Independent Hearings Panel

Christchurch Replacement District Plan

Te paepae motuhake o te mahere whakahou a rohe o Ōtautahi

IN THE MATTER OF section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

AND

IN THE MATTER OF proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: 18–25 January, 2–10 February and 9 and 10 May 2016

Date of decision: 21 October 2016

Hearing Panel: Sir John Hansen (Chair), Environment Judge John Hassan (Deputy Chair), Ms Sarah Dawson, Dr Phil Mitchell, Ms Jane Huria

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DECISION 50

CHAPTER 9: NATURAL AND CULTURAL HERITAGE (PART)
Sub-chapter 9.1 — Indigenous Biodiversity and Ecosystems

Outcome: **Proposals changed as per Schedule 1**

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INTRODUCTION

Preliminary matters

[1] This decision[1] concerns Sub-chapter 9.1 Indigenous Biodiversity and Ecosystems which the Christchurch City Council ('Council') notified as part of its Stage 3 Chapter 9 Natural and Cultural Heritage proposal ('Notified Version').[2] It follows our hearing of submissions and evidence and is one of a series of decisions for the formulation of the Christchurch Replacement District Plan ('CRDP'). This is under the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('OIC').

[2] The Council's final position on the most appropriate provisions was put in its 16 September 2016 closing submissions.[3] Those submissions ('Council's 16 September closing') attached a proposed tracked change update ('Final Revised Version') to a Secretariat draft set of provisions that the Panel issued for the purposes of closing submissions, on 2 September 2016 ('Secretariat Draft').[4] The Council's 16 September closing position was that we should confirm the Final Revised Version in this decision.[5]

[3] As we later explain, a central aspect of our task in deciding on the Sub-chapter 9.1 provisions for inclusion in the CRDP is to evaluate alternative planning approaches under s 32AA of the Resource Management Act 1991 ('RMA'). For those purposes, we understand the Council's 16 September closing position to be that the Final Revised Version is more appropriate than the Notified Version and subsequent refinements to that version. In contrast, the closing submissions of other parties indicate preferences for other versions of provisions and our s 32AA evaluation also proceeds on that understanding.

[4] Schedule 1 to this decision ('Decision Version') sets out the Chapter 9.1 provisions we have confirmed by this decision.

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1 Our decision is made under cl 12(1)(b) of the Order. We are required to serve this decision on the Council as soon as practicable, and no later than five working days after the Council receives the decision, it must give public notice of it (and of the matters specified in the Order) and serve that public notice on all submitters on the Notified Version: cl 15, Schedule 3, OIC. The OIC also specifies other obligations on the Council in terms of making copies of the Decision available.

2 Decision 38, issued on 28 August 2016, concerns Sub-chapter 9.2 Outstanding Natural Features and Landscapes, Significant Features and Landscapes and Areas of Natural Character in the Coastal Environment

3 Closing submissions for the Council, 16 September 2016.

4 At [80]–[97], we explain the background to the issuing of the Secretariat Draft.

5 Council's 16 September closing at 10.1.

No provisions deferred

[5] Unlike several previous Panel decisions, we have no deferrals of provisions in this decision other than some related definitions.

Rights of appeal and effect of decision

[6] The following persons may appeal our decision to the High Court (within the 20 working day time limit specified in the Order), but only on questions of law:

(a) Those who have made submissions (and/or further submissions) on the Notified Version;

(b) The Minister for Canterbury Earthquake Recovery and the Minister for the Environment, acting jointly;

(c) The Council.

[7] The Decision Version will be deemed to be approved by the Council on and from:

(a) The date the appeal period expires (if there are no appeals); or

(b) The date on which all appeals relating to it are determined.

Identification of parts of the Existing Plan to be replaced

[8] The OIC requires that our decision identifies the parts of the Existing Plan[6] to be replaced by the Decision Version. The decision replaces all Existing Plan provisions that are to give effect to Chapter 9 of the Canterbury Regional Policy Statement 2013 ('CRPS'), including the Ecological Heritage Sites of the Christchurch City District Plan ('CCDP') and the general vegetation clearance rule of the Banks Peninsula District Plan ('BPDP').

[6] The Existing Plan comprises two formerly separate district plans and known as the Christchurch City District Plan and Banks Peninsula District Plan.

Conflicts of interest

[9] We have posted notice of any potential conflicts of interest on the Independent Hearings Panel website.[7] No party raised any issue.

REASONS

STATUTORY FRAMEWORK

OIC and the RMA and Higher Order Documents[8]

[10] In terms of the statutory framework, we adopt and rely on the analysis we set out in our Strategic Directions and Natural Hazards decisions.[9]

[11] By way of summary, the OIC directs that we hold hearings on submissions concerning proposals, and make decisions on those proposals.[10] The OIC sets out what we must and may consider, including applying and modifying the application of the RMA in terms of both decision-making criteria and processes. It directs us to comply with s 23 of the Canterbury Earthquake Recovery Act 2011 ('CER Act'), and specifies additional matters for our consideration.[11]

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7 The website address is www.chchplan.ihp.govt.nz.

8 Higher Order Documents is a term we use in our decisions to refer to a range of relevant statutory instruments, such as national policy statements, the New Zealand Coastal Policy Statement 2010 ('NZCPS'), the Canterbury Regional Policy Statement 2013 ('CRPS'), and other instruments or provisions of the OIC in respect of which various statutory obligations apply to us in our decision-making.

9 In particular, we refer to [25]–[28] of our Strategic Directions decision dated 26 February 2015, and [35]–[38] of our Natural Hazards decision dated 17 July 2015.

10 OIC, cl 12(1).

11 Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website. The CER Act was repealed and replaced by the Greater Christchurch Regeneration Act 2016 ('GCRA'), which came into force on 19 April 2016. However, s 148 of the GCRA provides that the OIC continues to apply and the GCRA does not effect any material change to the applicable statutory framework for our decision or to related Higher Order Documents. That is because s 147 of the GCRA provides that the OIC continues in force. Further, Schedule 1 of the GCRA (setting out transitional, savings and related provisions) specifies, in cl 10, that nothing in that Part affects or limits the application of the Interpretation Act 1999 which, in turn, provides that the OIC continues in force under the now-repealed CER Act (s 20) and preserves our related duties (s 17).

[12] For this decision, there are important inter-relationships between relevant Part 2 RMA principles and provisions of two key Higher Order Documents, the New Zealand Coastal Policy Statement 2010 ('NZCPS') and the Canterbury Regional Policy Statement 2013 ('CRPS'). We consider those matters at [27]–[71]. The OIC Statement of Expectations also has an important bearing in our decision, as we later explain.[12]

[13] There was no material dispute that the three Higher Order Documents just mentioned are the most relevant for our determination (although, as we note, there are some important differences of interpretation as to certain provisions, particularly as concerning the CRPS Policy 9.3.1).

Relevance of Strategic Directions decision

[14] Our Strategic Directions decision is also relevant in that it contains objectives "for the district"[13] which are now operative as part of the provisions of the CRDP.[14] Under the RMA, the policies and rules of the CRDP are to implement related objectives.[15] That was not a matter which any party disputed, and we refer to and apply the analysis we give in our Strategic Directions decision for our findings on that.[16]

Submissions considered and heard

[15] We have considered all of the submissions and further submissions made on the Notified Version insofar as they pertain to the matters addressed in this decision.[17] We have considered the representations and submissions (including legal submissions) made by those submitters, and the related evidence presented on their behalf. We deal with that in the content of our s 32AA evaluation at [79]–[379].

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12 OIC, Schedule 4.
13 'Christchurch District' defined in OIC, cl 3(1).
14 In terms of cl 16 of the Order.
15 RMA, s 75.
16 Section 32AA RMA further evaluation at [97]–[130], Interpretation at [148]–[149], and also in relation to Objective 3.3.6 Natural Hazards.
17 Schedule 3 lists witnesses who gave evidence for various parties, and submitter representatives. Counsel appearances are recorded on Schedule 2.

Council s 32 Report

[16] As required,[18] we have had regard to the Council's s 32 report ('s 32 Report'/'Report'). As the Council has confirmed its preference for its Final Revised Version, and it is materially different from the Notified Version, we find we should give limited weight to that Report (or to the update to it provided by the Council on 15 April 2016).[19]

RMA PRINCIPLES AND RELATED NZCPS AND CRPS PROVISIONS

RMA Part 2

RMA s 6(e)

[17] The directions in s 6 of the RMA are to "all persons exercising functions and powers" under and in achieving the RMA's purpose. That is, the directions apply to the Panel and other statutory functionaries, including CCC in their notification of CRDP proposals and in their administration of their plan change functions. RMA s 6(c) relevantly requires that, in achieving the RMA's purpose, the statutory functionaries:

> … recognise and provide for the following matters of national importance: … the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

[18] In that directive, 'significant' is a qualifying word for 'areas' and 'habitats'. It has its origins in Latin, French and Old English and its close cousins include 'sign', 'signify' and 'significance' (a word used in related CRPS provisions). Its ordinary meaning in New Zealand usage is:[20]

> 1. Having a meaning; indicative
>
> …
>
> 3. Noteworthy; important; consequential (*a significant figure in history*).

[19] We interpret the word 'significant' in s 6(c) to reflect an intention that it is for the relevant statutory functionary to exercise properly informed judgement on what warrants protection. Where the statutory functionary is making or changing a district plan, it must exercise that

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18 OIC, cl 14(1)(a).
19 Attachment C to closing submissions for the Council, 15 April 2016.
20 *The New Zealand Oxford Dictionary*.

judgement properly informed by all the matters that must be considered, including under s 32 of the RMA. Importantly, that includes matters of evidence (including expert evidence), submissions, representations, and the related directions in Higher Order Documents. However, as this was a matter of some debate during the hearing, we emphasise that an expert who may have undertaken an assessment of areas of indigenous vegetation and habitats of indigenous fauna is not the statutory functionary for the purposes of s 6(c). Rather, the assessments and opinions of experts are more properly to be seen as (important) inputs to a properly informed judgement by the relevant statutory functionary of what is 'significant' for the purposes of s 6(c). The relevant statutory functionary is entitled to come to a different properly informed evidential judgement on what is 'significant' than that reached by an expert.

[20] 'Areas', in the context of s 6(c) and its usage in Chapter 9 of the CRPS, means defined or allocated spaces.[21] Consistent with that meaning, the Notified Version includes a Schedule of Sites of Ecological Significance ('SES'), identifying each SES by ID number, planning map number, name and/or description, location and ecological district. That same approach is carried through other versions. 'Habitats' are not, of course, as capable of being so geographically defined.

[21] As to the meaning of 'protection', the Crown helpfully referred us to an Environment Court decision, *Royal Forest and Bird*,[22] which considered a territorial authority's obligations under s 6(c) in plan formulation.[23] It interprets 'protection' to mean "keep safe from harm, injury or damage" and with the gloss that protection must be "adequate". Although it did not rule out voluntary methods for protection, it observed that a landowner's philosophical opposition to the identification in the plan of 'Significant Natural Areas' had to be measured in the context of the local authority's s 6(c) duty. Ultimately, it held that the Council's omission to identify Significant Natural Areas on private land contravened its duty under s 6(c) and failed to give effect to relevant NZCPS provisions.[24]

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21 For this we have sourced an online definition meaning, English Oxford Living Dictionary ('a space allocated for a specific use') and Concise Oxford (defined space).

22 *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Plymouth District Council* [2015] NZEnvC 219.

23 Closing submissions for the Crown for Natural and Cultural Heritage hearing, Topic 9.1 (Indigenous Biodiversity and Ecosystems), 7 April 2016 ('Crown's 7 April closing submissions').

24 Crown's 7 April closing submissions at 4.5–4.11, referring to *Royal Forest and Bird* at [82], [87], [94], [95] and [114].

[22] What we observe at this point is that the determination of what is or is not 'significant' is the trigger of that 'protection' direction.

RMA s 7(aa) — ethic of stewardship

[23] We are directed to have particular regard to 'the ethic of stewardship' (s 7(aa)). In this context, that concerns the role that a responsible landowner can have in protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, and respecting biodiversity values. When asked by the Panel whether stewardship on the part of the farmer is critical to the success of biodiversity goals, the Council's ecologist for Banks Peninsula, Mr Hooson, answered "absolutely".[25] When Mr Hooson was asked, in cross-examination on behalf of Mr Thomas (a farmer submitter) whether "a high degree of farmer co-operation" best ensures overall protection of indigenous species, he likewise answered "absolutely". Consistent with those answers, we heard a significant amount of evidence about the proactive roles that farmers at Banks Peninsula have played, over many years, in stewardship of their land. A number of them have arranged for QEII National Trust covenants over areas of their farms having particular s 6(c), RMA values. Counsel for Royal Forest and Bird Protection Society of New Zealand Incorporated ('Forest & Bird') (3614) made a related concession about these matters in his cross-examination of Federated Farmers' representative witness (Ms Mackenzie):[26]

> MR ANDERSON: Now if I put it to you that Forest and Bird's position was that the vast majority of farmers do good work, they are conscientious farmers. They care for biodiversity but - - -
>
> SJH: Where is the evidence of that?
>
> MR ANDERSON: Sorry?
>
> SJH: Where is the evidence of that, is that a concession through counsel?
>
> MR ANDERSON: About what?
>
> SJH: What you have just said, because we do not have evidence of that.
>
> MR ANDERSON: No, we do not have evidence.
>
> SJH: So this is a concession by counsel on behalf of Forest and Bird is it the bulk of farmers are responsible in this area?

[25] Transcript, page 203, lines 33–45.
[26] Transcript, page 441, 30 to page 442, line 8.

MR ANDERSON: Yes.

SJH: That is fine, because counsel can make that concession.

MR ANDERSON: Yes.

[24] The importance of partnership with landowners for achieving protection is also explicitly recognised in the Regional Council's *A Biodiversity Strategy for the Canterbury Region* and the *Christchurch City Council Biodiversity Strategy 2008–2035*. The latter was also adopted by several other agencies with relevant interests, including several parties before us.[27] At [128]–[135], we discuss the 2007 Environment Court consent order that settled appeals on the biodiversity provisions of the then-proposed BPDP ('2007 Consent Order'). The 2007 Consent Order also specified that the Council would discuss appropriate management mechanisms with landowners as part of its intended s 32 work for the plan change it intended to notify for the purposes of s 6(c), RMA. As we note at [33], Chapter 9 of the CRPS includes the following statement in its explanation of the issues concerning ecosystems and indigenous biodiversity:

> The majority of these lowland areas are found on freehold land, so the ability to access these areas for identification and assessment of their values and threats will be dependent on the cooperation and support of the landowner. Seeking this support continues to be one of the key challenges for achieving the objectives below.

[25] The weight to be given to the matters listed in s 7 is a matter for the decision-maker considering the evidence and context. In effect, it is undisputed that a failure by the Council to properly engage with landowners (as the 2007 Consent Order anticipated) is a major reason why the Notified Version is so inappropriate in the substance of what it proposes. On the evidence, we find that we should give weight to the importance of working with farmers and other landowners, in order to foster and encourage stewardship as a necessary element of protection for the purposes of s 6(c), and the related directions of Higher Order Documents. We find that this should be clearly reflected in related Sub-chapter 9.1 provisions.

RMA s 5

[26] For completeness, we note that 'sustainable management' is defined in terms that include "safeguarding the life-supporting capacity of … ecosystems" (s 5(2)(b)).

[27] Including Banks Peninsula Conservation Trust, Department of Conservation, Forest & Bird.

The proper interpretation of the CRPS and NZCPS

[27] The statutory purpose of a regional policy statement is (s 59, RMA):

> … to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.

[28] The statutory purpose of the NZCPS is (s 56, RMA):

> … to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand.

[29] The CRDP must give effect to the CRPS and the NZCPS (RMA s 75(3)). Both the CRPS[28] and NZCPS include directions concerning matters in s 6(c) and biodiversity. CRPS Chapter 9 concerns 'Ecosystems and Indigenous Biodiversity'. The NZCPS includes Policy 11 on this matter.

[30] The Supreme Court decision in *King Salmon* informs us on the proper approach to interpretation of the NZCPS for the purposes of that statutory directive.[29] As the statutory directive concerning the CRPS is materially the same, we also apply *King Salmon* to our interpretation of the CRPS. The relevant passage from *King Salmon* is as follows:

> [129] … the decision-maker must first identify those policies that are relevant, paying careful attention to the way in which they are expressed. Those expressed in more directive terms will carry greater weight than those expressed in less directive terms. Moreover, it may be that a policy is stated in such directive terms that the decision-maker has no option but to implement it. So, "avoid" is a stronger direction than "take account of". That said, however, we accept that there may be instances where particular policies in the NZCPS "pull in different directions". But we consider that this is likely to occur infrequently, given the way that the various policies are expressed and the conclusions that can be drawn from those differences in wording. It may be that an apparent conflict between particular policies will dissolve if close attention is paid to the way in which the policies are expressed.
>
> [130] Only if the conflict remains after this analysis has been undertaken is there any justification for reaching a determination which has one policy prevailing over another. The area of conflict should be kept as narrow as possible. The necessary analysis should be undertaken on the basis of the NZCPS, albeit informed by s 5. As we have said, s 5 should not be treated as the primary operative decision-making provision.

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28 CRPS, Chapter 9 Introduction, page 103.

29 *Environmental Defence Society v New Zealand King Salmon Co Ltd* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442.

Purpose and relevant directions of the CRPS Chapter 9 provisions

[31] CRPS Chapter 9 identifies the following issues (9.1.1, 9.1.2):

> Land use and development, and the introduction and spread of animal and plant pests, have contributed to the ongoing loss and degradation of Canterbury's ecosystems and indigenous biodiversity.
>
> While knowledge and recording of areas of indigenous vegetation and habitats of indigenous fauna in Canterbury is improving and increasing, there remains uncertainty around the identification of ecosystem values and their significance, particularly where there are access issues. This can make identification and protection of these areas from the adverse effects of land use and development, challenging.

[32] The accompanying explanation includes the following statements:

> As well as the overall decline in our indigenous biodiversity, many remaining areas of significant indigenous vegetation and significant habitats of indigenous fauna are potentially threatened and are likely to be lost without ongoing maintenance and protection. Protection of such areas is a matter of national importance under [s6(c)] … so development of clear guidance for the determination of significance will be essential for their identification and protection. …. Lowland, coastal and montane environments have seen the greatest loss of indigenous vegetation and habitat and continue to face the greatest threats from the intensification of land use. As a consequence, remaining indigenous biodiversity in these locations has a correspondingly higher significance and is in greatest need of protection, and where possible, restoration. The majority of these lowland areas are found on freehold land, so the ability to access these areas for identification and assessment of their values and threats will be dependent on the cooperation and support of the landowner. Seeking this support continues to be one of the key challenges for achieving the objectives below.

[33] Those objectives are:

> **9.2.1 – Halting the decline of Canterbury's ecosystems and indigenous biodiversity**
>
> The decline in the quality and quantity of Canterbury's ecosystems and indigenous biodiversity is halted and their life-supporting capacity and mauri safeguarded.
>
> **9.2.2 – Restoration or enhancement of ecosystems and indigenous biodiversity**
>
> Restoration or enhancement of ecosystem functioning and indigenous biodiversity, particularly where it can contribute to Canterbury's distinctive natural character and identity and to the social, cultural, environmental and economic well-being of its people and communities.
>
> **9.2.3 – Protection of significant indigenous vegetation and habitats**
>
> Areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified and their values and ecosystem functions protected.

[34] There are a number of related policies. Two of particular relevance are 9.3.1 and 9.3.2.

[35] Policy 9.3.1 – Protecting natural areas works in conjunction with Appendix 3 and is as follows:

> 1) Significance, with respect to ecosystems and indigenous biodiversity, will be determined by assessing areas and habitats against the following matters:
>
> (a) Representativeness
>
> (b) Rarity or distinctive features
>
> (c) Diversity and pattern
>
> (d) Ecological context
>
> The assessment of each matter will be made using the criteria listed in Appendix 3.
>
> 2) Areas or habitats are considered to be significant if they meet one or more of the criteria in Appendix 3.
>
> 3) 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.

[36] Appendix 3 is a set of narrative criteria "for determining significant indigenous vegetation and significant habitat of indigenous biodiversity". There are ten criteria, listed under the headings 'Representativeness', 'Rarity/Distinctiveness', 'Diversity and Pattern', and 'Ecological Context'.

[37] Under each of the CRPS objectives and policies there is an accompanying text giving reasons and describing intended methods of implementation. The explanatory text below Policy 9.3.1 includes the following passages that both the Crown and Forest & Bird have referred to in their interpretation of the policy:

> …. District plan provisions will include appropriate rule(s) that manage the clearance of indigenous vegetation, so as to provide for the case-by-case assessment of whether an area of indigenous vegetation that is subject to the rule comprises a significant area of indigenous vegetation and/or a significant habitat of indigenous fauna that warrants protection.
>
> While areas of significant indigenous vegetation and significant habitats of indigenous fauna are often identified in plans, it is difficult to ensure that all significant sites are included, because of issues with access and ecosystem information. The methods therefore seek that as a minimum, territorial authorities will include indigenous vegetation clearance rules that act as a trigger threshold for significance to be determined on a case-by-case basis.

[38] The CRPS defines 'no net loss' in relation to indigenous biodiversity as meaning "no reasonably measurable overall reduction" in the four measures it specifies.

[39] Policy 9.3.2 – Priorities for protection, is as follows:

> To recognise the following national priorities for protection:
>
> (1) Indigenous vegetation in land environments where less than 20% of the original indigenous vegetation cover remains.
>
> (2) Areas of indigenous vegetation associated with sand dunes and wetlands.
>
> (3) Areas of indigenous vegetation located in "originally rare" terrestrial ecosystem types not covered under (1) and (2) above.
>
> (4) Habitats of threatened and at risk indigenous species.

[40] CRPS Policy 9.3.6 specifies five criteria to apply to the use of 'biodiversity offsets'. The text following the policy includes an explanation of what is meant by 'biodiversity offset' including that it is "a measurable conservation outcome resulting from actions which are designed to compensate for significant residual adverse effects on biodiversity arising from human activities after all prevention and mitigation measures have been taken". It also specifies the goal of offsetting as being "to achieve no net loss and preferably a net gain of biodiversity on the ground with respect to species composition, habitat structure and ecosystem function".

[41] Other relevant policies are 9.3.3 (on "an integrated and co-ordinated management approach" to halting indigenous biodiversity decline), 9.3.4 (on promoting enhancement and restoration in appropriate locations) and 9.3.5 (on wetland protection and enhancement).

NZCPS Policy 11

[42] NZCPS Policy 11 is as follows:

> To protect indigenous biological diversity in the coastal environment:
>
> a. avoid adverse effects of activities on:
>
> i. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
>
> ii. taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
>
> iii. indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
>
> iv. habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;

v. areas containing nationally significant examples of indigenous community types; and

vi. areas set aside for full or partial protection of indigenous biological diversity under other legislation; and

b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

i. areas of predominantly indigenous vegetation in the coastal environment;

ii. habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;

iii. 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;

iv. habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;

v. habitats, including areas and routes, important to migratory species; and

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

Our interpretation of CRPS Policy 9.3.1 and Appendix 3

[43] These provisions of the Higher Order Documents informed the Council's design of the Notified Version, and the various other proposals before us.

[44] Prior to the hearing, and on the basis of our pre-reading of evidence, we informed the parties by Minute on 15 January 2016 that a central issue at that time was the proper interpretation of the CRPS, particularly its Chapter 9 and associated Appendix 3. That was in view of what the Notified Version then proposed. We set out various questions on this and sought assistance through opening legal submissions for the hearing.[30] As we describe at [111], following testing of Council evidence during the hearing, the Council and other interested parties asked for facilitated mediation and sought our preliminary observations on matters which we provided by Minute. In due course, that was to result in the Council's April Version for which there is a large degree of support by a number of parties. By and large, that support for the Council's April Version makes it unnecessary for us to traverse matters of interpretation concerning the Higher Order Documents. However, on some matters where we have departed

[30] Minute re the legal effect of the CRPS concerning Topic 9.1 as to indigenous biodiversity, 15 January 2016.

from the Council's April Version, the proper interpretation of CRPS Policy 9.3.1 is relevant. On that basis, we now set out our interpretation of it.

How, when, and by whom 'significance' is assessed and determined

[45] As we have set out at [35]–[38], Policy 9.3.1 (and the related Appendix 3 and definitions) are expressed in relatively directive terms, both in terms of the extent of protection required (no net loss of indigenous biodiversity values as a result of land use activities) and the method by which the significance of areas is to be determined, namely:

(a) The 'assessment' of relevant areas and habitats is to be against the matters it lists at (a)–(d) (representativeness, rarity or distinctive features, diversity and pattern, ecological context), using the criteria in Appendix 3;

(b) Areas or habitats that meet one or more of the criteria in Appendix 3 are considered to be significant; and

(c) Areas identified as significant will be protected to ensure no net loss of indigenous biodiversity or indigenous biodiversity values.

[46] On its interpretation of those directions, the Council included in the Notified Version:

(a) A schedule of 102 SES.[31] In addition to a large number of sites on Banks Peninsula, it included a 'Low Plains' part of the flat land in the vicinity of the city. That was on the explicit basis that this list was not complete but simply represented what had so far been assessed against the criteria in CRPS Policy 9.3.1 and Appendix 3.[32].

(b) Rules on indigenous vegetation clearance both within the identified SES and outside them:

(i) Its proposed permitted activities allowed for confined circumstances when indigenous vegetation clearance could be undertaken without resource consent. Outside an identified SES, that allowance was relatively greater in

[31] Opening submissions for the Council, 17 January 2016, at 9.1(a).
[32] Opening submissions for the Council, 17 January 2016, at 10.7.

that it included clearance undertaken on an area of improved pasture for pastoral farming existing at 25 July 2015.

(ii) When the activity specific standards for those permitted activities were not met, resource consent was required. This was a non-complying activity inside an SES and an open discretionary activity outside an SES.

[47] As we have noted, Policy 9.3.1 directs that, if an area is identified as significant, it is to be protected to ensure no net loss of indigenous biodiversity or indigenous biodiversity values. That protection direction closely parallels the direction in RMA s 6(c) to the statutory functionary to recognise and provide for the protection of significant areas. For the purposes of s 6(c), the policy sets a benchmark of 'protection', namely to ensure no net loss.

[48] Given Policy 9.3.1, and s 6(c), there is a particular premium in how, when, and by whom 'significance' is assessed and determined.

[49] The evidence of Council witnesses revealed that the Notified Version was developed on an assumption that all judgements and decisions in the assessment and determination of significance are for the Council's appointed experts.

[50] Mr Scott Hooson,[33] the Council ecologist responsible for the Banks Peninsula SES, explained that the SES that were included in the Notified Version derived from the following:[34]

> As I have already mentioned my primary role for Council has been to identify, prioritise and assess the significance of SESs on Banks Peninsula. This work involved several steps including a comprehensive literature search to identify and collate existing information on indigenous biodiversity on Banks Peninsula.
>
> The identification of potential sites that may be ecologically significant from existing information including sites identified by Hugh Wilson during his botanical survey between 1983 and 1990 and consultation with specialist ecologist groups. Prioritisation of sites for assessment based on consideration of several factors which are summarised in my evidence-in-chief, site surveys where there were insufficient recent reliable and robust information available to determine whether a site was significant or not and to accurately map site boundaries.

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33 Mr Hooson is a Principal/Senior Ecologist at Boffa Miskell Limited. He holds a Bachelor of Science degree (with 1st Class Honours) in Ecology and Geography and a Masters degree in Zoology (with Distinction) from the University of Otago. He has more than thirteen years' experience as a professional ecologist and is a Certified Environmental Practitioner and a member of the Ecology Society of New Zealand and the Ornithological Society of New Zealand. He has published ecological research in both national and international journals.

34 Transcript, page 176, line 39 to page 177, line 23.

> Assessment against the criteria listed in Appendix 3 of the Canterbury Regional Policy Statement using existing information and/or survey data. Ecological significance was determined by assessing sites against the criteria listed in Appendix 3 of the RPS, as per policy 9.3.1.2 of the RPS, sites were considered to be significant if they met one or more of the 10 criteria.
>
> The guidelines for the application of ecological significance criteria prepared by Wildland Consultants were used to assist assessments. A site significant statement was prepared for each site and site boundaries were mapped using aerial photographs and digitised in a geographic information system.

[51] When questioned as to whether it was the Council or the ecologists who led judgement on significance, he answered:[35]

> … So in terms of judgement on significance, it was myself and [Dr Antony Shadbolt, landscape architect/ecologist at the Council], but as [Antony] said earlier, we had specialist ecologist groups that also provided guidance on how those criteria should be interpreted.

[52] When asked if there was any time when the Council said, "We do not agree with your judgement on significance, Mr Hooson", he answered "No, there was [not]".[36] His answers were essentially confirmed by the Council's planning witness, Ms Hogan.[37]

[53] As we have set out, Policy 9.3.1 links determination to assessment. The Council's evidence made clear that the assessments undertaken for the purposes of the Notified Version were limited in a number of important respects. As we note at [50], Mr Hooson explained these to be largely a desktop exercise, drawing from the important work of Dr Hugh Wilson and other information. At [128]–[135] we explain the terms of the 2007 Consent Order concerning the indigenous vegetation clearance rules of the BPDP. In notable contrast to what that consent order set out as the intended s 32 process for investigation of areas of significance for an intended plan change, the Council's assessment processes for the preparation of the Notified Version involved very limited "on the ground assessment of the values of these sites", and discussions with landowners "on appropriate management mechanisms".

[54] In light of the directions given by the Supreme Court in *King Salmon* and of the Court of Appeal in *Powell*,[38] we find the proper interpretation of these aspects of Policy 9.3.1 relatively straightforward.

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35 Transcript, page 199, lines 14–25; page 177, lines 199–200.
36 Transcript, page 199, lines 14–25; page 177, lines 199–200.
37 Ibid at 254–255.
38 *Powell v Dunedin City Council* [2004] 3 NZLR 721 (CA).

[55] There is a pointer to meaning in the explanatory text that we refer to at [37]. This refers to the expected role of plan rules for case-by-case assessment of areas for the determination of significance. We are mindful that this explanatory text is not itself the Policy. At [243], we return to the matter of whether, on our s 32AA evaluation, rules to require case-by-case assessment are the most appropriate for achieving related -objectives. However, what these passages of this text also reveal is that assessment and determination are ultimately the province of the statutory functionary. Where the rules leave assessment and determination of areas of significance to resource consent processes, that functionary is the consent authority (whether the Council members, their appointed commissioners, or the Environment Court on appeal). Where rules serve the purposes of identification and protection of SES, the relevant functionary is the plan decision-maker (in this decision, the Panel, and for future plan changes, the Council, its appointed commissioners or the Environment Court on appeal).

[56] There is nothing extraordinary in that proposition. In essence, it simply reflects the RMA model of decision-making, including its expression of s 6(e) itself.

[57] What is also clear is that determinations on what are significant areas for protection that do not involve assessments as directed by Policy 9.3.1 cannot give effect to the CRPS. Were a statutory functionary to make an arbitrary, uninformed, judgement on what is and is not to be treated as significant for the purposes of s 6(e), that would clearly fail to give effect to the CRPS. However, nor does Policy 9.3.1 intend to give licence to a process of assessment that is not properly informed by evidence. The error of that thinking is revealed in the Council's own evidence in support of the Notified Version. Where, for example, appointed Council experts form an opinion of an area's significance on a desk top basis only, their lack of field work could well go to the weight that is given to their evidence.

[58] The following exchange in cross-examination illustrates this point:[39]

> MR CHAPMAN: Just some preliminary matters. How many times have you set foot on the Thomas property that is my client's property?
>
> MR HOOSON: So I have not set foot on the Thomas property. My role as an ecologist was to assess sites on Banks Peninsula, the way my contract was prepared was that I would be using existing information that the Council had, or survey data collected by other ecologists' contracted by the Council to make those assessments of

[39] Transcript, p 186, 1-20

> significance. Having said that, I have been on another property within that site and I viewed the site from the road.
>
> MR CHAPMAN: Mm'hm, so when at 14.3.2 of your evidence you comment "the site", in your opinion the site meets all of your criteria? – to paraphrase what you have just said, looking at it from the road and being on another property in close proximity, is that correct?
>
> MR HOOSON: Yes, and so just to make it clear, as I said, you know, my role was not to go out and survey properties, it was to use the information that was made available to me to assess significance.

[59] Related to that, we find that 'assessment' under Policy 9.3.1 is also the task of the functionary. The functionary must undertake that assessment on a properly informed evidential basis. Inherently, to be properly informed, the functionary must receive proper expert advice (particularly on ecology matters). However, that is as an input to the functionary's assessment, not in substitution for it.

[60] Again, there is nothing extraordinary in that proposition. For example, an inherent aspect of our s 32AA evaluation of options is to test the expert evidence we have received on these very matters, in order that we make the ultimate assessments and determinations required by Policy 9.3.1. In our case, as the primary authors of work that the Council's experts relied on (such as Dr Hugh Wilson) were not called as witnesses, there was no opportunity for them to be cross-examined or questioned on their work. That was a matter that went to the weight we could ascribe to the evidence of those witnesses who had relied on that work for their own opinions. The position is the same for those who, in future, will make determinations on plan changes to add further SES to the CRDP. It would also be the same under any rules that provide for assessments of significance in the context of resource consent applications.

[61] Again, it simply reflects the RMA model of decision-making, including its expression of s 6(e) itself.

[62] While we find that to be the clear meaning of Policy 9.3.1, we find it is also supported by the expression of related Appendix 3. The criteria there are expressed in narrative form that allows for the exercise of contextual and scientifically informed judgement as to matters of relative priority and influence. For example, that can be seen in the words we have highlighted in the following extracts:

> … that is representative, typical or **characteristic** of the natural diversity … This **can** include **degraded** examples where there are **some of the best remaining examples** …

> … that is a **relatively large** example …
>
> … that is threatened, or at risk, **or uncommon** … or has developed as a result of an **unusual** environmental factor or combinations of factors …
>
> … that provides **important** habitat…

[63] When questioned, the Crown's planner, Ms Anna Cameron accepted that, following a case-by-case assessment, the territorial authority could decide that even though an area or habitat meets the significance criteria in Appendix 3, it does not warrant protection.[40] On our consideration of Policy 9.3.1, we find that the statutory functionary does not enjoy that degree of licence. Rather, once areas or habitats are assessed and determined by the statutory functionary to be significant, the protection direction in Policy 9.3.1(3) applies. That is consistent with s 6(e), RMA.

[64] When the statutory functionary is determining plan provisions, the question at that point is as to what are the most appropriate rules for giving effect to the direction in CRPS Policy 9.3.1(3) to protect to ensure "no net loss of indigenous biodiversity or indigenous biodiversity values as a result of land use activities".

[65] Here we return to the passages from the explanatory text that follows Policy 9.3.1, relied on by the Crown and Forest & Bird and which we set out at [37]. The Crown argued that Policy 9.3.1 required rules for the case-by-case assessment of significance.[41] Forest & Bird submitted that, as a minimum, the Council must "include indigenous vegetation clearance rules that act as a trigger threshold for significance to be determined on a case-by-case basis."[42]

[66] Importantly, the text we set out at [37] is by way of explanation to the policy, rather than being part of the policy. To the extent that the Crown and Forest & Bird interpret it as part of the policy, we disagree. As explanation to the policy, we agree that the text bears on how we should interpret the policy. We also agree that, as explanatory text, it is clear that in saying that district plans will include 'appropriate' rules that provide for case-by-case assessment. However, as explanatory text to Policy 9.3.1, it does not proscribe how that policy must be given effect to as part of the CRPS. In any case, it is not, and could not legally be, a direction

40 Transcript, page 673–674.
41 Transcript, page 10, lines 24–42.
42 Transcript, page 15, lines 28–30.

of a subordinate statutory instrument that bypasses, overrides, or modifies the statutory requirements of s 32AA.

[67] We have duly considered this text in our evaluation of rules at [230]–[373].

[68] The Crown submitted that the boundaries of an SES "should be set solely on an ecological basis (including assessment by an ecologist and consultation with landowners as to the ecological values existing on their property)". It argued that boundary setting should not be qualified by "practical farming considerations", and cited the Environment Court's decision in *Royal Forest and Bird* in support of its submission.[43] That case concerned what were termed 'Significant Natural Areas' and the Crown quoted a passage from the decision in which the Court observed that it is "difficult to see how the willingness, ability or capacity of a property owner to provide the necessary management input should be determinative of whether or not an area is [a Significant Natural Area]".[44]

[69] We do not take the Crown to mean that the boundaries of an SES should be as determined by an ecologist. The evidence demonstrates the soundness of its submission that an "ecological basis" needs to include both assessment by an ecologist and consultation with landowners. However, as we have set out, we find that assessments by ecologists are as an input into, not a substitution of, the statutory functionary's ultimate task of assessment and determination. Related to that, we do not agree with the Crown's proposition that the determination of the boundaries of a SES cannot take account of practical farming considerations. As we have explained, we find Policy 9.3.1 is clear that areas identified as significant, according to its prescribed assessment approach, are to be protected. However, that does not necessarily mean practical farming considerations are irrelevant to the assessment and determination of boundaries. As we have noted, Appendix 3 includes several words of evaluative judgement, including 'relatively large' and 'important'. These are all areas where, on a properly informed evidential basis, the functionary may take a different view from the ecologist advising the functionary. That can include forming a different view in light of practical farming matters, provided that this different view is properly informed by evidence and accords with Policy 9.3.1 and Appendix 3. What is key in that respect is that both Policy 9.3.1 and Appendix 3

43 Above, n 22.
44 *Royal Forest and Bird* at [32].

allow some room for different judgements to be made, albeit requiring that those judgements are properly informed by ecological evidence.

[70] Federated Farmers argued that it was "simply a nonsense to interpret Policy 9.3.1 as meaning a single criterion in Appendix 3 equals significance in all cases".[45] We disagree because 9.3.1(2) plainly says that areas or habitats are considered to be significant if they meet one or more of the criteria in Appendix 3. However, as we have noted, the assessment and determination of that is for the statutory functionary, on a properly informed basis (including with proper regard to expert advice on all relevant matters).

[71] A further question of interpretation of Policy 9.3.1 concerns the meaning of 'no net loss' in relation to Policy 9.3.1(3). As the implications of this meaning is confined to how particular provisions are expressed, we address it in our s 32AA evaluation below.

OVERVIEW OF STATE OF BIODIVERSITY IN THE DISTRICT

[72] We heard from a number of ecologists on this topic. Some matters were contested. However, we found the following evidence from the Council's ecologists, Mr Hooson and Dr Antony Shadbolt to provide a helpful explanation of these matters. The following overview draws from Mr Hooson's evidence in particular as he gave evidence on Banks Peninsula and it was that part of the district that became a matter of more particular focus during the hearing.

[73] In his evidence in chief, Mr Hooson explained that Banks Peninsula supports a diverse and unique range of vegetation communities, ecosystems and habitats. But there has been significant loss of indigenous biodiversity over time. Today, almost all the original vegetation has been cleared for agriculture and human settlement. The indigenous biodiversity that remains is generally restricted to small, isolated remnants. He said that the indigenous ecosystems and habitats that remain support a disproportionately high number of species that are nationally threatened, at risk or locally uncommon.[46] As further explanation of this, the following is taken from his evidence (we have not included references, but these are in his evidence):[47]

45 Transcript of Proceedings, 21 January 2016, page 428-429 (Ms MacKenzie).
46 Evidence in chief of Scott Hooson on behalf of the Council, 2 December 2016, at 4.1.
47 Evidence in chief of Scott Hooson, 2 December 2016, at 7.2–7.5, 7.7 and 7.9–7.14.

Banks Peninsula is approximately 100,000 ha in extent and reaches a maximum altitude of 920 m. It is volcanic in origin and was an island for nearly all of the last 20 million years. During the last 2 million years glacially lowered sea levels periodically connected Banks Peninsula to the South Island mainland. Only in the last 20,000 years has this connection been substantial enough to survive post-glacial sea-level rises …. It is bounded by the sea to the north, east and to the west and by the Canterbury Plains, which are very different to the Peninsula.

Prior to the arrival of humans, Banks Peninsula was almost entirely covered in podocarp/hardwood forest (lowland totara, matai, and kahikatea associations in lowland forest, and thin-barked totara and native cedar in montane forest … with red and black beech restricted to the south-east portions of the Akaroa ED[48]). Volcanic bluff communities, montane shrublands and sub-alpine scrub and tussock grassland communities made up relatively minor proportion of the vegetation in this forested landscape.

Today almost all the original vegetation has been cleared for agriculture and human settlement. Only 800 ha (less than 1%) of the original forest remains, although subsequent regeneration of secondary forest, treeland and scrub has increased the cover of indigenous woody vegetation to about 15% …. …

… Almost all low altitude land of gentle relief on Banks Peninsula is either acutely or chronically threatened, while much of the higher montane hill country is at risk. … Overall, acutely and chronically threatened land environments comprise 74% of Banks Peninsula's land surface. Of particular note is Kaitorete Spit and the Ellesmere ED, where 75% of the land environments within the Christchurch District are acutely threatened (have <10% indigenous vegetation remaining, nationally) and the remainder are chronically threatened.

… On Banks Peninsula, approximately 10.4% (12,130 ha) of the land area is legally protected. … Larger protected areas occur along the coastal margin of Kaitorete Spit, the margins of Te Waihora (Lake Ellesmere), Te Oka Park and Misty Peaks Regional Parks, the Port Hills and Hinewai (a large privately owned DOC Conservation Covenant). While there has been a substantial amount of work done to voluntarily protect indigenous biodiversity on Banks Peninsula in the last two to three decades, protected areas generally remain small and isolated in the context of the Peninsula.

Because Banks Peninsula has been an island for much of its geological history, was buffered from the worst climatic effects of the glacial periods, is a climatically unique and has a complex topography, it supports a unique indigenous biodiversity characterised by high levels of endemism and a high proportion of species at their distributional limits. This, in combination with very high levels of human modification means the Peninsula supports a dis-proportionately high number of species that are nationally threatened, at risk or locally uncommon.

Prior to human arrival, Banks Peninsula is estimated to have had 575 indigenous vascular plants …. Of these 21 species are thought to be locally extinct …, 21 are nationally threatened, 56 are nationally at risk and 358 are "uncommon to rare or very local" on Banks Peninsula … 10 are endemic to Banks Peninsula and 34 are at their national or regional distributional limits.

The Christchurch District (including Banks Peninsula) provides habitat for a high diversity of bird species including 18 nationally threatened and 17 nationally at risk

[48] ED means Ecological District.

> species, one that is endemic to the Canterbury Region, 10 that are at their distributional limits and 53 are either locally threatened, at risk or uncommon in the Port Hills, Herbert, Akaroa and Ellesmere EDs.
>
> The terrestrial invertebrate fauna of Banks Peninsula is still poorly known, but it is diverse, and of considerable scientific interest. Two species are thought to be extinct, 18 are nationally threatened, 36 are nationally at risk, 14 are classified as data deficient, 92 are uncommon at the ED level, 82 are thought to be endemic to Banks Peninsula and 19 are thought to be at their national distributional limits.
>
> The aquatic invertebrate fauna includes seven nationally threatened species, four nationally at risk species and at least 10 endemic species. Banks Peninsula's aquatic habitats provide habitat for 11 indigenous freshwater fish species, of which one is nationally threatened and eight are nationally at risk. The majority of these fish species are endemic to New Zealand and diadromous. Banks Peninsula also provides habitat for freshwater crayfish/koura and freshwater mussels which are both classified as nationally at risk.
>
> Five species of lizard are known from Banks Peninsula. Of these one is nationally threatened, three are at risk and one is endemic to Canterbury.

[74] Mr Hooson was tested on these matters in cross-examination and in answer to Panel questions.

[75] He agreed that, as a result of re-generation, the amount of indigenous vegetation on Banks Peninsula has increased from "in the order of" one percent in 1920 to 15–18 per cent now:[49]

> JUDGE HASSAN: Right, now Francis Helps gives evidence that native vegetation was in the order of one percent in 1920 and now is in the order of 18 percent, what Francis Helps describes as native vegetation do you think that is generally probably right?
>
> MR HOOSON: Generally that is correct, it is widely accepted that indigenous vegetation on Banks Peninsula was reduced to what original cover was reduced to one percent in its original extent, roughly 800 hectares. It is now through regeneration between 15 and 18 percent depending on the source.

[76] Following on from that, he explained the following about where these gains have been experienced:

> DR MITCHELL: … Your evidence in summary says two things to me, one is that for whatever reason in recent times at least biodiversity on the Peninsula has increased quite markedly. The second thing is that of the 58 sites that you have surveyed 34 of those have no formal protection?
>
> MR HOOSON: Yes.

[49] The transcript has the first exchange at page 201, lines 32–42, and the second at page 212, line 40 to page 213 line 10.

> DR MITCHELL: Just putting those two points together, where have the gains been made on the Peninsula; is it within the sites that are formally protected, or is it within the sites that aren't?
>
> MR HOOSON: The gains are occurring right across the Peninsula as a result of regeneration, largely in those areas that are more marginal, south facing slopes, gullies, those sorts of areas and it is through the regeneration of indigenous vegetation it is occurring naturally.

[77] Dr Shadbolt told us that the Low Plains Ecological District is an Acutely Threatened Land Environment with less than 10 per cent of the original vegetation cover remaining.[50]

[78] We accept that evidence as providing a helpful overview of the origins and present state of the biodiversity values of the district for the purposes of our decision. We have also been informed by related evidence from other experts, and background reports.

OUR EVALUATION UNDER S 32AA RMA

Introduction

[79] Our Strategic Directions decision set out the requirements for the Council's s 32 and our s 32AA RMA evaluations.[51] Our decision serves to report on our evaluation, according to the requirements of ss 32 and 32AA RMA.[52]

Preliminary question as to scope to change the Notified Version

[80] The issue we deal with at this stage is the scope of our jurisdiction to modify the Notified Version, including in a way that is beyond what parties themselves may have agreed at mediation, and with input from the Panel's Secretariat staff.

[81] For the reasons we explain, the Decision Version modifies the Council's Final Revised Version which is itself the final of a series of modifications the Council proposed to its original Notified Version:

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50 Evidence in chief of Dr Shadbolt, 2 December 2015.
51 Decision 1: Strategic Directions at [63]–[70].
52 RMA, s 32(1)(c) and s 32AA(1)(a)–(d).

(a) That Final Revised Version is a modification of a draft proposal ('Secretariat Draft') prepared by a qualified planner of the Independent Secretariat, at the direction of the Panel for the purposes of supplementary closing submissions, for the reasons given in a Panel Minute of 9 August 2016 ('9 August Minute')[53].

(b) The Secretariat Draft was a modification of a version of the provisions proposed by the Council ('Council's April Version') with its 15 April 2016 closing submissions ('Council's April submissions').

(c) The Council's April Version was itself a significant modification of the Council's Notified Version.

[82] The Panel provided parties with the Secretariat Draft, for consideration for closing submissions, by Minute of 2 September 2016. That was despite the fact that the Council's April submissions recorded that there were few remaining areas of disagreement between the parties concerning the Council's April Version.

[83] The 9 August Minute noted that the Council's April Version was a significant move in the right direction from what was in the Notified Version. However, it informed the parties that, on careful consideration of the evidence, the Higher Order Documents, and related submissions, the Panel was concerned about fundamental aspects of it.[54] Part of that concern related to the anticipated future inclusion in the CRDP of an expected large number of additional SES. Related to that was a concern about whether the Council's April Version made appropriate provision for the engagement needed with farmers as part of determining future SES for inclusion in the CRDP.[55] It expressed related concerns about the expression of objectives and policies, the concepts and application of 'no net loss' and 'offset', and the approach to land regulation, both within SES and outside them.[56]

[84] On all these matters, the 9 August Minute indicated to the parties that the Panel's view at that time was that the proper choice was as between full rejection of the Sub-chapter 9.1 proposal or a modification of the Council's April Version to address the concerns raised.[57] It

53 Minute – as to Topic 9.1 Indigenous Biodiversity and Ecosystems, 9 August 2016.
54 9 August Minute at [5].
55 9 August Minute at [4].
56 9 August Minute at [6]–[25].
57 9 August Minute at [4].

asked the parties, as a first step, to indicate their positions on which of those choices would be more appropriate. The Panel Deputy Chair then convened a teleconference between various parties to discuss these concerns.

[85] As an initial response, Forest & Bird questioned whether we have jurisdiction to make any changes to the Council's April Version of the kind indicated in the 9 August Minute.[58]

[86] Noting that the Council's April Version was significantly a product of mediation, it submitted that we did not have the power, under the OIC cls 10 and 13 and Schedule 3, to "assume the drafting of planning provisions when [we consider] them to be unsatisfactory".[59] It argued that cl 13 was similar to s 293, RMA and, as such, we should be guided by a recent High Court decision in *Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council*.[60] In particular, it referred to the High Court's finding that, under s 293, the "jurisdiction is to direct that changes be made, not to make the changes and direct that they be implemented".[61] It also referred to a passage that distinguished the Environment Court's judicial appellate role under s 293 from local authorities' 'at source' planning authority.[62] It submitted that "the only reasonable conclusion" is that the same distinction applies between our role under the OIC and the Council's "planning role". Hence, it submitted that we do not have a role in drafting planning provisions to address any concerns we may have about the Council's April Version.[63]

[87] In a 12 August Minute[64] reporting on the parties' various responses to directions in the 9 August Minute, we recorded the following:

> [5] Given [Forest & Bird] has raised some fundamental questions concerning whether the Panel has a role in drafting provisions, I now briefly respond (noting that the Panel has, in several of its decisions, set out our findings on these same provisions). Our principal function includes making decisions on proposals (cl 10, OIC). That can extend to making changes to a proposal that the Panel considers appropriate, including potentially beyond the scope of submissions (cl 13). We have an obligation to take into account the outcomes of mediation (cl 14). Therefore, we do not accept [Forest & Bird's] submissions on these matters.

58 Memorandum of counsel for Forest & Bird, 11 August 2016 ('Forest & Bird memorandum').
59 Forest & Bird memorandum at 7.
60 *Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council* [2015] NZRMA 52.
61 Forest & Bird memorandum at 15, quoting *Federated Farmers* at [153](a).
62 Forest & Bird memorandum at 14, quoting *Federated Farmers* at [136].
63 Forest & Bird memorandum at 17 and 18.
64 Minute – as to Topic 9.1 Indigenous Biodiversity and Ecosystems, 12 August 2016.

> [6] Indeed, if [Forest & Bird's] present interpretation of the OIC were correct, the Panel's burden would be so much the lighter, albeit at the cost of achieving a quality planning outcome as intended by the OIC Statement of Expectations.
>
> [7] [Forest & Bird's] reference to s 293, RMA and related case law is irrelevant as s 293 does not apply to the matter in issue.
>
> [8] [Forest & Bird] also errs in equating the development of a Secretariat draft with a Panel decision. As we have been at pains to explain in the Minutes and chambers discussion, the Secretariat draft would be precisely that, i.e. a set of draft provisions which the Panel would commission a member of the Secretariat staff (a qualified planner) to provide for consideration. The Panel is expressly able to commission this, under the OIC, Sch 3, cl 8. A Secretariat draft is not a Panel decision.

[88] No other party raised any issues of scope on this matter.

[89] We adopt and confirm the reasons in the above-quoted passage for being satisfied that we have the requisite scope to make changes from the Council's April Version and its Final Revised Version, in the manner we have in the Decision Version.

[90] Fundamentally, as we have explained in several decisions, we are an independent first instance quasi-judicial body having statutory responsibility, through the OIC, for the determination of proposals for the formulation of the CRDP. As we have also made clear a number of times, we must evaluate alternatives according to the evidence, in light of submissions and representations, mediation outcomes (and other information we ask for, by for example commissioning a report including from the Secretariat). Those are all proper sources of information for the purposes of completing our statutory responsibilities, including under s 32AA, RMA.

[91] We acknowledge that our role is to make decisions on proposals which, by definition, must be notified by the Council under Schedule 1 to the OIC for incorporation into the CRDP (OIC, cls 3, 13). It is, therefore, beyond our role to initiate our own proposals. In all cases, even if by Panel direction, it is for the Council to initiate proposals.

[92] That said, we may make any changes to a proposal that we consider appropriate, and are not limited to making changes within the scope of submissions made on a proposal (OIC, cl 13). Of course, submissions on a proposal can seek changes to a proposal (subject to the two-limb test that the High Court enunciated in *Clearwater Resort* and endorsed in *Motor*

Machinists)[65]. Explicitly, therefore, the scope of what we can decide extends beyond what the Council and/or other parties put to us as proposals, even on an agreed or substantially agreed basis. It is a form of planning role, demonstrably different from the Environment Court's judicial appellate role, albeit not involving capacity to initiate a proposal.

[93] Self-evidentially, we must conduct our inquiry according to principles of natural justice (and related requirements under the OIC, in particular as specified in Sch 3, cl 4). In view of the importance of those matters, the Panel sought initial responses from the parties, in our 9 August Minute, before circulating the Secretariat Draft and inviting sequential closing submissions on it.

[94] The OIC specifies that proposals must be notified by the Council. We cannot change a notified proposal so much as to constitute a new proposal that the Council has not notified. Ultimately, that is a question of degree. An indicator of where the line is crossed is where changes are made that could impact on those who have been denied fair notice and opportunity to make a submission or further submission. Another example could be where changes to a proposal would materially extend what would be regulated under the CRDP, in terms of its substantive or geographic coverage.

[95] As we have noted, the Council's April Version is a modification of the Notified Version and no party has questioned whether it goes materially beyond the scope available for doing so, including in the relief sought by submissions. We are satisfied that the Council's April Version is within scope.

[96] In raising the question of scope in its memorandum, Forest & Bird did not then have the benefit of having considered the Secretariat Draft. Its 9 September 2016 closing submissions[66] raise questions of natural justice and s 32 concerning a prior notification trigger and a sunset date for the rule on clearance outside of SES. We address that at [316]–[345]. It does not address the matter of scope beyond this. Nor does any other party. The closing submissions of the CCC (and of the Regional Council) are substantially supportive of the Secretariat Draft.

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65 *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003; *Palmerston North City Council v Motor Machinists Limited*, Kós J [2013] NZHC 1290

66 Supplementary closing submissions for Forest & Bird, 9 September 2016.

[97] For those reasons, we find that we have jurisdiction to consider the substance of the Secretariat Draft.

The Notified Version is inappropriate

[98] For the reasons that follow, the evidence overwhelmingly demonstrated that the Notified Version is inappropriate. As no party sought that we should confirm it, it is not necessary for us to fully traverse our evidential findings, the Higher Order Documents and other reasons why we have determined to reject it.

[99] Closing submissions reveal that no party, including CCC, continues to support the Notified Version. In essence, the available options on the evidence are broadly between the following (and variations of them):

(a) The Council's April Version;

(b) The Secretariat Draft; or

(c) Rejection of both in favour of carrying into the CRDP what is provided for under the BPDP for indigenous vegetation clearance pending a future plan change.

[100] Parties who made closing submissions express their preferences broadly in those terms and we find that the appropriate range, on the evidence.

[101] Given the history of this matter, however, we consider it important that we record why we have found, on the evidence, that the Notified Version is inappropriate. As no party seeks that we confirm the Notified Version, we find that we can largely cover these matters by summarising the content of a Minute we issued on 26 January 2016, concerning matters for mediation for Sub-chapter 9.1 ('26 January Minute').[67]

[102] Before we deal with that Minute, however, we record that we heard from several farmers, some attending as witnesses for Federated Farmers, and others in their own private capacity. Two remarkably common themes emerged from that evidence.

[67] Minute concerning matters for mediation as to Topic 9.1 on indigenous biodiversity and ecosystems, 26 January 2016.

[103] One was how many of those farming witnesses were active conservationists in their farming practices. Several were members of the Banks Peninsula Conservation Board. Many had been proactive in providing for QEII covenants over ecologically significant parts of their farms. Their evidence, while not as independent experts with formal qualifications in ecology, was informative of the practical aspects of protection.

[104] Another common theme was as to how seriously the Notified Version impacted on them, not only in a financial and productive farming sense (itself, a very significant impost[68]) but also in a deeply personal one. Many told us about having felt betrayed by the Council and we do not doubt the sincerity of those feelings. In a number of cases, it was as a consequence of the Council failing to follow through on commitments landowners understood were made concerning processes of further engagement before notification of the Notified Version.

[105] By way of illustration of this, we note the following statement from Hamish and Annabel Craw,[69] sixth generation farmers on a 420ha property at Little Akaloa on the eastern side of Banks Peninsula:

> The council's role in obtaining botanical information on the site was not carried in a way council staff assured it would be. We were approached by Council staff in early 2014 seeking our approval to conduct an ecological survey of the site. Being highly conservation-minded, we willingly agreed, having been assured that this information would not be used in any way that jeopardised our interests, without prior discussion. Quite simply, we consider that we were deceived.
>
> Once the ecological assessment was carried out we were assured by [xxx][70], CCC that we as landowners would be notified and consulted with should our property have SES identified. This would include consultation with landowners around best management practices for the area, protection options and discussion around boundaries.
>
> We were assured that no lines or areas would appear on public maps without our prior knowledge and full consultation around boundaries and areas would happen before becoming part of the new CCC district plan to ensure accuracy and achieving the best outcome for all parties.

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68 Mr Ian Richardson, who farms with Pam Richardson at Pigeon Bay, gave evidence that the Notified Version identified SES (H26, H27) that encompassed 23% or 150ha of their property, and 13–15km of fencing would be needed to fence them off, at an estimated cost of $400,000–$500,000. Michael Bayley told us that he had been informally told by Bayleys Real Estate that the Notified Version could remove in the order of 20–50% of the value of his land ($462,000–$1,155,000 of a current capital value of $2,310,000). However, we note that this was not a formal 'before and after' valuation and, hence, we do not ascribe it significant weight other than to demonstrate a significant level of concern about these matters on Mr Bayley's part.

69 Statement of rebuttal evidence (lay witness) by Hamish & Annabel Craw for Federated Farmers, 18 December 2015, at 12–18.

70 We have deleted the name of the officer mentioned in the Craws' evidence, as we understand from the evidence that the attested failure by the Council to fulfil commitments made was not the fault of the particular person concerned, who subsequently resigned from the Council.

> Once the ecological study was completed the information was then used along with google maps to create boundaries for the SES. No accurate surveying was carried out, this has created inaccurate and is some cases inappropriate boundaries.
>
> We as landowners have now found that we have to defend our position to ensure the correct areas have been identified and for the right to have the freedom to manage our land in the positive way we have been doing over generations.
>
> We entered into this ecological assessment positively and optimistic that CCC had learnt from mistakes made in other regions and supportive of the councils motivation to work alongside land owners to have a 'not surprises' process. It seems those which have proactively tried to work alongside the council are the ones which have been impacted the most and having to rectify the errors.
>
> We feel a loss of trust between CCC and us as landowners and are now extremely wary of trusting CCC word as it is clear from our experience that they can go against their word and identify areas on private property without consulting landowners and working for a win-win arrangement.

[106] For its part, we understand and accept the Council did not intend to act in bad faith. Rather, for the reasons the Council witnesses and counsel explained (and which we record in our 26 January Minute), this was a case of failing to undertake the necessary s 32 work, particularly in engaging with farmers and properly understanding context and consequences. It was a significant failure of process.

[107] By way of example, we refer to the evidence of Mr Bayley.[71] He farms a 3500 ha property at 1461 Bayleys Road, Kaitorete Spit. He is the third generation of Bayleys to have farmed there, and has 53 years' farming experience on the property. His family has been part of the land since 1916, and he gave evidence that their "conservative and careful management over the past 100 years has maintained any inherent ecological values existing at the property".[72]

[108] The Notified Plan identified a large portion of Mr Bayley's property as an SES, covering 95 per cent of his grazeable land. He argued that this left him approximately 40.4ha to grow cash crops and maintain his family's livelihood. The relevant SES/E/2 covered virtually the entire Kaitorete Spit. Mr Bayley gave evidence of the severe impediments the SES placed on his future use of the land and, potentially, his ability to survive on the farm, and ultimately its value, which were issues of considerable significance to him.[73]

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71 Evidence in chief of Michael Bayley, 10 December 2015
72 Evidence in chief of Michael Bayley, 10 December 2015, at 11.
73 Evidence in chief of Michael Bayley at 19.

[109] It is fair to record that Mr Bayley's case is somewhat exceptional. For most others, the proportionate impacts were much less extensive. Even so, we have no hesitation in recording that the evidence demonstrated those impacts would have been very severe, both economically and personally. Our impression is that those impacts were not appreciated by Council witnesses before the evidence was tested before us. That history has a very important bearing on what the Council will now need to do, by way of re-establishing farmer confidence that the Council has damaged by not adhering to what it committed to in terms of partnership and collaboration. As the Council itself acknowledges with the Council's April Version, this must clearly inform relevant objectives, policies and other provisions.

[110] Again, we illustrate that with reference to Mr Bayley's evidence. Notwithstanding his extensive involvement in mediation and discussions that led to the Council's April Version, his closing submissions[74] express his continuing significant concern that "farm viability remains a virtual afterthought" despite the central importance that farmers must play in the success of the ecological sustainability of the Kaitorete Spit.

[111] We now return to the 26 January Minute. It includes the following explanation of why it was issued[75]:

> During the hearing, on 19 January 2016, Mr Conway reported that the Council and other interested parties[76] proposed to undertake facilitated mediation on Topic 9.1 on indigenous biodiversity and ecosystems. His request was made following cross-examination and questioning of some Council witnesses.
>
> Mr Conway explained that the parties' intention for mediation is "to see if we can work on a package of provisions, particularly looking at the rules, to see the way those can operate and whether there is an agreed way forward for those".
>
> That mediation will occur over two days (Thursday and Friday, 28-29 January 2016), facilitated by mediator, Mr John Mills.
>
> Mr Conway invited the Panel to issue a Minute for the purposes of assisting the parties in mediation. Time pressures have precluded us from issuing this Minute before now. However, to assist Mr Conway in formulating an agenda for the parties, during the hearing on 22 January 2016 Judge Hassan and I gave Mr Conway some preliminary observations on the basis of the evidence and submissions that we have heard to date. We confirm that those observations and our further observations here do not represent Panel findings in that we have yet to hear all the relevant evidence and closing submissions. The relevant transcript extract is attached.

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74 Closing submissions of counsel for Michael Bayley, 7 April 2016, at 30–34.

75 At [1]–[6].

76 The Minute recording these as including Forest & Bird, Federated Farmers, various farmer submitters, the Crown (DOC) and the range of others we had heard from on this topic.

> As requested by the parties, this Minute also sets out some concerns the Panel has in regard to Exhibit 5.
>
> We reiterate that our preliminary observations here do not represent findings in that we have not yet heard all the relevant evidence and closing submissions. Nor do our observations address various contested matters as to the merits of particular approaches on topics such as access tracks and other details.

[112] The Minute then explained the context for the preliminary observations we made, noting that this included our statutory obligations to evaluate options under s 32AA, RMA, be satisfied that the CRDP gave effect to the CRPS, and have particular regard to the OIC Statement of Expectations.[77]

[113] As sought by the parties, the Minute went on to record our preliminary observations on the evidence and concerning what the Council then proposed as its Sub-chapter 9.1 provisions:

> [8] Concessions made by key witnesses (particularly for the Council), in cross examination and Panel questioning, demonstrate that the Topic 9.1 provisions of the Notified Proposal are inappropriate in their design and content, when considered against the requirements to give effect to the CRPS and to have particular regard to the OIC SOE.
>
> [9] Concessions by a number of Council witnesses also demonstrate that the Council did not follow its own intended processes for landowner engagement in its identification of the several "Sites of Ecological Significance" ("SES") around which several land use restrictions are intended to be imposed through the Notified Proposal. That is despite the clear emphasis on partnership with landowners expressed in both the "Christchurch City Council Biodiversity Strategy 2008-2035" and the Regional Council's 2008 document entitled "A Biodiversity Strategy for the Canterbury Region", which was shown to be adopted by the City Council and several other agencies with relevant interests, including several parties before us. It would appear that, despite the Council's best intentions, it failed to engage further with several landowners about draft SES before the SES and the Notified Proposal were finalised.
>
> [10] Council witnesses explained that this was due to time and resourcing pressures (including the loss of a key staff member). In any case, several landowners have given uncontested evidence to us as to how this has deeply impacted on them. Some expressed feelings of betrayal and/or outrage. A number explained how the combined effect of errors and misjudgements in the SES and related rules put at risk their ability to farm and/or seriously impacted on the value of their farms. Others spoke of the negative impact that SES could have on prospective farm purchasers.
>
> [11] The Council's own valuation expert informed us that the Notified Proposal could adversely affect property values. Furthermore, key Council witnesses explained that the success in achieving statement biodiversity and indigenous vegetation protection objectives depended on farmer stewardship and, therefore, relied on ensuring that the rules did not jeopardise farming operations.

[77] 26 January Minute at [7].

> [12] That evidence overwhelmingly demonstrates that key Topic 9.1 provisions of the Notified Proposal are inappropriate in their design and content, when considered against the requirements to give effect to the CRPS and to have particular regard to the OIC SOE.
>
> [13] One area of concern is whether we can be satisfied that SES included in the Section 32 Report are reliably identified in those cases where the Council has failed to complete them according to their intended approach (including, in particular, landowner engagement on the draft SES).

[114] The Minute directed the Council to provide us with a list of SES where it had not completed its intended approach (including landowner engagement). It also noted our concern that the Council's intention to develop a very long list of further SES appeared overly ambitious and unrealistic, recording:[78]

> In particular, the Council has proposed rules to restrict indigenous vegetation clearance outside of SES, partly with a view to ensuring protection pending the completion of this future work. We were told by one witness that this future programme could take 10 or so years to complete. However, given other statements by Council witnesses, we have no confidence that even that lengthy timeframe is realistic. Specifically, despite our requests, we were given no assurance that the Council would have the necessary resources. Overarching this, as a number of Council witnesses acknowledged, identifying future SES relied on landowner cooperation and the Council's process failures to date have seriously undermined landowner trust.

[115] We recorded that the Council's future work programme for identification of SES is also of relevance to our consideration of objectives and policies. We noted that we had in mind directions being specified in the CRDP, pertaining to how the Council approaches this process.[79]

[116] The Minute then made some preliminary observations about the proposed rules. Commencing with a discussion of rules for clearance within SES, the Minute noted with regard to what are termed 'Farm Biodiversity Plans' in the Council's April Version:[80]

> there was a reasonably high degree of support in principle (amongst various parties and their witnesses) for use of a "farm environmental plan"/"farm biodiversity protection plan" ('FEM'). FEM were not part of the design of the Notified Proposal, but that does not necessarily preclude our consideration of them. Doing so would appear compatible with the Council's express intention to express a partnership approach.

[117] We followed that with observations as to what the evidence suggested as 'certain parameters' of such plans. We do not need to traverse those observations now, as we find that

78 26 January Minute at [14]–[15].
79 26 January Minute at [17].
80 26 January Minute at [20].

the Council April Version's proposed Farm Biodiversity Plan ('FBP') provisions, which are not contentious, are substantially appropriate.

[118] The Minute also made preliminary observations on rules then proposed for the control of vegetation clearance outside SES. Those observations noted that these were understood to apply "pending future identification of SES". It recorded:[81]

> The OIC SOE emphasises clear articulation of rules. Unclear rules give rise to risks of litigation and associated cost, whether or not the rules are at the level of being void for uncertainty and/or ultra vires. …We see several clarity and uncertainty problems with the rules of the Notified Proposal.

[119] The Minute listed various examples of our concerns on those matters, with reference to Attachment A to Ms Hogan's rebuttal evidence.[82]

[120] Our further consideration of the evidence and Higher Order Documents leads us to confirm those preliminary observations as our findings concerning the Notified Version. Therefore, we reject it as inappropriate for achieving the purpose of the RMA, responding to the Higher Order Documents, and achieving related Strategic Directions objectives.

Rejection of Sub-chapter 9.1 and grandfathering BPDP regime is inappropriate

[121] As our 26 January Minute explained, the BPDP indigenous vegetation clearance provisions were inserted into that section of the Existing Plan as a result of the 2007 Consent Order. Forest & Bird and Federated Farmers were parties to that settlement.[83] They and some landowners expressed a preference for this option in their closing submissions.

Existing Plan cannot co-exist with the CRDP

[122] We understand those who favour this option do so on an assumption that this would be achieved by carrying forward the 2007 Consent Order provisions into the CRDP. However, for completeness, we now explain why we consider it would not be legally possible to have Existing Plan provisions continue in place alongside the CRDP.

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81 26 January Minute at [23](a).
82 26 January Minute at [23](b).
83 Closing submissions for Forest & Bird, 9 September 2016, at 6 and 64; Closing submissions for Federated Farmers, 13 September 2016, at 8.

[123] The OIC does not contemplate or allow for continuance of the Existing Plan. As the name 'replacement district plan' suggests, the CRDP will fully replace the Existing Plan once its various component proposals are determined. The OIC cl 6 directs that the CCC undertake a 'full review' of the operative provisions of the Existing Plan and "develop a replacement plan by preparing and notifying proposals for the replacement district plan". The only matter carved out from the OIC process is the CCC's proposed coastal hazard provisions (OIC cl 5A). However, in all other respects, the OIC intends a process whereby the incremental notification of, and Panel decisions concerning, proposals leads to the formulation of the CRDP, as a complete replacement of the Existing Plan.

[124] Our function is to hear submissions and make decisions on all proposals (cls 8, 12 - 14). Part of our role is to "identify the parts of the [Existing Plan] that are to be replaced by proposals for the replacement district plan" (cl 13(3)). We do not, however, have jurisdiction to direct that any parts of the Existing Plan continue in force in tandem with the CRDP.

[125] The RMA specifies that there "shall at all times be 1 district plan for each district prepared by the territorial authority in the manner set out in Schedule 1". That is not altered by the OIC.

[126] Therefore, we find that there is no legal ability to achieve an outcome under the OIC or RMA that would see this aspect of the Existing Plan remaining in force in tandem with the CRDP. It is not an available option under s 32, RMA and we reject it.

[127] Replicating the substance of the 2007 Consent Order provisions as a new replacement Sub-chapter 9.1 of the CRDP would overcome the legal obstacle we have described.

[128] The 2007 Consent Order was in settlement of an appeal on decisions concerning the then proposed BPDP from a range of parties. In addition to Federated Farmers of New Zealand Inc and Forest & Bird, those included the Regional Council, the Department of Conservation, NZ Institute of Forestry (Canterbury Branch) and Summit Road Society Inc. Other parties to the settlement included Banks Peninsula Conservation Trust and utility operators and other individuals and community groups.

[129] As a product of settlement, the 2007 Consent Order was not a decision on the merits or based on any evidential findings by the Court.

[130] The primary thrust of the 2007 Consent Order was its inclusion in the proposed BPDP of a new rule 9 specified as a non-complying activity:

> Clearance of significant indigenous vegetation, except:
>
> - Minor trimming or disturbance (i.e. the removal of branches from trees/shrubs and removal of seedlings/saplings) of significant indigenous vegetation within 2 metres of existing fences, existing vehicle tracks, existing buildings, and existing utilities; within the legal formed roads; and in the course of removing declared weed pests
> - Where the clearance is carried out on an area of improved pasture for pastoral farming purposes.
>
> • For conservation activities.

[131] The 2007 Consent Order included related definitions of 'improved pasture' and 'significant indigenous vegetation':

(a) 'Improved pasture' was defined to mean:

> …an area of pasture where:
>
> a) exotic species are visually the predominant vegetation cover; and
>
> b) the area has been modified or enhanced by being subjected to either cultivation, irrigation, over-sowing, top-dressing, or direct drilling; and
>
> c) has been subjected to routine pasture maintenance or improvement since 1 June 1987.

(b) 'Indigenous vegetation' was defined to mean a plant community in which locally indigenous species are important in terms of coverage, structure and/or species diversity';

(c) 'Significant indigenous vegetation' was extensively defined. It means 'indigenous (native) trees, forest, scrub, tussock grassland, coastal vegetation, wetland and salt marsh and other indigenous vegetation' in any of the various forms it goes on to specify under the various subheadings of 'indigenous trees, forest and scrub', indigenous tussock grassland', 'indigenous coastal vegetation', 'indigenous wetland vegetation', and 'threatened indigenous plant species'.

[132] That new rule and definition were prefaced by 'method' statements making it explicit that the rule was intended to serve an interim purpose of protection, for the purpose of s 6(c), RMA pending the Council's notification of a future plan change that would serve to protect what had by then been identified as the relevant 'areas of significant indigenous vegetation and significant habitats of indigenous fauna'. Relevantly, those method statements recorded the following (our emphasis):

> Method 1 Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna
>
> Part A …To use the definition of significant indigenous vegetation and associated rule as an **interim** regulatory method for addressing the significant indigenous vegetation and significant habitats of indigenous fauna requirements of the Resource Management Act.
>
> Part B: To identify (**in consultation with landowners and other interested parties**) sites of significant indigenous vegetation and significant habitats of indigenous fauna in accordance with a set of criteria below.

[133] The method statements went on to express what the Council was then committed to doing, by way of s 32 RMA evaluation in preparation for the intended plan change. This refers to undertaking a study to identify sites of significance according to its specified criteria (which we observe to be closely similar to those in Policy 9.3.1). It describes how the Council will approach that study, on advice from a community steering group to be established. The described methodology includes "on the ground assessment of the values of these sites", discussions with landowners "on appropriate management mechanisms" and evaluation and review. Finally, it records the following intention concerning the notification of the plan change:

> Council intends to complete the study and carry out a section 32 analysis to determine whether any of the areas should be included in the Plan within 5 years of this provision being approved by the Environment Court.

[134] Given the date of the 2007 Consent Order, it signalled that the Council was intending to notify a plan change by 28 September 2010.

[135] In addition, the 2007 Consent Order makes some confined changes to objectives and various policies and rules (and related explanatory text).

[136] The parties who prefer this option do not explain how much of the 2007 Consent Order provisions they envisage being replicated as a replacement Sub-chapter 9.1. Nor do they offer

any proposed drafting for this. If we assume they meant that we simply carry forward the non-complying activity rule and related definitions, we must be satisfied that this would be most appropriate for achieving relevant CRDP objectives. If we assume that the replacement Sub-chapter 9.1 would not include its own objectives, we would have to undertake that evaluation by reference to other CRDP objectives. If we assume the parties mean that we should incorporate other BPDP provisions, including its objectives (even if these were unaltered by the 2007 Consent Order), that begs other questions. One concerns whether we can be satisfied that the CRDP would continue to give effect to the CRPS, bearing in mind that the 2007 Consent Order pre-dated it. We do not have evidence as to the potential costs and benefits of these various options. Finally, we note that the drafting of the 2007 Consent Order provisions (including its non-complying activity rule and related definitions) is conceptually quite different from the drafting of the CRDP. None of the submitters who advocated for this approach offered any planning evidence or assistance on these matters in their legal submissions.

[137] We do not have an evidentially sound basis to determine whether full or partial replication of the 2007 Consent Order provisions would be appropriate for achieving related objectives. In addition, we find that replicating the non-complying activity regime of the 2007 Consent Order (and any wider replication of the 2007 Consent Order provisions) would fail to give effect to the CRPS. Specifically, that is because it would fail to give effect to Policy 9.3.1, on the evidence before us. In particular, that is because it would not protect areas identified as significant, according to that policy's prescribed methodology, to ensure no net loss of indigenous biodiversity or indigenous biodiversity values as a result of land use activities.

[138] For those reasons, we reject this option as contrary to the Higher Order Documents and inappropriate for achieving CRDP objectives.

[139] There is an irony in the fact that Forest & Bird and Federated Farmers prefer reversion to the 2007 Consent Order regime despite having each been associated with the settlement that led to that consent order. That is particularly so, given that the 2007 Consent Order is explicit that the regime they now seek for inclusion in the CRDP was an interim one pending its specified process of investigation of areas for an intended plan change, neither of which eventuated. As we next discuss, it is on the basis of the evidence before us and in light of the

Higher Order Documents that we evaluate the remaining options in order to make our determination for the provisions in the Decision Version.

Rejecting Sub-chapter 9.1 and leaving matters to a future plan change inappropriate

[140] For completeness, we have considered and find that it would be inappropriate to reject Sub-chapter 9.1 such as to leave these matters to be addressed by the Council in a future plan change. Suffice to say that, on the evidence, this option would mean a loss of protection, fail to responsibly address s 6(e) and fail to give effect to the NZCPS and CRPS. Nor was it sought by either the CCC or Regional Council.

Comparisons: Council's April Version, Notified Version and Secretariat Draft

[141] The most significant substantive differences are as between the Notified Version and the Council's April Version.

[142] The Council's submissions that accompanied the Council's April Version noted that facilitated mediation had been successful in narrowing previously divergent views such that there was a "high level of agreement" concerning that Version. It summarised key changes to what it had proposed during the hearing in the following terms:

> 2.2 The key changes that have been made to the policies since the hearing:
>
> (a) Place a greater emphasis on collaboration with landowners;
>
> (b) Set out principles to prioritise the identification of further SES in the Plan in the future;
>
> (c) Provide for FBPs as a tool to encourage integrated management and protection of indigenous biodiversity values, while acknowledging that there may be a need to clear some indigenous vegetation as part of maintaining rural productive activities; and
>
> (d) Recognise that biodiversity management and protection is dependent on landowner support and that biodiversity protection is achieved through various mechanisms including rules, as outlined in Policy XA(a), introduction and Policy XB.
>
> 2.3 The Council notes that the policy framework for this Topic is now substantially agreed amongst all of the parties, except for issues in relation to biodiversity offsetting, particularly in relation to Policy 2(e) and 2(a).
>
> 2.4 With respect to the rules, key changes made since the hearing include changes to:

(a) Alter permitted activity standards for grazing within an SES;

(b) Provide for clearance within and outside of an SES under an FBP as a restricted discretionary activity;

(c) Provide for the clearance of vegetation identified in Appendix 9.1.4.6 outside of SES on Banks Peninsula and the Port Hills as a restricted discretionary activity (reduced from discretionary) where it does not meet the permitted activity standards in Rule P1;

(d) Align the provisions for permitted clearance activities within and outside an SES to reduce duplication and simplify the provisions;

(e) Include clearance undertaken in accordance with conservation covenants as a permitted activity to recognise that these covenants have gone through a robust process and reflect landowners' commitment to biodiversity;

(f) Provide for clearance of old growth and regenerating podocarp/hardwood forest as non-complying activity (increased from discretionary); and

(g) Split the previous Schedule of SES into two parts:

(i) SES where agreement has been reached with landowners in relation to the scheduling. These SES are set out in Schedule A of Appendix 9.1.4.1 and are subject to the rules in this Topic applying to vegetation clearance within SES (and other rules in Chapter 6 and 8 relating to earthworks).

(ii) SES that the Council had included for scheduling in the notified version of the Plan, but where landowner agreement has not been obtained or the collaborative process has not been completed. These SES are set out in Schedule 8 of Appendix 9.1.4.1 and are included in the Plan for information purposes only. Vegetation within these SES is subject to the general indigenous vegetation clearance rule, which applies to Banks Peninsula and the Port Hills only.

2.5 To assist Plan users' understanding of the rules, the Council has also inserted a diagram in 9.1.2.1.7 setting out an overview of the situations when a resource consent is needed for indigenous vegetation clearance.

2.6 The Council notes that there is now also a comparatively high level of agreement amongst the parties in relation to the rules. Remaining areas of disagreement now primarily relate to the way in which the permitted activity rules address grazing within an SES, the activity status for clearance in accordance with a FBP, and clearance height of kanuka for the general clearance rule on Banks Peninsula and the Port Hills in Appendix 9.1.4.6.

2.7 The Council also refers to the joint memorandum of counsel filed by Norak Enterprises Limited and the Council on 17 February 2016, setting out agreed changes to SES/LP/16. These changes are reflected in the current revised proposal.

[143] We accept those submissions to accurately represent the position at that time, including the narrow points of difference parties have about the Council's April Version.

[144] As the submissions explain, FBPs were included in the Council's April Version "as a tool to encourage integrated management and protection of indigenous biodiversity values, while acknowledging that there may be a need to clear some indigenous vegetation as part of maintaining rural productive activities". As the submissions also record, this was one of the key aspects of the Council's April Version on which there was "a high level of agreement" between parties to mediation.

[145] The evidence overwhelmingly satisfies us of the appropriateness of providing for the use of FBPs, both inside and outside protected SES, for the purposes that the Council's submissions describe. Provided that their use is properly incentivised by the rules (which we discuss later in this decision), we find that they are a tool that will assist to incentivise landowner cooperation in stewardship. As the Council's expert Mr Hooson acknowledged, we find that cooperation is an important aspect of protection of significant areas and the maintenance and enhancement of biodiversity.

[146] One further important matter that the Council's explanation does not bring out concerns the Council's April Version proposed changes to the scheduling of SES. It proposes that we replace the single schedule of the Notified Version with two different schedules:

(a) Schedule A — Sites of Ecological Significance are those on public land or where, following collaboration, private landowners have agreed to their inclusion; and

(b) Schedule B — Sites of Ecological Significance are those on private land that require further collaboration with landowners.

[147] Schedule A is not a comprehensive list, and is intended to be updated by way of future plan changes as new SES are identified and assessed in collaboration with landowners.

[148] Schedule B is specifically "for information" only, and identifies sites where the Council intends to continue discussions with landowners about what ecological values exist and how these can be managed. Schedule B includes SES/E/2 on Mr Bayley's property. Future plan changes will add these sites to Schedule A once the relevant collaboration process is complete.

[149] We have earlier noted (at [105]–[114]) some of the evidence that we heard that showed the unsatisfactory way in which the Council formulated its proposed list of SES as included in the Notified Version. Following the hearing in January 2016, the Council informed us that it had in fact not concluded its intended approach for any proposed SES area prior to notification of the CRDP.[84] Specifically, while noting that it had held discussions with a number of landowners, it conceded that "it was not able to complete its intended approach prior to notification in relation to any of the proposed SES" (emphasis added).[85]

[150] In view of that evidence, and the Council's acknowledged position, we find this significant change of approach in the Council's April Version is most appropriate. We have carried it into the Decision Version.

[151] We commend the Council and parties for narrowing these differences.

[152] The Secretariat Draft differs from the Council's April Version in relatively more confined respects. Those differences are all in respect to issues raised with parties in our 26 January Minute. In our Minute to the parties of 9 August 2016 ('9 August Minute'), we acknowledged the constructive engagement that occurred and the significant improvements resulting from this in the Council's April Version. In particular, we recorded:[86]

> That is particularly as to its recognition of the need for early farmer engagement in the development of Sites of Ecological Significance ('SES') and, related to that, the removal of several initially proposed SES to be considered at a later stage.

[153] The Minute went on to explain that our primary remaining concern on this was whether there is a sound planning framework for the future plan changes for the anticipated large number of future SES and related engagement with farmers concerning these (most of whom were not before the Panel).

Overall observations including as to objectives and policies

[154] The Minute then made some observations as to what we considered, on our view of the evidence and Higher Order Documents, to be important themes including for expression in objectives and policies:

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84 Memorandum on behalf of the Council responding to Panel Minute, 3 February 2016.
85 Memorandum of the Council, 3 February 2016, at para 3.
86 9 August Minute – as to Topic 9.1 Indigenous Biodiversity and Ecosystems, 9 August 2016.

> [6] The Panel considers that the objectives and policies need to be clear that it is for the statutory functionary, not the expert, to determine both:
>
> (a) Significance of areas, and
>
> (b) Protection response(s).
>
> [7] There is, of course a requirement for informed determination and, related to that, expert assessment. However, expert assessment is to serve the statutory functionary's obligation of determination. That approach is what s 6(c) requires, and is reflected in CRPS Policy 9.3.1 and its related Appendix.
>
> [8] The Revised Version's expression of objectives and policies reflects this to some extent, but still reads in similar vein to the Notified Version in assuming that it is for the expert to determine significance.
>
> [9] The Panel considers that engagement and collaboration with the landowner is a prerequisite for determining both significance and protection response(s). In particular, that is necessary because both steps need to be informed by knowledge of farming. Ecology is insufficient as a source of knowledge for both, and this was clearly in evidence before us.

[155] We observed that those matters were reflected in the Council's April Version "to some extent" but further clarity was needed, particularly in regard to engagement "in order to make a properly informed determination concerning both significance and protection"[87]

[156] Also in regard to the objectives and policies, we made the following observations:

> [15] Objectives and policies need to be framed for two important purposes. One is obviously for consent application purposes. In addition, and fundamentally in this case, they serve as a frame of reference for all stakeholders as to how future plan changes to bring in new SES are to be approached. That also assumes, as the Panel does, that plan change is the most appropriate method for instituting a SES. It is more appropriate than doing so via a resource consent application.
>
> [16] The policies need to account for the potential risk that a collaborative approach fails. There should be sensible scope for the Council to notify a plan change for a SES in those circumstances. The Panel's thinking here is that, on an approach where there is an established Council practice of collaboration with farmers for the purposes of its determinations as to both significance and protection, there will be an associated building of capability as to farming practice matters at the Council (together with ecological expertise). In addition, we note the Council's RMA powers of entry under s 333, if needed.

'No net loss' and 'offset'

[157] On the matter of the Council's April Version's use of 'no net loss', and 'offset' we made the following observations:

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87 9 August Minute at [10]

> [11] It is important for the CRDP to be clear in its definition and application of concepts of 'no net loss' and 'offset'.
>
> [12] Regarding 'no net loss', the proper frame of reference, for the CRDP, is at the level of the particular Site of Ecological Significance ('SES').
>
> [13] Offsetting is a different concept. In addition to the important elements of avoidance, it should reflect an approach of local first, much like the concentric circles from dropping a stone in a pond. We envisage it should require starting at property/neighbour property where the SES located, then going on to consider the relevant ecological district, then district wide.
>
> [14] To support a sound offsetting approach going forward, we consider the Council needs to undertake regular checking of biological diversity at least at each ecological district scale. This is important to provide sound baseline information for determinations as to offsetting. Given the importance of this, we consider it should be given expression in the policies.

[158] The Minute then went on to express our observations concerning regulation, both within and outside SES, in view of the evidence and Higher Order Documents.

Rules for clearance within SES

[159] We noted concern about the vagueness of proposed permitted activity rules for grazing within SES, including an inconsistency in related definitions. Also in regard to permitted activities, we noted concerns about the complexity of proposed activity standards for some classes. We expressed preference for a clearer, simpler, approach for clearance in relation to specified structures (e.g. fences, ponds for stock, fire, buildings, stockyards). That was with a view to providing that, if such a structure is in existence, there would be an ability to undertake clearance within the specified distances (i.e. dropping the date reference).[88]

[160] An important aspect of the regulatory approach of the Council's April Version to indigenous vegetation clearance in an SES is the Farm Biodiversity Plan ('FBP'). We observed that we considered that restricted discretionary activity ('RDA') was more appropriate than a controlled activity ('CA') classification when clearance was in accordance with a FBP, subject to the following:[89]

(a) The rules need to be clear that only one consent process is involved (i.e. both as to the FBP and related clearance activity).

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88 9 August Minute at [18]–[19].

89 Minute as to Topic 9.1 — Indigenous Biodiversity and Ecosystems, 9 August 2016, at [20].

(b) The assessment criteria need to be specifically focussed essentially on the implementation of the FBP, farm management matters, and ensuring no net loss, and offsetting if no net loss is not achieved. Extraneous matters need to be excluded.

[161] We expressed the view that, for such consent applications, public notification would not be appropriate, given the nature of the resource management issue and in view of costs and uncertainty dimensions. We explained that we wanted to carefully reflect on the relative positions of non-notified (on the footing that the Council has requisite assessment capability) or very confined limited notification to a named other entity/entities (on the basis that the Council does not hold all requisite assessment capability).[90]

[162] We indicated that we favoured a non-complying activity ('NCA') classification where clearance is not in accordance with a FBP.

Rules for clearance outside SES

[163] In relation to rules for indigenous vegetation clearance outside SES, we made a number of observations. This included the following comment[91]:

> The Panel considers that an important part of a properly balanced and appropriate regime for Topic 9.1 matters is a clear expression of the intended transitional nature of provisions for regulation outside SES. These provisions are effectively a carry over of what were intended to be transitional provisions of the Existing Plan. The clear emphasis should be on changing to area-based protection through SES. The Panel has a related concern that the Revised Version regime is still far too uncertain and prone to catching out farmers who are unaware.

[164] We indicated that we considered the activity classification approach of the Council's April Version is generally appropriate (i.e. mostly RDA and some NCA). However, we proposed for consideration the following modifications to better position this regime as clearly transitional:

(a) A trigger rule, to the effect that no regulation applies unless/until the Council has written to the landowner to inform that it reasonably considers that specified vegetation listed in the CRDP schedules exists on the land;

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90 Ibid at [20].
91 Ibid at [22].

(b) Two activity classes:

(i) Controlled activity for clearance if the application is accompanied by a certificate from a terrestrial ecologist that the land where the activity is to take place does not include the vegetation specified or not to a material extent;

(ii) RDA otherwise, including where the farmer elects to seek a global farm wide consent enabling vegetation clearance according to a FBP;

(c) Non notification of consent applications;

(d) A four-year sunset date on the rule applying with the effect that the rule ceases to apply to a parcel of land unless, by that date, the Council has notified a plan change to institute an SES for that land.

'Hard cases'

[165] We made the observation that there could be some outlier 'hard cases', such as where the regime operated in effect to take out a farm's productive capacity to an unreasonable extent. We invited the parties to consider whether the RMA designation regime could cater for such circumstances and whether it would be appropriate to signal that in some way (for instance via a policy).[92]

Concluding remarks

[166] Our concluding remarks observed that we sought an outcome that best reflects the constructive engagement that has occurred between stakeholders, and which best positions this to continue as future SES are developed. We then outlined our intended processes for receiving parties' responses, noting our ability to direct the Secretariat to undertake related drafting. In due course, that led to circulation of the Secretariat Draft for further closing submissions.

92 Ibid at [25].

Key issues in the comparison of the Council's April Version and the Secretariat Draft

[167] That summary of our 9 August Minute provides context for our evaluation of key outstanding issues for our determination of the most appropriate provisions.

[168] In terms of the ultimate preferences expressed by parties in closing submissions:

(a) Both CCC and the Regional Council favoured our confirmation of the Secretariat Draft, but subject to specified amendments. The CCC described it as having "built upon and improved" the Council's April Version which it described as "the product of constructive engagement between the parties".[93] The Regional Council supported the general approach of the Secretariat Draft, particularly its emphasis on collaboration, its intention to provide increased certainty and support for landowners, and its requirement that the CCC monitor to establish a baseline of 'no net loss'. It proposed amendments which it considered would better give effect to the CRPS.[94]

(b) The Crown and Rod Donald Banks Peninsula Trust each favoured the Council's April Version. However, the Crown suggested a number of amendments to the Secretariat Draft.[95] The Trust supported the Secretariat Draft's RDA rule for vegetation clearance under a FBP, and made various other suggestions concerning the Secretariat Draft. It opposed the Secretariat Draft's sunset regime for the rule on indigenous vegetation clearance outside SES.[96]

(c) As noted, Forest & Bird and Federated Farmers expressed a first preference that we reject the Sub-chapter 9.1 proposals entirely. However, as we discuss at [122]–[126], that was on the incorrect assumption that this would see continuance of the Existing Plan regime. That was also the case for Mr Bayley and Ms Pam Richardson.[97] The Crown also made that assumption, although it did not express preference for rejection of the sub-chapter. Helpfully though, Forest & Bird, Federated Farmers and Mr Bayley each also commented on aspects of the

93 Council's 16 September closing at 1.3
94 Closing submissions for the Regional Council, 9 September, at 2.
95 Closing submissions for the Crown, 16 September 2016, at 1.1–1.3.
96 Closing representations for Rod Donald Banks Peninsula Trust, 9 September 2016, at 5–13.
97 Closing submissions for Michael Bayley, 9 September 2016, at 4; closing representations by Pam Richardson, 9 September 2016.

Secretariat Draft. Federated Farmers have indicated that the Secretariat Draft "looks reasonable", and noted support for the Draft's definition of 'pasture', and its rules concerning limited notification of consent applications. It recorded concerns on some other aspects.[98]

(d) Transpower New Zealand Limited expressed full support for the Secretariat Draft.[99] Isaac Conservation and Wildlife Trust ('ICWT') noted support for the Secretariat Draft's removal of grazing from the definition of indigenous vegetation clearance (and the lack of regulation of indigenous vegetation clearance on the Low Plains outside SES).[100]

(e) Fulton Hogan sought particular RDA provision for indigenous vegetation clearance at Templeton Golf Course and addressed the Secretariat Draft's proposed policy concerning adverse effects within SES and offsets.[101]

[169] In terms of its drafting style and structure, we find that the Secretariat Draft is generally clearer and more consistent with other decided CRDP chapters. Those are important considerations, given that the OIC Statement of Expectations to which we must have particular regard, gives emphasis to drafting clarity and consistency. While there are important substantive differences between the Council's April Version and the Secretariat Draft, these are on relatively confined matters, all of which were signalled in our 26 January Minute.

[170] In light of closing submissions, we find that the following are the key issues for our evaluation of the most appropriate provisions:

(a) Should Objective 9.1.2.1 be confined to those SES scheduled for protection or apply more broadly?

(b) What policy direction should be given concerning protection of indigenous vegetation and habitats within SES?

98 Closing submissions for Federated Farmers, 13 September 2016, at 3, 5
99 Closing submissions for Transpower New Zealand Limited, 9 September 2016.
100 Closing submissions for ICWT, 9 September, at 4 and 5.
101 Closing submissions for Fulton Hogan, 9 September 2016, at 2.

(c) What policy direction should be given on plan change processes for the protection of further SES?

(d) Should policies on offsetting:

(i) allow for offsetting to be extended to other areas that are subject to a resource consent application to clear vegetation?

(ii) express an expectation of a 'net gain' outcome?

(e) What further direction should be given concerning the coastal environment?

(f) Should assessment of ecological significance be through consent applications?

(g) Regarding indigenous vegetation clearance:

(i) What allowance should we make concerning improved pasture?

(ii) Should grazing be exempt and, if not, what grazing ought to be permitted?

(h) Should vegetation clearance under a Farm Biodiversity Plan ('FBP') in an SES be RDA or CA?

(i) Should the RDA matters of discretion for resource consent decision-making refer to farm viability?

(j) Should FBP indigenous clearance applications be assigned only limited notification or be non-notified?

(k) What is the most appropriate activity status for vegetation clearance in an SES at the Templeton Golf Course?

(l) Regarding rules restricting indigenous vegetation clearance outside SES:

(i) should a trigger of prior CCC notice of the existence of protected vegetation apply (i.e. a 'trigger rule')?

(ii) should a sunset date be set whereby the rule ceases to apply to particular land unless a plan change for a SES is notified?

(m) What are the appropriate specifications for indigenous vegetation that is the subject of clearance rules?

[171] We acknowledged that closing submissions identify some other issues. Notably, the Regional Council makes a number of drafting refinement recommendations. While we do not traverse these specifically, we have considered them in our determination of the Decision Version. Federated Farmers expresses concern that the Secretariat Draft includes provisions that were not agreed at mediation.[102] We refer to [87]–[94] in answer to that matter. We deal with the specific matter it raises concerning the height of kanuka plants in Table 9.1.6.5, at [347]–[360].

[172] We address those issues in the context of our evaluation of objectives, policies and rules in the following part of the decision.

Should Objective 9.1.2.1 be confined to those SES scheduled for protection or apply more broadly?

[173] The Secretariat Draft, like the Council's April Version, includes two objectives. It modifies the expression of the first of these (9.1.2.1) to read as follows:

> 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 vegetation.

[174] The substantive change it makes is to explicitly reference what is "listed in Schedule A of Appendix 9.1.6.1". The Crown is concerned that the addition of those words would remove protection from areas not listed, submitting that this would be inconsistent with s 6(c) and CRPS Chapter 9. It seeks that we prefer the wording of the Council's April Version:[103]

102 Closing submissions for Federated Farmers, 13 September 2016, at 11.
103 Closing submissions for the Crown, 9 September 2016, at 11.1–11.3.

> Areas of significant indigenous vegetation significant habitats of indigenous fauna are protected.

[175] The CCC supports the Crown on this matter,[104] and the Regional Council and Forest & Bird raise similar concerns.[105]

[176] On the evidence, we find it important that the objective explicitly refer to Schedule A of Appendix 9.1.6.1 as the benchmark for protection for the matters in that schedule is to ensure no net loss. We find clarity best gives effect to CRPS Chapter 9. In terms of the wider intended design of Sub-chapter 9.1, the emphasis of protection is on areas identified as SES. That design of approach reflects s 6(e) and CRPS Chapter 9. We acknowledge that that Sub-chapter 9.1 also serves to manage effects of clearance on other listed indigenous vegetation and habitat types. We note that proposed Objective 9.1.2.2 of the Council's April Version, which is included in the Secretariat Draft, deals with this.

[177] For those reasons, we find that the most appropriate approach is to confine Objective 9.1.2.1 to Schedule A of Appendix 9.1.6.1, on the basis that it applies in tandem with Objective 9.1.2.2 to provide sufficient overall direction to related provisions.

[178] We have noted some issues of drafting clarity with both draft objectives of the Secretariat Draft. Objective 9.1.2.1 ought to include the word 'areas', as this is used in both s 6(e) and CRPS Chapter 9. The placement of the words "in the district" in the middle of draft Objective 9.1.2.2 could mean the objective is taken to seek that indigenous biodiversity must be maintained and enhanced on every farm holding, as opposed to being set at a district-wide scale. We have clarified both objectives on these matters in the Decision Version.

[179] On the evidence, we find that, subject to our rewording of these objectives, they are most appropriate in responding to the statutory principles and Higher Order Documents and achieving the RMA's purpose. As provided for in RMA s 32, our evaluation of related policies and rules is in terms of what is most appropriate for achieving these objectives (and related Strategic Directions objectives).

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104 Council's 16 September closing at 4.13.

105 Closing submissions for the Regional Council, 9 September 2016, at 43; closing submissions for Forest & Bird, 9 September 2016, at 55 and 56.

What policy direction should be given concerning protection of indigenous vegetation and habitats within SES?

[180] Policy 9.1.2.8 of the Secretariat Draft concerns protection of indigenous vegetation and habitats of indigenous fauna in SES listed in Schedule A of Appendix 9.1.6.1. It is in three parts.

[181] Clause (a) is 'Recognise and protect' the vegetation and habitats within each SES "so as to ensure no net loss of indigenous biodiversity", by the following cascade of measures:

> 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 reasonably measureable residual adverse effects on the significant indigenous vegetation and significant habitats of indigenous fauna within the site, offsetting them in accordance with Policy 9.1.2.15.

[182] The equivalent proposed policy of the Council's April Version was cl (a) of proposed Policy 9.1.1.1.2 on 'Land Management'. It was prefaced by a different policy directive to "manage clearance of indigenous vegetation and disturbance of habitats to ensure no net loss of indigenous biodiversity values" by a two-pronged approach:

(a) In the first instance, avoid and, where this is not practicable, "remedy and finally mitigate" adverse effects on those values; and

(b) Offset any residual adverse effects on those values in accordance with its proposed offsetting policy (9.1.1.1.5).

[183] In its closing submissions on the Council's April Version, Forest & Bird sought that we change the policy direction to:[106]

(a) Avoid, in the first instance, remedy or mitigate adverse effects on indigenous biodiversity and indigenous biodiversity values; and

106 Closing submissions for Forest & Bird, undated but filed approximately 7 April 2016, at 7 and 8.

(b) Ensure no net loss of indigenous biodiversity and indigenous biodiversity values.

[184] Forest & Bird did not address this policy in its 9 September 2016 submissions. Rather, it focussed on the concerns it has in regard to draft policies 9.1.2.6 and 9.1.2.7 of the Secretariat Draft, concerning provision of advance notice by the Council and the sunset regime for those rules for indigenous vegetation clearance outside SES.[107] Similarly, the Crown focussed on those other policies.

[185] The Council sought that we change cl (a)(iv) by replacing "reasonably measurable" residual adverse effects with "significant". We agree that is a sensible change, making the policy more in keeping with s 6(c) and CRPS Chapter 9. In all other respects, we find that the Secretariat Draft Policy 9.1.2.8(a) is more appropriate than the equivalent part of proposed Policy 9.1.1.1.2 of the Council's April Version. Specifically, that is because it more closely follows s 6(c), better gives effect to CRPS Policy 9.3.1 and better achieves the related objectives.

[186] Clause (b) of the Secretariat Draft is as follows:

> Provide for small-scale, low impact indigenous vegetation clearance where it will enable continued use of land and the maintenance of existing infrastructure.

[187] It was not a matter of contention in closing submissions, and we find it appropriate for achieving related objectives and so include it in the Decision Version.

[188] Clause (c) of the Secretariat Draft is as follows:

> Recognise that the locational, operational and technical requirements of new, or upgrades to, network utilities operations 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.

[189] Under the Council's April Version, the equivalent was proposed Policy 9.1.1.1.2(e), as follows:

> Recognise that the locational, operational and technical requirements of new, or more than minor upgrades to, network utility operations may necessitate the removal of significant indigenous vegetation and significant habitats of indigenous fauna, including within Sites of Ecological Significance.

[107] Closing submissions for Forest & Bird, 9 September 2016, at 4 and 10–36.

[190] An earlier iteration of this policy, proposed by the Council on 24 March 2016 for the April round of closing submissions, added to the above the following:

> i. ensure in the first instance avoidance of adverse effects on significant indigenous biodiversity values, including through route, site and method selection.
>
> ii. where this is not practicable adverse effects shall be remedied or mitigated.

[191] In its April closing submissions, Forest & Bird challenged reference to "where this is not practicable", submitting that it was uncertain and did not give effect to the NZCPS or CRPS.[108] It sought that sub-clauses (i) and (ii) be deleted. Transpower challenged those submissions at that time, and Transpower was supported by Orion New Zealand Limited.[109]

[192] As we have explained, the Council's April Version deleted the two sub-paragraphs. Leaving aside drafting refinements, the substantive difference between the Council's April Version and the Secretariat Draft is in the fact that the latter refers to "upgrades to, utilities operations", whereas the former refers to "minor upgrades to, network utility operations".

[193] As we have noted, Transpower submitted in full support for the Secretariat Draft. So did the Crown.[110] Orion did not file closing submissions on it. Forest & Bird does not make any submissions on this aspect of the Secretariat Draft. The CCC proposes the following drafting refinements to cl (c):

> Recognise that the locational, operational and technical requirements of new, or upgrades to, <u>utilities operated by</u> network utility ~~operations~~ 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

[194] We agree those are sensible changes.

[195] Therefore, subject to the CCC's requested amendments to cls (a) and (c), we have included this policy in the Decision Version. For greater clarity, we have split the Secretariat Draft policy into two:

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108 Closing submissions for Forest & Bird at 10 – 25.
109 Closing submissions for Transpower, 7 April 2016, at 5–7; Closing submissions for Orion, 7 April 2016.
110 Closing submissions for the Crown, 9 September 2016, at 6.1.

(a) Policy 9.1.2.8 concerns "Protection and management of significant indigenous vegetation and habitats of indigenous fauna listed in Schedule A of Appendix 9.1.6.1";

(b) Policy 9.1.2.11 headed 'Land management' deals with the utility matters.

What policy direction should be given on plan change processes for the protection of further SES?

[196] At [101]–[120] we traverse the significant failures in the s 32 processes the Council undertook in its preparation of the Notified Version. In essence, as the Council has acknowledged, the evidence revealed that its processes fell well short of what could be regarded as proper engagement with landowners. It did not accord with the Council's own biodiversity strategy or the processes the Council committed to undertaking for the BPDP plan change that was signalled by the 2007 Consent Order but never eventuated. In addition, the Council's evidence showed other serious deficiencies in its ecological assessment, such as a lack of adequate ground-truthing fieldwork. Because of those fundamental deficiencies, the Council's s 32 evaluation process did not accord with the CRPS Policy 9.3.1 and Appendix 3 requirements of assessment for the purposes of determination of SES.

[197] We are satisfied, on the evidence, that the significantly culled back list of protected SES in the Council's April Version are sufficiently supported by ecologically-based assessment, including landowner engagement. Therefore, we have included these in Schedule 1 of the Decision Version.

[198] Given that evidence, we find it particularly important to give policy direction about the processes of ecological assessment and landowner engagement that the Council is to follow as part of its preparation of plan changes to add SES to Schedule A. That direction should reflect the findings we have made at [43]–[71] concerning the proper interpretation of CRPS Policy 9.3.1 and Appendix 3.

[199] The Council's April Version significantly improves upon the Notified Version in explicitly recognising the importance of working in partnership with landowners to protect indigenous diversity. For example, in a new Introduction section it proposes the following statement:

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

[200] In addition, it proposes a Policy 9.1.1.1.1 in regard to the process for identifying and scheduling areas of significance, cls (a)–(c) of which are as follows:

(a) Proposed cl (a) reads:

> Collaborate with landowners to identify areas of significant indigenous vegetation and significant habitats of indigenous fauna as Sites of Ecological Significance and include them on the schedule in Appendix 9.1.4.1 where they have been assessed as meeting one or more of the significance criteria in [CRPS] Policy 9.3.1 and Appendix 3. The [SES] identify areas or habitats where the Council will prioritise collaboration with landowners to maintain and protect the indigenous biodiversity values.

(b) Proposed cl (b) is to recognise that the SES listed in Schedule A to Appendix 9.1.4.1 is not comprehensive and to specify that the Council would undertake further work "with land owners, Ngāi Tahu, Department of Conservation, conservation groups and other stakeholders" to identify areas of significant indigenous biodiversity.

(c) Proposed cl (c) concerns prioritisation of assessment, and specifies assessment factors (i–vi).

[201] We find the proposed policy to express themes that the evidence establishes as important in the direction of future plan change processes for the addition of further SES. We observe that, in those terms, the policy is similar to the method statement of the 2007 Consent Order (although noting that the consent order pre-dated the CRPS). In those respects, we find that the proposed policy better gives effect to the CRPS and makes the Council's April Version significantly more appropriate than the Notified Version.

[202] Our concerns with it are in terms of the clarity of its direction on the priorities it correctly identifies.

[203] The Secretariat Draft proposed reasonably extensive structural and substantive changes (to a renumbered Policy 9.1.2.3):

(a) It deleted cl (a);

(b) It added to cl (b) "and to understand the relationship between the protection of those areas and land use practices" and made other changes in essence by way of clarification;

(c) It modified cl (c) so as to require that the Council give priority to assessment of whether sites listed in Schedule B (i.e. sites that are listed but not protected) should be put into Schedule A of Appendix 9.1.6.1 (and hence accorded protection). Otherwise, it made mainly clarification changes.

(d) It added a new proposed policy on 'determination of significance' as follows:

> 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, the Council will determine whether those sites are significant, in accordance with the criteria in the Canterbury Regional Policy Statement Policy 9.3.1 and Appendix 3, and warrant protection by listing in Schedule A of Appendix 9.1.6.

[204] The Crown sought that we delete from cl (b) the words:

> and to understand the relationship between the protection of those areas and land use practices

[205] It submitted that the words are unclear and SES boundaries should not be influenced by land use practices, but be determined solely on an ecological basis. For those submissions, it referred to its April submissions on related case law,[111] as well as to a High Court decision, *Man O'War*[112] concerning the application of RMA s 6(b), in which the Court held that 'identification' of outstanding natural landscapes was a separate and prior step to the determination of the level of associated protection.

[206] *Man O'War* concerns the interpretation of s 6(b). We do not find it necessary to put any gloss on the plain meaning of s 6(c), by way of any splitting of steps involved in identification and protection of areas of significant indigenous vegetation.

111 Closing submissions for the Crown, 7 April 2016.
112 *Man O'War Station Ltd v Auckland City Council* [2015] NZHC 767, particularly at [59] and [60].

[207] The FBP, endorsed by the Crown and Forest & Bird as a feature of the Council's April Version, itself demonstrates the relationship that land use practices may have to the protection of areas of significance and the maintenance and enhancement of biodiversity. Furthermore, 'significance' is inherently a matter of degree calling for judgement by the statutory functionary. That functionary could legitimately factor in land use practices yet still make a determination that an area is, or is not, sufficiently significant in proper accordance with both s 6(c) and CRPS Chapter 9.

[208] We acknowledge Federated Farmers' concern as to whether the Council will commit the requisite resources to identification of further SES. Those were concerns we also expressed in our 26 January Minute, on the evidence we heard on the Notified Version. There is also cause for concern about this matter in the context of the Council's failure to follow through on what the 2007 Consent Order recorded as its intended programme of s 32 evaluation for the purpose of its then-intended plan change to the BPDP, a plan change that never eventuated.

[209] We recognise that the Council's competing funding priorities and its budgets could well influence the time the Council takes to progress plan change(s) for the identification of further SES for protection. However, it is beyond our role to make findings on Council funding priorities. We go only so far as to make clear in the Decision Version that plan change is the proper means for the Council, as the responsible statutory functionary, to assess (on a proper evidential basis) and determine what areas are significant.

[210] Considering all these matters, we find that we should make a change to the Secretariat Draft policies on this matter. That change is as to which is the more appropriate policy to refer to the relationship between protection and land use practices. We find it more appropriately placed in what is now Policy 9.1.2.4 (as to determination of significance).

[211] We have made that change in the Decision Version, along with some other drafting refinements. For the reasons we have given, we find this is the most appropriate set of policies on this topic for responding to the statutory principles and Higher Order Documents and achieving the related objectives.

Should policies:

- **allow for offsetting to be extended to other areas that are subject to a resource consent application to clear vegetation?**
- **express an expectation of a 'net gain' outcome for offsetting?**

[212] CRPS Policy 9.3.6 specifies that the following criteria will apply to the use of biodiversity offsets:

> (1) the offset will only compensate for residual adverse effects that cannot otherwise be avoided, remedied or mitigated;
>
> (2) the residual adverse effects on biodiversity are capable of being offset and will be fully compensated by the offset to ensure no net loss of biodiversity;
>
> (3) where the area to be offset is identified as a national priority for protection under Policy 9.3.2, the offset must deliver a net gain for biodiversity;
>
> (4) there is a strong likelihood that the offsets will be achieved in perpetuity; and
>
> (5) where the offset involves the ongoing protection of a separate site, it will deliver no net loss, and preferably a net gain for indigenous biodiversity conservation.

[213] The policy also specifies:

> Offsets should re-establish or protect the same type of ecosystem or habitat that is adversely affected, unless an alternative ecosystem or habitat will provide a net gain for indigenous biodiversity.

[214] In the Council's April Version, proposed Policy 9.1.1.1.5 (offsetting) provides:

> **9.1.1.1.5 Policy 5 — Offsetting**
>
> a. Offsetting is required where there are any residual adverse effects to indigenous biodiversity meeting the significance criteria detailed in Policy 9.3.1 and Appendix 3 of the Canterbury Regional Policy Statement.
>
> b. Where residual adverse effects to indigenous biodiversity have been identified, offsetting will only be considered where:
>
> i. Significant adverse effects on indigenous biodiversity from the development have been avoided in the first instance, minimised when total avoidance is impracticable, remedied where this is not possible and finally, mitigated;
>
> ii. The offset can achieve no net loss and preferably a net gain for indigenous biodiversity; and
>
> iii. The offset is consistent with the framework detailed in Appendix 9.1.4.5.

[215] It included the following proposed definition of 'biodiversity offset':

> means measurable conservation outcomes resulting from actions designed to compensate for reasonably measurable residual adverse biodiversity effects arising

> from development after all appropriate avoidance, minimisation, remediation and mitigation measures have been taken. The goal of biodiversity offset is to achieve no net loss on the ground.

[216] It included in its Appendix 9.1.4.5 an associated proposed framework for biodiversity offsetting, to be read in conjunction with the New Zealand Government 'Guidance on Good Practice Biodiversity Offsetting in New Zealand' (August 2014). This is in narrative form, covering some ten listed matters, which are in substance criteria expressing outcome expectations for use of offsetting.

[217] The Secretariat Draft recasts this as draft Policy 9.1.2.15, as follows:

> a. Allow for biodiversity offsetting to be offered by a resource consent applicant where an activity will result in any reasonably measurable residual adverse effects on a Site of Ecological Significance listed in Schedule A of Appendix 9.1.4.1.
>
> b. Biodiversity offsetting will only be considered appropriate where adverse effects on the Site of Ecological Significance listed in Schedule A of Appendix 9.1.4.1 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 9.1.4.5; and
>
> ii. the biodiversity offset can achieve no net loss of indigenous biodiversity;
>
> A. preferably in the Site of Ecological Significance listed in Schedule A of Appendix 9.1.4.1; or
>
> B. where that is not practicable, in the Ecological District in which the Site of Ecological Significance listed in Schedule A of Appendix 9.1.4.1 is located.

[218] The Secretariat Draft made a single modification to the Council's April Version's definition of 'biodiversity offset', namely removing the word 'minimisation'.

[219] It made relatively confined changes to the Council's April Version's framework for biodiversity offsetting. The substantive changes in the Secretariat Draft are as follows:

(a) Adding to the first listed criterion the qualifying words "reasonably measurable" (with reference to "anticipated residual effects of activities") and deleting the word "minimisation" (from the phrase "appropriate avoidance, minimisation, remediation and mitigation actions");

(b) Adding to the second criterion, after "explicit loss and gain calculation", the words "commensurate to the scale of the effects of the activity" and dropping from this criterion the words "and preferably a net gain";

(c) Changing the fifth criterion on the location of offsetting, by replacing the words "will be undertaken as close as possible to the location of the development, and with priority for within the same Ecological District" with the words "will be undertake within the Site of Ecological Significance as a first priority, or as close as possible to the location of development within the same Ecological District as a second priority";

(d) Deleting from the sixth criterion the words "and preferably a net gain in ecological values";

(e) Deleting from the eighth criterion the word "preferably" as a qualifier to "in perpetuity".

[220] The Crown records one concern about the Secretariat Draft's draft policy, namely that it limits the scope for offering biodiversity offsetting to situations where residual effects occur on an SES listed in Schedule A of Appendix 9.1.6.1. For this, it seeks a change to allow for offsetting where an activity results in residual effects on any area of significant indigenous biodiversity, whether or not in an SES listed in Schedule A of Appendix 9.1.6.1.[113]

[221] On the definition of 'biodiversity offset', it seeks that "reasonably measurable" be replaced with "significant".[114]

[222] The Regional Council expresses a concern that the Secretariat Draft no longer provides recognition of cls (3) and (5) of CRPS Policy 9.3.6 of the CRPS. It seeks that reference to "or a net gain" be inserted into the policy. In addition, it seeks changes to the framework for biodiversity offsetting in Appendix 9.1.6.5, to better reflect and give effect to the criteria in CRPS Policy 9.3.6. Substantive changes it seeks to the framework are:[115]

113 Closing submissions for the Crown, 9 September 2016, at 8.1 – 8.4.
114 Closing submissions for the Crown, 9 September 2016, at 8.4.
115 Closing submissions for the Regional Council, 9 September, at 33 – 37.

(a) Addition to cls 2 and 6 of reference to "or no net gain", after parts of those paragraphs that refer to "no net loss".

(b) The addition of a new cl 2A:

(i) Where an area to be offset is identified as a national priority for protection, the offset must deliver a net gain for biodiversity;

(ii) Where the offset involves the ongoing protection of a separate site, it will deliver no net loss and preferably a net gain.

(c) The following change to cl 5:

> Offset actions will be undertaken within the Site of Ecological Significance as a first priority, or <u>where this is not practicable,</u> as close as possible to the location of development within <u>the Christchurch District and</u> the same Ecological District ~~as a second priority~~.

(d) The following change to cl 8:

> ~~There is a strong likelihood that~~ The positive ecological outcomes of the offset <u>must have a strong likelihood of lasting</u> ~~last at least as long as the impact of the activity, and~~ in perpetuity.

[223] Fulton Hogan[116] submitted that we could modify cl 8 to read "at least as long as the impact of the activity <u>and preferably in perpetuity</u>".

[224] The CCC supports the Regional Council's suggestion and seeks for reference to "or preferably a net gain" to be added to the policy. It does not express a position on the Regional Council's suggestions concerning the related appendix.

[225] With respect to the Crown's preference for the policy to allow for offsite offsetting, we find cause for caution in the explanatory text below CRPS Policy 9.3.6, including:

> The most desirable form of offsetting will be achieved in situ or adjacent to the area affected. … Offsetting at a different location is unlikely to be able to replicate all such aspects of the original area.

[226] With respect to the CCC and the Regional Council's request that we add reference to "preferably a net gain", we also find cause for caution in CRPS Policy 9.3.6. Its references to

116 Closing submissions for Fulton Hogan, 9 September 2016, at 10.2

"preferably a net gain" in CRPS Policy 9.3.6 are relatively specific. Clause (5) expresses this preference on the matter of an offset involving ongoing protection of a separate site. The other reference to "a net gain" is in relation to using an alternative ecosystem or habitat for an offset, instead of re-establishing or protecting the same type of ecosystem or habitat that is adversely affected. There is another reference to this preference for a net gain in the explanatory text following the policy, where it specifies a meaning of 'biodiversity offset' and says that the goal is "to achieve no net loss and preferably a net gain of biodiversity on the ground with respect to species composition, habitat structure and ecosystem function".

[227] On both these topics, we interpret CRPS Policy 9.3.6 as allowing for sensible exercise of discretion on our part. In light of our findings on the evidence, we consider it important that we approach this matter on a basis that makes clear that offsetting ought to be approached on an ordered basis which sees first attention at the SES in question or close to it. We agree that we should allow for greater flexibility to account for what is practicable.

[228] We have broadened the expression of cl (a) of the policy such that allows for biodiversity offsetting to be applied both to SES listed in Appendix A and vegetation clearance outside SES. We have made some changes to the related definition of 'biodiversity offset' (such as to remove reference to "reasonably measurable" and "on the ground", the latter term being inconsistent with the policy). However, we have not accepted further changes to the policy (and related framework) that some parties have sought.

[229] We find on the evidence that the refined policy (and framework) give proper effect to the CRPS, properly respond to s 6(c) and are the most appropriate for achieving related objectives.

What further direction should be given concerning the coastal environment?

[230] As we have noted at [42], NZCPS Policy 11 on protection of indigenous biodiversity in the coastal environment directs avoidance of adverse effects on the matters it specifies in its cl a. For the matters it lists in cl b, there is a direction giving greater flexibility, namely "avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on" its listed matters.

[231] On this topic, the design of the rules under the Council's April Version and the Secretariat Draft are materially the same. In essence, both provide for a two pronged approach depending on whether the vegetation or habitat in issue is inside or outside a protected SES.

[232] The matter that remains in contention concerns the related policy direction.

[233] The Council's April Version included the following as proposed Policy 9.1.1.1.2(x):

> Where indigenous biodiversity is located within the coastal environment, either in a Site of Ecological Significance and [sic] in those areas identified in Appendix 9.1.4.6 manage the clearance of indigenous vegetation and disturbance of habitats to:
>
> i. avoid adverse effects on indigenous biodiversity values as identified in Policy 11(a) of the [NZCPS]; and
>
> ii. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on indigenous biodiversity values as identified in Policy 11(b) of the [NZCPS].

[234] The amended policy is an addition to earlier Council versions and would appear not to have been the subject of any mediation discussions. The Council's April submissions explain that it was recommended by Ms Hogan in her rebuttal evidence, "albeit in a different form".[117]

[235] The Secretariat Draft's equivalent is draft Policy 9.1.2.10 on protection of indigenous vegetation and habitats of indigenous fauna in the coastal environment. Although it appears as a substantial rewrite of the policy, much of this is in the fact that it replicates (rather than cross-references) the content of cls a. and b. of NZCPS Policy 11. The substantial difference between the two versions of the proposed policy is in the introductory words. In the Secretariat Draft, these are:

> Where Sites of Ecological Significance listed in Schedule A of Appendix 9.1.4.1 or indigenous vegetation and habitat types listed in Appendix 9.1.6.5 and notified to property owners are located within the coastal environment, the protection of their indigenous biodiversity will be achieved by.

[236] Consistent with their positions on the related rules, the CCC and the Crown seek that we delete "and notified to property owners". Neither seeks any other changes. Forest & Bird does not seek any changes.

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117 Closing submissions for the Council, 7 April 2016, at 12.12.

[237] We do not accept that we should delete reference to "and notified to property owners". In addition to our reasons at [334]–[345], the evidence also satisfies us that advance notice to property owners will assist to give effect to NZCPS Policy 11. Specifically, that is because it will serve to inform owners of what may be present on their properties and of their associated legal obligations.

[238] Mr Bayley's property on Kaitōrete Spit is in the coastal environment. As such, this proposed policy would apply to any clearance there. He requests that we amend the policy so that it allows for the intended role of a FBP (by adding the words "where not otherwise approved under a FBP and/or resource consent").[118] He is concerned that the policy would significantly diminish the value that an approved FBP otherwise would have concerning the viability and value of his farm.

[239] In its closing submissions, the Council points out that the CRDP must "give effect to" the NZCPS, an obligation emphasised by the Supreme Court in *King Salmon*. It concluded "on this basis … there is little if any room to qualify the NZCPS's direction by adding reference to FBPs, as sought by Mr Bayley".[119]

[240] We accept the Council's submission on this matter. In essence, we must ensure that the relevant provisions pertaining to RDA applications, where an applicant has prepared a FBP for land in the coastal environment (whether or not for a protected SES), give proper effect to the NZCPS.

[241] This has also brought to light a need to make a consequential change to RDA Rule 9.1.5.2, which sets out matters of discretion for applications where an FBP is proposed but the land is not a protected SES. The change we have made ensures that matters concerning the coastal environment are included in the scope of matters for discretionary consideration.

[242] For those reasons, we find that the expression of Policy 9.1.2.10 and RDA Rule 9.1.5.2 gives proper effect to the NZCPS and is the most appropriate for achieving related objectives.

118 Closing submissions for Michael Bayley, 7 April 2016, at 15.
119 Closing submissions for the Council at 12.13–12.14.

Should assessment of ecological significance be through consent applications?

[243] At [63]–[66] we give our reasons why we do not agree with the submissions of the Crown and Forest & Bird that CRPS Policy 9.3.1 requires that the CRDP include rules for the case-by-case assessment of significance.[120] On the evidence, we find that assessment of the significance of areas for the purposes of s 6(c) and CRPS Chapter 9 should be as part of a s 32 plan change processes.

[244] That is for a number of reasons. It allows for better exercise, by the statutory functionary, of its responsibility of assessing and determining what areas are significant. It allows for proper comparative assessment of areas in a more strategic way, whereas assigning this to consenting processes results in a reactive, rather than strategic, approach. It ensures costs are more fairly borne at a community scale, where the benefits are also primarily enjoyed, rather than being passed to individual consent applicants. In all these matters, we find a parallel with the approach of Sub-chapter 9.2 with respect to determinations of what constitute outstanding natural landscapes ('ONLs').

[245] We recognise that this does not strictly reflect what is said in the two passages of commentary that follow Policy 9.3.1 that we have set out at [37]. However, as we note at [66], those passages are not themselves the policy and do not remove our responsibility to evaluate options to determine the most appropriate rules for achieving related objectives.

[246] We also point out that the RDA rules for indigenous vegetation clearance under a FBP provides for a form of case-by-case assessment. An important point of distinction, however, is that these are for the assessment of the effects of activities on areas that have already been assigned significance by the Council, for and on behalf of the community, through plan change.

[247] We find on the evidence that this design of approach best assigns costs and benefits to where they should be borne or enjoyed. We are satisfied that this approach properly responds to the statutory principles and Higher Order Document, and is the most appropriate for achieving related objectives.

120 Transcript, page 10, lines 24–42.

Regarding indigenous vegetation clearance:

- **What allowance should we make concerning improved pasture?**
- **Should grazing be exempt and, if not, what grazing ought to be permitted?**

Improved pasture

[248] The relevance of pasture improvement is in terms of how long ago it occurred. An obvious immediate consequence of pasture improvement is its destruction of indigenous vegetation that may have existed on the paddocks. That destruction is not necessarily permanent, in that indigenous vegetation is capable of re-colonising paddocks, although that could be some time after cessation of pasture improvement activity.

[249] The Council's April Version addressed this by having in the definition of 'improved pasture' a qualifying time limit, i.e. "since 1 June 1996". The Secretariat Draft did not carry that time limit forward. The significance of that is that it would allow clearance for the purpose of maintaining improved pasture as a permitted activity, even in cases where there had been a hiatus in pasture improvement over the last 20 years or so, with associated regrowth of indigenous vegetation occurring in the meantime. That is as provided by the related Rule 9.1.4.1 P1 (as renumbered in the Secretariat Draft).

[250] The Crown, Forest & Bird and CCC all opposed this aspect of the Secretariat Draft. ICWT and Federated Farmers supported it, although both focussed their closing submissions on the matter of grazing (where they also supported the Secretariat Draft).[121]

[251] On this matter, the Crown's 7 April submissions referred to the evidence of its ecologist, Mr Head. He explained that it was necessary that the definition was "time bound" "to account for any ecological recovery that may have occurred from past farming practices within sites that are likely to support significant ecological values".[122] The Crown also noted that the FBP process would allow the Council and landowners to collaborate on the mapping and identification of areas of improved pasture, structures or grazing.[123]

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121 Closing submissions for ICWT, 9 September 2016, at 4; closing submissions for Federated Farmers, 13 September 2016, at 11.

122 Closing submissions for the Crown, 7 April 2016, at 9.7, referring to the evidence in chief of Nicholas Head, 10 December 2015, at 8.3.

123 Closing submissions for the Crown, 7 April 2016, at 6.3 and 9.7.

[252] It noted that the Crown had initially sought a 2005 date, but that the 1996 date was discussed and agreed at mediation to represent an appropriate balance between providing for farming activities and allowing for significant indigenous vegetation to be managed. It expressed the view that, on land that has not been improved since 1996, indigenous vegetation is more likely to be significant.[124] It asked that we retain the qualifying words "since 1 June 1996". CCC supported the Crown's position on this.

[253] Forest & Bird submitted that the Secretariat Draft's definition of 'improved pasture' would render controls unenforceable,[125] and asked that we remedy this by adopting the following definition:

> **Improved pasture**
>
> means an area of pasture where:
>
> a. exotic pasture grass and herb species are the visually predominant vegetation cover; and
>
> b. the area has been modified or enhanced for the purpose of livestock grazing by being subjected to either cultivation, irrigation, oversowing, top-dressing, or direct drilling; and~~the area has been subjected to routine livestock grazing, pasture maintenance or improvement, including by cultivation, irrigation, oversowing, top dressing or direct drilling.~~
>
> c. the area has been subjected to routine pasture management or improvement since 1 June 2000.

[254] We agree with Forest & Bird, the Crown and the Council that the definition needs a cut-off date. We agree with the Crown that the appropriate date should be 1 June 1996, as a date supported through mediation. Borrowing from aspects of what Forest & Bird proposes, we have included in the Decision Version the following definition:

> **Improved pasture**
>
> means an area of pasture:
>
> a. where exotic pasture grass and herb species are the visually predominant vegetation cover; and
>
> b. that:
>
> i. is used for livestock grazing and has been routinely so used since 1 June 1996; or

124 Closing submissions for the Crown, 7 April 2016, at 9.8 and 9.9.
125 Closing submissions for Forest & Bird, 9 September 2016, at 3.

ii at any time on or after 1 June 1996, was modified or enhanced for the purpose of livestock grazing by cultivation, irrigation, oversowing, top-dressing and/or direct drilling.

Grazing

[255] Grazing is obviously fundamental to pastoral farming. There is no dispute between parties that sensible allowance for it is necessary. The point of contention is how much.

[256] The Council's April Version provided for a permitted activity class as follows (in its proposed Rule 9.1.2.2.1:

P2	Livestock grazing as part of farming activities: a. within a [SES] that is identified in Schedule A of Appendix 9.1.4.1; or b. outside a [SES] on Banks Peninsula and the Port Hills, and within an area of vegetation identified in Table 1 and Table 2 of Appendix 9.1.4.6	a. Where grazing of a similar nature, intensity, and scale has been undertaken within the 12 months up to and including OPERATIVE PLAN DATE

[257] Livestock grazing not complying with the above rule defaulted to restricted discretionary activity, under proposed Rule 9.1.2.2.3 RD6. Its definition of 'indigenous vegetation clearance' explicitly excluded grazing. That was on the basis that grazing was effectively addressed by proposed Rules 9.1.2.2.1 and 9.1.2.2.3 RD6.

[258] The Secretariat Draft did not include proposed Rules 9.1.2.2.1 and 9.1.2.2.3 RD6, and continued to exclude grazing from the definition of indigenous vegetation clearance. In effect, this would render grazing free from the indigenous vegetation clearance controls.

[259] Forest & Bird opposed this.[126] It relied on the evidence of its ecologist, Mr Davis, that grazing could have significant adverse effects in certain circumstances.[127] Describing his evidence as "uncontroverted", it submitted that it demonstrated that adoption of the changes in the Secretariat Draft would create an unmanaged risk that significant areas could be damaged or destroyed by an increase in stocking rates. It submitted that this would be contrary to s 6(c) and CRPS Objective 9.3.2 and Policy 9.3.1. It also submitted that deleting 'grazing' from the definition of 'indigenous vegetation' would create uncertainty, contrary to the OIC Statement of Expectations.

126 Closing submissions for Forest & Bird, 9 September 2016, at 3.
127 Closing submissions for Forest & Bird, 9 September 2016, at 41, referring to the evidence in chief of Mr Davis, at 80.

[260] It sought that grazing be included as part of the definition of 'indigenous vegetation clearance' and sought that the allowance for clearance by grazing to be limited by the words "of a similar nature, intensity and scale to that which has been undertaken in the 12 months up to and including OPERATIVE PLAN DATE". The Crown supported this relief.[128]

[261] Forest & Bird conceded there is "some vagueness" associated with its requested relief, but submitted it was appropriate "on the basis that it would clearly address the most problematic scenario, where there was a dramatic increase in the stocking rates or type resulting in significant adverse effects on significant sites".[129]

[262] The approach of the Secretariat Draft on this matter was supported by the Regional Council, ICWT and Federated Farmers.[130] The Regional Council welcomed it as providing increased certainty for landowners both within and outside SES.[131]

[263] In his closing submissions for Mr Bayley, Mr Schulte observed that "an animal grazing rarely 'clears' a plant entirely", so the inclusion of 'grazing' in the definition of 'indigenous vegetation clearance' seems a factual stretch.[132] Ms Richardson, a Banks Peninsula sheep and beef farmer whose 710ha farm hosts two significant ecological sites totalling 150ha, commented that:

> Stock graze areas of tussock grassland and are used to manage and maintain the tussock grasslands identified within H26. … Stock continues to graze H26/27 as it is a mosaic of improved pasture and indigenous vegetation…

[264] The CCC also supported the approach of the Secretariat Draft, for the following reasons:[133]

> The Council acknowledges concerns from submitters and the Panel with the practicability of administering and enforcing such a rule. In light of this, the Council considers the most appropriate approach is to collaboratively work with landowners to better understand both the effects of grazing on significant indigenous vegetation, and landowner needs. In the Council's view, [FBPs] represent an opportunity for landowners to look at the management of their land (including grazing) holistically, and ensure that the land is managed in a way which meets their needs overall, providing reasonable protection for indigenous biodiversity that is present. Accordingly, the

128 Closing submissions for the Crown, 7 April 2016, at 9.4 – 9.6.
129 Closing submissions for Forest & Bird, 9 September 2016, at 37, 38.
130 Closing submissions for ICWT, 9 September 2016, at 4, closing submissions for Federated Farmers, 13 September 2016, at 11.
131 Closing submissions for the Regional Council, 9 September 2016, at 8–11.
132 Closing submissions for Mr Bayley at 27.
133 Council's 16 September closing at 5.7.

> Council supports the deletion of [the] permitted activity rule for grazing proposed in [the Council's April Version].

[265] We do not accept Forest & Bird's submission that there would be a serious risk posed by excluding grazing from the definition of 'indigenous vegetation clearance'. While we acknowledge Mr Davis's evidence on the matter of increased stocking risks, we did not find that evidence sufficiently reliable in the sense of being well-founded. His opinion was strongly based on his own personal experience. It did not draw from reliable other empirical data, surveys or other factual sources as to the real risk posed by exempting grazing from the definition of 'indigenous vegetation clearance'. Further, statements he made on the basis of his own experience (and that of his client) were coloured with a reasonably high degree of pre-conception. For example, in making his point concerning Banks Peninsula, he commented[134]:

> I am aware of some recent clearance of indigenous vegetation on Banks Peninsula does not meet the provisions of the District Plan. When assessing sprayed indigenous vegetation on Banks Peninsula for Forest and Bird, it was clear that some areas of sprayed indigenous vegetation (kanuka, secondary hardwood forest and volcanic rock communities) exceeded Plan thresholds at the time. Information about these examples, including photographs or satellite images is provided in Appendix 1. Forest and Bird provided an ecological assessment to Council for the most extensively sprayed area (Hickory Bay) which breached the Plan provisions. As a result Council's enforcement staff claimed that the sprayed kanuka were only 'about 3m high' and thus did not attain the required height threshold (6m) and no action was taken. In my opinion, this view was demonstrably wrong as were other statements made about the kanuka by the enforcement officer.

[266] Mr Davis's choice in volunteering his opinion on this matter reveals an approach where perception (whether his own, or his client's) is assumed as fact, including on how the law is to be interpreted.

[267] On the matter of aerial spraying at Banks Peninsula, we also heard from Mr Phillip Helps, a farmer called as a witness for Federated Farmers. In summarising his evidence, he made the following statements:[135]

> In the front part of my submission I do have a bit of a crack at poor old Forest and Bird and I am sorry about this but they made mention of land being sprayed by way of aerial spraying as sort of common practice; believe you me it is not on Banks Peninsula.
>
> Aerial spraying is bloody expensive and no one takes it on light heartedly. One particular area mentioned in Goughs Bay a consent was applied for to do the work, it was granted and the job took place and what was sprayed was all regrowth kanuka and the previous owner Kit and Robbie Grigg who used to own the property, they had a

134 Evidence in chief of Marcus Davis on behalf of Forest & Bird at para 27.
135 Transcript, page 488, lines 32–46.

> constant battle with it and Kit said to me the only reason I did not spray there by aerial spray he said I could not afford it otherwise he had to battle always by hand so that is just to put it into perspective.

[268] Forest & Bird did not cross-examine Mr Helps on this matter. Mr Davis references Hickory Bay whereas Mr Helps references the nearby Goughs Bay. We have no way of knowing, on the evidence, whether Mr Helps was referring to the same example as that mentioned by Mr Davis. However, that is beside the point. Mr Helps' evidence serves to reinforce the fact that Mr Davis was basing an opinion on Banks Peninsula land use practices on a single example that, on the face of it, sits in contrast to the example Mr Helps gave us. We find that an inherently unreliable foundation for his opinion.

[269] We do not need to make a finding on whether the facts concerning this spraying are as understood by Mr Davis or Mr Helps.

[270] Mr Davis referenced literature, although a lot of it was his own. His reference to one of those was "Davis et al. (2015)". He noted it reached "broadly similar conclusions" to various other noted literature on the state of New Zealand's indigenous biodiversity and he listed several of its conclusions. He did not provide the Panel with a copy of this reference (or his other references). When we asked him about this particular report, he explained that it had not been published and, while it was being circulated at DOC, it was not DOC policy.[136] Again, we found that to demonstrate a witness whose opinions were not based on a sufficiently reliable foundation.

[271] Nor do we accept Forest & Bird's submission that, aside from Mr Davis's evidence, there was an "absence of evidence" on the issue of grazing.[137] We heard from several farmers on this topic, some as witnesses and others as submitter representatives. Their evidence on grazing practices, including the potential benefits of grazing, was also supported by the Council's ecologist, Mr Hooson (as we note, for example, at [23]). As we have emphasised, that evidence overwhelmingly demonstrates to us the critical importance of ensuring that indigenous vegetation clearance rules are properly calibrated so that they achieve protection without imperilling farming, including grazing.

136 Transcript, page 289, line 10 to page 290, line 27.
137 Closing submissions for Forest & Bird, 9 September 2016, at 41–45.

[272] For those reasons, we find that Forest & Bird's submission that the changes in the Secretariat Draft would give rise to a risk that significant areas could be damaged or destroyed by an increase in stocking rates is not supported on the evidence. Therefore, we also reject its submission that the Secretariat Draft provisions would be contrary to s 6(c) and CRPS Objective 9.3.2 and Policy 9.3.1.

[273] We also reject Forest & Bird's submission that deleting 'grazing' from the definition of 'indigenous vegetation' would create uncertainty or be contrary to the OIC Statement of Expectations. Indeed, we find Forest & Bird's overall position on this topic fails to grasp the fundamental importance of ensuring adequate certainty in permitted activity rules. It does not help protection to create an inherent uncertainty about whether it is permissible to graze livestock on a farm.

[274] Forest & Bird's position fails to give due regard to voluntary landowner stewardship as a means of protection and, related to that, the importance of fostering and encouraging partnership between the Council and landowners in these matters. We find that surprising in view of the concession Mr Anderson made when cross-examining Federated Farmers' witness, Ms Mackenzie (which we refer to at [23]) and the fact that that Forest & Bird was a signatory to the 2007 Consent Order and the relevant Biodiversity Strategies to which we have referred. In any case, as we have recorded, we find the evidence to clearly the demonstrate the importance of giving farmers certainty and confidence that they are able to have livestock graze on their farms. That is something that the Council has now rightly acknowledged.

[275] On the matter of provision for grazing, we find that the extract from the CCC's closing submissions that we quote at [264] is well supported on the evidence. We adopt those submissions as our reasons for preferring the approach of the Secretariat Draft on this matter.

[276] For those reasons, we are satisfied that the provision we make in the Decision Version for improved pasture and grazing is the most appropriate for responding to the statutory principles and Higher Order Documents and achieving the related objectives.

Should vegetation clearance under an FBP in an SES be RDA or CA?

[277] We start with some background on the genesis of Farm Biodiversity Plans ('FBPs'). As we have explained, the concept of FBPs first arose in cross-examination and questioning during the hearing and they are discussed in our 26 January Minute. They were then discussed in mediation, with the end result that they feature as a significant, and non-contentious, component of the Council's April Version.

[278] A particular value of FBPs is that they encourage integrated management and protection of indigenous biodiversity values, while acknowledging the practical needs of farmers for certainty as to when they can clear vegetation so as to maintain farming productivity. Related to that, they are an important partnering tool between the farmer and the Council.

[279] While FBPs were not part of the design of the Notified Version, we find that there is ample scope to consider them. We find that they are compatible with the Council's expressed intention to pursue a partnership approach with landowners, and provide an appropriate mechanism by which practical farming considerations and individual farm circumstances could be considered.

[280] In our 26 January Minute[138] we considered that the evidence received to date suggested FBP's would require various parameters as a method of regulation. We find that the FBP provisions contained in the Council's April Version meet those parameters, albeit we find that further changes are required to the provisions (as discussed further below).

[281] The related issue we now address concerns whether the most appropriate activity classification for indigenous vegetation clearance pursuant to a FBP is RDA or CA.

[282] Consistent with our 9 August Minute, the Secretariat Draft provides for a RDA classification for resource consent applications, under its draft Rule 9.1.4.3. Its associated draft Rule 9.1.5.3 concerns matters of discretion. These refer to the role of FBPs in the maintenance and enhancement of biodiversity values and protection of SES together with rural productivity. The assessment matters also refer to targets, actions and timeframes, and monitoring.

138 Minute, 26 January 2016 at [21].

[283] Mr Bayley expressed a concern that the Council's earlier drafting of rules for FBPs could mean resource consent for vegetation clearance would be required even if a farmer has an approved FBP.[139] He did not express the same concern about the Secretariat Draft rules. We are satisfied that this drafting anomaly is addressed satisfactorily.

[284] The CCC, the Crown and Forest & Bird generally support RDA as the more appropriate classification. Other submitters do not address this matter in any detail in their closing submissions.

[285] On the evidence, we find that RDA is more appropriate than CA in that it is important to ensure that the Council has capacity to make an ultimate choice to decline consent if that is what is required to ensure proper protection of SES values. For the same reasons, we find the RDA regime of the Secretariat Draft best responds to s 6(c) and the Higher Order Documents and is the most appropriate for achieving related objectives. Therefore, we have carried it into the Decision Version.

Should the RDA matters of discretion for resource consent decision-making refer to farm viability?

[286] The CCC does not seek any substantial changes to the drafting in the Secretariat draft of proposed Rule 9.1.5 which specifies the matters of discretion for RDA applications. Nor does the Crown, the Regional Council or Forest & Bird. Mr Bayley asked that we add a matter of discretion, as follows:

> The extent to which clearance of indigenous vegetation is necessary for the viability of existing farming activities and maintaining property values.

[287] Mr Bayley did not call planning evidence.

[288] We find that these matters are adequately and more appropriately addressed in the following listed matters (subject to a minor wording change we shortly describe):

> 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 offsetting, covenants and/or restoration and enhancement;

139 Closing legal submissions for Michael Bayley, 7 April 2016, at 21–26.

> f. Any locational, technical or operational requirements of the proposed activity and the practicality of avoiding indigenous vegetation, including the viability of alternative routes using route, site and method selection.

[289] Both those matters are expressed in the same terms in the Council's April Version. There is a drafting infelicity in matter f., which we remedy as follows:

> including the viability of alternatives.

[290] With that refinement, we find that the Secretariat Draft's wording makes sufficient provision for what Mr Bayley seeks, but on a basis that reflects the relevant statutory principles and Higher Order Documents. For those reasons, subject to that minor amendment, we find that draft Rule 9.1.5 of the Secretariat Draft is the most appropriate for achieving related objectives.

Should FBP indigenous clearance applications be assigned only limited notification or be non-notified?

[291] The Council's April Version provides that "[a]ny application arising from this [Rule RD5] shall not be publically notified" but allows for limited notification where the relevant tests in the RMA are met.[140]

[292] Consistent with what we indicated as a preliminary view on the evidence in our 9 August Minute, the Secretariat Draft Rule 9.1.4.3 specified the following:

> 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).

[293] The Crown, Forest & Bird, and the CCC each seek that we dispense with this aspect of the rule. We understand CCC seeks that we revert to the form of notification rule in the Council's April Version.

[294] The Crown submits that it is appropriate for the Council to retain a discretion on notification and "for public notification to be required if the indigenous vegetation clearance will have or is likely to have adverse effects on the environment that are more than minor"[141] For that submission, it references RMA ss 95A and 95D. It goes on to argue[142]:

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140 Closing submissions for the Council at paras 9.1– 9.3.
141 Closing submissions for the Crown, 9 September 2016, at 9.3.
142 Closing submissions for the Crown, 9 September 2016, at 9.3.

> It is inappropriate to presume that each and every proposal for indigenous vegetation clearance will have less than minor effects, or that the Department of Conservation will be the only potentially affected person. The sheer scale of a given clearance proposal, or the level of significance of the values under threat by that proposal may be such that notification could be warranted.

[295] Federated Farmers, Mr Bayley and other landowner submitters also support the approach of the Secretariat Draft.

[296] The Regional Council would go further. It submits that a rule that specifies that applications will proceed non-notified is the most appropriate. That is "to ensure that the consenting process is as cost-effective and certain for the applicant as possible within the rules framework". It submits that this is consistent with the OIC Statement of Expectations and provides farmers with an incentive to develop FBPs.[143]

[297] RMA ss 95A and 95D do not support the Crown's submission that it is inappropriate to have rules dispensing with public or limited notification if the activity "will have or is likely to have adverse effects on the environment that are more than minor". In particular, the requirement of s 95A that a consent authority must publicly notify an application if it decides that the activity would have more than minor effects is explicitly subject to the qualifier that it must not do so "if … a rule … precludes public notification" (s 95A(2) and (3)). RMA s 95D has no obvious bearing on this matter at all.

[298] The Crown's submission does not direct us to relevant RMA provisions on this matter. RMA s 77D is as follows:

> A local authority may make a rule specifying the activities for which the consent authority—
>
> (a) must give public notification of an application for a resource consent:
>
> (b) is precluded from giving public notification of an application for a resource consent:
>
> (c) is precluded from giving limited notification of an application for a resource consent.

[299] That sits with s 76, on district rules, which relevantly specifies the following:

> (1) A territorial authority may, for the purpose of—

143 Closing submissions for the Regional Council, 7 April 2016, at 30 -32

(a) carrying out its functions under this Act; and

(b) achieving the objectives and policies of the plan,—

include rules in a district plan.

…

(3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.

[300] As those sections make clear, CRDP rules (including as to notification) are for the purpose of carrying out the CCC's functions and achieving related CRDP objectives and policies. In making any rule, including a rule on this matter, we must have regard to any adverse effect (including potential effect). However, rules can be made to preclude public, and even limited, notification even in the face of actual or likely adverse effects on the environment that are more than minor. There can be many reasons why it may be appropriate to preclude notification through rules, even where adverse effects would be significant, in order to serve the RMA's sustainable management purpose (as reflected in achieving related plan objectives).

[301] Relevant to that, the OIC Statement of Expectations includes that the CRDP "clearly articulates how decisions about resource use and values will be made, which must be in a manner consistent with an intention to reduce significantly (compared with the [Existing Plan]) … the requirements for notification and written approval."

[302] As will be evident, a clear pattern in the design of the CRDP Chapters determined to date (also reflected in the Strategic Directions objectives) is that we have rules that make explicit where applications are to be non-notified or limited notified (including, in the latter case, to an identified person or persons). An example of this concerns certain controlled and restricted discretionary activities for infrastructure works (including those of the Crown) (see Rule 11.3(h)). Infrastructure is readily capable of producing effects that some in the community may regard as "more than minor". On a similar note, we observe that the Crown supports and seeks what we have included as Policy 9.1.2.11 on land management, which expressly recognises the appropriateness of removing indigenous vegetation and habitats, including in SES, in view of the requirements of network utility operators.

[303] Returning to the evidence on Sub-chapter 9.1, it very clearly demonstrates the importance of very careful attention to the design of rules that achieve necessary protection but do not

unduly impact on landowner confidence. We have emphasised that throughout this decision. Part of that, as the Regional Council has put it, is to incentivise farmers to partner in protection by avoiding unwarranted sources of uncertainty and cost.

[304] The Council's evidence satisfies us that it has the requisite in-house (or consultant) capability to properly assess RDA applications for vegetation clearance under a FBP. As such, notification would not serve any particular resource management purpose on those terms. Given s 6(c) and CRPS Chapter 9, we find the evidence demonstrates an overwhelming case for limited notification or non-notification. We agree that non-notification is consistent with the OIC Statement of Expectations.

[305] We observe that the Crown does not identify any particular contribution that DOC could make to the determination of FBP applications, other than to observe that DOC is not "the only potentially adversely affected person" which, as we have noted, is not the appropriate statutory test for consideration of this matter. The Crown's evidence did not identify any particular role DOC ought to have in applications. Having reflected further on DOCs statutory functions under the Conservation Act 1989 and the RMA, we confirm our previously-expressed preliminary view that there is sufficient statutory justification to require limited notification to DOC. That is particularly in view of the extent of Banks Peninsula that is within the coastal environment (to which NZCPS Policy 11 could apply). It is also in view of CRPS Policy 9.3.2 as to national priorities for protection.

[306] On the evidence, we find that leaving the matter of notification more open would not assist to reduce risk to protection of areas of biodiversity. That is because the Council (in terms of its functions under RMA s 31(1)(b)(iii)) is sufficiently equipped to assess and determine all relevant matters. That is particularly given these are predominantly matters of ecological assessment. Conversely, making notification more open could increase these risks by disincentivising landowner co-operation. It would also impose greater costs, delay and uncertainty on landowners. On the evidence, we find there is no material benefit justifying doing so.

[307] We have found the Secretariat Draft deficient in one respect, namely that it should also provide for limited notification to DOC of applications for consent for vegetation clearance outside SES.

[308] We note that the RMA allows the Council a residual discretion in special circumstances or if further information sought is not provided by an applicant (ss 95A, 95C). On the evidence, we find that it would be only in such circumstances, as adjudged by the Council in the relevant context, where public notification would be warranted.

[309] Therefore, on the evidence, we find the most appropriate regime for responding to the statutory principles and Higher Order Documents, and achieving related CRDP objectives is that of the Secretariat Draft (subject to the minor change we have noted). The Decision Version so provides.

What is the most appropriate activity status for vegetation clearance in an SES at the Templeton Golf Course?

[310] Fulton Hogan seeks that we insert a rule bespoke to Templeton Golf Course to provide that indigenous vegetation at the SES there is a restricted discretionary activity. It proposes two related activity specific standards:

a. Indigenous biodiversity and ecosystems 9.1.5.2, except for (d); and

b. The extent to which the activity may result in the protection, maintenance, or enhancement of ecosystems or indigenous biodiversity, including through the use of offsetting, covenants and/or restoration and enhancement.

[311] It submits that the Panel's decisions, now issued, on the Rural and Open Space chapters[144] "alter the planning framework for quarrying at [the golf course] site if certain pre-requisites (including obtaining resource consent for vegetation clearance) are satisfied".[145] It also refers to paragraphs 15–17 of its 7 April closing submissions as reasons for the change it seeks. Those and related paragraphs of its 7 April submissions explain that:

(a) Fulton Hogan does not seek this to make consent more likely or easy to get, but to avoid re-opening arguments on matters such as noise, traffic, landscape and similar effects. It sees RDA activity status complementary to the deferred quarry zoning now allowed for. Given these matters, it submits that RDA is the most appropriate activity class, limiting what is in consideration but allowing for decline of consent.

144 Decision 34: Rural and Decision 35: Open Space.
145 Closing submissions for Fulton Hogan, 9 September 2016, at 4.

(b) It argues that RDA status would still enable "full implementation of" the relevant objectives and policies. By contrast, it submits that non-complying activity status is not a necessary consequence of the Higher Order Documents "which are focussed on the avoidance of certain effects (i.e. a net loss of biodiversity) rather than the avoidance of indigenous vegetation clearance activities".[146]

[312] The CCC submits that the most appropriate activity status is non-complying.[147] That was the position it took in its opening submissions. At that time, it submitted that RDA status would be inconsistent with the policy intent of Sub-chapter 9.1, the CRPS and s 6(e), RMA.[148]

[313] We do not accept Fulton Hogan's submission that its proposed RDA rule would enable "full implementation" of relevant objectives and policies. In legal terms, that depends on how the matters of discretion are framed (RMA, s 104C). That is also the position concerning the matters in the CRPS. We find that Fulton Hogan's proposed matters of discretion would restrict the ability of a decision-maker to test an RDA consent application for clearance against the various objectives and policies and the CRPS. Its matters of discretion do not obviously open consideration of matters of fundamental importance in terms of the intentions of Sub-chapter 9.1. Those include "no net loss of indigenous biodiversity" (Objective 9.1.2.1, Policy 9.1.2.8) and whether indigenous biodiversity in the district is maintained (Objective 9.1.2.2). Related to those matters, it is also not clear whether it would be open to consider whether Fulton Hogan has a commitment or otherwise to stewardship (Policy 9.1.2.5).

[314] The ecologists (Dr Shadbolt for the Council, Dr Judith Roper-Lindsay for Fulton Hogan) agreed that the golf course site meets the CRPS significance criteria for listing.[149] Considering that and other evidence, we find that Fulton Hogan has not provided sufficient evidential justification for the relief it seeks. In particular, we do not have an evidential basis to safely conclude that we can appropriately narrow matters for consideration in the way Fulton Hogan seeks. By contrast to the FBP mechanism, which we endorse as well supported on the evidence, Fulton Hogan has not provided us with any reliable equivalent management plan.

146 Closing submissions for Fulton Hogan, 7 April 2016, at 14.
147 Council's 16 September closing at 7.9.
148 Opening submissions for the Council, 17 January 2016, at 10.20.
149 Evidence in chief of Dr Antony Shadbolt, 2 December 2015, at 9.18.

[315] For those reasons, we accept the Council's submissions that Fulton Hogan's relief would not give effect to the CRPS and the more appropriate activity classification is non-complying. In particular, in the absence of sufficient evidence, we consider it important that applications to clear indigenous vegetation at the golf course's SES are properly tested according to related objectives and policies (and in light of the CRPS), including as to ensure that the integrity of Sub-chapter 9.1 would be maintained.

Regarding rules restricting indigenous vegetation clearance outside SES:

- **should a trigger of prior CCC notice of the existence of protected vegetation apply (i.e. a 'rule trigger')?**
- **should a sunset date be set whereby the rule ceases to apply to particular land unless a plan change for a SES is notified?**

Rule trigger

[316] The Crown opposes any rule trigger. It submits that it could inadvertently put protection at risk in the event that the Council cannot, or does not, give prior notice. It submitted that the Council's ability to give notice could be impeded or delayed for a number of reasons (e.g. landowner resistance, Council resourcing limits). It raised a concern that a rule trigger of this kind could create a perverse incentive for significant vegetation to be cleared ahead of any notice being given. It submits that the resulting 'protection gap' would be inconsistent with s 6(c) and CRPS Chapter 9.[150]

[317] The CCC also opposes the rule trigger. It says it could take up to 3-4 months to clarify mapping and write to all landowners with properties that the Council considers may contain indigenous vegetation and habitat types listed in the Appendix. It submits that the lack of protection that would arise pending notice being given (as well as for properties where the Council omitted to give notice) would be inconsistent with RMA s 6(e) and not give effect to the CRPS (especially Policy 9.3.1).

[318] Forest & Bird opposes the rule trigger for the same reasons that it opposes having a sunset date.

150 Closing submissions for the Crown, 9 September 2016, at 4.1–4.7.

Sunset date

[319] Forest & Bird records that it would have supported a sunset date if it was satisfied it would be lawful and it had confidence that the Council would follow through and include a comprehensive schedule of SES in the CRDP by plan change.[151] It noted Dr Clive Appleton's answer in cross-examination that the Council does not force the issue of access if that is refused by the landowner.[152]

[320] On the matter of whether there is lawful ability to add these provisions to the rule, it submits that including a sunset date would predetermine the RMA Schedule 1 plan change process. It expresses a concern that the case for these changes to the Council's April Version is not supported by a RMA s 32 evaluation. It also raises a natural justice concern that these matters ought to have been raised earlier, so that they could have been addressed in evidence prior to the round of closing submissions in April.

[321] Given these matters, it submitted that these changes to the Council's April Version would conflict with s 6(c) RMA and the CRPS and were inappropriate.[153]

[322] Federated Farmers also appears to oppose having a sunset date in the rule, arguing that it would constitute an unlawful fetter on the Council's discretion.

[323] On the matter of a sunset date, the Regional Council expressed caution as to whether this could unlawfully fetter the Council's discretion, if the Council does not itself commit to a work programme, in conjunction with landowners. It noted the importance of the CCC addressing this aspect in its closing submissions.[154]

[324] The Crown and CCC each oppose having the rule expire by a sunset date. However, each submits that a policy would be an appropriate incentive for the Council to regularly update the SES protection schedule.[155]

151 Closing submissions for Forest & Bird, 9 September 2016, at 12–13.
152 Closing submissions for Forest & Bird, 9 September 2016, at 32.
153 Closing submissions for Forest & Bird, 9 September 2016, at 10–36.
154 Closing submissions for the Regional Council, 9 September 2016, at 12–26.
155 Closing submissions for the Crown, 9 September 2016, at 3.1–3.4.

Our evaluation of the rule trigger and sunset date

[325] We start with Forest & Bird's concerns about natural justice and whether there is a proper s 32 evaluation to support such changes.

[326] We do not accept there is any natural justice matter such as should preclude us from considering the merits of these aspects of the Secretariat Draft, according to s 32. As we have noted, our approach throughout has been to keep parties well appraised of our concerns and issues as these have emerged from the testing of evidence. As we have noted, the preliminary views we expressed in our 26 January Minute were at the behest of the parties. As that Minute explains, that was in order to assist parties in the facilitated mediation the parties sought. We acknowledge that on these matters of concern to Forest & Bird, the Secretariat Draft departs from the Council's April Version and that Version reflected a strong consensus from mediation. However, as we have explained, while we must take account of mediated outcomes, they do not remove us from our overall responsibility to be satisfied with the appropriateness of the CRDP provisions we decide upon. Our 9 August Minute was explicit about our concerns, as arising from the evidence, on these aspects of the Council's April Version. The Secretariat Draft simply reflects those signalled concerns and our observations to the parties on how they could be overcome. Those observations were plainly made on the basis that they did not represent our final views, which would be subject to parties' closing submissions. Our related procedural directions allowed ample time for those submissions, and Forest & Bird did not seek any change to those directions. What the Secretariat Draft specifies as draft modifications to these aspects of the Council's April Version are plainly within the scope of what is available to us on the evidence and the proposals and submissions before us.

[327] Added to that is the evidence concerning the explicitly interim nature of similar rules included in the BPDP on this matter, in the 2007 Consent Order.

[328] We do not identify any procedural reason why we should not now make the appropriate determination on the substance of this important matter.

[329] Nor do we accept Forest & Bird's submission on s 32, RMA. As we have also made clear, our determination involves our own s 32 evaluation of options, on the basis of the evidential findings we record in this decision.

[330] On the two substantive matters, we start with the sunset date as it is relatively straightforward.

[331] We agree with the submissions of the various parties that it is inappropriate to include a sunset date in the relevant rules. We also agree with the Crown and CCC that we should include a policy direction to incentivise the Council to follow through with anticipated plan changes to add further SES to the protection schedule. We find that this is by far the better means of protection, for both s 6(c) and CRPS Chapter 9. Specifically, that is by reason that both provisions refer to 'areas'. It is also important, in terms of fostering certainty and clarity for landowners, that what is protected is clearly understood and defined.

[332] It is unfortunate that, for a variety of reasons including the earthquakes, the CCC never fulfilled the intention clearly expressed in the 2007 Consent Order to advance a plan change for the purposes of protection through identified SES. It is also unfortunate that the explicitly interim regime of the 2007 Consent Order continues to be reflected in rules that we have determined must be included in the CRDP for the protection of vegetation and habitats outside of identified SES. We do so also on the explicit basis that the provisions serve an interim purpose pending transition to SES protection. The CCC clearly must now 'play catch up', and we have determined to include the policy in the CRDP with that in mind.

[333] Before we leave this matter, on the matter of Dr Appleton's evidence concerning access to land, we draw attention to the CCC's powers of entry under s 333, RMA. Appropriately, the Council's strong first preference is enter land only as a welcomed guest of the landowner. However, s 333 is in the RMA as an appropriate fall-back, where the Council's capacity to enter land for important s 32 investigative purposes is thwarted.

[334] On the matter of the rule trigger, we find the concerns expressed by the Crown and CCC are overstated. The Secretariat Draft expresses this trigger in relatively simple terms that enable the Council reasonable flexibility as to both the timing and nature of notification to be given. Proposed Policy 9.1.2.9 specifies that the indigenous vegetation and habitat types in Appendix 9.1.6.6 must be "notified to property owners" before the related policy direction as to the management of clearance applies. Proposed Rule 9.1.4.1 P1 and P2 are similarly framed in specifying "(and where the Council has provided formal notification to the land owner)".

[335] We do not accept the submissions that a rule trigger could create a perverse incentive for significant vegetation to be cleared ahead of any notice being given or result in a 'protection gap'. As the clearance rules provide, service of the notice on the landowner or occupier immediately trigger them into effect. As such, any time gap before the rules takes effect will be only as long as it takes the Council to prepare and serve the notices. The Council has been on notice of our preliminary thinking for several months. It has had significant further time to get underway with this work in the time that has since elapsed since filing its 16 September closing submissions. In any case, it informs us that it estimates that it would take 3-4 months to clarify mapping and give notice to landowners. For each property, service of the notice will trigger the rule into effect. In those circumstances, we find the risk of this regime incentivising significant clearance to be low and outweighed by the protection benefits the notice will serve.

[336] That is in the sense that the notice regime will reduce the risk of harm arising from ignorance. In those circumstances, we find a prior notice rule trigger more in keeping with s 6(e) and CRPS Chapter.

[337] We recognise that providing for a prior notice regime will impose a further cost on the Council in CRDP administration. However, we consider this in keeping with the partnership approach with landowners that the Council is committed to and which is an acknowledged priority under the CRPS (as expressed under Issue 9.1.2). In any case, given the Council's capacity to put landowners on notice, we find it would be unreasonable to expose those who may be presently unaware of what is on their properties to serious legal sanction. What the Crown, CCC and Forest & Bird would appear to have lost sight of is that indigenous vegetation can be small and intermingled with exotic grass and herb species on farms and the activities defined as indigenous vegetation clearance are typical farming operations.

[338] We find the prior notice regime is also better in keeping with the OIC Statement of Expectations, in that it will more clearly articulate how decisions about resource use and values will be made under the rule.

[339] For those reasons, we find that the most appropriate approach is to retain the prior notice requirement for the application of the relevant rules.

[340] The Secretariat Draft provided for this notice trigger in various rules, as follows:

> (and where the Council has provided formal notification to the land owner).

[341] We find that drafting uncertain on important matters concerning the substance and manner of such notification.

[342] The substance of the notice should reflect the primary purpose of both educating the landowner of the protection matter and giving that landowner fair notice of related legal obligations under the CRDP. The Council has explained that it is able to map properties. We accept that such mapping is only of what the Council either knows or reasonably believes could be in existence on a property, in the mapped locations. That mapping is itself informed on that basis.

[343] The manner of notice should simply reflect the RMA regime of service of documents (s 352). That includes the deeming that a notice sent by post to a person in accordance with s 352 (1) (c) or (d) is deemed, in the absence of proof to the contrary, to be received by the person at the time at which it would have been delivered in the ordinary course of the post.

[344] In terms of clarity, we find it more appropriate for these matters to be addressed by adding a rule that defines a 'Council indigenous vegetation notice' for the purpose of the various permitted activity rules and policies. The rule included in the Decision Version is as follows:

> a. In Rule 9.1.2 '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 9.1.6.5 Table 1 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.

[345] For those reasons, we find that rule (and associated linkages to it in related rules and policies) is the most appropriate for responding to the statutory principles and Higher Order Documents and achieving the related objectives.

What are the appropriate specifications for indigenous vegetation that is the subject of clearance rules?

[346] Appendix 9.1.6.6 Table 1 of the Secretariat Draft lists indigenous vegetation on Banks Peninsula and the Port Hills, outside SES in Schedule A of Appendix 9.1.6.1. It replicates Table 1 of Appendix 9.1.4.6 of the Council's April Version. It works in tandem with the related clearance rule that we have just addressed. Federated Farmers and Michael Bayley raised some concerns about aspects of this specification table.

Kanuka height

[347] This was the matter Federated Farmers expressed concern about. The Secretariat Draft carries forward what the Council's April Version specifies, as the height specifications for mature and regenerating kanuka (*Kunzea robusta*) forest, as follows:

(a) In the Port Hills Ecological District occupying ≥ 0.25 ha, the specification that any individual kanuka plants are 2m or greater in height;

(b) In the Herbert, Akaroa or Ellesmere Ecological Districts, occupying ≥ 0.5 ha, the specification that any individual kanuka plants are 3m or greater in height.

[348] Federated Farmers cites this as an example of where the Secretariat Draft includes "matters that were not agreed between the parties at mediation"[156]. However, as we have noted, the correct position is that it replicates what the Council's April Version specifies.

156 Closing submissions for Federated Farmers, 13 September, at 11.

[349] In terms of substance, however, we understand that the Council's April Version expresses what the Council and the Crown prefer primarily because of the role kanuka can play, at lower heights, as a habitat for indigenous fauna and as a buffer from wind, weed and ingress effects. The positions of the Council and the Crown are supported by the evidence of Mr Hooson for the Council[157] and Mr Davis for Forest & Bird.[158]

[350] We understand that Federated Farmers seeks that these heights be specified as 4m and 6m respectively for two reasons.[159] It notes that this is what is specified in the BPDP, which is known to plan users. Secondly, it submits that there is no convincing evidence why the heights should change. On that matter, Federated Farmers referred us to evidence from Francis Helps and others as to the need to clear kanuka, and the vigour of its growth. It submitted that nothing has changed in that regard, or in regard to farming practice.

[351] Mr Francis Helps is a founding member of the Banks Peninsula Conservation Trust and its present Covenants Chair.[160] He and his wife farm at Flea Bay, Banks Peninsula. He bought the farm 47 years ago, as a 21 year old. At that time, it was cheap and gorse covered; some 1200 acres split into four paddocks and with half its boundary fences "on the ground". As he described it, it was a "shambles". Noticing the indigenous vegetation and wildlife on this south eastern corner of Banks Peninsula, he and his brother started a "protection programme". That included gifting to the Crown as a scenic reserve 11 ha of original beech forest. He followed that by arranging for a QEII covenant over hardwood forest areas, archaeological sites, and penguin nesting habitat.[161] There is now one reserve and five covenanted areas on the farm, including the QEII covenant, a covenant with DOC and one with the Trust.[162]

[352] In the context of explaining how he undertook aerial and hand spraying to maintain tracks and grazing , Mr Helps noted the cost in the order of $400 per ha. He went on to say:[163]

> I have attempted to do it responsibly, it costs me about $400 per hectare to do so. It is quite expensive. I generally do 10 hectares per year just to keep up with what is growing. I noticed the height criteria for kanuka has been reduced by half, it means by doing that I would never catch up, it would grow too fast. By doing that I would never catch up, it would grow too fast, doing 10 hectares per year. If I recall triggered a

157 Evidence of Scott Hooson, 2 December 2015, at para 15.24.
158 Evidence of Marcus Davis, 10 December 2015, at para 90(c).
159 Closing statement of Fiona Mackenzie for Federated Farmers, 7 April 2016, at 41–43.
160 Rebuttal evidence of Francis Helps on behalf of Federated Farmers at 4.
161 Transcript, page 497, line 25 to page 498, line 18.
162 Rebuttal evidence of Francis Helps at 2.
163 Transcript, page 500, lines 19–33.

> resource consent, figures that I have seen, $2,500 resource consent, plus costs for an ecological report every time I spray.
>
> So that would, my estimate would raise a $4,000 job to something like $10,000 - $12,000. I have stopped doing it, what do I do with my farm? Do I allow it to go back to forest? And rely on tourism alone, tourism is probably a third of my income. These properties are not sustainable on beef and sheep alone, I have to do other things.

[353] We accept, on the evidence of Mr Hooson and Mr Davis, that providing for a reduced height will have the habitat and buffering benefits that are described. However, we also accept Mr Helps' evidence as to the vigour of kanuka and its capacity for regrowth. He is a highly experienced farmer and active conservationist. His evidence demonstrates the role that farming practices can have in protecting areas of significant indigenous vegetation and habitat, if those practices demonstrate an ethic of stewardship. That ethic is clearly expressed in Mr Helps' farming practices.

[354] We also accept Mr Helps' evidence to demonstrate the significant financial impost such a change can be for farmers. We find that has not been properly accounted for in the evidence for the Council.

[355] On balance, we conclude that we should accept Federated Farmers' requested relief and set the height thresholds for kanuka at 4m and 6m respectively. That is on our evaluation of the evidence we have received on relative benefits and costs. If this threshold is to be revisited in the future, it should be after a process of further engagement by the Council with the farming community that could be impacted by this change. In the meantime, the evidence satisfies us that the additional ecological benefit that may be secured from reducing the height is not worth the significant costs and uncertainties that would impose on the farming community.

[356] The Secretariat Draft table also carries forward the following entry under 'indigenous coastal vegetation':

> scattered (low density) indigenous tussock, shrubs, rushes, vines, herbs, grasses and mosses among predominantly exotic grasslands, and cushion fields, moss fields and stone fields on Kaitorete Spit.

[357] Mr Bayley expressed concern about the "sheer breadth" of this entry. He considered that it would be virtually impossible to avoid clearing such species in the course of normal farming activities, or even know whether such species is present in the first place without obtaining

expert ecological input.[164] He asked that we amend this so that it lists only vegetation that he would be able to identify on the ground, without the need for expert ecological assistance.

[358] The Council's April closing notes that the list "contains links to fact sheets with details to help identify the relevant vegetation". While the right hand column of the table in the Council's April Version ('Link to factsheet with example of vegetation type') provides such a link for most entries, it does not do so for the entry of concern to Mr Bayley.

[359] Given our determination to specify a rule trigger, we find this omission does not require any further direction or change to the table. Firstly, we are satisfied on the evidence that the items identified warrant inclusion. Secondly, we find that the rule trigger provides that the Council must give notice to Mr Bayley of the indigenous vegetation understood to be on his property and its geographic location. Until notice is issued, Mr Bayley will not be caught by the relevant rule.

[360] For those reasons, we find that Appendix 9.1.6.6 Table 1 of the Secretariat Draft (modified so as to set the height thresholds for kanuka at 4m and 6m respectively) is the most appropriate for responding to the statutory principles and Higher Order Documents and for achieving related objectives. Therefore, we have included the table as so modified, in the Decision Version.

Various matters of detail where we have not agreed with submissions

[361] On a range of provisions, parties have sought some changes to matters of detail which we have decided not to include in the Decision Version, for the following reasons.

Policy 9.1.2.2.b

[362] Policy 9.1.2.2 concerns the future identification and assessment of sites, recognising that Schedule A of Appendix 9.6.6.1 is not comprehensive. Clause b. of the policy gives priority to the assessment of sites listed in Schedule B of Appendix 9.1.6.1. Rod Donald Banks Peninsula Trust sought that priority also be accorded to the assessment of naturally uncommon

164 Closing submissions for Michael Bayley, 7 April 2016, at 9–12.

ecosystems and threatened indigenous species. The CCC and the Regional Council also sought that prioritisation be extended beyond Schedule B.

[363] On the evidence, we find that it is important to give clear direction concerning the priority that is to be accorded Schedule B. In particular, the Schedule B sites were those the Council's Notified Version originally proposed to be also accorded full protection under the rules. The process and other failings we have described has resulted in them being included, for the time being, in Schedule B. In that context, we find it particularly important that the policy gives clear priority to them. That does not preclude the Council, in the exercise of its biodiversity maintenance functions under RMA s 31(1)(b)(iii) also giving due priority to other matters.

[364] For those reasons, we decline to change the expression of clause b. in the manner sought.

Policy 9.1.2.15.b

[365] The Crown submitted that the matters in sub-clauses (i) and (ii) could be deleted in that the matters concerning the biodiversity framework are in the related Appendix. We find it more appropriate that these sub-clauses remain as part of the policy given their importance.

Controlled activity Rule 9.1.4.2

[366] CCC and the Crown have questioned whether this rule is needed, given that the clearance of vegetation not meeting the relevant specifications would not require consent in any case.

[367] Were it the case that those specifications were of a kind that allowed for simple factual determination of compliance or not, we would agree that a controlled activity rule of this kind would serve no purpose. However, and somewhat unusually for a permitted activity regime, the specifications of indigenous vegetation in Table 1 Appendix 9.1.6.5 are not so black and white. Take, for example, the circumstance where there is a 0.6ha area of lower altitude mixed scrub on a property. The Council indigenous vegetation notice could be issued because the Council understands that this scrub meets the specification, namely "lower altitude mixed scrub – in which mature specimens of any of the [specified] genera form the dominant cover … 0.5ha or greater in area". An ecologist, examining the site, could validly come to a different conclusion on several ingredients of this specification, e.g. 'mature', 'dominant cover', or

'area'. However, that conclusion could be a matter for genuine debate and interpretation between ecologists as it involves expert opinion.

[368] Given that characteristic inherent in the permitted activity rules, we find the proposed controlled activity rule serves a relevant resource management purpose, and assists clarity and certainty. We find it also assists protection in that it encourages landowners to seek professional assistance in those cases where the landowner might otherwise come to an uninformed view that clearance was lawful.

[369] CCC, the Crown, the Regional Council and Forest & Bird have sought a change to the following matter of control in the Secretariat Draft:

> That the activity is undertaken in accordance with the proposal as assessed by the qualified ecologist.

[370] Those parties generally seek that this matter be changed to refer to an assessment by a qualified ecologist. We disagree, in that the sole matter in issue concerns the proposal and whether it triggers related other consenting obligations.

[371] For those reasons, we have retained this rule as included in the Secretariat Draft.

9.1.6.7 Farm biodiversity plan framework – qualification of experts

[372] The Crown submits that, where the framework refers to the Council providing "a suitably qualified ecological expert to identify and assess the indigenous biodiversity values of the farmed property", the qualifications of that expert should be prescribed. However, the Crown does not say how this should be done. We find that change unnecessary and inappropriate. Experts who gave evidence on these matters before us had a range of qualifications. In any case, we find we can leave this matter to the judgement of the Council, as the statutory functionary.

Other changes sought to Appendices

[373] The CCC, the Regional Council, the Crown and Federated Farmers also sought various finer-grained changes to different aspects of the Appendices. Our decision not to make a number of these changes is consequential on matters we have already addressed. In other cases,

the changes sought are in the nature of technical drafting refinements which we have considered but determined not to be appropriate or necessary.

SES/LP22 Wilmers Road — removal of portion of SES

[374] The Council's ecologist, Dr Shadbolt recommended that we accept the Crown's submission to remove from the SES a roughly triangular portion along its north-eastern boundary.[165] This change is agreed between the Council and the Crown.[166] We accept Dr Shadbolt's recommendation and remove the portion.

Various non-contentious matters

[375] Section 32AA(1) specifies that a "further evaluation required under this Act … is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed". It also specifies that the further evaluation "must … be undertaken at a level of detail that corresponds to the scale and significance of the changes".

[376] In several non-contentious aspects, we are satisfied that the Council's Final Version properly accords with the RMA requirements, and is generally sound and appropriate. Subject to some minor refinements to ensure consistency with the approach of the Panel's Stage 1 decision and otherwise improve drafting clarity, the Decision Version confirms the approach of the Council's Final Version as the most appropriate.

Drafting refinement matters

[377] In this section, for the purposes of this decision, we give our reasons for making various other drafting refinements to the Council's Final Version which have not been covered earlier.

165 Statement of evidence of Dr Antony Shadbolt, 2 December 2016, at 9.3 and Attachment 3.

166 Memorandum of counsel for the Chief Executive of the Department of the Prime Minister and Cabinet for and on behalf of the Crown, 11 August 2016, at 9.

Introduction

[378] There is a degree of inconsistency in the Council's drafting of various Chapter proposals in that some have introductions, and others do not. We consider introductions have an important role for the lay reader seeking to navigate the CRDP. Therefore, we intend to provide for them across all chapters, but subject to the inclusion of the following statement:

> This Introduction is to assist the lay reader to understand how this Chapter works and what it applies to. It is not an aid to interpretation in a legal sense.

[379] We find it important that the Introduction remind the reader of particular CRDP chapters of the pre-eminence of the Strategic Directions, for the reasons stated at [148] of Decision 1. Therefore, we have included in the Introduction the following:

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

Planning Maps

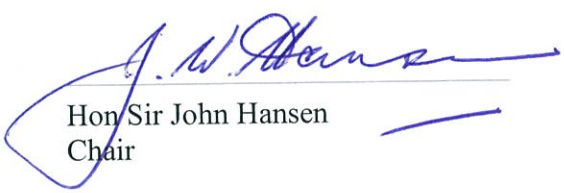
[380] We have made directions in Decision 51: Topic 9.5 at [249] regarding the updating of Planning Maps to give effect to our Chapter 9 decisions. A separate decision on all Chapter 9 Planning Map amendments will issue in due course.

CONCLUSION

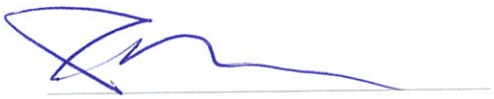
[381] For the reasons we have given, we confirm the Decision Version. Any party seeking that we make any minor corrections to this decision must file a memorandum for those purposes within **five working days of the date of this decision.**

[382] We direct that, within **10 working days of the date of this decision**, the Council provides to us for approval and inclusion in 9.1.4 'How to interpret and apply the rules' an updated diagram reflecting the various changes to provisions in the Decision Version.

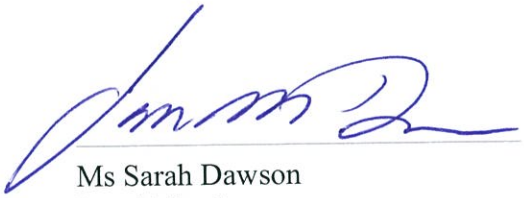
For the Hearings Panel:



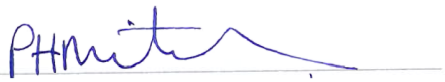
Hon Sir John Hansen
Chair



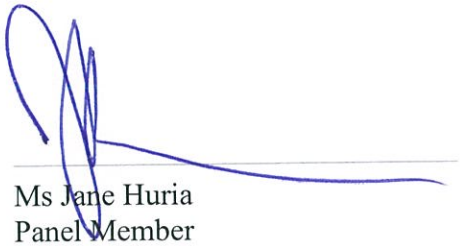
Environment Judge John Hassan
Deputy Chair



Ms Sarah Dawson
Panel Member



Dr Phil Mitchell
Panel Member



Ms Jane Huria
Panel Member

SCHEDULE 1

Changes our decision makes to the following chapters.

Chapter 9.1	Indigenous Biodiversity and Ecosystems
Chapter 2	Definitions

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 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 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 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 waterbody 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 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 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

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 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.

9.1.2.7 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. adverse effects on indigenous biodiversity values and Ngāi Tahu values are managed to ensure indigenous biodiversity in the 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 biological diversity 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 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 harvest 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 harvest.

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

a. Work with nga rūnanga, landowners 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 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 harvest and enhancing habitats of indigenous biodiversity;

vi. recognising and encouraging 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 biodiversity offsetting 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, biodiversity offsetting 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 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 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 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 District, the rules apply only to the part of the ecological district that is located within the 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 clearance in the 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 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;

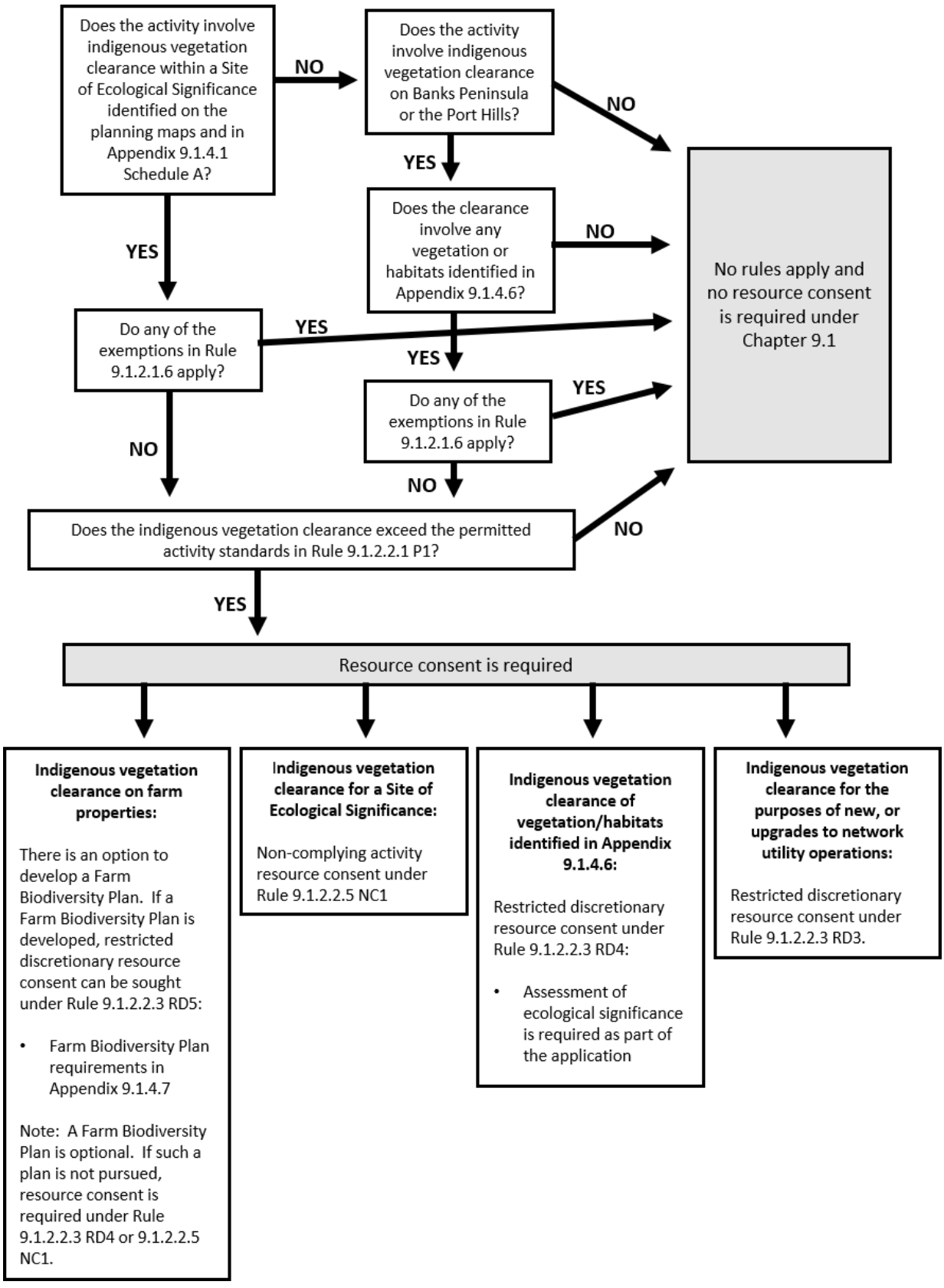
iv. maintenance of existing roads within existing road corridors;

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.

[Council is directed to update this diagram]



9.1.4 Rules - Activity status tables

9.1.4.0 General Rules

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

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	Indigenous vegetation clearance: 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.	a. Any indigenous vegetation clearance shall be limited to clearance for one or more of the following: i. the operation, maintenance and repair, within 2 metres either side, of fences, access tracks, buildings, 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 improved

	Activity	Activity specific standards
		pasture; iv. conservation activities; 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; 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	Planting and seed gathering: a. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; or b. within indigenous vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served.	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. Note: Ecological districts are identified in Appendix 9.1.6.4. 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.
P3	Customary harvesting of: a. any species grown specifically for that purpose; or b. any other taonga species with the written permission of the relevant runanga: that is: i. within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; or ii. indigenous vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served. Note: This rule does not override the requirements to obtain permission of the landowner or administrator for any customary harvest of taonga species.	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.
P4	Any indigenous vegetation clearance: a. outside a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1; and b. that: i. is not vegetation listed in Appendix	Nil

	Activity	Activity specific standards
	9.1.6.6; or ii. is vegetation listed in Appendix 9.1.6.6 but a Council indigenous vegetation notice has not been served.	

9.1.4.2 Controlled activities

The activities listed below are 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:
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: 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. Any resource consent application shall not be limited or publicly notified.	a. That the activity is undertaken in accordance with the proposal as assessed by the qualified ecologist.

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:
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. Any resource consent application shall not be limited or publicly notified.	a. Planting and customary harvesting – Rule 9.1.5.1
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. Any resource consent application shall not be limited or publicly notified.	a. Planting and customary harvesting – Rule 9.1.5.1

Activity		The Council's discretion shall be limited to the following matters:
RD3	Indigenous vegetation clearance, not provided for by Rule 9.1.4.1 P1 or P3, for the purposes of new, or upgrades (except minor upgrades under Rule 11.4.1 P9 - P15) to, utilities operated by network utility operators, including associated access tracks: 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. Note: This rule does not apply to customary harvesting.	a. Indigenous biodiversity and ecosystems – Rule 9.1.5.2
RD4	Indigenous vegetation clearance of vegetation listed in Appendix 9.1.6.6 and where a Council indigenous vegetation notice has been served, that: a. is not provided for by Rule 9.1.4.1 P1 or P3 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. 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). Note: The rule does not apply to customary harvesting.	a. Farm Biodiversity Plans – Rule 9.1.5.3
RD5	Indigenous vegetation clearance within a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1 that: a. is not provided for by Rule 9.1.4.1 P1 or P3 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. 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). Note: This rule does not apply to customary harvesting.	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	Indigenous vegetation clearance, that is not provided for by Rule 9.1.4.1 P1 or P3, Rule 9.1.4.2 C1 or Rule 9.1.4.3 RD3 - RD5: 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	On Banks Peninsula and the Port Hills, indigenous vegetation clearance involving the clearance of: a. Any old-growth podocarp/hardwood forest which contains kahikatea (*Dacrycarpus dacrydioides*), totara (*Podocarpus totara*, *Podocarpus laetus*) matai (*Prumnopitys taxifolia*), miro (*Prumnopitys ferruginea*), or kaikawaka (*Libocedrus bidwillii*) trees, or beech forest which contains *Fuscospora* spp trees; or any mature individual trees of these species; or b. 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 (*Melicytus ramiflorus*), fivefinger (*Pseudopanax arboreus*), lemonwood (*Pittosporum eugenioides*), tree fuchsia (*Fuchsia excorticata*), narrow-leaved lacebark (*Hoheria angustifolia*), ribbonwood (*Plagianthus regius*), kaikomako (*Pennantia corymbosa*), kowhai (*Sophora microphylla*), pigeonwood (*Hedycarya arborea*), or ngaio (*Myoporum laetum*). Note: This rule does not apply to customary harvesting or to indigenous vegetation clearance provided for by Rule 9.1.4.3 RD3.

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

a. The extent to which the selected or proposed species are locally appropriate / endemic; and

b. 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

a. The extent to which the nature, scale, intensity and location of the proposed activity will adversely affect indigenous biodiversity and ecosystems taking into account:

   i. any loss of, or effects on, indigenous vegetation or habitats of indigenous fauna, including wetlands, ecological corridors and linkages;

   ii. indigenous ecosystem integrity and function;

   iii. Ngāi Tahu values associated with indigenous biodiversity;

   iv. where relevant, any effects on 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

   v. where relevant, any effects on indigenous vegetation and habitats of indigenous fauna in the coastal environment.

b. The extent to which 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 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 offsetting, 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.

9.1.6 Appendices

9.1.6.1 Schedule of Sites of Ecological Significance

Introduction

This appendix is divided into two schedules:

Schedule A Sites of Ecological Significance

This part contains the schedule of Sites of Ecological Significance. The schedule includes sites identified on public land and, following collaboration, where private landowners have agreed to the inclusion of the site on the schedule.

This schedule is not a comprehensive list of Sites of Ecological Significance within the District. There are a number of sites that may 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.

Schedule B Information only – Ecological sites on private land that require further collaboration with landowners

This schedule 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 of Appendix 9.1.6.1 by way of future plan changes.

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 Sites of Ecological Significance.

Sites of Ecological Significance identified in Schedule A and Schedule B with a notation of (part) indicates an ecologically significant area that has been identified and assessed however part of the Site of Ecological Significance occurs on private land and the collaborative process with the landowner has not been completed. These sites appear in both schedules.

Schedule A: Sites of Ecological Significance

1. Low Plains

ID. No	Planning Map Number	Name and/or Description	Location	Ecological District
SES/LP/1	21	Waimakariri Reserves Dry Plains Grasslands Lease Land	McLeans Island	Low Plains
SES/LP/2	20, 26	Travis Wetland	Parklands	Low Plains

ID. No	Planning Map Number	Name and/or Description	Location	Ecological District
SES/LP/3 (part)	25, 26	No 2 and Old No 2 Drain	Between QE2 Drive and Horseshoe Lake Reserve	Low Plains
SES/LP/4	31	Riccarton Bush	Riccarton	Low Plains
SES/LP/5	2, 6	Brooklands Lagoon	Brooklands	Low Plains
SES/LP/6 (part)	13, 2, 20, 26, 27, 34, 41, 48, 6	Christchurch Coastal Strip	Southshore Spit to Waimakariri River mouth	Low Plains
SES/LP/7	17, 18	Roto Kohatu Lakes	Harewood	Low Plains
SES/LP/8	25, 26	Horseshoe Lake Reserve	Burwood	Low Plains
SES/LP/9	24, 31	Jellie Park Pond	Burnside	Low Plains
SES/LP/10	44	Westlake Reserve Ponds	Halswell	Low Plains
SES/LP/11	1, 2, 5	Lower Waimakariri River Tidal Reaches	Kainga	Low Plains
SES/LP/12	10, 11, 4	Sanctuary Wetland	Belfast/Waimakariri River	Low Plains
SES/LP/13	10, 11, 14, 3, 4, 5, 7, 8, 9	Waimakariri River Braided River	North Christchurch territorial boundary	Low Plains
SES/LP/14	33, 34, 40, 41, 47, 48	Avon Heathcote Estuary / Ihutai and environs	The Estuary	Low Plains
SES/LP/15	29, 36	Templeton Golf Course & Ruapuna Speedway	Templeton	Low Plains
SES/LP/16 (part)	16, 22	Conservators Road Dry Plains Grassland	Harewood	Low Plains
SES/LP/17	21	Chattertons Road Dry Plains Grassland	Yaldhurst	Low Plains
SES/LP/18	21, 22	School Road Dry Plains Grassland	Yaldhurst	Low Plains
SES/LP/19	4, 5	Dickeys Road Wetland	Belfast	Low Plains
SES/LP/20	2	Styx River Mouth Wetlands	Brooklands	Low Plains
SES/LP/21	5	Otukaikino Reserve Wetland	Chaneys	Low Plains
SES/LP/22	44	Wilmers Road Dry Grasslands	Hornby	Low Plains
SES/LP/23 (part)	12, 13, 18, 19, 2, 6	Styx River	Belfast	Low Plains
SES/LP/24 (part)	25, 26, 30, 31, 32, 33, 38, 39	Avon River / Otakaro and Tributaries	The Avon and main tributaries	Low Plains
SES/LP/25	37, 38, 39, 40, 44, 45, 46, 47	Heathcote River and Tributaries	The Heathcote and main tributaries.	Low Plains
SES/LP/26 (part)	10, 11, 12, 17, 18, 4, 5	Otukaikino River and Tributary Waterways	Belfast	Low Plains
SES/LP/27	18	Smacks Creek	Belfast	Low Plains

ID. No	Planning Map Number	Name and/or Description	Location	Ecological District
SES/LP/28 (part)	12, 19	Kaputone Creek	Belfast	Low Plains
SES/LP/29 (part)	49	Knights and Nottingham Streams	Halswell	Low Plains
SES/LP/30	19	Horners Drain and Rhodes Drain	Belfast	Low Plains
SES/LP/31	13	Sheppards Stream	Marshland	Low Plains
SES/LP/32	10, 11	Isaacs Carr	Harewood	Low Plains
SES/LP/33	15, 21	Christchurch Gun Club Dry Plains Grassland	Harewood	Low Plains
SES/LP/34	8	McLeans Island Kanuka	Harewood	Low Plains
SES/LP/37	5	Chaneys/Kainga Wetland	Brooklands	Low Plains
SES/LP/38 (part)	49	Creamery Ponds	Halswell	Low Plains
SES/LP/40	5	Main North Road Ephemeral Pond	Bridgend	Low Plains
SES/LP/41	16	McLeans Island Road Dry Grassland	Harewood	Low Plains
SES/LP/43	24	Papanui Stream	Papanui	Low Plains
SES/LP/44 (part)	18	Cavendish Drain	Redwood	Low Plains
SES/LP/45	16, 17	Peacock Springs	Harewood	Low Plains

2. Banks Peninsula and Port Hills

ID. No	Planning Map Number	Name and/or Description	Location	Ecological District
SES/A/8 (part)	R8	Tumbledown Bay Dunes	Te Oka Road, Southern Bays	Akaroa
SES/A/12	71, 72, R5	Le Bons Estuary	Le Bons Bay	Akaroa
SES/A/13 (part)	68, R2, R5	Okains Estuary	Okains Bay	Akaroa
SES/A/14 (part)	R4	Okuti Valley	Okuti Valley Road, Little River	Akaroa
SES/A/15 (part)	R2	Raupo Bay	Chorlton	Akaroa
SES/A/18 (part)	R5	Goughs Bay	Goughs Bay	Akaroa
SES/A/20 (part)	75, R8	Wainui / Carews Peak	Wainui	Akaroa
SES/A/24 (part)	R5	Otepatotu	Lavericks Peak, Summit Road	Akaroa
SES/A/26 (part)	74, R4	Saddle Hill	Above Okuti Valley	Akaroa
SES/H/3 (part)	R2, R4	Hay Reserve	Pigeon Bay	Herbert
SES/H/6 (part)	78, R4, R8	Lake Forsyth / Wairewa	Little River	Herbert

ID. No	Planning Map Number	Name and/or Description	Location	Ecological District
SES/H/9 (part)	R1	Upper Port Levy Miro	Port Levy Saddle	Herbert
SES/H/11 (part)	R2	Holloway Conservation Reserve and Goodwin Reserve	Starvation Gully Road, Pigeon Bay	Herbert
SES/H/14 (part)	78, R4, R8	Birdlings Flat Shrublands	Poranui Beach Road, Birdlings Flat	Herbert
SES/H/16 (part)	R3	Lower Kaituna River	Kaituna Valley	Herbert
SES/H/17 (part)	R4	Kaituna Spur	Kaituna Valley	Herbert
SES/H/24 (part)	R4	Waipuna Saddle	Western Valley Road, Little River	Herbert
SES/H/28 (part)	R1	Mt Bradley	Mt Bradley	Herbert
SES/E/1 (part)	R3, R6, R7	Lake Ellesmere/Te Waihora and Margins	Lake Ellesmere/Te Waihora	Ellesmere
SES/E/2 (part)	78, R3, R4, R6, R7	Kaitorete Spit	Kaitorete Spit	Ellesmere

Schedule B: Information only – Ecological sites on private land that require further collaboration with landowners

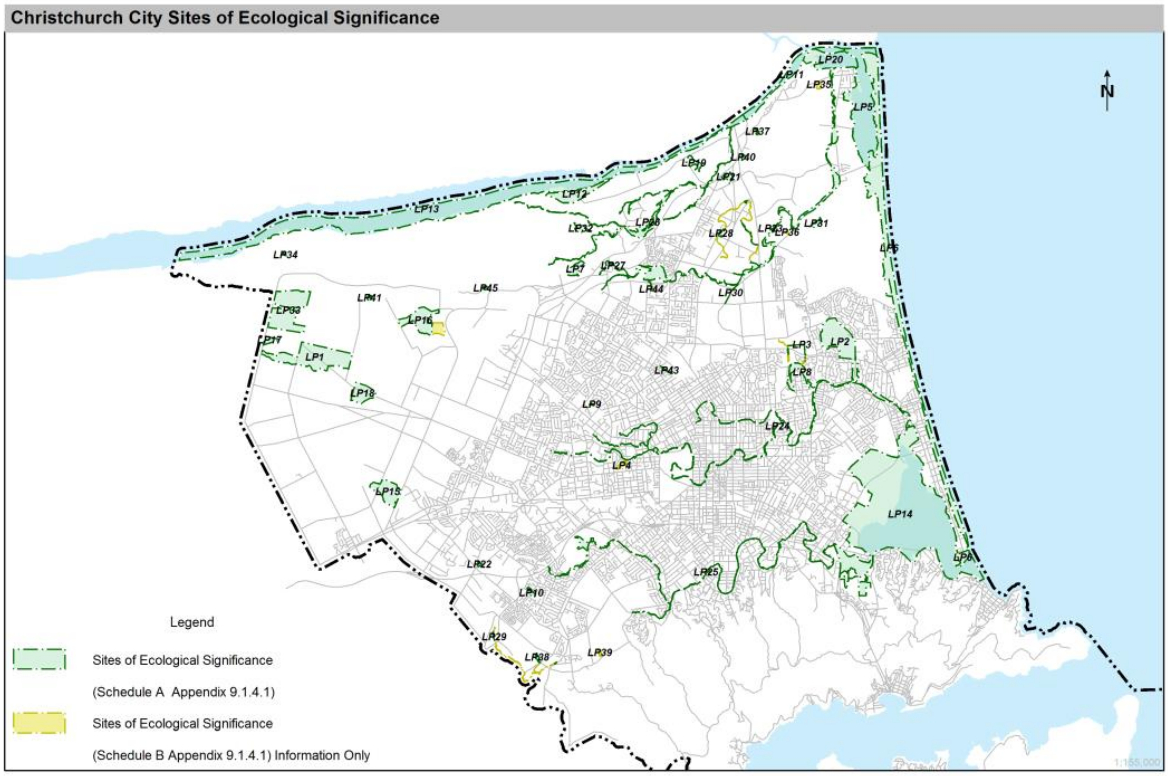
ID. No	Planning Map Number	Name and/or Description	Location	Ecological District
Low Plains				
SES/LP/3 (part)	25, 26	No 2 and Old No 2 Drain	Between QE2 Drive and Horseshoe Lake Reserve	Low Plains
SES/LP/6 (part)	13, 2, 20, 26, 27, 34, 41, 48, 6	Christchurch Coastal Strip	Southshore Spit to Waimakariri River mouth	Low Plains
SES/LP/14 (part)	33, 34, 40, 41, 47, 48	Avon Heathcote Estuary / Ihutai and environs	The Estuary	Low Plains
SES/LP/16 (part)	16, 22	Conservators Road Dry Plains Grassland	Harewood	Low Plains
SES/LP/23 (part)	12, 13, 18, 19, 2, 6	Styx River	Belfast	Low Plains
SES/LP/24 (part)	25, 26, 30, 31, 32, 33, 38, 39	Avon River / Otakaro and Tributaries	The Avon and main tributaries	Low Plains
SES/LP/26 (part)	10, 11, 12, 17, 18, 4, 5	Otukaikino River and Tributary Waterways	Belfast	Low Plains
SES/LP/28 (part)	12, 19	Kaputone Creek	Belfast	Low Plains

ID. No	Planning Map Number	Name and/or Description	Location	Ecological District
SES/LP/29 (part)	49	Knights and Nottingham Streams	Halswell	Low Plains
SES/LP/35	2	Kainga Road Saltmeadow	Brooklands	Low Plains
SES/LP/36	12	Lower Styx Road Ephemeral Ponding	Marshland	Low Plains
SES/LP/38 (part)	49	Creamery Ponds	Halswell	Low Plains
SES/LP/39	50	Cashmere Road Ephemeral Pond	Halswell	Low Plains
SES/LP/44 (part)	18	Cavendish Drain	Redwood	Low Plains
Banks Peninsula and the Port Hills				
SES/A/1	R4	French Farm Wetland	Upper catchment of French Farm	Akaroa
SES/A/2	73, R4	Wainui Pass Wetland	Upper catchment of French Farm	Akaroa
SES/A/3	69, R4	Breitmeyers	Little River	Akaroa
SES/A/4	R5	Cloud Farm	Summit Road, Akaroa	Akaroa
SES/A/5	66, R2	Decanter Headland	Little Akaloa	Akaroa
SES/A/6	R2	North West Okains Bay	Okains Bay	Akaroa
SES/A/7	72, R5	Steep Head	Le Bons Bay	Akaroa
SES/A/8 (part)	R8	Tumbledown Bay Dunes	Te Oka Road, Southern Bays	Akaroa
SES/A/9	R4, R8	Hikuraki Bay Valley	Off Bossu Road, Southern Bays	Akaroa
SES/A/10	73, R4	Barrys Bay Kahikatea	Akaroa Road, Barrys Bay	Akaroa
SES/A/11	R4	Kinloch	South-east Lake Forsyth, Little River	Akaroa
SES/A/13 (part)	68, R2, R5	Okains Estuary	Okains Bay	Akaroa
SES/A/14 (part)	R4	Okuti Valley	Okuti Valley Road, Little River	Akaroa
SES/A/15 (part)	R2	Raupo Bay	Chorlton	Akaroa
SES/A/16	R2, R5	View Hill	Above Chorlton	Akaroa
SES/A/17	R9	Stony Bay Sooty Shearwater Colony	Sea cliffs south of Stony Bay	Akaroa
SES/A/18 (part)	R5	Goughs Bay	Goughs Bay	Akaroa
SES/A/20 (part)	75, R8	Wainui / Carews Peak	Wainui	Akaroa
SES/A/21	R5	Grehan Valley	Above Akaroa	Akaroa

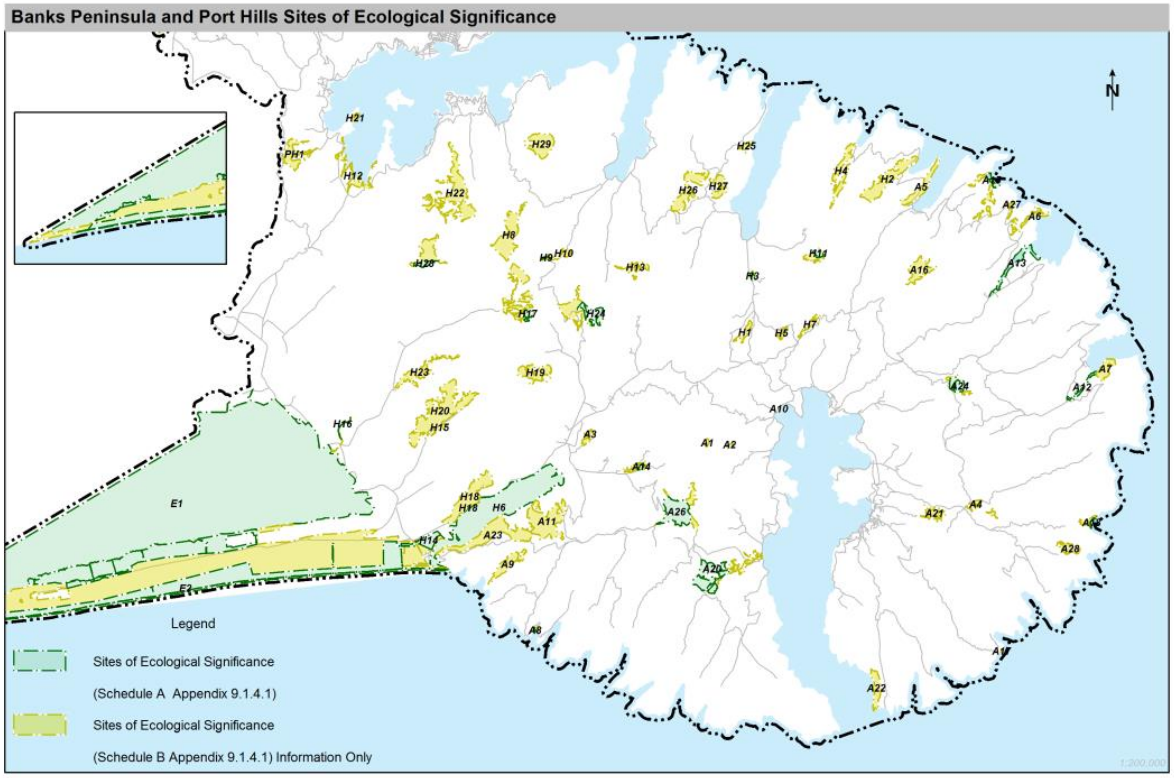
ID. No	Planning Map Number	Name and/or Description	Location	Ecological District
SES/A/22	R9	Lighthouse Road Coastal Slopes	Akaroa Head	Akaroa
SES/A/23	78, R4	Oashore	South of Lake Forsyth, Little River	Akaroa
SES/A/24 (part)	R5	Otepatotu	Lavericks Peak, Summit Road	Akaroa
SES/A/26 (part)	74, R4	Saddle Hill	Above Okuti Valley	Akaroa
SES/A/27	R2	Stony Beach	Chorlton	Akaroa
SES/A/28	R5	Paua Bay Valley	Paua Bay Road, Akaroa	Akaroa
SES/H/1	67, R4	Cotters Bush	Pigeon Bay	Herbert
SES/H/2	66, R2	Decanter Bay Valley	Decanter Bay	Herbert
SES/H/3	R2, R4	Hay Reserve	Pigeon Bay	Herbert
SES/H/4	R2	Menzies Bay	Menzies Bay	Herbert
SES/H/5	67, R4	Pigeon Bay Road Bush	Pigeon Bay Road	Herbert
SES/H/6 (part)	78, R4, R8	Lake Forsyth / Wairewa	Little River	Herbert
SES/H/7	R4	Pigeon Bay Turnoff	Summit Road/Middle Road, Pigeon Bay	Herbert
SES/H/8	R1	Purau Valley Head	Off Purau Port Levy Road	Herbert
SES/H/9 (part)	R1	Upper Port Levy Miro	Port Levy Saddle	Herbert
SES/H/10	R1	Upper Port Levy	Port Levy Saddle	Herbert
SES/H/11 (part)	R2	Holloway Conservation Reserve and Goodwin Reserve	Starvation Gully Road, Pigeon Bay	Herbert
SES/H/12	60, 61, 63, R1	Head of the Harbour	Teddington	Herbert
SES/H/13	R1, R4	Howdens	North of Mt Fitzgerald	Herbert
SES/H/14 (part)	78, R4, R8	Birdlings Flat Shrublands	Poranui Beach Road, Birdlings Flat	Herbert
SES/H/15	R4	Prices Valley QEII Covenant and Environs	Prices Valley	Herbert
SES/H/16 (part)	R3	Lower Kaituna River	Kaituna Valley	Herbert
SES/H/17 (part)	R4	Kaituna Spur	Kaituna Valley	Herbert
SES/H/18	78, R4	Lake Forsyth North Side	Christchurch Akaroa Road, Little River	Herbert
SES/H/19	R4	Lathams	Little River	Herbert
SES/H/20	R4	Western Slopes of Mid Prices Valley	Prices Valley	Herbert

ID. No	Planning Map Number	Name and/or Description	Location	Ecological District
SES/H/21	60, R1	Mansons Peninsula	Lyttelton Harbour	Herbert
SES/H/22	61, 63, R1	Mt Herbert Spur and Orton Bradley Park	Above Charteris Bay	Herbert
SES/H/23	R4	Okana Valley, Kaituna	Off Kaituna Valley, Little River	Herbert
SES/H/24 (part)	R4	Waipuna Saddle	Western Valley Road, Little River	Herbert
SES/H/25	R2	Whiskey Gully	Pigeon Bay	Herbert
SES/H/26	R1, R2	Wild Cattle Hill and Maori Gully	Between Pigeon Bay and Port Levy	Herbert
SES/H/27	R2	Northern Side of Holmes Bay	Pigeon Bay	Herbert
SES/H/28 (part)	R1	Mt Bradley	Mt Bradley	Herbert
SES/H/29	62, R1	Mt Evans	Between Purau Bay and Port Levy	Herbert
SES/E/1 (part)	R3, R6, R7	Lake Ellesmere/Te Waihora and Margins	Lake Ellesmere/Te Waihora	Ellesmere
SES/E/2 (part)	78, R3, R4, R6, R7	Kaitorete Spit	Kaitorete Spit	Ellesmere
SES/PH/1	60, R1	Lion Rock	Summit Road, Allandale, Governors Bay	Port Hills

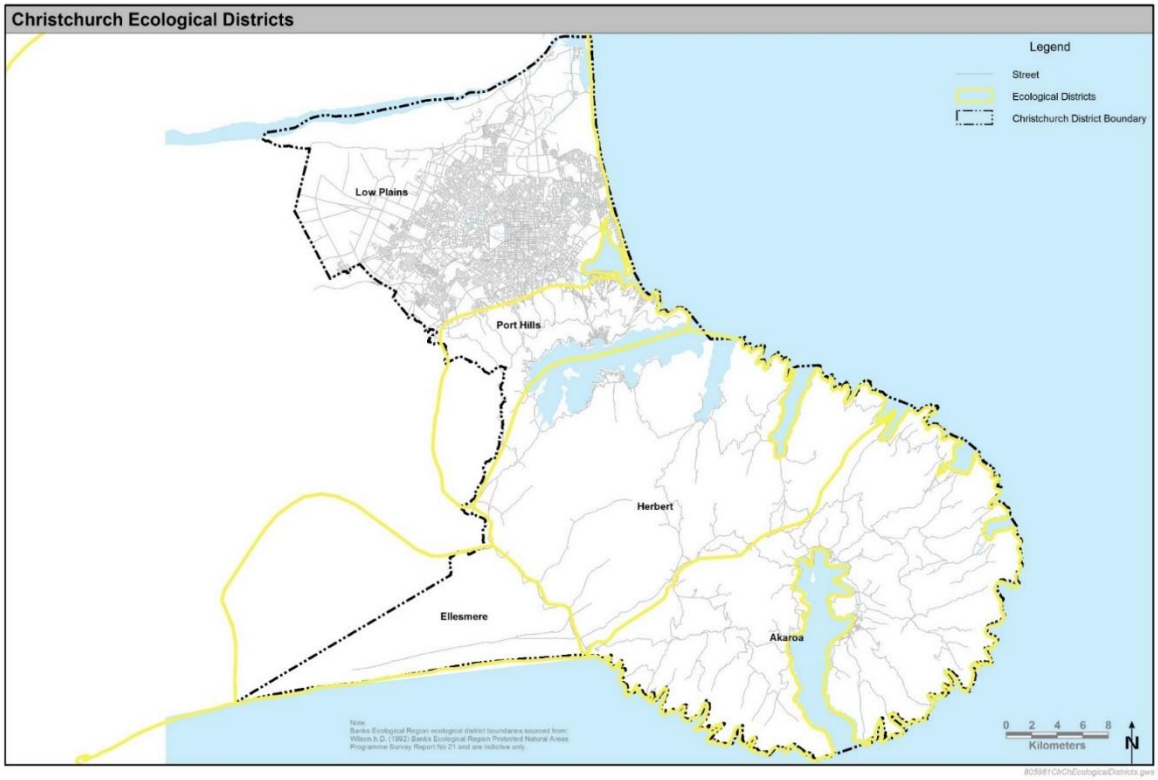
9.1.6.2 Schedule reference map - Sites of ecological significance (Christchurch City)



9.1.6.3 Schedule reference map - Sites of ecological significance (Banks Peninsula and Port Hills)



9.1.6.4 Ecological districts map



9.1.6.5 Framework for biodiversity offsetting

Introduction

The following sets out a framework for the use of biodiversity offsets. Any offset is to be consistent with this framework. It should be read in conjunction with The New Zealand Government *Guidance on Good Practice Biodiversity Offsetting in New Zealand* August 2014 (or any successor document).

Biodiversity offsetting framework

a. Restoration, enhancement and protection actions will only be considered a biodiversity offset where they are used to offset the anticipated reasonably measureable residual effects of activities after appropriate avoidance, remediation and mitigation actions have occurred in accordance with Policy 9.1.2.8 (i.e. not in situations where they are used to mitigate the adverse effects of activities).

b. A proposed biodiversity offset will contain an explicit loss and gain calculation commensurate to the scale of effects the activity, and should demonstrate the manner in which no net loss can be achieved.

c. A biodiversity offset will recognise the limits to offsets due to irreplaceable and vulnerable biodiversity (including effects that must be avoided in accordance with Policy 11(a) of the New Zealand Coastal Policy Statement 2010), and its design and implementation will include provisions for addressing sources of uncertainty and risk of failure of the delivery of no net loss.

d. Restoration, enhancement and protection actions undertaken as a biodiversity offset are demonstrably additional to what otherwise would occur, including that they are additional to any remediation or mitigation undertaken in relation to the adverse effects of the activity.

e. In relation to a Site of Ecological Significance listed in Schedule A of Appendix 9.1.6.1, offset actions will be undertaken within the Site of Ecological Significance as a first priority, or where this is not practicable, as close as possible to the location of development within the same ecological district as a second priority.

f. Offset actions will prioritise protection and enhancement of existing areas of biodiversity where those actions produce additional biodiversity gains commensurate with the biodiversity values lost.

g. The values to be lost through the activity to which the offset applies are counterbalanced by the proposed offsetting activity which is at least commensurate with the residual adverse effects on indigenous biodiversity, so that the overall result is no net loss.

h. The offset will be applied so that the ecological values being achieved through the offset are the same or similar to those being lost, unless an alternative ecosystem or habitat will provide a net gain for indigenous biodiversity, and the values lost are not irreplaceable or highly vulnerable.

i. There is a strong likelihood that the positive ecological outcomes of the offset last at least as long as the impact of the activity, and preferably in perpetuity. Adaptive management responses should be incorporated into the design of the offset, as required to ensure that the positive ecological outcomes are maintained over time.

j. The biodiversity offset will be designed and implemented in a landscape context – i.e. with an understanding of both the donor and recipient sites' roles, or potential roles, in the ecological context of the area.

k. Any application that intends to utilise an offset will include a biodiversity offset management plan that:

   i. sets out baseline information on indigenous biodiversity that is potentially impacted by the proposal at both the donor and recipient sites;

   ii. demonstrates how the requirements of the framework set out in this appendix will be addressed; and

   iii. identifies the monitoring approach that will be used to demonstrate how the matters set out in this framework have been addressed, over an appropriate timeframe.

9.1.6.6 Indigenous vegetation on Banks Peninsula and the Port Hills, outside of the sites of ecological significance listed in Schedule A of Appendix 9.1.6.1

Table 1. Indigenous vegetation on Banks Peninsula and the Port Hills (Note: Banks Peninsula means the area shown at Appendix 2.1 of Chapter 2 Definitions)

Ecosystem Category	Vegetation and habitat (species)	Occupying a contiguous area of: (hectares)	Canopy cover (%) of:	Height (metre) of any individual plants	Link to factsheet with example of vegetation type
a. Indigenous trees and forest	i. Mature and regenerating kanuka (*Kunzea robusta*) forest in the Port Hills Ecological District	0.25 ha or greater in area	N/A	Any individual kanuka plants are 4 metres or greater in height	http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_7644.pdf
	ii. Mature and regenerating kanuka (*Kunzea robusta*) forest in the Herbert, Akaroa or Ellesmere Ecological Districts	0.5 ha or greater in area	N/A	Any individual kanuka plants are 6 metres or greater in height	http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_7644.pdf
	iii. Lower altitude mixed scrub – in which mature specimens of any of the following genera form the dominant cover: *Olearia*: - *Olearia arborescens* - Mountain akeake (*Olearia avicenniifolia*) - *Olearia bullata* - *Olearia fimbriata*	0.5ha or greater in area	N/A	N/A	*Olearia arborescens* - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1043.pdf Mountain akeake - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1044.pdf *Olearia bullata* - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1045.pdf

Ecosystem Category	Vegetation and habitat (species)	Occupying a contiguous area of: (hectares)	Canopy cover (%) of:	Height (metre) of any individual plants	Link to factsheet with example of vegetation type
	- Fragrant tree daisy (*Olearia fragrantissima*) - Mountain holly, hakeke (*Olearia ilicifolia*) - *Olearia nummulariifolia* - Akiraho (*Olearia paniculata*) *Hebe* - *Hebe odora* - Koromiko (*Hebe salicifolia*) - Banks Peninsula hebe (*Hebe strictissima*) *Pseudopanax* - fivefinger, whauwhaupaku (*Pseudopanax arboreus*) - mountain fivefinger, orihou (*Pseudopanax colensoi*) - lancewood, horoeka (*Pseudopanax crassifolius*) - fierce lancewood (*Pseudopanax ferox*) Fuchsia - fuchsia, kotukutuku (*Fuchsia excorticate*) - climbing fuchsia (*Fuchsia perscandens*) Griselinia, - broadleaf, kapuka (*Griselinia littoralis*) - shining broadleaf, puka (*Griselinia lucida*) Pseudowintera - horopito, pepperwood (*Pseudowintera colorata*) and Coprosma - thin-leaved Coprosma (*Coprosma areolata*) - mikimiki (*Coprosma ciliata, Coprosma crassifolia, Coprosma dumosa, Coprosma propinqua, Coprosma*				*Olearia fimbriata* - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_137.pdf Fragrant tree daisy - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_293.pdf Mountain holly, hakeke http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1051.pdf *Olearia nummulariifolia* - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1055.pdf Akiraho - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1058.pdf fivefinger, whauwhaupaku - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1194.pdf mountain fivefinger, orihou - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1195.pdf lancewood, horoeka - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1196.pdf fierce lancewood - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_307.pdf fuchsia, kotukutuku - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1901.pdf

Ecosystem Category	Vegetation and habitat (species)	Occupying a contiguous area of: (hectares)	Canopy cover (%) of:	Height (metre) of any individual plants	Link to factsheet with example of vegetation type
	rhamnoides, Coprosma rigida, Coprosma rubra, Coprosma virescens, Coprosma wallii) - yellow wood (*Coprosma linariifolia*) - karamu (*Coprosma lucida, Coprosma robusta*) - round-leaved mikimiki (*Coprosma rotundifolia*) - *Coprosma rugosa*				climbing fuchsia - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1902.pdf broadleaf, kapuka - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1957.pdf shining broadleaf, puka - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1958.pdf horopito, pepperwood - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1201.pdf thin-leaved Coprosma - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1701.pdf mikimiki - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1706.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1708.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2322.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1728.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1731.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1732.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1735.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1741.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_159.pdf

Ecosystem Category	Vegetation and habitat (species)	Occupying a contiguous area of: (hectares)	Canopy cover (%) of:	Height (metre) of any individual plants	Link to factsheet with example of vegetation type
					yellow wood - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1718.pdf karamu - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1719.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1733.pdf round-leaved mikimiki - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1734.pdf *Comprosma rugosa* - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1736.pdf
	iv. Subalpine mixed scrub with generally continuous canopy of native species in which mature specimens of any of the following genera form the dominant cover: *Dracophyllum*, *Olearia*, *Hebe*	N/A	N/A	N/A	
	v. Lower altitude small-leaved shrubland dominated by small-leaved Coprosma species, scrub pohuehue (*Muehlenbeckia complexa*), *Helichrysum lanceolatum*, porcupine shrub (*Melicytus alpinus*), common broom (*Carmichaelia australis*) and/or matagouri (*Discaria toumatou*)	0.1 ha or greater in area	All native shrub species exceeds 15%.	N/A	Scrub pohuehue - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_991.pdf Porcupine shrub - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_968.pdf Common broom - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1596.pdf Matagouri - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1795.pdf

Ecosystem Category	Vegetation and habitat (species)	Occupying a contiguous area of: (hectares)	Canopy cover (%) of:	Height (metre) of any individual plants	Link to factsheet with example of vegetation type
					Helichrysum lanceolatum - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_809.pdf
b. Indigenous tussock grassland	i. Tall tussockland and/or tall tussock shrubland with native snow tussock (*Chionochloa*) and/or *Dracophyllum*	N/A	N/A	N/A	Native snow tussock - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1671.pdf http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1658.pdf Dracophyllum acerosum - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1799.pdf
	ii. Short tussockland with native fescue/hard tussock (*Festuca novae-zelandiae*) and native inter-tussock species	N/A	The contiguous area of specified species accounts for 20% or more of canopy cover	N/A	Hard tussock - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1893.pdf
	iii. Short tussockland with native silver tussock (*Poa cita*) and native inter-tussock species	A contiguous area of over 1.0ha	The contiguous area of specified species accounts for 30% or more of canopy cover.	N/A	Silver tussock - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1155.pdf
c. Indigenous coastal vegetation	i. Coastal shrubland communities; ii. Scattered (low density) indigenous tussock, shrubs, rushes, vines, herbs, grasses and mosses among predominantly exotic grasslands, and cushionfields, mossfields and stonefields on Kaitorete Spit	N/A	N/A	N/A	

Ecosystem Category	Vegetation and habitat (species)	Occupying a contiguous area of: (hectares)	Canopy cover (%) of:	Height (metre) of any individual plants	Link to factsheet with example of vegetation type
d. Indigenous wetland vegetation	i. Naturally occurring freshwater marsh, fen, swamp, seepage, flush and aquatic vegetation, including closely associated riparian vegetation, in which native species of the following genera are present: raupo (*Typha*), toetoe (*Cortaderia*), flax (*Phormium*), sedges (*Carex*), spike rush (*Eleocharis*), pond weed (*Potamogeton*), sphagnum moss (*Sphagnum*), bog rush (*Schoenus*); pygmy clubrush (*Isolepis basilaris*), slender clubrush (*Isolepis cernua*), *Isolepis distigmatosa*, *Isolepis Habra*, *Isolepis pottsii*	N/A	N/A	N/A	Raupo - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2279.pdf Toetoe - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1758.pdf Flax - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2219.pdf Spike rush - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2120.pdf http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2121.pdf Pondweed - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2225.pdf http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2226.pdf Bog rush - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_802.pdf Pygmy clubrush - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_129.pdf Slender clubrush - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2166.pdf Isolepis distigmatosa- http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2167.pdf

Ecosystem Category	Vegetation and habitat (species)	Occupying a contiguous area of: (hectares)	Canopy cover (%) of:	Height (metre) of any individual plants	Link to factsheet with example of vegetation type
					Isolepis Habra - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_862.pdf Isolepis inundata - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_799.pdf Isolepis pottsii - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_863.pdf
	ii. Saltmarsh vegetation in which any of the following native species are present: seagrass (*Zostera*), saltmarsh ribbonwood (*Plagianthus divaricatus*), sea rush (*Juncus kraussii*), jointed rush (*Apodasmia similis*), remuremu (Selliera radicans), sea primrose (*Samolus repens*), glasswort (*Sarcocornia quinqueflora*), native musk (*Thyridia repens*), salt grass (*Puccinellia* spp), *Schoenoplectus* spp;	N/A	N/A	N/A	Seagrass - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2335.pdf Saltmarsh ribbonwood - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1141.pdf Sea rush - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2172.pdf Jointed rush - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2052.pdf Remuremu - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2255.pdf Sea primrose - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_1280.pdf Glasswort - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2247.pdf

Ecosystem Category	Vegetation and habitat (species)	Occupying a contiguous area of: (hectares)	Canopy cover (%) of:	Height (metre) of any individual plants	Link to factsheet with example of vegetation type
					Native musk - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_286.pdf Saltgrass (Puccinellia spp.) - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2234.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_651.pdf Schoenoplectus spp. - http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2251.pdf; http://www.nzpcn.org.nz/c/flora/factsheets/NZPCN_Species_2252.pdf
e. Naturally uncommon ecosystem	i. Indigenous vegetation in a naturally uncommon ecosystem as identified in Table 2;	N/A	N/A	N/A	Refer to Table 2
f. Threatened indigenous species	i. An area of vegetation which provides habitat for an indigenous species that is threatened, at risk or uncommon, nationally or within the relevant ecological district or that is endemic to the Canterbury Region	N/A	N/A	N/A	N/A

Table 2. Naturally Uncommon Ecosystems

Tentative common name	Vegetation structure	Link to information sheet that describes the ecosystem
Coastal ecosystems		
Active sand dunes	Grassland, sedgeland, open land	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/coastal/active-sand-dunes
Dune deflation hollows	Open land	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/coastal/dune-deflation-hollows
Shell barrier beaches	Grassland, herbfield	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/coastal/shell-barrier-beaches-chenier-plains
Coastal turfs	Open land, herbfield	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/coastal/coastal-turfs
Stony beach ridges	Scrub, shrubland, open land	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/coastal/stony-beach-ridges
Shingle beaches	Open land	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/coastal/shingle-beaches
Stable sand dunes	Shrubland, grassland, tussockland, herbfield, open land	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/coastal/stable-sand-dunes
Coastal rock stacks	Open land, herbfield, lichenfield, shrubland	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/coastal/coastal-rock-stacks
Basic coastal cliffs	Open land, lichenfield, herbfield, scrub, shrubland, tussockland	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/coastal/coastal-cliffs-of-basic-rocks
Inland and Alpine ecosystems		
Volcanic boulderfields	Forest, scrub	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/inland-and-alpine/volcanic-boulderfields
Basic cliffs, scarps and tors	Open land, herbfield, tussockland, shrubland	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/inland-and-alpine/basic-cliffs-scarps-and-tors
Inland sand dunes	Open land, scrub, tussockland, herbfield	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/inland-and-alpine/inland-sand-dunes
Inland outwash gravels	Open land, herbfield, treeland	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/inland-and-alpine/inland-outwash-gravels
Braided riverbeds	Open land, herbfield	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/inland-and-alpine/braided-riverbeds

Tentative common name	Vegetation structure	Link to information sheet that describes the ecosystem
Induced by native vertebrates		
Seabird guano deposits	Open land, herbfield	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/induced-by-native-vertebrates/seabird-guano-deposits
Seabird burrowed soils	Open land to forest	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/induced-by-native-vertebrates/seabird-burrowed-soils
Marine mammal haulouts	Open land to forest	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/induced-by-native-vertebrates/marine-mammal-rookeries-and-haulouts
Wetlands		
Lake margins	Open land, herbfield, rushland	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/wetlands/lake-margins
Dune slacks	Herbfield, open land	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/wetlands/dune-slacks
Estuaries	Open land, sedgeland, rushland, reedland, herbfield, shrubland, scrub	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/wetlands/estuaries
Lagoons	Open land, sedgeland, rushland, reedland, herbfield, shrubland, scrub	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/wetlands/lagoons
Seepage and flushes	Sedgeland, cushionfield, mossfield, scrub	http://www.landcareresearch.co.nz/publications/factsheets/rare-ecosystems/wetlands/seepages-and-flushes

9.1.6.7 Farm biodiversity plan framework

Introduction

A Farm Biodiversity Plan, which may sit within an existing farm environment plan, is a tool to assist landowners / land managers in managing and protecting indigenous biodiversity on their property while recognising that areas of significant ecological value may also form an integral part of a productive farmed property.

A Farm Biodiversity Plan will take into consideration the recommendations contained in a Site Significance Statement/ecologist's report undertaken for any Site of Ecological Significance or any other areas of indigenous biodiversity on the property.

The purpose of a Farm Biodiversity Plan is to achieve maintenance and over time, enhancement, of indigenous biodiversity on the property alongside the ability to maintain rural productive activities, in order to achieve the objectives and policies in 9.1.2, particularly Policy 9.1.2.13 (Farm Biodiversity Plans).

Development of a Farm Biodiversity Plan

A Farm Biodiversity Plan is developed through a collaborative process between the Council and the landowner / land manager.

The Council will work with landowners / land managers in developing a Farm Biodiversity Plan and will provide a suitably qualified ecological expert to identify and assess the indigenous biodiversity of the farmed property, and to provide ecological advice on management of those values. Advice may also be provided from an appropriately qualified person who has expertise in land/farm management, where appropriate.

The development of a Farm Biodiversity Plan provides the best opportunity for the land owner/land manager and Council to discuss and resolve any matters prior to it being lodged as part of an application for resource consent.

Framework

The following sets out the framework for development of a Farm Biodiversity Plan.

1. A Farm Biodiversity Plan can be provided in one of the following formats:

    a. as a separate stand-alone Farm Biodiversity Plan; or

    b. as an additional section to a farm environment plan prepared according to an industry template such as the Beef and Lamb New Zealand Canterbury Farm Environment Plan or a plan prepared to meet Schedule 7 of the Canterbury Land and Water Regional Plan.

    Where an industry farm environment plan template is used, the Council is only concerned with the sections of the farm environment plan that address the matters outlined in the framework below.

2. A Farm Biodiversity Plan can apply to:

    a. a plan prepared for an individual allotment or aggregation of allotments managed as a single farm property; or

    b. a plan prepared for a collective of farm properties that form a catchment.

3. The Farm Biodiversity Plan should contain as a minimum:

    a. Description of the property/catchment and its features:

        i. Physical address;

        ii. Description of the ownership and name of a contact person;

        iii. Legal description of the property; and

        iv. A map(s) or aerial photograph at a scale that clearly shows, where relevant:

            A. The boundaries of the farm property or allotments managed as a single farm;

            B. The boundaries of the main land management units on the property or within the property;

            C. The location of all water bodies, including riparian vegetation;

            D. Constructed features including buildings, tracks and any fencing to protect biodiversity values (including around riparian areas);

            E. The location of any areas within or adjoining the property that have been identified as a Site of Ecological Significance or are legally protected by way of covenant;

            F. The location of any other areas within the property that may have ecologically significant values;

            G. Areas of improved pasture;

            H. Areas of retired land; and

            I. Location of any proposed developments, including new tracks or buildings and areas to be cleared.

    b. Description of existing ecological values:

        The purpose of this section is to describe the indigenous biodiversity of the property/catchment to understand what the values are and any threats or risks to these values. This will inform how these values are to be managed to achieve the overall goal(s) of maintenance, and over time, enhancement, of indigenous biodiversity on the property/catchment.

        i. Assess existing ecological values and identify any areas or ecological values that may warrant protection. Where the property contains one or more Sites of Ecological Significance, the Site Significance Statement(s) can provide this information. This assessment must be completed by a suitable qualified ecological expert;

ii. Describe historic and current activities to protect or enhance ecological values; and

iii. Describe any current or future threats and risks to existing ecological values. A map or photos may be useful.

c. Land management:

The purpose of this section is to understand how the land, including any Sites of Ecological Significance, has been managed, what the future management will be and how this will affect the indigenous biodiversity.

i. Describe historic and current land use management, including stocking policy, water supply, grazing regimes, improved pasture, biodiversity management, where relevant;

ii. Describe any proposed land use management or activities to be undertaken that would require the clearance or disturbance of indigenous biodiversity and the time frames over which these activities are proposed to occur. Such activities may include construction of new farm tracks or buildings, intensification of land use, vegetation clearance of previously undisturbed areas, earthworks or cultivation; and

iii. Describe any potential adverse effects of the proposed activities described above on areas of indigenous biodiversity, including any Site of Ecological Significance.

d. Biodiversity management:

The purpose of this section is to establish the targets that can be used to measure progress towards achieving the overall goal of maintaining and, over time, enhancing indigenous biodiversity on the property.

i. List measurable targets, which can be general or specific. Some examples of targets may include:

A. grazing pressure and stock rotation is managed to maintain and enhance indigenous biodiversity;

B. fencing is considered on areas where grazing has not occurred in the past and on areas where significant indigenous biodiversity gains could be made from the exclusion of grazing stock; and

C. weed and pest control is prioritised to maximise indigenous biodiversity.

e. Action Plan:

The purpose of this section is to explain how the targets set out in the Farm Biodiversity Plan will be achieved by actions on the ground, including any measures to assess progress. A useful starting point is the management recommendations in the Site Significance Statement for any Site of Ecological Significance on the property, where this has been completed, although more specific actions may be necessary.

i. Describe the actions needed to achieve each targets, how each action will be achieved, over what timeframe, and any methods to assess progress. This should include how existing areas of indigenous vegetation and habitat will be managed to protect and maintain the values, including:

A. fencing areas for protection;

B. weed and pest control;

C. restoration or enhancement planting; and

D. stock removal or management of stock grazing levels to aid the regeneration of natural indigenous vegetation in appropriate areas.

f. Reporting on actions

The Council will review progress against the actions contained in the Farm Biodiversity Plan on a regular basis to ensure that the actions continue to be relevant to managing indigenous biodiversity on the property in accordance with the Farm Biodiversity Plan.

Regular reviews will be a condition of consent associated with the Farm Biodiversity Plan. Frequency of progress reviews will be determined as part of assessing the resource consent and will depend on activities proposed, indigenous biodiversity on the property, the duration of the resource consent, and will be informed by on-going dialogue with the landowner.

A progress review may include:

i. A site visit to view actions taken and results achieved;

ii. A request that the landowner provide a report on actions taken and results achieved.

Chapter 2 Definitions

Include the following definitions:

Biodiversity offset

Means a measurable conservation outcome resulting from actions designed to compensate for residual adverse biodiversity effects arising from development after all appropriate avoidance, remediation and mitigation measures have been taken. The goal of a biodiversity offset is to achieve no net loss.

Customary harvesting

means the harvesting of indigenous vegetation or animals by Manawhenua, in accordance with tikanga, for traditional uses. These include:

a. food gathering;

b. carving;

c. weaving; and

d. traditional medicine.

Improved pasture

means an area of pasture:

a. where exotic pasture grass and herb species are the visually predominant vegetation cover; and

b. that:

   i. is used for livestock grazing and has been routinely so used since 1 June 1996; or

   ii. at any time on or after 1 June 1996, was modified or enhanced for the purpose of livestock grazing by cultivation, irrigation, oversowing, top-dressing and/or direct drilling.

Indigenous biodiversity

means organisms of New Zealand origin, the variability among these organisms and the ecological complexes of which they are a part. It includes diversity within species, between species, and of ecosystems, and includes their related indigenous biodiversity values.

Indigenous fauna

means all animals that occur naturally in New Zealand and have evolved or arrived without any assistance from humans. Indigenous fauna includes migratory species visiting New Zealand on a regular or irregular basis.

Indigenous vegetation

means vegetation containing plant species that are indigenous or endemic to the area/site.

Indigenous vegetation clearance

means the felling or clearing of indigenous vegetation by cutting, crushing, cultivation, irrigation, chemical application, artificial drainage, stop banking or burning.

No net loss

in relation to indigenous biodiversity, means no reasonably measurable overall reduction in:

a. the diversity of indigenous species or recognised taxonomic units; and
b. indigenous species' population sizes (taking into account natural fluctuations) and long term viability; and
c. the natural range inhabited by indigenous species; and
d. the range and ecological health and functioning of assemblages of indigenous species, community types and ecosystems.

Significant indigenous vegetation

means indigenous vegetation that has been assessed as meeting any one or more of the criteria set out in Appendix 3 of the Canterbury Regional Policy Statement.

SCHEDULE 2

Counsel appearances

Mr M Conway, Ms M Jagusch, Mr Z Fargher, Ms C Coyle and Mr W Bangma	Christchurch City Council
Mr P Radich QC, Mr C Carranceja and Ms E Moore	Crown
Mr D Pedley	Arts Centre of Christchurch Trust Board
Mr E Chapman and Mr R Webster	Brent Thomas, Willesden Farms Limited, Wongan Hills Limited
Ms P Steven QC	Canterbury Cricket Association Inc
Mr D Pedley	Canterbury Museum Trust Board
Ms M Mehlhopt	Canterbury Regional Council
Ms H Marks	Carter Group Limited
Mr H van der Wal	Ceres NZ The Christchurch Civic Trust and Others The Great Christchurch Building Trust
Mr M Christensen	Christchurch Gondola
Mr J Johnson and Ms L de Latour	Church Property Trustees (Christchurch Cathedral)
Mr T Hughes-Johnson QC	Church Property Trustees (site-specific heritage items)
Mr R Gardner	Federated Farmers of New Zealand
Ms A Limmer	Fulton Hogan Limited Isaac Conservation and Wildlife Trust N&T Tyler
Mr B Burke	Graeme and Joy McVicar

Ms J Appleyard, Mr B Williams and Ms E Ellis	Greg & Mia Gaba
	Tailorspace Property Limited
	The Roman Catholic Bishop of the Diocese of Christchurch
	The Roman Catholic Bishop of the Diocese of Christchurch, Alpine Presbytery and Church Property Trustees
Ms G Baumann	Heritage New Zealand Pouhere Taonga
Mr A Schulte	Michael Bayley
Mr D van Mierlo, Ms J Walsh and Mr J Leckie	Ngāi Tahu
Ms M Nichol	Orion New Zealand Limited
Mr H Cuthbert	Rosemary Lyon
Mr P Anderson	Royal Forest and Bird Protection Society of NZ
Ms J Crawford and Ms E Osborne	Silver Fern Farms
Mr G Cleary	The Radford Family
Mr A Beatson and Ms N Garvan	Transpower New Zealand

SCHEDULE 3

Table of submitters

This list has been prepared from the index of appearances recorded in the Transcript, and from the evidence and submitter statements shown on the Independent Hearing Panel's website.

Submitter Name	No.	Person	Expertise or Role of Witness	Filed/Appeared
Christchurch City Council	3723	Dr C Appleton	Ecologist	Filed/Appeared
		P Barnes	Open Space planner	Filed
		H Beaumont	Natural environment and heritage manager	Filed/Appeared
		W Blake	Valuer	Filed/Appeared
		A Crossland	Ornithologist	Filed
		Dr J Fairgray	Economist	Filed/Appeared
		S Ferguson	Planner	Filed/Appeared
		J Gillies	Conservation architect	Filed/Appeared
		R Graham	Arborist	Filed/Appeared
		D Hogan	Planner	Filed/Appeared
		Dr S Hooson	Ecologist	Filed/Appeared
		S Jenkin	Planner	Filed/Appeared
		A Long	Planner	Filed/Appeared
		Dr B Margetts	Waterway ecologist	Filed
		A Marriott	Heritage engineer	Filed/Appeared
		A Matheson	Planner	Filed/Appeared
		J May	Architectural historian	Filed/Appeared
		Dr A McEwan	Heritage	Filed/Appeared
		J Moore	Landscape architect	Filed

Submitter Name	No.	Person	Expertise or Role of Witness	Filed/Appeared
		A Ohs	Heritage advisor	Filed/Appeared
		Dr T Partridge	Botanist	Filed
		C Pauling	Planner	Filed/Appeared
		Y Pflüger	Landscape architect	Filed/Appeared
		C Rachlin	Planner	Filed/Appeared
		E Sard	Arborist	Filed
		Dr A Shadbolt	Landscape architect/ecologist	Filed/Appeared
		G Stanley	Quantity surveyor	Filed/Appeared
		M Stevenson	Planner	Filed/Appeared
		F Wykes	Heritage advisor	Filed/Appeared
Crown	3721	I Bowman	Conservation architect	Filed/Appeared
		A Cameron	Planner	Filed/Appeared
		J Cumberpatch	Earthquake recovery	Filed/Appeared
		N Head	Terrestrial ecologist	Filed/Appeared
		S McIntyre	Planner	Filed/Appeared
		P Rough	Landscape architect	Filed/Appeared
		A Spencer	Ecologist	Filed/Appeared
Chris Abbott	904	C Abbott		Filed
Sarah Harnett	3018	S Harnett		Appeared
Kathleen Clinton	3039	K Clinton		Appeared
Maree & Chris Johnston	3045	C & M Johnston		Filed/Appeared
Diamond Harbour Community Association	3090	R Suggate		Appeared
Christs College	3212	C Sweetman		Appeared
Faye and Ron Sedgley	3215	J Rea		Filed/Appeared

Submitter Name	No.	Person	Expertise or Role of Witness	Filed/Appeared
Barbara Stewart	3270	Barbara, Lady Stewart		Filed/Appeared
The Arts Centre of Christchurch Trust Board	3275	A Lovatt		Filed/Appeared
		D Pearson	Conservation architect	Filed/Appeared
		G Taylor	Planner	Filed/Appeared
Restore Christchurch Cathedral Group Inc	3279	D Collins		Appeared
		Prof I Lochhead	Architectural historian	Filed/Appeared
Tapper Family Trust	3284	HJ Tapper		Filed
Michael Bayley	3285	M Bayley		Filed/Appeared
Te Wharau Investments Limited	3290	J May	Architectural historian	Filed
Brian Hutchinson	3293	B Hutchison	Farmer	Filed/Appeared
Ceres New Zealand Limited	3334	B de Vere		Filed
Girl Guiding New Zealand	3346	K Hilton		Filed
Canterbury Museum Trust Board	3351	J May	Architectural historian	Filed/Appeared
		G Taylor	Planner	Filed/Appeared
		A Wright		Filed/Appeared
Martin Stanbury	3381	M Stanbury		Appeared
Richard Schneideman Investment Trust	3397	D Morel	Construction	Filed
		R Schneideman		Filed
"The Utilities Group"	Various	M McCallum-Clark	Planner	Filed
Mark Belton	3410	M Belton		Filed/Appeared
College House	3420	A Bruce	Architect	Filed/Appeared
Rod Donald Banks Peninsula Trust	3469	J Cook		Filed/Appeared
		K Thompson		Filed/Appeared

Submitter Name	No.	Person	Expertise or Role of Witness	Filed/Appeared
Fulton Hogan Limited	3482	D Chrystal	Planner	Filed/Appeared
		S Miller	Arborist	Filed
		Dr J Roper-Lindsay	Ecologist	Filed/Appeared
Transpower New Zealand Limited	3494	A McLeod	Planner	Filed/Appeared
Taylors Mistake Association	3525	D Hill		Filed
The Great Christchurch Buildings Trust	3558	H Anderton		Filed/Appeared
		Prof I Lochhead	Architectural historian	Filed/Appeared
David Brailsford & Jan Cook	3596	J Cook		Filed/Appeared
John Thornton	3600	J Thornton	Arborist	Filed/Appeared
Rik Tindall on behalf of Cashmere Residents' Association	3601	R Tindall		Filed/Appeared
Carter Group Limited	3602	P Carter		Filed/Appeared
		J May	Architectural historian	Filed
		J Phillips	Planner	Filed/Appeared
Church Property Trustees	3610	D Doherr	Quantity surveyor	Filed/Appeared
		H Hare	Engineer	Filed/Appeared
		G Holley		Filed
Graeme and Joy McVicar	3613	J Head	Landscape architect	Filed
Royal Forest & Bird Protection Society of New Zealand Inc	3614	M Davis	Ecologist	Filed/Appeared
The Isaac Conservation & Wildlife Trust	3616	B Rule		Filed/Appeared
		K Seaton	Planner	Filed/Appeared
The Radford Family	3622	F Aston	Planner	Filed/Appeared
Rosemary Lyon	3625	R Lyon		Filed/Appeared

Submitter Name	No.	Person	Expertise or Role of Witness	Filed/Appeared
Akaroa Civic Trust	3627	J Cook		Filed/Appeared
		Dr J Wilson	Historian	Filed/Appeared
Walter Fielding-Cotterell	3628	W Fielding-Cotterell	Arborist	Filed/Appeared
Canterbury Regional Council	3629	A Parrish	Planner	Filed/Appeared
Riccarton/Wigram Community Board	3637	M Mora		Appeared
Greg & Mia Gaba	3639	M Bonis	Planner	Filed/Appeared
		B Gilmore	Engineer	Filed/Appeared
Lindsay Carswell	3641	WL Carswell		Filed
Michael Ostash	3661	M Ostash	Arborist	Filed/Appeared
The Spreydon/Heathcote Community Board	3664	P McMahon		Appeared
Suky Thompson	3665	KS Thompson		Filed/Appeared
The Roman Catholic Bishop of the Diocese of Chch and Alpine Presbytery, Church Property Trustees	3670	W Clark	Engineer	Filed/Appeared
		B Nixon	Planner	Filed/Appeared
		R Hardy	Planner	Filed/Appeared
		L Kimberley		Filed
		D Pearson	Conservation architect	Filed/Appeared
		S Price		Filed/Appeared
		M Copeland	Economist	Filed/Appeared
The Elmwood Club	3682	M Gow		Appeared
The Roman Catholic Bishop of the Diocese of Christchurch	3692	K Beal		Filed/Appeared
		M Halliday	Engineer	Filed/Appeared
		C Kerrigan	Archaeologist	Filed
		J Mace	Quantity surveyor	Filed/Appeared
The University of Canterbury	3694	P Lemon	Planner	Filed

Submitter Name	No.	Person	Expertise or Role of Witness	Filed/Appeared
Canterbury Polytechnic Institute of Technology	3274			
Brent Thomas, Willesden Farms Ltd, Wongan Hills Limited	3698	B Thomas	Planner	Filed/Appeared
Christchurch Civic Trust Inc	3700	B Cadwallader	Arborist	Filed/Appeared
		H Lowe	Planner	Filed/Appeared
		D Lucas	Landscape architect	Filed/Appeared
		M Belton		Filed/Appeared
Eliot Sinclair and Partners Ltd	3701	W Haynes		Appeared
		C McKeever	Planner	Filed/Appeared
Federated Farmers of New Zealand	3702	E Aitken		Filed
		C Chamberlain		Appeared
		H & A Craw		Filed/Appeared
		F Helps		Filed/Appeared
		P Helps		Filed/Appeared
		F Mackenzie		Filed/Appeared
		RM Manson		Filed/Appeared
		K Reilly		Filed/Appeared
		P & I Richardson		Filed/Appeared
The Tait Foundation and Tait Limited	3707	D Cawte	Heritage	Filed
		K Morrison	Lawyer	Filed
		C Patient		Filed
		G Sellars	Valuer	Filed
		D Wade		Filed
Hands off Hagley Inc.	3711	S Williams		Filed/Appeared

Submitter Name	No.	Person	Expertise or Role of Witness	Filed/Appeared
Silver Fern Farms	3712	F Aston	Planner	Filed/Appeared
Lyttelton/Mt HerbertCommunity Board	3716	P Smith		Appeared
Tailorspace Property Limited	3718	S Ansley	Valuer	Filed/Appeared
		C Armitage	Corporate finance	Filed/Appeared
		M Bonis	Planner	Filed/Appeared
		M Copeland	Economist	Filed/Appeared
		C Oldfield	Engineer	Filed/Appeared
		K Pomeroy	Quantity surveyor	Filed/Appeared
		GW Taylor		Filed/Appeared
		B Vincent		Filed
Orion New Zealand Limited	3720	A Craig	Landscape architect	Filed
		C Kelly	Architect	Filed
		P Lemon	Planner	Filed
		S Watson	Engineer and asset manager	Filed
Te Rūnanga o Ngāi Tahu	3722	I Cranwell	Cultural (Ngāi Tahu)	Filed
		M Dale	Freshwater ecologist	Filed
		K Davis	Environmental advisor	Filed/Appeared
		Y Legarth	Planner	Filed/Appeared
		L Murchison	Planner	Filed/Appeared
		T Stevens	Planner	Filed/Appeared
		G Tikao	Cultural (Ngāi Tahu)	Filed/Appeared
Christian Jordan	3955	C Jordan		Filed/Appeared
Malcolm Hattaway and Keri Whaitiri	3963	K Whaitiri and M Hattaway		Appeared

Submitter Name	No.	Person	Expertise or Role of Witness	Filed/Appeared
Annette Wilkes and Diana Madgin	3974	A Wilkes		Filed/Appeared
Penny Hargreaves	3979	P Hargreaves		Appeared
The Christchurch Gondola Limited	4000	N Smetham	Landscape architect	Filed
Penny Wenlock	4002	P Wenlock		Appeared
Heritage New Zealand	5029	R Burgess	Heritage advisor	Filed/Appeared
		D Margetts	Heritage architect	Filed/Appeared
		M Vincent	Heritage planner	Filed/Appeared
Errol Hadfield	5076	E Hadfield		Filed/Appeared
Llewyn Davis	5078	L Davis		Appeared
Boltbox Limited	5080	S Newby		Appeared
Raymond Winter	5082	R Winter		Appeared