

BEFORE THE HEARINGS PANEL

IN THE MATTER OF of the Resource Management Act 1991

AND

IN THE MATTER OF Submissions on the Proposed Otago Regional Policy
Statement 2021 (non-freshwater parts)

SUMMARY STATEMENT OF EVIDENCE BY CLAIRE ELIZABETH HUNTER

ON BEHALF OF CONTACT ENERGY LIMITED

ECO PROVISIONS

17 APRIL 2023

1. INTRODUCTION

1.1 Contact Energy (Contact) made submissions on the ECO provisions of the PORPS. In particular Contact had concerns with ECO-P2 and APP2, and ECO-P6 and its reference to APP3 and APP4. These matters are summarised below.

2. ECOSYSTEMS AND INDIGENOUS BIODIVERSITY

ECO – P2 and APP2

2.1 Contact's submission raises concerns with the generality of the approach to identifying significant natural areas (SNAs) using the framework in APP2. In Contact's view, using this approach will likely require large areas of Otago to be classified as SNAs because the threshold for qualifying for an SNA is too low. Dr Keesing has similar concerns, noting that applying the criteria in APP2 will likely lead to significant uncertainty, as well as a lowering of the bar such that many areas/features, often of low ecological value will be found to be a SNA.

2.2 Contact sought the deletion or otherwise amendment of ECO-P2 to provide for mapping of SNAs at an appropriate scale in the relevant regional and district plans.

2.3 The section 42A report notes the requirements of methods ECO-M2 and ECO-M3 to work with mana whenua to identify and map SNAs, and therefore did not consider it necessary to specify the responsibility of local authorities in this policy. However, the report has recommended inclusion of mapping to the identification process. I support this amendment. Notwithstanding this, I still consider there to be potential problems with the criteria set out in APP2 on the basis that the bar may still be set too low, and it will take some time for the mapping to be completed.

2.4 I have reviewed the Joint Witness Statement (JWS) following the expert ecologist witness conferencing session to discuss APP2 which occurred on 31 March 2023. It is apparent from this statement that there is not yet

an agreed set of criteria between the various ecologists. This is not an unsurprising outcome. However, it further indicates that the criteria may not be 'fit for purpose' and therefore should be taken with care in terms of the application of APP2 as it could, as demonstrated in Contact's and others' evidence, potentially have widespread and unforeseen implications. I also note that a number of the ecological experts agree that the impact of implementing the criteria have not been analysed as part of the section 32 of the RMA or within the section 42A reports. On this basis I am unsure of the likely impact the proposed SNA framework (in whatever form it will ultimately take) will have on development activity in Otago.

- 2.5 A number of the experts also expressly acknowledge in the JWS that meeting only one of the criteria set out in APP2 is a low threshold for attributing a significance status. In addition, Dr Thorsen and Dr Keesing recommend amending this as follows:

An area is considered to be a significant natural area if it meets any one the threshold for the rarity criterion or two or more of the other criteria below.

- 2.6 Given that an agreed set of criteria has not yet been developed amongst the ecologists, it may be more appropriate to refer to the criteria in a less absolute way when drafting the provisions and methods of the PORPS which refer to APP2. By this I mean that additional wording could either be added to APP2, or within the methods (ECO-M2) setting out that:

APP2

An area is considered to be a significant natural area if it meets the threshold for the rarity criterion or two or more of the criteria below and is mapped in the regional or district plans. If an area meets the threshold for the rarity criterion or two or more of the criteria below and is not mapped in the regional or district plans, determination of the significance status will need to be verified by an ecological assessment on a case by case basis.

ECO – P6, APP3 and APP4

- 2.7 Contact's submission noted its general support for enabling a pathway for infrastructure projects by allowing access to the effects management hierarchy for such activities in ECO-P6. However, Contact raised concerns about the workability of the policy when read alongside APP3 and APP4, noting that these appendices contain criteria significantly limiting the situations in which environmental offsetting and compensation would be available. When environmental offsetting and compensation are not available, the policy response requires avoiding adverse effects (or the activity itself), which could significantly curtail otherwise meritorious proposals.
- 2.8 In Contact's submission, reliance on APP3 and APP4 creates an inconsistency with national directions, such as the NPSFM, or evolving best-practice as set out in the Exposure Draft of the Proposed National Policy Statement for Indigenous Biodiversity (NPSIB Exposure Draft) as well as with section 104(1)(ab) of the RMA.
- 2.9 I believe the current drafting of criteria within APP3 and APP4 is too limiting. It also fails to recognise the reality that large-scale REG projects will inevitably affect natural and, at times, highly valued resources. Moreover, the constraints and scale of REG activities will often mean that it will not always be practicable to locate, design and manage these activities such that adverse effects on SNAs (for example) are all avoided, and limits met, particularly in natural environments.
- 2.10 Under the current drafting of APP3 and APP4, if certain impacts are to arise (e.g. the loss of any individuals of threatened taxa; and/or removal of its habitat), the activity is automatically 'ruled out' for offsetting or compensation. In other words, offsetting and compensation cannot be part of the environmental effects management matrix when specified species of conservation value or their habitat will be lost, even though the loss may be capable of being offset or compensated to produce a net gain for the species of interest.

- 2.11 As recognised in the NPSREG, effects from such proposals will often need to be offset or compensated and it requires decision-makers to have regard to them. That is a specific obligation, solely for offsetting and compensation for renewable electricity generation activities, and which must be given effect to by the PORPS, without limitation. The approach which is set out in APP3 and APP4 is therefore not currently consistent with this. Such limitations could, therefore, inadvertently preclude renewable electricity development, as well as the ability to achieve good biodiversity outcomes in Otago, through valid offsetting and compensatory means.
- 2.12 Dr Keesing agrees with this from an ecological perspective, noting that the current drafting of APP3 and APP4 set a high bar as to when offsetting and compensation are available in Otago, and that this will ultimately lead to poorer ecological outcomes for the region. He notes that the NPSIB Exposure Draft does not take such a restrictive approach. Instead, it gives examples where offsetting would be inappropriate, including because of the irreplaceability or vulnerability of the indigenous biodiversity affected.
- 2.13 I consider that APP3 and APP4 should be amended to remove the relevant clauses that set unreasonable limits on when biodiversity offsetting and compensation are available as a management response and seek to ensure consistency with recommended best practices and/or national guidance for biodiversity offsetting and compensation, such as the NPSIB or the NPSFM. Similar to this approach, it would be appropriate to amend these appendices so that they act as guiding principles, against which offsetting and/or compensation proposals are considered against.

Claire Hunter

17 April 2023