

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

Decision No. [2025] NZEnvC 397

IN THE MATTER

of the Resource Management Act 1991

AND

appeals under clause 14 of the First
Schedule to the Act

BETWEEN

REAL GROUP LIMITED (and five
other appellants as set out in the
Schedule)

(ENV-2024-CHC-23)

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 appeal points are allowed subject to the amendment of provisions in the non-freshwater planning instrument parts of the proposed Otago Regional Policy Statement 2021 as set out in

¹ Resource Management Act 1991.



Annexure 1 to this Order:

- (a) Real Group Limited's appeal points in relation to:
 - (i) NFL-P1 – Identification;
 - (ii) NFL-P2 – Protection of outstanding natural features and landscapes; and
 - (iii) APP9 – Identification criteria for outstanding and highly valued natural features, landscapes and seascapes.
- (b) Royal Forest and Bird Protection Society of New Zealand Incorporated's appeal points in relation:
 - (i) Definition: highly valued natural features and landscapes;
 - (ii) NFL-O1 – Outstanding natural features and landscapes;
 - (iii) NFL-P2; and
 - (iv) NFL-P4 – Restoration (deleted in decisions version).
- (c) Cain Whānau's appeal points in relation to:
 - (i) NFL-P1;
 - (ii) NFL-P2;
 - (iii) NFL-M1 – Identification;
 - (iv) NFL-M2 – Regional plans; and
 - (v) NFL-M3 – District plans.
- (d) Transpower New Zealand Limited's appeal point in relation to:
 - (i) NFL-P2.
- (e) Queenstown Lakes District Council's appeal points in relation to:
 - (i) Definition: highly valued natural features and landscapes;
 - (ii) NFL-O1;
 - (iii) NFL-P3 (deleted in decisions version);
 - (iv) UFD-P7 – Rural areas;
 - (v) UFD-P8 – Rural lifestyle development; and
 - (vi) LF-LS-E4.

- (2) the appeals, in respect of provisions in the ‘NFL – Natural features and landscapes’ chapter and other relevant provisions and definitions as set out in ‘A:’ above, are otherwise dismissed.

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

REASONS

Introduction

[1] This proceeding concerns appeals filed against decisions by Otago Regional Council on the non-freshwater planning instrument parts of the proposed Otago Regional Policy Statement 2021 (PORPS) in relation to provisions in the ‘NFL – Natural features and landscapes’ (NFL) chapter.

[2] The NFL chapter is located in the ‘Part 3 – Domain and Topics’ section. It contains objectives, policies and methods that provide direction on the identification, management and protection of Otago’s natural features and landscapes.

[3] The following persons filed appeals seeking amendments to the NFL chapter:

- (a) Royal Forest & Bird Protection Society of New Zealand Incorporated (Forest & Bird);
- (b) Real Group Limited (RealNZ);
- (c) Queenstown Lakes District Council (QLDC);
- (d) Cain Whānau; and

(e) Glenpanel Limited Partnership (Glenpanel).²

Policy framework for highly valued natural features and landscapes

[4] As notified, the PORPS contained a policy framework for the management of ‘highly valued natural features and landscapes’ as well as a policy framework for outstanding natural features and landscapes (s6(b) RMA landscapes). That policy framework provided for the identification and maintenance or enhancement of highly valued natural features and landscapes.

[5] ‘Highly valued natural features and landscapes’ are commonly understood to be/or also mean “amenity landscapes” or s7(c) and (f) landscapes as they contain attributes and values of significance under those sections.

[6] In the Decision Version of the PORPS, the policy framework for ‘highly valued natural features and landscapes’ was removed.

[7] Forest & Bird and QLDC appealed the removal of the policy framework for the management of ‘highly valued natural features and landscapes’.

Forest & Bird

[8] Forest & Bird’s appeal sought the reinstatement of the policy framework for ‘highly valued natural features and landscapes’.

[9] Forest & Bird sought the reinstatement of a definition for “highly valued natural features and landscapes” and amendments to ‘NFL-O1 – Outstanding natural features and landscapes’ so that the objective provides for highly valued

² Glenpanel’s submissions on the NFL chapter were limited to NFL-P2 and NFL-O1. The relief sought in relation to those provisions was subsequently granted in the decisions version of the PORPS: see www.orc.govt.nz/media/s1fdog1h/300824-tracked-annotated-decisions-version.pdf at 270 and 271. The relief sought in its appeal in relation to the NFL chapter is therefore determined to be outside of scope and is not granted by this Order.

natural features and landscapes.

[10] Forest & Bird’s position was that the removal of the policy framework for “highly valued natural features and landscapes” resulted in the NFL chapter no longer achieving the purpose of the Act.

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

- (a) QLDC;
- (b) Federated Farmers of New Zealand Incorporated (FFNZ);
- (c) Transpower New Zealand Limited (Transpower);
- (d) New Zealand Transport Agency Waka Kotahi (NZTA);
- (e) Waterfall Park Developments Limited (WPDL);
- (f) Aurora Energy Limited, Network Waitaki Limited, Powernet Limited – electricity distribution businesses (EDBs);
- (g) Mount Cardona Station Village Limited (MCSVL);
- (h) Dunedin City Council (DCC);
- (i) Darby Asset Management LP (Darby Planning);
- (j) Rayonier Matariki Forests, City Forests Limited, Ernslaw One Limited and Port Blakely NZ Limited (Forestry Appellants);
- (k) Meridian Energy Limited (Meridian);
- (l) Oceana Gold (New Zealand) Limited (OGL);
- (m) RealNZ;
- (n) Manawa Energy Limited (Manawa);
- (o) 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 (Kai Tahu);
- (p) Otago and Central South Island Fish and Game Councils (Fish & Game); and

(q) Queenstown Airport Corporation (QAC).

QLDC

[12] QLDC’s appeal sought the reinstatement of provisions that provide for the ability to manage ‘highly valued natural features and landscapes’.

[13] QLDC appealed the provisions:

- (a) the definition for ‘highly valued natural features and landscapes’;
- (b) NFL-O1 – Outstanding natural features and landscapes;
- (c) NFL-P3 – Maintenance of highly valued natural features and landscapes;
- (d) UFD-P7 – Rural Areas;
- (e) UFD-P8 – Rural lifestyle and residential zones; and
- (f) LF-LS-E4 – Explanation.

[14] QLDC’s position was that in order to achieve Part 2 of the Act and in particular to achieve the purpose of the Act in accordance with s7, the management of “highly valued natural features and landscapes” (s7(c) and (f) landscapes) must be provided for.

[15] Further, QLDC considered that the deletion of references to ‘highly valued natural features and landscapes’ also meant there are no objectives or policies in the PORPS that address “Damage to or loss of natural features and landscapes compromises amenity values” as identified in ‘SRMR-I10 – Economic and domestic activities in Otago use natural resources but do not always properly account for the environmental stresses or the future impacts they cause’.

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

- (a) Darby Planning;
- (b) Meridian;
- (c) RealNZ;
- (d) QAC;
- (e) Transpower;
- (f) Forestry Appellants;
- (g) OGL;
- (h) WPDL;
- (i) DCC;
- (j) Kāi Tahu; and
- (k) NZTA.

Resolution

[17] The parties have agreed that the PORPS should provide for ss7(c) and 7(f) landscapes.

[18] The parties consider that the policy approach to ‘highly valued natural features and landscapes’ should be discretionary for territorial authorities. This is a different approach to the management framework for highly valued natural features and landscapes in the notified version of the PORPS, which was mandatory.

[19] The parties have agreed that where a territorial authority chooses to identify and manage ‘highly valued natural features and landscapes’, the PORPS should then provide regionally consistent policy direction on identification and maintenance or enhancement.

[20] A package of amendments was agreed between the parties to reinstate a management framework for ‘highly valued natural features and landscapes’.

[21] In summary, the parties have agreed on the following amendments:

- (a) Inclusion of a definition for ‘highly valued natural features and landscapes’, as follows:

<u>Highly valued natural features and landscapes</u>	<u>means areas which contain attributes and values of significance under Sections 7(c) and 7(f) of the RMA 1991, which have been identified in accordance with APP9.</u>
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- (b) Inclusion of a new Objective ‘NFL-O2 – Highly valued natural features and landscapes’ as follows:

NFL-O2 – Highly valued natural features and landscapes

The identified values of any highly valued natural features and landscapes are maintained or enhanced.

- (c) An amendment to ‘NFL-P1 – Identification’ to include reference to ‘highly valued natural features and landscapes’.
- (d) Inclusion of a new Policy ‘NFL-P3 – Management of activities within highly valued natural features and landscapes’ as follows:

NFL-P3 – Management of activities within highly valued natural features and landscapes

Manage adverse effects of subdivision, use and development within any identified highly valued natural features and landscapes having particular regard to the maintenance or enhancement of the values of those areas.

- (e) Amendments to Method ‘NFL-M1 – Identification’ so that it applies to ‘highly valued natural features and landscapes’ as well as outstanding natural features and landscapes.

- (f) Amendments to Method ‘NFL-M2 – Regional plans’ so that it applies to ‘highly valued natural features and landscapes’, as well as outstanding natural features and landscapes as follows:

NFL-M2 – Regional plans

Otago Regional Council must prepare or amend and maintain its regional plans to control the use and development of water bodies, the beds of rivers and lakes, and wetlands in order to:

(1) protect outstanding natural features and landscapes in accordance with NFL-P2 and NFL-Px,

(2) manage adverse effects on highly valued natural features and landscapes in accordance with NFL-P3 and NFL-Px, and

(3) provide for and encourage activities undertaken for the purpose of restoring outstanding natural features and landscapes and highly valued natural features and landscapes in accordance with NFL-P4.

- (g) Amendments to Method ‘NFL-M3 – District plans’ so that it applies to ‘highly valued natural features and landscapes’, as well as outstanding natural features and landscapes as follows:

NFL-M3 – District plans

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

(1) control the subdivision, use and development of land and the use of the surface of water bodies in order to:

(a) protect outstanding natural features or landscapes in accordance with NFL-P2 and NFL-Px, and

(b) manage adverse effects on highly valued natural features and landscapes in accordance with NFL-P3 and NFL-Px,

(3) manage wilding conifer spread in accordance with LF-LS-P16A, and

(3A) provide for and encourage activities undertaken for the purpose of restoring outstanding natural features and landscapes and highly valued natural features and landscapes in accordance with NFL-P4.

- (h) Amendments to Method ‘NFL-M4 – Other incentives and mechanisms’ so that it applies to ‘highly valued natural features and landscapes’, as well as outstanding natural features and landscapes as follows:

NFL-M4 – Other incentives and mechanisms

Local authorities are encouraged to consider the use of other mechanisms or incentives to assist in achieving the outcomes sought by the policies in this chapter, including:

- (1) funding assistance for restoration projects (for example, through the Regional Council’s ECO Fund),
- (2) purchase of land that forms part of a natural feature or landscape,
- (3) development or design guidelines (for example, colour palettes for structures in or on natural features or landscapes),
- (4) rates relief for land that is protected due to its status as an outstanding natural feature or landscape, or use is constrained due to its status as a highly valued natural feature and landscape,
- (5) education and advice,
- (6) waiver or reduction of processing fees for activities where the primary purpose is to enhance the values of outstanding natural features and landscapes or identified highly valued natural features ~~or~~ and landscapes, and
- (7) advocating for a collaborative approach between central and local government to fund and carry out wilding conifer control.

- (i) An amendment to NFL-E1 - Explanation to include reference to “highly valued natural features and landscapes”, as follows:

NFL-E1 – Explanation

The policies in this chapter are designed to require outstanding and highly valued natural features and landscapes to be identified using regionally consistent attributes, then managing activities to ~~either~~ protect outstanding natural features and landscapes in accordance with section 6(b) of the RMA. The chapter also allows for highly valued natural features and landscapes to be identified. Where highly valued natural features and landscapes are identified, policies require the management of adverse effects, having particular regard to the maintenance or enhancement of these highly valued natural features and landscapes in accordance with section 7 of the RMA. This distinction recognises that these areas have values with differing degrees of significance and that generally those classified as ‘highly valued’ will have a greater capacity to accommodate land use change and development without values being adversely affected. The policies seek to control the impact of *wilding conifers* which are a particular threat to Otago’s natural features and landscapes, in a way that recognises the regulations in the NES~~P~~-CF.

- (j) Amendments to ‘NFL-PR1 – Principal reasons’ to include reference to ‘highly valued natural features and landscapes’, as follows:

NFL-PR1 – Principal reasons

Natural features include resources that are the result of natural processes, particularly those reflecting a particular geology, topography, geomorphology, hydrology, ecology, or other physical attribute that creates a natural feature or combination of natural features. Landscapes include the natural and physical attributes of land together with air and water, which change over time and which is made known by people’s evolving perceptions and associations. Natural features and landscapes also have significant cultural value to Kāi Tahu. There are many sites of significance across Otago, reflecting the relationship of Kāi Tahu with the land, water and sea.

The provisions in this chapter assist in protecting Otago's outstanding natural features and landscapes, and managing adverse effects on highly valued natural features and landscapes by ~~requiring~~:

- ~~requiring~~ the identification of outstanding natural features and landscapes using regionally consistent criteria,
- ~~requiring~~ the protection of outstanding natural features and landscapes,
- ~~requiring~~ specified actions on the part of Otago's local authorities in managing natural features and landscapes,
- allowing for the identification of highly valued natural features and landscapes using regionally consistent criteria,
- requiring the management of adverse effects having particular regard to the maintenance or enhancement of any identified highly valued natural features and landscapes.

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.

[22] The parties have agreed that including a policy framework for the highly valued natural features and landscapes better achieves the purpose of the Act and in particular, s7.

[23] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss7(c) and 7(f).

NFL-P1 – Identification

[24] Policy NFL-P1 was appealed RealNZ and Cain Whānau.

RealNZ

[25] RealNZ’s appeal sought the inclusion of a reference to ‘APP9 – Identification criteria for outstanding and highly valued natural features and landscapes (including seascapes)’ in NFL-P1 and consequentially the reinstatement of APP9 which was deleted from the decisions version of the PORPS.

[26] RealNZ’s position was that the deletion of the reference to APP9 and the insertion of reference to guidelines was inappropriate because it would lock the 2021/2022 guidelines into the PORPS.

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

- (a) QLDC;
- (b) Meridian;
- (c) NZSki Limited (NZSki);
- (d) WPDL;
- (e) Forestry Appellants;
- (f) MCSVL; and
- (g) Darby Planning.

Cain Whānau

[28] Cain Whānau’s appeal sought an amendment to NFL-P1 to provide reference to Te Ao Kāi Tahu paradigms and mātauraka, such as Āpiti Hono Tātai Hono: Ngā Whenua o Ngāi Tahu ki Murihiku.

[29] Cain Whānau’s position was that ‘Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines’ is not an appropriate methodology or guideline for recognising or providing for landscape values or other matters of importance to Kāi Tahu, and as such is not fit for purpose when considering management of places, areas, landscapes, waters, taoka and other elements of cultural, spiritual or

traditional significance to mana whenua. In addition, Cain Whānau considered that Kāi Tahu may not seek or desire some places, areas or landscapes of cultural, spiritual or traditional significance to be identified or mapped.

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

- (a) QLDC;
- (b) EDBs;
- (c) DCC; and
- (d) Kāi Tahu.

Resolution

[31] The parties have proposed to amend NFL-P1 as follows:

NFL-P1 – Identification

~~Any identification of the areas and values of outstanding natural features and landscapes or highly valued natural features and landscapes, occurs in accordance with APP9 and MW-M1(5). Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines', Tuia Pito Ora New Zealand Institute of Landscape Architects, July 2022.~~

[32] The reference to APP9 responds to RealNZ's appeal point. This agreed amendment necessitates the reinstatement of APP9 as sought by RealNZ as follows:

APP9 – Identification criteria for outstanding and highly valued natural features and landscapes (including seascapes)

The areas and the values of outstanding and highly valued natural features and landscapes (including seascapes) are identified using the following factors:

Physical (natural and human)

(a) Geology and geomorphology,

(b) Topography and hydrology (including drainage patterns),

(c) Climate and weather patterns,

(d) Soil patterns,

(e) Vegetation patterns,

(f) Ecological (flora and fauna) and dynamic components,

(g) Settlements and occupation,

(h) Roads and circulation,

(i) Land use – cadastral pattern,

(j) Buildings,

(k) Archaeology and heritage features,

(l) Mana whenua features.

Associative

(m) Mana whenua creation and origin traditions manifest in landscape features,

(n) Mana whenua associations and experience – (historic, contemporary,

and future) including
pūrākau, whakapapa, tikaka,
and mātauraka,

(o) Mana whenua
metaphysical aspects such
as wairua and mauri,

(p) Legal personification of
landscape features,

(q) Shared and recognised
values of a landscape
derived from community
life including the
community's livelihood, its
history and reason for being
in that place, places of social
life and gathering, places
associated with
metaphysical meanings
such as retreat,
contemplation, and
commemoration,

(r) Landscape values
associated with identity
such as attributes that are
emblematic for an area,
places that are central to a
community (main street,
wharf, park), features that
are anthropomorphised.
Landscapes that are
engaged through activities
such traditional food and
resource gathering,
recreational use, food and
wine that reflect a locale,

tourism based on landscape experience or appreciation of a landscape's qualities.

Perceptual

(s) Geomorphic legibility (how obviously a landscape expresses the geomorphic processes),

(t) Wayfinding and mental maps (legibility or visual clarity of landmarks, routes, nodes, edges, and areas of different character),

(u) Memorability,

(v) Coherence (the extent to which patterns reinforce each other, coherence between human patterns and underlying natural landscape),

(w) Aesthetic qualities,

(x) Naturalness,

(y) Views.

Note that physical, associative, and perceptual factors are sometimes transient: they may be present occasionally or seasonally or in different weather conditions. An assessor should be aware of such transient attributes that may not be immediately apparent.

[33] The cross-reference in NFL-P1 to MW-M1(5) responds to Cain Whānau's appeal point. MW-M1(5) has been confirmed by the court and requires that assessments (including landscape assessments) "expertly employ Te Ao Kāi Tahu methodologies, paradigms and mātauraka in setting the context, considering and

evaluating issues as they relate to Kāi Tahu values and paradigms, and the manner in which they guide decision-making”.

[34] The removal of Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines, Tuia Pito Ora New Zealand Institute of Landscape Architects, July 2022 responds to both Cain Whānau and RealNZ’s appeal points.

[35] As a result of the agreed amendments to NFL-P1 and the reintroduction of the policy framework for highly valued natural features and landscapes, consequential amendments were also agreed to Method ‘NFL-M1 – Identification’, as follows:

NFL-M1 – Identification

Territorial authorities ~~must~~:

(1) may identify highly valued natural features and landscapes, and

(2B) must:

(a) include in their district plans a map or maps and a statement of the values of the areas of outstanding natural features and landscapes in accordance with NFL-P1,

(b2) in areas likely to face development or growth pressure, include in their district plans a statement of the capacity of outstanding natural features and landscapes to accommodate use or development while protecting from inappropriate use and development the values that contribute to the natural feature and landscape being considered outstanding,

(c2A) collaborate with Kāi Tahu to identify the areas, values, and capacity of natural features and landscapes of significance for Kāi Tahu in accordance with tikaka, and record and apply appropriate management responses as determined by Kāi Tahu~~mana whenua~~,

(d3) recognise that natural features and landscapes and any identified highly valued

natural features and landscapes may span jurisdictional boundaries and work together, including with the Regional Council and adjoining Regional Councils, to identify areas under (1) and (2B)(a) to ensure that the identification of outstanding natural features and landscapes and highly valued natural features and landscapes are treated uniformly across district boundaries and, where appropriate, regional boundaries, ~~and~~

~~(e4)~~ prioritise identification under ~~(2B)(a)~~ in areas that are likely to contain outstanding natural features or landscapes and are likely to face development or growth pressure over the life of this RPS-, and

(f) ensure the requirements of MW-M1(5) are met, and

(g) if identifying highly valued natural features and landscapes under (1):

(i) implement (2B)(c) and (f) above, and

(ii) include in their district plans a map or maps.

[36] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss6(b), 6(e), 7(c) and 7(f).

NFL-P2 – Protection of outstanding natural features and landscapes

[37] Policy NFL-P2 was appealed by Forest & Bird and RealNZ.

Forest & Bird

[38] Forest & Bird's appeal sought the deletion of clause (3). Forest & Bird's position was that clause (3) was superfluous as NFL-P2 must be read alongside other policies that may be engaged, including EIT-INF-P13.

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

- (a) Chorus New Zealand Limited, One New Zealand Group Limited and Spark New Zealand Trading Limited (the Telcos);
- (b) QLDC;
- (c) EDBs;
- (d) Manawa;
- (e) Falls Dam Irrigation;
- (f) Maniototo Irrigation Company (MIC);
- (g) Waitaki Irrigators Collective Limited (WIC);
- (h) Otago Water Resources Users Group (OWRUG);
- (i) Forestry Appellants;
- (j) Kāi Tahu;
- (k) Fish & Game;
- (l) QAC;
- (m) Transpower;
- (n) Darby Planning; and
- (o) NZTA.

RealNZ

[40] RealNZ's appeal sought the deletion of clause (1A), or as alternative relief, to add an explanation of what 'landscape capacity of the natural feature or landscape' is intended to mean. RealNZ also sought amendments to clause (1) as follows:

(1) maintaining the values that make the ~~contribute to the~~ natural feature or landscape ~~being considered~~ natural and outstanding, ~~even if those values are not themselves outstanding,~~

[41] RealNZ's position was that the use of the unqualified directive language sets an inappropriate high bar to any development or change.

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

- (a) QLDC;
- (b) Meridian;
- (c) Forestry Appellants;
- (d) Darby Planning;
- (e) NZSki; and
- (f) WPDL.

Resolution

[43] The parties have proposed to amend NFL-P2 as follows:

NFL-P2 – Protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes from inappropriate subdivision, use and development by:

~~(1A) avoiding exceeding the landscape capacity of the natural feature or landscape,~~

(1) maintaining the values that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding,

(2) avoiding, remedying or mitigating other adverse effects; and

(3) managing the adverse effects of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13 and EIT-INT-Px.

[44] The proposed amendments respond to RealNZ's appeal point. For clarity the parties agreed that clause (1A) be deleted. Clause (1) requires the maintenance of the values that contribute to a natural feature/landscape being considered outstanding; accordingly, the parties considered clause (1A) to be unnecessary. The parties also agreed to include a cross reference in clause (3) to new policy EIT-INT-Px as confirmed by the court in Decision No. [2025] NZEnvC 323.

[45] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss5, 6(b), and 7(f).

NFL-P4 – Restoration

[46] The deletion of Policy NFL-P4 was appealed by Forest & Bird.

[47] Forest & Bird's appeal sought that NFL be reinstated. Forest & Bird's position was that its removal did not achieve the purpose of the Act and did not accord with the existing NFL policies (such as NFL-P2) which requires protection of natural features and landscapes.

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

- (a) DCC;
- (b) FFNZ;
- (c) RealNZ;
- (d) Darby Planning;
- (e) MCSVL;
- (f) QLDC; and
- (g) Fish & Game.

Resolution

[49] The parties have agreed to include a policy for the promotion of restoration of features and landscapes as follows:

NFL-P4 – Restoration

Promote restoration of the areas and values of outstanding and highly valued natural features and landscapes where those areas or values have been reduced or lost.

[50] Consistent with the parties' agreement to reinstate a policy framework for highly valued natural features and landscapes, the agreed policy includes the promotion of restoration of these areas also.

[51] The parties have also agreed on consequential amendments to 'NFL-M2 – Regional plans' and 'NFL-M3 – District plans' to include the following clause:

provide for and encourage activities undertaken for the purpose of restoring outstanding natural features and landscapes and highly valued natural features and landscapes in accordance with NFL-P4.

[52] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss5, 6(b), 7(c) and 7(f).

NFL-Px (new policy sought)

[53] Cain Whānau's appeal sought a new policy for the management of landscape values on Native Reserves and Māori land.

[54] Cain Whānau's position was that the provisions in the NFL chapter (together with other chapters throughout the PORPS) unduly restrict owners of Māori land from being able to utilise their land and that owners of Māori freehold land should be able to use and develop their land and manage any adverse effects in accordance with mātauraka and tikaka, to implement the policy direction in MW-P4.

[55] Cain Whānau's position that the rights and interests of owners of Māori freehold land, in respect to their land, should be recognised, in specific circumstances, alongside Kāi Tahu as mana whenua.

[56] 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) QLDC;
- (c) DCC;
- (d) Transpower; and
- (e) EDBs.

Resolution

[57] The parties have proposed to insert a new Policy ‘NFL-Px – Managing landscape values on Native Reserves and Māori land’ into the PORPS as follows:

NFL-Px – Managing landscape values on Native Reserves and Māori land

When managing the effects of subdivision, use and development of Native Reserves and Māori land on outstanding and highly valued natural features and landscapes, recognise and give practical effect to Kai Tahu rakatirataka by:

(1) 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,

(2) enabling mana whenua, and owners of Māori freehold land in relation to their land, to lead approaches to the management of those effects, and

(3) while achieving the outcomes provided for under NFL-P2 and NFL-P3, also achieving the outcomes provided for under MW-P4.

[58] The parties consider that the new policy recognises the rakatirataka of owners of Māori freehold land, alongside Kāi Tahu and reflects a more appropriate approach to the recognition of rakatirataka when managing the effects of use and development of Native Reserves and Māori Land on the values of highly valued and outstanding natural features and landscapes.

[59] The parties agree that the new Policy provides for the use of Māori Land and Native Reserves and is consistent with ‘MW-P4 – Use of Native Reserves and

Māori land’, which has now been confirmed by the court.

[60] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss5, 6(e), and 8.

Other relevant matters

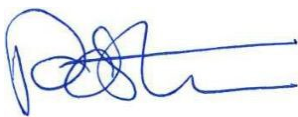
[61] No appeals on the PORPS are fully resolved as a result of this Order.

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

[63] 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

[64] 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. Royal Forest & Bird Protection Society of New Zealand Incorporated v ORC (ENV-2024-CHC-26)
2. Cain Whānau v ORC (ENV-2024-CHC-30)
3. Glenpanel Limited Partnership v ORC (ENV-2024-CHC-31)
4. Queenstown Lakes District Council v ORC (ENV-2024-CHC-37)

Annexure 1

New definition:

<u>Highly valued natural features and landscapes</u>	<u>means areas which contain attributes and values of significance under Sections 7(c) and 7(f) of the RMA 1991, which have been identified in accordance with APP9.</u>
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New objective:

NFL-O2 – Highly valued natural features and landscapes

The identified values of any *highly valued natural features and landscapes* are maintained or enhanced.

Amend policies:

NFL-P1 – Identification

Any ~~identification~~ of the areas and values of outstanding natural features and landscapes *or highly valued natural features and landscapes*, occurs in accordance with ~~APP9 and MW-M1(5). Te Tangi-a-te-Manu: Aotearoa New Zealand Landscape Assessment Guidelines~~, Tuia Pito Ora New Zealand Institute of Landscape Architects, July 2022.

NFL-P2 – Protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes from inappropriate *subdivision*, use and development by:

- ~~(1A) avoiding exceeding the landscape capacity of the natural feature or landscape,~~
- (1) maintaining the values that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding,
 - (2) avoiding, remedying or mitigating other adverse *effects*; and
 - (3) managing the adverse effects of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13 and EIT-INT-Px.

New policies:

NFL-P3 – Management of activities within *highly valued natural features and landscapes*

Manage adverse *effects* of *subdivision*, use and development within any identified *highly valued natural features and landscapes* having particular regard to the maintenance or enhancement of the values of those areas.

NFL-P4 – Restoration

Promote restoration of the areas and values of outstanding and *highly valued natural features and landscapes* where those areas or values have been reduced or lost.

NFL-Px – Managing landscape values on Native Reserves and Māori land

When managing the *effects* of *subdivision*, use and development of Native Reserves and Māori land on outstanding and *highly valued natural features and landscapes*, recognise and give practical effect to Kai Tahu rakatirataka by:

- (1) 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,

- (2) enabling *mana whenua*, and owners of Māori freehold land in relation to their *land*, to lead approaches to the management of those *effects*, and
- (3) while achieving the outcomes provided for under NFL-P2 and NFL-P3, also achieving the outcomes provided for under MW-P4.

Amend methods:

NFL-M1 – Identification

Territorial authorities must:

- (1) may identify *highly valued natural features and landscapes*, and
- (2B) must:
 - (a) include in their *district plans* a map or maps and a statement of the values of the areas of outstanding natural features and landscapes in accordance with NFL-P1,
 - (b2) in areas likely to face development or growth pressure, include in their *district plans* a statement of the capacity of outstanding natural features and landscapes to accommodate use or development while protecting from inappropriate use and development the values that contribute to the natural feature and landscape being considered outstanding,
 - (c2A) collaborate with Kāi Tahu to identify the areas, values, and capacity of natural features and landscapes of significance for Kāi Tahu in accordance with tikaka, and record and apply appropriate management responses as determined by Kāi Tahu~~*mana whenua*~~,
 - (d3) recognise that natural features and landscapes and any identified *highly valued natural features and landscapes* may span jurisdictional boundaries and work together, including with the Regional Council and adjoining Regional Councils, to identify areas under (1) and (2B)(a) to ensure that the

identification of outstanding natural features and landscapes and highly valued natural features and landscapes are treated uniformly across district boundaries and, where appropriate, regional boundaries, ~~and~~

- (~~e~~4) prioritise identification under (~~2B~~(a)4) in areas that are likely to contain outstanding natural features or landscapes and are likely to face development or growth pressure over the life of this RPS, and
- (f) ensure the requirements of MW-M1(5) are met, and
- (g) if identifying highly valued natural features and landscapes under (1):
 - (i) implement (2B)(c) and (f) above, and
 - (ii) include in their district plans a map or maps.

NFL-M2 – Regional plans

Otago Regional Council must prepare or amend and maintain its *regional plans* to control the use and development of *water bodies*, the *beds of rivers* and *lakes*, and *wetlands* in order to:

- (1) protect outstanding natural features and landscapes in accordance with NFL-P2 and NFL-Px,
- (2) manage adverse effects on highly valued natural features and landscapes in accordance with NFL-P3 and NFL-Px, and
- (3) provide for and encourage activities undertaken for the purpose of restoring outstanding natural features and landscapes and highly valued natural features and landscapes in accordance with NFL-P4.

NFL-M3 – District plans

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

- (1) control the *subdivision*, use and development of *land* and the use of the surface of *water bodies* in order to:

- (a) protect outstanding natural features or landscapes in accordance with NFL-P2 and NFL-Px, and
- (b) manage adverse effects on highly valued natural features and landscapes in accordance with NFL-P3 and NFL-Px,
- (3) manage *wilding conifer* spread in accordance with LF-LS-P16A., and
- (3A) provide for and encourage activities undertaken for the purpose of restoring outstanding natural features and landscapes and highly valued natural features and landscapes in accordance with NFL-P4.

NFL-M4 – Other incentives and mechanisms

Local authorities are encouraged to consider the use of other mechanisms or incentives to assist in achieving the outcomes sought by the policies in this chapter, including:

- (1) funding assistance for restoration projects (for example, through the Regional Council's ECO Fund),
- (2) purchase of *land* that forms part of a natural feature or landscape,
- (3) development or design guidelines (for example, colour palettes for *structures* in or on natural features or landscapes),
- (4) rates relief for *land* that is protected due to its status as an outstanding natural feature or landscape, or use is constrained due to its status as a highly valued natural feature and landscape,
- (5) education and advice,
- (6) waiver or reduction of processing fees for activities where the primary purpose is to enhance the values of outstanding natural features and landscapes or identified highly valued natural features and landscapes, and
- (7) advocating for a collaborative approach between central and local government to fund and carry out *wilding conifer* control.

Amend explanation:

NFL-E1 – Explanation

The policies in this chapter are designed to require outstanding and highly valued natural features and landscapes to be identified using regionally consistent attributes, then managing activities to ~~either~~ protect outstanding natural features and landscapes in accordance with section 6(b) of the RMA. The chapter also allows for *highly valued natural features and landscapes* to be identified. Where *highly valued natural features and landscapes* are identified, policies require the management of adverse effects having particular regard to the maintenance or enhancement of these *highly valued natural features and landscapes* in accordance with section 7 of the RMA. This distinction recognises that these areas have values with differing degrees of significance and that, generally those classified as 'highly valued' will have a greater capacity to accommodate land use change and development without values being adversely affected. The policies seek to control the impact of *wilding conifers* which are a particular threat to Otago's natural features and landscapes, in a way that recognises the regulations in the NESP-CF.

Amend principal reason:

NFL-PR1 – Principal reasons

Natural features include resources that are the result of natural processes, particularly those reflecting a particular geology, topography, geomorphology, hydrology, ecology, or other physical attribute that creates a natural feature or combination of natural features. Landscapes include the natural and physical attributes of *land* together with air and water, which change over time and which is made known by people's evolving perceptions and associations. Natural features and landscapes also have significant cultural value to Kāi Tahu. There are many sites of significance across Otago, reflecting the relationship of Kāi Tahu with the *land*, *water* and sea.

The provisions in this chapter assist in protecting Otago's outstanding natural features and landscapes, and managing adverse effects on *highly valued natural features and landscapes* by requiring:

- requiring the identification of outstanding natural features and landscapes using regionally consistent criteria,
- requiring the protection of outstanding natural features and landscapes,
- requiring specified actions on the part of Otago's *local authorities* in managing natural features and landscapes.

- allowing for the identification of *highly valued natural features and landscapes* using regionally consistent criteria,
- requiring the management of adverse *effects* having particular regard to the maintenance or enhancement of any identified *highly valued natural features and landscapes*.

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.

Reinstate Appendix:

APP9 – Identification criteria for outstanding and *highly valued natural features and landscapes* (including seascapes)

The areas and the values of outstanding and *highly valued natural features and landscapes* (including seascapes) are identified using the following factors:

- | | |
|-------------------------------------|---|
| <u>Physical (natural and human)</u> | <ul style="list-style-type: none"> (a) <u>Geology and geomorphology,</u> (b) <u>Topography and hydrology (including drainage patterns),</u> (c) <u>Climate and weather patterns,</u> (d) <u>Soil patterns,</u> (e) <u>Vegetation patterns,</u> (f) <u>Ecological (flora and fauna) and dynamic components,</u> (g) <u>Settlements and occupation,</u> (h) <u>Roads and circulation,</u> (i) <u>Land use – cadastral pattern,</u> (j) <u>Buildings,</u> (k) <u>Archaeology and heritage features,</u> (l) <u>Mana whenua features.</u> |
|-------------------------------------|---|

Associative

- (m) Mana whenua creation and origin traditions manifest in landscape features.
- (n) Mana whenua associations and experience – (historic, contemporary, and future) including pūrākau, whakapapa, tikaka, and mātauraka.
- (o) Mana whenua metaphysical aspects such as wairua and mauri.
- (p) Legal personification of landscape features.
- (q) Shared and recognised values of a landscape derived from community life including the community's livelihood, its history and reason for being in that place, places of social life and gathering, places associated with metaphysical meanings such as retreat, contemplation, and commemoration.
- (r) Landscape values associated with identity such as attributes that are emblematic for an area, places that are central to a community (main street, wharf, park), features that are anthropomorphised. Landscapes that are engaged through activities such traditional food and resource gathering, recreational use, food and wine that reflect a locale, tourism based on landscape experience or appreciation of a landscape's qualities.

Perceptual

- (s) Geomorphic legibility (how obviously a landscape expresses the geomorphic processes).
- (t) Wayfinding and mental maps (legibility or visual clarity of landmarks, routes, nodes, edges, and areas of different character).
- (u) Memorability.
- (v) Coherence (the extent to which patterns reinforce each other, coherence between human patterns and underlying natural landscape).
- (w) Aesthetic qualities.
- (x) Naturalness.
- (y) Views.

Note that physical, associative, and perceptual factors are sometimes transient: they may be present occasionally or seasonally or in different weather conditions. An assessor should be aware of such transient attributes that may not be immediately apparent.

