

Proposed Otago Regional Policy Statement Hearing

Summary of Evidence of: Bruce McKinlay

Introduction

1. In the first section of this paper is a summary of my evidence as signed on 23 November 2022. The second section is further statements on matters that have been raised by expert conferencing caucusing or further discussion with colleagues, or as a result of presentations earlier in this hearing.

Summary

2. My opinion is that the Science work commissioned by the ORC to inform the pORPS provides a clear justification that indigenous faunal values are present in Otago and that Otago Region is a diverse landscape and is the location for unique ecosystems.
3. I believe adopting Appendix 1 of the Exposure Draft of the National Policy Statement for Indigenous Biodiversity ('E NPS IB') into the Otago Regional Policy statement will reflect best practice and will also give clear guidance as to how the Region should implement the assessment of significant natural areas in Otago.
4. The omission of an analysis of threatened plants in Otago is significant and should be rectified in the RPS.
5. It is my view that having separate chapters for Land and Freshwater and ECO will lead to a failure to promote integrated management of the natural resources of Otago.
6. In my opinion there are multiple impacts and objectives that are required to be recognised in responding to the adverse effects of wildling conifer and these need consideration in a Regional Policy Statement within a land management context not a biodiversity context.
7. An integrated approach to economic and environmental activity to achieve sustainable development having clear outcomes which demonstrate an improvement in not only the economic health of the Region but also the environmental health and ecological resilience is desirable. To be successful in delivering this requires not only specific and measurable outcomes but ensuring that they are integrated into the whole of the Regional Policy Statement.

Further matters

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8. Further to my substantive evidence, an issue has been raised about recognition of the impact in application of the NZ Threat Classification assessments terms of those species whose “indigenous range include Otago and extend beyond the region’s boundary”¹. Many threatened species do move at significant geographic scale, and this does have real implications for how a Regional Policy Statement and subsequently Regional and District Plans promote the objective of Otago’s indigenous *biodiversity* is healthy and thriving and any net decline in quality condition, quantity and diversity is halted, subject to changes as a result of decisions as a result of this hearing.
9. In response to this issue, I have revised my thinking and in order to give more specificity to the RPS and consequent plans I acknowledge that policy should reflect that some species have a range beyond Otago, and others move seasonally in and out of the region. Equally there is a group of species which are found only in Otago and consequently can be described as endemic to Otago. To be able to meet the stated objective of the RPS, the RPS needs to have objectives, policies and methods which reflect this biological reality.
10. In some respects, species which are sessile (i.e., do not move²) are the easiest to develop an objective for. Those endemic³ species found only in Otago should have clear outcome statements in the RPS as described in paragraph 149 of my substantive evidence.
11. At the other extreme are those species which are highly mobile and range far beyond Otago. Definitions of these vary and there is a version of a list for birds and bats contained in the E NPS IB (Appendix 2). Some entries in this list have direct application to Otago and there is an expectation in the E NPS IB that regional councils will address this issue in the RPS:

“If it will help manage specified highly mobile fauna, regional councils must include in their regional policy statements (where possible) a map and description of each highly mobile fauna area in its region”⁴.

¹ S Jarvie Evidence 20/09/22, para 28

² *Botany*. attached by the base, or without any distinct projecting support, as a leaf issuing directly from the stem.

Zoology. permanently attached; not freely moving.

³ natural to or characteristic of a specific people or place; belonging exclusively or confined to a particular place:

⁴ E NPS IB, pg 25, para 3.20 (2)..

12. However, the E NPS IB is not a perfect document as, for example, the list in Appendix 2 E NPS IB, omits reference to migratory fish. Paragraph 3.20 (2) is also of limited utility as it includes the phrase “If it will help manage...”. Delegating this assessment outside the NPS is going to cause work, debate and potentially litigation.
13. Between these two extremes is potentially the most difficult category of indigenous biodiversity to develop policy for: those which are not sessile and those which are not extremely mobile. Within this category are those species which are more widely distributed than just Otago but for which Otago contributes a greater or lesser amount of the total. This is a dynamic space as biologists in the field continue to contribute field observations, data and analysis to describe the distribution of such species. This challenge is illustrated on pages 17 and 18 of Wildlands 2020⁵ where the development of recommendations relating to lizards required the creation of ‘significant’ and ‘potentially significant’ categories.
14. Some of these species move in regular patterns, others randomly to exploit resources during the year. But they depend on resources in Otago being available for them to exploit when required.
15. Others are naturally found beyond Otago and the development of objectives and policies and methods within Otago will measurably contribute to enhanced populations nationally.
16. To be able to develop an Objectives and Policy framework within the RPS which recognises the correct scale at which to consider the appropriate measures for implementing ecological outcomes in the RPS requires further work. However, I do not agree that species which move in and out of Otago or for which actions outside Otago may drive declines independent of what occurs in Otago should be excluded from consideration by the RPS.
17. The issue is not how to exclude species which are not endemic to Otago but how to get the balance of what is the appropriate contribution of the Otago RPS to ensuring the survivorship of these species.
18. I have highlighted the need for the RPS to have outcome statements which are meaningful and measurable.

⁵ Wildlands 2020 a. Mapping of significant habitats for indigenous fauna in terrestrial, freshwater, and marine ecosystems in Otago region. Contract Report No. 5015b

19. I think that for species where Otago is a significant / important contributor to their threat status this should be reflected in the RPS. I think that this revised wording for suggested Objectives captures what is intended:

“That activities within Otago do not contribute to any worsening of the threat classification of indigenous threatened species found within Otago”,

“In the term of the RPS, that activities within Otago contribute to improvements in the threat classification of threatened indigenous species found within Otago”.

20. Failure by the RPS to have policy and guidance for all threatened species even those which while found in Otago are not endemic will potentially lead to a worsening of the threat classification for such species. If all regional councils only created policy for species which are endemic to their particular region, then it might be great for some (eg plants), but it could be disastrous for threatened species which cross regional boundaries (eg wrybill, bittern, crested grebe etc.). So, while addressing the recognition of endemic species through policy is relatively easy there is a real gap for those species which are threatened but more widely spread.

Assessment of Significance

21. At the request of the hearing panel, an expert witness conference was held on 31 March 2023. I attended the expert conference and signed off my views in the Joint Witness Statement.

22. The request of the hearing panel set out in minute 9 was:

The purpose of the caucusing is to seek to achieve agreement between the various experts on matters that are essentially of a technical ecological nature⁶

23. The agenda for the caucusing was as follows:

(a) “Review Appendix 2 and in Table 1 below record:

- Areas of agreement, including any agreed changes; and
- Where there are areas of disagreement, record succinct individual reasons for their position with reference to the relevant parts of their evidence.

⁶ Minute 9, para 2 <https://www.orc.govt.nz/media/13923/minute-9-directions-for-expert-caucusing-regarding-appendix-2.pdf>

(b) Review Appendix 2 against the equivalent Draft NPSIB criteria in Table 2 below and record:

- Differences in the criteria, including whether each criterion is more or less stringent. [Note that (b) was not directed by the Panel, however, as a number of parties sought to align with the draft NPSIB, ORC considers that this would be useful for the Panel if there is sufficient time to complete it during the time available.”

24. Consequently, we focused on item (a) and in the time available, we did not complete any substantive work on item (b).

25. As a result of the expert conference on 31 March I think that the conference did what it was asked to do but this was the wrong question. In my opinion we should not have been focusing on the detail of the Appendix two as notified and the differences that the various submission have made but testing whether E NPS IB Appendix 1⁷ is a better approach.

26. A theme of my engagement and evidence in the RPS process has been to promote an integrated Regional Policy Statement across domains. The NZ CPS⁸ Policy 11 (Indigenous Biological diversity) states the following (*inter alia*):

“To protect indigenous biological diversity in the coastal environment:

(a) avoid adverse effects of activities on:

(i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists; ...

(iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;

(iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;

(v) areas containing nationally significant examples of indigenous community types; and ...

⁷ Appendix 1 E NPS IB Page 31

⁸ <https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/nz-coastal-policy-statement-2010.pdf>

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

(i) areas of predominantly indigenous vegetation in the coastal environment;

(ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;

(iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, ...;

(v) habitats, including areas and routes, important to migratory species; and ...

27. Consequently, a problem of implementation of the Appendix 1 of the E NPS IB is that the language of this NPS and that of the approved and predominating⁹ NZCPS are not consistent between terrestrial domains and coastal and estuarine domains.

28. Appendix 1 E NPS IB is an ecologically based assessment of significance based on a wider range of ecological criteria. Compared to this, Policy 11 of the NZCPS is much more directed to avoiding adverse effects of activities with a focus on threatened species and not assessing significance.

29. Ideally, expert caucusing/conferencing should have been used to explore and test how the RPS could incorporate these two conflicting approaches in order to provide for an integrated approach to assessment of significance across all ecological domains.

30. In lieu of this careful consideration, I support the adoption into the RPS of the Appendix 1 of the E NPS IB even though it has shortcomings, as outlined above. I have adopted this approach because E NPS IB reflects current thinking and has been developed at a national scale which allows for a consistent national approach to be developed in Regional Policy Statements.

⁹ E NPS IB Clause 1.4 (2) Page 4.

31. As a result of the evidence and discussion at this hearing on 17 April 2023 I wish to emphasise to the panel the following points:

- a. The General Matters of the JWS paragraph 5 refers to the need for a guidance document as essential to interpret the “Criteria for Assessment of Significance”. I would like to be clear that this paragraph 5 needs to be considered as an essential part of the process of implementing the Objectives of the RPS. Examples of what is required are available and could as an interim measure be cited in the RPS as to what’s required.
- b. Examples that I think give a detailed flavour of what is required to implement these criteria include:
 - i. Lloyd *et al.* 2013. Guidelines for the application of ecological significance criteria for indigenous vegetation and habitats of indigenous fauna in Canterbury Region. Wildlands Contract Report No. 2289i June 2013¹⁰.
 - ii. Davis, M.; Head, N.J.; Myers, S.C.; Moore, S.H. 2016: Department of Conservation guidelines for assessing significant ecological values. Science for Conservation 327. Department of Conservation, Wellington. 73 p¹¹.
- c. There are probably others, but these illustrate that the Criteria do need interpretation and that such resources are available.
- d. Undertaking an ecological assessment is a matter of professional judgement. The criteria and the guidance explain the ‘what’ of an assessment but do not deal with the ‘how’. An assessment requires critical evaluation of the site, the ecological values present and the criteria to be applied before drawing conclusions. It is an iterative process where judgements are required at each step and proper justification is recorded to ensure transparency and the basis of the evidence applied. I do not agree that it can be described as a ‘tick box’ exercise or that certain criteria can be glossed over without proper evaluation.

Therefore, in my experience it is useful to have a full set of criteria to provide a robust basis for evaluation.

- e. Recognising the particular attribute of mineral resources i.e., that they are fixed within the landscape and that Policy needs to reflect this, can be

¹⁰ <https://www.ecan.govt.nz/document/download?uri=2075337>

¹¹ <https://www.doc.govt.nz/globalassets/documents/science-and-technical/sfc327entire.pdf>

problematic. Providing for this potentially at the expense of other values that might be present¹² could lead to perverse outcomes. I think that establishing a different consideration for mineral resources compared to ecological resources is erroneous and needs to be resisted. In as much as a high priority minerals site is the result of abiotic factors that have interacted at a site and produced a mineral resource that is valued by Society so has the action of abiotic and biotic factors at a site led to the creation of important ecological patterns. Neither is moveable to suit the other. In a policy framework they need to be addressed equally and given the prominence they deserve. The RPS should in my opinion clearly set out policy, so decision makers have the full context of the Community to be able to make a reasoned decision.

Bruce McKinlay

19 April 2023

¹² Eg Para 5.3. Evidence of Anita Collie for Mataranui Gold Limited <https://www.orc.govt.nz/media/13291/mataranui-gold-limited-anita-collie.pdf>