REPLY EVIDENCE OF ANDREW MACLENNAN

IMPLICATIONS OF THE NPSIB

Qualifications and Experience

1 My qualifications and experience are set out in paragraphs 7 to 9 of my section 42A report on the Coastal environment chapter of the Proposed Otago Regional Policy Statement (pORPS) dated 25 March 2022.

Code of Conduct

2 I have read and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2023. I have complied with the Code in preparing my evidence. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of Evidence

3 In its Minute 15 and updated in Minute 19, the Non-Freshwater Hearing Panel provided submitters with an opportunity to respond to the ORC evidence circulated on the 8th of September, solely on those aspects of the implications of the NPS IB for non freshwater issues by 5 p.m. Tuesday 19 September, 2023. The Non-Freshwater Hearing Panel then provided ORC with an opportunity to provide a final response by 5 p.m. Tuesday 26 September, 2023.

4 This evidence responds to the following submitters:

- Mr Bathgate for Kāi Tahu ki Otago (Kāi Tahu)
- Ms Cain on behalf of the Cain Whānau
- Ms Irving and Mr Page on behalf of Otago Water Users Group, Federated Farmers and Dairy NZ (OWRUG)
- Mr Farrell on behalf of Otago and Central South Island Fish and Game Councils (Fish & Game), Realnz Limited, and NZSki Limited

- Ms Justice on behalf of Aurora Energy Ltd, Network Waitaki Ltd and Powernet Ltd (EDBs)
- Ms St John and Mr Christensen on behalf of Oceana Gold NZ Ltd
- Ms Baish on behalf of Otago Forestry Companies
- Ms Styles on behalf of Manawa Energy Limited
- Ms Burkhardt on behalf of Manawa Energy Limited
- Ms Bartlett on behalf of Waihōpai Rūnaka. Te Rūnanga o Ōraka-Aparima and Te Rūnanga o Awarua (Ngāi Tahu ki Murihiku)
- Mr Brass on behalf of the Director-General of Conservation (DOC)
- Ms Warnock on behalf of the Director-General of Conservation (DOC)
- Ms Ruston for Meridian Energy Limited
- Mr Maassen for Meridian Energy Limited
- Ms McLeod or Transpower New Zealand Limited

Key to proposed amendments

Appearance	**Explanation**
Black text	Text as notified.
Black text with underlining or ~~strikethrough~~	Amendments recommended in section 42A report or reply report.
Text with ~~black~~ underlining and ~~green strikethrough~~	Amendments recommended in section 42A report or reply report that I now recommend deleting.
Green text with underlining or ~~strikethrough~~	Additional amendments recommended in my evidence in chief on the implications of the NPSIB.
Red text with underlining or ~~strikethrough~~	Additional amendments recommended in this statement

Overview of evidence

5 I have considered the evidence of submitters on a topic-by-topic basis, using the following topics:

- Application of the NPSIB

- NPSIB provisions given effect to by the pORPS
- Mana whenua
- Effects management hierarchies (EMHs)
- Renewable electricity generation (REG) and electricity transmission (ET)
- Significant natural areas (SNAs)
- Definitions
- Omissions

6 For each topic, this evidence summarises the submitters' evidence, provides my response, and includes updated recommendations.

Application of the NPSIB

Submitter evidence

7 Mr Brass for DOC agrees that ORC must align its policies with the NPSIB when preparing the pORPS. He emphasises the NPSIB should not be interpreted narrowly, rather as part of a comprehensive national framework to be integrated across the pORPS. He highlights the pORPS needs to function effectively across terrestrial, freshwater, marine, and air domains and encourages a broader and consistent approach is adopted to implementing the NPSIB across all these domains where relevant.

8 Counsel for DOC note that objective 2.1(a) of the NPSIB is to 'maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity'. The legal submission states that DOC continues to oppose any amendment to ECO-O1 as notified. However, in the event that the Hearing Panel is persuaded by other submitters, DOC suggests the word 'overall' should be used rather than 'net'.

9 Mr Farrell for Fish & Game generally agrees with the proposed amendments but consider further refinement is required to the definitions used. He suggests that it is safer and more appropriate to refer back to the NPSIB definitions where a provision is implementing and relying on terms defined within it.

Analysis

10 In relation to whether 'net' or 'overall' should be used within ECO-O1, I note that Objective 2.1(a) of the NPSIB is set at a national level and requires at least no overall loss of indigenous biodiversity across all of Aotearoa. ECO-O1 is set at the regional level and is more specific as it requires that any net decline to the condition, quantity and diversity of indigenous biodiversity is halted.

11 In my view both 'net' or 'overall' used in the context of ECO-O1 provide similar outcomes and would both give effect to the NPSIB. I consider 'net' may suggest a quantitative evaluation, while 'overall' may be more subject to a qualitative evaluation, and therefore more appropriate as an objective. On balance, I agree that is it beneficial to adopt the same language that is used in the NPSIB, and therefore I agree the 'net' should be replaced by 'overall'.

12 With respect to Mr Farrell's suggested amendments, I agree that the definitions included within my evidence-in-chief on the Implications of the NPSIB dated 8 September 2023 (EiC) adopted a different drafting style to other definitions within the pOPRS which replicate definitions from other statutory documents. For example, all the other definitions from other statutory documents take the following approach:

> ***[…]***
>
> *has the same meaning as in the Glossary in the New Zealand Coastal Policy Statement 2010 (as set out in the box below) …*

13 I therefore agree that the definitions that have been taken directly from the NPSIB should adopt the same drafting style.

Amended recommendation

14 I recommend definitions which replicate a definition in the NPSIB are identified by including the following statement:

> ***[…]***
>
> *has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below) …*

15 I recommend that ECO-O1 is amended as follows:

Otago's indigenous biodiversity is healthy and thriving and any overall ~~net~~[1] decline in ~~quality~~ condition,[2] quantity and diversity is halted.

Mana whenua

Decision making

Submitter evidence

16 In paragraph 7 to 9 of his evidence, Mr Bathgate for Kāi Tahu discusses NPS-IB requirements that recognise the mana whenua role as kaitiaki of indigenous biodiversity. He generally supports my analysis of NPSIB Objective 2.1 and Policies 1 and 2. However, he highlights Policy 2(a) NPSIB requires the exercise of kaitiakitaka through mana whenua managing indigenous biodiversity on their own land and as such considers amendments are required to provide for kaitiakitanga on Māori land.

17 Mr Bathgate also considers the language used within the NPSIB is more directive than ECO-O3 and recommends the following amendment for alignment:

> *Mana whenua ~~are able to~~ exercise their role ~~recognised~~ as kaitiaki of Otago's indigenous biodiversity, and Otago's communities are recognised as stewards, who are responsible for: ...*

18 He specifically notes that corresponding amendments to ECO-P1 are unnecessary, as the policy provides guidance for several parties.

Analysis

19 I agree with the evidence of Mr Bathgate that Objective 2.1 and Policy 2 of the NPSIB provide greater direction regarding recognising the role of mana whenua as kaitiaki of indigenous biodiversity and support the proposed amendment to ECO-O3.

Amended recommendation

20 I recommend the following amendment to ECO-03:

> *Mana whenua ~~are able to~~ exercise their role ~~recognised~~ as kaitiaki of Otago's indigenous biodiversity, and Otago's communities are recognised as stewards, who are responsible for:*

[1] 00024.010 City Forests Limited
[2] 00306.042 Meridian

Partnership

Submitter evidence

21 In Paragraph 10 of his evidence, Mr Bathgate states his support for amendments proposed to ECO-P1 and ECO-M7A(1A) to better achieve the direction of clause 3.2 of the NPSIB and suggests a minor amendment to include Kāi Tahu dialect.

22 With regards to partnership, Ms Cain for the Cain Whānau does not support the proposed NPSIB amendments. She notes the NPSIB has introduced a shift in the management of indigenous biodiversity by recognising tangata whenua and owners of specified Māori land. She recognises the pORPS partnership approach has been based on engagement with mana whenua and Kāi Tahu, and consultation with Te Rūnanga o Ngāi Tahu, Aukaha, and Te Ao Marama Inc. In her opinion partnership has not extended to owners of specified Māori land and the exclusion of Māori landowners from this process goes against the NPSIB's intent. Furthermore, she considers the 'rush to include the NPSIB in the PORPS' does not achieve the timing requirements of the NPSIB as set out in part 4.

23 This matter has also been recognised by Ms Bartlett for Ngāi Tahu ki Murihiku in paragraphs 8 to 11 of her evidence. In her opinion further process steps are required to enable appropriate partnership with owners of specified Māori land in the development of pORPS provisions. She considers two options may satisfy this requirement:

(1) Introducing a procedural step in the hearing process to reserve decisions on matters related to indigenous biodiversity maintenance, restoration, and protection of SNAs and identified taonga on specified Māori land. This involves ORC engaging with the owners of specified Māori land to gather comments on draft provisions and sharing the results with the hearing panel for decision-making.

(2) Establishing a partnership approach between ORC and owners of specified Māori land within the PORPS provisions, allowing for discussions and the possibility to amend provisions as a result of these discussions.

24 In support of option (2) Ms Bartlett has proposed amendments to the MW and ECO chapter provisions to apply clause 3.18(1) of the NPSIB. This includes:

- a new definition of 'Māori landowners' and amendments to the definition 'Papakāika'
- amendments to the MW-O1, MW-P2, MW-P4, a new MW-1A
- a new policy (ECO-P13) to manage indigenous biodiversity on Native reserves and Māori land
- a new method (ECO-M4D) in relation to local authorities working in partnership with mana whenua and owners of native reserves and Māori land.

Analysis

25 I agree with the evidence of Mr Bathgate and accept the recommended minor amendment to ECO-M7A(1A) to include Kāi Tahu dialect.

26 In relation to the evidence of Ms Cain and Ms Bartlett, I agree that ORC through the development of the pORPS has not worked in partnership with individual owners of Māori land in Otago to develop the provisions of the pORPS. The intention of proposed method ECO-M4D was that district and regional councils must work in partnership with mana whenua and owners of native reserves and Māori land to develop, and include in district and regional plans, objectives, policies, and methods that result from this partnership approach. I consider this ensures that at the regional plan and district plan level this partnership approach is required. However, I accept that this means the partnership approach with owners of native reserves and Māori land will not be incorporated within the pORPS, and instead ECO-M4D sets out the process in which the partnership approach is required when developing regional and district plans.

27 Ms Bartlett has proposed two options to ensure the requirements of the NPSIB clause 3.18(1) are given effect to.

28 In relation to introducing a procedural step in this hearing process, in my view this is not required. I consider that the additional requirement included within ECO-M4D sets out the process in which a partnership approach is

required when developing regional and district plans which gives effect to clause 3.18(1) of the NPSIB.

29 In relation to Ms Bartlett's suggested amendments associated with option 2, I consider this concept is largely the same as the recommended drafting of ECO-M4D. When comparing the version of ECO-M4D with the drafting proposed by Ms Bartlett, I note that the recommended version of ECO-M4D replicates the drafting within 3.18(1) and (2) of the NPSIB. In contrast, Ms Bartlett's suggested drafting includes:

- a new definition of 'Māori landowners' and amendments to the definition 'Papakāika'
- amendments to the MW-O1, MW-P2, MW-P4, a new MW-1A
- a new policy (ECO-P13); I note that clauses (1), (2)(a), (b), (c) of this policy are not included within the NPSIB,
- a new method on (ECO-M4D); note that clauses (a), (b), (c) of this method are not included within the NPSIB. In addition, clauses 3.18(1)(a), 3.18(1)(b), 3.18(2)(e), and 3.18(2)(g) of the NPSIB are not included within this suggested drafting.

30 In my view, the drafting of ECO-M4D proposed within my evidence (and updated based on the amendments suggested by Mr Bathgate) better gives effect to the requirements of clause 3.18 of the NPSIB.

Amended recommendation

31 No further changes to the ECO chapter are recommended on the basis of this evidence.

Specified Māori Land

Submitter evidence

32 In paragraph 11 of his evidence, Mr Bathgate supports retaining the definition of Māori land.

33 With respect to clause 3.18 of the NPSIB Mr Bathgate suggested the drafting of the pOPRS is unclear as to whether the use or development of Māori land is subject to the effects management hierarchy or not. In his

view clause 3.18 of the NPSIB clearly promotes alternative approaches to effects management concerning indigenous biodiversity on Māori land.

34 In paragraph 19 to 21 of his evidence, he sets out three options to address this matter. This includes:

(a) *amendments to ECO-P3, ECO-P4 and ECO-P6 to provide for alternate approaches for Māori land;*

(b) *a new policy specific to indigenous biodiversity effects management on Māori land; or*

(c) *amendments to new method MW-M4D to provide better alignment to MW-P4 and MW-M5, including signalling alternate approaches to effects management.*

35 Mr Bathgate suggests that amendments to existing policies or insertion of a new policy to provide specifically for Māori land could obscure the intended outcome sought. He also recognises MW-P4 and MW-M5(2) in the Mana Whenua chapter already broadly address the effects management on Māori land and considers replicating these in other pORPS chapters may not be efficient or effective. He therefore recommends the following amendments to the new ECO-M4D to align with MW-M5 which recognise Kāi Tahu rakatirataka and allow mana whenua to take the lead in managing indigenous biodiversity on Māori land:

ECO-M4D – Native reserves and Māori land

Local authorities must:

(1) ~~work in partnership (which includes acting in good faith) with mana whenua and owners of native reserves and Māori land to develop~~, provide for the use of native reserves and Māori land in accordance with MW-P4, and recognise Kāi Tahu rakatirataka over this land by enabling mana whenua to lead approaches to managing any adverse effects of such use on indigenous biodiversity. This may involve the inclusion ~~to and include~~ in district plans and regional plans, of objectives, policies, and methods that provide an alternative approach to effects management for indigenous biodiversity than those policies set out in this ECO chapter. These objectives, policies and methods will seek ~~that~~, to the extent practicable, to:

(a) maintain and restore indigenous biodiversity on native reserves and Māori land, and

(b) protect SNAs and identified taoka on native reserves and Māori land, and

(2) ensure that objectives, policies, and methods developed under (~~6~~ 1): ...

36 He considers these changes make it clear that different policy approaches to ECO-P3 to ECO-P6 will be available for Māori land while maintaining the overall intent set out within 3.18(1).

37 Regarding clause 3.18(2), Mr Bathgate recommends retaining ECO-M4D(2), as it provides valuable context for the alternative policy approaches needed for Māori land. He notes that this recommendation conflicts with method ECO-M7A(4), which involves local authorities collaborating with mana whenua to determine appropriate management strategies for native reserves and Māori land. Therefore, he recommends deleting ECO-M7A(4), as follows, if the proposed ECO-M4D amendments are accepted:

> *Local authorities must partner with Kāi Tahu in the management of indigenous biodiversity to the extent desired by mana whenua, including by:*
>
> *(4) ~~working with mana whenua to determine appropriate management approaches for indigenous biodiversity within native reserves and Māori land,~~ ...*

38 In paragraph 23 of his evidence, Mr Bathgate highlights that consideration should be given to alternative management approaches in the coastal environment, as the NPSIB applies to the terrestrial part of the coastal area. He specifically notes that within Otago, a significant portion of native reserves and Māori land is likely to be within the coastal environment as defined by NZCPS Policy 1. Mr Bathgate considers his proposed amendment to ECO-M4D could be an alternative approach.

39 With respect to ECO-P8(4)(e) Mr Bathgate endorses the approach taken to prioritise the restoration of areas of indigenous biodiversity on native reserves and Māori land when such restoration is initiated by Māori landowners.

Analysis

40 Regarding the definition of Māori land, I agree with the evidence of Mr Bathgate and maintain no change is required.

41 I acknowledge Mr Bathgate's analysis of clause 3.18 of the NPSIB and agree in part that it supports alternative approaches to effects management concerning indigenous biodiversity on Māori land.

42 I agree that to propose a 'carve-out' for Māori land to ECO-P3, ECO-P4 and ECO-P6 may detract from plan clarity and efficiency. I also agree that it would not be efficient or effective to insert a new policy specific to indigenous biodiversity effects management on Māori land as this would duplicate MW-P4 and MW-M5(2).

43 With respect to ECO-M4D, I agree that the proposed amendments in part clarify that alternate policy approaches to ECO-P3 to P6 may be available for Māori land. However, in my opinion clause 3.18 requires a '*partnership*' approach between Council, mana whenua and owners of specified Māori land. I therefore disagree with the language proposed by Mr Bathgate, '*provide for the use*', as I consider this seeks a more directive approach which in my opinion limits a meaningful plan development process required by the NPSIB.

44 In paragraph 71 to 76 of my EiC I identified a number of provisions, including MW-P4, which I considered partly achieve the requirements set out in clause 3.18. After considering Mr Bathgate's proposed amendments, I agree with the additional text suggested by Mr Bathgate that further specifies how this partnership approach will be used to develop objectives, policies, and methods within district and regional plans that result in an alternative approach to effects management for indigenous biodiversity than those policies set out in the ECO chapter.

45 In my view, this is what is anticipated by phrase 'to the extent practicable' within the clause 3.18(1) of the NSPIB. I disagree that reference to MW-P4 is required, as I consider all the relevant methods are to be read together and specific reference is not required.

46 I agree with Mr Bathgate that these amendments conflict with method ECO-M7A(4) which encompasses local authorities working with mana whenua to determine appropriate management approaches for native reserves and Māori land. To avoid duplication and confusion, I support the recommended deletion of ECO-M7A(4).

47 With regards to the suggestion from Mr Bathgate that an alternative approach should be applied to the management of indigenous biodiversity on native reserves and Māori land located within the coastal environment, I disagree this will achieve Policy 11 of the NZCPS. I note that Policy 11 of the NZCPS is directive and requires protection of indigenous biological

diversity in the coastal environment either by avoiding the adverse effects of activities on particular areas or avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects of activities on other environments.

48 Given the directiveness of Policy 11, and the requirement within clause 1.4(2) of the NPSIB that if there is a conflict between the NSPIB and the NZCPS, the latter prevails, I consider clause 3.18, is still subject to the requirements of Policy 11 of the NZCPS when that land is located within the coastal environment and therefore requirements of Policy 11 of the NZCPS prevail over the requirement within clause 3.18 of the NPSIB. Therefore, in my view the additions to ECO-M4D recommended below should not apply to the requirements of CE-P5.

49 In relation to the evidence of Mr Brass, I retain the view that the definition of Māori land should be retained within the pORPS. As stated in paragraphs 66 and 67 of my EiC, I consider the definition of Māori land in the pORPS is broader than the definition within the NPSIB, and therefore applies the exemption within ECO-M4D more broadly than clause 3.18. However, I also note that this definition has been developed in partnership with mana whenua. Given clause 3.3 of the NPSIB requires that local authorities must involve tangata whenua as partners in the management of indigenous biodiversity, I consider this definition is a result of this partnership approach and reverting to the NPSIB definition would be contrary to Policy 2 of the NPSIB. Therefore, I retain the view that the definition of Māori land in the pORPS should remain.

Amended recommendation

50 I maintain the view that no change is required to the definition of Māori land.

51 I recommend that an amendment is made to ECO-M4D as follows:

> *(1) work in partnership (which includes acting in good faith) with mana whenua and owners of native reserves and Māori land to develop, and include in district plans and regional plans~~,~~ objectives, policies, and methods that may include providing an alternative approach to effects management for indigenous biodiversity than the policies in this ECO chapter (excluding CE-P5). These objectives, policies and methods will seek, to the extent practicable, to:*

52 I recommend that an amendment is made to ECO-M7A as follows:

> *Local authorities must partner with Kāi Tahu in the management of indigenous biodiversity to the extent desired by mana whenua, including by:*
>
> *~~(4) working with mana whenua to determine appropriate management approaches for indigenous biodiversity within native reserves and Māori land,~~ ...*

Toaka and Mahika kai

Submitter evidence

53 In paragraph 26, Mr Bathgate offers his general support for the conclusions reached regarding the proposed amendments to support achievement of clause 3.19 of the NPSIB.

54 In paragraphs 27 to 29 Mr Bathgate highlights CE-P5 as a policy relevant to providing for terrestrial taoka species and ecosystems in the coastal environment. He considers this policy provides an alternative approach for managing taoka which aligns with the NPSIBs intent but may conflict with the kaitiaki approach required by NPSIB Policy 2 and clause 3.19(4).

55 With respect to the phrase *'as far as practicable*' in clause 3.19(4), he considers it implies some policy discretion in protecting acknowledged and identified taoka which differs to ECO-P3 and CE-P5. He concludes that since local authorities work with mana whenua to develop taoka provisions and mana whenua have discretion in identifying and describing taoka, no additional changes are needed at the PORPS policy level to implement clause 3.19.

56 Regarding clause 3.19(5) of the NPSIB, Mr Bathgate proposes the amendments set out above to ECO-M4D align with clauses 3.18 and 3.19(5).

57 In paragraph 31 of is evidence, Mr Bathgate considers the proposed amendments to ECO-M3(4) and (5) introduce management aspects to a method primarily focused on taoka identification. He suggests that although the title could be changed to include 'management,' it might be misleading, as taoka management is better covered by ECO-M4 and ECO-M5. He considers clause 4 relates to identifying adverse effects and potential management approaches but to align customary use by mana whenua in accordance with tikaka, he proposes relocating clause 5 in ECO-M7A.

58 Mr Bathgate states that while the NPSIB does not explicitly define '*sustainable customary harvest*', he believes it closely aligns with the concept of mahika kai.

59 He sets out the NPSIB clauses which provide for sustainable customary use, including clauses:

- 3.3(2)(d)
- 3.10(6)(b), and
- 3.19(7).

60 In paragraphs 35 Mr Bathgate details all the PORPS provisions he recognises make allowance for mahika kai.

61 In paragraph 37 he states:

> *"In my opinion, there is reasonable recognition of the need to provide for mahika kai practices in the Reply Version of the ECO chapter. However, there is still potential for misunderstanding between the ECO policy effects tests and the exercise of mahika kai, which remains of some concern."*

62 In paragraph 38 and 39 Mr Bathgate explains this further. In summary he states:

- Mahika kai practices outside the coastal environment that interact with SNAs or taoka follow an 'easier' effects pathway governed by ECO-P4(2) but remains subject to the effects management hierarchy.
- Non-coastal mahika kai practices without SNAs or taoka follow ECO-P6 and follow an effects management hierarchy for significant impacts and use an 'avoid/remedy/mitigate' approach for other adverse effects on indigenous biodiversity.
- Coastal mahika kai practices are governed by CE-P5.
- Neither ECO-P6 nor CE-P5 contain specific provisions for mahika kai.

63 In his opinion, the pORPS policies do not give effect to the NPSIB. He considers that mahika kai practices should be excluded from effects tests

or at least be subject to an alternative management approach. He notes ECO-M4(1A) and ECO-M5(2) already consider an alternative approach that allows for the inclusion of mahika kai in developing management strategies for indigenous vegetation clearance or modification and recommends amendments to accommodate mana whenua-led approaches for mahika kai management, aligning with the NPSIB and principles of MW-P4 and MW-M5.

64 With reference to '*sustainable customary use*', Ms Cain seeks the removal of the term '*sustainable*', particularly in relation to 'sustainable use of mahinga kai'. In her opinion this is a western concept that risks misrepresenting the Kāi Tahu practice of mahinga kai, a practice that is defined by specific legislation and management plans, independent of the NPSIB's influence.

Analysis

65 I agree with Mr Bathgate that ECO-M3 provides direction on the identification of toaka, whereas the requirement within clause 3.19(7) of the NPSIB relates to the management of taoka and is better given effect to by amending ECO-M7A which relates to Kāi Tahu as kaitiakitaka.

66 I also agree with Mr Bathgate that clause 3.10(6)(b) of the NPSIB provides an exemption for the sustainable customary use of indigenous biodiversity in SNAs if conducted in accordance with tikanga. I consider this is given effect to by ECO-P4(2A), ECO-M4(1A) and ECO-M5(2). However, I agree that the additions proposed by Mr Bathgate to ECO-M4(1A) and ECO-M5(2) accommodate mana whenua-led approaches for mahika kai management. I support these amendments.

67 In relation to Ms Cain's suggested removal of the term '*sustainable*', when used in the context of 'sustainable use of mahinga kai', I agree that the phrase '*sustainable*', is not required and I support the removal of this term.

Amended recommendation

68 I recommend that amendments are made to ECO-M3, ECO-M4(1A), ECO-M5(2), ECO-M7A:

ECO-M3 – Identification of taoka

[...]

~~*(5) make or change their policy statements and plans as necessary to ensure that the sustainable customary use of identified taoka by mana whenua in accordance with tikaka and in a manner consistent with the protection of the identified taoka is provided for, and*~~

[...]

ECO-M4 – Regional plans

Otago Regional Council must prepare or amend and maintain its regional plans to:

[...]

(1A) manage the clearance or modification of indigenous vegetation, while allowing for mahika kai and kaimoana (seafood) activities (including through the development, in partnership with mana whenua, of provisions for mahika kai and kaimoana activities that may provide an alternative approach to effects management than the policies in this ECO chapter),

[...]

ECO-M5 – District plans

Territorial authorities must prepare or amend and maintain their district plans to:

[...]

(2) ~~control~~ manage the clearance or modification of indigenous vegetation, while allowing for mahika kai activities (including through the development, in partnership with mana whenua, of provisions for mahika kai activities that may provide an alternative approach to effects management than the policies set out in this ECO chapter),

[...]

ECO-M7A — Kāi Tahu kaitiakitaka

[...]

(3) enabling the mahika kai practices of mana whenua in accordance with tikaka, including the customary use of identified taoka,

Effects management hierarchies

Submitter evidence

69 Within paragraph 26 of his evidence, Mr Brass notes that the pORPS limits provisions for protecting SNAs and applying an EMH for indigenous biodiversity in the coastal environment, with indigenous biodiversity in the

coastal environment managed separately. However, he argues that excluding the coastal environment from these provisions is unnecessary to comply with the NZCPS, as the NPSIB explicitly applies to the terrestrial coastal environment. He proposes that these provisions should apply to the coastal environment but only after the 'avoid' requirements of NZCPS Policy 11(a) and (b) have been met. This approach would provide more specificity and align with the NPSIB without conflicting with the NZCPS.

70 In paragraph 11 to 17 of counsel for OWRUGs discuss the merits of the NPSFM and the NPSIB, particularly regarding EMH requirements. In their opinion there is no substantive difference in outcomes between NPSFM and NPSIB offsetting and do not support the argument put forward in paragraph 103.2 of my evidence in chief that the EMH in the NPSIB is more stringent than the EMH in the NPSFM. They also disagree that NPSIB has a more stringent criterion for financial contributions, as both NPSFM and NPSIB include similar criteria for considering financial contributions. Finally, they believe that both the NPSFM and NPSIB have intentionally set out their own EMH criteria for different habitat types and there is no compelling reason to deviate from these standards, given the varying habitat types involved. They consider flexibility should be maintained to integrate responses across land and freshwater situations on a case-by-case basis.

71 Regarding ECO-P6, Ms Justice for the EDBs supports the amendments which they recognise aligns with clause 3.16 of the NPSIB. Consequently, an exclusionary amendment previously requested in their evidence in chief is no longer needed.

72 Ms Baish for the Forestry Companies states there is currently no available guidance on how to implement or interpret the NPSIB and therefore she understands that indigenous biodiversity located outside SNA within plantation forests will be subject regulation 93 of the NES Plantation Forestry. As such she seeks the following amendment:

> ***ECO-P6 – Maintaining indigenous biodiversity***
>
> *Outside the coastal environment, ~~M~~maintain Otago's indigenous biodiversity (excluding ~~the coastal environment and~~ areas ~~managed~~ protected under ECO-P3, and activities managed under ECOP6A(1) and ECO-P12 by…"*

73 She also proposes the following amendments to ECO-P12 to clarify this matter further:

ECO-P12 – Plantation forestry activities

Manage:

[…]

(3) the adverse effects of plantation forestry activities on indigenous biodiversity outside of an SNA or identified highly mobile fauna area in accordance with the National Environmental Standard for Plantation Forestry.

Analysis

74 In relation to the evidence of Mr Brass, suggesting that the scope of ECO-P3, ECO-P4, and ECO-P6 should broaden to include biodiversity in the coastal environment (excluding the coastal marine area). I note that the reply report version of CE-P5 within the pORPS largely replicates Policy 11 of the NZCPS. CE-P5 requires protection of indigenous biological diversity in the coastal environment either by:

- avoiding the adverse effects of activities on particular coastal ecosystems, or
- avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects of activities on a range of other coastal ecosystems.

75 The ecosystems and habitats listed within CE-P5(1) include:

- indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists,
- taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened,
- indigenous ecosystems and vegetation types in the coastal environment that are threatened or are naturally rare,
- habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare,
- areas containing nationally significant examples of indigenous community types, and

- areas set aside for full or partial protection of indigenous biodiversity under other legislation, and

76 The ecosystems and habitats listed within CE-P5(2) include:

- areas of predominantly indigenous vegetation in the coastal environment,
- habitats in the coastal environment that are important during the vulnerable life stages of indigenous species,
- indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable,
- areas sensitive to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh,
- habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes,
- habitats, including areas and routes, important to migratory species, and
- ecological corridors, and areas important for linking or maintaining biological values identified under this policy.
- significant natural areas identified in accordance with APP2 that are not included in (1) above, and
- indigenous species and ecosystems identified as taoka in accordance with ECO-M3 that are not included in (1) above.

77 I consider CE-P5 is comprehensive. CE-P5(1) requires the avoidance of adverse effects within the ecosystems and habitats listed in CE-P5(1) (which are likely to be considered SNAs in accordance with APP2). This is more directive than the requirements of ECO-P3 and ECO-P4. Therefore, I consider an addition within ECO-P3 and ECO-P4 is not required, as the requirement of CE-P5(1) would prevail over the requirements of ECO-P3 and ECO-P4.

78 For the ecosystems and habitats listed in CE-P5(2) there is a requirement to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects. The management of biodiversity within ECO-P6 adopts a similar management approach to CE-P5(2) as it requires that significant adverse effects are required to adopt the EMH, and all other adverse effects are required to maintain indigenous biodiversity.

79 Therefore, the suggested amendment to ECO-P6 would only apply to ecosystems or habitats not listed by CE-P5. In my view this would apply to very few ecosystems and habitats of indigenous biodiversity, if any.

80 Given the broad range of ecosystems or habitats listed by CE-P5, I consider this protects the indigenous biological diversity of the coastal environment as required by Policy 11 of the NZCPS and maintains indigenous biodiversity as required by Objective 2.1 and no further amendments are required.

81 In relation the submissions from OWRUG, on reflection, I agree that there is no substantive difference in outcomes between EMH within the NPSFM and NPSIB, and therefore I agree that the EMH in the NPSIB is largely the same as the EMH in the NPSFM. Therefore, I agree that the definition of EMH used within the NPSIB should be used within the ECO chapter and definition of EMH used within the NPSFW should be used within the FW chapter.

82 In relation to the amendment sought by Ms Baish, I agree that there should be an exclusion from ECO-P4 for plantation forestry activities that are managed under ECO-P12. I note that a similar exemption is included within clause 3.10(1)(d) of the NPSIB. I disagree that an additional clause is required within ECO-P12 setting out the how the adverse effects of plantation forestry activities on indigenous biodiversity are to be managed outside of SNA's.

APP3 & APP4

83 Regarding APP3 and APP4, counsel for Oceana Gold disagree with my interpretation of the biodiversity offsetting and the biodiversity offsetting principles and consider amendments are required to refer to 'principles' rather than 'criteria' with the heading to APP3 and APP4. They also seek amendments to APP3 and APP4 to specify which of the principles an applicant must 'comply with' and which an applicant must 'have regard to'.

84 Mr Brass highlights the Director General of Conservation has previously sought changes to APP3 and APP4 in an earlier submission which are generally consistent with the NPSIB. He recommends the NPSIB drafting is adopted to give better give effect to the NPSIB, improve consistency of implementation, and avoid a need for further drafting amendments in the future.

85 Mr Brass supports the additional amendments to APP3 and APP4.

Analysis

86 I agree with the amendments to APP3 and APP4 suggested by Oceana Gold. I consider this additional text within APP3 and APP4 gives effect to Clause 3.10(4)(b) of the NPSIB.

Amended recommendation

87 I recommend the following amendments to APP3 and APP4:

> ***APP3 – ~~Criteria for biodiversity offsetting~~ Principles for biodiversity offsetting***
>
> *These principles apply to the use of biodiversity offsets for adverse effects on indigenous biodiversity. An applicant must comply with principles 1 to 6 and have regard to the remaining principles as appropriate.*
>
> *[…]*
>
> ***APP4 – ~~Criteria for biodiversity compensation~~ Principles for biodiversity compensation***
>
> *These principles apply to the use of biodiversity compensation for adverse effects on indigenous biodiversity. An applicant must comply with principles 1 to 6 and have regard to the remaining principles as appropriate.*
>
> *[…]*

Renewable electricity generation and electricity transmission networks

Submitter evidence

88 Ms Styles for Manawa disagrees with my statement at paragraph 26 of my evidence in chief that '*there is no specific guidance regarding how the NPSIB relates to other national directives, like the National Policy Statement for Renewable Electricity Generation (NPSREG)'*. In her opinion, while no explicit reference is made by the NPSIB to NPSREG, it is implied through the application of clause 1.3(3).

89 Regarding ECO-P6A, Ms Styles disagrees there is a 'policy gap' regarding the consideration of effects of renewable electricity generation activities on indigenous biodiversity. She states that the NPSREG is clear on assessing such effects and provides steps for avoidance, remedy, mitigation, offsetting, and compensation. She suggests ECO-P6A is complex, as it deals with various activities in different areas, and notes that both NPSREG and NPSIB do not differentiate between nationally significant and regionally significant infrastructure related to REG activities. She recommends the following amendments:

> ***ECO-P6A – Renewable electricity generation and electricity transmission networks***
>
> *Manage the effects of the development, operation, maintenance, and upgrade of renewable electricity generation and electricity transmission network infrastructure on indigenous biodiversity (outside water bodies and the coastal marine area) by:*
>
> *(1) ~~For infrastructure that is nationally or regionally significant infrastructure:~~*
>
> *~~(a)~~ avoiding, ~~as a first priority~~ where practicable, locating within significant natural areas, and*
>
> *(2) ~~(b)~~ Where ~~If~~ it ~~is~~ not ~~demonstrably~~ practicable to avoid locating within a significant natural area because of the functional needs or operational needs of the infrastructure, minimise adverse effects on the values of the area, and*
>
> *(3) (c) outside significant natural areas, avoiding, remedying, or mitigating more than minor adverse effects on indigenous biodiversity to the extent practicable, and*
>
> *(4) ~~(d)~~ in all cases, hav~~ing~~e regard to the offsetting principles set out within APP3 or the compensation principles set out within APP4 in relation to any residual adverse effects.*
>
> *~~(2) for infrastructure not addressed in (1), managing adverse effects in accordance with ECO-P6.~~*

90 Counsel for Oceana Gold disagree with my interpretation of the biodiversity offsetting and compensation principles and as such consider changes are required to my proposed amendments. These include the following amendment of ECO-P6A:

> ***ECO-P6A – Renewable electricity generation and electricity generation networks***

(1) […]

(d) In all areas comply with ~~have regard to the offsetting~~ principles 1 to 6 set out within APP3 or ~~the compensation principles set out in~~ APP4, and have regard to the remaining principles within APP3 or APP4 for any residual adverse effects; and

[…]

91 Ms Ruston has filed evidence on behalf of Meridian in relation to proposed Policy ECO-P6A. She has noted that the NPSIB explicitly states that nothing in the NPSIB applies to the development, operation, maintenance and upgrade of renewable electricity generation assets and activities. In her opinion, she considers that the NPSIB's specific exclusion of its application to REG activities further highlights the needs for a self-contained set of REG provisions in the pORPS. She disagrees that some REG and ET activities will be nationally and regionally significant, while others will not, as I set out in my evidence-in-chief. While she agrees that although the NPSIB does not apply to REG and ET activities and that this does not mean their effects should not be managed at all, she considers the national direction that must be given effect to leads to a distinctly different effects management hierarchy for REG activities. She continues to support the standalone provisions for REG outlined in her evidence and does not support recommended Policy ECO-P6A.

92 Ms McLeod has provided evidence on behalf of Transpower. Ms McLeod notes that the ET and REG are both exempt from the NPSIB. She helpfully outlines the reason for this which is contained in the NPSIB Recommendations Report, which describes that the proposed NPSs include a bespoke pathway for REG and ET, and that the clause removes the potential for conflict between the NPSREG and NPSET against the NPSIB when the documents come into effect. She agrees that the exemption in the NPSIB challenges the extent to which the ECO chapter can apply to all activities but considers that the provisions require amendment to separately direct the management of effects of electricity transmission activities, re-enforcing her view that a bespoke approach is necessary to address the effects of the National Grid as outlined in her evidence-in-chief. Ms McLeod does not support proposed Policy ECO-P6A for the reasons set out in her evidence.

93 In paragraphs 34 to 39 of his evidence, Mr Brass sets out his disagreement with the proposed approach to managing renewable electricity generation and electricity transmission networks. He states that applying an EMH to REG and ET activities is justified in the context of Otago's biodiversity values and threats, and under sections 6(c) and 30(1)(ga) of the RMA. He believes that adopting a uniform approach and wording for these activities, like that used for other activities, would enhance clarity and certainty regarding the provisions and promote consistency and integration in the management of their impacts on indigenous biodiversity. He seeks ECO-6A be deleted.

Analysis

94 I agree with Mr Brass that sections 6(c) and 30(1)(ga) of the RMA still apply to REG and ET activities. Reflecting on the evidence of Mr Brass evidence I have re-considered whether ECO-P6A as recommended would achieve the protection of SNAs required by section 6(c) of the RMA, while also recognising the benefits of REG and ET as required by the NPSET and the NPSREG. I have also re-considered the integration between the ECO chapter and the EIT chapter and specifically EIT-P13. On reflection, I do not consider that the inclusion of ECO-6A as drafted would achieve protection, as effects on SNAs would only need to be minimised in accordance with that policy.

95 I have further considered the reply evidence of Mr Langman[3] in response to both the standalone provisions for ET and REG in relation to the EIT chapter, in the context of the position that existed prior to the gazettal of the NPSIB. I acknowledge that the position put forward in my supplementary evidence represented a considerable weakening of the policy approach for ET and REG activities as they relate to SNAs. It provided an approach where the effects on SNAs are minimised (proposed ECO-P6A(1)(b)), whereas in the closing recommended version of ECO-P6, the approach was to apply an effects management hierarchy, where following the application of the effects management hierarchy, if residual effects cannot be compensated for, the activity is to be avoided.

96 I have considered Ms Styles', Ms Ruston's and Ms McLeod's evidence. In my view, when read as a whole document, the pORPS does recognise and

[3] https://www.orc.govt.nz/media/14372/reply-report-11-eit.pdf

provide for the benefits of ET and REG. It does this through provision for a slightly relaxed planning framework for nationally and regionally significant infrastructure which comprise of both ET and REG, in particular, by providing for minimising of adverse effects as they relate to some of the matters set out in section 6 of the RMA through EIT-INF-P13, as well as specific objectives and policies relating to ET and REG. It also provides for existing investment in regionally and nationally significant infrastructure, through proposed Policy EIT-INF-P11 for existing infrastructure which provides for avoidance of significant adverse effects, and if avoidance is not practicable, minimising adverse effects. However, I acknowledge that this approach does not extend to the management of adverse effects on indigenous biodiversity.

97 I agree with Ms Styles, Ms Ruston, and Ms McLeod that clause 1.3(3) of the NPSIB explicitly states that nothing in the NPSIB applies to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities, and this in my view provides clear direction that an alternative management approach for these activities is required.

98 Taking into account the matters above, I consider that ECO chapter needs to recognise and provide for the protection required by section 6(c), while also recognising and providing for the benefits of REG and ETN activities as provided for by the NPSET and NPSREG. To do this I recommend adopting the approach taken within the proposed NPSET and NPSREG drafts for consultation (dNPSET and dNPSREG). Within both these documents an EMH is included for the management of adverse effect which replicates that within the NPSIB but includes an additional clause. This additional clause follows the compensation clause and states that if compensation is not appropriate to address any residual adverse effects:

- the REG or ETN activities must be avoided if the residual adverse effects are significant; but
- if the residual adverse effects are not significant, the REG or ETN activities must be enabled if the national significance and benefits of the REG activities outweigh the residual adverse effects.

99 This EMH applies REG or ETN activities within ‘areas with ‘significant environmental values’ defined as:

means any or all of the following:

(a) areas with natural character in the coastal environment:

(b) outstanding natural features and landscapes, both within and outside the coastal environment:

(c) areas with historic heritage, including sites of significance to Māori and wahi tapu:

(d) significant natural areas'

100 For areas without significant environment values clauses 3.7 and 3.9 of the dNPSREG and dNPSET require that the adverse effects of REG or ETN activities are avoided, remedied, or mitigated to the extent practicable. I consider this effects test for REG or ETN activities outside of SNA's is appropriate and recommend an amendment to ECO-P6 to reflect this.

101 For the reasons discussed above, I recommend that ECO-P6A, and related references, are deleted, amendments are made to the definition of 'Effects management hierarchy (in relation to indigenous biodiversity)' and amendments are made to ECO-P6.

102 To be clear, I am not recommending this approach because I consider the dNPSREG and dNPSET have statutory weight, I am recommending this approach as policy response to bridge the gap between protection required by section 6(c) and the enabling aspects of the NPSET and NPSREG. I consider this amended provides policy direction as to the scale of effects that are acceptable or not acceptable (i.e. significant or not significant), and provides a clear response to be undertake depending on the scale of effects. This is somewhere between the full NPSIB response (where activities must be avoided if biodiversity compensation is not appropriate), and the request from the submitters to not have a "bookend" which describes when an activity is to be avoided.

<u>Amended recommendation</u>

103 I recommend that ECO-P6A be deleted.

104 I recommend references to ECO-P6A within ECO-P3, ECO-P4, ECP-P6 and ECO-M5(1) be deleted.

105 I recommend the definition of 'Effects management hierarchy (in relation to indigenous biodiversity)' is amended to include the following:

[…]

(f) if biodiversity compensation is not appropriate, the activity itself is avoided~~.~~, unless the activity is regionally significant infrastructure and nationally significant infrastructure that is either renewable electricity generation or the National Grid then:

(g) if compensation is not appropriate to address any residual adverse effects:

(i) the activity must be avoided if the residual adverse effects are significant; but

(ii) if the residual adverse effects are not significant, the activity must be enabled if the national significance and benefits of the activity outweigh the residual adverse effects.

106 I recommend that ECO-P6 is amended as follows:

ECO-P6 – Maintaining indigenous biodiversity

Outside the coastal environment, ~~M~~maintain[4] manage Otago's indigenous biodiversity (excluding ~~the coastal environment and~~[5] areas ~~managed~~ protected[6] under ECO-P3~~, and activities managed under ECOP6A(1)~~) by:

(1) applying the ~~following~~ biodiversity effects management hierarchy (in relation to indigenous biodiversity)[7] to manage significant adverse effects on indigenous biodiversity, ~~and~~

(2) ~~avoiding, remedying, or mitigating all other adverse effects on indigenous biodiversity~~. requiring the maintenance of indigenous biodiversity for all other adverse effects of any activity and

(3) not withstanding (1) and (2) above, for regionally significant infrastructure and nationally significant infrastructure that is either renewable electricity generation or the National Grid avoid, remedy, or mitigate adverse effects to the extent practicable.

~~in decision-making on applications for resource consent, plan change~~[8] ~~and notices of requirement~~.

~~(1) avoid adverse effects as the first priority,~~

~~(2) where adverse effects demonstrably cannot be completely avoided, they are remedied,~~

~~(3) where adverse effects demonstrably cannot be completely avoided or remedied, they are mitigated,~~

~~(4) where there are more than minor[9] residual adverse effects after avoidance, remediation, and mitigation, then the residual adverse effects are offset in accordance with APP3, and~~

[4] Clause (10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00301.028 Port Otago
[5] Clause 10(2)(b)(i) - Consequential amendment arising from 00226.223 Kāi Tahu ki Otago
[6] 00230.105 Forest and Bird
[7] 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga
[8] 00138.036 Queenstown Lakes District Council
[9] 00307.014 Christchurch International Airport Limited (CIAL)

~~(5) if biodiversity offsetting of more than minor[10] residual adverse effects is not possible, then:~~

~~(a) the those[11] residual adverse effects are compensated for in accordance with APP4, and~~

~~(b) if the those[12] residual adverse effects cannot be compensated for in accordance with APP4, the activity is avoided.~~

Significant Natural Areas (SNAs)

Submitter evidence

ECO-P3

107 With reference to ECO-P3, Mr Brass discusses in paragraphs 40 to 45 of his evidence, the requirements of clause 3.10(2) of the NPSIB and ECO-P3. He disagrees with the conclusion in paragraph 184 of my EIC While he agrees the overall intention is broadly similar, he considers the NPSIB provisions are more specific and contain more prescriptive ecological criteria than ECO-P3(1). He therefore recommends redrafting ECO-P3(1) as follows to give effect to the NPSIB by replacing the current clause (a) with clauses (a) to (e) from NPSIB 3.10(2):

ECO-P3 – Protecting significant natural areas and taoka

Outside the coastal ~~environment~~ marine area, subject to CE-P5, and except as provided for by ECO-P4 and ECO-P6A, protect significant natural areas and indigenous species and ecosystems that are taoka by:

(1) first avoiding adverse effects that result in:

~~*(a) any reduction of the area or indigenous biodiversity values identified and mapped under ECO-P2(1), (even if those values are not themselves significant but contribute to an area being identified as a significant natural area) identified under ECO-P2(1), or and*~~

(a) loss of ecosystem representation and extent:

(b) disruption to sequences, mosaics, or ecosystem function;

(c) fragmentation of SNAs or the loss of buffers or connections within an SNA:

(d) a reduction in the function of the SNA as a buffer or connection to other important habitats or ecosystems:

[10] 00307.014 Christchurch International Airport Limited (CIAL)
[11] 00307.014 Christchurch International Airport Limited (CIAL)
[12] 00307.014 Christchurch International Airport Limited (CIAL)

(e) a reduction in the population size or occupancy of Threatened or At Risk (declining) species that use an SNA for any part of their life cycle

~~(b)~~(f) any loss of ~~Kāi Tahu~~ taoka values identified by mana whenua as requiring protection under ECO-P2(2), and

(2) […]

ECO-P4

108 Regarding ECO-P4, Ms Justice for the EDBs supports the proposed amendment to include reference to '*specified infrastructure*' and as such no longer considers it necessary to include exclusionary clauses for specified infrastructure in policies ECO-P3, ECO-P4 or ECO-P5, as set out in her evidence in chief.

109 Mr Brass considers the amended drafting of ECO-P4 does not achieve the requirements of clause 3.11(1) of the NPSIB in relation to national and regional benefit, functional or operation need, and alternative locations.

110 Mr Farrell for Realnz Limited, and NZSki Limited acknowledges the proposed amendment to ECO-P5A to give effect to clause 3.15 of the NPSIB but raises the following concerns regarding the effect of the policy on established ski areas:

(a) ECO-P5A may be narrower than clause 3.15, potentially excluding activities already allowed in local planning frameworks.

(b) Clause 3.15 uses "enable," not "provide for".

111 Mr Farrell therefore considers ECO-P5A should be amended to replace "provide for" with "enable" and include specific recognition of 'activities enabled by ski area sub zone provisions under the QLDC district plan'.

APP2

112 With regards to APP2, Ms Justice for the EDBs maintains that the criteria for identifying SNAs should closely match the criteria outlined in NPSIB clause 3.8(1) and (2).

113 Counsel for Oceana Gold seek the following amendments to align APP2 with the specific wording of clause 3.8 of the NPSIB.

APP 2 – ~~Significance criteria for indigenous biodiversity~~ Criteria for identifying areas that qualify as significant natural areas (SNAs)

This appendix sets out the criteria for identifying significant indigenous vegetation or significant habitats of indigenous fauna in a specific area, so that the area qualifies as an SNA.

The assessment must be done using the assessment criteria in this Appendix ~~1~~ and in accordance with the following principles:

[…]

(e) consistency: the criteria in this Appendix ~~1~~ are applied consistently, regardless of who owns the land:

[…]

D Ecological context criterion

[…]

~~(e) an area that is important for a population of indigenous fauna during a critical part of their life cycle, either seasonally or permanently, e. g. for feeding, resting, nesting, breeding, spawning or refuges from predation.~~

Analysis

ECO-P2

114 I agree with Mr Brass that clause 3.10(2) of the NPSIB is more specific and contain more prescriptive ecological criteria than ECO-P3(1). I therefore agree with his suggestion that ECO-P3(1) is amended to reflect the drafting of clause 3.10(2) of the NPSIB.

ECO-P4

115 In relation to ECO-P4, I agree with the amendment proposed by Mr Brass. I agree that clause 3.11(1) of the NPSIB requires that the exceptions to clause 3.10(2) are only available if activities can demonstrate: a national and regional benefit, a functional or operational need, and that there are not practical alternative locations. I agree that the amended drafting of ECO-P4 does not reflect these requirements. As such, I support his recommended amendments to clauses (1), (1A), (1B) and (1C).

116 In relation to ECO-P5A, I agree in part with Mr Farrell. I agree that the clause 3.15 uses the phrase "enable," not "provide for", and therefore I agree that an amendment is required to ECO-P5A to reflect this.

117 In relation to whether ECO-P5A is narrower than clause 3.15 of the NPSIB, I note that clause 3.15 uses the phrase 'established' activity rather than 'existing' activity. I agree that the language used within ECO-P5A should reflect clause 3.15 of the NPSIB. However, I disagree that the pORPS needs to specify particular established activities such as activities enabled by ski area sub zone provisions under the QLDC district plan.

APP2

118 I agree within the minor amendments proposed by Oceana Gold to fix the minor errors within APP2. I disagree with the removal of ecological context criterion D(e). As set out within paragraph 28 of Dr Lloyd's statement of evidence, this additional criterion is required as the NPS-IB criterion does not capture important indigenous fauna habitats. He notes that this criterion for indigenous fauna habitats is particularly important in an Otago context, providing a basis for the recognition and protection of indigenous fauna habitats across many species group. I retain the view that the fauna habitat criterion should be added as an attribute of the ecological context criterion.

Amended recommendation

119 I recommend ECO-P3 be amended as follows:

> ***ECO-P3 – Protecting significant natural areas and taoka***
>
> *Outside the coastal environment, and ~~E~~except as provided for by ECO-P4 ~~and ECO-P6A~~ ~~and ECO-P5~~, protect significant natural areas and indigenous species and ecosystems that are taoka by:*
>
> *(1) first avoiding adverse effects that result in:*
>
> *~~(a) any reduction of the area or indigenous biodiversity values identified and mapped under ECO-P2(1), (even if those values are not themselves significant but contribute to an area being identified as a significant natural area) identified under ECO-P2(1), or and~~*
>
> *(a) loss of ecosystem representation and extent:*
>
> *(b) disruption to sequences, mosaics, or ecosystem function;*
>
> *(c) fragmentation of SNAs or the loss of buffers or connections within an SNA:*
>
> *(d) a reduction in the function of the SNA as a buffer or connection to other important habitats or ecosystems:*

(e) a reduction in the population size or occupancy of Threatened or At Risk (declining) species that use an SNA for any part of their life cycle

~~(b)~~(f) any loss of ~~Kāi Tahu~~ taoka values identified by mana whenua as requiring protection under ECO-P2(2), and

(2) […]

120 I recommend ECO-P4 be amended as follows:

ECO-P4 – Provision for new activities

Outside the coastal environment, ~~except as provided for by ECO-P6A, M~~maintain[13] Otago's indigenous biodiversity by following the sequential steps in the effects management hierarchy (in relation to indigenous biodiversity)[14] ~~set out in ECO-P6~~ when making decisions on plans, applications for resource consent or notices of requirement for the following activities in significant natural areas or where they may adversely affect indigenous species and ecosystems that are taoka that have been identified by mana whenua as requiring protection:[15]

(1) the development, operation, maintenance or upgrade of specified infrastructure ~~nationally significant infrastructure[16] and regionally significant infrastructure~~ that provides significant national or regional public benefit ~~(excluding infrastructure for renewable electricity generation and electricity transmission networks)~~ that has a functional need or operational need to locate within the relevant significant natural area(s) or where they may adversely affect indigenous species or ecosystems that are taoka, and there are no practicable alternative locations.

(1A) the development, operation and maintenance of mineral extraction activities that provide a significant national public benefit that could not otherwise be achieved within New Zealand and that have a functional need or operational need to locate within the relevant significant natural area(s) or where they may adversely affect indigenous species or ecosystems that are taoka, and there are no practicable alternative locations.

(1B) the development, operation and maintenance of aggregate extraction activities that provide a significant national or regional

[13] Clause (10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00301.028 Port Otago

[14] 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC

[15] Consequential change to 00239.100 Federated Farmers

[16] 00314.001 Transpower

public benefit that could not otherwise be achieved within New Zealand and that have a functional need or operational need to locate within the relevant significant natural area(s) or where they may adversely affect indigenous species or ecosystems that are taoka, and there are no practicable alternative locations,

(1C) the operation or expansion of any coal mine that was lawfully established before August 2023 that has a functional need or operational need to locate within the relevant significant natural area(s) or where they may adversely affect indigenous species or ecosystems that are taoka, and there are no practicable alternative locations; except that, after 31 December 2030, this exception applies only to such coal mines that extract coking coal,

(2) .....

ECO-P5A

121 I recommend ECO-P5A be amended as follows:

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

~~Provide for~~ Enable the maintenance, operation, and upgrade of ~~existing~~ established 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.

Definitions

Submitter evidence

Restoration

122 Mr Farrell for Fish & Game have previously sought a definition of '*restore*' to be included in the pORPS, emphasising the return to a state of good health, wellbeing and resilience and encompassing both the indigenous and introduced ecosystem services in both the freshwater and terrestrial environments. He states that the NPSIB introduces a broader definition of "restoration" and raise concern that the pORPS amendments propose a more restricted definition, focusing on indigenous biodiversity values which may lead to unintended consequences when "restoration" is applied in contexts beyond terrestrial indigenous biodiversity, including freshwater

provisions like FW-P7, LF-FW-M8A, and LF-FW-O1A. Mr Farrell recommends the following amendments to refine the definition sought by Fish and Game and the proposed definition to clarify their scope:

> ***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.*

Maintenance of indigenous biodiversity

123 For the same reasons set out above in relation to the meaning of 'restoration', Mr Farrell considers the definition of '*maintenance of indigenous biodiversity*' should be amended as follows to clarify it relates to the terrestrial environment:

> ***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.*

Specified infrastructure

124 Ms Justice for the EDBs supports the proposed definition from the NPSIB, which she considered is necessary to support the implementation of ECO-P4.

Threatened or At Risk, and Threatened or At Risk (declining)

125 The Ms Baish for the Forestry Companies support the inclusion of a new definition for '*threatened, at-risk (declining)'* to align with the meanings given in the New Zealand Threat Classification System Manual (Townsend et al, 2008).

Analysis

126 Mr Farrell has previously recommended referring back to the higher order documents where the meaning of the term remains unchanged. In paragraph 9 of this evidence, I support this approach and recommend amendments to the definitions in the pORPS which replicate the definition of the NPSIB. This approach is consistent with the approach taken for other definitions relying on other higher order documents. I therefore consider the definition for '*restoration'* and the definition for '*maintenance of indigenous biodiversity*', are amended to refer back to the NPSIB definition.

127 I note the definition of '*specified infrastructure*' has been supported by Ms Justice and the definition of '*Threatened or At Risk, and Threatened or At Risk (declining)*' has been supported by the Ms Baish. However, I consider amendments are required to refer back to the NPSIB definition in line with my approach discussed above.

128 I acknowledge Fish & Game has previously sought a definition of '*restore*' to be inserted into the pORPS which has previously been addressed in the s42A report of Ms Hawkins. At paragraph 130 to 131, Ms Hawkins determined that defining '*restore*' could be too restrictive and concluded that leaving the term undefined allows for a nuanced approach through regional and district plans to address specific circumstances. I rely on the recommendation of Ms Hawkins as I consider the insertion of this definition goes beyond the scope of this evidence which is solely for the purpose of giving effect to the NPSIB.

Amended recommendation

129 I recommend the definition for '*restoration*' be amended as follows:

> ***Restoration*** ~~***(in relation to indigenous biodiversity)***~~
>
> *has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):*

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.

130 I recommend the definition for '*Maintenance of indigenous biodiversity*' be amended as follows:

Maintenance of indigenous biodiversity

has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):

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.

131 I recommend the definition for '*Specified infrastructure*' be amended as follows:

specified infrastructure

has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):

means any of the following:

(a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002):

(b) regionally or nationally significant infrastructure identified as such in a National Policy Statement, the New Zealand Coastal Policy Statement, or a regional policy statement or plan:

(c) infrastructure that is necessary to support housing development, that is included in a proposed or operative plan or identified for development in any relevant strategy document (including a future development strategy or

spatial strategy) adopted by a local authority, in an urban environment (as defined in the National Policy Statement on Urban Development 2020):

(d) any public flood control, flood protection, or drainage works carried out:

(i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or

(ii) for the purpose of drainage, by drainage districts under the Land Drainage Act 1908:

(e) defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990.

132 I recommend the definition for '*Threatened or At Risk, and Threatened or At Risk (declining)*' be amended as follows:

Threatened or At Risk, and Threatened or At Risk (declining)

has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):

~~means any indigenous species of flora or fauna that meets the criteria for nationally critical, nationally endangered, or nationally vulnerable species in the New Zealand Threat Classification System Manual (Townsend et al, 2008).~~

have, at any time, the meanings given in the New Zealand Threat Classification System Manual (Andrew J Townsend, Peter J de Lange, Clinton A J Duffy, Colin Miskelly, Janice Molloy and David A Norton, 2008. Science & Technical Publishing, Department of Conservation, Wellington), available at: https://www.doc.govt.nz/globalassets/documents/science-andtechnical/sap244.pdf, or its current successor publication.

Omissions

Submitter evidence

133 Mr Brass considers the pORPS should include the following method for the development of an Otago Regional Biodiversity Strategy, despite understanding that this will be undertaken independently:

ECO-MX Regional Biodiversity Strategy

The Regional Council must initiate preparation of a regional biodiversity strategy that complies with Appendix 5 of the National Policy Statement for Indigenous Biodiversity 2023 no later than 7 July 2026, and complete the strategy no later than 7 July 2033.

134 In his opinion this would give explicit effect to the NPSIB and be consistent with the approach taken elsewhere in recommending additional methods. He also notes the existing biodiversity strategy for Otago, developed in 2018, is inconsistent with the NPSIB focussing on actions that the Regional

Council itself will take, rather than being a 'regional' strategy covering actions of central and local government, communities and tangata whenua.

Analysis

135 I agree with Mr Brass that including a new method to support the achievement of clause 3.23 of the NPSIB and would be consistent with the approach taken by ORC to implementing the requirements of the NPSIB. However, I do not consider stipulating timing requirements necessary. The process for developing a regional biodiversity strategy is independent to the process for developing the pORPS. I would therefore expect that in order to inform the development of a regional biodiversity strategy higher order documents would be referred to and timing requirements implemented.

Amended recommendation

136 I recommend the insertion of a new method ECO-M9 as follows:

> ***ECO-M9 – Regional Biodiversity Strategy***
>
> *The Regional Council must initiate preparation of a regional biodiversity strategy that complies with Appendix 5 of the National Policy Statement for Indigenous Biodiversity 2023.*

Errors

137 There are two errors within my EIC that I would like to correct.

138 Firstly, within paragraph 106 I recommended amending ECO-P6(2) as follows:

> *Outside the coastal environment, ~~M~~maintain[12] manage Otago's indigenous biodiversity (excluding the ~~coastal environment and13~~ areas ~~managed~~ protected[14] under ECO-P3, and activities managed under ECOP6A(1)) by:*
>
> *[…]*
>
> *(2) requiring the maintenance of indigenous biodiversity for all other adverse effects of any activity.*

139 However, within Appendix 2 of my evidence I recommended amending ECO-P6(2) as follows:

> *Outside the coastal environment, ~~M~~maintain[12] Otago's indigenous biodiversity (excluding the ~~coastal environment and13~~ areas ~~managed~~ protected[14] under ECO-P3, and activities managed under ECOP6A(1)) by:*

[…]

(2) avoiding, remedying, or mitigating all other adverse effects on indigenous biodiversity.

140 I support the version of ECO-P6(2) set out within paragraph 106 of my EIC.

141 Secondly, I note that APP3(2)(g) has been added to APP3 within Appendix 2 of my evidence. I consider this additional clause is not required as it is covered by APP3(2)(a).

Section 32AA Assessment

142 The amendments recommended within this evidence are solely focused on giving effect to the NSPIB. Given the NSPIB has been assessed under s32 of the Act I consider no further s32AA assessment is required.

Conclusion

143 My recommended amendments to the pORPS are included within Appendix 1.

Andrew Maclennan

26 September 2023

Appendix 1 Recommended amendments to the pORPS

Biodiversity compensation	*has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* means a conservation outcome that meets the requirements in Appendix 4 and results from actions that are intended to compensate for any more than minor residual adverse effects on *indigenous biodiversity* after all appropriate avoidance, minimisation, remediation, and *biodiversity offsetting* measures have been sequentially applied ~~means a conservation outcome that meets the requirements in Appendix 4 and results from actions that are intended to compensate for any more than minor residual adverse effects on *indigenous biodiversity* after all appropriate avoidance, minimisation, remediation, and *biodiversity offsetting* measures have been sequentially applied~~
Biodiversity offset	*has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below) …* means a measurable conservation outcome that meets the requirements in Appendix 3 and results from actions that are intended to: (a) redress any more than minor residual adverse effects on *indigenous biodiversity* after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied; and (b) achieve a net gain in type, amount, and condition of *indigenous biodiversity* compared to that lost. ~~means a measurable conservation outcome that meets the requirements in Appendix 3 and results from actions that are intended to:~~ ~~(a) redress any more than minor residual adverse effects on *indigenous biodiversity* after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied; and~~ ~~(b) achieve a net gain in type, amount, and condition of *indigenous biodiversity* compared to that lost.~~
Depositional landform	*has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* means a landform that is alluvial (matter deposited by water, (eg, fans, river flats, and terraces), colluvial (matter deposited by gravity at the base of hillslopes, (eg, talus), or glacial (matter deposited by glaciers, (eg, moraines and outwash). ~~means a landform that is alluvial (matter deposited by water, (eg, fans, river flats, and terraces), colluvial (matter deposited by gravity at the base of hillslopes, (eg, talus), or glacial (matter deposited by glaciers, (eg, moraines and outwash).~~
Ecological district	*has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* means the ecological districts as shown in McEwen, W Mary (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation. ~~means the ecological districts as shown in McEwen, W Mary (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation.~~

Ecosystem function	*has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* means the abiotic (physical) and biotic (ecological and biological) flows that are properties of an ecosystem. ~~means the abiotic (physical) and biotic (ecological and biological) flows that are properties of an ecosystem.~~
Effects management hierarchy (in relation to indigenous biodiversity)	means ~~the effects management hierarchy set out in ECO-P6.~~ an approach to managing the adverse effects of an activity on *indigenous biodiversity* that requires that: (a) adverse effects are avoided where practicable; then (b) where adverse effects cannot be avoided, they are minimised where practicable; then (c) where adverse effects cannot be minimised, they are remedied where practicable; then (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, *biodiversity offsetting* is provided where possible; then (e) where *biodiversity offsetting* of more than minor residual adverse effects is not possible, *biodiversity compensation* is provided; then (f) if *Biodiversity compensation* is not appropriate, the activity itself is avoided~~.~~ unless the activity is *regionally significant infrastructure* and *nationally significant infrastructure* that is either *renewable electricity generation* or the *National Grid* then: (g) if compensation is not appropriate to address any residual adverse effects: (i) the activity must be avoided if the residual adverse effects are significant; but (ii) if the residual adverse effects are not significant, the activity must be enabled if the national significance and benefits of the activity outweigh the residual adverse effects.
Exotic pasture species	*has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* means a pasture species identified in the *National List of Exotic Pasture Species* (see clause 1.8). ~~means a pasture species identified in the *National List of Exotic Pasture Species* (see clause 1.8).~~
Habitat	*has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* means the area or environment where an organism or ecological community lives or occurs naturally for some or all of its life cycle, or as part of its seasonal feeding or breeding pattern; but does not include built structures or an area or environment where an organism is present only fleetingly. ~~means the area or environment where an organism or ecological community lives or occurs naturally for some or all of its life cycle, or as part of its seasonal feeding or breeding pattern; but does not include built structures or an area or environment where an organism is present only fleetingly.~~

Improved pasture	*has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* means an area of land where *exotic pasture species* have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed for livestock grazing. ~~means an area of land where *exotic pasture species* have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed for livestock grazing.~~
Indigenous biodiversity	*has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* means the living organisms that occur naturally in New Zealand, and the ecological complexes of which they are part, including all forms of indigenous flora, fauna, and fungi, and their *habitats*. ~~means the living organisms that occur naturally in New Zealand, and the ecological complexes of which they are part, including all forms of indigenous flora, fauna, and fungi, and their *habitats*.~~
Maintenance of improved pasture	*has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* includes the removal of indigenous vegetation for the purpose of maintaining the *improved pasture*, whether the removal is by way of cutting, crushing, applying chemicals, draining, burning, cultivating, over-planting, applying seed of *exotic pasture species*, mob stocking, or making changes to soils, hydrology, or landforms. ~~includes the removal of indigenous vegetation for the purpose of maintaining the *improved pasture*, whether the removal is by way of cutting, crushing, applying chemicals, draining, burning, cultivating, over-planting, applying seed of *exotic pasture species*, mob stocking, or making changes to soils, hydrology, or landforms.~~
Maintenance of indigenous biodiversity	*has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* 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. ~~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.~~
Restoration ~~(in relation to indigenous biodiversity)~~	*has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* 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. ~~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.~~
***SNA*, or ~~S~~significant natural area**	*has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* means: ~~areas of significant indigenous vegetation and significant habitats of indigenous fauna that are located outside the coastal environment.~~ (a) any area that, after the commencement date, is notified or included in a district plan as an *SNA* following an assessment of the area in accordance with Appendix 1; and (b) any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant *habitat* of indigenous fauna (regardless of how it is described); in which case it remains as an *SNA* unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant *habitat* of indigenous fauna. ~~means: areas of significant indigenous vegetation and significant habitats of indigenous fauna that are located outside the coastal environment.~~ ~~(a) any area that, after the commencement date, is notified or included in a district plan as an *SNA* following an assessment of the area in accordance with Appendix 1; and~~ ~~(b) any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant *habitat* of indigenous fauna (regardless of how it is described); in which case it remains as an *SNA* unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant *habitat* of indigenous fauna.~~

Specified infrastructure	*has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* means any of the following: (a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002): (b) regionally or nationally significant infrastructure identified as such in a National Policy Statement, the New Zealand Coastal Policy Statement, or a regional policy statement or plan: (c) infrastructure that is necessary to support housing development, that is included in a proposed or operative plan or identified for development in any relevant strategy document (including a future development strategy or spatial strategy) adopted by a local authority, in an urban environment (as defined in the National Policy Statement on Urban Development 2020): (d) any public flood control, flood protection, or drainage works carried out: (i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or (ii) for the purpose of drainage, by drainage districts under the Land Drainage Act 1908: (e) defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990. ~~means any of the following:~~ ~~(a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002):~~ ~~(b) regionally or nationally significant infrastructure identified as such in a National Policy Statement, the New Zealand Coastal Policy Statement, or a regional policy statement or plan:~~ ~~(c) infrastructure that is necessary to support housing development, that is included in a proposed or operative plan or identified for development in any relevant strategy document (including a future development strategy or spatial strategy) adopted by a local authority, in an urban environment (as defined in the National Policy Statement on Urban Development 2020):~~ ~~(d) any public flood control, flood protection, or drainage works carried out:~~ ~~(i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or~~ ~~(ii) for the purpose of drainage, by drainage districts under the Land Drainage Act 1908:~~ ~~(e) defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990.~~

Threatened ~~species~~ or At Risk, and Threatened ~~species~~ or At Risk (declining)	*has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):* ~~means any indigenous species of flora or fauna that meets the criteria for nationally critical, nationally endangered, or nationally vulnerable species in the New Zealand Threat Classification System Manual (Townsend et al, 2008).~~ have, at any time, the meanings given in the New Zealand Threat Classification System Manual (Andrew J Townsend, Peter J de Lange, Clinton A J Duffy, Colin Miskelly, Janice Molloy and David A Norton, 2008. Science & Technical Publishing, Department of Conservation, Wellington), available at: https://www.doc.govt.nz/globalassets/documents/science-andtechnical/sap244.pdf, or its current successor publication. ~~means any indigenous species of flora or fauna that meets the criteria for nationally critical, nationally endangered, or nationally vulnerable species in the New Zealand Threat Classification System Manual (Townsend et al, 2008).~~ ~~have, at any time, the meanings given in the New Zealand Threat Classification System Manual (Andrew J Townsend, Peter J de Lange, Clinton A J Duffy, Colin Miskelly, Janice Molloy and David A Norton, 2008. Science & Technical Publishing, Department of Conservation, Wellington), available at: https://www.doc.govt.nz/globalassets/documents/science-andtechnical/sap244.pdf, or its current successor publication.~~

ECO – Ecosystems and *indigenous biodiversity*

Objectives

ECO-O1 – *Indigenous biodiversity*

Otago's *indigenous biodiversity* is healthy and thriving and any overall ~~net~~[17] decline in ~~quality~~ condition,[18] quantity and diversity is halted.

ECO-O2 – Restoring ~~or~~ and[19] enhancing

Restoration and[20] enhancement activities result in a ~~A~~[21] net increase in the extent and *occupancy*[22] of Otago's *indigenous biodiversity* ~~results from restoration or enhancement~~.[23]

[17] 00024.010 City Forests Limited
[18] 00306.042 Meridian
[19] 00226.215 Kāi Tahu ki Otago
[20] 00226.215 Kāi Tahu ki Otago
[21] 00322.026 Fulton Hogan Limited
[22] 00223.099 Ngāi Tahu ki Murihiku, 00226.215 Kāi Tahu ki Otago
[23] 00322.026 Fulton Hogan

ECO-O3 – *Kaitiakitaka*[24] and stewardship

Mana whenua ~~are able to~~ exercise their role ~~recognised~~[25] as kaitiaki of Otago's *indigenous biodiversity*, and Otago's communities are recognised as stewards, who are responsible for:

(1) te hauora o te koiora (the health of *indigenous biodiversity*), te hauora o te taoka (the health of species and ecosystems that are taoka), and te hauora o te taiao (the health of the wider *environment*), while

(2) providing for te hauora o te takata (the health of the people).

Policies

ECO-P1 – *Kaitiakitaka*

~~Recognise the role of~~ Enable[26] Kāi Tahu to exercise their role[27] as kaitiaki of Otago's *indigenous biodiversity* by:

(1) ~~involving~~ partnering with Kāi Tahu in the management of *indigenous biodiversity* to the extent desired by *mana whenua*, ~~and~~

(1A) working with Kāi Tahu to identify ~~the identification of~~[28] *indigenous species* and ecosystems that are taoka,

(2) incorporating the use of mātauraka Māori in the management and monitoring of *indigenous biodiversity*, and

(3) ~~providing for~~ facilitating[29] access to and use of *indigenous biodiversity* by Kāi Tahu, including *mahika kai*,[30] according to tikaka.

ECO-P2 – Identifying *significant natural areas* and taoka

Identify and map:[31]

(1) the areas ~~and indigenous *biodiversity*[32] values of *significant natural areas* in accordance with APP2,~~ of significant indigenous vegetation or significant *habitat* of indigenous fauna that qualify as *significant natural areas* using the assessment criteria in APP2 and in accordance with ECO-M2, and

[24] 00234.031 Te Rūnanga o Ngāi Tahu
[25] 00226.216 Kāi Tahu ki Otago, 00234.031 Te Rūnanga o Ngāi Tahu
[26] 00226.217 Kāi Tahu ki Otago
[27] 00226.217 Kāi Tahu ki Otago
[28] 00226.217 Kāi Tahu ki Otago
[29] 00239.099 Federated Farmers
[30] 00226.0038 Kāi Tahu ki Otago
[31] 00020.018 Rayonier Matariki
[32] 00226.218 Kāi Tahu ki Otago, 00230.101 Forest and Bird

(2) where appropriate,[33] *indigenous species* and ecosystems that are taoka, including those identified by *mana whenua* as requiring protection,[34] in accordance with ECO-M3.

ECO-P3 – Protecting *significant natural areas* and taoka

Outside the coastal environment, and ~~E~~except[35] as provided for by ECO-P4 ~~and ECO-P6A~~~~and ECO-P5~~,[36] protect *significant natural areas* and *indigenous species* and ecosystems that are taoka by:

(1) first[37] avoiding adverse *effects* that result in:

~~(a) any reduction of the area or *indigenous biodiversity*[38] values identified and mapped under ECO-P2(1),[39] (even if those values are not themselves significant but contribute to an area being identified as a *significant natural area*[40]) identified under ECO–P2(1), or[41] and~~

(a) loss of ecosystem representation and extent:

(b) disruption to sequences, mosaics, or ecosystem function;

(c) fragmentation of *significant natural areas* or the loss of buffers or connections within an *significant natural area*;

(d) a reduction in the function of the *significant natural area* as a buffer or connection to other important habitats or ecosystems:

(e) a reduction in the population size or occupancy of Threatened or At Risk (declining) species that use an *significant natural area* for any part of their life

~~(b)~~(f) any loss of ~~Kāi Tahu~~ taoka[42] values identified by *mana whenua* as requiring protection[43] under ECO-P2(2),[44] and

(2) after (1), applying the ~~biodiversity~~ *effects management hierarchy (in relation to indigenous biodiversity)*[45] ~~in ECO-P6~~ to areas and values other than those covered by ECO-P3(1),[46] and

(3) prior to *significant natural areas* and *indigenous species* and ecosystems that are taoka being identified and mapped[47] in accordance with ECO-P2, adopt a precautionary approach towards activities in accordance with ~~IM–P15~~IM-P6(2).[48]

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[33] 00226.218 Kāi Tahu ki Otago
[34] 00239.100 Federated Farmers
[35] Clause (10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00301.028 Port Otago
[36] 00315.037 Aurora Energy, 00115.021 Oceana Gold (New Zealand) Ltd
[37] 00223.100 Ngāi Tahu ki Murihiku
[38] 00226.219 Kāi Tahu ki Otago
[39] 00230.102 Forest and Bird
[40] 00230.102 Forest and Bird
[41] 00230.102 Forest and Bird
[42] 00139.129 DCC
[43] Consequential change to 00239.100 Federated Farmers
[44] 00138.033 QLDC
[45] 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC
[46] Consequential change to 00239.100 Federated Farmers
[47] 00020.018 Rayonier Matariki
[48] 00139.040 DCC, 00121.027 Ravensdown

ECO-P4 – Provision for new activities

Outside the coastal environment, ~~except as provided for by ECO-P6A, M~~maintain[49] Otago's *indigenous biodiversity* by following the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*[50] ~~set out in ECO-P6~~ when making decisions on plans, applications for *resource consent* or notices of requirement for the following activities in *significant natural areas* or where they may adversely affect *indigenous species* and ecosystems that are taoka that have been identified by *mana whenua* as requiring protection:[51]

(1) the development, operation, maintenance[52] or upgrade of *specified infrastructure* ~~*nationally significant infrastructure*[53] and *regionally significant infrastructure* infrastructure~~ that provides significant national or regional public benefit ~~(excluding infrastructure for renewable electricity generation and electricity transmission networks)~~ that has a *functional need*[54] or *operational need* to locate within the relevant *significant natural area(s)* or where they may adversely affect indigenous species or ecosystems that are taoka, and there are no practicable alternative locations,

(1A) the development, operation and maintenance of *mineral* extraction activities that provide a significant national public benefit that could not otherwise be achieved within New Zealand and that have a *functional need* or *operational need* to locate within the relevant *significant natural area(s)* or where they may adversely affect *indigenous species* or ecosystems that are taoka,[55] and there are no practicable alternative locations,

(1B) the development, operation and maintenance of aggregate extraction activities that provide a significant national or regional benefit that could not otherwise be achieved within New Zealand and that have a *functional need* or *operational need* to locate within the relevant *significant natural area(s)* or where they may adversely affect *indigenous species* or ecosystems that are taoka,[56]

(1C) the operation or expansion of any coal mine that was lawfully established before August 2023 that has a functional need or operational need to locate within the relevant *significant natural area(s)* or where they may adversely affect indigenous species or ecosystems that are taoka, and there are no practicable alternative locations; except that, after 31 December 2030, this exception applies only to such coal mines that extract coking coal,

(2) the development of *papakāika*, marae and ancillary facilities associated with customary activities on Native reserves and *Māori land*,[57]

(2A) the sustainable use of *mahika kai*[58] and kaimoana (seafood) by *mana whenua*,[59]

[49] Clause (10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00301.028 Port Otago
[50] 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC
[51] Consequential change to 00239.100 Federated Farmers
[52] 00311.022 Trustpower Limited
[53] 00314.001 Transpower
[54] 00315.046 Aurora Energy, 00138.116 QLDC
[55] 00115.022 Oceana Gold (New Zealand) Ltd
[56] 00115.022 Oceana Gold (New Zealand) Ltd
[57] 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau
[58] 00226.0038 Kāi Tahu ki Otago
[59] 00226.220 Kāi Tahu ki Otago

(3) the use of Native reserves and *Māori land* ~~in a way that will make a significant contribution~~[60] to enable *mana whenua* to maintain their connection to their whenua and enhance~~ing the~~[61] social, cultural or economic well-being, ~~of *takata whenua*,~~[62]

(4) activities that are for the purpose of protecting, maintaining, restoring or enhancing a *significant natural area* or indigenous species or ecosystems that are taoka, ~~or~~

(5) activities that are for the purpose of addressing a severe ~~and~~ or[63] immediate risk to public health or safety~~.~~,

(6) activities that are for the purpose of a developing a single residential dwelling on an allotment that was created before 4 August 2023, and can demonstrate there is no practicable location within the allotment where a single residential dwelling and essential associated on-site infrastructure can be constructed, or

(7) activities that are for the purpose of harvesting indigenous tree species from a *significant natural area* carried out in accordance with a forest management plan or permit under Part 3A of the Forests Act 1949.

~~**ECO-P5 – Existing activities in *significant natural areas***~~

~~Except as provided for by ECO–P4, provide for existing activities within *significant natural areas* and that may adversely affect indigenous species and ecosystems that are taoka, if:~~

~~(1) the continuation of an existing activity will not lead to the loss (including through cumulative loss) of extent or *degradation* of the ecological integrity of any *significant natural area* or indigenous species or ecosystems that are taoka, and~~

~~(2) the adverse *effects* of an existing activity are no greater in character, spatial extent, intensity or scale than they were before this RPS became operative.~~[64]

ECO-P5A – Managing adverse effects of established activities on *significant natural areas*

~~Provide for~~ Enable the maintenance, operation, and upgrade of ~~existing~~ established activities (excluding activities managed under ECO-P3 and ECO-P4), where the effects of the activity, including cumulative effects, on a *significant natural area*:

(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 *significant natural area*.

[60] 00234.032 Te Rūnanga o Ngāi Tahu
[61] 00234.032 Te Rūnanga o Ngāi Tahu
[62] 00234.032 Te Rūnanga o Ngāi Tahu
[63] 00139.130 DCC
[64] 00315.037 Aurora Energy, 00115.021 Oceana Gold (New Zealand) Ltd

ECO-P6 – Maintaining *indigenous biodiversity*

Outside the coastal environment, ~~M~~maintain[65] manage Otago's *indigenous biodiversity* (excluding ~~the coastal *environment* and~~[66] areas ~~managed~~ protected[67] under ECO-P3~~, and activities managed under ECOP6A(1)~~) by:

(1) applying the ~~following~~ *biodiversity effects management hierarchy (in relation to indigenous biodiversity)*[68] to manage significant adverse *effects* on *indigenous biodiversity*, ~~and~~

(2) ~~avoiding, remedying, or mitigating all other adverse *effects* on *indigenous biodiversity*~~. requiring the *maintenance of indigenous biodiversity* for all other adverse effects of any activity~~.~~, and

(3) not withstanding (1) and (2) above, for *regionally significant infrastructure and nationally significant infrastructure* that is either *renewable electricity generation* or the *National Grid* avoid, remedy, or mitigate adverse effects to the extent practicable.

~~in decision-making on applications for *resource consent*~~, plan change[69] ~~and notices of requirement~~.

~~(1) avoid adverse *effects* as the first priority,~~

~~(2) where adverse *effects* demonstrably cannot be completely avoided, they are remedied,~~

~~(3) where adverse *effects* demonstrably cannot be completely avoided or remedied, they are mitigated,~~

~~(4) where there are more than minor[70] residual adverse *effects* after avoidance, remediation, and mitigation, then the residual adverse *effects* are offset in accordance with APP3, and~~

~~(5) if *biodiversity* offsetting of more than minor[71] residual adverse *effects* is not possible, then:~~

~~(a) the those[72] residual adverse *effects* are compensated for in accordance with APP4, and~~

~~(b) if the those[73] residual adverse *effects* cannot be compensated for in accordance with APP4, the activity is avoided.~~

~~**ECO-P6A – Renewable electricity generation and electricity transmission networks**~~

~~Manage the effects of the development, operation, maintenance, and upgrade of *renewable electricity generation* and *electricity transmission network infrastructure* on *indigenous biodiversity* (outside *water bodies* and the *coastal marine area*) by:~~

~~(1) for *infrastructure* that is *nationally significant infrastructure* or *regionally significant infrastructure*:~~

~~(a) avoiding, as a first priority, locating within *significant natural areas*, and~~

[65] Clause (10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00301.028 Port Otago
[66] Clause 10(2)(b)(i) - Consequential amendment arising from 00226.223 Kāi Tahu ki Otago
[67] 00230.105 Forest and Bird
[68] 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga
[69] 00138.036 Queenstown Lakes District Council
[70] 00307.014 Christchurch International Airport Limited (CIAL)
[71] 00307.014 Christchurch International Airport Limited (CIAL)
[72] 00307.014 Christchurch International Airport Limited (CIAL)
[73] 00307.014 Christchurch International Airport Limited (CIAL)

~~(b) if it not demonstrably practicable to avoid locating within a *significant natural area* because of the *functional needs* or *operational needs* of the *infrastructure*, minimise adverse effects on the values of the area, and~~

~~(c) outside *significant natural areas*, avoiding, remedying, or mitigating adverse effects on *indigenous biodiversity* to the extent practicable, and~~

~~(d) in all areas have regard to the offsetting principles set out within APP3 or the compensation principles set out in APP4 for any residual adverse *effects*; and~~

~~(2) for *infrastructure* not addressed in (1), managing adverse *effects* on *indigenous biodiversity* in accordance with ECO-P6.~~

~~ECO-P7 – Coastal indigenous *biodiversity*~~

~~Coastal indigenous *biodiversity* is managed by CE–P5, and implementation of CE–P5 also contributes to achieving ECO–O1~~.

CE-P5 – Coastal indigenous *biodiversity*

Protect *indigenous biodiversity* in the coastal environment by:

(1) identifying and avoiding adverse *effects* on the following ecosystems, vegetation types and areas:

(a) indigenous *taxa* that are listed as threatened or at risk in the New Zealand Threat Classification System lists,

(b) *taxa* that are listed by the International Union for Conservation of Nature and Natural Resources as threatened,

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

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

(e) areas containing nationally significant examples of indigenous community types, and

(f) areas set aside for full or partial protection of *indigenous biodiversity* under other legislation, and

(2) identifying and avoiding significant adverse *effects* and avoiding, remedying or mitigating other adverse *effects* on the following ecosystems, vegetation types and areas:

(a) areas of predominantly *indigenous vegetation* in the coastal environment,

(b) *habitats* in the coastal environment that are important during the vulnerable life stages of indigenous species,

(c) indigenous ecosystems and *habitats* that are only found in the coastal environment and are particularly vulnerable,

(d) areas sensitive to modification, including estuaries, lagoons, coastal

wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh,

(e) *habitats* of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes,

(f) *habitats*, including areas and routes, important to migratory species, and

(g) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

(h) *significant natural areas* identified in accordance with APP2 that are not included in (1) above, and[74]

(i) indigenous species and ecosystems identified as taoka in accordance with ECO-M3 that are not included in (1) above.[75]

ECO–P8 – *Restoration* and e~~E~~nhancement[76]

The *intrinsic values*,[77] extent, *occupancy*[78] and condition of Otago's *indigenous biodiversity* is increased by:

(1) restoring and enhancing *habitat* for *indigenous species*, including taoka and *mahika kai*[79] species,

(2) improving the health and *resilience* of *indigenous biodiversity*, including ecosystems, species, ~~important~~[80] *ecosystem function*, and *intrinsic values*, ~~and~~

(3) buffering or linking ecosystems, *habitats* and ecological corridors, ki uta ki tai and~~.~~[81]

(4) prioritising all the following for *restoration*:

(a) *significant natural areas* whose ecological integrity is degraded,

(b) threatened and rare ecosystems representative of naturally occurring and formerly present ecosystems,

(c) areas that provide important connectivity or buffering functions,

(d) natural inland wetlands whose ecological integrity is degraded or that no longer retain their indigenous vegetation or *habitat* for indigenous fauna

(e) areas of *indigenous biodiversity* on native reserves and *Māori land* where *restoration* is advanced by the Māori landowners,

[74] 00137.055 DOC, 00120.042 Yellow-eyed Penguin Society
[75] 00137.055 DOC, 00120.042 Yellow-eyed Penguin Society
[76] 00226.224 Kāi Tahu ki Otago
[77] 00138.037 QLDC
[78] 00223.099 Ngāi Tahu ki Murihiku, 00226.215 Kāi Tahu ki Otago
[79] 00226.0038 Kāi Tahu ki Otago
[80] 00137.091 DOC
[81] 00138.037 QLDC

(e) any other priorities specified in regional biodiversity strategies or any national priorities for *indigenous biodiversity restoration*.

~~**ECO-P9 – Wilding conifers**~~

~~Reduce the impact of *wilding conifers* on indigenous *biodiversity* by:~~

~~(1) avoiding *afforestation* and *replanting* of *plantation forests* with *wilding conifer* species listed in APP5 within:~~

~~(a) areas identified as *significant natural areas,* and~~

~~(b) buffer zones adjacent to *significant natural areas* where it is necessary to protect the *significant natural area*, and~~

~~(2) supporting initiatives to control existing *wilding conifers* and limit their further spread.~~[82]

ECO-P10 – ~~Integrated management~~ Co-ordinated approach[83]

~~Implement an integrated and~~[84] ~~co-ordinated approach to managing Otago's ecosystems and indigenous *biodiversity* that:~~ Manage *indigenous biodiversity* and the effects on it from subdivision, use and development in an integrated way, which means:

(1) ensur~~es~~ing any permitted or controlled activity in a *regional plan*[85] or *district plan* rule does not compromise the achievement of ECO-O1,

(2) recognises the interactions ki uta ki tai (from the mountains to the sea) between the terrestrial *environment*, *fresh water*, and the *coastal marine area*, including:

(a) the migration of fish species between *fresh* and *coastal waters*, and[86]

(b) the effects of land-use activities on coastal biodiversity and ecosystems,[87]

(2A) acknowledges that *climate change* will affect *indigenous biodiversity*, and manages activities which exacerbate the *effects* of *climate change*,[88]

(3) ~~promotes collaboration between individuals and agencies with *biodiversity* responsibilities,~~ providing for the coordinated management and control of subdivision, use and development, as it affects *indigenous biodiversity* across administrative boundaries,

(4) ~~supports the various statutory and non-statutory approaches adopted to manage indigenous *biodiversity*,~~ working towards aligning strategies and other planning tools required or provided for in legislation that are relevant to *indigenous biodiversity*.

[82] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from including new LF-LS-P16A in response to 00411.006 Wayfare, 00137.084 DOC
[83] 00226.226 Kāi Tahu ki Otago
[84] 00226.226 Kāi Tahu ki Otago
[85] Clause 16(2), Schedule 1, RMA
[86] 00226.226 Kāi Tahu ki Otago
[87] 00226.226 Kāi Tahu ki Otago
[88] 00234.033 Te Rūnanga o Ngāi Tahu

(5) recognises the critical role of people and communities in actively managing the remaining indigenous *biodiversity* occurring on private *land,* and

(6) adopts regulatory and non-regulatory regional *pest* management programmes.

ECO-P11 – Resilience to climate change

Promote the resilience of *indigenous biodiversity* to *climate change*, including at least by:

(1) allowing and supporting the natural adjustment of *habitats* and ecosystems to the changing climate; and

(2) considering the effects of climate change when making decisions on:

(a) *restoration* proposals; and

(b) managing and reducing new and existing biosecurity risks; and

(3) maintaining and promoting the enhancement of the connectivity between ecosystems, and between existing and potential *habitats*, to enable migrations so that species can continue to find viable niches as the climate changes.

(4) recognising the role of *indigenous biodiversity* in mitigating the effects of climate change.

ECO-P12 – Plantation forestry activities

Manage:

(1) the adverse effects of plantation forestry activities in any existing plantation forest on any *significant natural area* in a manner that:

(a) maintains *indigenous biodiversity* in the *significant natural area* as far as practicable, while

(b) provides for plantation forestry activities to continue.

(2) over the course of consecutive rotations of production, any part of an *significant natural area* that is within an area of an existing plantation forest that is planted, or is intended to be, replanted in trees for harvest in the manner necessary to maintain the long-term populations of any *Threatened or At Risk (declining) species* present in the area.

Methods

ECO-M1 – Statement of responsibilities

In accordance with section 62(1)(i)(iii) of the RMA 1991, the *local authorities* responsible for the control of *land* use to maintain indigenous *biological diversity* are:

(1) the Regional Council and *territorial authorities* are responsible for specifying objectives, policies and methods in *regional* and *district plans* for managing the margins of *wetlands*, *rivers* and *lakes*,

(2) the Regional Council is responsible for specifying objectives, policies and methods in *regional plans*:

(a) in the *coastal marine area*,

(b) in *wetlands*, *lakes* and *rivers*, and

(c) in, on or under the *beds* of *rivers* and *lakes*,

(3) in addition to (1), *territorial authorities* are responsible for specifying objectives, policies and methods in *district plans* outside of the areas listed in (2) above if they are not managed by the Regional Council under (4), and

(4) the Regional Council may be responsible for specifying objectives, policies and methods in *regional plans* outside of the areas listed (1) above if:

(a) the Regional Council reaches agreement with the relevant *territorial authority* or *territorial authorities*, and

(b) if applicable, a transfer of powers in accordance with section 33 of the RMA 1991 occurs from the relevant *territorial authority* or *territorial authorities* to the Regional Council.

ECO-M2 – Identification of *significant natural areas*

Local authorities must:

(1) in accordance with the statement of responsibilities in ECO-M1, identify the areas and *indigenous biodiversity*[89] values of *significant natural areas* as required by ECO-P2, and

(2) map and verify[90] the areas and include the *indigenous biodiversity*[91] values identified under (1) in the relevant *regional plans*[92] and *district plans*~~,~~ no later than 31 December 2030,[93]

(3A) identify areas and values of *indigenous biodiversity* within their jurisdictions in accordance with CE-P5, map the areas and describe their values in the relevant *regional plans*[94] and *district plans*, and[95]

(3) recognise that *indigenous biodiversity* spans jurisdictional boundaries by:

(a) working collaboratively to ensure the areas identified by different *local authorities* are not artificially fragmented when identifying *significant natural areas* that span jurisdictional boundaries, and

(b) ensuring that *indigenous biodiversity* is managed in accordance with this RPS,

(4) until *significant natural areas* are identified and mapped in accordance with (1) and (2),[96] require ecological assessments to be provided with applications for *resource consent*, plan

[89] 00226.228 Kāi Tahu ki Otago
[90] 00020.018 Rayonier Matariki
[91] 00226.228 Kāi Tahu ki Otago
[92] Clause 16(2), Schedule 1, RMA
[93] 00139.036 DCC
[94] Clause 16(2), Schedule 1, RMA
[95] Clause 10(2)(b)(i), schedule 1, RMA – CE-M2(3) moved to ECO-M2(3A) as a consequential amendment arising from moving coastal biodiversity provisions from CE to ECO in response to 00301.028 Port Otago
[96] 00311.014 Queenstown Airport

change[97] and notices of requirement that identify whether affected areas are *significant natural areas* in accordance with APP2, and[98]

(5) in the following areas, prioritise identification under (1) ~~no later than 31 December 2025~~:[99]

(a) intermontane basins that contain *indigenous vegetation* and *habitats*,

(b) areas of dryland shrubs,

(c) braided *rivers*, including the Makarora, Mātukituki and Lower Waitaki Rivers,

(d) areas of montane tall tussock grasslands, and

(e) limestone *habitats*.

(6) when identifying *significant natural areas*, ensuring that:

(a) if the values or extent of a proposed *significant natural area* are disputed by the landowner, the local authority:

(i) conducts a physical inspection of the area,

(ii) or, if a physical inspection is not practicable, uses the best information available to it at the time, and

(b) if requested by a territorial authority, the regional council will assist the territorial authority in undertaking its district-wide assessment, and

(c) where a territorial authority has identified an *significant natural area* prior to 4 August 2023, and prior to 4 August 2027, a suitably qualified ecologist is engaged by the territorial authority to confirm that the methodology originally used to identify the area as an *significant natural area*, and its application, is consistent with the assessment approach in APP2, and

(d) if a territorial authority becomes aware (as a result of a resource consent application, notice of requirement or any other means) that an area may be an area of significant indigenous vegetation or significant *habitat* of indigenous fauna that qualifies as an *significant natural area*, the territorial authority:

(i) conducts an assessment of the area in accordance with APP2 as soon as practicable, and

(ii) if a new *significant natural area* is identified as a result, includes it in the next appropriate plan or plan change notified by the territorial authority, and

(e) when a territorial authority does its 10-yearly plan review, it assesses its district in accordance with ECO-P2 and APP2 to determine whether changes are needed, and

(7) allow an area of Crown-owned land to qualify as an *significant natural area* without the need for the assessment required by ECO-P2, using APP2, if:

[97] Consequential change to 00138.036 Queenstown Lakes District Council
[98] Clause 16(2), Schedule 1, RMA
[99] 00139.002 DCC

(a) the land is managed by the Department of Conservation under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act, and

(b) the territorial authority is reasonably satisfied, after consultation with the Department of Conservation, that all or most of the area would qualify as an *significant natural area* under APP2; and

(c) the area is:

(i) a large and more-or-less contiguous area managed under a single protection classification (such as a national park); or

(ii) a large, compact, and more-or-less contiguous area under more than one classification (such as adjoining reserves and a conservation park); or

(iii) a well-defined landscape or geographical feature (such as an island or mountain range); or

(iv) a scientific, scenic or nature reserve under the Reserves Act 1977, a sanctuary area, ecological area, or wildlife management area under the Conservation Act 1987, or an isolated part of a national park.

ECO-M3 – Identification of taoka

Local authorities must:

(1) work together with *mana whenua* to agree a process for:

(a) identifying *indigenous species* and ecosystems that are taoka, including those identified by *mana whenua* as requiring protection, and how they are valued with reference to mātauraka Māori,[100]

(b) describing the taoka identified in (1)(a),

(c) mapping or describing the location of the taoka identified in (1)(a), and

(d) describing the values of each taoka identified in (1)(a), and

(2) notwithstanding (1), recognise that *mana whenua* have the right to choose not to identify taoka and to choose the level of detail at which identified taoka, or their location or values, are described, and

(3) to the extent agreed by *mana whenua*, amend their *regional* and *district plans* to include matters (1)(b) to (1)(d) above~~.~~, and

(4) recognise the possible adverse effects on identified *taoka* include effects on:

(a) the mauri of the *taoka*,

(b) the values of the taoka as identified by *mana whenua*,

(c) the historical, cultural, and spiritual relationship of tangata whenua with the *taoka*, as identified by *mana whenua*, and

[100] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00239.100 Federated Farmers

~~(5) make or change their policy statements and plans as necessary to ensure that the sustainable customary use of identified *taoka* by mana whenua in accordance with tikaka and in a manner consistent with the protection of the identified taoka is provided for, and~~

(6) notify the relevant landowner of the presence of the *taoka* prior to identifying acknowledged *taoka* in a proposed district plan.

ECO-M4 – *Regional plans*

Otago Regional Council must prepare or amend and maintain its *regional plans* to:

(1) if the requirements of ECO-P3 ~~and~~ to[101] ECO-P6 can be met, provide for the use of *lakes* and *rivers* and their *beds,* including:

(a) activities undertaken for the purposes of *pest* control or maintaining or enhancing the *habitats* of indigenous fauna, and

(b) the maintenance and use of existing *structures* that are lawfully established[102] (including *infrastructure*), and

(c) *infrastructure* that has a *functional need*[103] or *operational need* to be sited or operated in a particular location,

(1A) manage the clearance or modification of *indigenous vegetation*, while allowing for *mahika kai*[104] and kaimoana (seafood) activities (including through the development, in partnership with *mana whenua*, of provisions for mahika kai and kaimoana activities that may provide an alternative approach to effects management than the policies in this ECO chapter,[105]

(2) require:

(a) *resource consent* applications to include information that demonstrates that the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*[106] ~~in ECO–P6~~ have been followed, and

(b) that consents are not granted if the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*[107] ~~in ECO–P6~~ have not been followed, and

(3) provide for activities undertaken for the purpose of restoring or enhancing the *habitats* of indigenous fauna.

ECO-M4A – Increasing indigenous vegetation cover

Otago Regional Council must:

[101] Clause 16(2), Schedule 1, RMA
[102] 00230.113 Forest and Bird
[103] 00315.046 Aurora Energy, 00138.116 QLDC
[104] 00226.0038 Kāi Tahu ki Otago
[105] 00226.230 Kāi Tahi ki Otago / Aukaha
[106] 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC
[107] 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC

(1) assess the percentage of indigenous vegetation cover in

(a) each of its urban environments; and

(b) its non-urban environments.

(2) the assessment may be done by a desktop analysis, by ground truthing, or both, and must be done in collaboration with relevant territorial authorities, and *mana whenua* (to the extent they wish to be involved).

(3) set a target of at least 10% indigenous vegetation cover for any urban or non-urban environment that has less than 10% cover of indigenous vegetation; and

(a) Consider, in consultation with *mana whenua* and territorial authorities, setting higher targets for urban and non-urban environments that already have at least 10% coverage of indigenous vegetation; and

(b) include any indigenous vegetation cover targets in their regional policy statements.

Local authorities must:

(4) promote the increase of indigenous vegetation cover in their regions and districts through objectives, policies, and methods in their policy statements and plans:

(a) having regard to any targets set under ECO-M4A(3); and

(b) giving priority to all the following:

(i) areas referred to in ECO-P8(4):

(ii) ensuring indigenous species richness appropriate to the ecosystem:

(iii) *restoration* at a landscape scale across the region; and

(iv) using species, and seed from species, that are local to the area.

ECO-M4B - Specified highly mobile fauna

Local authorities must:

(1) include objectives, policies, or methods in their policy statements and plans for managing the adverse effects of new subdivision, use, and development on highly mobile fauna areas, in order to maintain viable populations of specified highly mobile fauna across their natural range.

(2) provide information to their communities about:

(a) highly mobile fauna and their *habitats*; and

(b) best practice techniques for managing adverse effects on any specified highly mobile fauna and their *habitats* in their regions and districts.

ECO-M4C – *Maintenance of improved pasture* for farming

Local authorities must:

(1) allow the *maintenance of improved pasture* to continue if:

(a) there is adequate evidence to demonstrate that the *maintenance of improved pasture* is part of a regular cycle of periodic maintenance of that pasture; and

(b) any adverse effects of the *maintenance of improved pasture* on an *significant natural area* are no greater in intensity, scale, or character than the effects of activities previously undertaken as part of the regular cycle of periodic maintenance of that pasture; and

(c) the *improved pasture* has not itself become an *significant natural area*; and

(d) the land is not an uncultivated *Depositional landform*; and

(e) the *maintenance of improved pasture* will not adversely affect a *Threatened or At Risk (declining) species*.

ECO-M4D – Native reserves and Māori land

Local authorities must:

(1) work in partnership (which includes acting in good faith) with *mana whenua* and owners of native reserves and Māori land to develop, and include in *district plans* and *regional plans*~~,~~ objectives, policies, and methods that may include providing an alternative approach to effects management for indigenous biodiversity than the policies in this ECO chapter (excluding CE-P5). These objectives, policies and methods will seek, to the extent practicable, to:

(a) maintain and restore indigenous biodiversity on native reserves and Māori land, and

(b) protect *significant natural areas* and identified *taoka* on native reserves and Māori land, and

(2) ensure that objectives, policies, and methods developed under (6):

(a) enable new occupation, use, and development of native reserves and Māori land to support the social, cultural, and economic wellbeing of *mana whenua,* and

(b) enable the provision of new *papakāika*, marae and ancillary community facilities, dwellings, and associated infrastructure, and

(c) enable alternative approaches to, or locations for, new occupation, use, and development that avoid, minimise, or remedy adverse *effects* on *SNA*s and identified *taoka* on native reserves and Māori land, and enable options for offsetting and compensation, and

(d) recognise and be responsive to the fact that there may be no or limited alternative locations for *mana whenua* to occupy, use, and develop their lands, and

(e) recognise that there are circumstances where development will prevail over *indigenous biodiversity*, and

(f) recognise and be responsive to any recognised historical barriers *mana whenua* have faced in occupying, using, and developing their ancestral lands.

ECO-M5 – *District plans*

Territorial authorities must prepare or amend and maintain their *district plans* to:

(1) if the requirements of ECO-P3 ~~and~~ to[108] ECO-P6A are met, provide for the use of *land* and the surface of *water bodies* including:

(a) activities undertaken for the purposes of *pest* control or maintaining or enhancing the *habitats* of indigenous fauna, and

(b) the maintenance and use of existing *structures* (including *infrastructure*), and

(c) *infrastructure* that has a *functional* or *operational need* to be sited or operated in a particular location,

(2) ~~control~~ manage[109] the clearance or modification of *indigenous vegetation*, while allowing for *mahika kai*[110] activities (including through the development, in partnership with mana whenua, of provisions for mahika kai activities that may provide an alternative approach to effects management than the policies in this ECO chapter),[111]

(3) promote the establishment of *esplanade reserves* and *esplanade strips*, particularly where they would support ecological corridors, buffering or connectivity between *significant natural areas*, or access to *mahika kai*,[112]

(4) require:

(a) *resource consent* applications to include information that demonstrates that the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*[113] ~~in ECO-P6~~ have been followed, and

(b) that consents are not granted if the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*[114] ~~in ECO-P6~~ have not been followed, and

(5) provide for activities undertaken for the purpose of restoring or enhancing the *habitats* of indigenous fauna, and

~~(6) prohibit the planting of *wilding conifer* species listed in APP5 within areas identified as *significant natural areas.*~~[115]

(7) require buffer zones adjacent to *significant natural areas* where it is necessary to protect the *significant natural area.*[116]

ECO-M6 – Engagement

Local authorities, when implementing the policies in this chapter, will:

[108] Clause 16(2), Schedule 1, RMA
[109] Clause 16(2), Schedule 1, RMA
[110] 00226.0038 Kāi Tahu ki Otago
[111] 00226.231 Kāi Tahu ki Otago
[112] 00226.231 Kāi Tahu ki Otago, 00226.0038 Kāi Tahu ki Otago
[113] 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC
[114] 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC
[115] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00411.006 Wayfare, 00137.084 DOC (insertion of new LF-LS-P16A)
[116] 00140.026 Waitaki DC

(1) work collaboratively with other *local authorities* to adopt an integrated approach to managing Otago's *biodiversity* across administrative boundaries,

(2) engage with individuals (including landowners and *land* occupiers), community groups, government agencies and other organisations with a role or an interest in *biodiversity* management, and

(3) consult directly with landowners and *land* occupiers whose properties potentially contain or are part of *significant natural areas*.

ECO-M7A — Kāi Tahu kaitiakitaka

Local authorities must partner with Kāi Tahu in the management of *indigenous biodiversity* to the extent desired by *mana whenua*, including by:

(1A) ensuring that engagement with mana whenua is early, meaningful, and in accordance with tikanga Māori,

(1) actively supporting the role of *mana whenua* as kaitaiki,

(2) facilitating opportunities for *mana whenua* to be involved in resource management (including decision making),

(3) enabling the *mahika kai* practices of *mana whenua* in accordance with tikaka, including the ~~sustainable~~ customary use of identified taoka,

~~(4) working with *mana whenua* to determine appropriate management approaches for *indigenous biodiversity* within native reserves and *Māori land*,~~

(5) supporting *mana whenua* initiatives that contribute to restoring or enhancing te hauora o te koiora (the health of *indigenous biodiversity*),

(6) where appropriate, incorporating Kāi Tahu mātauraka and tikaka in *indigenous biodiversity* management and monitoring, and

(7) providing relevant information to *mana whenua* for the purposes of *indigenous biodiversity* management and monitoring.[117]

ECO-M7B – Information requirements

Local authorities must:

(1) require that, in relation to an application for a resource consent for an activity that would have more than minor adverse effects on *indigenous biodiversity*, the application is not considered unless it includes a report that:

  (a) is prepared by a suitably qualified ecologist and, as required, any other person with suitable expertise, such as someone with expertise in mātauraka Māori; and

  (b) complies with subclause (2); and

  (c) is commensurate with the scale and significance (to *indigenous biodiversity*) of the proposal.

(2) the report required within ECO-M2(4A) above must:

[117] 00226.232 Kāi Tahu ki Otago

(a) include a description of the existing ecological features and values of the site; and

(b) include a description of the adverse effects of the proposal on *indigenous biodiversity* and how those effects will be managed; and

(c) identify any effects on identified taoka; and

(d) identify the ecosystem services associated with *indigenous biodiversity* at the site; and

(e) include an assessment of the ecological integrity and connectivity within and beyond the site; and

(f) include mātauraka Māori and tikaka Māori assessment methodology, where relevant; and

(g) if *biodiversity offsetting* is proposed, set out:

(i) a detailed plan of what is proposed, including a quantified loss and gain calculation, the currency used in the calculation, and the data that informs the calculation and plan; and

(ii) a description of how the relevant principles in APP4 have been addressed; and

(iii) an assessment of the likely success of the plan in achieving a net gain in biodiversity values; and

(h) if *biodiversity compensation* is proposed, set out:

(i) a detailed plan of what is proposed; and

(ii) a description of how the relevant principles in Appendix 4 of this National Policy Statement have been addressed; and

(iii) an assessment of the likely success of the plan in achieving its outcomes.

ECO-M7 – Monitoring

Local authorities will:

(1) establish long-term monitoring programmes for areas identified under ~~ECO–P1~~ECO-P2[118] that measure the net loss and gain of *indigenous biodiversity*,

(2) record information (including data) over time[119] about the state of species, vegetation types and ecosystems, including *mahika kai*[120] species and ecosystems,[121]

(3) to the extent possible, use mātauraka Māori and tikaka Māori monitoring methods, as well as scientific monitoring methods, and

(4) regularly report on matters in (1) and (2) and publish these reports.

[118] 00137.095 DOC, 00226.233 Kāi Tahu ki Otago
[119] 00226.233 Kāi Tahu ki Otago
[120] 00226.038 Kāi Tahu ki Otago
[121] 00226.233 Kāi Tahu ki Otago

ECO-M8 – Other incentives and mechanisms

Local authorities are encouraged to consider the use of other mechanisms or incentives to assist in achieving Policies ECO-P1 to ECO-P10, including:

(1) providing information and guidance on the maintenance, *restoration* and enhancement of indigenous ecosystems ~~and~~,[122] *habitats*, taoka and *mahika kai*[123] species and ecosystems,[124]

(2) funding assistance for *restoration* projects (for example, through Otago Regional Council's ECO Fund),

(3) supporting the control of *pest* plants and animals, including through the provision of advice and education and implementing regulatory programmes such as the Regional Pest Management Plan,

(4) financial incentives,

(5) covenants to protect areas of *indigenous biodiversity* ~~*land*~~,[125] including through the QEII National Trust,

(6) advocating for a collaborative approach between central and local government to fund *indigenous biodiversity* maintenance and enhancement, and

(7) gathering information on indigenous ecosystems, ~~and~~[126] *habitats*, and taoka and *mahika kai*[127] species and ecosystems,[128] including outside *significant natural areas*.

ECO-M9 – Regional Biodiversity Strategy

The Regional Council must initiate preparation of a regional biodiversity strategy that complies with Appendix 5 of the National Policy Statement for Indigenous Biodiversity 2023.

Explanation

ECO-E1 – Explanation

The first policy in this chapter outlines how the kaitiaki role of Kāi Tahu will be recognised in Otago. The policies which follow then set out a management regime for identifying *significant natural areas* and *indigenous species* and ecosystems that are taoka and protecting them by avoiding particular adverse *effects* on them. The policies recognise that these restrictions may be unduly restrictive for some activities within *significant natural areas*, including existing activities already established. To maintain ecosystems and *indigenous biodiversity*, the policies set out mandatory and sequential steps in an *effects management hierarchy* to be implemented through decision making, including providing

[122] 00226.234 Kāi Tahu ki Otago
[123] 00226.038 Kāi Tahu ki Otago
[124] 00226.234 Kāi Tahu ki Otago
[125] 00230.117 Forest and Bird
[126] 00226.234 Kāi Tahu ki Otago
[127] 00226.038 Kāi Tahu ki Otago
[128] 00226.234 Kāi Tahu ki Otago

for *biodiversity offsetting* and compensation if certain criteria are met. The policies also require protecting coastal *indigenous biodiversity* in accordance with the NZCPS.[129]

~~Although the objectives of this chapter apply within the coastal environment, the specific management approach for *biodiversity* is contained in the CE – Coastal environment chapter.~~[130] Given the *biodiversity* loss that has occurred in Otago historically, *restoration* or enhancement will play a part in achieving the objectives of this chapter and these activities are promoted.

~~*Wilding conifers* are a particular issue for *biodiversity* in Otago. Although *plantation forestry* is managed under the NESPF, the NESPF allows plan rules to be more stringent if they recognise and provide for the protection of *significant natural areas*. The policies adopt this direction by requiring *district* and *regional plans* to prevent *afforestation* within *significant natural areas* and establish buffer zones where they are necessary to protect *significant natural areas*.~~[131]

The policies recognise that managing ecosystems and *indigenous biodiversity* requires co-ordination across different areas and types of resources, as well as across organisations, communities and individual landowners. This articulates the stewardship role of all people and communities in Otago in respect of *indigenous biodiversity*.

Principal reasons

ECO-PR1 – Principal reasons

The health of New Zealand's *biodiversity* has declined significantly since the arrival of humans and remains under significant pressure. ~~Mahika kai~~ *Mahika kai*[132] and taoka species, including their abundance, have been damaged or lost through resource use, *land* use change and development in Otago. The provisions in this chapter seek to address this loss and pressure through providing direction on how *indigenous biodiversity* is to be managed.

The provisions in this chapter assist in maintaining, protecting and restoring *indigenous biodiversity* by:

- stating the outcomes sought for ecosystems and *indigenous biodiversity* in Otago,
- requiring identification and protection of *significant natural areas*, ~~and~~ *indigenous species* and ecosystems that are taoka, and coastal *indigenous biodiversity,* and[133]
- directing how *indigenous biodiversity* is to be maintained.

This chapter will assist with achieving the outcomes sought by *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020.* Implementation of the provisions in this chapter will occur

[129] Clause 10(2)(b)(i), schedule 1, RMA – CE-M2(3) moved to ECO-M2(3A) as a consequential amendment arising from moving coastal biodiversity provisions from CE to ECO in response to 00301.028 Port Otago
[130] Clause 10(2)(b)(i), schedule 1, RMA – CE-M2(3) moved to ECO-M2(3A) as a consequential amendment arising from moving coastal biodiversity provisions from CE to ECO in response to 00301.028 Port Otago
[131] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00411.006 Wayfare, 00137.084 DOC (insertion of new LF-LS-P16A)
[132] 00226.0038 Kāi Tahu ki Otago
[133] Clause 10(2)(b)(i), schedule 1, RMA – CE-M2(3) moved to ECO-M2(3A) as a consequential amendment arising from moving coastal biodiversity provisions from CE to ECO in response to 00301.028 Port Otago

primarily through *regional* and *district plan* provisions, however *local authorities* may also choose to adopt additional non-regulatory methods to support the achievement of the objectives.

Anticipated environmental results

ECO-AER1 There is no further decline in the condition ~~quality~~,[134] quantity or diversity of Otago's *indigenous biodiversity*.

ECO-AER2 The condition ~~quality~~,[135] quantity and diversity of *indigenous biodiversity* within Otago improves over the life of this Regional Policy Statement.

ECO-AER3 Kāi Tahu are involved in the management of *indigenous biodiversity* and able to effectively exercise their *kaitiakitaka*.

~~**ECO-AER4** Within *significant natural areas*, the area of *land* vegetated by *wilding conifers* is reduced.~~[136]

[134] Consequential amendment to 00306.042 Meridian
[135] Consequential amendment to 00306.042 Meridian
[136] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00411.006 Wayfare, 00137.084 DOC (insertion of new LF-LS-P16A)

APP2 – ~~Significance criteria for indigenous *biodiversity*~~ Criteria for identifying areas that qualify as *significant natural areas* (*SNA*s)

This appendix sets out the criteria for identifying significant indigenous vegetation or significant *habitats* of indigenous fauna in a specific area, so that the area qualifies as an *SNA*.

The assessment must be done using the assessment criteria in Appendix 1 and in accordance with the following principles:

(a) partnership: territorial authorities engage early with mana whenua and landowners and share information about *indigenous biodiversity*, potential management options, and any support and incentives that may be available:

(b) transparency: territorial authorities clearly inform mana whenua and landowners about how any information gathered will be used and make existing information, draft assessments and other relevant information available to mana whenua and relevant landowners for review:

(c) quality: wherever practicable, the values and extent of natural areas are verified by physical inspection; but if a physical inspection is not practicable (because, for instance, the area is inaccessible, or a landowner does not give access) the local authority uses the best information available to it at the time:

(d) access: if a physical inspection is required, permission of the landowner is first sought and the powers of entry under section 333 of the Act are used only as a last resort:

(e) consistency: the criteria in Appendix 1 are applied consistently, regardless of who owns the land:

(f) boundaries: the boundaries of areas of significant indigenous vegetation or significant *habitat* of indigenous fauna are determined without regard to artificial margins (such as property boundaries) that would affect the extent or ecological integrity of the area identified.

1 What qualifies as an *SNA*

(1) An area qualifies as an *SNA* if it meets any one of the attributes of the following four criteria:

(a) representativeness:

(b) diversity and pattern:

(c) rarity and distinctiveness:

(d) ecological context.

(2) If an area would qualify as an *SNA* solely on the grounds that it provides *habitat* for a single indigenous fauna species that is At Risk (declining), and that species is widespread in at least three other regions, the area does not qualify as an *SNA* unless:

(a) the species is rare within the region or *ecological district* where the area is located; or

(b) the protection of the species at that location is important for the persistence of the species as a whole.

(3) If an area would qualify as an *SNA* solely on the grounds that it contains one or more indigenous flora species that are Threatened or At Risk (declining), and those species are widespread in at least three other regions, the area does not qualify as an *SNA* unless:

(a) the species is rare within the region or *ecological district* where the area is located; or

(b) the protection of the species at that location is important for the persistence of the species as a whole.

2 Context for assessment

(1) The context for an assessment of an area is: (a) its *ecological district*; and (b) for the rarity assessment only, its *ecological district*, its region and the national context.

3 Manner and form of assessment

(1) Every assessment must include at least:

(a) a map of the area; and

(b) a general description of its significant attributes, with reference to relevant criteria (as specified below); and

(c) a general description of the indigenous vegetation, indigenous fauna, *habitat*, and ecosystems present; and

(d) additional information, such as the key threats, pressures, and management requirements; and

(e) for *SNA*s in areas of Crown-owned land referred to in clause 3.8(8), the conservation management strategy or plan or national park management plan that applies to the area.

(2) An assessment under this appendix must be conducted by a suitably qualified ecologist (which, in the case of an assessment of a geothermal ecosystem, requires an ecologist with geothermal expertise).

A Representativeness criterion

(1) Representativeness is the extent to which the indigenous vegetation or *habitat* of indigenous fauna in an area is typical or characteristic of the *indigenous biodiversity* of the relevant *ecological district*.

Key assessment principles

(2) Significant indigenous vegetation has ecological integrity typical of the indigenous vegetation of the *ecological district* in the present-day environment. It includes seral (regenerating) indigenous vegetation that is recovering following natural or induced disturbance, provided species composition is typical of that type of indigenous vegetation.

(3) Significant indigenous fauna *habitat* is that which supports the typical suite of indigenous animals that would occur in the present-day environment. *Habitat* of indigenous fauna may be indigenous or exotic.

(4) Representativeness may include commonplace indigenous vegetation and the *habitats* of indigenous fauna, which is where most *indigenous biodiversity* is present. It may also include degraded indigenous vegetation, ecosystems and *habitats* that are typical of what remains in depleted *ecological district*s. It is not restricted to the best or most representative examples, and it is not a measure of how well that indigenous vegetation or *habitat* is protected elsewhere in the *ecological district*.

(5) When considering the typical character of an *ecological district*, any highly developed land or built-up areas should be excluded.

(6) The application of this criterion should result in identification of indigenous vegetation and *habitats* that are representative of the full range and extent of ecological diversity across all environmental gradients in an *ecological district*, such as climate, altitude, landform, and soil sequences. The ecological character and pattern of the indigenous vegetation in the *ecological district* should be described by reference to the types of indigenous vegetation and the landforms on which it occurs.

Attributes of representativeness

(7) An area that qualifies as an *SNA* under this criterion has at least one of the following attributes:

(a) indigenous vegetation that has ecological integrity that is typical of the character of the *ecological district*:

(b) *habitat* that supports a typical suite of indigenous fauna that is characteristic of the *habitat* type in the *ecological district* and retains at least a moderate range of species expected for that *habitat* type in the *ecological district*.

B Diversity and pattern criterion

(1) Diversity and pattern is the extent to which the expected range of diversity and pattern of biological and physical components within the relevant *ecological district* is present in an area.

Key assessment principles

(2) **Diversity of biological components** is expressed in the variation of species, communities, and ecosystems. Biological diversity is associated with variation in physical components, such as geology, soils/substrate, aspect/exposure, altitude/depth, temperature, and salinity.

(3) **Pattern** includes changes along environmental and landform gradients, such as ecotones and sequences.

(4) **Natural areas** that have a wider range of species, *habitats* or communities or wider environmental variation due to ecotones, gradients, and sequences in the context of the *ecological district*, rate more highly under this criterion.

Attributes of diversity and pattern

(5) An area that qualifies as a significant natural area under this criterion has at least one of the following attributes:

(a) at least a moderate diversity of indigenous species, vegetation, *habitats* of indigenous fauna or communities in the context of the *ecological district*:

(b) presence of indigenous ecotones, complete or partial gradients or sequences.

C Rarity and distinctiveness criterion

(1) Rarity and distinctiveness is the presence of rare or distinctive indigenous taxa, *habitats* of indigenous fauna, indigenous vegetation or ecosystems.

Key assessment principles

(2) **Rarity** is the scarcity (natural or induced) of indigenous elements: species, *habitats*, vegetation, or ecosystems. Rarity includes elements that are uncommon or threatened.

(3) **The list of Threatened and At Risk species** is regularly updated by the Department of Conservation. Rarity at a regional or *ecological district* scale is defined by regional or district lists or determined by expert ecological advice. The significance of nationally listed Threatened and At Risk species should not be downgraded just because they are common within a region or *ecological district*.

(4) **Depletion of indigenous vegetation or ecosystems** is assessed using *ecological district*s and land environments.

(5) **Distinctiveness** includes distribution limits, type localities, local endemism, relict distributions, and special ecological or scientific features.

Attributes of rarity and distinctiveness

(6) An area that qualifies as an *SNA* under this criterion has at least one of the following attributes:

(a) provides *habitat* for an indigenous species that is listed as Threatened or At Risk (declining) in the New Zealand Threat Classification System lists:

(b) an indigenous vegetation type or an indigenous species that is uncommon within the region or *ecological district*:

(c) an indigenous species or plant community at or near its natural distributional limit:

(d) indigenous vegetation that has been reduced to less than 20 per cent of its prehuman extent in the *ecological district*, region, or land environment:

(e) indigenous vegetation or *habitat* of indigenous fauna occurring on naturally uncommon ecosystems:

(f) the type locality of an indigenous species:

(g) the presence of a distinctive assemblage or community of indigenous species:

(h) the presence of a special ecological or scientific feature.

D Ecological context criterion

(1) Ecological context is the extent to which the size, shape, and configuration of an area within the wider surrounding landscape contributes to its ability to maintain *indigenous biodiversity* or affects the ability of the surrounding landscape to maintain its *indigenous biodiversity*.

Key assessment principles

(2) Ecological context has two main assessment principles:

(a) the characteristics that help maintain *indigenous biodiversity* (such as size, shape, and configuration) in the area; and

(b) the contribution the area makes to protecting *indigenous biodiversity* in the wider landscape (such as by linking, connecting to or buffering other natural areas, providing 'stepping stones' of *habitat* or maintaining ecological integrity).

Attributes of ecological context

(3) An area that qualifies as an *SNA* under this criterion has at least one of the following attributes:

(a) at least moderate size and a compact shape, in the context of the relevant *ecological district*:

(b) well-buffered relative to remaining *habitats* in the relevant *ecological district*:

(c) provides an important full or partial buffer to, or link between, one or more important *habitats* of indigenous fauna or *significant natural areas*:

(d) important for the natural functioning of an ecosystem relative to remaining *habitats* in the *ecological district*; and

(e) an area that is important for a population of indigenous fauna during a critical part of their life cycle, either seasonally or permanently, e.g. for feeding, resting, nesting, breeding, spawning or refuges from predation.

~~An area is considered to be a *significant natural area* if it meets any one or more of the criteria below:~~

~~**Representativeness**~~

~~(a) An area that is an example of an indigenous vegetation type or habitat that is typical or characteristic of the original pre-human[137] natural diversity of the relevant ecological district[138] or coastal marine biogeographic region. This may include *degraded* examples of their type or represent all that remains of indigenous vegetation and habitats of indigenous fauna in some areas. This can include degraded examples where they are some of the best remaining examples of their type.[139]~~

~~(b) An indigenous marine ecosystem (including both intertidal and sub-tidal habitats, and including both faunal and floral assemblages) that makes up part of at least 10% of the natural extent of each of Otago's original marine ecosystem types and reflecting the environmental gradients of the region.[140]~~

~~(c) An indigenous marine ecosystem, or habitat of indigenous marine fauna (including both intertidal and sub-tidal habitats, and including both faunal and floral components), that is characteristic or typical of the natural marine ecosystem diversity of Otago.~~

~~**Rarity**~~

~~(d) An area that supports:~~

~~(i) An *indigenous species* that is threatened, at *risk*, Threatened,[141] or an important population of species that is At Risk,[142] or uncommon nationally or within~~

~~[137] 00221.018 Sanford~~

~~[138] McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation (new footnote attributed to 00138.027 QLDC)~~

~~[139] 00221.018 Sanford Ltd~~

~~[140] 00306.081 Meridian~~

~~[141] As defined in the New Zealand Threat Classification System~~

~~[142] 00318.020 Contact, 00122.032 Sanford, 00221.018 Silver Fern Farms, 00313.033 Queenstown Airport, 00019.005 Straterra, 00320.020 Network Waitaki, 00511.023 PowerNet~~

an ecological district[143] or coastal marine biogeographic region, or

(ii) *Indigenous vegetation* or habitat of indigenous fauna that has been reduced to less than 20% of its former pre-human[144] extent nationally, regionally or within a relevant *land environment*, ecological district,[145] coastal marine biogeographic region or *freshwater environment* including *wetlands*, or

(iii) *Indigenous vegetation* and habitats within originally rare ecosystems, or.[146]

(iv) The site contains *indigenous vegetation* or an *indigenous species* that is endemic to Otago or that are at distributional limits within Otago.[147]

Diversity

(e) An area that supports a high diversity of indigenous ecosystem types, indigenous *taxa* or has changes in species composition reflecting the existence of diverse natural features or gradients.

Distinctiveness

(f) An area that supports or provides habitat for:

(i) *Indigenous species* at their distributional limit within Otago or nationally, or

(ii) *Indigenous species* that are endemic to the Otago region, or

(iii) *Indigenous vegetation* or an association of *indigenous species* that is distinctive,[148] of restricted occurrence, or has developed as a result of an unusual environmental factor or combinations of factors.

Ecological context

(g) The relationship of the area with its surroundings (both within Otago and between Otago and the adjoining regions),[149] including:

(i) An area that has important connectivity value allowing dispersal of indigenous flora and fauna between different areas, or

(ii) An area that has an important buffering function that helps to protect the values of an adjacent area or

[143] McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation (new footnote attributed to 00138.027 QLDC)
[144] For example, 00221.018 Sanford Ltd.
[145] McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation (new footnote attributed to 00138.027 QLDC)
[146] As defined in Williams et al, 2007. New Zealand's historically rare terrestrial ecosystems set in a physical and physiognomic framework
[147] 00230.147 Forest and Bird
[148] 00221.018 Sanford
[149] 00221.018 Sanford

feature of significant *indigenous vegetation* or significant habitat of indigenous fauna, or

(iii) An area that is important for a population of[150] indigenous fauna during some a critical[151] part of their life cycle, either seasonally or permanently, regularly or on an irregular basis[152] e.g. for feeding, resting, nesting, breeding, spawning or refuges from predation, or

(iv) A *wetland* which plays an important hydrological, biological or ecological role in the natural functioning of a *river* or coastal ecosystem.

[150] 00221.018 Sanford
[151] 00221.018 Sanford
[152] 00221.018 Sanford

APP3 – ~~Criteria for *biodiversity* offsetting~~ Principles for *biodiversity offsetting*

These principles apply to the use of biodiversity offsets for adverse effects on *indigenous biodiversity*

(1) **Adherence to effects management hierarchy:** A biodiversity offset is a commitment to redress more than minor residual adverse effects and should be contemplated only after steps to avoid, minimise, and remedy adverse effects are demonstrated to have been sequentially exhausted.

(2) **When *biodiversity offsetting* is not appropriate:** Biodiversity offsets are not appropriate in situations where *indigenous biodiversity* values cannot be offset to achieve a net gain. Examples of an offset not being appropriate include where:

(a) residual adverse effects cannot be offset because of the irreplaceability or vulnerability of the *indigenous biodiversity* affected:

(b) effects on *indigenous biodiversity* are uncertain, unknown, or little understood, but potential effects are significantly adverse or irreversible:

(c) there are no technically feasible options by which to secure gains within an acceptable timeframe.

(d) the loss from an *ecological district* of any individuals of Threatened *taxa*, other than kānuka (*Kunzea robusta* and *Kunzea serotina*), under the New Zealand Threat Classification System (Townsend et al, 2008); or

(e) the likely worsening of the conservation status of any *indigenous biodiversity* as listed under the New Zealand Threat Classification System (Townsend et al, 2008); or

(f) the removal or loss of health and *resilience* of a naturally uncommon ecosystem type that is associated with *indigenous vegetation* or *habitat* of indigenous fauna; or

(g) the loss (including through cumulative loss) of irreplaceable or vulnerable *indigenous biodiversity*.

(3) **Net gain:** This principle reflects a standard of acceptability for demonstrating, and then achieving, a net gain in *indigenous biodiversity* values. Net gain is demonstrated by a like-for-like quantitative loss/gain calculation of the following, and is achieved when the *indigenous biodiversity* values at the offset site are equivalent to or exceed those being lost at the impact site:

(a) types of *indigenous biodiversity*, including when indigenous species depend on introduced species for their persistence; and

(b) amount; and

(c) condition (structure and quality).

(4) **Additionality:** A biodiversity offset achieves gains in *indigenous biodiversity* above and beyond gains that would have occurred in the absence of the offset, such as gains that are additional to any minimisation and remediation undertaken in relation to the adverse effects of the activity.

(5) **Leakage:** Biodiversity offset design and implementation avoids displacing harm to other *indigenous biodiversity* in the same or any other location.

(6) **Long-term outcomes:** A biodiversity offset is managed to secure outcomes of the activity that last at least as long as the impacts, and preferably in perpetuity. Consideration must be given to long-term issues around funding, location, management and monitoring.

(7) **Landscape context:** *Biodiversity offsetting* is undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same *ecological district*. The action considers the landscape context of both the impact site and the offset site, taking into account interactions between species, *habitats* and ecosystems, spatial connections, and *ecosystem function*.

(8) **Time lags:** The delay between loss of, or effects on, *indigenous biodiversity* values at the impact site and the gain or maturity of *indigenous biodiversity* at the offset site is minimised so that the calculated gains are achieved within the consent period or, as appropriate, a longer period (but not more than 35 years).

(9) **Science and mātauraka Māori:** The design and implementation of a biodiversity offset is a documented process informed by science and mātauraka Māori.

(10) **Mana whenua and stakeholder participation:** Opportunity for the effective and early participation of mana whenua and stakeholders is demonstrated when planning biodiversity offsets, including their evaluation, selection, design, implementation, and monitoring.

(11) **Transparency:** The design and implementation of a biodiversity offset, and communication of its results to the public, is undertaken in a transparent and timely manner.

~~(1) *Biodiversity* offsetting is not available for an[153] if the activity that[154] will result in:~~

~~(a) the loss from an ecological district[155] -[156] of any individuals[157] of Threatened *taxa*, other than kānuka (*Kunzea robusta* and *Kunzea serotina*), under the New Zealand Threat Classification System (Townsend et al, 2008); or~~

~~(b) reasonably measurable loss within the ecological district to an At Risk-Declining *taxon*, other than manuka (*Leptospermum scoparium*), under the New Zealand Threat Classification System (Townsend et al, 2008).[158]~~

~~(c) the likely[159] worsening of the conservation status of any *indigenous biodiversity* as listed under the New Zealand Threat Classification System (Townsend et al, 2008); or[160]~~

~~(d) the removal or loss of health and *resilience* of a naturally uncommon ecosystem type that is associated with *indigenous vegetation* or habitat of indigenous fauna; or[161]~~

~~(e) the loss (including through cumulative loss) of irreplaceable or vulnerable indigenous *biodiversity*, and[162]~~

~~[153] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.158 DOC~~
~~[154] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.158 DOC~~
~~[155] McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation (new footnote attributed to 00138.027 QLDC)~~
~~[156] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.158 DOC~~
~~[157] 00137.158 DOC~~
~~[158] 00137.158 DOC~~
~~[159] 00311.0650 Manawa~~
~~[160] 00137.158 DOC~~
~~[161] 00137.158 DOC~~
~~[162] 00137.158 DOC~~

(2) *Biodiversity* offsetting may be is[163] available if the following criteria are met:

(a) the offset addresses only[164] residual adverse *effects* that remain after implementing the sequential steps required by ECO-P6(1) to (3),

(b) the proposal demonstrates that[165] the offset can reasonably[166] achieves[167] no net loss and preferably a net gain in indigenous *biodiversity*, as measured by type, amount and condition at both the impact and offset sites using an explicit quantitative[168] loss and gain calculation,

(c) the offset is undertaken where it will result in the best ecological outcome, and preferably as the first priority be:[169]

(i) close to the location of the activity, and

(ii) within the same ecological district[170] or coastal marine biogeographic region,[171]

(d) the offset is applied so that the ecological values being achieved are the same or similar to those being lost,

(e) the positive ecological outcomes of the offset endure at least as long as the impact of the activity and preferably in perpetuity,

(f) the proposal demonstrates that the offset will[172] achieves[173] *biodiversity* outcomes beyond results that are demonstrably additional to those[174] that would have occurred if the offset was not proposed, and are additional to any remediation or mitigation undertaken in relation to the adverse effects of the activity,[175]

(g) the time delay between the loss of *biodiversity* and the gain or maturation of the *biodiversity* outcomes of the realisation of the[176] offset is the least necessary to achieve the best possible outcome,

(h) the outcome of the offset is achieved within the duration of the *resource consent*, and

(i) any offset developed in advance of an application for *resource consent* must be shown to have been created or commenced in anticipation of the specific *effect* of the proposed activity and would not have occurred if that *effect* was not anticipated., and

[163] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.158 DOC
[164] Clause 16(2), Schedule 1, RMA – for consistency with APP4(2)(a)
[165] 00137.158 DOC
[166] 00137.158 DOC
[167] 00137.158 DOC
[168] 00137.158 DOC
[169] 00137.158 DOC
[170] McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation (new footnote attributed to 00138.027 QLDC)
[171] 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird
[172] 00137.158 DOC
[173] 00137.158 DOC
[174] 00139.139 DCC
[175] 00137.158 DOC
[176] 00137.158 DOC

(j) the offset accords with mātauraka Māori when taoka species are affected,[177]

(k) the offset design and implementation do not displace harm to other locations (including harm to existing *biodiversity* at the offset site), and[178]

(3) *Biodiversity* offsetting proposed in any application for *resource consent*, plan change or notice of requirement must address all matters in APP3(2), and:

(a) describe and measure *biodiversity* at the impact and offset sites using metrics that allow for *biodiversity* losses and gains to be quantified and balanced on a like for like basis,[179]

(b) use a disaggregated accounting system for important and *high value species and vegetation types* to ensure they are transparently accounted for,[180]

(c) evaluate the ecological context, including the interactions between species, habitats and ecosystems, spatial connections and ecosystem function at the impact site and offset site,

(d) include application of mātauraka Māori where to available to an applicant, and[181]

(e) include a separate *biodiversity* offset management plan prepared in accordance with good practice and which incorporates a monitoring and evaluation regime.

[177] 00223.134 Ngāi Tahu ki Murihiku
[178] 00311.0650 Manawa, 00137.158
[179] 00137.158 DOC
[180] 00137.158 DOC
[181] 00311.0650 Manawa, 00137.158

APP4 – ~~Criteria for *biodiversity* compensation~~ Principles for biodiversity compensation

These principles apply to the use of *biodiversity compensation* for adverse effects on *indigenous biodiversity*:

(1) Adherence to effects management hierarchy: *Biodiversity compensation* is a commitment to redress more than minor residual adverse effects, and should be contemplated only after steps to avoid, minimise, remedy, and offset adverse effects are demonstrated to have been sequentially exhausted.

(2) When *biodiversity compensation* is not appropriate: *Biodiversity compensation* is not appropriate where *indigenous biodiversity* values are not able to be compensated for. Examples of *biodiversity compensation* not being appropriate include where:

(a) the *indigenous biodiversity* affected is irreplaceable or vulnerable;

(b) effects on *indigenous biodiversity* are uncertain, unknown, or little understood, but potential effects are significantly adverse or irreversible;

(c) there are no technically feasible options by which to secure a proposed net gain within acceptable timeframes.

(d) the loss from an ecological district of Threatened taxa, other than kānuka (Kunzea robusta and Kunzea serotina), under the New Zealand Threat Classification System (Townsend et al, 2008); or

(e) removal or loss of viability of the *habitat* of a Threatened *indigenous species* of fauna or flora under the New Zealand Threat Classification System (Townsend et al, 2008),

(f) removal or loss of health and *resilience* of a naturally uncommon ecosystem type that is associated with *indigenous vegetation* or *habitat* of indigenous fauna,

(g) the likely worsening of the conservation status of any Threatened or At Risk *indigenous biodiversity* listed under the New Zealand Threat Classification System (Townsend et al, 2008).

(3) Scale of biodiversity compensation: The *indigenous biodiversity* values lost through the activity to which the *biodiversity compensation* applies are addressed by positive effects to *indigenous biodiversity* (including when indigenous species depend on introduced species for their persistence), that outweigh the adverse effects.

(4) Additionality: *Biodiversity compensation* achieves gains in *indigenous biodiversity* above and beyond gains that would have occurred in the absence of the compensation, such as gains that are additional to any minimisation and remediation or offsetting undertaken in relation to the adverse effects of the activity.

(5) Leakage: *Biodiversity compensation* design and implementation avoids displacing harm to other *indigenous biodiversity* in the same or any other location.

(6) Long-term outcomes: *Biodiversity compensation* is managed to secure outcomes of the activity that last as least as long as the impacts, and preferably in perpetuity. Consideration must be given to long-term issues around funding, location, management, and monitoring.

(7) Landscape context: *Biodiversity compensation* is undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same *ecological district*. The action considers the landscape context of both the impact site and the compensation site, taking into account interactions between species, *habitats* and ecosystems, spatial connections, and *ecosystem function*.

(8) Time lags: The delay between loss of, or effects on, *indigenous biodiversity* values at the impact site and the gain or maturity of *indigenous biodiversity* at the compensation site is minimised so that the calculated gains are achieved within the consent period or, as appropriate, a longer period (but not more than 35 years)

(9) Trading up: When trading up forms part of biodiversity compensation, the proposal demonstrates that the *indigenous biodiversity* gains are demonstrably greater or higher than those lost. The proposal also shows the values lost are not to *Threatened or At Risk (declining) species* or to species considered vulnerable or irreplaceable.

(10) Financial contributions: A financial contribution is only considered if:

(a) there is no effective option available for delivering biodiversity gains on the ground; and

(b) it directly funds an intended biodiversity gain or benefit that complies with the rest of these principles.

(11) Science and mātauraka Māori: The design and implementation of *biodiversity compensation* is a documented process informed by science, and mātauraka Māori.

(12) Mana whenua and stakeholder participation: Opportunity for the effective and early participation of mana whenua and stakeholders is demonstrated when planning for biodiversity compensation, including its evaluation, selection, design, implementation, and monitoring.

(13) Transparency: The design and implementation of biodiversity compensation, and communication of its results to the public, is undertaken in a transparent and timely manner.

(14) Achievability: The *biodiversity compensation* outcome is demonstrably achievable.

~~(1) *Biodiversity* compensation is not available if the for an[182] activity that[183] will result in:~~

~~(a) the loss from an ecological district[184] of an indigenous *taxon* (excluding *freshwater* fauna and flora) or of any ecosystem type from an *ecological district* or coastal marine biogeographic region,[185]~~

[182] ~~Clause 10(2)(b)(i), Schedule 1, RMA – consequential change from 00137.158 DOC~~
[183] ~~Clause 10(2)(b)(i), Schedule 1, RMA – consequential change from 00137.158 DOC~~
[184] ~~McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation (new footnote attributed to 00138.027 QLDC)~~
[185] ~~00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird~~

(b) removal or loss of viability of the[186] habitat of a Threatened or At Risk[187] *indigenous species* of fauna or flora under the New Zealand Threat Classification System (Townsend et al, 2008),

(c) removal or loss of viability health and *resilience*[188] of a *naturally rare* or naturally[189] uncommon ecosystem type that is associated with *indigenous vegetation*[190] or habitat of indigenous fauna, or[191]

(d) the likely[192] worsening of the conservation status of any Threatened or At Risk *indigenous biodiversity* listed under the[193] New Zealand Threat Classification System (Townsend et al, 2008) of any Threatened or At Risk indigenous fauna., or[194]

(e) the loss (including through cumulative loss) of irreplaceable or vulnerable *indigenous biodiversity*, and[195]

(2) *Biodiversity* compensation may be[196] available if the following criteria are met:

(a) compensation addresses only residual adverse *effects* that remain after implementing the sequential steps required by ECO-P65(1) to (4),

(b) compensation is undertaken where it will result in the best ecological outcome and preferably:

(i) close to the location of the activity, and[197]

(ii) within the same ecological district,[198] or coastal marine biogeographic region,[199] and[200]

(iii) delivers indigenous *biodiversity* gains on the ground,[201]

(ba) where criterion (2)(b)(iii) is not met, any financial contributions considered must be directly linked to a specific indigenous *biodiversity* gain or benefit,[202]

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[186] Clause 16(2), Schedule 1, RMA
[187] 00115.022 Oceana Gold
[188] 00230.149 Forest and Bird
[189] Consequential to 0137.014 DOC
[190] Clause 16(2), Schedule 1, RMA
[191] Clause 16(2), Schedule 1, RMA
[192] 00311.0650 Manawa
[193] 00137.158 DOC
[194] Clause 16(2), Schedule 1, RMA
[195] 00137.158 DOC
[196] 00137.158 DOC
[197] 00137.158 DOC
[198] McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation (new footnote attributed to 00138.027 QLDC)
[199] 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird
[200] 00137.158 DOC
[201] 00137.158 DOC
[202] 00137.158 DOC

(c) the proposal demonstrates that the compensation will[203] achieves[204] positive *biodiversity* outcomes that that are demonstrably additional to those that[205] would not have occurred without that compensation, and are additional to any remediation, mitigation or offset undertaken in relation to the adverse *effects* of the activity;[206]

(d) the positive *biodiversity* outcomes of the compensation are enduring last at least as long as the impacts and preferably in perpetuity and are enough to outweigh the adverse *effects* on indigenous *biodiversity*;[207]

(e) the time delay between the loss of *biodiversity* through the proposal at the impact site[208] and the gain or maturation of the compensation's[209] *biodiversity* outcomes from the compensation,[210] is the least necessary to achieve the best possible ecological[211] outcome,

(f) the outcome of the compensation is achieved within the duration of the *resource consent*,

(fa) when trading up forms part of *biodiversity* compensation, the proposal must demonstrate the indigenous *biodiversity* values gained are demonstrably of higher indigenous *biodiversity* value than those lost, and the values lost are not[212] considered vulnerable or irreplaceable,[213]

(g) *biodiversity* compensation developed in advance of an application for *resource consent* must be shown to have been created or commenced in anticipation of the specific *effect* of the proposed activity and would not have occurred if that *effect* was not anticipated, and

(h) the *biodiversity* compensation outcome[214] is demonstrably achievable.; and

(i) the compensation accords with mātauraka Māori when taoka species are affected, and[215]

(i) the compensation design and implementation do not displace harm to other locations (including harm to existing *biodiversity* at the compensation site), and[216]

(3) *Biodiversity* compensation proposed in any application for *resource consent*, plan change or notice of requirement must address all matters in APP4(2), and:

(a) evaluate the ecological context, including the interactions between species, habitats and ecosystems, spatial connections and ecosystem function at the impact site and compensation site,

[203] Clause 10(2)(b)(i), schedule 1, RMA – consequential amendment arising from 00137.158 DOC
[204] 00137.158 DOC
[205] 00139.139 DCC
[206] 00137.158 DOC
[207] 00137.158 DOC
[208] 00137.158 DOC
[209] 00137.158 DOC
[210] 00137.158 DOC
[211] 00137.158 DOC
[212] 00137.158 DOC
[213] 00137.158 DOC
[214] 00137.158 DOC
[215] 00223.134 Ngāi Tahu ki Murihiku
[216] 00137.158 DOC

(b) include application of mātauraka Māori where available to an applicant,[217] and

(c) include a separate *biodiversity* compensation management plan prepared in accordance with good practice and which incorporates a monitoring and evaluation regime.[218]

[217] 00137.158 DOC
[218] 00137.158 DOC

APP12 – Specified highly mobile fauna

Scientific Name	Common name	Ecosystem	Threat category	Found in Otago?	Listed in ORC's Schedule?
Anarhynchus frontalis	ngutu parore/wrybill	Coastal/riverine	Threatened (Nationally Increasing)	Yes	Yes
Anas chlorotis	pāteke/brown teal	wetland/riverine	Threatened (Nationally increasing)		Yes
Anas superciliosa superciliosa	pārera/grey duck	wetland/riverine	Threatened (Nationally Vulnerable)		Yes
Anthus novaeseelandiae novaeseelandiae	pīhoihoi/NZ pipit	forest/open	At Risk (Declining)	Yes	
Apteryx australis 'northern Fiordland'	northern Fiordland tokoeka	forest/open	Threatened (Nationally Vulnerable)		
Apteryx australis australis	southern Fiordland tokoeka	forest/open	Threatened (Nationally Endangered)		
Apteryx haastii	roa/great spotted kiwi	forest/open	Threatened (Nationally Vulnerable)		
Ardea modesta	kotuku/white heron	wetland/riverine	Threatened (Nationally Critical)		Yes
Botaurus poiciloptilus	matuku/bittern	wetland/riverine	Threatened (Nationally Critical)	Yes	Yes
Bowdleria punctate stewartiana	mātātā/Stewart Island fernbird	wetland/riverine	Threatened (Nationally Vulnerable)		
Bowdleria punctata punctata	koroātito/South Island fernbird	wetland/riverine	At Risk (Declining)	Yes	
Bowdleria punctata vealeae	mātātā/North Island fernbird	wetland/riverine	At Risk (Declining)		
Calidris canutus rogersi	huahou/lesser knot	coastal/riverine	At Risk (Declining)	Maybe?	
Chalinolobus tuberculatus	pekapeka/long-tailed bat	forest/open	Threatened (Nationally Critical)	Yes	yes

Charadrius bicinctus bicinctus	pohowera/banded dotterel	coastal/riverine	At Risk (Declining)	Yes	
Charadrius obscurus aquilonius	tūtiriwhatu/northern NZ dotterel	coastal/riverine	Threatened (Nationally Increasing)		
Charadrius obscurus obscurus	tūtiriwhatu/southern NZ dotterel	coastal/riverine	Threatened (Nationally Critical)		
Chlidonias albostriatus	tara pirohe/blackfronted tern	coastal/riverine	Threatened (Nationally Endangered)	Yes	Yes
Egretta sacra sacra	matuku moana/reef heron	coastal/riverine	Threatened (Nationally Endangered)	Yes	Yes
Falco novaeseelandiae ferox	kārearea/bush falcon	forest/open	Threatened (Nationally Increasing)		
Falco novaeseelandiae novaeseelandiae	kārearea/eastern falcon	forest/open	Threatened (Nationally Vulnerable)		
Falco novaeseelandiae 'southern'	kārearea/southern falcon	forest/open	Threatened (Nationally Endangered)		
Gallirallus australis greyi	North Island weka	forest/open	At Risk (Relict)		
Gallirallus philippensis assimilis	moho pererū/banded rail	wetland/riverine	At Risk (Declining)		
Haematopus finschi	tōrea/South Island pied oystercatcher	coastal/riverine	At Risk (Declining)	Yes	
Haematopus unicolor	tōrea tai/variable oystercatcher	coastal/riverine	At Risk (Recovering)	Yes	
Himantopus novaezelandiae	kakī/black stilt	wetland/riverine	Threatened (Nationally Critical)	Yes	Yes
Hydroprogne caspia	taranui/Caspian tern	coastal/riverine	Threatened (Nationally Vulnerable)	Yes	Yes
Hymenolaimus malacorhynchos	whio/blue duck	riverine	Threatened (Nationally Vulnerable)	Yes	Yes
Larus bulleri	tarāpukā/black-billed gull	coastal/riverine	At Risk (Declining)	Yes	

Larus novaehollandiae scopulinus	tarāpunga/red-billed gull	coastal/riverine	At Risk (Declining)	Yes	
Limosa lapponica baueri	kuaka/eastern bartailed godwit	coastal/riverine	At Risk (Declining)	Yes	
Mystacina tuberculata aupourica	pekapeka/northern short-tailed bat	forest/open	Threatened (Nationally Endangered)		
Mystacina tuberculata rhyacobia	pekapeka/central shorttailed bat	forest/open	At Risk (Declining)		
Mystacina tuberculata tuberculata	pekapeka/southern short-tailed bat	forest/open	At Risk (Recovering)	Yes / maybe?	
Nestor meridionalis meridionalis	kākā/South Island kākā	forest/open	Threatened (Nationally Vulnerable)	Yes	
Nestor meridionalis septentrionalis	kākā/North Island kākā	forest/open	At Risk (Recovering)		
Nestor notabilis	kea	forest/open	Threatened (Nationally Endangered)	Yes	
Petroica australis australis	kakariwai/South Island robin	forest/open	At Risk (Declining)	Yes	
Phalacrocorax varius varius	kāruhiruhi/pied shag	coastal/riverine	At Risk (Recovering)	Yes	
Podiceps cristatus australis	kāmana/southern crested grebe	wetland/riverine	Threatened (Nationally Vulnerable)	Yes	Yes
Poliocephalus rufopectus	weweia/NZ dabchick	wetland/riverine	Threatened (Nationally Increasing)		
Porzana pusilla affinis	koitareke/marsh crake	wetland/riverine	At Risk (Declining)	Yes	
Porzana tabuensis	pūweto/spotless crake	wetland/riverine	At Risk (Declining)		
Sterna striata striata	tara/white-fronted tern	coastal/riverine	At Risk (Declining)	Yes	
Sternula nereis davisae	tara iti/NZ fairy tern	coastal/riverine	Threatened (Nationally Critical)		
Thinornis novaeseelandiae	tuturuatu/NZ shore plover	coastal/riverine	Threatened (Nationally Critical)		

Xenicus gilviventris 'northern'	pīwauwau/northern rock wren	forest/open	Threatened (Nationally Critical)		
Xenicus gilviventris 'southern	pīwauwau/southern rock wren	forest/open	Threatened (Nationally Endangered)	Yes	