

Before the RPS Hearing Panel

In the matter of Submissions on the Proposed Otago Regional Policy
Statement 2021

Supplementary Evidence of Ben Farrell on behalf of Otago and Central South Island Fish and Game Councils, Realnz Limited, and NZSki Limited regarding the implications of the National Policy Statement for Indigenous Biodiversity for non-freshwater provisions

19 September 2023

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Introduction

- 1 My full name is Ben Farrell. I have prepared various earlier statements of evidence in relation to both the freshwater and non-freshwater parts of the Proposed Otago Regional Policy Statement 2021. My qualifications and experience are set out in my EiC dated November 2022.

Scope of evidence

- 2 My evidence responds to the evidence of Otago Regional Council's reporting officer Mr Andrew Maclennan dated 8 September 2023 in relation to the implications of the National Policy Statement for Indigenous Biodiversity (**NPSIB**), except that the scope of my evidence does not address any matter directly relating to Specified Māori Land.
- 3 This evidence is provided in relation to the implications of the NPSIB for the non-freshwater provisions in response to Minutes 18 and 19 of the Non-Freshwater Hearing Panel.

Code of Conduct

- 4 I confirm that I have read the code of conduct for expert witnesses as contained in the Chief Freshwater Commissioner and Freshwater Hearings Panels Practice and Procedures Note 2020. I have complied with the Practice Note when preparing my written statement of evidence and will do so when I give oral evidence before the hearing.
- 5 The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
- 6 Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Material Considered

- 7 In addition to the material considered in my previous evidence before this panel, in preparing this supplementary evidence I have also considered the National Policy Statement for Indigenous Biodiversity 2023; and the supplementary statement of evidence of Andrew McLennan dated 8 September 2023.
- 8 I note I have had informal discussions with Ms Bartlett and Ms Cain in relation to the NPSIB and RPS provisions that relate directly to Specified Māori Land.

General Agreement with Mr MacLennan evidence

- 9 I generally agree with the findings and recommendations set out in Mr MacLennan evidence dated 8 September 2023, except that:
- (a) The definitions of 'restoration' and 'maintenance of indigenous biodiversity' should be narrowed to apply only 'within the terrestrial environment', and I note I continue to support inclusion of the definition of 'restore' as sought by Fish and Game, except that it should be refined as a consequence of the NPSIB so that it applies only to freshwater environments;
 - (b) ECO-P5A should be amended to 'enable', not 'provide for', established activities or specified of established activities, to continue where there are effects of the activity on an SNA; and
 - (c) I offer no expert planning opinion on the provisions that affect Specified Māori Land.

Adopting NPSIB definitions and principles

- 10 Definitions and principles provided in the NPSIB are subject to change. While the NPSIB definitions will apply where they are used in a provision relevant to implementing the NPSIB, they do not need to be repeated (cut and pasted) unless they are clearly referenced back to the NPSIB.
- 11 The NPSIB is a relatively detailed NPS that I anticipate will likely be amended in the future as implementation of its key definitions and principles are tested in practice (I observe the content of the NPSIB is already subject to a judicial review). If the NPSIB is amended, then the RPS provisions that quote the NPSIB could become invalid or incomplete. A safer more appropriate option is not to cut and paste the NPSIB, particularly definitions, but instead where a provision is implementing the NPSIB, and uses terms defined in the NPSIB, then it is implicit that the NPSIB definition applies. And if that NPSIB definition later changes, the ORC can evaluate whether or not the RPS requires amending as well – in some cases it may not need amending.
- 12 On this point I also do not understand why at [191] Mr MacLennan recommends inclusion of the definition of 'specified infrastructure' from the NPSIB, when in the June 2023 s 42A Report version of the provisions for the Freshwater process, the recommendation is to delete the NPSFM definition from the RPS.

Meaning of RESTORATION

13 Upon review of the latest s42A version of the RPS (Non-FPI) there are around 24 references to “restore” / “restoration”.

14 Fish and Game have sought a definition of “restore” to be included in the RPS, which I have previously supported:

***Restore** means to return to a state of good health, well-being and resilience.*

15 Fish and Game’s relief applies to:

(a) Indigenous and introduced ecosystem services (not just indigenous biodiversity)

(b) Freshwater and terrestrial environments

16 Fish and Game’s relief was (and remains) focused on restoring freshwater environments (including wetlands), to a state of good health.

17 The NPSIB has introduced the following definition:

***Restoration:** the active intervention and management of modified or degraded habitats, ecosystems, landforms, and landscapes in order to maintain or reinstate indigenous natural character, ecological and physical processes, and cultural and visual qualities, and may include enhancement activities.*

18 The NPSIB applies to indigenous biodiversity in the terrestrial environment (s1.31(1) of the NPSIB); including natural inland wetlands (s1.3(2)(c) of the NPSIB).

19 Understandably, Mr Maclennan proposes the following definition for the RPS, which is restricted to indigenous biodiversity values.

***Restoration (in relation to indigenous biodiversity)** means the active intervention and management of modified or degraded habitats, ecosystems, landforms, and landscapes in order to maintain or reinstate indigenous natural character, ecological and physical processes, and cultural and visual qualities, and may include enhancement activities.*

20 However, there is a risk that carving out indigenous biodiversity in the definition of restoration will have unintended consequences where the term “restoration” is used and applies to more than terrestrial indigenous

biodiversity, including within the freshwater provisions, for example in relation to FW-P7, LF-FW-M8A and LF-FW-O1A.

- 21 Accordingly, I recommend the definition of both the definition sought by Fish and Game and the definition recommended by Mr MacLennan be slightly refined to clarify their applicability, as follows:

Restore (in relation to freshwater) means to return to a state of good health, well-being and resilience.

Restoration (in relation to indigenous biodiversity within the terrestrial environment) means the active intervention and management of modified or degraded habitats, ecosystems, landforms, and landscapes in order to maintain or reinstate indigenous natural character, ecological and physical processes, and cultural and visual qualities, and may include enhancement activities.

Meaning of MAINTENANCE OF INDIGENOUS BIODIVERSITY

- (a) For the same reasons set out above in relation to the meaning of 'restoration', I consider the definition of 'Maintenance of indigenous biodiversity' (discussed at par 107 of Mr MacLennan's evidence) should also be amended to clarify it relates to the terrestrial environment, for example as follows:

Maintenance of indigenous biodiversity (within the terrestrial environment) means:

(a) *the maintenance and at least no overall reduction of all the following:*

- (i) *the size of populations of indigenous species:*
- (ii) *indigenous species occupancy across their natural range:*
- (iii) *the properties and function of ecosystems and habitats used or occupied by indigenous biodiversity:*
- (iv) *the full range and extent of ecosystems and habitats used or occupied by indigenous biodiversity:*
- (v) *connectivity between, and buffering around, ecosystems used or occupied by indigenous biodiversity:*
- (vi) *the resilience and adaptability of ecosystems; and*

(b) *where necessary, the restoration and enhancement of ecosystems and habitats.*

- 22 This amendment should also avoid any confusion arising from a possible inconsistency between the NPSIB, and the NPSFM – the NPSFM no longer uses the term 'overall' at the Objective level.

ECO-P5A

- 23 Clause 3.15 of the NPSIB says:

Local authorities must include objectives, policies, and methods in their policy statements and plans to enable specified established activities, or specified types of established activities, to continue where the effects of the activity on an SNA (including cumulative effects):

(a) are no greater in intensity, scale, or character over time than at the commencement date; and

(b) do not result in the loss of extent, or degradation of ecological integrity, of an SNA.

- 24 Mr MacLennan is recommending a new policy to implement clause 3.15 of the NPSIB, as follows:

ECO-P5A – Managing adverse effects of established activities on SNAs

Provide for the maintenance, operation, and upgrade of existing activities (excluding activities managed under ECO-P3 and ECO-P4), where the effects of the activity, including cumulative effects, on an SNA:

(1) are no greater in intensity, scale, or character over time than at 4 August 2023, and

(2) do not result in the loss of extent, or degradation of ecological integrity, of an SNA.

- 25 In respect of established ski areas, I have the following concerns with Mr MacLennan’s recommendation:

- (a) The wording of the policy is (or maybe) narrower than that set out in clause 3.15 and may not provide for activities that are established in local planning frameworks (e.g. Ski Area Sub Zones) that already enable effects on SNAs (e.g. managed vegetation clearance). Specifically, activities that are provided for within Ski Area Sub-Zones (under the QLDC district plan) are “types of established activities” for the purposes of clause 3.15. However, Mr MacLennan’s version of ECO-P5A is limited to just ‘existing activities’.

- (b) Clause 3.15 of the NPSIB clearly says '**enable**', not '**provide for**'. For brevity I do not intend on providing evidence about the difference between these meanings (as I understand the matter has been traversed with the panel previously).

26 For the reasons set out above ECO-P5A should be amended as follows:

ECO-P5A – Managing adverse effects of established activities on SNAs

~~Provide for~~ Enable the maintenance, operation, and upgrade of existing activities, including activities enabled by ski area sub zone provisions under the QLDC district plan, (excluding activities managed under ECO-P3 and ECO-P4), where the effects of the activity, including cumulative effects, on an SNA:

(1) are no greater in intensity, scale, or character over time than at 4 August 2023, and

(2) do not result in the loss of extent, or degradation of ecological integrity, of an SNA.

Conclusion

27 I tend to agree with Mr Maclennan evidence dated 8 September 2023 except that:

- (a) As set out above, Mr Maclennan's proposed definition of 'restoration' and 'maintenance of indigenous biodiversity' should be amended, along with consequential amendments to the definition of 'restore' sought by Fish and Game.
- (b) ECO-P5A should be amended to better reflect the intent of the NPSIB by, among other things, 'enable', not 'provide for', existing activities within or that affect SNAs, including Ski Area Activities that are established by the QLDC District Plan rule framework that haven't yet been fully implemented.
- (c) I am not offering an expert opinion on the provisions relating to Specified Māori Land.

19 September 2023

Ben Farrell