

**BEFORE THE OTAGO REGIONAL COUNCIL**

**AT DUNEDIN**

**KI ŌTEPOTI**

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of the proposed Otago Regional Policy Statement 2021  
(excluding those parts determined to be a Freshwater  
Planning Instrument)

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**Legal Submissions for the Director-General of Conservation *Tumuaki Ahurei*  
Ecosystems and Indigenous Biodiversity Chapter ('ECO')  
dated 19<sup>th</sup> April 2023**

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## MAY IT PLEASE THE HEARING PANEL

The following matters are submitted on behalf of the Director-General of Conservation, Tumuaki Ahurei ('Director-General'):

### *Introduction*

1. The Director-General has a particular interest in ensuring that the proposed Otago Regional Policy Statement (pORPS) promotes sustainable management by protecting ecosystems and indigenous biodiversity in the Otago region.<sup>1</sup>
2. Within the current legal framework, Regional Policy Statements are *the* most important legal instrument for protecting ecosystems and indigenous biodiversity from adverse effects. In particular, they are a critical tool for protecting threatened indigenous species.<sup>2</sup>
3. The pORPS must set ***clear, specific outcomes*** in Otago for the protection and improvement of ecosystems and indigenous biodiversity – particularly threatened species – and those outcomes must be ***integrated throughout*** the pORPS. Without such clarity, endangered ecosystems and threatened indigenous species in Otago will receive inadequate regulatory protection and risk depletion or extinction.

### *Legal Framework*

4. The Director General's detailed submissions are underpinned by seven core legal premises:
  - i. The Resource Management Act 1991 ('RMA') requires that decision-makers 'shall recognise and provide' for 'the protection of areas of significant indigenous

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<sup>1</sup> The Director-General is the Head of the Department of Conservation and has all the powers necessary and expedient to enable the Department to perform its functions as set out in s 6 of the Conservation Act 1987 (see Conservation Act 1987, ss 52, 53).

<sup>2</sup> *Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020* (Department of Conservation, August 2020), pp 67, 69.

vegetation and significant habitats of indigenous fauna’ in order to achieve sustainable management (s 6(c) RMA). As the High Court stated in *West Coast Regional Council v Friends of Shearer Swamp Inc*, significant is a relative term that imports the notion of *informed judgment* as to those natural resources in the region that need to be protected.<sup>3</sup> While the national state of biodiversity or species ‘must be a relevant consideration’ for a regional council preparing a policy statement or plan,<sup>4</sup> nevertheless ‘national importance is not a pre-requisite’ for significance and something can be regionally significant without having to be nationally significant.<sup>5</sup>

- ii. The protection of indigenous species from adverse effects is a s 5(2) RMA matter.<sup>6</sup>
- iii. The Regional Council has the function of establishing, implementing, and reviewing objectives, policies, and methods for maintaining indigenous biological diversity (s 30(1)(ga) RMA).
- iv. The pORPS must be prepared ‘in accordance with’ national policy statements (s 61(1)(da) RMA). The *New Zealand Coastal Policy Statement 2010* (‘NZCPS’)<sup>7</sup> and *National Policy Statement for Freshwater Management 2020* (‘NPSFM’)<sup>8</sup> are particularly relevant to the Ecosystems and Indigenous Biodiversity Chapter (‘ECO’).
- v. The exposure draft of the *National Policy Statement for Indigenous Biodiversity* (‘draft NPSIB’) is a document to which the Panel may have regard. It has weight in the sense that: (a) it has been prepared under the RMA; (b) represents current

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<sup>3</sup> *West Coast Regional Council v Friends of Shearer Swamp Inc* [2012] NZRMA 45, [67], [22].

<sup>4</sup> *West Coast Regional Council v Friends of Shearer Swamp Inc* [2012] NZRMA 45, [48].

<sup>5</sup> *West Coast Regional Council v Friends of Shearer Swamp Inc* [2012] NZRMA 45, [56].

<sup>6</sup> Section 2 RMA, indigenous species are part of ‘natural and physical resources’; see e.g., *Pierau v Auckland Council* [2017] NZEnvC 90, [251] and *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81, [163].

<sup>7</sup> Particularly policies 11, 13 and 15 of the NZCPS.

<sup>8</sup> Particularly the objective of the NPSFM that prioritises the health and well-being of water bodies and freshwater systems (see 2.1(1)(a)), and policies 6-10, 13, and 14.

best practice and the considered consensus of technical experts; (c) involved treaty partners-input; and (d) provides the best indication of current Government thinking. The Director-General submits that the draft NPSIB is both relevant and highly persuasive.<sup>9</sup> Paragraphs [21–25] of the opening legal submissions by Counsel for the Director-General are repeated herein.<sup>10</sup>

- vi. The Panel may also have regard to *Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*, a national strategy with Ministerial approval, created to fulfil New Zealand’s international law obligations under Article 6 of the Convention of Biological Diversity.<sup>11</sup> The Director-General submits that this Strategy is both relevant and persuasive.<sup>12</sup>
- vii. The legal framework protects ecosystems and indigenous biodiversity for their *intrinsic* value, i.e., not (solely) for any practical utility to humans.<sup>13</sup>

### **Evidence for the Director-General**

5. The following witnesses will appear and give evidence to support the submissions of the Director-General:

<sup>9</sup> Legal weight connotes a spectrum:

Binding	<b>Highly persuasive</b>	Persuasive	Persuasive but less so	Irrelevant
Must give effect to	<b>May give effect to but if not giving effect to onus is to explain why not</b>	May give effect to, but no onus to explain either way	May give effect to and should explain why giving effect to	Must not give effect to

Although not strictly analogous, *Keystone Ridge Ltd v Auckland CC* [2001] BCL 482 (NZHC), [16] is helpful in that it states the further along the process towards promulgation, the more persuasive a proposed plan is.

<sup>10</sup> Opening Legal Submissions on the Non-Freshwater Parts of the Proposed Otago Regional Policy Statement on behalf of the Director-General of Conservation *Tumuaki Ahurei* dated 25 January 2023.

<sup>11</sup> 1992 Convention on Biological Diversity 1760 UNTS 79, 31 ILM 818 (1992).

<sup>12</sup> s 41 RMA and s 4B(1) Commission of Inquiry Act 1908: ‘the Commission may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry, whether or not it would be admissible in a Court of law’; see also *West Coast Regional Council v Friends of Shearer Swamp Inc* [2012] NZRMA 45, at [49]

<sup>13</sup> Section 7(d) RMA; *Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020* (Department of Conservation, August 2020) p 43, core principles include ‘**Intrinsic value** – Species and ecosystems are valuable in their own right and have their own right to exist and be healthy and thriving now and in the future, regardless of human use and appreciation’.

- Bruce McKinlay ('BM') – terrestrial ecology
- Dr Marine Richardson ('MR') – freshwater ecology
- Dr Hendrik Schultz ('HS') – coastal ecology
- Cassandra Mealey ('CM') – biodiversity offsetting and compensation
- Murray Brass ('MB') – planning

### ***Detailed submissions***

#### ***ISSUE 1 – Integrated Management***

*Require greater integration across chapters in the pORPS*

6. Throughout this hearing, a consistent theme of the Director-General's submissions and evidence has been the need for greater integrated management in the pORPS (pursuant to s 59, RMA). That message is particularly acute in relation to the ECO chapter. Biodiversity exists both within and across coastal, freshwater and land domains, and biodiversity in any one domain can be affected by activities in other domains. Biodiversity is also directly affected by energy, infrastructure, transport and urban development projects etc.
7. While the structure of the pORPS is constrained by the National Planning Standards, that does not, for example, prevent greater cross-referencing between chapters (nor indeed between Regional Council instruments, for example, there should be an integrated management approach taken between the pORPS and the Otago Regional Pest Management Plan).<sup>14</sup> The ECO chapter should be directly referenced in all other chapters.<sup>15</sup>

#### ***ISSUE 2 – Objectives***

*Oppose the addition of 'net' in ECO-01*

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<sup>14</sup> The Otago Regional Pest Management Plan 2019 ('the plan'), prepared pursuant to the Biosecurity Act 1993, identified 51 species of plants and animals to be managed as pests (see Forward). At p 5 of the plan, it states in general terms, the policies and methods that will be contained in any Otago RPS to manage pests.

<sup>15</sup> As has been done in the Coastal Environment Chapter, see CE-P1.

8. The s 42A Report recommends amending ECO-O1 to include the word 'net' ('... and **net** decline in condition, quantity and diversity is halted').
9. The Director-General strongly opposes the inclusion of the word 'net' in ECO-O1 and submits that it should not be adopted.
10. The inclusion of the word 'net':
  - i. prevents ECO-O1 from being aspirational. As the Environment Court has stated, 'an objective in a planning document sets out an end state of affairs to which the drafters of the document aspire';<sup>16</sup>
  - ii. would allow a 'capped approach' to biodiversity across Otago (MB [142]);
  - iii. enables 'perverse outcomes whereby a consent applicant could justify loss of biodiversity arising directly from their actions on the basis that there have been unrelated improvements elsewhere' (MB [142]), and so cuts across the carefully crafted policies in the pORPS that include an effects management hierarchy and criteria for when offsetting will or will not be appropriate;
  - iv. does 'not work' from an ecological perspective as ecosystems and species are not fully fungible (MR [149-152]).
11. Accordingly, the current proposed wording for ECO-O1 is contrary to s 6 (c) RMA, Objective 1 and Policy 11 of the NZCPS, Policies 6, 8, 9 of the NPSFM, and the planned outcomes and objectives of *Te Mana o te Taiao*. Each of these national, statutory directives require 'protection' of indigenous biological diversity.
12. Objectives cannot be looked at in isolation and 'the *extent* of each objective's relationship to achieving the purpose of the [RMA]' must be examined.<sup>17</sup> However, considering ECO-O1 in combination with ECO-O2 does not remedy the problem with including 'net' in ECO-O1, because ECO-O1 would (for example) tolerate the loss of a threatened species while the inclusion of ECO-O2 (or other objectives) could not

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<sup>16</sup> *Ngati Kahungunu Iwi Inc v Hawke's Bay RC* [2015] NZEnvC 50 at [42].

<sup>17</sup> *Rational Transport Society Inc v New Zealand Transport Agency* [2012] NZRMA 298 (HC) at [46].

restore or remedy this loss. Nor does ECO-O2 ‘set any quantum or scale for net enhancement, and [it] only applies to extent and occupancy, not condition or diversity’ (MB [148]).

*Additional objectives required*

13. Subject to the discrete submissions in paragraphs [8-12] above, the Director-General supports the substantive direction of the current objectives.
14. However, ecologists and resource management professionals know from experience that without *clear and specific regulatory outcomes*, ecosystems and indigenous biodiversity will not be adequately protected from adverse effects, nor will their population, occupancy, diversity and condition improve.<sup>18</sup> The entire reform of the resource management system is predicated upon this lesson.
15. On their own, ECO-O1 and ECO-O2 do not provide sufficiently *clear, specific outcomes* for the protection of ecosystems and indigenous biodiversity (MR [144-156], BM [146]). In particular, a generic approach is taken to ‘indigenous biodiversity’ and the objectives do not seek to place any emphasis at all on threatened species or habitats.
16. The s 42A Report suggests that threatened species and habitats are automatically encompassed within the term ‘indigenous biodiversity’ and there is no need to set specific outcomes for them.<sup>19</sup> But that is rather like Fagan instructing his gang to ‘get all the metal’ from the Tower of London, and them returning without the Crown Jewels (how were they to know?)<sup>20</sup> The most valuable items were forgotten in the melee. Without targeting threatened species, and setting clear, specific outcomes for them, there is a risk they will get lost in the melee of planning and decision-making.<sup>21</sup>

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<sup>18</sup> See, for example, *New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel* (June 2020, Resource Management Review Panel) (‘Randerson Report’), Chapter 2; Natural and Built Environment Bill, cl 5; *Te Mana o te Taiao* at p 35 (i.e., this lacuna was the problem with previous national biodiversity strategies).

<sup>19</sup> Section 42A Report, Chapter 10 on ECO, Appendix 10 d.

<sup>20</sup> A reimaging of *Oliver Twist* by Charles Dickens.

<sup>21</sup> On 30<sup>th</sup> March 2023, Statistics New Zealand released [current data](#) that showed ‘more than 75 percent of indigenous reptile, bird, bat and freshwater fish species groups are threatened with

17. Further, there is a need to protect the components of biodiversity (i.e. species and habitats), as without them you lose the whole. When species or habitats are so depleted they are listed as threatened, this is a clear sign that targeted intervention is required.
18. *Te Mana o Te Taiao* sets out specific goals that require implementation by regional councils, amongst others, to prevent further deterioration of threatened species. These goals include: ‘there have been no known human-driven extinctions of indigenous species’ (by 2025) and ‘populations of all indigenous species known to be at risk of extinction are being managed to ensure their future stability or an improving state’ (by 2050).<sup>22</sup> The pORPS should set clear objectives that reflect these goals.
19. Setting specific objectives for threatened species will focus attention in decision-making. It may help to prevent gaps in protection where, for example, threatened species inhabit non-protected areas (for example, see Minute 12 - Commissioner Cubitt’s questions to Kelvin Lloyd: ‘plantation forestry is unlikely to be protected but supports threatened species such as the karearea and toutouwai (South Island Robin)).
20. Accordingly, six additional objectives should be added to the ECO Chapter to provide the necessary clarity and specificity (MB [137,161], BM Written Summary 19.4.23 ):
- i. *That activities within Otago do not contribute to any worsening of the threat classification of indigenous threatened species found in Otago;*
  - ii. *In the term of the RPS, that activities within Otago contribute to improvements in the threat classification of threatened indigenous species found in Otago:*
  - iii. *Areas of significant indigenous biodiversity will be mapped and protected;*

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extinction or are at risk of becoming threatened’, including ‘39 of 47 freshwater and marine taonga species’.

<sup>22</sup> *Te Mana o Te Taiao*, goals 10.7.1 and 10.7.2, p 53.



- iv. *Threatened ecosystems will be protected in Otago;*
- v. *That there is no further loss of LENZ environments that are threatened or At Risk (i.e. <30% of indigenous cover remains);*
- vi. *That there is no further loss of naturally rare ecosystems or ecosystems that have been heavily depleted.*

21. In relation to proposed Objectives i and ii, the New Zealand Threat Classification System ('NZTCS') is explicitly referenced (and it also plays a role in relation to proposed Objectives iv and v). The NZTCS is the best tool we have for identifying threatened species (BM [93-114], MR [153-155]). Explicit reference to the NZTCS in the ECO objectives is essential because it will ensure *critical focus* is placed on our most vulnerable species, those that we cannot afford to deplete any further.

22. [Note, in response to concerns expressed in the s 42A Report ECO [109], the *wording* in the first two proposed objectives has been amended slightly from that originally proposed (see MB [137]). However, the substantive intent and important reference to the New Zealand Threat Classification System remains.]

### **ISSUE 3 – Policies**

#### *Amend wording of ECO-P3*

23. The proposal in the s 42A Report that ECO-P3(1)(a) be limited to areas 'which have been identified and mapped under ECO-P2(1)' should be rejected. The addition of these words could lead to unintended adverse consequences (see MB [164-166]).

#### *Amend wording and order of effects management hierarchy in ECO-P6*

24. The word 'mitigate' in ECO-P6 should be replaced with the word 'minimise' (MB [168], CM [47]). Mitigate is less distinct than minimise, as it attempts to do two things: as the High Court has stated, '[t]o mitigate is to alleviate. It may lessen [the impact], or it may reduce the severity of an impact – and it may as a consequence result in protection, or even removal of an unwanted effect, depending on its degree.'<sup>23</sup> The

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<sup>23</sup> *Rational Transport Society Inc v New Zealand Transport Agency* [2012] NZRMA 298 (HC), [52].

NPSFM and draft NPSIB do not use ‘mitigate’ in the effects management hierarchy, preferring to use ‘minimise’ instead.

25. The aim of the effects management hierarchy is to set out a scale, that starts with the most protective action moving through to the least protective. To ‘minimise’ adverse effects is more protective than attempting to repair adverse effects ex post facto (CM [23], MB [32-33]). Accordingly, the effects management hierarchy should be re-ordered so that minimising adverse effects is the second preferred action and then remedying adverse effects comes after that. This order reflects the NPSFM and draft NPSIB.
26. It is incorrect that the cascading structure in the effects management hierarchy would prevent any given project from utilising a number of management techniques (for example, a mining project might ‘avoid’ some effects, ‘minimise’ others and ‘offset’ the remainder). Rather, the cascading structure focuses attention on the most protective aspects – to require serious thought and attention to be given first, to avoiding adverse effects and so on. To adopt the ‘pick and mix’ approach suggested by some submissions would remove this emphasis and inevitably lead to the focus switching to the approach that the applicant deemed most expedient.

#### **ISSUE 4 – Methods**

##### *Amend ECO-M1*

27. The statement of local authorities’ responsibilities in ECO-M1 (2) should be amended to include the Regional Council’s responsibilities to manage land of regional importance pursuant to s 30(1)(b) and (see MB [177] for proposed wording).

#### **ISSUE 5 – APP3 Offsetting & APP4 Compensation**

##### *Amend APP3 and APP4 in accordance with the Director-General’s submissions*

28. The pORPS must carefully differentiate between provisions that require a *regional response and variation*, and those provisions concerned with *scientific methodology*.
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Where provisions are concerned with *scientific methodology*, best practice can be largely replicated.

29. APP3 and APP4 both have three parts. Each part has a separate foci that impacts the legal approach to be taken:
- i. Parts (1) of APP3 and APP4 provide the gateway limits to when offsetting / compensation is not available.
  - ii. Parts (2) of APP3 and APP4 provide the criteria for when offsetting / compensation may be available.
  - iii. Parts (3) of APP3 and APP4, entitled the ‘additional considerations’, are concerned with ensuring a scientifically robust methodology of assessment and an inclusive and transparent process.
30. Parts 1 and 2 need to be reflective of the values relevant in the regional context. The examples provided in the draft NPSIB should not be repeated verbatim but translated into criteria that make sense in the regional context. Critically, the gateway for accessing offsetting in APP3 (and compensation in APP4) constitutes a form of risk management. In essence, it reflects where the Regional Council has utilised a precautionary approach and set the risk standard accordingly – i.e., what will be an acceptable risk to take and what is unacceptable. We know that offsetting is not guaranteed. Offsetting measures may fail. The oral evidence of Dr Keesing made this clear – sometimes we lose things, he said. In APP3 (1) and APP4 (1), ORC has set the boundary between acceptable and unacceptable risk. We can argue about where that boundary should fall (and indeed the Director-General does), but we cannot argue that setting a boundary is an invalid legal approach.
31. Further, parts (1) and (2) must (and, indeed do, in large part) establish criteria that give decision-makers *some* degree of flexibility to allow offsetting / compensation in specific contexts, if that management approach will create the best outcomes for biodiversity. This requirement means that in *some* instances the drafting in parts (1) and (2) will appear looser and more flexible, rather than highly prescriptive and rules-based. For example, the inclusion of the wording (the loss of) ‘irreplaceable or

vulnerable indigenous biodiversity’ allows a value judgment to be taken by the decision-maker based on the relevant context and best evidence at the time (see CM [40-41]).<sup>24</sup>

32. However, as presently drafted, the ‘gateway’ to offsetting in the proposed pORPS is too restrictive and may create a fast-track to compensation. Compensation can lead to poorer outcomes for biodiversity (CM [38] and [42]). Accordingly, the pORPS should *facilitate* offsetting that is ‘reasonably demonstrated to achieve no net loss or a net gain of biodiversity’ in preference to compensation. The Director-General recommends that APP3(1)(a) and APP4(1)(b) are *removed* (CM [42]) and *replaced* with five additional limits that provide the requisite safeguards for biodiversity, while preventing a fast track to compensation (CM [43]).
33. Oceania Gold submits that – as a matter of law – s 104(1)(ab) RMA provides a veto (or, as a corollary, a mandatory rule) that an RPS cannot contain a threshold at all for when offsetting will/won’t be considered. This submission is incorrect. The wording in s 104 (1) RMA, requires consent authorities to ‘have regard to’ the list of matters in s 104(1)(a)-(c). ‘Have regard to’ means give genuine attention and thought to; it does not mean that it *must* be achieved or actioned.<sup>25</sup>
34. In contrast to the above submissions, parts 3 (‘additional matters’) – concerned with scientific methodology – do *not* need to be regionally specific or necessarily bespoke. Rather than ‘trying to re-invent the wheel’, the Director-General recommends that the provisions in part (3) are more aligned to international and national best practice,’ as reflected in the draft NPSIB (see CM [46]). To ensure a robust assessment methodology, the wording in parts (3) must be tightened up. The Director-General

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<sup>24</sup> C.f. e.g., evidence of Vaughan Keesing [10.22]). However, some terms clearly need definitions to *function* properly, for example ‘measurable loss’ if APP(1)(a) is retained (albeit the Director-General’s submission is that APP(1)(a) should be deleted).

<sup>25</sup> This interpretation has been well traversed in cases from *Foodstuffs (South Island) Ltd v Christchurch CC* (1999) 5 ELRNZ 305 to *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 (CA), [73-74].

recommends inserting new provisions in parts 3 of APP3 and APP4 to provide increased clarity (see CM [46](e) and Appendix A and B).

***ISSUE 6 – APP2 – Significance Criteria for Indigenous Biodiversity / Significant Natural Areas***

*APP2 agreed in the expert caucusing meeting is adequate but greater work is needed to ensure compatibility across domains*

35. As stated above, the pORPS must carefully differentiate between provisions that require a *regional response and variation*, and those provisions concerned with *scientific methodology*. Where provisions are concerned with *scientific methodology*, best practice can be largely replicated.
  
36. In respect of the assessment of *significant natural areas* (SNAs), best practice *scientific methodology* from Appendix 1 in the draft NPSIB can be drawn on in the pORPS, thus providing robust and widely accepted assessment criteria that apply across domains (and may be replicated across regions in the future) (see BM [61-62], MR [31-34], HS [66-68], MB [179-183]).
  
37. However, the Director-General accepts that the draft APP2, arrived at in the expert caucusing meeting held on 31<sup>st</sup> March 2023 is *largely* representative of the draft NPSIB. It also has some advantages over the draft NPSIB, for example it establishes a baseline ('pre-human') against which to assess representativeness and rarity, and including *some* form of baseline is critical to being able to make an assessment of decline.
  
38. Further, the Director-General rejects any arguments that the current APP2 would lock away too much land. It is important to remember that SNAs are not 'locked away' from all uses. Rather, they are protected *from adverse effects* deemed unacceptable and thereafter subjected to the effects management hierarchy in ECO-P6.

Accordingly, a focus on how much land would fall into SNAs and the correlative idea that too much land is being taken out of all productive use, is not particularly helpful.

39. Fundamentally, however, experts from the Department of Conservation would have appreciated a greater opportunity to work with ORC ecologists in order to consider, test and revise APP2 to improve compatibility between the management regimes applicable in and outside the coastal environment.

### ***ISSUE 7 – Definitions***

#### *Add definitions*

40. Commenting on the RMA in 2013, the previous Chief Justice wrote:

the Resource Management Act is an Act that affects people and their aspirations in the real world. It is a framework of values for practical living and for the management of disagreements about the physical environment. It is meant to engage communities, not alienate them.<sup>26</sup>

41. The policies and plans that construct the detailed framework for resource management must also engage rather than alienate communities. The pORPS inevitably treads a delicate line between verbosity and certainty, in an attempt to ease accessibility but prevent contestation. However, certain terms require greater explanation in order to avoid potentially futile debate that would detract attention from substantive issues. The Director-General recommends adding definitions for the following terms:

- i. **‘Indigenous fauna’** – fauna is referenced 33 times in the pORPS (sometimes just ‘fauna’ is used, or ‘indigenous fauna’, ‘freshwater fauna’, ‘species of fauna under NZTCS’, ‘coastal fauna’, ‘fauna assemblages’, ‘fauna components’). The Director-General’s proposed definition (MB [127]) is supported by the ORC expert (see Kelvin Lloyd 29.09.22 [13]).
- ii. **‘Indigenous vegetation’** – the Director-General’s submission is supported by the ORC expert (see Kelvin Lloyd 29.09.22 [14], [18]). The s 42A Report recommends adopting slightly different wording, which is also acceptable.

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<sup>26</sup> Sian Elias ‘Righting Environmental Justice’ (The Salmon Lecture, Auckland, July 2013), 2.

- iii. **'Naturally rare'** – add a definition to show that this term is synonymous with 'naturally uncommon'. 'Naturally rare' is used in the Coastal Environment chapter to ensure consistency with the NZCPS but 'naturally uncommon' is the modern usage amongst ecologists, and is employed in other chapters. However, the terms are synonymous (BM [118-126]).

42. Cassandra Mealey also suggests adding definitions for:

- i. **'Biodiversity offsetting'** and **'biodiversity compensation'**– add the definitions from the draft NPSIB (CM [49-50]).
- ii. **'No net loss'** and **'net gain'** – add the definitions taken from best practice (CM [49-50]).



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