

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ

Decision No. [2025] NZEnvC 396

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 to the First
Schedule to the Act

BETWEEN MERIDIAN ENERGY LIMITED
(and eight other appellants as set out in
Schedule One to this Order)

(ENV-2024-CHC-22)

Appellants

AND OTAGO REGIONAL COUNCIL

Respondent

Environment Judge P A Steven – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 9 December 2025

CONSENT ORDER

A: Under s279(1)(b) RMA,¹ the Environment Court, by consent, orders that:

- (1) the following appeals are allowed subject to amendment of the provisions of the ‘ECO – Ecosystems and indigenous biodiversity’ (ECO) chapter of the proposed Otago Regional Policy Statement

¹ Resource Management Act 1991.



(Non-freshwater) 2021 (PORPS) as set out in Annexure 1, attached to and forming part of this Order:

- (a) Meridian Energy Limited's appeal points in relation to:
 - Definition: Effects management hierarchy (in relation to indigenous biodiversity);
 - ECO-P4 – Provision for new activities; and
 - ECO-P6 – Maintaining indigenous biodiversity.
- (b) Aurora Energy, Network Waitaki Limited and Powernet Limited's appeal points in relation to:
 - ECO-P2 – Identifying significant natural areas and taoka;
 - ECO-P3 – Protecting significant natural areas and taoka;
 - ECO-P4;
 - ECO-P5 – Existing activities in significant natural areas (deleted in Decisions Version); and
 - ECO-P6.
- (c) Royal Forest and Bird Protection Society of New Zealand Incorporated's appeal points in relation to:
 - Definition: Significant natural area;
 - ECO-O1 – Indigenous biodiversity;
 - ECO-O2 – Restoring and enhancing;
 - ECO-P3;
 - ECO-P4;
 - ECO-P5A – Managing adverse effects of established activities on significant natural areas;
 - ECO-P6;
 - ECO-P8 – Restoration and enhance;
 - ECO-P10 – Integrated approach;
 - ECO-P11 – Resilience to climate change;
 - ECO-M2 – Identification of significance natural areas;
 - ECO-M4 – Regional plans;

- ECO-M5 – District plans; and
 - ECO-PR1 – Principal reasons.
- (d) Rayonier Matariki Forests, City Forests Limited, Ernslaw One Limited and Port Blakely NZ Limited's appeal points in relation to:
- ECO-O1;
 - ECO-O2;
 - ECO-O3 – Kaitiakitaka and stewardship;
 - ECO-P1 – Kaitiakitaka;
 - ECO-P2;
 - ECO-P3;
 - ECO-P4;
 - ECO-P5;
 - ECO-P5A;
 - ECO-P6;
 - ECO-P7 – Coastal indigenous biodiversity;
 - ECO-P8;
 - ECO-P9 – Wilding conifers (deleted in Decisions Version);
 - ECO-P10;
 - ECO-P11;
 - ECO-P12 – Plantation forestry activities;
 - ECO-PXX (new policy sought);
 - ECO-M1 – Statement of responsibilities;
 - ECO-M2;
 - ECO-M4;
 - ECO-M5;
 - APP3 – Principles for biodiversity offsetting; and
 - APP4 – Principles for biodiversity compensation.

(e) Oceana Gold (New Zealand) Limited's appeal points in relation to:

- New definition sought: Environmental compensation;
- ECO-P2;
- ECO-P3;
- ECO-P4;
- ECO-P5A;
- ECO-P6;
- ECO-M4;
- APP2 – Criteria for identifying areas that qualify as indigenous natural areas (SNAs);
- APP3; and
- APP4.

(f) Cain Whānau's appeal points in relation to:

- ECO-O1;
- ECO-O2;
- ECO-O3;
- ECO-P1;
- ECO-P2;
- ECO-P3;
- ECO-P4;
- ECO-P5;
- ECO-P5A;
- ECO-P6;
- ECO-P7;
- ECO-P8;
- ECO-P9;
- ECO-P10;
- ECO-P11;

- ECO-P12;
- ECO-PXX;
- ECO-M1;
- ECO-M2;
- ECO-M3 – Identification of taoka;
- ECO-M4;
- ECO-M4A – Increasing indigenous vegetation cover;
- ECO-M4B – Specific highly mobile fauna;
- ECO-M4C – Maintenance of improved pasture for farming;
- ECO-M4D – Native Reserves and Māori land;
- ECO-M5;
- ECO-M6 – Engagement;
- ECO-M7A – Kāi tahu kaitiakitaka;
- ECO-M7B – Information requirements;
- ECO-M7 – Monitoring;
- ECO-M8 – Other incentives and mechanisms;
- ECO-M9 – Regional biodiversity strategy;
- ECO-E1 – Explanation;
- ECO-PR1;
- ECO-AER1;
- ECO-AER2;
- ECO-AER3;
- APP2;
- APP3; and
- APP4.

(g) Manawa Energy Limited's appeal points in relation to:

- ECO-P4;
- ECO-P5A; and

- ECO-P6.
- (h) New Zealand Transport Agency – Waka Kotahi’s appeal points in relation to:
- APP2;
 - APP3; and
 - APP4.
- (i) Environmental Defence Society Incorporated’s appeal points in relation to:
- Definition: Significant natural area;
 - ECO-O1;
 - ECO-P1;
 - ECO-P2;
 - ECO-P10;
 - ECO-P11;
 - ECO-M2;
 - ECO-M5;
 - ECO-M7; and
 - ECO-AER4 (deleted in Decisions Version).
- (2) the appeals in respect of the ECO chapter, definitions and other provisions of the PORPS addressed in this Order, are otherwise dismissed.

B: Under s285 RMA, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns appeals filed against part of the decisions by the Otago Regional Council (ORC) on the proposed Otago Regional Policy Statement (Non-freshwater) 2021 in relation to provisions in the ‘ECO – Ecosystems and

indigenous biodiversity’ (ECO) chapter located in the ‘Part 3 – Domain and Topics’ section.

[2] The following persons filed appeals seeking amendments to provisions in the ECO chapter:

- (a) Meridian Energy Limited (Meridian);
- (b) Aurora Energy, Network Waitaki Limited and PowerNet Limited – electricity distribution businesses (EDBs);
- (c) Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird);
- (d) Rayonier Matariki Forests, City Forests Limited, Ernslaw One Limited and Port Blakely NZ Limited (Forestry appellants);
- (e) Oceana Gold (New Zealand) Limited (OGL);
- (f) Cain Whānau;
- (g) Manawa Energy Limited (Manawa Energy);
- (h) New Zealand Transport Agency – Waka Kotahi (NZTA); and
- (i) Environmental Defence Society Incorporated (EDS).

ECO-O1 – Indigenous biodiversity

[3] Objective ECO-O1 was appealed by Forest & Bird and EDS (together, the Societies).

[4] In their respective appeals, the Societies sought that the Notified Version of ECO-O1 be reinstated. The Societies’ position was that the inclusion of the text “overall decline” within the Decisions Version of the objective was contrary to s6(c) of the Act and failed to give effect to the National Policy Statement Indigenous Biodiversity (NPSIB).

[5] The following persons gave notice of an intention to join this part of Forest & Bird’s appeal pursuant to s274 RMA:

- (a) Dunedin City Council (DCC);
- (b) the Director-General of Conservation (DGC);
- (c) Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga, Te Ao Marama Incorporated on behalf of Waihopai Rūnaka, Te Rūnanga o Ōraka Aparima, and Te Rūnanga o Awarua and Te Rūnanga o Ngāi Tahu (Kāi Tahu);
- (d) Meridian;
- (e) Otago and Central South Island Fish and Game Councils (Fish & Game);
- (f) the EDBs;
- (g) OGL;
- (h) Queenstown Lakes District Council (QLDC); and
- (i) Port Otago Limited (POL).

[6] The following persons gave notice of an intention to join this part of EDS' appeal pursuant to s274 RMA:

- (a) Forest & Bird;
- (b) the EDBs;
- (c) Kāi Tahu;
- (d) DGC;
- (e) Fish & Game;
- (f) OGL;
- (g) QLDC;
- (h) POL; and
- (i) Meridian.

Resolution

[7] The parties have proposed to amend ECO-O1 as follows (amendments henceforth show additions in underline and deletions in strikethrough):

ECO-O1 – Indigenous biodiversity

Otago’s indigenous biodiversity is healthy and thriving and, at a minimum, any overall decline in condition, quantity and diversity is halted.

[8] The parties consider that the amendment better gives effect to the NPSIB which requires that there is “at least no overall loss in indigenous biodiversity”.²

[9] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(d) and 7(f).

New objective sought

[10] OGL’s appeal sought a new objective that requires the management of indigenous biodiversity in a way that also provides for the social, economic and cultural wellbeing of people and communities now and in the future. OGL’s position was that this relief is consistent with Objective 2.1 of the NPSIB.

[11] The following persons gave notice of an intention to join this part of OGL’s appeal pursuant to s274 RMA:

- (a) DGC;
- (b) QLDC;
- (c) Otago Water Resource Users Group (OWRUG);
- (d) the Forestry appellants;
- (e) Forest & Bird;
- (f) Kāi Tahu;
- (g) Meridian;
- (h) Fish & Game; and
- (i) EDS.

² Objective 2.1.

Resolution

[12] The parties have proposed to insert new Objective ECO-O4 as follows:

ECO-O4 – Social, economic and cultural well-being

While achieving ECO-O1, ECO-O2 and ECO-O3, the social, cultural, and economic well-being of people and communities now and in the future is provided for.

[13] The parties consider that the new objective is consistent with Objective 2.1 of the NPSIB which requires the maintenance of indigenous biodiversity while, among other matters, providing for the social, economic, and cultural wellbeing of people and communities now and in the future.

[14] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 7(b) and 7(f).

Application of the ECO – Ecosystems and indigenous biodiversity chapter and the National Policy Statement for Freshwater Management

[15] As decided, the ECO chapter applies to all indigenous biodiversity (noting that for coastal biodiversity there are cross-references to provisions in the ‘CE – Coastal environment’ (CE) chapter). Forest & Bird’s appeal sought amendments to provisions within the ECO chapter to clarify its interface with the National Policy Statement for Freshwater Management (NPS-FM) and to avoid conflict between the provisions in the ECO chapter with other directive provisions in the NPS-FM.

[16] The NPS-FM contains many provisions, some of which apply to the management of land (as it relates to freshwater health). The parties agreed it can be unclear exactly where the NPS-FM applies or does not apply.

[17] Clause 1.4(3) of the NPSIB provides that if there is a conflict between the

provisions of the NPSIB and the NPS-FM, the NPS-FM prevails. Similarly, Clause 1.4(2) provides that if there is a conflict between the provisions of the NPSIB and the New Zealand Coastal Policy Statement (NZCPS), the NZCPS prevails.

Resolution

[18] The parties have proposed to make amendments to the ECO chapter to address the relationship between the ECO and 'LF – Land and freshwater' (LF) chapters to ensure both the NPSIB and NPS-FM are given effect to, as sought by Forest & Bird.

[19] Policy 'ECO-P7 – Coastal indigenous biodiversity' addresses the relationship between the ECO and CE chapters.

[20] The parties consider that ECO-P7 should be amended to address the relationship between the ECO and LF chapters also.

[21] The parties have therefore proposed to amend ECO-P7 as follows:

ECO-P7 – Coastal and freshwater indigenous biodiversity

~~Indigenous biodiversity in the coastal environment is managed by CE-P5 in addition to all objectives and policies of the ECO chapter except ECO-P3, ECO-P4, ECO-P5A and ECO-P6. This chapter applies to all forms of indigenous biodiversity except that:~~

- ~~(1) ECO-P2 only applies to land covered by water, water bodies, or freshwater ecosystems that are not within a natural inland wetland if those areas are contained within a wider significant natural area identified in accordance with ECO-M2, and~~
- ~~(2) ECO-P3, ECO-P4, ECO-P5A, ECO-P6, and ECO-P13 do not apply in the coastal environment or to land covered by water, water bodies, or freshwater ecosystems.~~

[22] The parties have also agreed ECO-P7, as amended, should be relocated to the beginning of the chapter to assist readers.

[23] The parties consider consequential changes are also required to the following provisions to ensure there is alignment between ECO-P7 and the policies and methods:

- (a) consequential amendments to the chapeau of ECO-P2 include the text “Except as provided for in ECO-P7”;
- (b) consequential amendments to the chapeau of the following policies to replace “Outside the coastal environment” with “Except as provided for by ECO-P7” to reflect that ECO-P7 now addresses the relationship with both coastal environment and freshwater:
 - (i) ECO-P3 – Protecting significant natural areas and taoka;
 - (ii) ECO-P4 – Provision for new activities;
 - (iii) ECO-P5A – Managing adverse effects of established activities on significant natural areas; and
 - (iv) ECO-P6 – Maintaining indigenous biodiversity.
- (c) further consequential amendments to clause (5)(c) of ECO-M2 to include the text “areas which include” and refer to “braided river systems” as follows:
 - (c) areas which include braided river systems, including the Makarore, Mātakitaki and Lower Waitaki Rivers,

25.3.1

The amendments to ECO-M2(5)(c) will ensure indigenous biodiversity in and around braided river systems is included in the list of priorities for identification.

- (d) further consequential amendments to clause (1) of ‘ECO-M4 – Regional plans’ and ‘ECO-M5 – District plans’ to remove the text “if the requirements of ECO-P3 to ECO-P6 are met”. The parties have agreed the text be removed as drafted, it reads as though no use of lakes, rivers, or their beds could occur until all of the policies had been implemented, which is not the intent of the policy direction. The deletion provides clarity in this regard. The parties consider that the methods are implemented in accordance with the policies, so a

specific reference back to the policies was not necessary.

[24] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(d) and 7(f).

ECO-P3 – Protecting significant natural areas and taoka

[25] Policy ECO-P3 was appealed by Forest & Bird.

[26] Forest & Bird's appeal sought an amendment to clause (1) to read "first avoiding the following adverse effects~~that result in~~". Forest & Bird's position was that waiting until an adverse effect results in any reduction or loss was too late, and the wording should reflect a precautionary approach.

[27] The following persons gave notice of an intention to join this part of Forest & Bird's appeal pursuant to s274 RMA:

- (a) DGC;
- (b) Kāi Tahu;
- (c) DCC;
- (d) Fish & Game;
- (e) Meridian;
- (f) OGL;
- (g) NZTA;
- (h) QLDC;
- (i) the EDBs;
- (j) the Forestry appellants; and
- (k) POL.

Resolution

[28] The parties have proposed to amend ECO-P3 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-P5A; ~~and ECO-P7~~ protect significant natural areas and indigenous species and ecosystems that are taoka by:

- (1) protect significant natural areas by first avoiding the following adverse effects ~~that result in:~~
 - (aa) loss of ecosystem representation and extent,
 - (ab) disruption to sequences, mosaics, or ecosystem function,
 - (ac) fragmentation of significant natural areas or the loss of buffers or connections within an SNA,
 - (ad) a reduction in the function of the significant natural area as a buffer or connection to other important habitats or ecosystems, or
 - (ae) 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 cycle; and
- (2) protect indigenous species and ecosystems that are taoka by first avoiding adverse effects that result in ~~(b)~~ any loss of taoka values identified by mana whenua as requiring protection under ECO-P2(2); and
- (2A) after (1) and (2), applying the effects management hierarchy (in relation to indigenous biodiversity) to areas and values other than those covered by ECO-P3(1), and
- (3) prior to significant natural areas and indigenous species and ecosystems that are taoka being identified and mapped in accordance with ECO-P2, adopt a precautionary approach towards activities in accordance with IM-P6(2).

[29] The removal of “Outside of the coastal environment” and addition of “Except as provided for by...ECO-P7” in the chapeau are consequential amendments to Forest & Bird’s relief as set out at paragraphs [15] to [23] above.

[30] The parties have agreed to amend clause (1) as sought by Forest & Bird. The parties consider that the amendment is consistent with Clause 3.10(2) of the NPSIB and makes clear that the list which follows is a list of adverse effects, rather than the results of adverse effects.

[31] The chapeau has been separated out as it relates to SNAs and species and

ecosystems that are taoka and the relevant text has been moved to clauses (1) for SNAs and (2) for taoka ecosystems and species respectively.

[32] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c) and 7(d).

ECO-P4 – Provision for new activities

[33] Policy ECO-P4 was appealed by the following persons:

- (a) OGL;
- (b) Forest & Bird;
- (c) Meridian; and
- (d) Manawa Energy.

OGL

[34] OGL's appeal sought an amendment to clause (1B) to remove reference to adverse effects on indigenous species or ecosystems that are taoka. OGL's position was that those words were not found in the NPSIB and therefore their inclusion in the PORPS did not give effect to the NPSIB.

[35] The following persons gave notice of an intention to join this part of OGL's appeal pursuant to s274 RMA:

- (a) Fish & Game;
- (b) the Forestry appellants;
- (c) QLDC;
- (d) Transpower New Zealand Limited (Transpower);
- (e) OWRUG;
- (f) DGC;
- (g) Kāi Tahu;
- (h) EDS;

- (i) Forest & Bird; and
- (j) Meridian.

Forest & Bird

[36] Forest & Bird's appeal sought amendments to more accurately reflect the NPSIB, in particular to clarify that the policy relates to the development of specified activities and to disapply the policy to specified highly mobile fauna. Forest & Bird's position was that amendments to policy were required to give effect to the NPSIB.

[37] The following person gave notice of an intention to join this part of Forest & Bird's appeal pursuant to s274 RMA:

- (a) DGC;
- (b) Kāi Tahu;
- (c) DCC;
- (d) Fish & Game;
- (e) Meridian;
- (f) OGL;
- (g) NZTA;
- (h) POL; and
- (i) QLDC.

Meridian

[38] The NPSIB does not apply to the development, operation, maintenance, or upgrade of renewable electricity generation assets and activities or electricity transmission network assets and activities.

[39] Meridian's appeal sought amendments to ensure that the effects management hierarchy in ECO-P4, which includes provisions for avoiding, remedy and mitigating adverse effects and for offsetting and compensating for

residual adverse effects, enables consideration of the national, regional and local benefits of renewable electricity generation relative to any residual effects that may remain. Meridian's position was that the NPSIB clearly anticipates a different approach to the consideration of effects of renewable electricity generation activities on indigenous biodiversity when compared to other activities in Clause 1.3(3).

[40] The following persons gave notice of an intention to join this part of Meridian's appeal pursuant to s274 RMA:

- (a) Fish & Game;
- (b) DGC;
- (c) EDS;
- (d) QLDC;
- (e) Kāi Tahu; and
- (f) Forest & Bird.

Manawa Energy

[41] Manawa Energy's appeal sought a bespoke policy framework for renewable electricity generation. Manawa Energy's position was that the PORPS contained complicated and unclear policy direction that applied to renewable electricity generation, and this undermined the suite of directions aimed at enabling these activities both at a national level and within the PORPS itself.

[42] The following persons gave notice of an intention to join this part of Manawa Energy's appeal pursuant to s274 RMA:

- (a) Meridian;
- (b) OGL;
- (c) the EDBs;
- (d) Fish & Game;
- (e) DGC;

- (f) EDS;
- (g) Forest & Bird;
- (h) Kāi Tahu; and
- (i) QLDC.

Resolution

[43] The parties have proposed to amend ECO-P4 as follows:

ECO-P4 – Provision for specified new activities

~~Outside of the coastal environment~~ Except as provided for by ECO-P7, maintain Otago's indigenous biodiversity by following the sequential steps in the effects management hierarchy (in relation to indigenous biodiversity) 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 ~~(but are not specified highly mobile fauna)~~ that have been identified by mana whenua as requiring protection:

- (1) ~~except as provided for in (1AA), new subdivision, use or development for the purpose of the construction~~ development, operation, maintenance or upgrade of specified infrastructure that provides significant national or regional public benefit 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, ~~(1AA) the development, operation, maintenance or upgrade of renewable electricity generation that provides significant national or regional public benefit 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 alternative sites, methods and designs have been considered under EIT-EN-P6,~~
- (1A) ~~new subdivision, use or development for the purpose of the development, operation and maintenance of~~ mineral extraction activities that provides 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) new subdivision, use or development for the purpose of the development, operation and maintenance of aggregate extraction activities that provides 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, and there are no practicable alternative locations, and
- ~~(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;~~
- (2A) the sustainable use of mahika kai and kaimoana (seafood) by mana whenua;
- (2) the use of Native reserves and Māori land to enable mana whenua to maintain their connection to their whenua and enhance social, cultural or economic well-being,

[44] In the chapeau, the removal of “Outside of the coastal environment” and addition of “Except as provided for by ECO-P7” are consequential amendments to Forest & Bird’s relief set out at paragraphs [15] to [23] above.

[45] In the chapeau, the inclusion of the text “but are not specified highly mobile fauna” responds to the Forest & Bird appeal. The parties advised that ECO-P4 is designed to give effect to Clause 3.11 of the NPSIB, which sets out how adverse effects of new activities on SNAs are to be managed. The parties consider that Clause 3.11 does not apply to specified highly mobile fauna and that amendment to ECO-P4 is required.

[46] In clauses (1), (1A), and (1B), the parties consider that the amendments to refer to “new subdivision, use or development for the purpose of” instead of “development, operation and maintenance of” better aligns with the NPSIB,

which uses the former language. As decided, clause (1) applies to “specified infrastructure”. The definition for “specified infrastructure” in the PORPS includes renewable electricity generation. The inclusion of “except as provided in (1AA)” makes it clear that clause (1) does not apply to the renewable electricity generation activities listed in clause (1AA) despite being “specified infrastructure”.

[47] The parties advised that the insertion of new clause (1AA) responds to Meridian and Manawa Energy’s appeal points. As decided, renewable electricity generation activities were managed under clause (1) due to being “specified infrastructure”. The parties have agreed that including (1AA) instead would assist to reconcile the direction in the NPSIB and the National Policy Statement for Renewable Electricity Generation (NPSREG), including by providing for consideration of alternative sites, methods and designs in accordance with ‘EIT-EN-P6 – Managing effects’.

[48] In clause (1B), the inclusion of “and there are no practicable alternative locations” responds to Forest & Bird’s appeal point. The NPSIB only provides for new subdivision, use, or development of mineral and aggregate extraction activities to access the less stringent effects management approach in Clause 3.16 if there are, among other things, no practicable alternative locations available. The parties consider this amendment gives effect to the NPSIB.

[49] The removal of clauses (2) and (3) is a consequential amendment to Cain Whānau’s relief discussed at paragraphs [116] to [125] below.

[50] The parties have agreed to delete clause (1C). The NPSIB contained a similar Clause 3.11(1)(a)(iv) at the time decisions were made on the PORPS. That clause has subsequently been removed by the Resource Management (Freshwater and Other Matters) Act 2024. As a result, the parties agree to delete ECO-P4(1C).

[51] The parties have further agreed to make the following amendments to the definition for “effects management hierarchy (in relation to indigenous biological diversity)” in response to the Meridian’s appeal point discussed at paragraphs [38]

and [39] above:

means an approach to managing the adverse effects of an activity of 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:~~
 - (ia) for the National Grid:
 - ~~(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
 - (ia) for renewable electricity generation, consider whether the activity should be allowed, including by considering whether the national significance and benefits of the activity outweigh the residual adverse effects.

[52] The parties consider that the agreed amendment further recognises the national importance of renewable electricity generation activities and the exception

for such activities in the NPSIB, while at the same time recognising and providing for s6(c) matters. Recognising the national significance of renewable electricity generation activities includes the national, regional and local benefits of renewable electricity generation activities in accordance with ‘EIT-EN-P2 – Recognising renewable electricity generation activities in decision making’.

[53] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c) 7(b), 7(ba), 7(d) and 7(j).

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

[54] Policy ECO-P5A was appealed Forest & Bird and OGL.

Forest & Bird

[55] Forest & Bird’s appeal sought the term “established activities” in ECO-P5A be defined. Forest & Bird’s position was that without a definition for “established activity”, ECO-P5A was open to misuse.

[56] The following persons gave notice of an intention to join this part of Forest & Bird’s appeal pursuant to s274 RMA:

- (a) DGC;
- (b) Kāi Tahu;
- (c) DCC;
- (d) Fish & Game;
- (e) Meridian;
- (f) OGL;
- (g) POL; and
- (h) QLDC.

OGL

[57] OGL's appeal sought amendments to ECO-P5A to provide certainty that all new and existing activities could be developed within appropriately zoned areas. OGL's position was that it was unclear how this policy would work.

[58] The following persons gave notice of an intention to join this part of OGL's appeal pursuant to s274 RMA:

- (a) the Forestry appellants;
- (b) Fish & Game;
- (c) QLDC;
- (d) DGC;
- (e) Forest & Bird;
- (f) Kāi Tahu;
- (g) Meridian; and
- (h) EDS.

Resolution

[59] The parties have proposed to amend ECO-P5A as follows:

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

~~Outside of the coastal environment~~ Except as provided for by ECO-P7, enable established activities ~~the maintenance, operation, and upgrade of 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 a significant natural area, subject to ECO-P12.

[60] The parties have further proposed to include a definition for 'established

activities’ as sought by Forest & Bird as follows:

| | |
|---|---|
| <p><u>Established activity</u></p> | <p><u>has the same meaning as in clause 3.15 of the National Policy Statement for Indigenous Biodiversity 2023 (as set out below)</u></p> <div data-bbox="914 499 1374 893"> <p><u>means an activity (including maintenance, operation, and upgrade) that:</u></p> <p><u>(a) is in, or affects, an SNA; and</u></p> <p><u>(b) is not a new subdivision, use, or development.</u></p> </div> |
|---|---|

[61] The removal of “Outside of the coastal environment” and addition of “Except as provided for by ECO-P7” are consequential amendments to Forest & Bird’s relief set out at [15] to [23] above.

[62] The term ‘established activities’ is defined in the NPSIB, as set out above. The parties consider that simplifying the chapeau to refer to ‘established activities’ and providing a definition for the same provides clarity for plan users and improves consistency with the NPSIB.

[63] The parties consider that the cross-reference to ECO-P12 ensures consistency with the NPSIB and with the suite of amendments agreed for the management of forestry as set out at paragraphs [91] to [105] below.

[64] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(d) and 7(f).

Management of Areas that Qualify as SNA Prior to being Mapped in a District Plan

[65] EDS's appeal sought amendments to the ECO chapter to provide protection for areas which meet the criteria for identifying SNAs in APP2 but were not yet mapped in a district plan.

[66] The definition for 'significant natural areas' in the NPSIB captures areas identified in policy statements or plans. Accordingly, the policy framework for the management and protection of SNAs does not apply to SNAs that have been identified but not yet included in a district plan.

[67] EDS' position was that s6(c) of the Act requires that SNAs must be treated as such irrespective of whether they are identified in a policy statement or plan or identified via another process (resource consent, plan change or notice of requirement).

[68] The following persons gave notice of an intention to join this part of EDS's appeal pursuant to s274 RMA:

- (a) Forest & Bird;
- (b) DGC;
- (c) Fish & Game;
- (d) the EDBs;
- (e) Federated Farmers of New Zealand Incorporated (FFNZ);
- (f) the Forestry appellants;
- (g) Meridian;
- (h) OGL;
- (i) OWRUG; and
- (j) QLDC.

Resolution

[69] The parties have agreed that amendments are required to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna under s6(c) that have not yet been identified and mapped in plans as significant natural areas in accordance with the NPSIB.

[70] The parties have proposed that the following amendments are required to achieve this:

ECO-P6 – Maintaining indigenous biodiversity

~~Outside of the coastal environment~~ Except as provided for by ECO-P7, and
excluding areas protected under ECO-P3, manage Otago’s indigenous biodiversity
by all of the following:

- (1) applying the effects management hierarchy (in relation to indigenous biodiversity) to manage significant adverse effects on indigenous biodiversity) and recognising and providing for the protection of significant indigenous biodiversity values identified under ECO-M2(4), and
- (2) requiring the maintenance of indigenous biodiversity for all other adverse effects of any activity, and
- (3) notwithstanding (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, and
- (4) when significant indigenous biodiversity values are identified under ECO-M2(4), protecting those values in district plans.

[71] The removal of “Outside of the coastal environment” and addition of “Except as provided for by ECO-P7” are consequential amendments to Forest & Bird’s relief set out at paragraphs [15] to [23] above.

[72] The amendments to clause (1) require protection of the values identified pursuant to ECO-M2(4), which provides that:

until significant natural areas are identified and mapped in accordance with (1) and (2), require ecological assessments to be provided with applications for resource consent, plan changes and notices of requirement that identify whether affected areas are significant natural areas in accordance with APP2.

[73] The parties consider this ensures protection of any identified significant indigenous biodiversity values until the area is included in a district or regional plan and is formally recognised as an SNA.

[74] New clause (4) directs their inclusion and protection in district plans, which is consistent with Clause 3.8(6) of the NPSIB.

[75] To implement this, the parties have agreed that consequential changes were required to ‘ECO-M7B – Information requirements’.

[76] The parties have therefore proposed to amend ECO-M7B as follows:

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) ensure the report required within ~~ECO-M2(4A)~~ ECO-M7B(1) above must:
 - (a) include a description of the existing ecological features and values of the site, including those in APP2 if applicable; 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; and
- (3) after a report is prepared in accordance with (1) and (2), assess the area in accordance with APP2 as soon as practicable.

[77] The parties advised that the agreed amendments to ECO-M7B clarify how this method is intended to be implemented alongside ECO-P6 and ECO-M2. The amendments to clause (2) correct a cross-referencing error. They also require expert report writers to turn their minds to the assessment criteria in ‘APP2 – Criteria for identifying areas that qualify as indigenous natural areas (SNAs)’ when describing the existing ecological features and values of a site (if applicable).

[78] New clause (3) then requires local authorities to undertake a full assessment of the area in accordance with APP2 as soon as practicable.

[79] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(d) and 7(f).

ECO-P11 – Resilience to climate change

[80] Policy ECO-P11 was appealed by the Societies.

[81] In their respective appeals, the Societies sought to include reference to “adapting to” the effects of climate change in clause (4) alongside “mitigating”. EDS’s position was that indigenous biodiversity plays a significant role in both mitigating the effects of climate change and in climate change adaptation.

[82] The following persons gave notice of an intention to join this part of EDS’s appeal pursuant to s274 RMA:

- (a) Forest & Bird;
- (b) DGC;
- (c) the EDBs;
- (d) Kāi Tahu;
- (e) Fish & Game;
- (f) FFNZ;
- (g) Meridian;
- (h) QLDC; and
- (i) POL.

[83] The following persons gave notice of an intention to join this part of Forest & Bird’s appeal pursuant to s274 RMA:

- (a) DGC;
- (b) DCC;
- (c) Fish & Game;
- (d) Kāi Tahu;
- (e) OGL;
- (f) Meridian; and
- (g) POL.

Resolution

[84] The parties have proposed to amend ECO-P11 as follows:

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, and
- (4) recognising the role of indigenous biodiversity in mitigating and adapting to the effects of climate change.

[85] The parties have agreed to amend clause (4) as sought by EDS. The parties consider the amendment is consistent with Clause 3.6(1)(a) of the NPSIB, which requires promoting the resilience of indigenous biodiversity to climate change including by “allowing and supporting the natural adjustment of habitats and ecosystems to the changing climate”.

[86] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(d) 7(f) and 7(i).

Forestry Activities and the ECO – Ecosystems and indigenous biodiversity chapter

Forestry appellants

[87] The Forestry appeal sought various amendments to provisions in the ECO

chapter to “disapply” their application to the management of adverse effects of forestry. The Forestry appellants’ position was that the regulation of adverse effects of forestry on indigenous biodiversity was provided for in Policy 12 and Clauses 3.14 and 3.16 of the NPSIB as well as the National Environmental Standards for Commercial Forestry (NES-CF). They considered that the PORPS should not go beyond that.

[88] Similarly, the Forestry appellants sought to disapply provisions that further regulate wilding trees for activities undertaken in accordance with NES-CF on the basis that the Wilding Tree Risk Calculator and Regulations 11 and 79 of the NES-CF manage wilding conifer spread.

[89] The Forestry appellants also raised health and safety concerns regarding enabling policies (such as ‘ECO-P1 – Kaitiakitaka’ for example) that seek to facilitate access to, and use of indigenous biodiversity. The Forestry appellants’ position was that access will be enabled at the expense of health and safety, particularly during harvesting season when heavy machinery is commonplace and provides a hazard to the public.

[90] The following persons gave notice of an intention to join this part of the Forestry appeal pursuant to s274 RMA:

- (a) DCC;
- (b) Meridian;
- (c) Fish & Game;
- (d) DGC;
- (e) Forest & Bird;
- (f) EDS;
- (g) Kāi Tahu; and
- (h) OGL.

Resolution

[91] The parties agreed amendments were appropriate to provisions to better align the ECO chapter with the NPSIB as it relates to forestry.

[92] Amendments were agreed to the following provisions:

- (a) ECO-P5A – Managing adverse effects of established activities on significant natural areas;
- (b) ECO-P12 – Plantation forestry activities; and
- (c) ECO-P10 – Integrated approach.

[93] No amendments to ECO-P1 were agreed between the parties.

[94] Instead, the parties have agreed on amendments to ‘ECO-M4 – Regional plans’ and ‘ECO-M5 – District plans’ as alternate relief to clarify the position around access to private land and address the health and safety concerns raised by the Forestry appellants.

[95] Those amendments are set out below.

ECO-P12 – Plantation forestry activities

[96] The parties have agreed to amend ECO-P12 as follows:

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, and
- (2) over the course of consecutive rotations of production, any part of a 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, and
 (3) the maintenance of indigenous biodiversity under ECO-P6 in a way that provides for plantation forestry activities to continue.

[97] The parties consider that new clause (3) is consistent with Policy 12 of the NPSIB which requires indigenous biodiversity within plantation forestry be managed while providing for plantation forestry activities.

[98] As a consequential amendment, the parties agreed that 'ECO-P12 – Plantation forestry activities' be cross-referenced in 'ECO-P5A – Managing adverse effects of established activities on significant natural areas' to ensure consistency with the NPSIB as set out at paragraph [64] above.

ECO-P10 – Integrated approach

[99] The parties have proposed to amend ECO-P10 as follows:

ECO-P10 – Integrated approach

Manage indigenous biodiversity and the effects on it from subdivision, use and development in an integrated way, which means:

- (1) ensuring any permitted or controlled activity in a regional plan or district plan rule does not compromise the achievement of ECO-O1,
- (2) recognising 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
 - (b) the effects of land use activities on coastal biodiversity and ecosystems,
- (2A) acknowledging that climate change will affect indigenous biodiversity and managing activities which may exacerbate the effects of climate change,
- (3) providing for the coordinated management and control of subdivision, use and development, as it affects indigenous biodiversity across administrative boundaries,

- (4) working towards aligning strategies and other planning tools required or provided for in legislation that are relevant to indigenous biodiversity,
- (5) recognising the critical role of people and communities in actively managing the remaining indigenous biodiversity occurring on private land, and
- (6) adopting regulatory and non-regulatory regional pest management programmes (including, where necessary, in relation to wilding conifers).

[100] The parties advised that the amendment to clause (6) responds to the Forestry appellants' concerns that the PORPS contained additional controls on wilding conifers (which are included in the definition for 'pest'). The parties consider that the amendment clarifies that regulatory and non-regulatory pest management programmes should also be considered for wilding conifers.

ECO-M4 – Regional plans

[101] The parties have proposed to amend ECO-M4 as follows:

ECO-M4 – Regional plans

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

- (1) ~~if the requirements of ECO-P3 to 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 (including infrastructure), and
 - (c) infrastructure that has a functional need 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 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 (in accordance with ECO-M4D),
- ~~(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) have been followed, and~~
- ~~(b) that consents are not granted if the sequential steps in the effects management hierarchy (in relation to indigenous biodiversity) 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, and-
- (4) recognise that where access to and use of indigenous biodiversity by any person would require access to or through private land, such access is subject to the consent of the landowner.

ECO-M5 – District plans

[102] The parties have proposed to amend ECO-M5 as follows:

ECO-M5 – District plans

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

- (1) ~~if the requirements of ECO-P3 to ECO-P6 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) 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 in this ECO chapter),
- (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,
- (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) have been followed,

- and
- (b) that consents are not granted if the sequential steps in the effects management hierarchy (in relation to indigenous biodiversity) have not been followed, and
 - (5) provide for activities undertaken for the purpose of restoring or enhancing the habitats of indigenous fauna, ~~and~~
 - (7) require buffer zones adjacent to significant natural areas where it is necessary to protect the significant natural area (subject to LF-FS-P16A),
and
 - (8) recognise that where access to and use of indigenous biodiversity by any person would require access to or through private land, such access is subject to the consent of the landowner.

[103] The parties have proposed that clause (2) of ECO-M4 be removed as its content duplicates ECO-M7B.

[104] The parties advised that the agreed amendments to ECO-M4(4) and ECO-M5(8) provide clarity around access to private land and address the health and safety concerns raised by the Forestry appellants.

[105] The parties also agreed it is appropriate to include a cross-reference in ‘ECO-M5 – District plans’ to ‘LF-FS-P16A – Managing pests’. In the ‘LF – Land and freshwater’ (LF) chapter consent memorandum dated 3 October 2025, the parties sought various detailed amendments to this policy for the management of afforestation and replanting of plantation forests, including clarifying when buffer zones may be an appropriate management tool to protect SNAs, outstanding natural features, or outstanding natural landscapes.

[106] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(b), 7(d) and 7(f).

Indigenous biodiversity on Native Reserves and Māori land

[107] Cain Whānau’s appeal sought a separate policy approach for the

management of indigenous biodiversity on Native Reserves and Māori land. Cain Whānau's position was that the provisions in the ECO chapter unduly restrict owners of Māori land from being able to utilise their land both within and outside the coastal environment.

[108] The following persons gave notice of an intention to join this part of Cain Whānau's appeal pursuant to s274 RMA:

- (a) Kāi Tahu;
- (b) DCC;
- (c) OGL;
- (d) the EDBs;
- (e) QLDC; and
- (f) Forest & Bird.

[109] The parties have agreed to incorporate a management framework for indigenous biodiversity on Native Reserves and Māori land to give effect to the NPSIB.

[110] The NPSIB contains specific direction on the management of indigenous biodiversity on specified Māori land.

[111] Clause 3.10 of the NPSIB manages adverse effects on SNAs of new subdivision, use, and development; however, Clause 3.10(1)(b) states that it does not apply to SNAs on specified Māori land.

[112] Clause 3.16 of the NPSIB sets out how adverse effects on indigenous biodiversity outside of SNAs must be managed, but states at (1) that it does not apply to indigenous biodiversity on specified Māori land.

[113] Instead, Clause 3.18 of the NPSIB requires local authorities to work in partnership with tangata whenua and owners of specified Māori land to develop, and include in plans and provisions that, to the extent practicable:

- (a) maintain and restore indigenous biodiversity on specified Māori land; and
- (b) protect SNAs and identified taonga on specified Māori land.

[114] While the parties are aware there are differences between the definitions for ‘specified Māori land’ in the NPSIB and ‘Māori land’ in the PORPS, they consider that the differences are not material, and no additional definition or amendment to the definition for ‘Māori land’ within the PORPS is required. They have also agreed that provisions applying to specified Māori land in the NPSIB are applicable to Māori land as defined in the PORPS.

Resolution

[115] The parties have proposed to insert a new policy for the management of indigenous biodiversity on Native Reserves and Māori land as follows:

ECO-P13 – Managing indigenous biodiversity on Native Reserves and Māori land

In relation to Native Reserves and Māori land outside the coastal environment, recognise and give practical effect to Kāi Tahu rakatirataka and kaitiakitaka by:

- (1) enabling mana whenua, and owners of Māori freehold land in relation to their land, to lead approaches to the management of the effects of use and development of Native Reserves and Māori land on indigenous biodiversity, in accordance with mātauraka and tikaka,
- (2) applying mātauraka and tikaka to protect identified taoka and SNAs, and maintain and restore indigenous biodiversity:
 - (a) to the extent practicable,
 - (b) in a manner appropriate to the particular Native Reserve or Māori land, and
 - (c) having regard to the principles of the Treaty of Waitangi, and the purpose of the redress provided for in the NTCSA, including redress arising from the Ancillary Claims and SILNA, and
- (3) recognising that there are circumstances where the use and development of Native Reserves and Māori land, as provided in MW-P4, will prevail over the indigenous biodiversity values of that land, and
- (4) recognising that this policy applies instead of ECO-P3 to ECO-P6 in

relation to Native Reserves and Māori land.

[116] The parties have agreed to make two consequential amendments to ‘ECO-O3 – Kaitiakitaka and stewardship’, as follows:

ECO-O3 – Kaitiakitaka and stewardship

~~Mana whenua~~ Kāi Tahu exercise their rakatirataka and role 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).

[117] The parties have agreed that ECO-O3 is an instance where the context required that the reference to “mana whenua” be amended to recognise the rakatirataka of owners of Māori freehold land. The parties considered that changing “mana whenua” to “Kāi Tahu” in the objective makes it inclusive of Māori freehold landowners who whakapapa to Kāi Tahu, but who may not be included within the definition for ‘mana whenua’.

[118] They also considered that the insertion of “rakatirataka” provides a link at objective level for the new ECO-P13 that is specific to different management approaches for indigenous biodiversity on Māori land. This assists with recognising and providing for the relationship of Māori and their cultural and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga in accordance with s6(e) RMA.

ECO-M4D – Native Reserves and Māori land

[119] The parties have also agreed that consequential changes are required to ECO-M4D, as follows:

ECO-M4D – Native ~~R~~eserves and Māori land

Local authorities must:

- (1) work in partnership (which includes acting in good faith) with mana whenua and owners of ~~N~~ative ~~R~~eserves 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 ~~ECO-P13CE-P5~~), and ~~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 (1~~6~~):
 - (a) enable new occupation, use, and development of ~~nature~~ Native Reserves and Māori land to support the social, cultural, and economic wellbeing of mana whenua and owners of Māori freehold land, 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 significant natural areas and identified taoka on ~~N~~ative ~~R~~eserves and Māori land, and enable options for offsetting and compensation, and
 - (d) recognise and be responsible to the fact there may be no or limited alternative location for mana whenua and owners of Māori freehold land 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 and owners of Māori freehold land have faced in occupying, using, and developing their ancestral lands.

[120] The removal of the text in clause (1) removes duplication of matters now covered in new ECO-P13.

[121] Further consequential amendments were agreed to ‘ECO-P4 – Provision for new activities’ to remove clauses (2) and (3) from that policy because they are already addressed in clause (2) of ‘ECO-M4D – Native Reserves and Māori land’.

[122] The parties have also agreed to include an abbreviation for the South Island Landless Natives Act 1906 (SILNA) in the abbreviations section of the PORPS to aid interpretation of this method.

[123] The parties have also agreed on a consequential amendment to include a cross-reference to ECO-M4D in clause (1A) of ‘ECO-M4 – Regional plans’ as follows:

- (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 (in accordance with ECO-M4D) ...

[124] The parties consider that the proposed new policy and suite of consequential amendments give effect to the NPSIB and are consistent with the approach taken in other chapters to recognise the enabling approach for the use and development of Native Reserves and Māori land set out in the ‘MW – Mana Whenua’ (MW) chapter.

[125] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(e), 7(a) and 8.

ECO-M2 – Identification of significant natural areas

[126] Method ECO-M2 was appealed by the following persons:

- (a) EDS;
- (b) Forest & Bird; and

- (c) the Forestry appellants.

The Societies

[127] In their respective appeals, the Societies sought that ECO-M2 be amended to refer to regional councils, regional council functions and regional plans instead of solely to “territorial authorities”. They considered the effect of these changes would be to allow regional councils, in addition to territorial authorities, to identify SNAs.

[128] The following persons gave notice of an intention to join this part of EDS’s appeal pursuant s274 RMA:

- (a) Forest & Bird;
- (b) DGC;
- (c) the EDBs;
- (d) Kāi Tahu;
- (e) Fish & Game;
- (f) FFNZ;
- (g) Meridian;
- (h) OGL;
- (i) QLDC;
- (j) the Forestry appellants;
- (k) POL; and
- (l) QLDC.

[129] The following persons gave notice of an intention to join this part of Forest & Bird’s appeal pursuant to s274 RMA:

- (a) DGC;
- (b) DCC;
- (c) Fish & Game;
- (d) Kāi Tahu;

- (e) Meridian;
- (f) OGL;
- (g) the Forestry appellants;
- (h) POL; and
- (i) the EDBs.

Forestry appellants

[130] The Forestry appeal sought amendments to require SNAs to be verified, as well as mapped. The Forestry appellants' position was that it was important that satellite imagery was verified on the ground to avoid protecting areas that did not qualify for protection.

[131] The following persons gave notice of an intention to join this part of the Forestry appeal pursuant to s274 RMA:

- (a) OGL;
- (b) DCC;
- (c) Fish & Game;
- (d) DGC;
- (e) EDS;
- (f) Forest & Bird; and
- (g) Kāi Tahu.

Resolution

[132] The parties have proposed to amend ECO-M2 as follows:

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 values of significant natural areas as required by ECO-P2, and

- (2) map ~~and (including verification wherever practicable) verify~~ the areas and include the indigenous biodiversity values identified under (1) in the relevant regional plans and district plans ~~no later than 31 December 2030,~~
- (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 and district plans, and
- (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), require ecological assessments to be provided with applications for resource consent, plan changes and notices of requirement that identify whether affected areas are significant natural areas in accordance with APP2, and
- (5) in the following areas, prioritise identification under (1)
 - (a) intermontane basins that contain indigenous vegetation and habitats,
 - (b) areas of dryland shrubs,
 - (c) areas which include braided river systems, including the Makarore, Mātakitaki and Lower Waitaki Rivers,
 - (d) areas of montane tall tussock grasslands, and
 - (e) limestone habitats, and
- (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 a 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 a

significant natural area, and its application, is consistent with the assessment approach in APP2 in accordance with any timeframes specified in the NPSIB, and

- (d) if a ~~territorial~~ local 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 a significant natural area, the ~~territorial~~ local 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~~ local 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 a significant natural area without the need for the assessment required by ECO-P2, using APP2, if:
 - (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 a 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.

[133] The parties advised that the proposed amendment to clause (2) responds to the Forestry appellants' appeal point and provides greater consistency with Clause 3.8(2)(c) of the NPSIB, which states that verification by physical inspection should be undertaken "wherever practicable", recognising that sometimes this will not be possible, for example where a landowner does not give access.

[134] In relation to clause (6)(c), the parties have proposed to delete references to specific dates and instead refer to any timeframes specified within the NPSIB.

[135] The proposed change from "territorial authority" to "local authority" in ECO-M2(6)(d) responds to the Societies' appeal point and reflects the reality that it is the ORC who is responsible for identifying SNAs in the coastal marine area under ECO-M2(3A) and that the statement of responsibilities in ECO-M1(4) allows the territorial powers and/or functions to be transferred to ORC, including responsibility for identifying SNAs. This proposed change necessitated an amendment to the definition for 'Significant natural area'.

[136] The parties have proposed to amend the definition for 'Significant natural area' as follows:

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| <p>Significant natural area or SNA</p> | <p>has the same meaning as in the Interpretation section of the National Policy Statement for Indigenous Biodiversity 2023 (except that a reference to Appendix 2 rather than Appendix 1) as set out below:</p> <p>means:</p> <p>(a) any area that, after the commencement date, is notified or included in a <u>regional plan or</u> district plan as an SNA following an assessment of the area in accordance with APP2<u>Appendix 2</u>; and</p> <p>(b) any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant</p> |
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| | indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which case it remains as a significant natural area 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. |
|--|--|

[137] The parties have proposed that the beginning of the definition which referred to the NPSIB be removed because the changes agreed to ECO-M2(6) mean that the NPSIB definition is no longer being adopted; instead, an amended version of that definition has been agreed. For the same reasons set out at paragraph [135] above, a reference to “regional plan” has also been included in (a) of the definition.

[138] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(d) and 7(f).

ECO-PR1 – Principal reasons

[139] ECO-PR1 was appealed by Forest & Bird.

[140] Forest & Bird’s appeal sought amendments so that ECO-PR1 referred to the management of “land use, development and subdivision activities” rather than the management of indigenous biodiversity at the end of the first paragraph. Forest & Bird’s position was that ECO-PR1 confused the management of activities with responsibilities and functions for the protection and maintenance of indigenous biodiversity.

[141] The following persons gave notice of an intention to join this part of Forest & Bird’s appeal pursuant to s274 RMA:

- (a) DGC;
- (b) DCC;
- (c) Fish & Game;
- (d) OGL;
- (e) Kāi Tahu;
- (f) Meridian;
- (g) the Forestry appellants; and
- (h) QLDC.

Resolution

[142] The parties have proposed to amend ECO-PR1 as follows:

ECO-PR1 – Principal reasons

The health of New Zealand’s indigenous biodiversity has declined significantly since the arrival of humans and remains under significant pressure. Mahika kai 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 managing the effects of land use, development, and subdivision activities on how indigenous biodiversity ~~is to be managed~~.

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

- (1) stating the outcomes sought for ecosystems and indigenous biodiversity in Otago,
- (2) requiring identification and protection of significant natural areas and indigenous species and ecosystems that are taoka, and
- (3) 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 primarily through regional plan and district plan provisions, however local authorities may also choose to adopt additional non-regulatory methods to support the achievement of the objectives.

[143] The proposed amendment responds to Forest & Bird’s appeal point and makes clear that it is activities that are to be managed in order to maintain and protect indigenous biodiversity.

[144] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(d) and 7(f).

APP2 – Criteria for identifying areas that qualify as indigenous natural areas (SNAs)

[145] APP2 was appealed by NZTA and OGL.

NZTA

[146] NZTA’s appeal sought the deletion of clause (3)(e) of ‘Section D – Ecological context criterion’. NZTA’s position was that clause (3)(e) broadened the criteria for SNA areas to include all indigenous fauna, not just species of conservation concern.

[147] The following persons gave notice of an intention to join this part of NZTA’s appeal pursuant s274 RMA:

- (a) the Forestry appellants;
- (b) Meridian;
- (c) OGL;
- (d) Fish & Game;
- (e) DGC; and
- (f) Forest & Bird.

OGL

[148] OGL’s appeal sought the deletion of clause (3)(e) of ‘Section D – Ecological

context criterion’. OGL’s position was that including the additional criteria in clause (3)(e), which is not found in the NPSIB, was not warranted.

[149] The following persons gave notice of an intention to join this part of OGL’s appeal pursuant to s274 RMA:

- (a) DGC;
- (b) Meridian;
- (c) the Forestry appellants;
- (d) Fish & Game;
- (e) OWRUG;
- (f) EDS; and
- (g) Forest & Bird.

Resolution

[150] The parties have proposed to amend clause (3)(e) of ‘Section D – Ecological context criterion’ as follows:

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

[151] The parties advised that the amendments clarify the scope of the criterion, resolving NZTA’s concern that it applied too broadly and also addresses OGL’s concerns. The parties consider that the amendments give effect to Objective 2.1 of the NPSIB, which is to “...maintain indigenous biodiversity across Aotearoa New Zealand...”.

[152] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(d) and 7(f).

APP3 – Principles for biodiversity offsetting

[153] APP3 was appealed by NZTA and OGL.

NZTA

[154] NZTA's appeal sought the deletion of clauses (2)(d) to (2)(f). NZTA's position was that the criteria in those clauses were ambiguous, would result in perverse outcomes, create conflict, and introduce unacceptable hard limits. The criteria are presented in such a manner that they could be perceived as a definitive list, rather than a non-exhaustive list of examples as intended.

[155] The following persons gave notice of an intention to join this part of NZTA's appeal pursuant to s274 RMA:

- (a) Meridian;
- (b) OGL;
- (c) Fish & Game;
- (d) DGC; and
- (e) Forest & Bird.

OGL

[156] OGL's appeal also sought deletion of clauses of (2)(d) of (2)(f). OGL's position was that those criteria, which set out when biodiversity offsetting is not appropriate, are not warranted nor necessary.

[157] The following persons gave notice of an intention to join this part of OGL's appeal pursuant to s274 RMA:

- (a) DGC;
- (b) the Forestry appellants;
- (c) Fish & Game;

- (d) OWRUG; and
- (e) EDS;
- (f) Forest & Bird; and
- (g) Meridian.

Resolution

[158] The parties have proposed to amend clause (2) of APP3, as follows:

- (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 kanuka (*Kunzea robusta* and *Kunzea serotina*), under the New Zealand Threat Classification System (~~Townsend et al, 2008~~ Rolfe et al, 2022); or
 - (e) the likely worsening of the conservation status of any Threatened or At Risk indigenous biodiversity as listed under the New Zealand Threat Classification System (~~Townsend et al, 2008~~ Rolfe et al, 2022); or
 - (f) the removal or loss of ecological integrity ~~health~~ and resilience of a naturally uncommon ecosystem type that contains ~~is associated with~~ indigenous vegetation or habitat ~~for~~ of indigenous fauna.

[159] The parties have agreed to correct the New Zealand Threat Classification System (NZTCS) reference from “Townsend et al, 2008” to “Rolfe et al. 2022” throughout both APP3 and APP4. That change is a result of the NZTCS review of which began in 2019, leading to publication of the 2022 manual (Rolfe et al. 2022).

[160] The parties have also agreed to remove reference to “any individuals” in clause (2)(d) and to narrow the scope of clause (2)(e) to the worsening of any “Threatened or At Risk” indigenous biodiversity in clause (2)(e). The parties consider that the agreed amendments create consistency with the criteria in APP4 and aim to prevent perverse offsetting outcomes, as sought by NZTA.

[161] The parties have agreed to replace “health” with “ecological integrity” in clause (2)(f). They have also agreed that it was more appropriate to refer to “ecological integrity”, which is defined in the NPSIB, and that the amendment would reduce ambiguity as sought by NZTA. The parties further agreed to include the definition for “ecological integrity” from the NPSIB as a consequential amendment as follows:

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| <p><u>Ecological integrity</u></p> | <p><u>has the same meaning as in clause 1.6 of the National Policy Statement for Indigenous Biodiversity 2023 (as set out below)</u></p> <div data-bbox="735 1149 1382 1753" style="border: 1px solid black; padding: 10px;"> <p><u>means the extent to which an ecosystem is able to support and maintain its:</u></p> <ul style="list-style-type: none"> <u>(a) composition (being its natural diversity of indigenous species, habitats, and communities); and</u> <u>(b) structure (being its biotic and abiotic physical features); and</u> <u>(c) functions (being its ecological and physical processes).</u> </div> |
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[162] The parties have also agreed to replace “is associated with” to “contains” in clause (2)(f). The parties consider the combined effect of the proposed

amendments is that greater clarity is provided for plan users any ambiguity is reduced as sought by NZTA and also addresses OGL's concerns.

[163] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(d) and 7(f).

APP4 – Principles for biodiversity compensation

[164] APP4 was appealed by NZTA and OGL.

NZTA

[165] NZTA's appeal sought the deletion of clauses (2)(d) to (2)(g). NZTA's position was that the criteria in those clauses were overly restrictive, ambiguous, and may result in the compensation not being available as a pathway.

[166] The following persons gave notice of an intention to join this part of NZTA's appeal pursuant to s274 RMA:

- (a) DGC;
- (b) Fish & Game;
- (c) Forest & Bird;
- (d) OGL; and
- (e) Meridian.

OGL

[167] OGL's appeal also sought the deletion of clauses (2)(d) to (2)(g). OGL's position was that those criteria for when biodiversity compensation is not appropriate are not warranted and are unnecessary.

[168] The following persons gave notice of an intention to join this part of OGL's

appeal pursuant to s274 RMA:

- (a) DGC;
- (b) the Forestry appellants;
- (c) Fish & Game;
- (d) OWRUG;
- (e) EDS;
- (f) Forest & Bird; and
- (g) Meridian.

Resolution

[169] The parties have proposed to amend clauses (2) and (14) of APP4 as follows:

- (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 a 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 kanuka (*Kunzea robusta* and *Kunzea serotina*), under the New Zealand Threat Classification System (~~Townsend et al, 2008~~Rolfe et al, 2022); 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~~Rolfe et al, 2022),
 - (f) ~~the~~ removal or loss of ecological integrity ~~health~~ and resilience of a naturally uncommon ecosystem type that contains ~~is associated with~~ indigenous vegetation or habitat for ~~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~~ Rolfe et al, 2022).

...

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

[170] Consistent with the proposed amendments to APP3 and for the same reasons given, the parties have agreed to:

- (a) replace “is associated with” to “contains”, and “health” with “ecological integrity” in clause (2)(f); and
- (b) correct the NZTCS reference from “Townsend et al, 2008” to “Rolfe et al. 2022”.

[171] The parties have further agreed to amend clause (14) to refer to “demonstrates” instead of “demonstrably”; the parties consider that the change in wording is clearer for plan users.

[172] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(c), 7(d) and 7(f).

Other relevant matters

[173] The EDBs’ appeal points on ECO-P2, ECO-P3, ECO-P4 and ECO-P6 are withdrawn on the basis of the agreed outcomes in the ‘EIT – Energy, infrastructure and transport’ consent order.³

[174] The parties advise that the following appeals are resolved in their entirety as a result of this Order and previous consent orders resolving various appeal points on the PORPS:

³ [2025] NZEnvC 323.

- (a) Manawa Energy Limited (ENV-2024-CHC-32);
- (b) Meridian Energy Limited (ENV-2024-CHC-22);
- (c) New Zealand Transport Agency – Waka Kotahi (ENV-2024-CHC- 38);
- (d) Environmental Defence Society Incorporated (ENV-2024-CHC-39);
- (e) Rayonier Matariki Forests, City Forests Limited, Ernslaw One Limited and Port Blakely NZ Limited (ENV-2024-CHC-27).

[175] The parties advise there are no outstanding appeal points on the ECO chapter as a result of this Order.

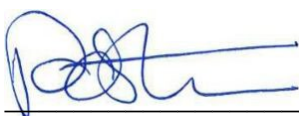
Other relevant matters

[176] I have read and considered the consent memorandum of the parties dated 14 October 2025 which proposes to resolve the appeal points in relation to the provisions in the ECO chapter, and other relevant definitions and provisions as set out in ‘A:’ at the commencement of this Order.

[177] The parties advise that all matters proposed for the court’s endorsement fall within the court’s jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Pt 2.

Outcome

[178] All parties to the proceeding have executed the memorandum requesting the orders. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.



P A Steven
Environment Judge



Schedule One

1. Aurora Energy, Network Waitaki Limited and PowerNet Limited v ORC (ENV-2024-CHC-24)
2. Royal Forest and Bird Protection Society of New Zealand Incorporated v ORC (ENV-2024-CHC-26)
3. Rayonier Matariki Forests, City Forests Limited, Ernslaw One Limited and Port Blakely NZ Limited v ORC (ENV-2024-CHC-27)
4. Oceana Gold (New Zealand) Limited v ORC (ENV-2024-CHC-29)
5. Cain Whānau v ORC (ENV-2024-CHC-30)
6. Manawa Energy Limited v ORC (ENV-2024-CHC-32)
7. New Zealand Transport Agency – Waka Kotahi v ORC (ENV-2024-CHC-38)
8. Environmental Defence Society Incorporated v ORC (ENV-2024-CHC-39)

Annexure 1

Amend definitions:

| | |
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| <u>Ecological integrity</u> | <p><u>has the same meaning as in clause 1.6 of the National Policy Statement for Indigenous Biodiversity 2023 (as set out below)</u></p> <div><p><u>means the extent to which an ecosystem is able to support and maintain its:</u></p><p><u>(a) composition (being its natural diversity of <i>indigenous species, habitats, and communities</i>); and</u></p><p><u>(b) structure (being its biotic and abiotic physical features); and</u></p><p><u>(c) functions (being its ecological and physical processes).</u></p></div> |
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| <p>Effects management hierarchy (in relation to indigenous biodiversity)</p> | <p>means an approach to managing the adverse effects of an activity of <i>indigenous biodiversity</i> that requires that:</p> <ul style="list-style-type: none"> (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, <i>biodiversity offsetting</i> is provided where possible; then (e) where <i>biodiversity offsetting</i> of more than minor residual adverse effects is not possible, <i>biodiversity compensation</i> is provided; then (f) if <i>biodiversity compensation</i> is not appropriate, the activity itself is avoided, unless the activity is <i>regionally significant infrastructure</i> and <i>nationally significant infrastructure</i> that is either <i>renewable electricity generation</i> or the <i>National Grid</i> then: (g) if compensation is not appropriate to address any residual adverse effects: <ul style="list-style-type: none"> <u>(ia) for the <i>National Grid</i>:</u> <ul style="list-style-type: none"> (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 <u>(iia) for <i>renewable electricity generation</i>, consider whether the activity should be allowed, including by considering whether the national significance and benefits of the activity outweigh the residual adverse effects.</u> |
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| <u>Established activity</u> | <p>has the same meaning as in clause 3.15 of the National Policy Statement for Indigenous Biodiversity 2023 (as set out below)</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><u>means an activity (including maintenance, operation, and upgrade) that:</u></p> <p><u>(a) is in, or affects, an SNA; and</u></p> <p><u>(b) is not a new subdivision, use, or development.</u></p> </div> |
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| Significant natural area | <p>has the same meaning as in the Interpretation section of the National Policy Statement for Indigenous Biodiversity 2023 (except that a reference to Appendix 2 rather than Appendix 1) as set out below:</p> <p>means:</p> <p>(a) any area that, after the commencement date, is notified or included in a <i>regional plan or district plan</i> as an <i>SNA</i> following an assessment of the area in accordance with Appendix 2APP2; and</p> <p>(b) any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant <i>indigenous vegetation</i> or significant <i>habitat</i> of indigenous fauna (regardless of how it is described); in which case it remains as an <i>significant natural area</i> unless or until a suitably qualified ecologist engaged by the relevant <i>local authority</i> determines that it is not an area of significant <i>indigenous vegetation</i> or significant <i>habitat</i> of indigenous fauna.</p> |
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Amend abbreviation:

| Abbreviation | Full Terms |
|---------------------|--|
| <u>SILNA</u> | <u>South Island Landless Natives Act 1906</u> |

Amend objectives:

ECO-O1 – *Indigenous biodiversity*

Otago’s *indigenous biodiversity* is healthy and thriving and, at a minimum, any overall decline in condition, quantity and diversity is halted.

ECO-O3 – *Kaitiakitaka* and stewardship

~~Mana whenua~~ Kāi Tahu exercise their rakatirataka and role 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).

ECO-O4 – Social, economic and cultural well-being

While achieving ECO-O1, ECO-O2 and ECO-O3, the social, cultural, and economic well-being of people and communities now and in the future is provided for.

Amend policies:

ECO-P7 – Coastal and freshwater *indigenous biodiversity*

~~Indigenous biodiversity in the coastal environment is managed by CE-P5 in addition to all objectives and policies of the ECO chapter except ECO-P3, ECO-P4, ECO-P5A and ECO-P6. This chapter applies to all forms of *indigenous biodiversity* except that:~~

- ~~(1) ECO-P2 only applies to land covered by water, water bodies, or freshwater ecosystems that are not within a natural inland wetland if those areas are contained within a wider significant natural area identified in accordance with ECO-M2, and~~
- ~~(2) ECO-P3, ECO-P4, ECO-P5A, ECO-P6, and ECO-P13 do not apply in the coastal environment or to land covered by water, water bodies, or freshwater ecosystems.~~

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

Except as provided for by ECO-P7, identify and map:

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

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

~~Outside the coastal environment, and e~~Except as provided for by ECO-P4, ~~and ECO-P5A, and ECO-P7~~ protect *significant natural areas* and indigenous species and ecosystems that are taoka by:

- (1) protect *significant natural areas* by first avoiding the following adverse effects that result in:
 - (aa) loss of ecosystem representation and extent,
 - (ab) disruption to sequences, mosaics, or *ecosystem function*,
 - (ac) fragmentation of *significant natural areas* or the loss of buffers or connections within an SNA,
 - (ad) a reduction in the function of the *significant natural area* as a buffer or connection to other important *habitats* or ecosystems, or
 - (ae) 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 cycle, and
- (2) protect *indigenous species* and ecosystems that are taoka by first avoiding adverse effects that result in ~~(b)~~ any loss of taoka values identified by *mana whenua* as requiring protection under ECO-P2(2), and
- (2A) after (1) and (2), applying the *effects management hierarchy (in relation to indigenous biodiversity)* to areas and values other than those covered by ECO-P3(1), and
- (3) prior to *significant natural areas* and *indigenous species* and ecosystems that are taoka being identified and mapped in accordance with ECO-P2, adopt a precautionary approach towards activities in accordance with IM-P6(2).

ECO-P4 – Provision for specified new activities

~~Outside of the coastal environment~~Except as provided for by ECO-P7, maintain Otago's *indigenous biodiversity* by following the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)* 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 (but are not specified highly mobile fauna) that have been identified by *mana whenua* as requiring protection:

- (1) except as provided for in (1AA), new subdivision, use or development for the purpose of the construction development, operation, maintenance or upgrade of *specified infrastructure* that provides significant national or regional public benefit 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,
- (1AA) the development, operation, maintenance or upgrade of renewable electricity generation that provides significant national or regional public benefit 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 alternative sites, methods and designs have been considered under EIT-EN-P6,

- (1A) new subdivision, use or development for the purpose of the development, operation and maintenance of mineral extraction activities that provides 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) new subdivision, use or development for the purpose of the development, operation and maintenance of aggregate extraction activities that provides 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, and there are no practicable alternative locations, and
- ~~(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,~~
- (2A) the sustainable use of *mahika kai* and kaimoana (seafood) by *mana whenua*;
- ~~(3) the use of Native reserves and Māori land to enable *mana whenua* to maintain their connection to their whenua and enhance social, cultural or economic well-being,~~

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

~~Outside of the coastal environment~~ Except as provided for by ECO-P7, enable established activities the maintenance, operation, and upgrade of 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 a significant natural area, subject to ECO-P12.

ECO-P6 – Maintaining indigenous biodiversity

~~Outside of the coastal environment~~ Except as provided for by ECO-P7, and excluding areas

protected under ECO-P3, manage Otago's *indigenous biodiversity* by all of the following:

- (1) applying the *effects management hierarchy (in relation to indigenous biodiversity)* to manage significant adverse *effects* on *indigenous biodiversity*, and recognising and providing for the protection of significant *indigenous biodiversity* values identified under ECO-M2(4), and
- (2) requiring the *maintenance of indigenous biodiversity* for all other adverse *effects* of any activity, and
- (3) notwithstanding (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, and
- (4) when significant *indigenous biodiversity* values are identified under ECO-M2(4), protecting those values in *district plans*.

ECO-P10 – Integrated approach

Manage *indigenous biodiversity* and the *effects* on it from *subdivision*, use and development in an integrated way, which means:

- (1) ensuring any permitted or controlled activity in a *regional plan* or *district plan* rule does not compromise the achievement of ECO-O1,
- (2) recognising 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
 - (b) the *effects* of *land* use activities on coastal biodiversity and ecosystems,
- (2A) acknowledging that *climate change* will affect *indigenous biodiversity* and managing activities which may exacerbate the *effects* of *climate change*,
- (3) providing for the coordinated management and control of *subdivision*, use and development, as it affects *indigenous biodiversity* across administrative boundaries,
- (4) working towards aligning strategies and other planning tools required or provided for in legislation that are relevant to *indigenous biodiversity*,
- (5) recognising the critical role of people and communities in actively managing the remaining *indigenous biodiversity* occurring on private *land*, and
- (6) adopting regulatory and non-regulatory regional pest management programmes (including, where necessary, in relation to *wilding conifers*).

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, and
- (4) recognising the role of *indigenous biodiversity* in mitigating and adapting to 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, and
- (2) over the course of consecutive rotations of production, any part of a *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, and
- (3) the maintenance of *indigenous biodiversity* under ECO-P6 in a way that provides for *plantation forestry activities* to continue.

ECO-P13 – Managing *indigenous biodiversity* on native reserves and *Māori land*

In relation to native reserves and *Māori land* outside the coastal environment, recognise and give practical effect to Kāi Tahu rakatirataka and *kaitiakitaka* by:

- (1) enabling *mana whenua*, and owners of *Māori freehold land* in relation to their *land*, to lead approaches to the management of the *effects* of use and development of native reserves and *Māori land* on *indigenous biodiversity*, in accordance with *mātauraka and tikaka*,
- (2) applying *mātauraka and tikaka* to protect identified taoka and *SNAs*, and maintain and restore *indigenous biodiversity*:
 - (a) to the extent practicable,
 - (b) in a manner appropriate to the particular native reserve or *Māori land*, and
 - (c) having regard to the principles of the Treaty of Waitangi, and the purpose of the redress provided for in the NTCSA, including redress arising from the Ancillary Claims and SILNA, and
- (3) recognising that there are circumstances where the use and development of native reserves and *Māori land*, as provided in MW-P4, will prevail over the *indigenous biodiversity values* of that *land*, and

- (4) recognising that this policy applies instead of ECO-P3 to ECO-P6 in relation to native reserves and Māori land.

Amend methods:

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* values of *significant natural areas* as required by ECO-P2, and
- (2) map ~~and~~ (including verification wherever practicable) ~~verify~~ the areas and include the *indigenous biodiversity* values identified under (1) in the relevant *regional plans* and *district plans* ~~no later than 31 December 2030,~~
- (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* and *district plans*, and
- (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), require ecological assessments to be provided with applications for *resource consent*, plan changes and notices of requirement that identify whether affected areas are *significant natural areas* in accordance with APP2, and
- (5) in the following areas, prioritise identification under (1)
 - (a) intermontane basins that contain *indigenous vegetation* and *habitats*,
 - (b) areas of dryland shrubs,
 - (c) areas which include braided *river systems*, including the Makarore, Mātakitaki and Lower Waitaki Rivers,
 - (d) areas of montane tall tussock grasslands, and
 - (e) limestone habitats, and
- (6) ~~when~~ 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 a *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 a *significant natural area*, and its application, is consistent with the assessment approach in APP2 in accordance with any timeframes specified in the NPSIB, and
 - (d) if a ~~*territorial*~~ *local* 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 a *significant natural area*, the ~~*territorial*~~ *local* 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*~~ *local* 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 a *significant natural area* without the need for the assessment required by ECO-P2, using APP2, if:
- (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 a *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-M4 – Regional plans

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

- (1) ~~if the requirements of ECO-P3 to 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 (including *infrastructure*), and
 - (c) *infrastructure* that has a *functional need* 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* 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 (in accordance with ECO-M4D),
- ~~(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*) have been followed, and~~
 - ~~(b) that consents are not granted if the sequential steps in the effects management hierarchy (*in relation to indigenous biodiversity*) 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, and-
- (4) recognise that where access to and use of *indigenous biodiversity* by any person would require access to or through private *land*, such access is subject to the consent of the landowner.

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 ECO-P13CE-P5), and. ~~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 (16):
 - (a) enable new occupation, use, and development of ~~nature~~ native reserves and *Māori land* to support the social, cultural, and economic wellbeing of *mana whenua* and owners of *Māori* freehold *land*, 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 *significant natural areas* and identified taoka on native reserves and *Māori land*, and enable options for offsetting and compensation, and
- (d) recognise and be responsible to the fact there may be no or limited alternative location for *mana whenua* and owners of Māori freehold land 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* and owners of Māori freehold land 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 to ECO-P6 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) 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 in this ECO chapter),
- (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*,
- (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)* have been followed, and
 - (b) that consents are not granted if the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)* have not been followed, and
- (5) provide for activities undertaken for the purpose of restoring or enhancing the *habitats* of indigenous fauna, ~~and~~
- (7) require buffer zones adjacent to *significant natural areas* where it is necessary to protect the *significant natural area* (subject to LF-FS-P16A), and
- (8) recognise that where access to and use of *indigenous biodiversity* by any person would require access to or through private *land*, such access is subject to the consent of the landowner.

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) ensure the report required within ~~ECO-M2(4A)~~ ECO-M7B(1) above must:
 - (a) include a description of the existing ecological features and values of the site, including those in APP2 if applicable; 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; and
- (3) after a report is prepared in accordance with (1) and (2), assess the area in accordance with APP2 as soon as practicable.

Amend principal reasons:

ECO-PR1 – Principal reasons

The health of New Zealand's *indigenous biodiversity* has declined significantly since the arrival of humans and remains under significant pressure. *Mahika kai* 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 managing the effects of *land* use, development, and subdivision activities on *how indigenous biodiversity is to be managed*.

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

- (1) stating the outcomes sought for ecosystems and *indigenous biodiversity* in Otago,
- (2) requiring identification and protection of *significant natural areas* and *indigenous species* and ecosystems that are taoka, and
- (3) 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 primarily through *regional plan* and *district plan* provisions, however *local authorities* may also choose to adopt additional non-regulatory methods to support the achievement of the objectives.

Amend appendices:

APP2 – 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 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* if 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 the 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 SNAs 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*.
- (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 districts*. 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, *habits*, 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 districts* and *land* environments.

- (5) **Distinctiveness** includes distribution limits, type localities, local endemism, relict distributions and species 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 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 maintaining a population of indigenous fauna during a critical part of their lifecycle, ~~(either seasonally or permanently), e.g. for feeding, resting, nesting, breeding, spawning or refuges from predation.~~

APP3 – Principles for *biodiversity offsetting*

These principles apply to the use of *biodiversity offsets* for adverse *effects* on *indigenous biodiversity*. An applicant is to comply with principles 1 to 6 and have regard to the remaining principles as appropriate.

- (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 kanuka (*Kunzea robusta* and *Kunzea serotina*), under the New Zealand Threat Classification System (~~Townsend et al, 2008~~ Rolfe et al, 2022); or
 - (e) the likely worsening of the conservation status of any Threatened or At Risk *indigenous biodiversity* as listed under the New Zealand Threat Classification System (~~Townsend et al, 2008~~ Rolfe et al, 2022); or
 - (f) the removal or loss of ecological integrity ~~health~~ and *resilience* of a naturally uncommon ecosystem type that contains ~~is associated with~~ *indigenous vegetation* or *habitat* ~~for~~ ~~of~~ indigenous fauna.
- (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 hard 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, special 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.

APP4 – Principles for *biodiversity compensation*

These principles apply to the use of *biodiversity compensation* for adverse *effects* on *indigenous biodiversity*. An applicant is to comply with principles 1 to 6 and have regard to the remaining principles as appropriate.

- (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 a 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 kanuka (*Kunzea robusta* and *Kunzea serotina*), under the New Zealand Threat Classification System (Townsend et al, 2008 Rolfe et al, 2022); 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 Rolfe et al, 2022),
 - (f) the removal or loss of ecological integrity health and *resilience* of a naturally uncommon ecosystem type that contains ~~is associated with~~ *indigenous vegetation* or *habitat* ~~for~~ 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 Rolfe et al, 2022).
- (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 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:** Demonstrate the *biodiversity compensation* outcome is demonstrably achievable.

