

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

CIV-2016-409-001157

IN THE MATTER

of an appeal under Clause 19 of the Canterbury
Earthquake (Christchurch Replacement District Plan)
Order 2014

BETWEEN

**ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND INCORPORATED**

Appellant

AND

CHRISTCHURCH CITY COUNCIL

Respondent

[continued]

JOINT MEMORANDUM OF COUNSEL

31 March 2017

AND

CANTERBURY REGIONAL COUNCIL

First Third Party

AND

**NORTH CANTERBURY PROVINCE OF FEDERATED
FARMERS OF NEW ZEALAND**

Second Third Party

AND

LYTTELTON PORT COMPANY

Third Third Party

AND

INDEPENDENT HEARINGS PANEL

Fourth Third Party

MAY IT PLEASE THE COURT

Introduction

1. The Appellant appeals against Decision 50, Chapter 9: Natural and Cultural Heritage (Part) Sub-Chapter 9.1 – Indigenous Biodiversity and Ecosystems (**Decision**) made by an Independent Hearings Panel (**the Panel**) on the Christchurch Replacement District Plan (**the Plan**).
2. This joint memorandum is filed in support of settlement of part of the appeal, by counsel for:
 - (a) The Appellant, Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**).
 - (b) The Respondent, Christchurch City Council (**the Council or Respondent**).
 - (c) The other parties to the appeal:
 - (i) Canterbury Regional Council;
 - (ii) North Canterbury Province of Federated Farmers of New Zealand (Inc); and
 - (iii) Lyttelton Port Company Ltd.
3. The Panel also joined the appeal but indicated that it will abide the decision of the Court. The Panel has therefore not signed this memorandum.
4. Te Rūnanga o Ngāi Tahu joined the appeal but subsequently withdrew its interest.
5. This memorandum sets out the matter under appeal, the alleged errors of law and the proposed partial settlement.

Procedural Background

Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

6. Under the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (**the Order**), the Council undertook a review of the Christchurch City Plan and the Banks Peninsula District Plan.
7. The process for hearing and deciding submissions is set out in Clause 6(1) of the Order. It required the Council to:
 - (a) undertake a full review of the operative provisions of the existing district plans; and
 - (b) develop a replacement district plan by preparing and notifying proposals for the replacement district plan, including identifying the parts of the existing district plans that are to be replaced by proposals for the replacement district plan.
8. Clause 8 of the Order required the Minister to appoint the Panel. The principal functions of the Panel are set out in Clause 10, they are to:
 - (a) hold hearings on submissions on proposals; and
 - (b) make decisions in relation to those proposals as required by clauses 12 to 14.
9. Proposals were notified by the Council, and divided up into sub-chapters or topics for the purposes of hearings over three stages.

Sub-chapter 9.1

10. Sub-chapter 9.1: Indigenous Biodiversity and Ecosystems, was notified as part of Chapter 9 in Stage 3 on 25 July 2015. It is intended to implement Chapter 9 of the Canterbury Regional Policy Statement (**CRPS**), which responds to section 6(c) of the Resource Management Act 1991 (**RMA**) and sets out the way in which the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna is to be carried out in Canterbury.

11. Sub-chapter 9.1 establishes the framework for the identification, assessment, management and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna within the District, along with the maintenance of indigenous biodiversity and ecosystems generally.
12. The effects of activities and development on areas or habitats listed as SES in Schedule A of Appendix 9.1.6.1, and other areas containing potentially significant vegetation and habitat listed in Appendix 9.1.6.6, are controlled through provisions managing the clearance of indigenous vegetation.
13. The identification and assessment of Sites of Ecological Significance (**SES**) began several years before the Canterbury Earthquakes with the assessments beginning on Banks Peninsula in 2008. In 2013 the Council commenced work to add the existing Ecological Heritage Sites to the operative Christchurch City Plan (1995). During this process the Council liaised and collaborated with many people; landowners, ecologists, conservation groups, runanga, statutory agencies and community groups. There was an emphasis on collaboration throughout, in recognition that the protection of ecosystems and biodiversity is primarily through the actions of people. The Council has invested considerable time and resources to ensure that the owners and managers of SES have been at the core of biodiversity protection.¹
14. The schedule of SES listed in the notified replacement district plan did not identify all areas, particularly not all those on the Banks Peninsula, that are known to have high ecological values. This was because time and resource constraints limited the number of surveys that could be commissioned to provide up to date information and also limited the number of areas that could be assessed against the significance criteria and mapped. The Council has a list of areas for priority survey and assessment in the coming years, with a view to adding further SES to the schedule through a plan change.²
15. Most SES on Banks Peninsula are on private land. In the low plains, most are on public land. The Council has therefore focussed its private landowner

1 Appendix 2 to the Section 32 report for Chapter 9: Natural and Cultural Heritage, at page 3.

2 Appendix 2 to the Section 32 report for Chapter 9: Natural and Cultural Heritage, at page 3.

engagement on Banks Peninsula. It is recognised that identifying SES could be seen as an unwelcome constraint on landowners.

16. The Council, with support from the Banks Peninsula Ecological Study Steering Group, conducted an extensive programme of landowner engagement on Banks Peninsula between August 2011 and December 2014. This provided opportunities to share information and discuss landowner concerns. These discussions began a positive collaborative relationship between the Council and landowners, which the Council hopes to continue.
17. The Council intended to give every landowner with all or part of a Site of Ecological Significance on their property a copy of the relevant draft Site Significance Statement, including an aerial map showing the proposed extent of the Site, prior to information being made available to anybody else as part of the plan process. They would have been offered the opportunity at that stage to discuss implications with Council staff.
18. The truncated process for the Plan announced in January 2015 did not allow consultation prior to formal notification, nor did it allow for all of the surveys to be completed. However the Council continued to engage with landowners and is committed to continue doing so.
19. The hearing for Sub-chapter 9.1 commenced on 18 January 2016. The hearing was then adjourned for further mediation, which was held on 28 and 29 January and 24 and 25 February 2016. A number of parties attended the mediation, including the Council, the Crown, Forest & Bird, Federated Farmers, Canterbury Regional Council, Lyttelton/Mt Herbert Community Board, Isaac Conservation and Wildlife Trust and individual submitters. During this mediation, the parties reached agreement regarding the prioritisation assessment criteria and the identification of further sites in the future. Parties decided to use farm biodiversity management plans and how these would work in practice, and agreements were reached as to how these management plans would link to the SES Statements. The majority of the objectives, policies and rules were agreed upon for areas of land both inside and outside identified SES. Substantial progress was made during mediation and there were comparatively few remaining areas of disagreement.

20. The remaining areas of disagreement did not materially relate to the provisions at the heart of this appeal. A revised version of Sub-chapter 9.1 was submitted to the Panel with the Council's submissions. Areas of disagreement between parties were identified.
21. Closing submissions on Topic 9.1 were filed in April 2016. The Panel then issued a Minute on 9 August 2016 which expressed concerns about aspects of the revised version of Sub-chapter 9.1. The Panel provided two options to the parties to address the deficiencies identified: the Panel could reject Proposal 9.1 and leave the existing plan in place until a future plan change could occur; or, it could direct the Secretariat to prepare and invite further closing submissions on a revised version of the Proposal. The Panel requested submissions on this matter, which were received from a number of parties. After considering submissions, the Panel directed the Secretariat to redraft Sub-chapter 9.1. Parties responded to the subsequent Secretariat draft, with further closing submissions being filed in September 2016. The Panel issued its Decision on 21 October 2016.

The Appeal

22. Forest & Bird filed a notice of appeal on 25 November 2016 alleging seven errors of law. These relate to:
- (a) scope, in particular whether the changes the Panel made to Sub-chapter 9.1 were materially different in scope such that they were obliged under Clause 13(4) of the order to direct the Council to notify a new proposal (first alleged error of law);
 - (b) natural justice, in particular whether or not the decision not to reject Sub-chapter 9.1 breached natural justice (second alleged error of law);
 - (c) whether or not certain provisions added by the Panel requiring the Council to serve notice on owners or occupiers of potentially significant ecological sites before rules relating to the protection of these sites come into force (indigenous vegetation notice provisions) were void for uncertainty (third alleged error of law);

- (d) natural justice, in particular whether or not the inclusion of the indigenous vegetation notice provisions breached natural justice (fourth alleged error of law);
- (e) whether the indigenous vegetation notice provisions failed to give effect to New Zealand Coastal Policy Statement (**NZCPS**) and CRPS (fifth alleged error of law);
- (f) whether the Panel failed to give effect to the CRPS, including Policy 9.3.1, when it distinguished between significant sites on the Schedule of SES listed on Appendix 9.1.6.1 and significant sites within the potentially significant vegetation types in Appendix 9.1.6.6 (sixth alleged error of law); and
- (g) whether the Panel failed to give effect to the NZCPS, CRPS and misapplied section 6(c) of the **RMA**, when it concluded that farm practices played a part in the determination of the boundary of significant ecological sites (seventh alleged error of law).

23. Part of the relief sought in the appeal included that the Council be directed to prepare a new proposal with respect to Sub-chapter 9.1.

Proposed partial settlement of the appeal

24. The parties to this Memorandum (**the parties**) have engaged in discussions in an attempt to resolve the appeal. This reflects a willingness to continue the collaborative approach taken throughout the hearings and mediation on this sub-chapter. Through these discussions the parties have significantly narrowed the issues and agree that the appeal can be resolved in part by discrete amendments to the Proposal.

25. The partial settlement involves:

- (a) Forest & Bird withdrawing the first, second and fourth alleged errors of law;
- (b) settlement of the third and sixth errors of law; and

- (c) an agreement to only pursue the fifth error of law if the Court is not minded to make the orders sought by the parties.

26. The seventh error of law remains unresolved. However, the parties continue to discuss its potential resolution.

27. The withdrawal of the first, second and fourth alleged errors of law does not prejudice the consideration of the remaining four errors of law. This is because those alleged errors of law relate to natural justice matters relating to the procedure adopted by the Panel and do not relate to the actual provisions of Sub-chapter 9.1 itself, which is the fundamental component of the appeal.

28. The parties also concur that the seventh error of law can remain to be resolved by the Court, as it is a discrete matter relating to the role that farm practices have in the identification of SES boundaries. It does not have any consequence with the settlement of the other alleged errors of law.

29. This memorandum sets out the proposed settlement of the third and sixth errors of law. In addressing each error of law that remains, the following approach has been adopted:

- (a) an introduction to the issue and error of law; and
- (b) the agreed position on the alleged errors of law.

30. The memorandum then addresses the orders sought by the parties and the Court's jurisdiction to make the proposed amendments to the Plan.

31. The proposed amendments to the Plan are attached as **Appendix 1**.

32. A draft consent order dealing with the appeal is attached as **Appendix 2**.

The third alleged error of law – Indigenous vegetation notice provisions

33. The third alleged error of law relates to the “indigenous vegetation notice provisions”.

Introduction to issue and error of law

34. The Plan contains a number of provisions that provide that the Council must serve a Council indigenous vegetation notice on an owner or occupier of land before rules regulating the clearance of indigenous vegetation listed in Appendix 9.1.6.6 come into force. These provisions, as set out in **Appendix 3**, are collectively referred to in the appeal and this Memorandum as the "indigenous vegetation notice provisions". The third alleged error of law in the appeal is that the Panel erred in creating indigenous vegetation notice provisions that are void for uncertainty. In particular:

The Panel erred in approving indigenous vegetation notice provisions, which trigger the indigenous vegetation rules in relation to potentially significant vegetation types in Appendix 9.1.6.6, only where a Council indigenous vegetation notice under Rule 9.1.4.0.1 is served on the owner or occupier of land. The Panel erred because the provisions are void for uncertainty, as there are circumstances where no person can reasonably ascertain whether the clearance of indigenous vegetation is permitted or not.

35. The Plan contains an Appendix 9.1.6.1 that is divided into two schedules, Schedule A and Schedule B. Schedule A identifies Sites of Ecological Significance (**SES**). Schedule A includes sites identified on public land and, following collaboration, where private landowners have agreed to inclusion of the site on the schedule. Schedule A is not a comprehensive list of SES within the District. There are number of sites that also meet the ecological significance criteria, which are not included in Schedule A, including, but not limited to, those sites identified in Schedule B of Appendix 9.1.6.1. Schedule A will be updated by way of future plan changes to include new sites in accordance with Policies 9.1.2.3, 9.1.2.4 and 9.1.2.7 of the Plan.

36. Schedule B identifies ecologically significant areas that have been identified and assessed, however the Council has not completed the collaborative process with landowners. The Council intends to continue discussions with these landowners about what ecological values exist on their property and the management of these values. It is intended that as the collaborative process is completed sites will be added to Schedule A by way of future plan changes.

37. Areas identified in Schedule B are for information purposes only and for the purposes of the rules are not subject to the rules relating to SES.
38. The approach adopted in the Decision is to identify certain vegetation types that are potentially significant and include them in an appendix (Appendix 9.1.6.6) with corresponding indigenous vegetation rules. The Council is required to serve an indigenous vegetation notice (as defined in Rule 9.1.4.0.1) on the owner or occupier of land in order to trigger those rules.
39. Appendix 9.1.6.6 was primarily created to provide protection to Sites of Ecological Significance that are yet to be identified as SES by the Council.

Legal requirement for certainty of rules

40. The need for certainty in rules was expressly recognised by the Environment Court in *Morgan v Marlborough District Council* whereby the Court stated that rules are required to have a status and certainty which allows them to form a basis for prosecutions.³
41. In *New Plymouth District Council v Baker*⁴ the Planning Tribunal followed the High Court decision in *A R & M C McLeod Holdings Ltd v Countdown Properties Ltd*, which concluded that a rule would be void for uncertainty if a member of the public is unable to determine whether or not a use (in this case clearance of indigenous vegetation) may be carried on.

We have concluded that the words in rule 301-31(c) living "in association with" create such uncertainty that the rule is void. On the question of uncertainty, Mr Justice McGechan in A R & M C McLeod Holdings Ltd v Countdown Properties Ltd (1990) 14 NZTPA 362, 372-3 said as follows-

*"A degree of confusion may be setting in through indiscriminate use of the terms 'discretion' and 'value judgment' in two different situations. The authorities cited establish two distinct propositions. The first is that a council may not reserve, by express subjective formulation, the right to decide whether or not a use comes within the category of predominant use. The Council cannot, for example, put forward an Ordinance which says A will be a predominant use 'if the Council is satisfied situation B exists'. Predominant uses fall for objective ascertainment. That much certainty always is required. The second is that predominant **use rights must not be described, even in objective fashion, in terms so nebulous that the reader is unable to determine whether or not a use may be carried on in the zone.** This*

³ *Morgan v Marlborough District Council* EnvC Christchurch W62/2000, 4 October 2000.

⁴ W91/04 at page 6.

second aspect does not involve any express subjective formula. It involves, simply, invalidity through inherent vagueness.”

[our emphasis]

The agreed position on the alleged third error of law

42. The parties agree, for the purpose of these proceedings, that the indigenous vegetation notice rules are void for uncertainty as there are multiple circumstances where it is not possible to ascertain whether clearance of indigenous vegetation is permitted under the rules, particularly where there has been a change in occupation or ownership of a property.

43. Examples of these circumstances are set out below:

- (a) It is not clear from the rules what happens if the Council's indigenous vegetation notice does not include all the matters required by Rule 9.1.4.0.1, or the notice contains an error. Is the notice void and of no effect? Or is the owner or occupier still bound by the vegetation clearance rules in the Plan?
- (b) Where the notice does not identify all of the potentially significant vegetation in a location, it is not clear whether the rules relate to the vegetation listed in the notice, or the location identified in the notice.
- (c) Where the land to which the Council indigenous vegetation notice relates is sold or has a new occupier, it is not clear whether a Council indigenous vegetation notice is binding on the owner, the occupier, or the land. This uncertainty could arise in a number of situations:
 - (i) Where the owner is served with a notice but fails to provide this to an occupier (there is uncertainty as to whether the rules apply to the occupier).
 - (ii) Where an occupier is served with a notice but fails to provide this to an owner (there is uncertainty about whether the rules apply to the owner).
 - (iii) Where land is sold and the new owner is not provided with a copy of the notice (there is uncertainty as to whether or not the rules apply to the new owner).

44. Owners and occupiers of land should be able to determine on the face of the plan whether they can undertake an activity on their property or not. The indigenous vegetation notices, whilst intended to provide greater certainty for landowners and occupiers, will in practice give rise to greater uncertainty and confusion.
45. The parties agree that the notice provisions are therefore void for uncertainty. The parties consider it important to record that the uncertainty relates to a relatively confined but important part of the provisions, namely the inclusion of the requirement for notice to be served before particular rules apply. The parties respectfully submit that the uncertainty can be resolved by a series of confined amendments to the provisions.
46. The agreement reached recognises the merit in advising landowners of the presence of potentially significant ecological sites. However, the parties have agreed that the formal service of an indigenous vegetation notice is not necessary for the rules to apply, and that the provisions will be more certain and effective with the notice requirement removed. The parties also agree that the provisions as sought to be amended would give effect to the relevant requirements of the NZCPS and CRPS, which are discussed below in more detail in relation to alleged error 6.
47. The amendments remove the requirement for notice to be served before the rules apply. The policy direction that notice is required before rules apply is replaced with a policy direction that the Council will work with landowners and advise them if they consider there is a potentially significant site on their land.
48. The amendments are set out in **Appendix 1** to this memorandum and involve:
- (a) Amendment to Policy 9.1.2.6 by:
 - (i) replacing the requirement for service of council indigenous vegetation notice on landowners with the potentially significant vegetation types on their land, with a reference to working with and advising such land owners. This would still provide landowners with the opportunity to be aware of the potentially significant vegetation on their land, however it would be done in

a collaborative manner consistent with Council's earlier signals to those landowners;

(ii) replacing the requirement to keep the notice on the property file, with provision that the Council will keep its advice on the property file. This would ensure consistency with the previous change;

(iii) deleting the reference to notified properties in Policy 9.1.2.6(a)(iii). This would ensure that the provision applies to all sites in Appendix 9.1.6.6;

(b) removal of reference to landowner notification from Policy 9.1.2.9, 10 and 15, to ensure the policies apply to all sites in Appendix 9.1.6.6 regardless of landowner notification;

(c) deletion of the references to Council Indigenous Vegetation Notices from the rules;

(d) a minor amendment to improve readability by moving the words "and at the size and scale identified in Appendix 9.1.6.6" from Policy 9.1.2.6(a)(i) to Policy 9.1.2.6(a)(iii); and

(e) deletion of Rule 9.1.4.0.1, which describes what a Council indigenous vegetation notice is.

49. Despite these amendments to several provisions, it can be seen from the nature of the changes that the changes themselves are focused and confined. The removal of the indigenous vegetation notice provisions do not have any consequential impacts on the remainder of the Plan.

Sixth alleged error of law - Protection of significant indigenous vegetation

Introduction to issue and error of law

50. The sixth alleged error of law relates to the distinction between significant sites listed in Schedule A in Appendix 9.1.6.1 of the Plan and potentially significant sites containing vegetation types listed in Appendix 9.1.6.6.

51. Objective 9.1.2.1 of the Plan provides for the protection of areas of significant vegetation in Schedule A of Appendix 9.1.6.1.

52. However parties in their evidence and the Panel in its decision noted that there may be other potentially significant sites with the vegetation types listed in Appendix 9.1.6.6 that have not yet been included in Schedule A of the Plan.

53. The CRPS to which the Plan is required to give effect to under section 75(c) of the RMA, requires protection for *all* significant indigenous vegetation.

54. The sixth alleged error of law is that the Panel erred by failing to give effect to the CRPS, including Policy 9.3.1, when it:

(a) provided that the following provisions do not apply to significant ecological sites within the potentially significant vegetation types in Appendix 9.1.6.6:

i. Objective 9.1.2.1, which relates to the protection of significant sites; and

ii. Policy 9.1.2.16, which relates to the offsetting significant sites.

(b) did not include a matter of discretion in Rule 9.1.5.2 relating to the protection of significant sites within the potentially significant vegetation types in Appendix 9.1.6.6; and

(c) did not require, in Rule 9.1.5.3, that clearance in accordance with a Farm Biodiversity Management Plan protect significant sites within the potentially significant vegetation types in Appendix 9.1.6.6.

Agreed position of the parties

55. The parties agree, for the purposes of these proceedings, that the Panel has erred in law by failing to give effect to the CRPS when it determined that the following provisions of the Plan do not apply to significant ecological sites within the potentially significant vegetation types in Appendix 9.1.6.6:

(a) Objective 9.1.2.1, which relates to the protection of significant sites; and

(b) Policy 9.1.2.16, which relates to the offsetting significant sites.

56. Objective 9.1.2.1 of the Plan provides:

Objective – Protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna

Areas of significant indigenous vegetation and significant habitats of indigenous fauna listed in Schedule A of Appendix 9.1.6.1 are protected so as to ensure there is no net loss of indigenous biodiversity.

57. However, there are a large number of significant sites that do not fall within the scope of Objective 9.1.2.1. These are the significant sites within the potentially significant vegetation types in Appendix 9.1.6.6, which are covered by Objective 9.1.2.2 which provides for the maintenance of indigenous biodiversity.

58. Policy 9.3.1(3) of the CRPS provides that areas identified as significant will be protected to ensure no net loss of indigenous biodiversity or indigenous biodiversity values as a result of land use activities. Areas or habitats are considered to be significant if they meet one or more of the criteria in Appendix 3 of the CRPS (Policy 9.3.1(2)).

59. The Plan recognises, and acknowledged in its Decision⁵, that not all areas or habitats that meet the criteria in Appendix 3 of the CRPS are listed in Schedule A of Appendix 9.1.6.1. There are other potentially significant sites containing the vegetation listed in Appendix 9.1.6.6 that may also meet the criteria in Appendix 3 of the CRPS.

60. On that basis, the Panel erred by determining that only those sites listed in Schedule A of Appendix 9.1.6.1 be protected so as to ensure there is no net loss of indigenous biodiversity.

61. The parties agree to the following amendment Objective 9.1.2.1 to resolve this error of law:

Areas of significant indigenous vegetation and significant habitats of indigenous fauna listed in Schedule A of Appendix 9.1.6.1 are protected so as to ensure that there is no net loss of indigenous biodiversity.

62. This amendment also necessitates a consequential amendment to Policy 9.1.2.16 which relates to offsetting significant sites and Policy 9.1.2.9 as set out in Appendix 1.

63. The parties agree that these changes would give effect to the CRPS and NZCPS.

64. Further amendments are required to Matters of Discretion 9.1.5.2a(iv) and 9.1.5.3(b) to reflect the above changes. These are shown in Appendix 1. There are no flow on consequences from these amendments.

Orders sought and grounds

65. Rule 20.19 of the High Court Rules set out the Court's jurisdiction to determine this appeal and provides:

20.19 Powers of court on appeal

(1) After hearing an appeal, the court may do any 1 or more of the following:

(a) make any decision it thinks should have been made:

(b) direct the decision-maker—

(i) to rehear the proceedings concerned; or

(ii) to consider or determine (whether for the first time or again) any matters the court directs; or

(iii) to enter judgment for any party to the proceedings the court directs:

(c) make any order the court thinks just, including any order as to costs.

66. The parties respectfully request that the Court approve the proposed amendments to the Plan as set out in **Appendix 1** under its power to substitute its decision for that of the Panel, rather than remit the matter back to the Panel.

67. Counsel submit that the Court's approval of the amendments is appropriate in the present circumstances for following reasons:

(a) The amendments sought are within the scope of the appeal.

(b) The proposal to settle the appeal by making the amendments proposed represents a just, speedy and inexpensive way to determine this proceeding. In that regard, one of the fundamental purposes of the Order was to provide an expedited process for replacing the district plan

in order to provide a replacement district plan that supports recovery and rebuilding.⁶

(c) Agreement has been reached on the resolution by all parties joined to the proceedings, representing a cross-section of the community. Persons who might have an interest in the appeal have had an opportunity to participate in the substantive first instance hearing process, and through service of the notice of appeal.

(d) The proposed amendments are consistent with the purpose and principles of the RMA, including in particular Part 2, particularly section 6(c), and give effect to the NZCPS and the CRPS under section 75 of the RMA. The amendments are also consistent with the position reached in mediation reports dated 19 February 2016 and 16 March 2016. In particular:

(i) there was no disagreement that Objective 9.1.1⁷ should apply to all significant ecological sites, whether they were on the schedule or not sites; and

(ii) at no stage prior to the secretariat draft being circulated on 2 September 2016, did Sub-chapter 9.1 contain any provisions resembling the indigenous vegetation notice provisions.

(e) Given the narrow scope of the relief jointly requested, it is not necessary for the matter to be remitted back to the Panel for determination.

68. Counsel are aware of comments made by Justice Whata in *Meridian Energy Limited v Canterbury Regional Council*⁸:

[11] I should note for completeness that there should not be an expectation that in every case consent orders are suitable for approval via appeals to this Court. This is a public law process and there must be due consideration given to the wider public interest in the promulgation of planning instruments. I am, however, satisfied that in this case that interest has been served by the consensus achieved there should not be

6 Review and Recommendation of the Canterbury Earthquake Recovery Review Panel appointed under s72(1) of the Canterbury Earthquake Recovery Act 2011, 2 July 2014.

7 The version that the Council filed on 24 March identified areas of agreement and disagreement and no disagreement was recorded against Objective 9.1.1, which provided for protection of all significant sites, whether they were on the schedule or not.

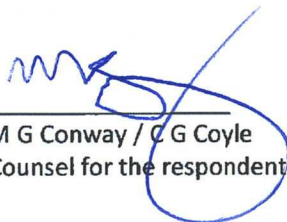
8 *Meridian Energy Limited v Canterbury Regional Council* HC Christchurch CIV-2010- 409-002604, 23 May 2011.

an expectation that amendments in every consent orders are suitable for approval by the High Court.


69. Counsel acknowledges that these comments are relevant as this is also a planning appeal. Counsel submit that, given the breadth of participation in the submission process and appeal, including participation by both Forest & Bird and Federated Farmers in the appeal, the wider public interest is best served by the consensus achieved.
70. For all these reasons, the parties respectfully request that the Court makes the orders that the plan be amended as set out in **Appendix 1** of this Joint Memorandum (and outlined above) to determine errors 3 and 6 in Forest & Bird's appeal by consent.
71. The remaining appeal point (the seventh alleged error of law), is unresolved. However, the parties continue to discuss its potential resolution. As noted earlier, the parties have agreed that the fifth alleged error of law would only be argued in the event that the Court was not inclined to make the amendments to the plan outlined above in relation to the third error and the indigenous vegetation notice provisions.
72. The parties respectfully invite the Court to advise the parties at the Court's earliest convenience if there are any aspects of this memorandum about which the Court would like further information or assistance. Counsel are willing to participate in a judicial telephone conference or to respond to any directions the Court may wish to make in that regard.



P Anderson / S Gepp
Counsel for the appellant



M G Conway / C G Coyle
Counsel for the respondent



M A Mehlhopt
Counsel for the Canterbury Regional Council



R Gardner
Counsel for Federated Farmers of New Zealand



J Appleyard
Lyttelton Port Company

APPENDIX 1

Key:

Text additions underlined and deletions are ~~struck through~~.
Green underlined text notates defined terms

Chapter 9 Natural and Cultural Heritage

9.1 Indigenous Biodiversity and Ecosystems

9.1.1 Introduction

This introduction is to assist the lay reader to understand how this sub-chapter works and what it applies to. It is not an aid to interpretation in a legal sense.

This sub-chapter establishes the framework for the identification, assessment, management and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna within the Christchurch District, along with the maintenance of indigenous biodiversity and ecosystems generally.

The involvement of landowners and their stewardship of the natural environment is essential to the maintenance of indigenous biodiversity and the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. The role of landowners, particularly those on private land, is recognised throughout this sub-chapter which emphasises a collaborative approach between the Council and landowners.

A vital starting point for maintaining and protecting indigenous biodiversity is to improve our understanding of what ecological values exist in the Christchurch District, where and how significant they are in terms of the criteria specified in the Canterbury Regional Policy Statement. This involves an assessment of secondary information and undertaking ecological surveys on site.

There are different levels of existing indigenous biodiversity, risks, threats and landowner commitment to conservation within the Christchurch District. This is reflected in this sub-chapter. In the Low Plains Ecological District, there is less than 1% of original indigenous vegetation remaining and almost all known remaining areas within the District have been listed as Sites of Ecological Significance in Schedule A of Appendix 9.1.6.1. It is important that these Sites of Ecological Significance are managed and protected. There are also many freshwater areas within the Low Plains Ecological District with significant ecological values based around their in-stream/aquatic values and wetland areas, which will mainly be managed through the water body setback provisions in Chapter 6.

On Banks Peninsula and the Port Hills there are more extensive areas of indigenous vegetation and habitats of indigenous fauna in the form of remnant or second growth vegetation, which are often an integral part of rural properties. Rural landowners on Banks Peninsula have demonstrated that, with appropriate land management practices, indigenous vegetation can be protected and increased to halt the decline in the quality and quantity of indigenous biodiversity. Banks Peninsula landowners are committed to active management of indigenous biodiversity through voluntary mechanisms such as covenants.

The provisions for [Banks Peninsula](#) and the Port Hills recognise this commitment from landowners and the need to ensure reasonable use of land and flexibility to meet changing needs. This is achieved by recognising existing [farming](#) activities, collaborating with landowners and providing an option to develop a Farm Biodiversity Plan to manage [indigenous biodiversity](#) values, including [farming](#) activities involving clearance.

The effects of activities and development on areas or habitats listed as Sites of Ecological Significance in Schedule A of Appendix 9.1.6.1, and other areas containing potentially significant vegetation and habitat listed in Appendix 9.1.6.6, will be controlled through provisions managing the clearance of [indigenous vegetation](#). Chapter 6 manages activities within [water body setbacks](#) while Chapter 8 manages [subdivision](#) and [earthworks](#) where a Site of Ecological Significance is involved. Chapter 8 and Chapter 17 encourage protection of areas of [indigenous biodiversity](#) through provisions for [subdivision](#) and development.

The provisions in this chapter give effect to the Chapter 3 Strategic Directions Objectives.

9.1.2 Objectives and policies

9.1.2.1 Objective – Protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna

- a. Areas of [significant indigenous vegetation](#) and significant habitats of [indigenous fauna](#) ~~listed in Schedule A of Appendix 9.1.6.1~~ are protected so as to ensure there is [no net loss](#) of [indigenous biodiversity](#).

9.1.2.2 Objective – Maintenance and enhancement of indigenous biodiversity

- a. The [Christchurch District](#)'s [indigenous biodiversity](#) is maintained and enhanced.

9.1.2.3 Policy – Identification and assessment of sites

- a. Recognise that the Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1 do not represent a comprehensive list of sites that are of significance for [indigenous biodiversity](#) within the [Christchurch District](#); and undertake further work with landowners, Ngāi Tahu, Department of Conservation, Canterbury Regional Council, conservation groups and other stakeholders to identify and assess additional areas of [indigenous vegetation](#) or habitats of [indigenous fauna](#) that may be of significance.
- b. Prioritise the assessment of the sites listed in Schedule B of Appendix 9.1.6.1 for potential listing in Schedule A of Appendix 9.1.6.1. Other sites of [indigenous vegetation](#) and habitats of [indigenous fauna](#) will be assessed over time to identify their potential for significance, taking into account the following factors:
 - i. ecological values, determined by the results of literature searches and / or expert advice;
 - ii. the level of existing legal protection;

- iii. threats to ecological values;
- iv. whether the site has been identified as a Recommended Area for Protection in the surveys undertaken by Hugh Wilson (1992) for the Department of Conservation Protected Natural Areas Programme;
- v. the national priorities for protection in Policy 9.3.2 of the Canterbury Regional Policy Statement; and
- vi. requests for assessments by landowners.

9.1.2.4 Policy – Determination of significance

Subject to appeal

- a. Properly informed by the assessment and identification of sites of [indigenous vegetation](#) and habitats of [indigenous fauna](#) in accordance with Policy 9.1.2.3 and an understanding of the relationship between the protection of areas and land use practices, the [Council](#) will determine whether those sites are significant, in accordance with the criteria in Canterbury Regional Policy Statement Policy 9.3 1 and Appendix 3, and warrant protection by listing in Schedule A of Appendix 9.1.6.1.

9.1.2.5 Policy – Mechanisms for the protection of indigenous biodiversity

- a. Recognise that the maintenance and protection of [indigenous biodiversity](#), including the Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1, is dependent on landowner support and will be achieved through a number of mechanisms, including:
 - i. the listing of sites of [significant indigenous vegetation](#) and significant habitats of [indigenous fauna](#) in Schedule A of Appendix 9.1.6.1;
 - ii. the use of rules regulating the clearance of [indigenous vegetation](#) and the disturbance of indigenous habitats;
 - iii. legal protection by way of covenants; and
 - iv. landowner commitment to conservation and stewardship of the natural environment, including through the use of Farm Biodiversity Plans;

and that the most appropriate mechanism may vary depending on the [indigenous biodiversity](#) and use of the particular [site](#).

9.1.2.6 Policy – Mechanisms for the management and protection of other indigenous vegetation and habitats

- a. Recognise that the [indigenous vegetation](#) and habitat types on [Banks Peninsula](#) and the Port Hills listed in Appendix 9.1.6.6 may be of ecological significance in the [Christchurch District](#) by providing for their management and protection through:
 - i. the [Council](#) ~~giving written notice to those working with and advising~~ landowners where they consider that a property may contain the [indigenous vegetation](#) and habitat types listed in Appendix 9.1.6.6, ~~and at the size and scale identified in Appendix 9.1.6.6;~~

- ii. the Council filing its written ~~notice~~ advice on the property file held for the relevant property; and
- iii. the use of rules to manage any potential adverse effects of the clearance or disturbance of the identified indigenous vegetation and habitat types listed in Appendix 9.1.6.6, and at the size and scale identified in Appendix 9.1.6.6 ~~for the notified properties.~~

9.1.2.7 Policy – Plan change

- a. The Council will initiate a plan change within six years of this Plan becoming operative to:
 - i. include any other sites of indigenous vegetation and habitats of indigenous fauna assessed as being significant and warranting protection, by amending and updating Schedule A of Appendix 9.1.6.1;
 - ii. remove those sites listed in Schedule B of Appendix 9.1.6.1 that have been assessed for significance; and
 - iii. remove Appendix 9.1.6.6 and associated rules.

9.1.2.8 Policy – Protection and management of significant indigenous vegetation and habitats of indigenous fauna listed in Schedule A of Appendix 9.1.6.1

- a. Recognise and protect the indigenous vegetation and habitats of indigenous fauna within each site listed in the Sites of Ecological Significance in Schedule A of Appendix 9.1.6.1 so as to ensure no net loss of indigenous biodiversity by:
 - i. avoiding the adverse effects of vegetation clearance and the disturbance of habitats as far as practicable; then
 - ii. remedying any adverse effects that cannot be avoided; then
 - iii. mitigating any adverse effects that cannot be remedied; and
 - iv. where there are any significant residual adverse effects on the significant indigenous vegetation and significant habitats of indigenous fauna within the site, offsetting them in accordance with Policy 9.1.2.16.

9.1.2.9 Policy – Protection and management of other indigenous vegetation and habitats

- a. On Banks Peninsula and the Port Hills, outside Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1, manage the clearance of indigenous vegetation and habitat types listed in Appendix 9.1.6.6 ~~and notified to landowners~~, by ensuring:
 - i. resource consent applications to clear indigenous vegetation or disturb habitat include an assessment of the indigenous biodiversity of the listed indigenous vegetation and habitat types on the site, in order to inform the assessment of the potential effects of the activity; ~~and~~

- ii. **that where the assessment undertaken in i. above concludes that an area of indigenous vegetation or habitat of indigenous fauna is significant, the effects of any clearance shall be considered in relation to the matters set out in Policy 9.1.2.8 i. – iv. to ensure there is no net loss of indigenous biodiversity; and**
- iii. adverse effects on [indigenous biodiversity](#) values and Ngāi Tahu values are managed to ensure [indigenous biodiversity](#) in the [Christchurch District](#) is maintained and enhanced.
- b. Avoid the clearance of mature and regenerating podocarp/hardwood and beech forest in the District.

9.1.2.10 Policy - Protection of indigenous vegetation and habitats of indigenous fauna in the coastal environment

- a. Where Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1 or [indigenous vegetation](#) and habitat types listed in Appendix 9.1.6.6 ~~and notified to landowners~~ are located within the coastal environment, the protection of their [indigenous biodiversity](#) will be achieved by:
 - i. avoiding adverse effects on:
 - A. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
 - B. taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
 - C. indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
 - D. habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
 - E. areas containing nationally significant examples of indigenous community types; and
 - F. areas set aside for full or partial protection of [indigenous biodiversity](#) under other legislation; and
 - ii. avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects on:
 - A. areas of predominantly [indigenous vegetation](#) in the coastal environment;
 - B. habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
 - C. indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal [wetlands](#), dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
 - D. habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;
 - E. habitats, including areas and routes, important to migratory species; and

- F. ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

9.1.2.11 Policy – Land management

- a. Provide for small-scale, low impact [indigenous vegetation clearance](#) where it will enable the continued use of land and the maintenance of existing infrastructure.
- b. Recognise that the locational, operational and technical requirements of new, or upgrades to, [utilities](#) or [network infrastructure](#) operated by [network utility operators](#) may necessitate the removal of [indigenous vegetation](#) and habitats of [indigenous fauna](#), including within Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1.

9.1.2.12 Policy – Maintenance and enhancement of indigenous biodiversity

- a. Enable activities that maintain and enhance [indigenous biodiversity](#) including:
 - i. planting with appropriate indigenous species; and
 - ii. the removal or management of pest plant and animal species and for biosecurity works

9.1.2.13 Policy - Farm biodiversity plans

- a. Establish a collaborative approach with rural landowners/land managers through the development of Farm Biodiversity Plans that:
 - i. recognises and encourages the integrated management, maintenance and protection of [indigenous biodiversity](#), including Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1, while also providing for the maintenance of [rural productive activities](#);
 - ii. recognises that there may need to be some clearance of [indigenous vegetation](#) as part of maintaining [rural productive activities](#); and
 - iii. achieves maintenance, and over time, the enhancement of [indigenous biodiversity](#).
- b. Farm Biodiversity Plans submitted as part of resource consent applications shall:
 - i. identify areas of [indigenous biodiversity](#) to be maintained, protected and, where appropriate, enhanced;
 - ii. adopt methods to minimise the clearance of previously uncleared areas and Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1;
 - iii. identify the measures that will be used to maintain, protect and, where appropriate, enhance [indigenous biodiversity](#);
 - iv. identify appropriate targets to measure progress in the maintenance, protection and, where appropriate, enhancement of [indigenous biodiversity](#); and
 - v. be flexible to adapt to changing needs of land use and [indigenous biodiversity](#) management.
- c. Promote the development of Farm Biodiversity Plans to landowners:

- i. at the time of identification and assessment of potentially ecologically significant values;
- ii. as good practice for maintaining and protecting indigenous biodiversity;
- iii. at a whole of property or catchment level, where appropriate; and
- iv. where resource consent is required for farming involving clearance activities.

9.1.2.14 Policy - Cultural heritage and customary rights

- a. Ngāi Tahu Manawhenua cultural heritage values associated with indigenous biodiversity will be maintained and enhanced through:
 - i. providing for the customary harvesting of taonga species by Ngāi Tahu, while ensuring such harvest will maintain the indigenous biodiversity of the site;
 - ii. non-regulatory incentives and assistance; and
 - iii. providing for the planting of indigenous vegetation for the purpose of customary harvesting.

9.1.2.15 Policy - Incentives and assistance to maintain and enhance indigenous biodiversity

- a. Work with nga rūnanga, landowners / land managers and the community to take an active role in maintaining and enhancing indigenous biodiversity by:
 - i. supporting and promoting the use of covenants, reserves, management plans and community initiatives;
 - ii. providing a landowner support package with incentives, advice and guidance for managing Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1 and any property ~~where owners have been notified that their property~~ may contain indigenous vegetation and habitat types listed in Appendix 9.1.6.6;
 - iii. providing a range of other incentives to assist landowners / land managers in the protection, retention, regeneration and restoration of indigenous biodiversity and ecosystem functions;
 - iv. promoting the use of indigenous species in planting and landscaping;
 - v. encouraging the planting of indigenous vegetation for the purpose of customary harvesting and enhancing habitats of indigenous biodiversity;
 - vi. recognising and encouraging landowners / land managers committed to protection and management of indigenous biodiversity; and
 - vii. continuing to work with the Banks Peninsula Ecological Steering Group or its successor.

9.1.2.16 Policy - Offsetting

- a. Allow for a biodiversity offset to be offered by a resource consent applicant where an activity will result in residual adverse effects on a Site of Ecological Significance listed in Schedule A

of Appendix 9.1.6.1, or on indigenous biodiversity outside such Sites of Ecological Significance.

- b. ~~Within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1, A~~ biodiversity offset will only be considered appropriate where adverse effects on the significant indigenous vegetation and significant habitats of indigenous fauna within the site have been avoided, remedied or mitigated in accordance with the hierarchy established in Policy 9.1.2.8; and
 - i. the biodiversity offset is consistent with the framework detailed in Appendix 9.1.6.5; and
 - ii. the biodiversity offset can achieve no net loss of indigenous biodiversity:
 - A. preferably in the affected area of significant indigenous vegetation or significant habitat of indigenous fauna ~~Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1~~; or
 - B. where that is not practicable, in the ecological district in which the affected area of significant indigenous vegetation or significant habitat of indigenous fauna ~~Site of Ecological Significance in Schedule A of Appendix 9.1.6.1~~ is located.

9.1.2.17 Policy – Monitoring

- a. The Council will undertake regular monitoring of the indigenous biodiversity in the ecological districts identified in Appendix 9.1.6.4 (within the Christchurch District) in order to measure whether no net loss of indigenous biodiversity is being achieved.

9.1.3 How to interpret and apply the rules

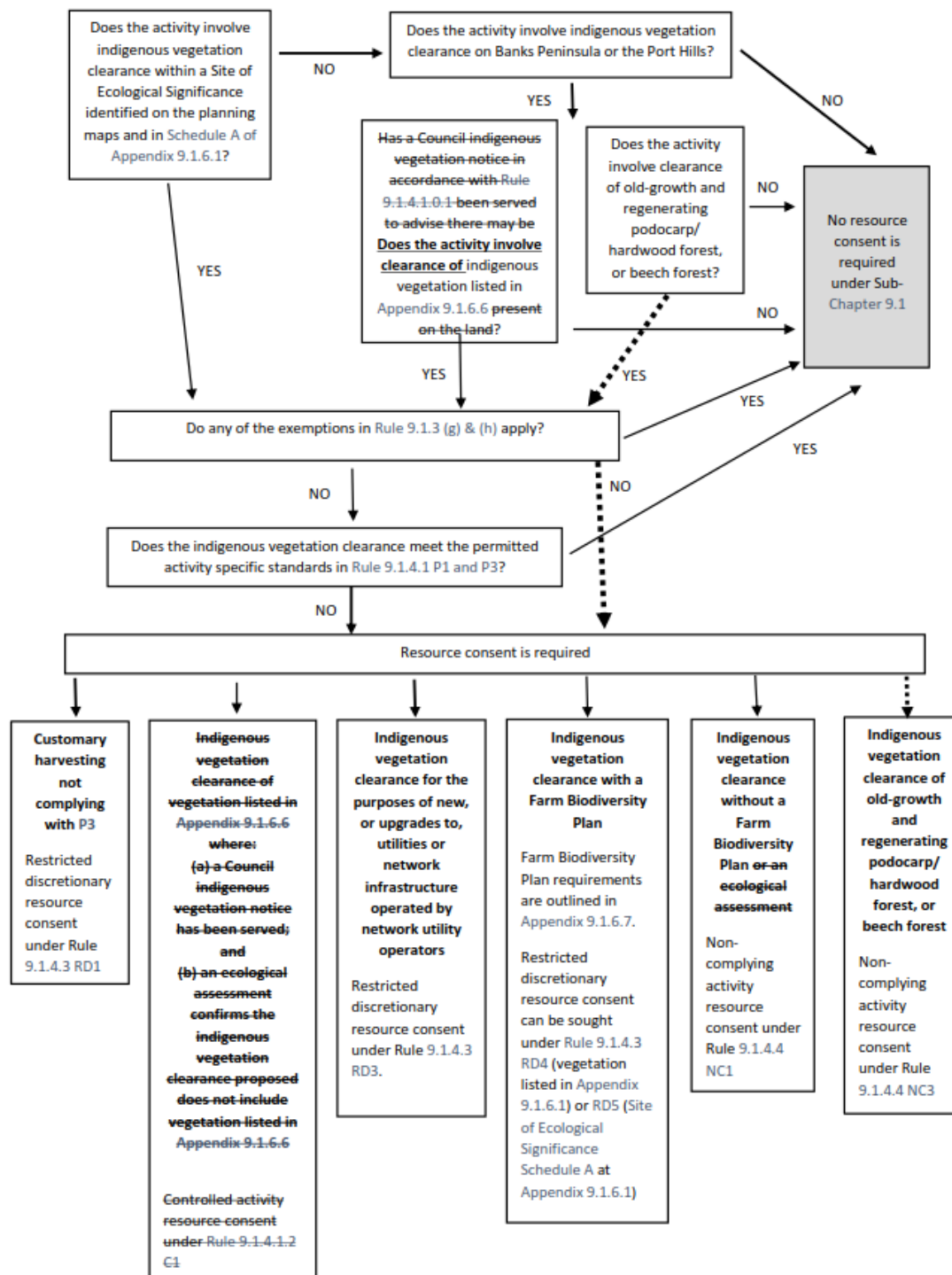
- a. Sites of Ecological Significance are identified on the planning maps, listed in Schedule A of Appendix 9.1.6.1, and shown on the reference maps in Appendix 9.1.6.2 and 9.1.6.3. The rules that apply to Sites of Ecological Significance are contained in the Activity Status Tables (including Activity Specific Standards) in Rule 9.1.4.
- b. The rules contained in the activity status tables (including the activity specific standards) in Rule 9.1.4 also apply to the clearance of the indigenous vegetation and habitat types listed in Appendix 9.1.6.6 ~~where the Council has served notice to the landowner.~~
- c. Where the rules refer to ecological districts, reference should be made to Appendix 9.1.6.4. In the case of the Low Plains Ecological District, which extends beyond the Christchurch District, the rules apply only to the part of the ecological district that is located within the Christchurch District.
- d. Activities covered by the rules in Sub-chapter 9.1 are also subject to the rules in the relevant zone chapters.
- e. The activity status tables and standards in the following chapters also apply to activities involving indigenous vegetation clearance in the Christchurch District:

5 Natural Hazards;

6 General Rules and Procedures;

- 7 Transport;
 - 8 Subdivision, Development and Earthworks;
 - 9 The other sub-chapters of Natural and Cultural Heritage;
 - 11 Utilities and Energy; and
 - 12 Hazardous Substances and Contaminated Land.
- f. The rules in Sub-chapter 9.1 do not apply to the Specific Purpose (Lyttelton Port) Zone.
- g. The rules in Sub-chapter 9.1 apply to [utilities](#), except that:
- i. Rule 9.1.4.3 RD3 does not apply to [indigenous vegetation clearance](#) for the purposes of minor upgrades to [utilities](#) provided for by Rule 11.4.1 P9 - P15.
 - ii. Rule 9.1.3 h. includes some exemptions for [indigenous vegetation clearance](#) for:
 - A. maintenance of existing access tracks for [utilities](#);
 - B. protection of, and access to, existing electricity infrastructure; and
 - C. the replacement, repair, maintenance and minor upgrading of existing [utilities](#).
- h. The following activities are exempt from the Rule 9.1.4 for the purpose of [indigenous vegetation clearance](#):
- i. maintenance activities within 2 metres either side of an existing access track for a [utility](#) or [network infrastructure](#) operated by a [network utility operator](#);
 - ii. [park management activities](#) in any Open Space Zone;
 - iii. flood protection or drainage works undertaken or authorised by the [Council](#) or the Canterbury Regional Council, in accordance with the appropriate Flood and Drainage bylaw;
 - iv. maintenance of existing [roads](#) within existing [road](#) corridors;
 - v. removal for the purposes of the protection of, and access to, existing electricity infrastructure; and
 - vi. associated with replacement, repair, maintenance and minor upgrading of an existing [utility](#) in accordance with Rule 11.4.1 P3 and P9 - P15.

- i. The following diagram shows when a resource consent is required for indigenous vegetation clearance under Rule 9.1.4.



9.1.4 Rules - Activity status tables

9.1.4.0 General Rule

9.1.4.0.1 Council indigenous vegetation notice

- a. In Rule 9.1.4, 'Council indigenous vegetation notice' means a notice signed on behalf of the Council and dated and served in accordance with the Resource Management Act 1991 on an owner or occupier of land, and which includes the following information:
- a statement that the Council knows or has information to indicate that there may be indigenous vegetation listed in Appendix 9.1.6.6 present on the land;
 - a copy of the information that the Council holds and relies on for that understanding;
 - a narrative description of the indigenous vegetation that the Council knows or understands may be present on the land;
 - a map that gives an approximate location of where it is on the land;
 - a statement that the Plan contains restrictions on the felling or clearing of indigenous vegetation by cutting, crushing, cultivation, irrigation, chemical application, artificial drainage, stop banking or burning and that those restrictions may mean the owner or occupier requires resource consent to be able to lawfully undertake any such activity;
 - a contact person and contact number for any enquiry the owner or occupier may wish to make concerning the notice.

9.1.4.1 Permitted activities

The activities listed below are permitted activities if they meet the activity specific standards set out in this table.

Activities may also be controlled, restricted discretionary or non-complying as specified in Rules 9.1.4.2, 9.1.4.3 and 9.1.4.4 below.

Exemptions relating to this rule can be found in Rule 9.1.3 (h).

	Activity	Activity specific standards
P1	<p><u>Indigenous vegetation clearance:</u></p> <ol style="list-style-type: none"> within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; or of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served. 	<ol style="list-style-type: none"> Any <u>indigenous vegetation clearance</u> shall be limited to clearance for one or more of the following: <ol style="list-style-type: none"> the operation, maintenance and repair, within 2 metres either side, of fences, access tracks, <u>buildings</u>, fire ponds, gates, stock yards, troughs and water tanks; clearance necessary for the removal of pest plants and pest animals in accordance with

	Activity	Activity specific standards
		<p>any regional pest management plan or the Biosecurity Act 1993;</p> <p>iii. for the purpose of maintaining <u>improved pasture</u>;</p> <p>iv. <u>conservation activities</u>;</p> <p>v. to implement a conservation covenant established under the Conservation Act 1987 or any other Act specified in the First Schedule of the Conservation Act 1987;</p> <p>vi. clearance of any understory of <u>indigenous vegetation</u> as a result of harvesting an <u>existing forestry</u> area or maintenance of forestry access or firebreaks.</p>
P2	<p>Planting and seed gathering:</p> <p>a. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; or</p> <p>b. within <u>indigenous vegetation</u> listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served.</p>	<p>a. Planting shall utilise indigenous species that are naturally occurring and sourced from within the relevant ecological district within which the planting is to take place.</p> <p>Note: Ecological districts are identified in Appendix 9.1.6.4.</p> <p>Note: Vegetation to be planted in the vicinity of any electricity infrastructure should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003.</p>
P3	<p><u>Customary harvesting</u> of:</p> <p>a. any species grown specifically for that purpose; or</p> <p>b. any other taonga species with the written permission of the relevant rununga:</p> <p>that is:</p> <p>i. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; or</p> <p>ii. <u>indigenous vegetation</u> listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served.</p> <p>Note: This rule does not override the requirements to obtain permission of the landowner or administrator for any <u>customary harvesting</u> of taonga species.</p>	<p>a. Any felling of trees shall be limited to <u>Māori land</u> in a Pāpakianga/Kāinga Nohoanga Zone and only where the felling of the tree is <u>ancillary</u> to a permitted activity or has been provided for by resource consent granted under any rule of that zone.</p>
P4	<p>Any <u>indigenous vegetation clearance</u>:</p> <p>a. outside a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1;</p>	Nil

	Activity	Activity specific standards
	<p>and</p> <p>b. that:</p> <p>i. is not vegetation listed in Appendix 9.1.6.6; or</p> <p>ii. is vegetation listed in Appendix 9.1.6.6 but a Council indigenous vegetation notice has not been served.</p>	

9.1.4.2 Controlled activities

The activities listed below ~~There~~ are **no** controlled activities.

~~Exemptions relating to this rule can be found in Rule 9.1.3 (h).~~

Activity	The Council's control will be limited to the following matters:
<p>C1 Indigenous vegetation clearance, not provided for by Rule 9.1.4.1 P1 or P3, of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served, where:</p> <p>a. an ecological assessment by an appropriately qualified ecologist is provided that confirms the indigenous vegetation clearance proposed to be undertaken does not include any of the vegetation listed in Appendix 9.1.6.6.</p> <p>Any resource consent application shall not be limited or publicly notified.</p>	<p>a. That the activity is undertaken in accordance with the proposal as assessed by the qualified ecologist.</p>

9.1.4.3 Restricted discretionary activities

The activities listed below are restricted discretionary activities.

Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in the following table.

Exemptions relating to this rule can be found in Rule 9.1.3 (h).

Activity	The Council's discretion shall be limited to the following matters:
<p>RD1 Any customary harvesting listed in Rule 9.1.4.1 P3 that does not meet any one or more of the activity specific standards in Rule 9.1.4.1 P3.</p> <p>Any resource consent application shall not be limited or publicly notified.</p>	<p>a. Planting and customary harvesting – Rule 9.1.5.1</p>
<p>RD2 Any planting and seed gathering activity listed in Rule 9.1.4.1 P2 that does not meet any one or more of the activity specific standards in Rule 9.1.4.1 P2.</p> <p>Any resource consent application shall not be limited or publicly</p>	<p>a. Planting and customary harvesting – Rule 9.1.5.1</p>

Activity		The Council's discretion shall be limited to the following matters:
	notified.	
RD3	<p>Indigenous vegetation clearance, not provided for by Rule 9.1.4.1 P1, for the purposes of new, or upgrades (except minor upgrades under Rule 11.4.1 P9 - P15) to, utilities or network infrastructure operated by network utility operators, including associated access tracks:</p> <ul style="list-style-type: none"> a. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; or b. of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served; or c. consisting of the vegetation described in Rule 9.1.4.4 NC3. <p>Note: This rule does not apply to customary harvesting.</p>	<ul style="list-style-type: none"> a. Indigenous biodiversity and ecosystems – Rule 9.1.5.2
RD4	<p>Indigenous vegetation clearance of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served, that:</p> <ul style="list-style-type: none"> a. is not provided for by Rule 9.1.4.1 P1 or Rule 9.1.4.2 C1; and b. is undertaken in accordance with a Farm Biodiversity Plan which has been prepared in accordance with the requirements of Appendix 9.1.6.7. <p>Any application arising from this rule shall not be publicly notified and shall be limited notified only to the Department of Conservation (absent its written approval).</p> <p>Note: The rule does not apply to customary harvesting.</p>	<ul style="list-style-type: none"> a. Farm Biodiversity Plans – Rule 9.1.5.3
RD5	<p>Indigenous vegetation clearance within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1 that:</p> <ul style="list-style-type: none"> a. is not provided for by Rule 9.1.4.1 P1 or Rule 9.1.4.2 C1; and b. is undertaken in accordance with a Farm Biodiversity Plan which has been prepared in accordance with the requirements of Appendix 9.1.6.7. <p>Any application arising from this rule shall not be publicly notified and shall be limited notified only to the Department of Conservation (absent its written approval).</p> <p>Note: This rule does not apply to customary harvesting.</p>	<ul style="list-style-type: none"> a. Indigenous biodiversity and ecosystems – Rule 9.1.5.2 b. Farm Biodiversity Plans – Rule 9.1.5.3

9.1.4.4 Non-complying activities

The activities listed below are non-complying activities.

Exemptions relating to this rule can be found in Rule 9.1.3 (h).

Activity	
NC1	<p>Indigenous vegetation clearance, that is not provided for by Rule 9.1.4.1 P1, Rule 9.1.4.2 C1 or Rule 9.1.4.3 RD3 - RD5:</p> <ul style="list-style-type: none"> a. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1 or b. of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous notice has been served;

Activity	
	Note: This rule does not apply to customary harvesting .
NC2	Plantation forestry in a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1.
NC3	<p>On Banks Peninsula and the Port Hills, indigenous vegetation clearance involving the clearance of:</p> <ol style="list-style-type: none"> Any old-growth podocarp/hardwood forest which contains kahikatea (<i>Dacrycarpus dacrydioides</i>), totara (<i>Podocarpus totara</i>), <i>Podocarpus laetus</i> matai (<i>Prumnopitys taxifolia</i>), miro (<i>Prumnopitys ferruginea</i>), or kaikawaka (<i>Libocedrus bidwillii</i>) trees, or beech forest which contains <i>Fuscospora</i> spp trees; or any mature individual trees of these species; or A contiguous area of 0.5ha or more of regenerating podocarp/hardwood forest or beech forest or mixed hardwood forest dominated by native trees such as mahoe (<i>Melicytus ramiflorus</i>), fivefinger (<i>Pseudopanax arboreus</i>), lemonwood (<i>Pittosporum eugenoides</i>), tree fuchsia (<i>Fuchsia excorticata</i>), narrow-leaved lacebark (<i>Hoheria angustifolia</i>), ribbonwood (<i>Plagianthus regius</i>), kaikomako (<i>Pennantia corymbosa</i>), kowhai (<i>Sophora microphylla</i>), pigeonwood (<i>Hedycarya arborea</i>), or ngaio (<i>Myoporum laetum</i>). <p>Note: This rule does not apply to customary harvesting or to indigenous vegetation clearance provided for by Rule 9.1.4.3 RD3.</p>

9.1.5 Rules - Matters of discretion

When considering applications for restricted discretionary activities, the [Council](#)'s discretion to grant or decline consent, or impose conditions, is restricted to the matters over which discretion is restricted in the relevant rule and as described below.

9.1.5.1 Planting and customary harvesting

- The extent to which the selected or proposed species are locally appropriate / endemic; and
- The extent to which [customary harvesting](#) is sustainable for the habitat and will not result in any long term ecological impacts, including on significance values.

9.1.5.2 Indigenous biodiversity and ecosystems

- The extent to which the nature, scale, intensity and location of the proposed activity will adversely affect [indigenous biodiversity](#) and ecosystems taking into account:
 - any loss of, or effects on, [indigenous vegetation](#) or habitats of [indigenous fauna](#), including [wetlands](#), ecological corridors and linkages;
 - indigenous ecosystem integrity and function;
 - Ngāi Tahu values associated with [indigenous biodiversity](#);
 - where relevant, any effects on [areas of significant indigenous vegetation](#) and/or significant habitats of [indigenous fauna](#) in Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; and
 - where relevant, any effects on [indigenous vegetation](#) and habitats of [indigenous fauna](#) in the coastal environment.

- b. The extent to which **areas of significant indigenous vegetation** and/or significant habitats of **indigenous fauna** ~~in Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1~~ will be protected to ensure **no net loss** of **indigenous biodiversity**;
- c. The extent to which adverse effects on **indigenous biodiversity** and Ngāi Tahu values will be managed to ensure **indigenous biodiversity** in the **Christchurch District** is maintained and enhanced;
- d. Any social, economic, environmental and cultural benefits resulting from the proposed activity including the extent to which the activity may protect, maintain or enhance any ecosystems or **indigenous biodiversity**, including through the use of **biodiversity offsets**, covenants and/or restoration and enhancement;
- e. The risk of the increase in weed and pest species, and proposed management of pests; and
- f. Any locational, technical or operational requirements of the proposed activity and the practicality of avoiding **indigenous vegetation**, including the viability of alternatives.

9.1.5.3 Farm Biodiversity Plans

- a. The extent to which the nature, scale, intensity and location of the proposed activity/activities will adversely affect **indigenous biodiversity**, and the planned actions in the Farm Biodiversity Plan to avoid, remedy or mitigate these effects;
- b. The extent to which the Farm Biodiversity Plan achieves the overall maintenance and/or enhancement of **indigenous biodiversity**, including the protection of areas of **significant indigenous vegetation** and significant habitats of **indigenous fauna** ~~in Sites of Ecological Significance listed in Schedule A of Appendix 9.1.6.1~~, alongside the maintenance of rural productive values;
- c. Where relevant, any effects on **indigenous vegetation** and habitats of **indigenous fauna** in the coastal environment;
- d. Whether the targets and actions in the Farm Biodiversity Plan are appropriate, including timeframes; and
- e. The extent to which it is necessary to include regular reviews of progress against the targets and actions in the Farm Biodiversity Plan.

APPENDIX 2

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

CIV-2016-409-001157

IN THE MATTER of an appeal under Clause 19 of the Canterbury
Earthquake (Christchurch Replacement District Plan)
Order 2014

BETWEEN **ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND INCORPORATED**, an incorporated
society having its registered office at Level 1, 90
Ghuznee Street, Wellington
Appellant

AND **CHRISTCHURCH CITY COUNCIL**, a territorial authority
under section 2 of the Local Government Act 2002
Respondent

CONSENT ORDER

Before the Honourable Justice

1. After reading the joint memorandum of counsel filed in March 2017 this Court orders that the Christchurch City Council amend the Christchurch Replacement District Plan as set out in Appendix 1 to this Order.
2. There is no order as to cost.

Date:

Signature:

(Registrar/Deputy Registrar)

Sealed:

APPENDIX 3

9.1.2.6 Policy – Mechanisms for the management and protection of other indigenous vegetation and habitats

- a. Recognise that the indigenous vegetation and habitat types on Banks Peninsula and the Port Hills listed in Appendix 9.1.6.6 may be of ecological significance in the District by providing for their management and protection through:
 - i. the Council giving written notice to those landowners where they consider that a property may contain the indigenous vegetation and habitat types listed in Appendix 9.1.6.6, and at the size and scale identified in Appendix 9.1.6.6;
 - ii. the Council filing its written notice on the property file held for the relevant property;
 - and
 - iii. the use of rules to manage any potential adverse effects of the clearance or disturbance of the identified indigenous vegetation and habitat types listed in Appendix 9.1.6.6 for the notified properties.

9.1.4.0.1 Council indigenous vegetation notice

a. In Rule 9.1.4, 'Council indigenous vegetation notice' means a notice signed on behalf of the Council and dated and served in accordance with the Resource Management Act 1991 on an owner or occupier of land, and which includes the following information:

- i. a statement that the Council knows or has information to indicate that there may be indigenous vegetation listed in Appendix 9.1.6.6 present on the land;
- ii. a copy of the information that the Council holds and relies on for that understanding;
- iii. a narrative description of the indigenous vegetation that the Council knows or understands may be present on the land;
- iv. a map that gives an approximate location of where it is on the land;
- v. a statement that the Plan contains restrictions on the felling or clearing of indigenous vegetation by cutting, crushing, cultivation, irrigation, chemical application, artificial drainage, stop banking or burning and that those restrictions may mean the owner or occupier requires resource consent to be able to lawfully undertake any such activity;
- vi. a contact person and contact number for any enquiry the owner or occupier may wish to make concerning the notice.

9.1.4.1 Permitted activities

	Activity	Activity specific standards
P1	<p><u>Indigenous vegetation clearance:</u></p> <ol style="list-style-type: none"> a. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; or b. of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served. 	<ol style="list-style-type: none"> a. Any <u>indigenous vegetation clearance</u> shall be limited to clearance for one or more of the following: <ol style="list-style-type: none"> i. the operation, maintenance and repair, within 2 metres either side, of fences, access tracks, <u>buildings</u>, fire ponds, gates, stock yards, troughs and water tanks; ii. clearance necessary for the removal of pest plants and pest animals in accordance with any regional pest management plan or the Biosecurity Act 1993; iii. for the purpose of maintaining <u>improved pasture</u>; iv. <u>conservation activities</u>; v. to implement a conservation covenant established under the Conservation Act 1987 or any other Act specified in the First Schedule of the Conservation Act 1987;

	Activity	Activity specific standards
		vi. clearance of any understory of indigenous vegetation as a result of harvesting an existing forestry area or maintenance of forestry access or firebreaks.
P2	<p>Planting and seed gathering:</p> <p>a. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; or</p> <p>b. within indigenous vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served.</p>	<p>a. Planting shall utilise indigenous species that are naturally occurring and sourced from within the relevant ecological district within which the planting is to take place.</p> <p>Note: Ecological districts are identified in Appendix 9.1.6.4.</p> <p>Note: Vegetation to be planted in the vicinity of any electricity infrastructure should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003.</p>
P3	<p>Customary harvesting of:</p> <p>a. any species grown specifically for that purpose; or</p> <p>b. any other taonga species with the written permission of the relevant rununga:</p> <p>that is:</p> <p>i. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; or</p> <p>ii. indigenous vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served.</p> <p>Note: This rule does not override the requirements to obtain permission of the landowner or administrator for any customary harvesting of taonga species.</p>	<p>a. Any felling of trees shall be limited to Māori land in a Pāpakianga/Kāinga Nohoanga Zone and only where the felling of the tree is ancillary to a permitted activity or has been provided for by resource consent granted under any rule of that zone.</p>
P4	<p>Any indigenous vegetation clearance:</p> <p>a. outside a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; and</p> <p>b. that</p> <p>i. is not vegetation listed in Appendix 9.1.6.6; or</p> <p>ii. is vegetation listed in Appendix 9.1.6.6 but a Council indigenous vegetation notice has not been served.</p>	Nil

9.1.4.2 Controlled activities

Activity	The Council 's control will be limited to the following matters:
<p>C1 Indigenous vegetation clearance, not provided for by Rule 9.1.4.1 P1 or P3, of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served, where:</p> <p>a. an ecological assessment by an appropriately qualified ecologist is</p>	<p>b. That the activity is undertaken in accordance with the proposal as assessed by the qualified ecologist.</p>

Activity		The Council's control will be limited to the following matters:
	<p>provided that confirms the indigenous vegetation clearance proposed to be undertaken does not include any of the vegetation listed in Appendix 9.1.6.6.</p> <p>Any resource consent application shall not be limited or publicly notified.</p>	

9.1.4.3 Restricted discretionary activities

Activity		The Council's discretion shall be limited to the following matters:
RD3	<p>Indigenous vegetation clearance, not provided for by Rule 9.1.4.1 P1, for the purposes of new, or upgrades (except minor upgrades under Rule 11.4.1 P9 - P15) to, utilities or network infrastructure operated by network utility operators, including associated access tracks:</p> <ul style="list-style-type: none"> c. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; or d. of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served; or e. consisting of the vegetation described in Rule 9.1.4.4 NC3. <p>Note: This rule does not apply to customary harvesting.</p>	f. Indigenous biodiversity and ecosystems – Rule 9.1.5.2
RD4	<p>Indigenous vegetation clearance of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served, that:</p> <ul style="list-style-type: none"> g. is not provided for by Rule 9.1.4.1 P1 or Rule 9.1.4.2 C1; and h. is undertaken in accordance with a Farm Biodiversity Plan which has been prepared in accordance with the requirements of Appendix 9.1.6.7. <p>Any application arising from this rule shall not be publicly notified and shall be limited notified only to the Department of Conservation (absent its written approval).</p> <p>Note: The rule does not apply to customary harvesting.</p>	i. Farm Biodiversity Plans – Rule 9.1.5.3
RD5	<p>Indigenous vegetation clearance within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1 that:</p> <ul style="list-style-type: none"> j. is not provided for by Rule 9.1.4.1 P1 or Rule 9.1.4.2 C1; and k. is undertaken in accordance with a Farm Biodiversity Plan which has been prepared in accordance with the requirements of Appendix 9.1.6.7. <p>Any application arising from this rule shall not be publicly notified and shall be limited notified only to the Department of Conservation (absent its written approval).</p> <p>Note: This rule does not apply to customary harvesting.</p>	<ul style="list-style-type: none"> l. Indigenous biodiversity and ecosystems – Rule 9.1.5.2 m. Farm Biodiversity Plans – Rule 9.1.5.3

9.1.4.4 Non-complying activities

Activity	
NC1	<p>Indigenous vegetation clearance, that is not provided for by Rule 9.1.4.1 P1, Rule 9.1.4.2 C1 or Rule 9.1.4.3 RD3 - RD5:</p> <ul style="list-style-type: none"> a. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1 or b. of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous notice has been served; <p>Note: This rule does not apply to customary harvesting.</p>