

Before Hearing Commissioners in Dunedin

Under the Resource Management Act 1991 (the Act)

In the matter of Submissions on the Proposed Otago Regional Policy Statement 2021 (Non-freshwater parts)

Between **Otago Regional Council**
Local Authority

And **Waka Kotahi NZ Transport Agency**
Submitter 305

Evidence in chief of Letitia Jarrett for Waka Kotahi NZ Transport Agency on Chapter 10 ECO- Ecosystems and indigenous biodiversity including Appendix 2, Appendix 3 and Appendix 4

Dated 25 November 2022

1 Executive Summary

1.1 This evidence seeks changes to ECO – P6 and Appendices 2, 3 and 4 to enable the pORPS to appropriately give effect to the management of Indigenous Biodiversity in the region and as such, achieve the purpose of the Act by:

- a Providing for the use, maintenance, development and protection of State Highway assets; and
- b Appropriately managing the adverse effects from the use, maintenance, development and upgrade of the State Highway Network to ensure that the social, cultural and economic well-being of communities are provided for.

2 Qualifications and Experience

2.1 My full name is Leticia Jarrett. I am a Principal Planner at Waka Kotahi NZ Transport Agency ('Waka Kotahi') where I have been employed for 5 years.

2.2 As Principal Planner at Waka Kotahi I make submissions on plan changes; work with central government partners commenting on draft legislation; oversee consents and approvals for new and existing infrastructure; and assess land use development applications for activities which could impact on our transport networks.

2.3 I have supported councils in a number of plan changes. In my previous consultancy role at Beca 2013-2017, I supported Kapiti District Council with Rural Zone Plan change and Bay of Plenty Regional Council Lake Rotorua Nutrient Management – Plan Change 10.

2.4 On behalf of Waka Kotahi I have been working with the Ministry for the Environment and the Department of Conservation since 2018 on the drafting of the National Policy Statement for Indigenous Biodiversity. As part of this work we have provided case studies showing the impact of the drafting interpretations on areas on our State Highway Network within the Central Otago Region, and other areas.

2.5 I have a Bachelor of Resource and Environmental Planning with a second major in Economics from Massey University. Since graduating in 2002, I have 20 years of planning experience in the public and private sector across all levels of government.

2.6 In addition to my degree, I have other qualifications in conflict resolution, erosion and sediment control management; public participation and engagement.

2.7 I hold memberships with the New Zealand Planning Institute and the International Association of Public Participation.

2.8 My evidence relates to the Waka Kotahi submission points on Chapter 10 (Ecosystems and Indigenous Biodiversity), Appendix 3 and Appendix 4 of the Proposed Otago Regional Policy Statement 2021 ('pORPS').

2.9 I attended the pre-hearing meeting for Chapter 10 on 22 June 2022.

3 Code of Conduct

3.1 While I am employed by Waka Kotahi, I am giving certain parts of my evidence in the capacity of an independent expert and Waka Kotahi has authorised me to do so. I understand that this requires me to give these parts of my evidence from an independent view and not as an advocate for Waka Kotahi. The parts of my evidence which I am giving as an independent planning expert are:

- a Chapter 10 Eco-06;
- b Appendix 2;
- c Appendix 3;
- d Appendix 4.

3.2 While these proceedings are not before the Environment Court, I confirm that I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court's Consolidated Practice Note 2014. I have complied with the Practice Note when preparing my written statement of evidence, and I will do so when I give oral evidence before the Hearings Panel. My qualifications as an expert are set out above.

3.3 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.

3.4 Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

4 Scope of evidence

4.1 My evidence will address the following:

- a Relevance of Chapter 10 to Waka Kotahi;
- b Summary of the Waka Kotahi Chapter 10 submission points;
- c Effects management hierarchy set out in ECO-P6

- d Appendix 2
- e Appendix 3 be amended to provide a pathway for infrastructure
- f Appendix 4 be amended to provide a pathway for infrastructure

4.2 I have considered the following documents when preparing my evidence:

- a The Resource Management Act
- b Exposure draft National Policy Statement Indigenous Biodiversity
- c The proposed Otago Regional Policy Statement 2021 ('**PORPS**') including the associated Summary of Decisions Requested;
- d the Section 32 report and appended documents;
- e submissions and further submissions of a number of parties, particularly those related to infrastructure matters or land holding that are traversed by Waka Kotahi's assets;
- f the further submissions on the Waka Kotahi submission;
- g the Section 42a Hearing Report (dated 4 May 2022); and
- h the Supplementary Evidence (dated 11 October 2022).

5 **Relevance of Chapter 10 to Waka Kotahi**

5.1 Waka Kotahi NZ Transport Agency ("**Waka Kotahi**"), as the controlling authority for New Zealand's state highway network, has significant infrastructure assets across New Zealand, including in the Otago region. **Mr Peter Robinson's** statement of evidence describes the Waka Kotahi role and responsibilities as the controlling authority of the state highway network, including the nature and operation of Waka Kotahi assets in the Otago region. **Mr Robinson** has also described the essential role the state highway network plays as a facilitator of growth for the Otago region through the safe and reliable supply of roads to transport people, goods and services around the region, and to other regions of New Zealand.

5.2 Waka Kotahi relies on provisions which allow it to effectively and efficiently manage its infrastructure in ecologically sensitive environments, as well as upgrade and develop future transport assets where required. In figure 1 of his evidence, Mr Robinson identifies the Nationally Significant Infrastructure within the region which is managed by Waka Kotahi and notes the geographically and geologically diverse environment our assets traverse.

- 5.3 The national significance of the State Highway Network is recognised by the Proposed Otago Regional Policy Statement (“**PORPS**”) by listing it in the definition for “Nationally significant infrastructure”.
- 5.4 Mr Peter Robinson’s evidence includes a table of identified upgrades and developments currently in the draft list of projects (unfunded). This table identifies the nature of the work which can reasonably be expected to occur to deliver our GPS commitments to Central Government and the community it serves. This is relevant as these projects traverse through sensitive receiving environments which impact on indigenous biodiversity.
- 5.5 Also as noted in Mr Peter Robinson’s evidence the existing state highway and other transport networks need to be able to be operated, maintained, upgraded and developed, in all of the environments they are located in.

6 Summary of the Waka Kotahi Chapter 10 submission points

- 6.1 Waka Kotahi had 6 submission points and 3 further submission points on Chapter 10. Through the s 42A report, the mediations and the Council’s supplementary evidence, Waka Kotahi is comfortable with the changes to ECO-P3, ECO-P4, ECO-P5, ECO-P6, ECO-P7, ECOP11, ECO-M4, and ECO-M5 . Matters that are outstanding relate to:
- a Appropriate provision of regionally significant infrastructure to enable provision of new or upgraded transport networks and to maintain existing State highways.
 - b Use of the term ‘avoid’ throughout ECO-P6 and recognition of the functional and operational needs for infrastructure.
 - c Appendix 2 be amended to make the significance criteria targeted and avoid the inclusion of inappropriate areas.
 - d Appendix 3 the criteria for biodiversity offsetting is too high and consideration of the functional and operational need should be provided for.
 - e Appendix 4 the criteria for biodiversity compensation is too high and consideration of the functional and operational need should be provided for.

7 The ‘effects management hierarchy’ set out in ECO-P6

- 7.1 Waka Kotahi in its submission sought to include recognition of the functional and operational needs of infrastructure, and to replace ‘avoid’ with ‘minimise’ or similar. The reporting officer rejected the submission point to recognise the functional and operational needs for infrastructure as it was not appropriate for this situation and rejected replacement of the words

'avoid' with 'minimise' as it was unclear what inconsistencies throughout ECO-P6 the submission was referring to.

- 7.2 To clarify, the effects management hierarchy has not yet become government policy, even though the Draft NPS-IB was released in November 2019, and more recently the Exposure Draft NPS-IB was notified in June 2022. In the Waka Kotahi submission, it was not clear that an effects management hierarchy was appropriate and sought to minimise adverse effects and provide for the operational and functional needs of significant infrastructure. It still seeks this relief.
- 7.3 However, since the notification of the PORPS, the Exposure Draft NPS-IB has been released and the effects management hierarchy has remained, providing greater likelihood that this concept will be taken forward in future. On that basis, the policy still needs to provide for significant infrastructure which in many cases cannot practicably avoid significant natural areas and should be reasonably enabled given its national and regional importance to economic, social well-being to the Otago region.
- 7.4 As discussed further in my submission, APP3 and APP4 are considered to be too restrictive to allow reasonable application of biodiversity offsetting or compensation, and therefore there is an inherent issue with "in accordance with". As such the words "that considers" is in my opinion, more appropriate.
- 7.5 It is therefore recommended that the text is amended for ECO - P6:

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

- 1) avoid adverse effects where practicable as the first priority,
- 2) where adverse effects ~~cannot be demonstrably~~ ~~cannot be completely~~ avoided, they are remedied minimised where practicable,
- 3) where adverse effects cannot be demonstrably remedied minimised they are ~~cannot be completely avoided or mitigated~~ where practicable, they are mitigated,
- 4) where ~~there are~~ more than minor residual adverse effects ~~cannot be demonstrably avoided, minimised, or remedied, or mitigated, biodiversity offsetting is provided where possible after avoidance, remediation, and mitigation, then the residual adverse effects are offset in accordance with~~ that considers APP3,
- 5) ~~where~~ where biodiversity offsetting of more than minor residual adverse effects is not demonstrably possible, biodiversity compensation is provided for that considers ~~in accordance with~~ APP4, and
- 6) ~~If the residual adverse effects cannot be compensated for in accordance with APP4, the effects of the~~ activity are avoided.

- 7.6 In my opinion, ECO-P6 needs to be amended to be workable and is a matter still outstanding.

8 Appendix 2 The significance criteria in appendices 2

- 8.1 Waka Kotahi supported further submission from Contact Energy Ltd¹ and Network Waitaki Ltd² and are in agreement that the significance criteria for Indigenous Biodiversity needs to be amended to be targeted and avoid the inclusion of inappropriate areas. The reporting officer rejected these submissions, as she considered there was a sufficient pathway for infrastructure to be provided and this was aligned to the Draft NPSIB.
- 8.2 I remain concerned that Appendix 2 is too general and creates the potential for disagreements over what is or is not significant indigenous biodiversity in a consenting and plan making processes as experts qualify and or quantify the intention of these criteria. This Appendix should be re drafted to target specific species and or ecosystems that warrant management.
- 8.3 By way of an example, during the Environment Court mediation on Te Ara o Te Ata in the Taranaki region numerous conversations were required between experts to agree the species that could be reasonably expected to be in the project area and what types of data collection and protection would be necessary. However, as this project progressed, data capture has determined more accurate evidence of behaviour and habitats, we found that the assumptions which had been made during the Environment Court mediation had not been correct. The difference between the assumptions and the evidence has necessitated amendments to the Waka Kotahi Ecological and Landscape Management Plan. This example shows need for flexibility to adapt to the reality on the ground and the need for specific guidance-
- 8.4 In my opinion, Appendix 2 requires amending to be more specific and this matter is still outstanding.

9 Appendix 3 (APP3) and Appendix 4 (APP4)

- 9.1 Waka Kotahi supported submissions by a number of other infrastructure providers on APP3³ and APP4⁴ as well as opposed submissions by Royal Forest and Bird⁵. Waka Kotahi agrees with the other infrastructure providers that APP3 criteria is too restrictive to be applied practically.
- 9.2 The reporting officer acknowledges the ecological advice that offsetting approaches should be determined at the consenting stage however remains opposed to amendments which would provide decision makers with the scope to enable them to use their discretion at the decision making stage. The Reporting Officer has gone further and recommended additional clause to

¹ 00319.020 Contact Energy

² 00320.020 Network Waitaki Limited

³ 00315.083 Aurora Energy Limited, 00318.021, 00320.021 Network Waitaki Ltd, 00115.024 Oceana Gold Ltd, 00511.021 Powernet Ltd, 00313.034 Queenstown Airport Corporation

⁴ 00315.084 Aurora Energy Limited, 00318.022, 00320.022 Network Waitaki Ltd, 00115.025 Oceana Gold Ltd, 00511.022 Powernet Ltd, 00313.035 Queenstown Airport Corporation

⁵ 00230.148 and 00230.149 Royal Forest and Bird Protection Society Inc.

further limit the ability for applicants to provide biodiversity offsetting. This approach forces applicants to avoid areas with Biodiversity which linear infrastructure can not.

9.3 In my view, Clause (1) of both appendix 3 and 4 are unnecessarily prohibitive and have the potential to create perverse outcomes if infrastructure, such as roads, are required to select longer alignment, within SNA area, which do not result in the loss of any individuals of threatened taxa; and or reasonably measurable loss within the ecological district to an At Risk-Declining taxon. The criteria are considered too narrow and therefore practically unusable. |

Commented [SH2R1]: I'm not sure this is a great example, as what is defined as "measurable" loss?

9.4 APP 3 (2)(e) and APP 4 (2)(d) need to make it clear that the requirement for "preferably in perpetuity" or "enduring" is not a requirement and rather optional. A requirement for in perpetuity offsetting and compensation is unnecessary because activities are otherwise required to provide a net gain. Additionally, the in-perpetuity requirement would require works to occur in these sensitive areas well beyond the lifespan of our assets which could create perverse outcomes. I request clarification of "enduring" within a reasonable limit and that APP 3 (2)(e) be amended to read:

Commented [SH3R1]:

(e) the positive ecological outcomes of the offset endure at least as long as the impact of the activity and preferably in perpetuity, where offered by the applicant.

9.5 In addition to the changes sought to clause APP3 (2)(h) that the outcomes of offsetting within the duration of the resource consent are at odds with each other. The offsetting outcomes often go beyond the Regional Council Consent terms and need to be enabled to achieve significant benefits rather than time bound benefits. I seek this clause be deleted.

9.6 I also seek APP3(2)(f) be deleted because it too could result in short sighted compensation options, by its very nature of what it sets out to achieve, is unnecessary.

9.7 In my view, APP3 and APP 4 impose too higher bar to be practical, and recommend that APP3(1), (2)(f) and (h) be deleted, and APP4(1), 2(f) be deleted. I also recommend amendments to APP3 (2)(e) and APP4 (2)(d).

10 Conclusion

10.1 In my view, the amendments as set out in this evidence enable the pORPS to appropriately give effect to the management of Indigenous Biodiversity in the region and as such, achieve the purpose of the Act by:

- a Providing for the use, maintenance, development and protection of state highway assets;
- and

- b Appropriately managing the adverse effects from the use, maintenance, development and upgrade of the State Highway Network to ensure that the social, cultural and economic well-being of communities are provided for.



Leticia Jarrett

25 November 2022