

**BEFORE THE HEARINGS PANEL  
FOR THE PROPOSED TIMARU DISTRICT PLAN**

**UNDER** the Resource Management Act 1991 (RMA)

**IN THE MATTER** of the Proposed Timaru District Plan

**AND**

**IN THE MATTER** of the Ecosystems and Biodiversity, Natural Character and Natural Features and Landscapes Chapters and, the Open Space and Recreation Zones (OSRZ) Topic (Hearing D)

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**STATEMENT OF EVIDENCE OF DEIDRE FRANCIS ON BEHALF OF THE  
CANTERBURY REGIONAL COUNCIL**

**Ecosystems and Biodiversity, Natural Character and Natural Features and  
Landscapes Chapters**

**Open Space Zone Chapter**

**25 October 2024**

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**Next date – 12 – 14 November 2024 – Hearing**

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## **INTRODUCTION**

- 1 My full name is Deidre Francis. I am a Principal Planner at the Regional Council, a position I have held since August 2022.
- 2 I hold a master's degree with distinction in Regional and Resource Planning from the University of Otago (1995) (MRRP). I have over 20 years' experience in resource management planning.
- 3 My relevant experience includes drafting plan provisions, preparing s32A reports, preparing s42A reports and decisions reports for Council Plan hearings, preparing submissions and presenting at hearings on proposed district plans. I led the development of the first Southland Regional Coastal Plan and the first Southland Regional Water Plan.
- 4 Prior to joining the Regional Council, I worked as Senior Management Planner for the Department of Conservation based in the Christchurch office, working on the development of the Rangitahi/Molesworth Recreation Reserve Management Plan and leading the rewrite of the draft Aoraki Mount Cook National Park Management Plan. Prior to that I worked for 14 years at the Southland Regional Council, starting as a graduate planner and finishing as Senior Planner. I also worked for the Planning Consultancy Ernest New and Associates in Invercargill, part time, while completing my MRRP.

## **CODE OF CONDUCT**

- 5 While I acknowledge that this is not an Environment Court hearing, I confirm that I have read and am familiar with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. I have complied with the Code of Conduct in preparing this evidence and I agree to comply with it while giving any oral evidence during this hearing.
- 6 Except where I state that I am relying on the evidence of another person, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 7 Although I am employed by the Regional Council, I am conscious that in giving evidence in an expert capacity that my overriding duty is to assist the Hearing Panel as an independent planning expert. The

recommendations made in this evidence are my own, based on my expertise.

## SCOPE OF EVIDENCE

- 8 I have been asked by the Regional Council to provide planning evidence in relation to the Ecosystems and Indigenous Biodiversity; Natural Character; and Natural Features and Landscapes and the Open Space Zone chapters of the pTDP.
- 9 My evidence addresses:
- An overview of the Regional Council's interest in the pTDP and the Ecosystems and Indigenous Biodiversity; Natural Character; and Natural Features and Landscapes chapters as well as the Open Space Zone chapter;
  - The relevant statutory framework with a particular focus on the CRPS; and
  - The recommendations in the relevant Section 42A Reports that I support.
- 10 In preparing my evidence I have reviewed the following documents:
- The RMA;
  - National Policy Statement for Indigenous Biodiversity (**NPSIB**);
  - The CRPS;
  - The pTDP including the section 32 Resource Management Act 1991 (**RMA**) analysis and supporting information notified by the Council;
  - The Regional Council's submission on the pTDP;
  - The summary of relevant submissions and further submission on the pTDP, (and where relevant, the submissions and further submissions themselves); and
  - The s42A reports referred to above.

## SUMMARY STATEMENT

- 11 The Canterbury Regional Council (**Regional Council**) submission is generally supportive of the proposed Timaru District Plan (**pTDP**). However, the Regional Council sought amendments in relation to the approach to the Significant Natural Areas (**SNAs**) provisions in the Ecosystems and Indigenous Biodiversity Chapter.

- 12 There are four individuals providing evidence in support of the Regional Council's submission:
- a. My evidence focuses on the recommendations that are important in giving effect to the Canterbury Regional Policy Statement (**CRPS**) along with the relevant national direction.
  - b. Dr Jean Jack, Ecologist and Science Team Leader, Land Ecology at the Regional Council, is providing supporting evidence for the Regional Council submission on SNAs.
  - c. Ms Jolene Irvine, a Rivers Planning Advisor at the Regional Council is addressing matters concerning the delivery of flood and erosion protection works in relation to the Bat Protection Overlay and Rules.
  - d. Mr Michael Boschen, River Engineering Officer at the Regional Council, is providing evidence on river operations to support Ms Irvine's evidence.
- 13 I have reviewed the reports prepared for the Timaru District Council under section 42A RMA (**s42A**) by Ms Liz White (Ecosystems and Indigenous Biodiversity; Natural Character; and Natural Features and Landscapes) and by Mr Nick Boyes (Open Space and Recreation Zones).
- 14 The Regional Council made submissions that concerned how hazard mitigation works are managed in relation to provisions in chapters addressed in the s42A report. I note that these submissions will now be considered in Hearing F.
- 15 Many of the recommendations set out in the s42A reports address the matters raised in the Regional Council's submission. No additional evidence is provided for the Open Space and Recreation Zone chapter, beyond support of Mr Boyes' recommendations. The submissions made by the Regional Council were all in support of the provisions in this chapter.
- 16 My evidence largely focuses on my reasons for accepting the recommendations outlined in Ms White's s42A report and how the recommended approach gives better effect to the Canterbury Regional Policy Statement (**CRPS**). It also seeks to clarify an amendment to the pTDP sought in the Regional Council submission (183.68) on ECO-O1, in light of the comments and recommendations of the s42A report.

- 17 The only further amendment requested is to objective ECO-O1. I have included the proposed amendment in **Appendix 1** of my evidence.

### **REGIONAL COUNCIL'S INTEREST AND OVERVIEW OF SUBMISSIONS IN HEARING D OF THE pTDP**

- 18 The focus of the Regional Council's submission was to ensure that the CRPS is given effect to, and to avoid any duplication or inconsistencies with the regional planning framework. This reflects the Regional Council's statutory responsibility regarding the implementation of the CRPS.
- 19 I consider that the pTDP chapters that are the subject of Hearing D generally give effect to the CRPS. However, I have suggested one amendment to ECO-O1 to give better effect to the CRPS and to align with s6(c) RMA. A copy of my recommended amendment is provided as Appendix 1 to this statement of evidence.

### **STATUTORY FRAMEWORK**

- 20 The importance of indigenous biodiversity is recognised in section 6(c) RMA with the direction to recognise and provide for the protection of significant areas of indigenous vegetation and significant habitats of indigenous fauna. Maintenance of indigenous biodiversity is included as a function of Territorial Authorities in s31(1)(b)(iii) RMA.
- 21 Section 75(3) of the RMA requires that:
- A district plan must give effect to –*
- (a) any national policy statement; and*
- (b) any New Zealand coastal policy statement (NZCPS); and*
- (ba) a national planning standard; and*
- (c) any regional policy statement*
- 22 The relevant national and regional planning documents that the pTDP must give effect to in relation to this matter include: NPSIB, New Zealand Coastal Policy Statement 2010 (**NZCPS**) within the Coastal Environment; and the CRPS.
- 23 My opinion as expressed in this statement of evidence has been informed by this statutory framework and the relevant statutory policy documents.

- 24 I have not sought to repeat all the relevant provisions contained in these national and regional planning documents. My evidence focusses on the most relevant provisions in the Ecosystems and Indigenous Biodiversity chapters of the pTDP and the submission made by the Regional Council.
- 25 I address the CRPS below.

### **Canterbury Regional Policy Statement (CRPS)**

#### *Policy Framework*

- 26 The most relevant CRPS provisions for this Hearing evidence are found in Chapter 9 - Ecosystems and Indigenous Biodiversity. This chapter reiterates that the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna are matters of national importance under section 6(c) RMA. Its objectives seek in summary to:
- a. halt biodiversity decline (Objective 9.2.1);
  - b. restore or enhance ecosystem functioning and indigenous biodiversity (Objective 9.2.2); and
  - c. protect significant areas and habitats (Objective 9.2.3).
- 27 Policy 9.3.1 includes direction on: how significance will be determined, as well as management of land-use activities within identified areas of significance to ensure protection and “no net loss” of biodiversity.
- 28 Implementation method 3 for this policy, states that Territorial Authorities will:
- “Set out objectives and policies, and may include methods in district plans to provide for the identification and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. 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.”*

- 29 The CRPS does not contain a definition of significant indigenous vegetation or significant habitats of indigenous fauna. However, Policy 9.3.1 sets the framework for identifying whether an area or habitat is significant. Identification is based on an assessment of the following:
- a. Representativeness;
  - b. Rarity or distinctive features;
  - c. Diversity and pattern; and
  - d. Ecological context.
- 30 Appendix 3 of the CRPS describes the criteria under each of the above matters to be used in assessing whether an area or habitat is significant. Significance is considered to exist if one or more of the criteria in Appendix 3 are met. Under Policy 9.3.1(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. Appendix 3 of the CRPS is replicated in Appendix APP5 of the pTDP.

## **RESPONSE TO S42A REPORT**

### **Support for s42A Recommendations to retain or adopt minor amendments**

- 31 The s42A reports have recommended that the following provisions are retained as notified:
- a. Ecosystems and Indigenous Biodiversity: ECO-O2, ECO-O3, ECO-P1 & APP5 & Indigenous Vegetation Definition, Improved Pasture Definition;
  - b. Natural Character, Natural Features and Landscapes: NATC-P2, NFL-O1, NFL-P1, NFL-R9; and
  - c. Open Space and Recreation Zones: NOSZ-P1, PREC4-P1 & P2 & OSZ-R10.
- 32 These were provisions which the Regional Council supported as notified. I support those recommendations.
- 33 The s42A reports have recommended minor amendments to the following notified provisions that were supported in the Regional Council submission:
- a. Ecosystems and Indigenous Biodiversity: ECO-P4;



- b. Natural Character, Natural Features and Landscapes: NATC-O1, SCHED 8 & SCHED 9; and
  - c. Open Space Zones: NOSZ-O2.
- 34 I agree that these amendments are appropriate and consistent with the original intent of the provisions. The amendments are also consistent with the CRPS.

#### **Consideration of Natural Hazard matters in other Hearings is supported**

- 35 The Regional Council made submissions requesting consequential changes to provisions in the ECO, NATC and NFL chapters as a result of our general submission on the approach to natural hazard mitigation works, natural hazards terminology and definitions. I agree with the comments of Ms White in paragraph 6.3.2, of the s42A report, that any consequential changes linked to our main submission on this topic are best considered in combination with the main submission points, scheduled for consideration in Hearing F. I support the approach to consider all natural hazards submissions together and the Regional Council will present any relevant supporting evidence for these submissions in Hearing F.

#### **ECO-O1 Amendments, further change recommended**

- 36 Paragraphs 7.4.11 – 7.4.13 of the s.42A report discuss amending ECO-O1. The s42A report recommends deleting reference to “The values of” significant indigenous vegetation. In paragraph 7.4.13 of the s42A report, it states that this change is made to align with the wording of 6(c) RMA.
- 37 The s42A report has not responded to the Regional Council’s submission (183.68) where the request was made to refer to “**areas of...**” significant indigenous vegetation. This requested amendment would give greater consistency with Objective 9.2.3 of the CRPS and s6(c) RMA.
- 38 Objective 9.2.3 CRPS is: “*Areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified, and their values and ecosystem functions protected*”.

- 39 The s42A report current recommended wording of this objective uses the wording of s6(c) for habitats of indigenous fauna but the reference to indigenous vegetation does not use the s6(c) wording. I recommend the wording be altered to refer to “*Areas of significant indigenous vegetation ...*” to fully align with the language of s6(c) and give effect to CRPS Objective 9.2.3.

### **ECO-P2 & P5 Recommendations supported**

- 40 The Regional Council made submissions (183.72 & 183.75) to ECO-P2 and ECO-P5 because of a consistency issue. Paragraphs 7.7.19, 7.8.12 and 7.8.21 in the s42A report recommend a change to the wording of ECO-P5 to refer to ECO-P2. I agree that this would resolve the issue raised in the submissions and I support this amendment.

### **Provisions the Regional Council’s submission sought to be amended**

*Definition: Significant Natural Area or SNA*

- 41 The pTDP definition of SNAs is:

*means identified areas of significant indigenous vegetation and significant habitats of indigenous fauna, as set out in ECO-SCHED2 and shown on the Planning Maps.*

- 42 The Regional Council’s original submission sought to amend the definition for SNAs. The submission requests that the definition should include all areas and habitats that meet one or more of the criteria for determining if an area or habitat is significant, regardless of whether it is included in SCHED 7 or shown in the SNA overlay of the pTDP.

- 43 Since making that submission, the NPSIB has come into force. I note that the definition for SNAs in the NPSIB is as follows:

*SNA, or significant natural area, means:*

- (a) any area that, after the commencement date, is notified or included in a district plan as an SNA following an assessment of the area in accordance with Appendix 1; and*
- (b) any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which*

*case it remains as an SNA unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant habitat of indigenous fauna.<sup>1</sup>*

- 44 The pTDP definition of SNAs is consistent with the NPSIB definition.
- 45 As noted in paragraph 27 above, CRPS Policy 9.3.1(3) requires that areas **identified** as significant will be protected to ensure no net loss of indigenous biodiversity or indigenous biodiversity values, as a result of land use activities. (emphasis added)
- 46 For the reasons identified in paragraphs 40 - 42, I accept that the definition of an SNA needs to be tied to areas that have already been identified and that it is appropriate for the definition to refer to the Planning maps and SCHED7.

#### **Applying Rules to cover all areas and habitats that meet SNA criteria**

- 47 Method 3 for implementing CRPS Policy 9.3.1 includes a requirement that Territorial Authorities will have appropriate rule(s), within a District Plan, that manage the clearance of indigenous vegetation, 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 that warrants protection.
- 48 The Regional Council submission requested amendment of some pTDP rules to extend their cover beyond SNAs that are mapped and are included in SCHED7. The purpose of this submission was to include all areas that meet one or more of the criteria in Appendix 5. The rules these submissions apply to are: ECO-R1, R2, R3, R5 & R6.
- 49 The key issue raised in the Regional Council submission, was that some areas that meet the criteria for significance were at risk, if they had not yet been included as SNAs. CRPS policy requires protection of identified SNAs. The methods for implementing that policy require rules that provide for a case-by-case assessment. This is to identify if proposed clearance will impact on areas or habitats that meet the significance criteria. Having rules that only apply to identified SNAs is not

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<sup>1</sup> NPSIB – Interpretation – SNA – page 10

inconsistent with the CRPS, provided there are additional rules designed to capture proposed clearance of any unidentified SNAs.

- 50 The final paragraph of the principal reasons and explanation for CRPS Policy 9.3.1 states:

*“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.”*

- 51 However, that trigger was not fully provided for in the pTDP. Ms White has recognised the gap in the pTDP, and discusses this in paragraphs 7.1.15 – 7.1.17 of the s42A report. In paragraph 7.1.26 of the s42A report, she recommends the addition of a new policy (ECO-PX) which directs further limitations on clearance of indigenous vegetation:

*Limit the clearance of indigenous vegetation outside areas identified in ECO-P1, ECO-P3 and ECO-PY, in order to maintain indigenous biodiversity, taking into account the value of such biodiversity.*

- 52 In paragraph 7.1.27, of the s42A report, a new rule (ECO-R1.4) is recommended. This new rule provides permitted activity status for vegetation clearance outside areas specified in ECO-R1.1-.3, that meet the listed conditions. Where compliance cannot be achieved, one of the matters of discretion to be considered, is whether the indigenous vegetation is significant. This approach gives effect to Policy 9.3.1 and implementation Method 3 which states:

*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.*

- 53 After taking advice from Dr Jean Jack, (Ecologist and Science Team Leader, Land Ecology, Regional Council), I believe that subject to a few additional points raised in her evidence, the new policy and rule would largely address the concerns raised by the Regional Council in its submission, in relation to the clearance of indigenous vegetation.
- 54 In paragraph 25 of her evidence, Dr Jack raises an issue in relation to new ECO-R1 (4). She states that the efficacy of the proposed new rule relies on the definition of indigenous vegetation, and improved pasture (PER 1 (7) of ECO-R1 (4)). I understand that Dr Jack's concern about the definition of improved pasture was in relation to the consequences of any potential changes to the definition, following submissions. The s42A report has recommended retaining the definition as notified. I have supported that recommendation in paragraph 32 of this evidence.
- 55 In paragraph 27 of her evidence, she raises a concern about the lack of certainty around defining cultivated land (PER 1 (6) of ECO-R1 (4)). I agree with Dr Jack that there are issues with these words. The Rule applies to the clearance of indigenous vegetation. The definition of indigenous vegetation:
- means vascular and non-vascular plants that, in relation to a particular area, are native to the ecological district in which that area is located.<sup>2</sup>*
- 56 This is a very broad definition. It is therefore important that the permitted activities within the rule do not inadvertently provide for clearance of areas of significant indigenous vegetation that have not yet been identified.
- 57 I agree with Dr Jack's comments in paragraph 27 of her evidence regarding the reference to "cultivated land." I was unable to ascertain, from the s42A report, what was intended to be permitted through ECO-R1 (4) PER 1 (6) and I agree with Dr Jack's comments regarding the lack of a temporal reference. I recommend that the intent be reviewed and subsequent clarification is reflected in the Plan.

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<sup>2</sup> pTDP – Interpretation – indigenous vegetation.

58 There remains a concern over whether significant habitats for indigenous fauna are adequately covered if the habitat they depend on is not indigenous vegetation. Dr Jack provides further evidence regarding this concern and reasons for supporting the new rule and policy. I support the views of Dr Jack.

### **CONCLUSION**

59 In summary, I generally agree with the recommendations in the s42A report, as noted above. I have requested amendments to ECO-O1 that in my opinion would more accurately align the policy with RMA s6(c) and give effect to RPS Objective 9.2.3. I believe further consideration is needed for proposed new permitted activity rule ECO-R1(4).

*Deidre Francis*

Dated this 25th day of October 2024

**Appendix 1 – Amendments sought to the pTDP through the Regional Council submission on the Ecosystem and Indigenous Biodiversity chapter**

Provision	As notified	Council S42A Drafting	Canterbury Regional Council Recommended Amendments (in red)
ECO -O1 Protection of significant indigenous biodiversity	The values of significant indigenous vegetation and significant habitats of indigenous fauna across the District are protected.	<del>The values of</del> Significant indigenous vegetation and significant habitats of indigenous fauna across the District are protected.	<u>Areas of</u> significant indigenous vegetation and significant habitats of indigenous fauna across the District are protected.