

**BEFORE THE HEARINGS PANEL**

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**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the Proposed Otago Regional Policy Statement  
2021 (Non-Freshwater Parts)

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**MEMORANDUM ON BEHALF OF THE OTAGO REGIONAL COUNCIL**

Dated 30 May 2023

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## MEMORANDUM ON BEHALF OF THE OTAGO REGIONAL COUNCIL

### May it please the Panel:

- 1 At the conclusion of the hearing today several matters were left for me to report on.
- 2 A typed copy of my handwritten list comparing SNA provisions with non-SNA indigenous biodiversity provisions is **attached**.
- 3 Ms Boyd maintained a list corrections authors made to the reply report version of the pORPS during the closing hearing. That list is **attached**.
- 4 The list includes the hatching to APP6, Table 8 which Mr MacLennan raised at the hearing today as an addition he recommended to show visually when a quantitative assessment is required under Step 4 in APP6.
- 5 An updated PDF copy of the reply version of the pORPS will be sent to the administrator to post on the hearing website, along with a word version to provide to the Panel.
- 6 Regarding the reference at paragraph 497 of my closing submissions to clause 6 of Schedule 12 of the Act:
  - 6.1 The reference should be to clause 26 rather than clause 6.
  - 6.2 I apologise for the error.
  - 6.3 Provisions which require decision makers to have regard to emissions reduction and national adaptation plans<sup>1</sup> under sections 5ZI and 5ZS of the Climate Change Response Act 2002 do not apply to proposed policy statements, plans, changes or variations notified before 30 November 2022.



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Simon Anderson  
Counsel for Otago Regional Council  
30 May 2023

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<sup>1</sup> Sections 61(2)(d) and (e), 66(2)(e) and (f) and 74(2)(d) and (e) of the RMA

## SNA indigenous biodiversity (section 6(c)) vs non-SNA indigenous biodiversity (section 30(1)(ga))

PORPS provision	SNA (protect)	Non-SNA IBD (maintain)
<b>ECO-P2:</b> Identify and map areas and values	✓	✗
<b>ECO-P3(1)(a):</b> Avoid any reduction in SNA area or values	✓  All activities except (ECO-P4): <ul style="list-style-type: none"> <li>• Nationally and regionally significant infrastructure</li> <li>• Mineral and aggregate extraction</li> <li>• Specified mana whenua uses</li> </ul>	✗
<b>EIT-INF-P13(1)(a) and (2):</b> Avoid locating in the area unless demonstrably impracticable for to functional or operational needs	✓  <ul style="list-style-type: none"> <li>• Nationally and regionally significant infrastructure</li> <li>• Other infrastructure</li> </ul>	✗
<b>ECO-P6:</b> Effects management hierarchy: avoid, remedy, mitigate, offset, compensate, avoid if residual adverse effects are more than minor.	✓  <ul style="list-style-type: none"> <li>• Nationally and regionally significant infrastructure (EIT-INF-P13(2)(a) and ECO-P4)</li> <li>• Mineral and aggregate extraction (ECO-P4)</li> <li>• Specified mana whenua uses (ECO-P4)</li> <li>• Other activity only to the extent it does not reduce the SNA area or values (ECO-P3(2))</li> </ul>	✓  All activities  (NB: Non-significant biodiversity is considered more easily remedied, offset or compensated for)
<b>EIT-INF-P13(2)(b):</b> Avoid adverse effects on the values that contribute to the area's significance	✓  Infrastructure that is not regionally or nationally significant	✗

Note: High level summary; refer policies for exception criteria and other details

**Table of corrections to the Reply Report version of the pORPS**

Provision	Error (23 May)	Correction (30 May)
Definition: 'highly valued features and landscapes'	highly valued natural features, <u>and landscapes and (including seascapes)</u> <sup>1</sup> are areas which contain attributes and values of significance under Sections 7(c) and 7(f) of the RMA-1991, <sup>2</sup> which have been identified in accordance with APP9, <u>and for the purposes of the NESPF they are visual amenity landscapes.</u> <sup>3</sup>	highly valued natural features, <u>and landscapes and seascapes</u> <sup>4</sup> are areas which contain attributes and values of significance under Sections 7(c) and 7(f) of the RMA-1991, <sup>5</sup> which have been identified in accordance with APP9, <u>and for the purposes of the NESPF they are visual amenity landscapes.</u> <sup>6</sup>
MW-E1	... given effect in resource management processes and decisions, <u>and mana whenua values and taoka <b>tuku iho</b> are actively protected, supporting Kāi Tahu wellbeing.</u>	... given effect in resource management processes and decisions, <u>and mana whenua values and taoka are actively protected, supporting Kāi Tahu wellbeing.</u>
CE-O2	Public <u>walking</u> <sup>7</sup> access, <u>and recreation opportunities, and <del>highly valued natural features and landscapes</del></u> <sup>8</sup> in the coastal environment are maintained <u>or</u> enhanced, <u>and vehicle access is controlled.</u> <sup>9</sup>	Public <u>walking</u> <sup>10</sup> access, <u>and recreation opportunities, and <del>highly valued natural features and landscapes</del></u> <sup>11</sup> in the coastal environment are maintained <u>or and</u> <sup>12</sup> enhanced, <u>and vehicle access is controlled.</u> <sup>13</sup>
CE-P11	Provide for the development and operation of <i>aquaculture activities</i> <u>within appropriate locations and limits</u> in accordance with CE-P3 to CE-P12, taking into account: ...	Provide for the development and operation of <i>aquaculture activities</i> <u>within appropriate locations and limits <b>where this is</b></u> in accordance with CE-P3 to CE-P12, taking into account: ...

<sup>1</sup> 00301.054 Port Otago

<sup>2</sup> Clause 16(2), Schedule 1, RMA

<sup>3</sup> 00230.007 Forest & Bird

<sup>4</sup> 00301.054 Port Otago

<sup>5</sup> Clause 16(2), Schedule 1, RMA

<sup>6</sup> 00230.007 Forest & Bird

<sup>7</sup> 00226.132 Kāi Tahu Ki Otago

<sup>8</sup> 00121.039 Ravensdown, 00230.047 Forest and Brid, 00239.057 Federated Farmers, 00306.027 Meridian Energy, 00124.015 Southern Inshore Fisheries

<sup>9</sup> 00226.132 Kāi Tahu Ki Otago

<sup>10</sup> 00226.132 Kāi Tahu Ki Otago

<sup>11</sup> 00121.039 Ravensdown, 00230.047 Forest and Brid, 00239.057 Federated Farmers, 00306.027 Meridian Energy, 00124.015 Southern Inshore Fisheries

<sup>12</sup> 00226.132 Kāi Tahu ki Otago

<sup>13</sup> 00226.132 Kāi Tahu Ki Otago

ECO-P3	... (1) <u>first</u> <sup>14</sup> avoiding adverse <i>effects</i> that result in: (a) any reduction of the area or <u>indigenous biodiversity</u> <sup>15</sup> values identified and mapped under <u>ECO-P2(1)</u> , <sup>16</sup> (even if those values are not themselves significant <u>but contribute to an area being identified as a significant natural area</u> ) <sup>17</sup> <u>identified under ECO-P2(1)</u> <sup>18</sup> , <b>and</b>	... (1) <u>first</u> <sup>19</sup> avoiding adverse <i>effects</i> that result in: (a) any reduction of the area or <u>indigenous biodiversity</u> <sup>20</sup> values identified and mapped under <u>ECO-P2(1)</u> , <sup>21</sup> (even if those values are not themselves significant <u>but contribute to an area being identified as a significant natural area</u> ) <sup>22</sup> <u>identified under ECO-P2(1)</u> <sup>23</sup> , <b>or</b>
APP3(1)(a)	(1) <i>Biodiversity</i> offsetting is not available <u>for an</u> <sup>24</sup> <del>if the activity that</del> <sup>25</sup> will result in: (a) the loss <u>from an ecological district</u> <sup>26 27</sup> <b>of any individuals</b> of Threatened <i>taxa</i> ...	(1) <i>Biodiversity</i> offsetting is not available <u>for an</u> <sup>28</sup> <del>if the activity that</del> <sup>29</sup> will result in: (a) the loss <u>from an ecological district</u> <sup>30 31</sup> <b>of any individuals</b> <sup>32</sup> of Threatened <i>taxa</i> ...
APP3(3)(d)	(3) ... (d) <u>include application of mātauraka Māori where</u> <b>to</b> <u>available to an applicant, and</u>	(3) ... (d) <u>include application of mātauraka Māori where</u> <u>available to an applicant, and</u>

<sup>14</sup> 00223.100 Ngāi Tahu ki Murihiku

<sup>15</sup> 00226.219 Kāi Tahu ki Otago

<sup>16</sup> 00230.102 Forest and Bird

<sup>17</sup> 00230.102 Forest and Bird

<sup>18</sup> 00230.102 Forest and Bird

<sup>19</sup> 00223.100 Ngāi Tahu ki Murihiku

<sup>20</sup> 00226.219 Kāi Tahu ki Otago

<sup>21</sup> 00230.102 Forest and Bird

<sup>22</sup> 00230.102 Forest and Bird

<sup>23</sup> 00230.102 Forest and Bird

<sup>24</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.158 DOC

<sup>25</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.158 DOC

<sup>26</sup> McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation (new footnote attributed to 00138.027 QLDC)

<sup>27</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.158 DOC

<sup>28</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.158 DOC

<sup>29</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.158 DOC

<sup>30</sup> McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation (new footnote attributed to 00138.027 QLDC)

<sup>31</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.158 DOC

<sup>32</sup> 00137.158 DOC

APP6, Table 8:

Error (23 May):

Likelihood	Consequences				
	Insignificant	Minor	Moderate	Major	Catastrophic
Almost certain	Green	Yellow	Yellow	Red	Red
Likely	Green	Green	Yellow	Yellow	Red
Possible	Green	Green	Yellow	Yellow	Red
Unlikely	Green	Green	Green	Green	Yellow
Rare	Green	Green	Green	Green	Yellow
Green, Acceptable Risk: Yellow, Tolerable Risk: Red, Significant Risk					

Correction (30 May):

Likelihood	Consequences				
	Insignificant	Minor	Moderate	Major	Catastrophic
Almost certain	Green	Yellow	Yellow	Red	Red
Likely	Green	Green	Yellow	Hatching	Red
Possible	Green	Green	Yellow	Hatching	Red
Unlikely	Green	Green	Green	Green	Hatching
Rare	Green	Green	Green	Green	Hatching
Green, Acceptable Risk: Yellow, Tolerable Risk: Red, Significant Risk, <u>Hatching: Quantitative assessment required</u> <sup>33</sup>					

<sup>33</sup> 00415.002 ORC