

Before a Hearings Panel
Appointed by the Otago Regional Council

under: the Resource Management Act 1991

in the matter of: submissions and further submissions on the Proposed
Otago Regional Policy Statement (non-freshwater parts)

and: **Sanford Limited**

Submitter #122

Summary Statement of Hilke Giles

Dated: 8 May 2023

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SUMMARY STATEMENT OF HILKE GILES

INTRODUCTION

- 1 My full name is Hilke Giles.
- 2 My qualifications and experience are set out in paragraphs 3-6 of my Evidence in Chief dated 23 November 2022.
- 3 I repeat the confirmation given at paragraph 15 of my Evidence in Chief that I have read the Code of Conduct for Expert Witnesses and agree to comply with it.

SUMMARY

Evidence in Chief

- 4 My Evidence in Chief addresses:
 - 4.1 Significance criteria in APP2 of the proposed Otago Regional Policy Statement 2021 (*pORPS*) as recommended in the Section 42A Hearing Report (*proposed significance criteria*); and
 - 4.2 Management of adverse effects in areas identified as significant under the proposed significance criteria under Policy CE-P5 as recommended in the Section 42A Hearing Report.
- 5 In my Evidence in Chief, I compared the proposed significance criteria with those of other councils and the descriptors of New Zealand Coastal Policy Statement (*NZCPS*) Policy 11. In summary, my conclusions were as follows:
 - 5.1 Most of the proposed significance criteria are similar to significance criteria of other councils. However, there are critical differences and the proposed significance criteria would likely apply to a wider range of areas within the coastal environment than those in other regions. They would also add ambiguity and new ecological grounds for determining significance.
 - 5.2 The combination of broader and partially ambiguous significance criteria and the blanket 'avoid effects' provision recommended in the Section 42A Hearing Report would result in a greater proportion of the Otago coastal environment being identified as significant and covered by an 'avoid effects' policy direction than the proportion identified under *NZCPS* Policy 11(a). The proposed approach to protecting indigenous biodiversity would also require avoidance of

effects in areas which fall under NZCPS Policy 11(b) and others not captured at all by Policy 11.

- 5.3 In my opinion, the proposed approach goes beyond what is necessary to protect indigenous biodiversity in the pORPS.
- 5.4 As a consequence of the relatively high ambiguity and broad scope of some of the proposed criteria, implementation of APP2 may be difficult.
- 6 In my Evidence in Chief I made the following recommendations:
- 6.1 Amend Policy CE-P5 so that areas captured under the proposed significance criteria in APP2 do not automatically trigger the need for adverse effects to be avoided but are protected under a tiered approach similar to that of the NZCPS and used by other councils; and
- 6.2 Reduce the ambiguities in and tighten the scope of the proposed significance criteria, especially criteria (a), (b), (e), (f)(ii), (fA), (g)(i)-(iv) and (h), which could be achieved by further refining the revised suite of proposed significance criteria included in Attachment 1 of Mr Low's Evidence in Chief through expert caucusing or a similar process.

Updated position on recommendation 1 in my Evidence in Chief (amend Policy CE-P5)

- 7 Since filing my Evidence in Chief, at the start of this hearing topic, the Council's reporting officer Mr Maclennan proposed further amendments to Policy CE-P5.¹ I have reviewed his proposed amendments and consider they address my recommendation in paragraph 6.1 above. Mr Low's summary statement also addresses this point.

Updated position on recommendation 2 in my Evidence in Chief (reduce ambiguities in and tighten the scope of several significance criteria)

- 8 Since filing my Evidence in Chief, expert caucusing has taken place on the proposed significance criteria. I participated in this expert caucusing, commenting on the criteria for use in the coastal environment. My agreements and disagreements with the various matters discussed and changes to the proposed significance criteria suggested are recorded in the Joint Witness Statement (*JWS*) prepared. I do not repeat my agreements and disagreements here.
- 9 **Attachment 1** provides an update on the concerns about proposed significance criteria identified in my Evidence in Chief in light of the

¹ See Opening Statement of Andrew Cameron Maclennan: Ce – Coastal Environment, Paragraphs 32 – 34 and Appendix 1.

agreed changes recorded in the JWS. For each criterion, I provide a conclusion on whether my concerns have been addressed through the agreed changes.

- 10 As shown in **Attachment 1**, my concerns are either fully addressed through the agreed changes recorded in Table 1 of the JWS or could be fully addressed through alternative changes or notes recorded in the last column of Table 1 of the JWS.

General matters recorded in the JWS

- 11 During expert caucusing a range of general matters were discussed and recorded under section 'General matters' in the JWS. Several comments relate to issues I identified in my Evidence of Chief. I would like to emphasise the specific importance of the following general matters recorded in the JWS:

11.1 JWS general matter 2: Some of the criteria do not have a strong empirical science basis.

11.2 JWS general matter 3: There are differences in the length of time and extent of testing of the first four criteria (representativeness; rarity, diversity, and distinctiveness) between terrestrial ecosystems and marine or freshwater ecosystems. While these criteria are considered good practice for terrestrial systems, the JWS notes that this does not apply to marine or freshwater.

11.3 JWS general matter 4: The implications of implementing the criteria have not been analysed as part of the section 32 or section 42A reports. In my Evidence of Chief, I identified that, as a consequence of the relatively high ambiguity and broad scope of some of the proposed criteria, implementation of the proposed significance criteria may be difficult.

11.4 JWS general matter 5: All experts agreed that a guidance document for interpretation of the significance criteria would be essential and identified specific aspects to be covered in a guidance document. Several of these aspects relate to implementation and would address some of my concerns about the ambiguity of some of the proposed criteria.

11.5 JWS general matter 6: Experts agreed that some proposed significance criteria of the pORPS are broader than NZCPS Policy 11 (a) and (b).

- 12 In conclusion, my specific concerns about the proposed significance criteria are either fully addressed through the agreed changes recorded in the JWS or could be fully addressed through alternative changes or notes recorded in Table 1 of the JWS.

- 13 The JWS includes agreed statements on a range of general matters that, in my opinion, are of great importance, particularly for the implementation of the proposed significance criteria in the coastal environment.

Hilke Giles

8 May 2023

ATTACHMENT 1: UPDATE ON CONCERNS ABOUT SIGNIFICANCE CRITERIA EXPRESSED IN MY EVIDENCE IN CHIEF

Criterion	Update in light of the agreed changes recorded in Table 1 of the JWS	Have concerns identified in my Evidence in Chief been addressed through agreed changes recorded in the JWS?
(a)	Fully addressed by agreed change in JWS	Yes
(b)	Fully addressed by agreed change in JWS	Yes
(e)	The agreed change in JWS (addition of 'in the context of similar areas and similar ecosystem types') addresses my concern about the ambiguity of the term 'high diversity'.	Partially My concern about ambiguity of the term 'diverse natural features' in the last part of the criterion has not been addressed by the majority agreement in the JWS. An alternative version I provided is recorded in the JWS. In my option, this would ensure that 'high diversity' is also reflected in this part of the criterion and fully address my concerns.
(f)(ii)	The agreed change to this criterion does not address my concern that a species being endemic to the region is not sufficient to render a population significant in the coastal marine area.	No An alternative option I provided (to delete this criterion) is recorded in the JWS. The reason for suggesting deletion instead of adding a requirement for species to be threatened or rare is that making those additions would result in a duplication of criterion rarity criterion (d)(i).
(g)(i)-(iv)	The agreed changes in the JWS considerably reduce ambiguity and scope of these criteria, which addresses some of my concerns. As recorded in the JWS, three experts (including me) asked for the connectivity value of an area (criterion (i)) to be interpreted consistently with NZCPS Policy 11(b)(vi). Connectivity in the three-dimensional and highly dynamic	Partially If the recommendation to interpret criterion (g)(i) consistently with NZCPS Policy 11(b)(vi) is incorporated into the pORPS, my concerns would be fully addressed.

	coastal environment is considerably more complex than connectivity in terrestrial environments. The alignment with NZCPS Policy 11(b)(vi) would provide critical guidance and support consistency of implementation of this criterion.	
(h)	Fully addressed by agreed change in JWS	Yes