate with the biodiversity values lost<sup>563</sup>,

(e) the time delay between the loss of *biodiversity* ~~through the proposal at the impact site~~<sup>564</sup> and the gain or maturation of the ~~compensation's~~<sup>565</sup> *biodiversity* outcomes from the compensation<sup>566</sup>, is the least necessary to achieve the best possible ecological<sup>567</sup> outcome,

(f) the outcome of the compensation is achieved within the duration of the *resource consent*,

(fa) when trading up forms part of biodiversity compensation, the proposal must demonstrate the indigenous biodiversity values gained are demonstrably of higher indigenous biodiversity value than those lost, or considered vulnerable or irreplaceable,<sup>568</sup>

(g) *biodiversity* compensation developed in advance of an application for *resource consent* must be shown to have been created or commenced in anticipation of the specific *effect* of the proposed activity and would not have occurred if that *effect* was not anticipated, and

(h) the *biodiversity* compensation is demonstrably achievable.

(3) Biodiversity compensation proposed in any application for resource consent, plan change or notice of requirement, must address all matters in APP4 (2), and:

(a) evaluate the ecological context, including the interactions between species, habitats and ecosystems, spatial connections and ecosystem function at the impact site and compensation site,

(b) include consideration of mātauraka Māori, and

(c) include a separate biodiversity compensation management plan prepared in accordance with good practice and which incorporates a monitoring and evaluation regime.<sup>569</sup>

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<sup>561</sup> 00137.158 DOC

<sup>562</sup> 00137.158 DOC

<sup>563</sup> 00137.158 DOC

<sup>564</sup> 00137.158 DOC

<sup>565</sup> 00137.158 DOC

<sup>566</sup> 00137.158 DOC

<sup>567</sup> 00137.158 DOC

<sup>568</sup> 00137.158 DOC

<sup>569</sup> 00137.158 DOC

## 10.31 Material not previously included

### 10.31.1 Trout and Salmon

613. Fish and Game considers the addition of a new objective ECO-O4 aligns with the direction set in the NPSFM. The submitter also considers the new addition of ECO-P11 aligns with Policies 9 and 10 of the NPSFMW and that the inclusion of a new method will provide a clear pathway for how the management of species interactions and populations is undertaken to implement the provisions of the ECO chapter<sup>570</sup>. The habitats of trout and salmon, and these submission points have been addressed in section 1.6.9.2 of the Intro and general themes chapter.

### 10.31.2 Carbon sequestration

#### 10.31.2.1 Submission

614. QLDC seeks the inclusion of the following new policy in the ECO chapter which considers the potential impact of species choice for biological carbon sequestration planting in relation to climate change mitigation<sup>571</sup>:

'ECO-PX – Carbon sequestration

Control the impact of carbon sequestration on indigenous biodiversity by:

a) Avoiding planting species which are invasive or a naturalised weed (I recommend including list of species in this part of the policy), or likely to become either

b) Supporting carbon sequestration planting initiatives which improve or enhance indigenous biodiversity.

615. Jim Hopkins requests the ECO chapter be amended to include prescriptive provisions on carbon forestry activities or to give councils greater powers to restrict their expansion in unsuitable areas to avoid the loss of productive soils, particularly in dry catchment zones<sup>572</sup>.

#### 10.31.2.2 Analysis

616. I do not recommend accepting QLDC'S submission as the policy would be more appropriate in a district or regional plan because it is too detailed for a RPS.

617. Similarly, Jim Hopkins seeks amendments to include prescriptive provisions on carbon forestry activities. The role of a RPS is to provide a policy framework for regional and district plans for them to then create the applicable rules. I do not recommend accepting Jim Hopkins submission as such an amendment would require a more nuanced approach and would sit more appropriately in a regional or district plan as it is too detailed for a RPS.

---

<sup>571</sup> 00138.039 Queenstown Lakes District Council

<sup>572</sup> 00420.013 Hopkins, Jim

10.31.2.3 Recommendation

618. I recommend not accepting these submission points.

10.31.3 Pest species and biosecurity

10.31.3.1 Submissions

619. DOC seeks the inclusion of a new policy to complement ECO-P9 to address other pest species. As pest species and biosecurity risks are only addressed in the Resource Management Overview sections<sup>573</sup>.

10.31.3.2 Analysis

620. I do not recommend accepting DOC's submission as this level of detail is more suited for a regional or district plan.

10.31.3.3 Recommendation

621. I recommend not accepting this submission point.

10.31.4 Mapped Indigenous biodiversity

10.31.4.1 Submissions

622. Yellow – eyed Penguin Trust seeks amendments to the ECO chapter to map significant indigenous biodiversity in the terrestrial, freshwater, and marine environments and to ensure that there is no worsening of the threat classification of these mapped indigenous species<sup>574</sup>.

623. Analysis

624. I do not recommend accepting Yellow-eyed Penguin Trust's submission to create a new provision for the mapping of significant indigenous biodiversity in the terrestrial, freshwater and coastal environments as these areas are identified under ECO-P2 in accordance with APP2. For reasons stated in the discussion on ECO-O1 regarding DOC's submission, I do not recommend accepting the submitter's second submission point.

10.31.4.2 Recommendation

625. I recommend not accepting this submission point.

10.31.5 Renewable electricity Generation

10.31.5.1 Submissions

626. Meridian raises concerns that the pORPS21 fails to ensure the national significance of renewable electricity generation is recognised and provided for. The submitter seeks the

---

<sup>573</sup> 00420.013 Director General of Conservation

<sup>574</sup> 00120.004 Yellow – eyed Penguin Trust



inclusion of the following new policy that directs how ecosystems and indigenous biodiversity will be maintained and enhanced in association with renewable electricity generation activities<sup>575</sup>:

‘Despite policies ECO-P1 to ECO-P10 (inclusive), manage effects on indigenous biodiversity in a way that recognises and provides for the national significance of renewable electricity generation activities, and provides for their development, operation, upgrading, and maintenance by:

- 1) Enabling indigenous vegetation clearance that is essential for the operation and maintenance of existing renewable electricity generation activities; and
- 2) Providing for the upgrading and development of renewable electricity generation, while managing the significant effects of upgrading and development on indigenous biodiversity, and having particular regard to:
  - a) the location of existing structures and infrastructure; and
  - b) the need to locate renewable electricity generation activities where the renewable energy resource is available; and
  - c) the logistical or technical practicalities associated with the activity; and
  - d) the importance of maintaining and increasing the output from existing renewable electricity generation activities; and
- 3) When considering any significant residual environmental effects of renewable electricity generation activities or electricity transmission activities that cannot be avoided, remedied or mitigated, have regard to offsetting measures or environmental compensation, including measures or compensation that benefits the local environment and community affected.’

#### 10.31.5.2 Analysis

627. I do not recommend accepting Meridian’s submission to create a carve out for renewable energy generation activities, because I consider it would contribute to the loss of Otago’s indigenous biodiversity and that these activities should instead access the *biodiversity effects management hierarchy* in ECO-P6. Coupled with this, I also note that there are three further submissions that oppose Meridian’s submission.

#### 10.31.6 Recommendation

628. No change recommended, retain as notified.

---

<sup>575</sup> 00306.048 Meridian

**From:** [Kelvin Lloyd](#)  
**To:** [Melanie Hardiman](#)  
**Subject:** RE: Ecology questions on ECO chapter  
**Date:** Wednesday, 30 March 2022 8:57:37 p.m.  
**Attachments:** [image003.png](#)  
[image005.png](#)

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Kia ora Melanie

Sorry I forgot to address these questions in the report.

I've never seen 'indigenous fauna' requiring definition previously, but if there needs to be one, the DOC suggestion is ok.

Indigenous vegetation is an assemblage of different plant species. Indigenous flora refers to the plant species themselves. So the two are not the same. The RMA S6c refers to indigenous vegetation, and I would have thought that 'indigenous vegetation' would be preferable.

I think 'reduction' makes more sense, particularly as you suggest for an area.

Regards  
Kelvin

---

—  
Kelvin Lloyd Principal Ecologist

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---

**From:** Melanie Hardiman <Melanie.Hardiman@orc.govt.nz>

**Sent:** Monday, 14 March 2022 11:27 am

**To:** Kelvin Lloyd [REDACTED]

**Subject:** Ecology questions on ECO chapter

Morning Kelvin,

I have a couple of additional ecology questions regarding the ECO chapter in the pORPS21. Do you have capacity to answer them? If not, we can find someone else to review them, however,

could you please let me know asap so that we can arrange for someone else to have a look at them?

Questions on ECO submissions:

1. DOC have requested a definition for 'indigenous fauna' is included to the pORPS21, as follows: 'means animals, including fish and invertebrates, that, in relation to a particular area, are native to the ecological district in which that area is located'. Do you think this is an appropriate definition and do you think there is merit in including a definition of 'indigenous fauna' in the pORPS21?
2. DOC have requested references to 'indigenous flora' are replaced with 'indigenous vegetation' or include a definition for 'indigenous flora' in the pORPS 21, as follows: 'has the same meaning as indigenous vegetation'. Do you think it is appropriate to replace references to 'indigenous flora' with 'indigenous vegetation', or provide a definition for 'indigenous flora' (as stated above) or neither of these approaches are necessary?
3. In ECO—P3(1)(a) Forest and Bird have requested 'any reduction' is replaced with 'any decline' because the term 'reduction' does not provide a clear link to the ECO objectives. I have recommended not to accept the submission because I consider the term 'reduction' clearly links back to ECO—O1 which sets out any decline in quality, quantity and diversity of Otago's indigenous biodiversity is halted. Furthermore, the purpose of clause (1)(a) is to avoid the area of a SNA from reducing in size and I do not consider the term 'decline' reflects this purpose as 'any decline of the area' could refer to many different scenarios. Do you think there is merit in accepting Forest and Bird's submission or is it just a 'word for word' game?

-  
-

Kindest regards,  
Melanie



**Melanie Hardiman**  
POLICY ANALYST

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**From:** [Kelvin Lloyd](#)  
**To:** [Melanie Hardiman](#)  
**Subject:** RE: ECO question  
**Date:** Friday, 25 March 2022 1:09:32 p.m.  
**Attachments:** [image001.png](#)  
[image005.png](#)

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Kia ora Melanie

It is a reasonable definition but can capture indigenous species that are not naturally found in an area. E.g. pohutukawa in Dunedin. Often this is dealt with by a definition that states the vegetation occurs naturally in the relevant ecological district.

Regards  
Kelvin

---

—  
**Kelvin Lloyd** Principal Ecologist

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---

**From:** Melanie Hardiman <Melanie.Hardiman@orc.govt.nz>  
**Sent:** Friday, 25 March 2022 12:48 pm  
**To:** Kelvin Lloyd [REDACTED]  
**Subject:** ECO question

Kia Ora Kelvin

I have one more ecology question relating to the ECO chapter. If you have capacity to answer it that would be great.

I have recommended accepting QLDC's submission to amend the definition of indigenous vegetation to: 'Means vegetation that occurs naturally in New Zealand or arrived in New Zealand without human assistance including both vascular and non' – vascular plants.' I accepted this new definition because it has recently been through a publicly notified plan review process on QLDC's Proposed District Plan and went through mediation in the Environment Court. However, we received a further submission from Federated Farmers submitting that this new definition is

too broad and our lawyer has suggested that we seek ecological advice on this matter.

Could you please advise if the new recommend definition for indigenous vegetation is appropriate?

-

Kind regards

Melanie



**Melanie Hardiman**

POLICY ANALYST

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**ECOLOGICAL ADVICE ON BIODIVERSITY  
POLICY IN THE PROPOSED OTAGO  
REGIONAL POLICY STATEMENT**

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# **ECOLOGICAL ADVICE ON BIODIVERSITY POLICY IN THE PROPOSED OTAGO REGIONAL POLICY STATEMENT**

**Contract Report No. 6299**

April 2022

**Project Team:**

Kelvin Lloyd - Report author

**Prepared for:**

Otago Regional Council  
Private Bag 1954  
Dunedin 9054

---

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**Reviewed and approved for release by:**




---

W.B. Shaw  
 Director/Lead Principal Ecologist  
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## 1. INTRODUCTION

Otago Regional Council is processing submissions on the ECO chapter for the Proposed Otago Regional Policy Statement (PORPS), and have submissions on APP2 (Significance Criteria for indigenous biodiversity), APP3 (Criteria for biodiversity offsetting), and APP4 (Criteria for biodiversity compensation) that require advice from an experienced ecologist. In addition, Council staff have a number of other questions relating to the ECO chapter that they require ecological advice on. Wildland Consultants Ltd were commissioned to provide this advice, which is set out in this report.

## 2. APP2 – SIGNIFICANCE CRITERIA FOR INDIGENOUS BIODIVERSITY

### 2.1 Overview

Eighteen submissions relate to the ecological significance criteria in APP2 and these are evaluated in turn below.

### 2.2 Alluvium Ltd and Stoney Creek Mining Ltd

The APP2 submission point for this submitter is incomplete; and evaluation has not been attempted.

### 2.3 Beef and Lamb NZ and Deer Industry NZ

The submitter seeks that APP2 is deleted in its entirety on the basis that regulation relating to indigenous biodiversity should be drafted in line with the operative National Policy Statement for Indigenous Biodiversity (NPS-IB) when it is released.

#### Evaluation

As the NPS-IB is still in draft form, and has no statutory effect, in the interim there would be no guidance in the Otago RPS as to how ecological significance should be defined.

### 2.4 Danny Walker, Peter Hall, Cold Clutha Ltd and Awa Koura Mining Ltd

The APP2 submission point for this submitter is incomplete and evaluation has not been attempted.

### 2.5 Fulton Hogan Ltd

The submitter requests that APP2 be deleted in its entirety, on the basis that it has potential to identify very large areas of the region as SNA, and this could affect activities such as aggregate extraction. Overall, the submitter considers that the costs and benefits of the proposed biodiversity policy framework are not known at this point in time.

## Evaluation

The proposed criteria are similar to second generation criteria in other plans, e.g. in the operative Canterbury RPS. None of the operative district plans in Otago have comprehensive schedules of SNAs (Wildland Consultants 2017), and SNAs on private land currently occupy a very small extent of Otago Region.

### 2.6 Federated Farmers of New Zealand

The submitter requests that APP2 is deleted in its entirety, on the basis that it differs from the criteria in the draft NPS-IB, and that significance assessments undertaken using the RPS criteria will need to be repeated once the NPS-IB is operative.

The submitter also notes that use of the term ‘uncommon’ in significance criteria does not align with the threat classifications of the New Zealand Threat Classification System (Michel 2021).

## Evaluation

The ecological significance criteria in APP2 are similar to those in the draft NPS-IB, and are typical of second generation ecological significance criteria such as in the operative Canterbury RPS. In practice, a site assessed as significant by one of these criteria sets would very likely be defined as being significant using one of the others, and there should be no need to repeat a significance assessment for existing SNAs.

Reference to ‘uncommon’ species at ecological district or regional levels is appropriate, because national threat classifications don’t take account of these finer scales of rarity, which are important if indigenous biodiversity is to be maintained at the regional or ecological district scales.

### 2.7 Contact Energy Ltd, Sandford Ltd, and Silver Fern Farms Ltd

These submitters suggest that the proposed criteria have low thresholds that would result in large areas of Otago to be classified as SNAs. The submitters have particular concern with the Rarity criterion (d) (i) and considers that urban areas, weed-infested areas, and that even buildings could be classified as significant. The submitters also raised the issue of highly mobile species, and areas that are used only temporarily by species.

Specifically, the submitters note that terms such as ‘supports’, ‘habitat’ and ‘important for’ are not defined elsewhere in the RPS and thus create ambiguity. They seek amendment to the significance criteria in APP2 to avoid inadvertent outcomes.

## Evaluation

Key aspects of the proposed criteria that represent high thresholds are inclusion of the term ‘original’ in the representativeness criterion, which requires comparison against the standard of the original natural vegetation, and the use of ‘important’ in the ecological context criteria, which should therefore only capture important context factors. In this context, the draft NPS-IB has a much lower threshold for

representativeness, as it does not contain an historic baseline, which could see large areas of current typical vegetation being captured as significant.

The submitters are correct to point out that lowest threshold in the criteria set is the rarity criterion (d) (i), which would only require the presence of a Threatened, At Risk or uncommon species for an area to trigger significance. This would be reasonable for a non-mobile species classified as Threatened, but is a low threshold for some At Risk species. For example, matagouri (*Discaria toumatou*) is currently classified as At Risk-Declining (de Lange *et al.* 2018), but it is widespread and abundant in parts of Otago. A higher threshold for At Risk species may be warranted. The issue with highly mobile Threatened or At Risk species, is that the simple presence of these in an area may not indicate significant habitat. Important habitats of highly mobile species would be those referred to ecological context criteria (g) (i) and (g) (iii).

Terms such as ‘supports’, ‘habitat’ and ‘important for’ are plain English terms that ecologists should have no difficulty understanding or interpreting. Use of both ‘supports’ and ‘provides habitat for’ is required in some criteria, as subcriteria relate to both vegetation and species. An area would logically support vegetation and provide habitat for a species. ‘Important for’ is used in the ecological context subcriteria, and creates a higher threshold, that necessarily requires informed judgement from an experienced ecologist. As the ecological context criteria relates to matters that are context-dependent, this informed judgement is necessary.

## 2.8 Network Waitaki Ltd and PowerNet Ltd

Like some of the above submitters, the submitters believe the significance criteria are likely to capture extensive areas of Otago. The submitter seeks that the APP2 criteria are amended to make them more specific and targeted.

### Evaluation

As noted above, the lowest threshold in the criteria set relates to the Rarity criterion (d) (i), and consideration could be given to having higher thresholds for At Risk species and highly mobile Threatened and At Risk species. It should be noted that the draft NPS-IB has a similar low threshold that does not differentiate between At Risk species.

## 2.9 Queenstown Airport Company Ltd

The submitter considers the ecological significance criteria to be framed too broadly, and like Contact Energy Ltd, also considers that terms such as ‘supports’, ‘habitat’ and ‘important for’ are likely to capture too much of Otago as SNA. The submitter seeks that the significance criteria are aligned with best practice or national policy direction and are specific and targeted.

### Evaluation

Terms such as ‘supports’, ‘habitat’ and ‘important for’ are plain English terms that ecologists should have no difficulty understanding or interpreting. Use of both ‘supports’ and ‘provides habitat for’ is required in some criteria, as subcriteria relate to

both vegetation and species. An area would logically support vegetation and provide habitat for a species. ‘Important for’ is used in the ecological context subcriteria, and creates a higher threshold, that necessarily requires an informed judgement from an ecologist. As the ecological context criteria relates to matters that are context-dependent, this informed judgement is necessary.

As noted above, the lowest threshold in the criteria set relates to Rarity criterion (d) (i), and consideration could be given to having higher thresholds for At Risk species and highly mobile Threatened and At Risk species.

## 2.10 Oceana Gold Ltd

The submitter is concerned that the ecological significance criteria in APP2 differ from those in the draft NPS-IB, and could result in a large proportion of Otago being defined as being significant. The submitter is also concerned the criteria don’t take account of previous advice (Wildland Consultants 2021) given on these criteria. The submitter highlights that criteria relating to endemic species and species at their distribution limits are duplicated under Rarity, and could be deleted from this part of the criteria set, given the same criteria are repeated under Distinctiveness.

### Evaluation

As noted above, the lowest threshold in the criteria set relates to the Rarity criterion (d) (i), and consideration could be given to having higher thresholds for At Risk species and highly mobile Threatened and At Risk species. The draft NPS-IB has a similarly low threshold under Rarity.

Duplication of criteria relating to endemic species and species at their distribution limits should be removed from the criteria set, otherwise these features would result in double-counting of the same ecologically-significant values.

## 2.11 Trustpower Ltd

The submitter supports the place of APP2 in the plan, but does not agree that the current wording represents best practice, and requests that it be rewritten to better align with best practice.

### Evaluation

It is not clear how the submitter wants the criteria to be rewritten. The criteria are similar to those in the Canterbury RPS and to those in the draft NPS-IB, but have higher thresholds than the latter for significance.

## 2.12 Straterra Ltd

The submitter is concerned about the low threshold in the Rarity criterion created by the reference to At Risk or uncommon species, and considers that the threshold would be higher if the criterion referred to important populations of such species.

### Evaluation

The unweighted inclusion of At Risk and uncommon species in the Rarity criterion does represent a relatively low threshold, similar to the draft NPS-IB. This could be resolved, as the submitter suggests, by referring to ‘important populations’ of At Risk species.

## 2.13 Forest and Bird

The submitter agrees with the APP2 ecological significance criteria except for one aspect. The submitter considers that the Rarity criterion be amended to remove reference to distribution limits, because this attribute is duplicated under Distinctiveness.

### Evaluation

As noted above, both distribution limits and endemic species are duplicated in the criteria set. The solution would be to remove reference to these attributes under Rarity but leave them in place under Distinctiveness.

## 2.14 Director-General of Conservation

The submitter agrees that the APP2 ecological significance criteria are generally appropriate, but require amendment for completeness, clarity, and effectiveness. The submitter proposes that the APP2 criteria are replaced with a new set of criteria, which they have provided.

### Evaluation

A Representativeness criterion for large examples is suggested by the submitter. Large examples would generally be identified as being significant by other criteria, such as the standard definition of representativeness, or ecological context. Most large areas of indigenous habitat would also provide important habitat for indigenous fauna.

The submitter prefers separate representativeness criteria for marine, freshwater, and terrestrial habitats, but the standard definition of representativeness would cover all of these ecosystems. The term ‘Representative’ relates to the structure and composition of vegetation or a fauna assemblage against a benchmark of intact structure and composition.

A naturalness criterion is proposed, but sites that are highly natural would generally be captured as representative examples of indigenous vegetation and habitat.

A new criterion for sensitive and vulnerable habitat is suggested by the submitter, which would capture species and habitats that are very susceptible to anthropogenic effects, or which have slow recovery timeframes. This criterion has merit, as no existing criterion would comprehensively capture these values, although some would be captured under Rarity.

The submitter seeks Rarity attributes that focus on rare and ‘one of a kind’ values, but these would be captured by the APP2 Distinctiveness criterion, or the Rarity criterion focusing on naturally uncommon ecosystems.

A new criterion of importance for Threatened and Declining species and habitats is proposed, but there are existing APP2 criteria for vegetation and habitats supporting Threatened and At Risk taxa.

Similarly, a new criterion for ‘special importance for life history stages’ is proposed, but these habitats are captured by APP2 Ecological Context criteria.

A new criterion (under Diversity) is proposed for areas that contain diverse ecosystem services. In general, these would be captured by the APP2 diversity criteria, or by Ecological Context criteria.

Additional Distinctiveness criteria are proposed, including for species and populations that have higher natural productivity, and incomplete criterion (d), and distinctive or notable marine habitats. High productivity sites in marine or freshwater ecosystems may be recognised by Ecological Context criteria for indigenous fauna, but high productivity sites have no analogues in terrestrial habitats. Criteria that addressed indigenous vegetation and habitat on high productivity sites would have merit, as most high productivity terrestrial ecosystems are now dominated by exotic vegetation. High productivity sites could include, for example, alluvial terraces and limestone ecosystems.

Overall, the suggested new criteria set is elaborate, with several new criteria, but also retains most of the proposed criteria. Because of this, there is considerable duplication of criteria in the criteria set suggested by the submitter.

## 2.15 Yellow-eyed Penguin Trust

The submitter states that it is important that the significance criteria in APP2 are appropriate and suitable for land, freshwater, and the coastal environment. The submitter notes that other criteria sets have been developed and that, ideally, they should be consistent between regions.

### Evaluation

The APP2 significance criteria do build on similar criteria used in second generation criteria sets in other regions, such as Canterbury Region and Southland Region. Advances in understanding do result in ongoing change to criteria sets, and because regional plan reviews are not simultaneous, there are often small differences between criteria sets in different regions.

## 2.16 Meridian Energy

The submitter suggests that the title to APP2 should be changed to ‘Criteria for identifying significant natural areas’. The submitter also suggests an amendment to Representativeness criterion (a) and review of criterion (b). The suggested amendment

for criterion (a) uses the word ‘significant’ in the criterion, which doesn’t assist the interpretation of the criterion and is not supported.

### Evaluation

The suggested change in title is more of a planning matter than an ecological matter. The suggested amendment for criterion (a) uses the word ‘significant’ in the criterion, which does not assist the interpretation of the criterion and is not supported. Wildland Consultants (2021) also noted that the intent of the Representativeness criterion (b) should be clarified, and identified that the final part of the criterion would be better addressed under the Diversity criterion.

## 2.17 Suggested changes to APP2 criteria

Several submissions suggested that the APP2 criteria had low thresholds and suggest that implementation of them may capture excessively large parts of the Region. The criteria have reasonable thresholds for most criteria (and a higher threshold for Representativeness than the draft NPS-IB), but Rarity criterion (d) (i) represents a low threshold for At Risk species and highly mobile Threatened and At Risk species. It is suggested that this threshold is raised by referring to important habitats for At Risk species. It is also suggested that highly mobile Threatened or At Risk species are probably best dealt with by applying common sense when interpreting the criterion for such species, or by providing appropriate guidance to the criteria. A suggested amended criterion is:

*An area that supports:*

- (i) *An indigenous species that is threatened, or uncommon, or an important population of a species that is at risk, nationally or within an ecological district or coastal marine biogeographic region.*

Submitters also pointed out that criteria relating to endemic species and species that are at their distribution limits were duplicated in the criteria set, and only one criterion should refer to these attributes. It is suggested that the Rarity criterion (iv) is deleted.

~~(iv) The site contains indigenous vegetation or an indigenous species that is endemic to Otago or that are at distributional limits within Otago.~~

The Department of Conservation submission suggested two new criteria that have merit. It is suggested that a new ‘Vulnerable and Sensitive Species’ criterion is included in APP2:

*Vulnerable and sensitive species*

*An area that contains sensitive habitats or species that are fragile to anthropogenic effects or have slow recovery from anthropogenic effects.*



It is also suggested that a new criterion is added under Distinctiveness:

*Vegetation, habitats, species, populations, and species assemblages that have relatively high natural productivity*

One submitter noted that Representativeness criterion (b) required its intent to be clarified and this point was also made by Wildland Consultants (2021). As written, it is not clear how this criterion could be interpreted.

### 3. APP3 – CRITERIA FOR OFFSETTING

#### 3.1 Overview

Seventeen submissions relate to the offsetting criteria in APP3 and these are evaluated in turn below.

#### 3.2 Beef and Lamb NZ and Deer Industry NZ

The submitter is not opposed to elements of APP3, but considers that it should be drafted in line with the operative NPS-IB when it is released.

##### Evaluation

As noted above, this would result in no guidance on offsetting in the Otago RPS in the interim.

#### 3.3 Fulton Hogan Ltd

The submitter notes that the offsetting criteria in APP3 are derived from good practice guidance for offsetting in New Zealand, and considers it inappropriate to translate guidance, which is less specific, into criteria.

Specifically, the submitter seeks that criterion 2 (a) addresses only the significant residual effects of an activity that cannot be avoided, remedied, or mitigated.

In addition, the submitter requests that the words ‘where practicable’ preface criterion 2 (h), which relates to the outcome of the offset to be achieved within the duration of a resource consent.

##### Evaluation

Good practice guidance of offsetting in New Zealand has been developed for offsetting practitioners<sup>1</sup>, but does not provide specific guidance for policy-makers. The criteria for offsetting in APP3 are based on consultation with the community and submitters and the outcome of an Environment Court hearing. With few exceptions, offsetting models developed in recent years for resource consent scenarios in New Zealand have not been robust and have not assisted decision-making. It is therefore important that

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<sup>1</sup> New Zealand Government 2014: Guidance on good practice biodiversity offsetting in New Zealand.

reasonably strong criteria are used to determine when offsetting is available and what it should comprise. Offsetting originally applied to significant residual adverse effects, but there are no practical reasons why offsetting cannot be applied to all residual adverse effects.

Insertion of ‘where practicable’ into criterion 2 (h) would downweight this criterion, which is a reasonable criterion in its current form. It may be difficult to enforce achievement of the offset outcome if it takes longer to achieve than the duration of the related resource consent.

### 3.4 Federated Farmers of New Zealand

The submitter requests that the offsetting criteria in APP3 are aligned with the most recently-resolved principles for offsetting.

#### Evaluation

As described above, the offsetting criteria appear to be based on consultation with the community and submitters. Offsetting principles are contained in Appendix 3 of the draft NPS-IB but these are not operative. The proposed Otago RPS first sets bottom lines relating to the loss of Threatened or At Risk taxa, and then lists criteria that an offset must meet, which are similar to those in the draft NPS-IB.

### 3.5 Contact Energy Ltd, Network Waitaki Ltd, PowerNet Ltd, Silver Fern Farms Ltd, and Aurora Energy Ltd

These submitters believe that the APP3 criteria set the threshold for offsetting too high, and consider the NPS-IB criteria to be more realistic.

#### Evaluation

The NPS-IB criteria refer to the ‘vulnerability and irreplaceability’ of biodiversity, which the bottom lines in APP3 (1) make more specific for Otago. The remaining offsetting criteria in the proposed RPS are similar to those in the draft NPS-IB.

### 3.6 Queenstown Airport Company Ltd

The submitter believes that the criteria for offsetting are too limiting, and seeks that unreasonable limits are deleted, and that the policy is amended to be consistent with best practice and national-level guidance.

#### Evaluation

The NPS-IB criteria refer to the ‘vulnerability and irreplaceability’ of biodiversity, which the bottom lines in APP3 (1) make more specific for Otago. The remaining offsetting criteria in the proposed RPS are similar to those in the draft NPS-IB.

### 3.7 Oceana Gold Ltd

The submitter is concerned that the offsetting criteria in APP3 are too restrictive, and un-necessarily limit the use of offsetting by establishing bottom lines that must be met

before offsetting can be considered. The submitter believes that offsetting approaches can be considered on their merits at the consenting stage. The submitter considers that the draft NPS-IB criteria are more realistic.

### Evaluation

The NPS-IB criteria refer to the ‘vulnerability and irreplaceability’ of biodiversity, which the bottom lines in APP3 (1) make more specific for Otago. The remaining offsetting criteria in the proposed RPS are similar to those in the draft NPS-IB.

Offsetting models used in resource consent applications to date have mostly not represented good practice, tending to use too much subjectivity in predicting gains, and using qualitative, aggregated metrics that conceal losses of indigenous biodiversity and are difficult to verify. Placing limits on the use of biodiversity offsetting is therefore warranted, to avoid it being used inappropriately when vulnerable or irreplaceable indigenous biodiversity is potentially affected.

## 3.8 Trustpower Ltd

The submitter supports the place of APP3 in the plan, but does not agree that the current wording represents best practice, and requests that it is rewritten to better align with best practice.

### Evaluation

It is not clear how the submitter wishes to have the APP3 criteria rewritten, which are similar to the criteria in the West Coast RPS.

## 3.9 Forest and Bird

The submitter seeks that the APP3 criteria for offsetting are amended, including amendments to criterion (1) (b) to include the coastal marine biogeographic area as a relevant scale for assessment. The submitter also requests that the exemption for mānuka under this criterion is removed.

The submitter also requests that an additional matter is included under (2), requiring limits to offsetting to have been observed, including where the loss of rare or vulnerable species or a naturally rare or uncommon ecosystem type makes an offset inappropriate or where there is uncertainty of success.

### Evaluation

This suggested amendment to include reference to the coastal marine biogeographic area is not supported for plan consistency reasons. The exemption for mānuka is reasonable. Loss of mānuka from an ecological district would be significant, but should be avoidable due to the propensity of this species to regenerate naturally in suitable environments. Mānuka is also very practical to propagate from seed and establish.

The proposed new clause lacks specificity with respect to rare and vulnerable species, which would be better referred to as categories of the New Zealand Threat

Classification System. In addition, loss of rare or vulnerable species or ecosystems would only count if it made the offset inappropriate, and this is arguable. Vulnerability would be better expressed as a bottom line. The proposed clause refers to uncertainty of success, but does not specify the degree of uncertainty that would trigger an offset being inappropriate. The proposed new clause is therefore not fully supported, but bottom lines for vulnerable indigenous biodiversity are reasonable.

### 3.10 Director-General of Conservation

The submitter supports the specific direction on offsetting in APP3, but considers that, to be effective, the offsetting provisions must be reasonably achievable, incentivise positive measures, and be in accord with best scientific practice. The submitter proposes that the APP3 criteria are replaced with a new set of criteria, incorporating the existing APP3 principles but adding some new limits to offsetting. The submitter suggests new bottom lines, relating to loss from an ecological district, loss of viability of a naturally rare ecosystem or fauna habitat, loss of irreplaceable indigenous biodiversity, worsening of conservation status, impractical or socially-prohibitive options, uncertainty, contradiction of anticipated results, and two criteria formatted as compensation criteria, that relate to demonstration of feasibility, and displacement of harmful activities, which do not seem to be intended as offsetting criteria.

The suggested new criteria also contain provisions that restrict ‘trading up’. Trading up is when positive actions are undertaken to benefit high value biodiversity but the impact is on lower value biodiversity.

#### Evaluation

APP3 contains bottom lines as well as principles to which offsetting should adhere. The bottom lines relate to loss of individuals of threatened taxa (excluding kānuka), and to reasonably measurable loss of At Risk-Declining taxa (excluding mānuka). The submitter’s bottom lines are much more extensive and have merit. In practice, offsetting in New Zealand has not been very constrained by limits, but this has led to offsetting approaches that adversely affect irreplaceable and vulnerable indigenous biodiversity.

Trading up does not fit well in biodiversity offsetting, because offsetting relies on like for like exchanges of impacts and positive actions. There are no metrics currently available that could evaluate like for unlike exchanges, so trading up relies on subjective opinion and societal preferences (Maseyk *et al.* 2018). Controls on trading up are better placed in APP4 which deals with compensation.

### 3.11 Dunedin City Council

The submitter believes that the APP3 criteria require amendment. In particular the term ‘reasonably measurable’ in (1) (b) needs to be defined. The submitter suggests amendment of criterion (2) (f) so that the words ‘beyond results’ are replaced by ‘that are demonstrably additional to those’.

### Evaluation

Both of these points have merit. It is not clear what additional certainty the word 'reasonably' provides in (1) (b), and the suggested amendment to (2) (f) is supported as it provides more clarity to the meaning of the criterion.

### 3.12 Meridian Energy

The submitter believes that the APP3 criteria require amendment. In particular the term 'reasonably measurable' in (1) (b) should have the word 'reasonably' deleted. The submitter also suggests that 'biodiversity' is replaced by 'indigenous biodiversity', that offsetting addresses 'significant' residual effects, that the word 'positive' is deleted from clause (e), suggests an amendment to improve the 'additionality' clause, and that clause (g) refers to the best 'practicable' outcome.

### Evaluation

Removal of the word 'reasonably' in (1) (b) is supported. Replacing 'biodiversity' with 'indigenous biodiversity' does not appear necessary as the subsequent clauses make clear that indigenous biodiversity is the focus. Offsetting was originally conceived as relating to significant residual effects, but there are no practical reasons why it cannot address all residual effects. Removal of the word 'positive' from clause (e) is not supported, as offsetting outcomes could be positive or negative, and it is only the positive outcomes that that should endure for long timeframes. The submitters concerns about the additionality clause are supported, and addressed under similar concerns from the Dunedin City Council. The suggestion that clause (g) relates to the best 'practicable' outcomes is supported, as possible outcomes that are not practicable have little utility in this context.

### 3.13 Otago Fish and Game Council

The submitter believes that the APP3 offsetting criterion (2) should include specific reference to the habitat of trout and salmon where consistent with a new ECO-P11.

### Evaluation

A different approach - known as the Stream Ecological Valuation (SEV; Quinn *et al.* 2011) - is used for offsetting adverse effects on freshwater habitats in other parts of New Zealand. This could be assessed for use when offsetting adverse effects on the habitats of trout and salmon.

### 3.14 Te Ao Marama

The submitter requests that the APP3 (1) (b) exception for mānuka and kānuka is removed.

## Evaluation

The submitter refers to both mānuka and kānuka, but only to APP3 (1) (b), which applies only to mānuka. The threat classifications for all Myrtaceae, including mānuka and species of kānuka, were raised as a precautionary approach due to the threat posed by myrtle rust (*Austropuccinia psidii*). All species of kānuka are now classified as Threatened, and mānuka is classified as At Risk – Declining (de Lange *et al.* 2018). The two species of kānuka in Otago (*Kunzea robusta* and *K. serotina*) have unknown susceptibility to myrtle rust, while mānuka is known to be susceptible<sup>1</sup>. Myrtle rust has been recorded as far south as Christchurch and Hokitika and but to date has not been recorded in Otago<sup>2</sup>. Therefore the elevated threat status of mānuka and kānuka trigger the bottom lines in APP3, but the reason for the elevated threat status does not apply in Otago. The loss of any individuals of kānuka would not necessarily be significant, and there would be practical options for offsetting such loss given the ability of this species to regenerate naturally in suitable environments and the ease of propagating and planting kānuka.

### 3.15 Suggested changes to APP3 criteria

Poor offsetting practice has frequently been used in New Zealand, and for this reason it is important to have clearly defined limits to offsetting in regional plans.

Dunedin City Council suggested that ‘reasonably measurable’ needed further definition, and Meridian Energy agreed it could be expressed more simply without the word ‘reasonably’. With removal of ‘reasonably’, Criterion (1) (b) could read.

*(b) Measurable loss within the ecological district to an At Risk-Declining taxon, other than manuka (Leptospermum scoparium), under the New Zealand Threat Classification System (Townsend et al, 2008)*

Dunedin City Council also submitted that for criterion (2) (f), the words ‘beyond results’ are replaced by ‘that are demonstrably additional to those’ and this is supported. An amended criterion incorporating this change would read:

*(f) the offset achieves biodiversity outcomes that are demonstrably additional to those that would have occurred if the offset was not proposed.*

The Director-General of Conservation submitted a comprehensive list of offsetting criteria that incorporate and add to the proposed APP3 criteria. These are more robust than the proposed APP3 criteria. The Director-General of Conservation criteria do not support exceptions for mānuka or kānuka, which is an outcome sought by other submitters, but as explained above, exceptions for these species are warranted.

As noted above, poor offsetting practice has often been used in New Zealand. APP3 could therefore provide more prescriptive guidance to offsetting, particularly with

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<sup>1</sup> <https://www.myrtlerust.org.nz/assets/Uploads/Suseptible-MR-Species.pdf>

<sup>2</sup>

<https://plantandfood.maps.arcgis.com/apps/webappviewer/index.html?id=db12ae762a0a4e3eb8c61b1f67120c3b>

respect to choice of offsetting attributes, and how their condition is assessed. This could include:

- Objective counts and measures should be used wherever possible
- All high value species or vegetation types should be included as components.
- High value components should be disaggregated, so that no trade-offs between them can occur.

High value species and vegetation/habitat types have been defined by Wildland Consultants (2012), and include:

- Naturally uncommon ecosystems
- Wetlands and indigenous sand dune vegetation
- Important indigenous fauna habitats
- Species classified as Threatened or At Risk-Declining
- Species with important ecosystem functions, for example pollination, seed dispersal, and provision of fauna habitat.

A definition should be provided for ‘high value species and ecosystems’

An integrated criteria set, based on the criteria suggested by the Director-General of Conservation, is provided below, that:

- Provides more specificity for the additionality principle.
- Provides more specificity on choice of offsetting attributes
- Retains the exemptions for mānuka and kanuka

(1) *Biodiversity* offsetting is not available for an<sup>1</sup> ~~if the~~ activity that<sup>2</sup> will result in:

- (a) the loss from an ecological district<sup>3</sup> of any individuals of Threatened *taxa*, other than kānuka (*Kunzea robusta* and *Kunzea serotina*), under the New Zealand Threat Classification System (Townsend et al, 2008), or
- (b) ~~reasonably~~<sup>4</sup> measurable loss within an ecological district to an At Risk-Declining *taxon*, other than manuka (*Leptospermum scoparium*), under the New Zealand Threat Classification System (Townsend et al, 2008), or
- (c) the worsening of the conservation status of any indigenous biodiversity as listed under the New Zealand Threat Classification System (Townsend et al, 2008), or<sup>5</sup>
- (d) the removal or loss of viability of a naturally uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna, or<sup>6</sup>

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<sup>1</sup> Consequential change to 00137.158 DOC

<sup>2</sup> Consequential change to 00137.158 DOC

<sup>3</sup> Consequential change to 00137.158 DOC

<sup>4</sup> 00306.082 Meridian Energy, 00139.139 Dunedin City Council

<sup>5</sup> 00137.158 DOC

<sup>6</sup> 00137.158 DOC

(e) the loss (including cumulative loss) of irreplaceable or vulnerable indigenous biodiversity.<sup>1</sup>

(2) *Biodiversity* offsetting may be ~~is~~<sup>2</sup> available if the following criteria are met:

- (a) the offset addresses residual adverse *effects* that remain after implementing the sequential steps required by ECO-P6(1) to (3),
- (b) the proposal demonstrates that<sup>3</sup> the offset can reasonably<sup>4</sup> achieves<sup>5</sup> no net loss and preferably a net gain in indigenous *biodiversity*, as measured by type, amount and condition at both the impact and offset sites using an explicit loss and gain calculation,
- (c) the offset is undertaken where it will result in the best ecological outcome, and is preferably as the first priority ~~be~~<sup>6</sup>:
  - (i) close to the location of the activity, and
  - (ii) within the same ecological district<sup>7</sup> ~~or coastal marine biogeographic region~~<sup>8</sup>,
- (d) the offset is applied so that the ecological values being achieved are the same or similar to those being lost,
- (e) the positive ecological outcomes of the offset endure at least as long as the impact of the activity and preferably in perpetuity,
- (f) the proposal demonstrates that the offset achieves *biodiversity* outcomes ~~beyond results that are clearly additional to those~~<sup>9</sup> that would have occurred if the offset was not proposed, and are additional to any remediation or mitigation undertaken in relation to the adverse effects of the activity.<sup>10</sup>
- (g) the time delay between the loss of *biodiversity* and the gain or maturation of the biodiversity outcomes of the ~~realisation of the~~<sup>11</sup> offset is the least necessary to achieve the best possible outcome,
- (h) the outcome of the offset is achieved within the duration of the *resource consent*, and
- (i) any offset developed in advance of an application for *resource consent* must be shown to have been created or commenced in anticipation of the specific *effect* of the proposed activity and would not have occurred if that *effect* was not anticipated.

(3) Biodiversity offsetting proposed in any application for resource consent, plan change or notice of requirement, must address all matters in APP3(2), and:

- (a) use objective counts and measures wherever possible,
- (b) include high value species or vegetation types as components,

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<sup>1</sup> 00137.158 DOC

<sup>2</sup> Consequential change to 00137.158 DOC

<sup>3</sup> 00137.158 DOC

<sup>4</sup> 00137.158 DOC

<sup>5</sup> 00137.158 DOC

<sup>6</sup> 00137.158 DOC

<sup>7</sup> 00138.027 QLDC

<sup>8</sup> 00237.007 Beef & Lamb NZ and Deer Industry NZ, 00137.016 Director-General of Conservation, 00226.035 Kāi Tahu ki Otago / Aukaha, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Royal Forest and Bird Protection Society of New Zealand Incorporated

<sup>9</sup> 00139.139 Dunedin City Council

<sup>10</sup> 00137.158 DOC

<sup>11</sup> 00137.158 DOC



- (c) disaggregate components of high value species and vegetation types, so that no trade-offs between them can occur,
- (d) evaluate the ecological context, including the interactions between species, habitats and ecosystems, spatial connections and ecosystem function at the impact site and offset site,
- (e) include consideration of matauranga Māori, and
- (f) include a separate biodiversity offset management plan prepared in accordance with good practice and which incorporates a monitoring and evaluation regime.<sup>1</sup>

This integrated APP3 criteria set is comprehensive and robust and could be used to replace the current APP3 criteria set.

## 4. APP4 –CRITERIA FOR COMPENSATION

### 4.1 Overview

Sixteen submissions relate to the compensation criteria in APP4 and these are evaluated in turn below.

### 4.2 Beef and Lamb NZ and Deer Industry NZ

The submitter is not opposed to elements of APP4, but considers it should be drafted in line with the operative NPS-IB when it is released.

As noted above, this would result in no guidance on compensation in the Otago RPS in the interim.

### 4.3 Fulton Hogan Ltd

The submitter has similar concerns as those relating to the offsetting criteria. The submitter considers it inappropriate to translate guidance, which is less specific, into criteria.

The submitter seeks that the criterion 2 (a) addresses only the significant residual effects of an activity that cannot be avoided, remedied, or mitigated.

In addition, the submitter requests that the words ‘where practicable’ preface criterion 2 (f), which relates to the outcome of the offset being achieved within the duration of the resource consent.

#### Evaluation

The criteria for offsetting in APP4 are based on consultation with the community and submitters and an Environment Court decision. With few exceptions, compensation models developed in recent years for resource management scenarios in New Zealand

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<sup>1</sup> 00137.158 DOC

have not been robust and have not assisted decision-making. It is therefore important that reasonably strong criteria are used to determine when compensation is available.

There are no practical reasons why compensation cannot be applied to all residual adverse effects.

Insertion of the words ‘where practicable’ to criterion 2 (f) would downweight this criterion, which is a reasonable criterion. It may be difficult to enforce achievement of the offset outcome if it takes longer to achieve than the duration of the consent.

#### 4.4 Meridian Energy Ltd

The submitter has similar concerns as those relating to the offsetting criteria. These include referring to ‘indigenous biodiversity’ throughout APP4, not requiring a reference to ‘indigenous vegetation and habitats’ in clause 1 (c), correcting an incorrect reference to ECO-P5, deleting the word ‘positive’ from clause 2 (c), and the best ‘practicable’ outcome is referred to in clause 2 (e).

##### Evaluation

Indigenous biodiversity doesn’t need to be specified in general in APP4, as the subsequent clauses focus on indigenous biodiversity. Removal of ‘indigenous vegetation and habitats’ from clause 1 (c) is not supported, as only those naturally uncommon ecosystem types that support indigenous vegetation and habitat are relevant in this context. Positive outcomes do need to be specified in clause 2 (c), as negative outcomes are also possible. Replacing ‘possible’ with ‘practicable’ in clause 2 (e) is supported, as the best possible outcomes may not be practicable.

#### 4.5 Federated Farmers of New Zealand

The submitter requests that the compensation criteria in APP4 are aligned with the most recently-resolved offsetting principles.

##### Evaluation

As described above, the compensation criteria appear to be based on consultation with the community and submitters. Compensation principles are contained in Appendix 4 of the draft NPS-IB but these are not operative. The proposed Otago RPS first sets bottom lines relating to loss of an indigenous taxa, Threatened or At Risk taxa, naturally rare or uncommon ecosystem, or worsening of the conservation status of a taxon, and then lists criteria that compensation must meet, which are similar to those in the draft NPS-IB.

#### 4.6 Contact Energy Ltd, Network Waitaki Ltd, and PowerNet Ltd

These submitters suggest that the APP4 criteria set the threshold for compensation too high, and consider the NPS-IB criteria to be more realistic. In particular, the submitters request that the clause 1 limits should be deleted if the criteria are not aligned with those in the NPS-IB.

### Evaluation

The NPS-IB compensation criteria refer to the ‘vulnerability and irreplaceability’ of biodiversity, which the bottom lines in APP4 (1) make more specific to Otago. These bottom lines are also similar to the relevant bottom lines in the West Coast RPS. The remaining compensation criteria in the proposed RPS are similar to those in the draft NPS-IB.

#### 4.7 Queenstown Airport Company Ltd

The submitter believes that the APP4 criteria for compensation are too limiting, and seek that unreasonable limits are deleted, and that the policy is amended to be consistent with best practice and national guidance.

### Evaluation

The NPS-IB criteria refer to the ‘vulnerability and irreplaceability’ of biodiversity, which the bottom lines in APP4 (1) make more specific for Otago. The remaining compensation criteria in the proposed RPS are similar to those in the draft NPS-IB.

#### 4.8 Oceana Gold Ltd

The submitter is concerned that the compensation criteria in APP4 are too restrictive, and un-necessarily limit the use of compensation. The submitter considers that the draft NPS-IB criteria are more realistic. The submitter notes a case involving the destruction of habitat of At Risk lizards, which would be inconsistent with the APP4 criteria, but where all experts agreed that the compensation package was acceptable.

### Evaluation

The reference to At Risk species in offsetting criterion (1) (b) does represent a relatively low threshold. This is particularly an issue where national threat classifications classify species that are common in Otago as At Risk, for example matagouri. Consideration could be given to limiting criterion 1b to Threatened taxa.

#### 4.9 Trustpower Ltd

The submitter supports the place of APP4 in the plan, but does not agree that the current wording represents best practice, and requests that it is rewritten to better align with best practice.

### Evaluation

It is not clear how the submitter wishes to have the APP4 criteria rewritten, which are currently similar to the criteria in the West Coast RPS.

#### 4.10 Forest and Bird

The submitter seeks that the APP4 criteria for compensation are amended, specifically amendments to criterion (1) (c) so that it does not read ‘removal or loss of viability of

a naturally rare or common ecosystem’, but instead reads ‘removal, loss or decline in the quality of a naturally rare or uncommon ecosystem’.

The submitter also requests that an additional matter is included under (2), requiring limits to offsetting to have been observed, including where the loss of rare or vulnerable species or a naturally rare or uncommon ecosystem type makes an offset inappropriate or where there is uncertainty of success.

### Evaluation

It is agreed that the reference to ‘viability’ in the proposed criterion is problematic, but ‘decline in the quality’ is arguably equally problematic. Under the proposed Policy ECO-P8(2), the ‘health and resilience’ of indigenous biodiversity is referred to, and it is suggested that offsetting criterion (1) (c) is amended to refer to ‘removal or loss of the health or resilience of a naturally rare or uncommon ecosystem’.

The proposed new clause lacks specificity with respect to rare and vulnerable species, which would be better referred to as categories of the New Zealand Threat Classification System. In addition, loss of rare or vulnerable species or ecosystems would only count if it made the offset inappropriate, and this is arguable. Vulnerability would be better expressed as a bottom line. The proposed clause refers to uncertainty of success, but does not specify the degree of uncertainty that would trigger an offset being inappropriate. The proposed new clause is therefore not fully supported, but bottom lines for vulnerable indigenous biodiversity are reasonable.

## 4.11 Director-General of Conservation

The submitter supports the specific direction on compensation in APP4 but considers that, to be effective, the compensation provisions must be reasonably achievable, incentivise positive measures, and be in accord with best scientific practice. The submitter proposes that the APP4 criteria are replaced with a new set of criteria, incorporating the existing APP4 principles but adding new limits to compensation. The submitter suggests new bottom lines, relating to loss from an ecological district, loss of viability of a naturally rare ecosystem or fauna habitat, loss of irreplaceable indigenous biodiversity, worsening of conservation status, impractical or socially-prohibitive options, uncertainty, contradiction of anticipated results, demonstration of feasibility, and displacement of harmful activities.

The suggested new criteria also contain provisions that restrict ‘trading up’. Trading up is when positive actions are undertaken to benefit high value biodiversity but the impact is on lower value biodiversity. The submitter suggests that trading up should be restricted to species that are not classified as Threatened, At Risk, or Data Deficient.

### Evaluation

APP4 contains bottom lines as well as principles which compensation should adhere to. The four bottom lines relate to loss of an indigenous taxon from an ecological district, removal or loss of viability of habitat of a Threatened or At Risk species, removal or loss of viability of a naturally rare or uncommon ecosystem, or worsening

of conservation status. The submitter's bottom lines are more extensive, but have a lower threshold for habitat of Threatened and At Risk species, yet have merit. Compensation in New Zealand has not been very constrained by limits, and this has led to compensation approaches that, overall, adversely affect irreplaceable and vulnerable indigenous biodiversity.

Restricting trading up to Not Threatened species narrows its scope considerably. Some At Risk species, for example matagouri (*Discaria toumatou*), are widespread in Otago and trading up would likely be accepted to address impacts on it. It is suggested that this restriction relating to species is removed, but the values lost should not be vulnerable or irreplaceable.

#### 4.12 Aurora Energy Ltd

The submitter believes that the APP4 criteria set the threshold for compensation too high, and considers the NPS-IB criteria to be more realistic.

##### Evaluation

The NPS-IB compensation criteria refer to the 'vulnerability and irreplaceability' of biodiversity, which the bottom lines in APP4 (1) make more specific for Otago. These bottom lines are also similar to the relevant bottom lines in the West Coast RPS. The remaining compensation criteria in the proposed RPS are similar to those in the draft NPS-IB.

#### 4.13 Dunedin City Council

The submitter believes that the APP4 criteria should be amended. In particular, the term 'enduring' in (2) (d) should be replaced by 'maintained in perpetuity'

##### Evaluation

'Maintained in perpetuity' is much stronger than 'enduring'. BBOP Principle 8<sup>1</sup> refers to long term outcomes that are at least as long as the project's impacts, and preferably in perpetuity. The criterion could be reframed accordingly.

#### 4.14 Otago Fish and Game Council

The submitter suggests the Policy ECO-P6 is the correct reference for APP4 (2) (a), rather than ECO-P5.

##### Evaluation

This does seem to be the case and compensation criterion (2) (a) should be amended to refer to ECO-P6.

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<sup>1</sup> [https://www.forest-trends.org/wp-content/uploads/2018/10/The-BBOP-Principles\\_20181023.pdf1023.pdf](https://www.forest-trends.org/wp-content/uploads/2018/10/The-BBOP-Principles_20181023.pdf1023.pdf)  
([forest-trends.org](https://www.forest-trends.org))

#### 4.15 Suggested changes to APP4 criteria

A submitter requested that criterion (1) (b) is amended to create a higher threshold, and this is supported given that some At Risk species are very common in Otago. An amended criterion could read:

*(a) removal or loss of viability of habitat of a Threatened indigenous species of fauna or flora under the New Zealand Threat Classification System (Townsend et al, 2008)*

Another submitter requested that ‘viability’ in Criterion (1) (c) is replaced with more specific text:

*(c) removal or loss of health or resilience of a naturally rare or uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna*

Another submitter requested a change to Criterion (2) (d) to make ‘enduring’ more specific. This suggestion has merit, and an amended Criterion (2) (d) could read:

*(d) the positive biodiversity outcomes of the compensation are at least as long as the project’s impacts, and preferably maintained in perpetuity*

The Director-General of Conservation’s suggestion for a new criteria set including and expanding on the proposed APP4 criteria set, if integrated with the above suggestions, could read:

- (1) *Biodiversity* compensation is not available ~~if the~~ for an<sup>1</sup> activity that<sup>2</sup> will result in:
- (a) the loss ~~from an ecological district~~<sup>3</sup> of an indigenous *taxon* (excluding *freshwater* fauna and flora) or of any ecosystem type ~~from an ecological district or coastal marine biogeographic region,~~<sup>4</sup>
  - (b) removal or loss of viability of the<sup>5</sup> habitat of a Threatened ~~or At Risk~~<sup>6</sup> indigenous species of fauna or flora under the New Zealand Threat Classification System (Townsend et al, 2008),

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<sup>1</sup> Consequential change from 00137.158 DOC

<sup>2</sup> Consequential change from 00137.158 DOC

<sup>3</sup> 00138.027 QLDC, and consequential change from 00137.158 DOC

<sup>4</sup> 00237.007 Beef & Lamb NZ and Deer Industry NZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Royal Forest and Bird

<sup>5</sup> Clause 16(2), Sch 1 RMA

<sup>6</sup> 00115.022 Oceana Gold

- (c) removal or loss of ~~viability~~ health and resilience<sup>1</sup> of a ~~naturally rare or naturally~~<sup>2</sup> uncommon ecosystem type that is associated with *indigenous vegetation*<sup>3</sup> or habitat of indigenous fauna, ~~or~~<sup>4</sup>
- (d) worsening of the conservation status of any Threatened or At Risk indigenous biodiversity listed under the<sup>5</sup> New Zealand Threat Classification System (Townsend et al, 2008), ~~conservation status of any Threatened or At Risk indigenous fauna.~~<sup>6</sup> or<sup>7</sup>
- (e) the loss (including through cumulative loss) of irreplaceable or vulnerable indigenous biodiversity.<sup>8</sup>

(2) *Biodiversity* compensation may be<sup>9</sup> available if the following criteria are met:

- (a) compensation addresses only residual adverse effects that remain after implementing the sequential steps required by ECO-P65(1) to (4),
- (b) compensation is undertaken where it will result in the best ecological outcome and preferably:
  - (i) close to the location of the activity, ~~and~~<sup>10</sup>
  - (ii) within the same ecological district<sup>11</sup> ~~or coastal marine biogeographic region~~<sup>12</sup>, ~~and~~<sup>13</sup>
  - (iii) delivers indigenous biodiversity gains on the ground.<sup>14</sup>
- (ba) where criterion (2)(b)(iii) is not met any financial contributions considered must be directly linked to a specific indigenous biodiversity gain or benefit.<sup>15</sup>
- (c) compensation achieves positive *biodiversity* outcomes that would not have occurred without that compensation, and are additional to any remediation, mitigation or offset undertaken in response to the adverse effects of the activity.<sup>16</sup>
- (d) the positive *biodiversity* outcomes of the compensation are enduring and are commensurate with the biodiversity values lost<sup>17</sup>,

<sup>1</sup> 00230.149 Royal Forest and Bird

<sup>2</sup> Consequential to 0137.014 DOC

<sup>3</sup> Clause 16(2), Sch 1 RMA

<sup>4</sup> Clause 16(2), Sch 1 RMA

<sup>5</sup> 00137.158 DOC

<sup>6</sup> 00137.158 DOC

<sup>7</sup> Clause 16(2), Sch 1 RMA

<sup>8</sup> 00137.158 DOC

<sup>9</sup> 00137.158 DOC

<sup>10</sup> 00137.158 DOC

<sup>11</sup> 00158.027 QLDC

<sup>12</sup> 00237.007 Beef & Lamb NZ and Deer Industry NZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Royal Forest and Bird

<sup>13</sup> 00137.158 DOC

<sup>14</sup> 00137.158 DOC

<sup>15</sup> 00137.158 DOC

<sup>16</sup> 00137.158 DOC

<sup>17</sup> 00137.158 DOC

- (e) the time delay between the loss of *biodiversity* through the proposal at the impact site<sup>1</sup> and the gain or maturation of the compensation's<sup>2</sup> *biodiversity* outcomes from the compensation<sup>3</sup>, is the least necessary to achieve the best possible ecological<sup>4</sup> outcome,
- (f) the outcome of the compensation is achieved within the duration of the *resource consent*,
- (fa) when trading up forms part of biodiversity compensation, the proposal must demonstrate the indigenous biodiversity values gained are demonstrably of higher indigenous biodiversity value than those lost, or considered vulnerable or irreplaceable.<sup>5</sup>
- (g) *biodiversity* compensation developed in advance of an application for *resource consent* must be shown to have been created or commenced in anticipation of the specific *effect* of the proposed activity and would not have occurred if that *effect* was not anticipated, and
- (h) the *biodiversity* compensation is demonstrably achievable.

(3) Biodiversity compensation proposed in any application for resource consent, plan change or notice of requirement, must address all matters in APP4 (2), and:

- (a) evaluate the ecological context, including the interactions between species, habitats and ecosystems, spatial connections and ecosystem function at the impact site and compensation site,
- (b) include consideration of matauranga Māori, and
- (c) include a separate biodiversity compensation management plan prepared in accordance with good practice and which incorporates a monitoring and evaluation regime.<sup>6</sup>

This integrated APP4 criteria set is comprehensive and robust and could be used to replace the current APP4 criteria set.

## 5. OTHER ADVICE

### 5.1 Definition of indigenous species

The Aotearoa Biodiversity Strategy defines indigenous species as:

*Indigenous species refers to species that occur naturally in Aotearoa New Zealand*

For the Otago RPS, a narrower definition would be more appropriate, as there are indigenous species from elsewhere in Aotearoa New Zealand that do not occur naturally in Otago. A suitable definition could be:

*Indigenous species refers to species that occur naturally in Otago.*

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<sup>1</sup> 00137.158 DOC

<sup>2</sup> 00137.158 DOC

<sup>3</sup> 00137.158 DOC

<sup>4</sup> 00137.158 DOC

<sup>5</sup> 00137.158 DOC

<sup>6</sup> 00137.158 DOC



## 5.2 Preferred definition for ‘naturally rare’

The terms ‘historically rare’, ‘originally rare’, ‘naturally rare’, and ‘naturally uncommon’ are synonymous and all refer to ecosystems that were naturally uncommon in Aotearoa New Zealand prior to the arrival of humans.

More recently, the term ‘naturally uncommon’ has been used, and is probably the most suitable term to use in APP4.

## 5.3 ECO-01 Indigenous biodiversity

The current wording of Objective ECO-01 reads:

*Otago’s indigenous biodiversity is healthy and thriving and any decline in quality, quantity and diversity is halted.*

Use of the word ‘quality’ is problematic as this term may be interpreted in different ways, and would be hard to verify. It is suggested that the term ‘condition’ is used instead, as condition can be measured by assessment of structure and composition.

If ‘decline’ was amended to ‘net decline’, this would allow the condition, quantity, and diversity of indigenous biodiversity to decline in some way but be offset by an improvement in another way, so overall, there was no net decline. It is probably more practical to use ‘net decline’ as there is no doubt that the condition, quantity, and diversity of indigenous biodiversity is declining in many parts of Otago, while ecological restoration projects are improving the condition, quantity, and diversity of indigenous biodiversity in other areas.

It is noted that Objective ECO 02 refers to a net increase, which similarly suggests that decrease will be balanced by a greater increase.

A revised objective could read:

*Otago’s indigenous biodiversity is healthy and thriving and any net decline in condition, quantity, and/or diversity is halted*

## 5.4 ECO-02 Restoring or enhancing

The current wording of Objective ECO-02 is:

*A net increase in the extent and occupancy of Otago’s indigenous biodiversity results from restoration or enhancement.*

The Regional Council has queried the utility and meaning of the term ‘occupancy’ in this policy. The term ‘Extent’, as used in the objective, would refer to the outer limits of the distribution of a biodiversity feature, while occupancy would refer to how much of the extent was occupied by the biodiversity feature. For example, the range within Otago of a species would measure its extent, while the number and distribution of populations or records of that species would measure its occupancy. Ecologically, occupancy is often measured as the number of grid squares occupied by a species within

its range. Occupancy therefore complements extent and both terms should be used in Objective ECO-02.

## 5.5 ECO-P2 Identifying significant natural areas and taoka

Policy ECO-P2 (1) relates to the identification of areas and values of significant natural areas in accordance with APP2. The Regional Council wishes to know if verification should be included in ECO-P2, and what would the value be of including this.

Identification of SNAs is primarily the role of district councils and their performance has been quite uneven in Otago (Wildland Consultants 2017). It is assumed that verification would require district councils to publish information on SNAs scheduled in district plans, and on annual progress towards having comprehensive schedules of SNAs. The condition of SNAs should also be monitored by assessment of whether their significant values persist. This kind of verification would be more appropriate as a Method.

## 5.6 ECO-P3 Protecting significant natural areas

Policy ECO-P3 (1) (a) reads:

- (1) avoiding adverse effects that result in:*  
*(a) any reduction of the area or values (even if those values are not themselves significant) identified under ECO-P2(1), or*

The Regional Council wishes to know what the implications would be of using the term 'net loss' instead of 'any reduction'.

This is similar to the issue raised with Objective ECO-01. If the term 'net loss' was used, this would allow remediation, mitigation, offsetting, or compensation for that loss through actions that were positive for SNAs. For example, if the area of an SNA was to be reduced, it would be balanced by an increase in area. The use of 'net loss' would mean that remediation, mitigation, offsetting, and compensation would be available to address any loss to SNA area or other values. Policies ECO-P4 enable the mitigation hierarchy to be applied to effects management in SNAs for specific activities. If the term 'net loss' was to be used in ECO-P3, this would enable all activities to access the mitigation hierarchy rather than avoid adverse effects. This would therefore weaken the policy.

## 5.7 ECO-P4 Provision for new activities

Policy ECO-P4 provides access to the mitigation hierarchy to address effects in SNAs, for nationally and regionally significant infrastructure, papakāika, marae and ancillary facilities on Māori land, use of Māori land which would make a significant contribution to the wellbeing of takata whenua, ecological restoration activities, and public health or safety activities.

The Regional Council wishes to know if in addition, there would be any ecological justification for providing a specific pathway for mineral extraction in SNAs, or

whether new activities could be allowed in SNAs provided that the ecological integrity of the SNA was maintained.

Mineral extraction, particularly open-cast mining, has the potential to generate significant adverse effects on the ecological values and areas of SNAs, and these would often require offsetting or compensation. As noted earlier in this report, the quality of offsetting and compensation approaches has often been very poor in New Zealand. As such, there would be a significant risk in providing a specific pathway for kinds of mineral extraction that cannot avoid, remedy, or mitigate adverse effects on SNA values and areas.

Oceana Gold Ltd raises a number of concerns about this. In Otago, the company currently operates in the Macraes Ecological District, which is a ‘hotspot’ for Threatened and At Risk plant species. Wildland Consultants assisted Waitaki District Council with surveys of prospective SNAs in Macraes Ecological District, but these are yet to be scheduled in the Waitaki District Plan. The areas Wildlands assessed as SNAs in Macraes Ecological District are mostly relatively small, discrete areas, and collectively cover only a small part of the ecological district. Many landholders refused to provide access for SNA surveys, and no surveys were undertaken on land owned by Oceana Gold. SNAs were assessed as the best remaining sites for indigenous biodiversity on the properties surveyed, and as such is it not likely that adverse effects of mining on these significant values could be easily mitigated, offset, or compensated. The Deepdell North Stage III project, which the submitter notes was consented, did not affect any SNAs.

Federated Farmers seeks that other new activities are provided for within ECO-P4 where they would be consistent with retaining the ecological integrity of the SNA. The key values of SNAs that need to be maintained are the significant values; ‘ecological integrity’ does not translate very well to significant values, so if a new activity pathway was allowed within SNAs, that maintained ecological integrity, this would not protect significant values.

## 5.8 ECO-P6 Maintaining indigenous biodiversity

Policy ECO-P6 requires the mitigation hierarchy to be applied, and if residual adverse effects cannot be offset or compensated for, then the activity should be avoided. The ecological justification for this approach is that it will require potential adverse effects on irreplaceable and vulnerable indigenous biodiversity to be avoided, and this is consistent with the principles of biodiversity offsetting. The policy complements the limits to offsetting and compensation that are expressed in APP3 and APP4.

## 5.9 ECO-P8 Enhancement

Policy ECO-P8 Enhancement has clause (2) which reads:

*(1) improving the health and resilience of indigenous biodiversity, including ecosystems, species, important ecosystem function, and intrinsic values*

The Regional Council wishes to know if the addition of ‘intrinsic values’ to the policy improves how the health and resilience can be measured.

‘Intrinsic values’ are defined in the RMA as:

*In relation to ecosystems, means those aspects of ecosystems and their constituent parts which have value in their own right, including:*

- (a) their biological and genetic diversity*
- (b) the essential characteristics that determine an ecosystem’s integrity, form, function, and resilience.*

Use of the term ‘intrinsic values’ would therefore improve how health and resilience can be measured, by specifying biological and genetic diversity and essential characteristics, which are the building blocks of ecosystem integrity, form, function, and resilience.

#### 5.10 The appropriateness of including trout and salmon in policies relating to indigenous biodiversity

Policies that generally aim to maintain, enhance, or restore freshwater habitats have the potential to benefit both indigenous freshwater biodiversity and exotic trout and salmon. Hence specific reference to trout and salmon is not needed in such policies.

Trout and salmon are predators that can have major adverse effects on indigenous freshwater biota (for example, many endangered inland galaxiid fish species are now restricted to streams that do not have salmonid fish). Policy should therefore focus on the protection of indigenous freshwater biodiversity above protection of the habitats of trout or salmon.

## ACKNOWLEDGMENTS

Melanie Hardiman, Lisa Hawkins, and Anita Dawe of Otago Regional Council are thanked for providing helpful links to submissions and policy that facilitated the compilation of this report.

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Document Id: A1602589

## MEMORANDUM

**To:** Melanie Hardiman  
**From:** Dr Scott Jarvie and Ciaran Campbell  
**Date:** 09/02/2022  
**Re:** Ecological advice on threatened species for pORPS21 ECO—O1

---

Melanie Hardiman requested ecological advice on pORPS21 ECO—O1 focusing specifically on two clauses in the Director-General of Conservation’s submission relating to threatened species (Objective ID: A1594802). This memo is in response to that request.

To assess whether the existing wording of ECO—O1 adequately applies to threatened species, we note two tools have been commonly used to assess the threat status of New Zealand’s indigenous species that define threatened species. The New Zealand Threat Classification System (NZTCS) is the most widely used tool to assess the risk of population decline and extinction risk of species. Experts assign a threat of extinction status in the NZTCS through a Department of Conservation-led process at the national scale. The NZTCS is similar to the International Union for Conservation of Nature (IUCN) Red List of Threatened Species, which shows trends in extinction risk for species globally.

In this response, we follow the recent direction in New Zealand policy by focussing on the NZTCS (e.g., National Policy Statement for Freshwater Management 2020). We also use the term 'species' for consistency with the Director-General of Conservation. However, we note that our usage of species is synonymous with the term 'taxa' in the NZTCS when referring to species, subspecies, varieties and forms, regardless of formal taxonomic status.

In the context of ECO—O1, the wording “Otago’s indigenous biodiversity” should capture all indigenous ecosystems and species found in the Otago region. The wording is inclusive for indigenous species, regardless of their threat classification.

The Director-General of Conservation has suggested two clauses specifically focusing on threat classification of species. In our opinion, the threat classifications of species, i.e., their statuses, are not an ecologically appropriate measure for inclusion in ECO—O1, with reasons including:

- The threat status for each species is assessed at a national scale by an expert panel through the NZTCS process. This means the threat status for indigenous species in Otago may not depend on what happens in Otago.

- The threat status of a species is subject to change through amendments to the NZTCS process. This means that changes in the threat status for indigenous species in Otago may not depend on what happens in Otago.
- The threat status of a species in the NZTCS may be affected by taxonomic revisions. Such revisions could affect threat statuses of species in Otago.

In summary, we reiterate: 1) the existing wording in ECO—O1 can apply to threatened species in Otago, and 2) the two clauses on threat classifications of species proposed by the Director-General of Conservation are not ecologically appropriate for ECO—O1, as highlighted in the reasons above.



**From:** [Kelvin Lloyd](#)  
**To:** [Melanie Hardiman](#)  
**Cc:** [Lisa Hawkins](#)  
**Subject:** RE: draft Wildlands report  
**Date:** Tuesday, 29 March 2022 7:49:08 p.m.  
**Attachments:** [image002.png](#)

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Kia ora Melanie

I'm away for the rest of this week doing field work but catching up with emails in the evenings.

That definition doesn't look quite right, it is a definition for an increase in occupancy.

Occupancy could be defined as 'the number of sites occupied in Otago'

So ECO-O2 would aim for a net increase in the number of sites occupied in Otago, and it would have a similar meaning for ECO-P8.

This wouldn't directly relate to population size, but in general, if there were more sites occupied, populations would be increasing.

Regards  
Kelvin

---

—  
Kelvin Lloyd Principal Ecologist

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**From:** Melanie Hardiman <Melanie.Hardiman@orc.govt.nz>

**Sent:** Tuesday, 29 March 2022 10:55 am

**To:** Kelvin Lloyd [REDACTED]

**Cc:** Lisa Hawkins <Lisa.Hawkins@orc.govt.nz>

**Subject:** RE: draft Wildlands report

Mōrena Kelvin,

Thank you for this piece of work as it is integral for completing the s42a report. I also really

appreciate you coming in at such short notice to help.

I do have one more question regarding the term 'occupancy'. It has been recommended to define 'occupancy' as: *Means that the species that are naturally present in Otago occupy a greater number of sites and/or larger population numbers are present.*

Do you think that using this definition for occupancy is correct and that it fits with the context of ECO—O2 and ECO—P8?

Kindest regards,  
Melanie

**From:** [Kelvin Lloyd](#)  
**To:** [Melanie Hardiman](#)  
**Subject:** RE: Ecology questions on ECO chapter  
**Date:** Tuesday, 15 March 2022 3:38:55 p.m.  
**Attachments:** [image007.png](#)  
[image008.png](#)  
[image002.png](#)

Hi Melanie

I can answer this one on the spot. I agree that DOC's suggested wording is appropriate. Ecosystem functions are generally held to be important per se in any case.

Referring to the resilience of indigenous biodiversity in the policy is very good, addressing pressures such as climate change and pest and weed invasion.

Regards  
Kelvin

—  
Kelvin Lloyd Principal Ecologist

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**From:** Melanie Hardiman <Melanie.Hardiman@orc.govt.nz>

**Sent:** Tuesday, 15 March 2022 2:45 pm

**To:** Kelvin Lloyd [REDACTED]

**Subject:** RE: Ecology questions on ECO chapter

Hi Kelvin

I have one more ecology question regarding the ECO chapter. Do you have capacity to answer it?

DOC have requested that ECO—P8(2) is amended to: 'improving the health and *resilience* of indigenous *biodiversity*, including ecosystems, species, ~~important~~ ecosystem function, and *intrinsic values*, and'. They consider there is no justification for limiting the enhancement of ecosystem functioning with the qualifier "important", as enhancement can and should apply to all elements of indigenous biodiversity. I've recommended accepting their submission.

Do you consider DOC's requested amendment to be appropriate or is the current notified wording fine?

Kindest regards,  
Melanie