Before the Hearing Panel
Appointed by the Timaru District Council

Under	the Resource Management Act 1991 (**RMA**)
In the matter of	the Proposed Timaru District Plan

Memorandum of Counsel on behalf of Timaru District Council

Hearings D – Response to Minute 19

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May it please the Hearing Panel:

Introduction

1 This memorandum is filed by counsel for the Timaru District Council (**Council**) in relation to the hearing of submissions on the Proposed Timaru District Plan (**PDP**).

2 Following Hearing D, the Hearing Panel has issued Minute 19 which directed counsel to address:[1]

> (a) The Rangitata WCO relevance and relationship to the Significant Natural Area over the Rangitata River, and what consideration that Panel should give the WCO in decision making.
>
> (b) Whether or not there is scope to amend the Proposed Plan to apply the NPSIB and provide comment on natural justice and the extent to which parties could have fairly and reasonably contemplated these changes.
>
> (c) Provide comment on the same matters in (b) above as they relate to the s42A author recommended changes to the VAL extent, the Bat Protection Overlay and the proposed Policy and Rule for clearance outside SNAs.
>
> (d) An outline of any relevant case law on the status of advisory notes in District Plans in the context of Ms White's recommendations to include an advisory note relating to the regulations on the NES-CF.

3 We assume the reference to the Visual Amenity Landscape (**VAL**) in 2(c) is intended to be a reference to the recommendation to restrict buildings above 500masl in the Outstanding Natural Landscape (**ONL**), rather than the VAL and proceed on that basis.

4 The Panel also requested that counsel, alongside Ms White (section 42A author for the ECO chapters):

> Provide an analysis of the relationship between the Rangitata Water Conservation Order (WCO), and the SNA, ONL and VAL boundaries and provisions, including the extent of existing protection provided by the WCO and a comparison of the values protected between the Proposed Plan and the WCO.

[1] Minute 19, at [11].

5 This was to be undertaken in consultation with counsel for Rangitata Diversion Race Management Limited (**RDMR**), and is addressed in Ms White's interim reply. Each of the other matters are addressed below.

Water Conservation (Rangitata River) Order 2006

6 The PDP identifies one VAL, one ONL and several Significant Natural Areas (**SNA**) that overlap with the Water Conservation (Rangitata River) Order 2006 (**Rangitata River WCO**). The Panel has queried the relationship of the Rangitata River WCO with SNAs that also relate to the Rangitata River, and what consideration the Panel is to give the WCO in decision-making. These matters are specifically addressed below.

7 Before turning to the specific questions posed by the Panel, I provide an overview of the scope, purpose and effect of WCOs generally, set out key principles established by relevant authorities, and provide a brief overview of the Rangitata River WCO for the purposes of informing a response to those questions.

Scope, purpose and effect of WCOs

8 WCOs are made for the purposes of recognising and sustaining the outstanding amenity or intrinsic values of particular bodies of water, such as rivers or lakes.[2] The primary effect of WCOs is that they restrict the exercise of regional councils' statutory functions as they relate to water, for example in issuing water permits. The only specific requirements or restrictions on district councils is that a district plan must not be inconsistent with a WCO.[3]

9 In that regard, WCOs can impose restrictions or prohibitions on the exercise of regional council functions under section 30(1)(e) and (f),[4] which relate to controlling the taking, use, damming and diversion of water, the control of the quantity, level and flow of water and the control of discharges to land or water. Section 200 of the Resource Management Act 1991 (**RMA**) specifies that those restrictions or prohibitions can relate to matters including:

> (a) the quantity, quality, rate of flow, or level of the water body; and

[2] RMA, section 199(1).

[3] RMA, section 75(4).

[4] WCOs restrict the exercise of those regional council functions under sections 30(1)(e) and 30(1)(f).

> (b) the maximum and minimum levels or flow or range of levels or flows, or the rate of change of levels or flows to be sought or permitted for the water body; and
>
> (c) the maximum allocation for abstraction or maximum contaminant loading consistent with the purposes of the order; and
>
> (d) the ranges of temperature and pressure in a water body.

10 Once operative, the regional council is precluded from granting a water permit, coastal permit or discharge permit where that would be contrary to any restriction, prohibition or any other provision of the WCO, and the provisions of the WCO must be maintained (including by imposing conditions).[5]

Relevance and relationship of WCOs to district plans

11 The relevance and relationship of WCOs to district plans is relatively limited. WCOs have a different focus than district plans, and are intended to work with other planning instruments but not replace them. While provisions of lower order instruments are relevant considerations in making a WCO,[6] there is nothing precluding WCOs and other planning instruments from covering the same geographical area or subject matter, subject to the requirement for consistency. However, the Environment Court has noted that WCOs can inform those lower order instruments.

12 In that regard, in considering whether a WCO was required over the Ngaruroro River, where there were other existing and proposed planning instruments, the Environment Court found that WCOs complement other planning instruments:[7]

> [360] We do not find the issue to be a contest about the perceived merits of different instruments and processes. A water conservation order, with its specific purpose, is an available instrument and process under the RMA.
>
> …

[5] RMA, section 217.

[6] RMA, section 207(c).

[7] *Re Ngā Kaitiaki o Te Awa o Ngaruroro* [2002] NZEnvC 227.

> [419] …a water conservation order is a complementary instrument that informs and works with other instruments in the hierarchy.

13 Further, WCOs are limited to recognising and sustaining outstanding characteristics of water bodies – where what constitutes "outstanding" is to be assessed at a national scale. The Planning Tribunal in the first case on water conservation orders under the RMA, *Re an Inquiry into the Draft National Water Conservation (Kawerau) Order*,[8] said:

> …the test as to what is outstanding is a reasonably rigorous one and that to qualify as outstanding a characteristic would need to be quite out of the ordinary on a national basis.

14 WCOs will not, therefore, manage values and characteristics that are relevant to communities at a district or regional level, and lower order planning instruments need to play that role. WCOs may nevertheless inform lower order instruments, as recognised by the Environment Court in *Re Ngā Kaitiaki o Te Awa o Ngaruroro*:[9]

> [443] …the water conservation order has a conservation purpose that identifies nationally outstanding values (that are greater than those of regional significance) and contains specific protections of those values. That order also informs what is appropriate in lower order planning instruments, like the approach in the regional policy statement and regional plan objectives, policies and rules. An order also informs the values and protections to be considered in consent application processes.

15 In light of the above, the relevance and relationship of WCOs to district plans can be summarised as follows:

(a) WCOs and district plans (in conjunction with regional plans) work together to protect the identified values of the river. There is no need to determine whether one instrument should be used or another – both can apply at the same time, provided the lower order instrument is not inconsistent with the WCO.

(b) A WCO only recognise and sustain values that are outstanding at a national scale, whereas district plans recognise values at a local/regional scale.

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[8] Decision C33/1996, 13 June 1996, Planning Tribunal, Christchurch at p.5.

[9] *Re Ngā Kaitiaki o Te Awa o Ngaruroro* [2002] NZEnvC 227, at [443].

(c) A WCO can only restrict the granting of water permits, coastal permits and discharge permits by a regional council. They have no impact on land uses controlled by a district council, except to the extent that district plans must not be inconsistent with them.

(d) Identification of outstanding characteristics at a national scale can inform lower order instruments which will also manage values and characteristics that are less than outstanding at a national scale.

Rangitata River WCO

16 The Rangitata River WCO identifies the outstanding characteristics of the Rangitata River generally[10] and, in Schedules 1 – 3, the specific characteristics that are outstanding in each section of the river and its tributaries.

17 For those sections identified in Schedule 1, the WCO requires the quality, quantity, level and rate of flow to be retained as far as possible in their natural state.[11] In relation to those sections in Schedules 2 and 3, the WCO applies specific restrictions on the damming of waters,[12] alteration of river flows and form,[13] activities that affect the maintenance of fish passage,[14] and alteration of water quality.[15]

18 Certain activities (including existing rock weirs, such as that managed by RDMR) are exempt from some restrictions – this recognises the needs of primary and secondary industry, and the community, as required by section 207 of the RMA.

19 The specific nationally outstanding characteristics, values and features protected by the Rangitata River WCO in various stretches of the river include: habitat for native aquatic birds, salmon (including fishing and spawning) and aquatic invertebrates such as mayflies and stoneflies; salmon angling, canoeing, rafting, jetboating and kayaking; wild and scenic characteristics; braided river characteristics (scientific); spiritual, cultural and historic values; and significance to Ngai Tahu.

[10] Water Conservation (Rangitata River) Order 2006, clause 4 and Schedules 1, 2 and 3.

[11] Water Conservation (Rangitata River) Order 2006, clause 5.

[12] Water Conservation (Rangitata River) Order 2006, clause 8.

[13] Water Conservation (Rangitata River) Order 2006, clause 9.

[14] Water Conservation (Rangitata River) Order 2006, clause 10.

[15] Water Conservation (Rangitata River) Order 2006, clause 11.

Application to PDP

20 In terms of the relevance and relationship of the Rangitata River WCO to the SNA, as reflected in the principles set out above, they are separate planning mechanisms that work together to protect the values of the river and its margins. While there may be some overlap in the values identified in both, there are also some fundamental differences in the two mechanisms that illustrate that the Rangitata River WCO cannot be relied upon to protect significant indigenous vegetation and significant habitat of indigenous fauna in river beds, in terms of section 6(c).

21 Key differences include:

(a) The Rangitata River WCO identifies nationally outstanding habitat and ecological values associated with the river. The Rangitata River WCO is not limited to protecting habitat for indigenous flora and fauna. By contrast, the PDP SNAs identify significant indigenous vegetation and habitat for indigenous fauna that are locally or regionally significant.

(b) There is no specific criteria to guide identification of outstanding habitat and ecological values in a WCO, whereas the PDP SNAs were identified in accordance with the specific criteria set out in Appendix 3 of the RPS.

(c) The Rangitata River WCO regulates water takes, water quality and river levels, flow and form for the purposes of recognising and sustaining the specified values. The SNA provisions of the PDP seek to control land uses that could impact upon the significant indigenous biodiversity and habitat of indigenous fauna identified in the river bed.

22 In other words, while the values identified in the Rangitata River WCO and the SNAs may overlap to some extent, they are identified at different scales, for different purposes and according to (potentially) different criteria. The SNA and Rangitata River WCO rules are each focused on protecting the values identified in the respective instruments, although they achieve this by regulating different activities.

23 While the Panel did not specifically request consideration of the relationship with the Rangitata River WCO and ONLs/VALs identified in the PDP, it is submitted that the same general principles apply. In addition, it could be argued that areas identified by an WCO as being "outstanding" for their wild and scenic characteristics should be

identified as an ONL in the relevant plans. In this case, the Rangitata River WCO identifies that the river has "wild and scenic characteristics" in the gorge, upper Rangitata and headwaters – these areas are also identified in the PDP as being within an ONL.

24 In light of the above analysis, it is respectfully submitted that the relevance of the Rangitata River WCO to the Panel's decision-making on the PDP is limited to ensuring that the PDP is not inconsistent with it. The existence and content of the Rangitata River WCO is also relevant context for the Panel's decision-making and may inform its decision. For example, it may provide support for the SNAs, VALs and ONLs and related provisions to the extent that it identifies similar values, characteristics and features (albeit at a "nationally outstanding" scale).

Scope to make amendments/ natural justice

25 The Panel has sought comment on whether there is the scope to amend the PDP, and on natural justice and the extent to which the parties could have fairly and reasonably contemplated changes, in relation to:

(a) applying the National Policy Statement on Indigenous Biodiversity (NPSIB) – as sought by submitters; and

(b) the ONL, the extent of the Bat Protection Area (BPA) and the proposed policy and rule for clearance outside SNAs – as recommended by the section 42A author.

26 Schedule 1 creates a participatory scheme for plan-making by providing for public notice of proposed plans, submissions on the proposal, and enabling people potentially affected by submissions (or representing the public interest) to signal their support or opposition to those submissions. One of the underlying purposes of the notification/ submission/ further submission process is to:[16]

> …ensure that all are sufficiently informed about what is proposed. Otherwise the plan could end up in a form which could not reasonably have been anticipated resulting in potential unfairness.

27 To that extent, natural justice is "built in" to the system by ensuring that people have the opportunity to participate in decision-making about matters that might affect them. The provisions of Schedule 1, and related principles developed through case law, embed guardrails into the plan-making process to both alert people to changes that might

[16] *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59, at [55].

affect them - so that they can determine whether to participate - and to limit the scope of permissible changes - to ensure that all affected parties have had the opportunity to do so.

28 The summary of decisions sought (**SDR**) is the starting point for persons interested in knowing whether they are affected by any submission seeking changes to provisions in a proposed plan.[17] It advises members of the public of potential changes, and enables them to ascertain whether and how they may be affected, and to respond to submissions.[18]

29 The SDR must therefore be:

(a) a concise statement of the decisions requested, but sufficient to alert the reasonably informed, non-expert reader of the summary to the fact they should go to the submissions in full and examine the proposed differences for themselves;[19] and

(b) fair and accurate, and not misleading,[20] which is to be assessed by reference to not only its content but in light of the public interest function it serves.[21]

30 While the intention of the SDR is to alert the reader to the submitter's intention, a proactive approach is also required on the part of potentially affected people, who are required to make an enquiry into the submissions on their own account.[22] The High Court has held that a reasonable level of diligence must be expected of landowners and potential submitters in finding out about changes which affected them.[23] It is submitted that this is particularly the case in the context of a full plan review, where there is a high likelihood that any given landowner will be affected to some extent by submissions made on a proposed plan.[24]

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[17] See *Campbell v Christchurch City Council* [2002] NZRMA 332.

[18] *Gertrude's Saddlery Ltd v Arthurs Point Outstanding Natural Landscape Society Inc* [2021] NZHC 147 147, at [115].

[19] *Re an application by Christchurch City Council*, (1999) 5 ELRNZ 227, at [15].

[20] *Re an application by Christchurch City Council*, (1999) 5 ELRNZ 227, at [15].

[21] *Gertrude's Saddlery Ltd v Arthurs Point Outstanding Natural Landscape Society Inc* [2021] NZHC 147, at [116].

[22] *Motor Machinists Ltd v Palmerston North CC* [2012] NZEnvC 231, at [28].

[23] *Albany North Landowners v Auckland Council* [2016] NZHC 138, at [132].

[24] This can be contrasted with a plan change, where the affected parties are defined by the limitations of the plan change itself. This underpins the line of authority developed in relation to whether a submission

31 Submissions themselves must be in the prescribed form – relevant provisions, the decision sought, and reasons need to be specified.[25] Compliance with the form need not be exact and deficiencies do not automatically invalidate the submission.[26] The focus is on substance rather than form, and the extent and effect of any breach will be relevant to the validity of a non-confirming submission and whether issues were fairly and reasonably raised in the submission.[27] The Court has determined that a submission that fails to specify any relief is invalid.[28] A reasonably informed person must be able to ascertain from the documentation exactly what is intended by a submitter – it is not for that reader to uncover the true intentions of the submitter.[29]

32 Finally, amendments to the notified plan must be within the scope of the original submission. The law on scope is neatly summarised by Whata J in the following extract from *Albany North*:[30]

> A Council must consider whether any amendment made to a proposed plan or plan change as notified goes beyond what is reasonably and fairly raised in submissions on the proposed plan or plan change. To this end, the Council must be satisfied that the proposed changes are appropriate in response to the public's contribution. The assessment of whether any amendment was reasonably and fairly raised in the course of submissions should be approached in a realistic workable fashion rather than from the perspective of legal nicety. The "workable" approach requires the local authority to take into account the whole relief package detailed in each submission when considering whether the relief sought had been reasonably

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is "on" a plan change (such as *Halswater Holdings Ltd v Selwyn DC* (1999) 5 ELRNZ 192 and *Clearwater Resort v Christchurch City Council* [2002] ELHNZ 319).

[25] Form 5 of the Resource Management (Forms, Fees and Procedure) Regulations 2003.

[26] Regulation 4 of the Resource Management (Forms, Fees and Procedure) Regulations 2003 provides that a form will not be invalid if it contains minor differences, has the same effect and is not misleading; Regulation 6 requires the form to be "generally followed". The High Court, in *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145, at [147], noted that submitters in some instances are unlikely to fill in the forms exactly as required and the way citizens participate in the process "should not be bound by formality".

[27] See *Campbell v Christchurch City Council* [2002] NZRMA 332.

[28] *Bennet v Thames-Coromandel District Council* [2017] NZEnvC 111, at [14] – [31]].

[29] *Healthlink South Ltd v Christchurch International Airport Ltd and Canterbury Regional Council* HC Christchurch AP 14/99, at [29] and [36].

[30] *Albany North Landowners v Auckland Council* [2016] NZHC 138, at [115]. Various legal submissions/ memoranda addressing scope have previously been filed with the Panel. See Legal submissions of Counsel on behalf of Timaru District Council (30 April 2024), at [19] – [30]; Memorandum of counsel on behalf of Timaru District Council – Response to Minute 10 (1 July 2024), at [9] – [12].

> and fairly raised in the submissions. It is sufficient if the changes made can fairly be said to be foreseeable consequences of any changes directly proposed in the reference.

33 A general test commonly referred to is that in *Re an Application by Vivid Holdings Ltd*:[31]

> …any decision of the Council, or requested from the Environment Court in a reference, must be:
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> (a) fairly and reasonably within the general scope of:
>
> (i) an original submission; or
>
> (ii) the proposed plan as notified; or
>
> (iii) somewhere in between
>
> provided that:
>
> (iv) the summary of the relevant submissions was fair and accurate and not misleading.

34 Whether an amendment is fairly and reasonably raised in submissions is a question of degree to be judged by the terms of the proposed change and the content of submissions.[32] The general wording of a submission sets the limits of the relief that can be granted, relief may be raised expressly or by reasonable implication, and the reasons given may be relevant to ascertaining relief sought.[33]

35 The Environment Court in *Campbell v Christchurch City Council*[34] considered the following factors in determining whether a submission reasonably raised relief:[35]

(a) The submission must identify what issue is involved and a change sought;

(b) The council needs to be able to rely on the submission as sufficiently information to summarise it accurately, fairly and in a non-misleading way;

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[31] *Re an Application by Vivid Holdings Ltd* (1999) 5 ELRNZ 264 at para 19, at [37].

[32] *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145, at [165] – [167].

[33] *Campbell v Christchurch City Council* [2002] NZRMA 332, at [18].

[34] *Campbell v Christchurch City Council* [2002] NZRMA 332.

[35] *Campbell v Christchurch City Council* [2002] NZRMA 332, at [42].

(c) The submission should inform others what the submitter is seeking, but if it does not do so clearly, it is not automatically invalid.

36 In considering whether relief sought was fairly raised, the Court noted that if an appeal was based on a reasonable submission but it would be fairer for other parties to be notified, its section 293 powers were available.[36] It referred to the Court's discussion in *Re an Application by Vivid Holdings Ltd*:[37]

> I consider that one of the reasons Parliament has given the Environment Court the powers in section 293, especially in section 293(2) is to cover the situation where the relief the referred is seeking is not spelt out in adequate detail in the submission and/or the reference. Obviously it is good practice to spell out precisely the relief sought, but it is not essential to do so. If it is not and the Court considers a reasonable case for a particular change to a proposed plan is made out but that interested persons have not had adequate notice – because the relief was not stated, or not clearly, then the Court can exercise its powers under section 293(2).

37 Although section 293 is not available to the Panel, it is submitted that the Panel could issue a direction to notify affected persons of specific relief being sought and provide the opportunity for further submissions, if it considers there is merit in the relief, but that the relief was not specified with sufficient particularity to enable a potentially affected person to ascertain that they would be affected.

ONL

Context

38 The PDP as notified permits buildings and structures associated with existing non-intensive primary production and public amenity buildings within ONL and Outstanding Natural Feature (ONF) overlays, provided they meet specified standards, including that they are not located above 900masl.

39 Frank (#90) made a submission generally supporting the objectives, policies and rules in the Natural Features and Landscapes chapter of Part 2: District Wide Matters: Natural Environment Values (#90.16).

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[36] *Campbell v Christchurch City Council* [2002] NZRMA 332, at [43].

[37] *Campbell v Christchurch City Council* [2002] NZRMA 332, at [39], citing *Re an Application by Vivid Holdings Ltd* [1999] NZRMA 467, at [28].

Under the heading "Natural Features and Landscapes", the submission specified an amendment to NFL-S2/1 seeking that the reference in point 2, to "900m above sea level", be replaced with "500m above sea level" on the basis that "*it does not make sense to allow new structures above this altitude considering the character and location of these natural features and landscapes in the Timaru District*". The relief sought was descriptive of the desired change and did not provide a marked-up version of the relevant standard.

40 While not strictly following Form 5, the submission addressed the substantive issues of specifying relief and reasons for that relief, and was of the same effect as Form 5 and not misleading in terms of Regulation 4 of the Resource Management (Forms, Fees and Procedure) Regulations 2003.

41 The SDR correctly identified the relevant section (NFL Natural Features and Landscapes), subsection (Standards) and provision (NFL-S2 Location of buildings, structures and irrigators) and fairly and accurately summarised the reasons for the relief sought. Rather than copying verbatim the descriptive relief sought, the SDR drafted a marked-up version of the standard that executed the description. It clearly showed that "Buildings and structures located within the ONL and ONF shall not be located…at any point above ~~900m~~ 500m above sea level". A search of the SDR for "ONL" or "ONF" would therefore identify this submission point (although the submission itself did not use those terms).

42 The SDR fairly and accurately summarised the relief sought and was not misleading. While the submission only mentioned "structures" and did not specifically address "buildings, structures and irrigators", which is the subject of the rule and standard, it was clear from the SDR that the amendment sought by the submitter would affect at least buildings and structures. The term "structures" (as defined by the RMA and the PDP) includes buildings, and it would be reasonable to assume that a layperson would interpret the term in that manner.

43 No further submissions were received on submission #90.16. One hundred and twenty-three further submissions were received on the NFL chapter as a whole.[38]

[38] The majority of these further submissions were from Royal Forest & Bird, Hermann Frank, but also included Te Rūnanga o Ngāi Tahu, Federated Farmers, Alliance Group, Transpower, Timaru Developments Ltd, Opuha Water, Milward Finlay Lobb, and Rooney Group Ltd (and related entities).

Recommended change

44 The section 42A report recommends[39] accepting the relief in part. It recommends:

(a) that the restriction between 500masl and 900masl applies only to buildings and not all structures;

(b) that buildings located between 500masl and 900masl are a restricted discretionary activity (**RDA**) (rather than a non-complying activity); and

(c) associated matters of discretion for the RDA relating to effects on the ONL or ONF.

45 The latter two recommendations require amendments to NFL-R1. There are no amendments proposed to the extent of the ONL itself, and all potentially affected landowners are already located within the ONL. The number of affected landowners is addressed in Appendix C of Ms White's reply, but, in essence, the recommended change affects 14 additional landowners (17 additional properties, based on rating units).

Analysis of scope

46 It is submitted that the amendment to the rule and standard recommended by the section 42A officer was fairly and reasonably raised by, and is within the scope of, the submission because:

(a) the application of the restriction between 500masl and 900masl to buildings only (and not all structures) is clearly "on the line" between the notified PDP and the relief sought in the submission, insofar as it accepts something less than the relief sought;

(b) the amendments to NFL-R1 are required as a direct consequence of accepting the relief in part and result in less onerous restrictions on landowners than the relief sought, and in order to make the rule workable. The Court's recognition of the need for flexibility to "deal with the realities of the situation" is relevant here;

(c) the submission was fairly and accurately summarised by the SDR, which provided additional detail (via explicit references to relevant sections, marked-up provisions and references to ONLs and

[39] Section 42A report at 9.16.6 and 9.16.10.

ONFs) that assisted potential submitters to understand the impact of the relief sought;

(d) with some due diligence, landowners with property in the ONL or ONF overlays would have been able to identify that they may be affected by this relief. It was clear that the proposed relief would affect all land between 500masl and 900masl. Even where that land was not specifically identified in the submission, it was easily ascertainable by reference to a topographical map;

(e) restrictions on buildings between 500masl and 900masl could reasonably have been anticipated following a review of the SDR and relevant submission, as could a lesser activity status than non-complying for buildings in that range.

47 Therefore, while the recommended relief affects a number of landowners who have not made further submissions, it is submitted that those landowners have had the opportunity to participate in the process and no natural justice issues arise.

Bat Protection Area

Context

48 The notified PDP identified a Bat Protection Area (**BPA**), which is an overlay shown on the online planning maps. It covers the majority of the Opihi River and its margins, and part of the Tengawai River (which branches off the Opihi River near Pleasant Point) and its margins. In addition, the BPA extends to GRUZ land to the north of the Opihi River inland from Pleasant Point and to the north-west of the Tengawai River, west of Pleasant Point.

49 The relevant submissions and further submissions received are set out in the table below.

Submitter	**Relief sought**	**Further submitter/ position**	**Reasons for position**
Zolve Environmental Ltd (#164.3)	Sought to extend the BPA to all known colonies and surrounding areas, and include a more extensive buffer. This submission did not identify the extent of the BPA being proposed, or provide any means by which that land could be	None	

	identified. It referenced ECO-R4 as the relevant provision.		
RF&B (#156.104)	Sought the ability for the BPA to increase as more information is understood about bats and their extent in the district. This submission did not specifically request the immediate extension of the BPA, but sought a policy framework that enabled other areas of bat habitat be included once identified.	Alliance Group[40] (oppose) Transpower[41] (oppose)	Alliance Group oppose on the basis that the amendments sought are unnecessary because the NPSIB provides specific, mandatory direction about managing effects on threatened and at-risk species and their habitats. Transpower oppose on the basis that neither the specific fauna proposed to be protected, nor the method of protection, are specified.
D-G (#166.37)	Sought that the BPA be extended to match the habitat area shown in Canterbury Maps. This submission identified ECO-P4 as the relevant provision, and sought the same relief in relation to ECO-R4 (#166.44). While the submission did not describe, or provide a physical map of, the area proposed to be included, it did provide a link to Canterbury Maps that links directly through to the map showing the roosting habitat of the Long-Tailed Bat. The Council advises that the bat habitat area identified in Canterbury Maps at the time of notification is the same as is currently reflected in Canterbury Maps.	RF&B[42] (support)	

50 It is noted that:

(a) Federated Farmers supports ECO-R4 (#182.108); and

(b) the only submitters to oppose the rule (other than seeking minor amendments) are the Rooney Group-related submitters (#174.33, #191.33, #249.33, #250.33, #251.33) and Timaru Developments

[40] #173.98FS.

[41] #159.24FS.

[42] #156.39FS.

Ltd (#252.33) (which is understood to also be related to the Rooney Group etc).

51 The SDR fairly and accurately summarised the relief sought and was not misleading. For the Zolve and D-G submissions, which sought immediate extension of the BPA, the SDR identified the relevant section (Planning Maps) and sub-section (Bat Protection Area), even though neither submissions specifically referenced the planning maps as a relevant provision in terms of Form 5. The SDR accurately reflected the relief sought, including the reference to Canterbury Maps in the D-G submission, although it did not provide the link. The summary also cross-referenced the D-G submission on the planning maps (#166.37) in the summary of that submission on ECO-R4 (#166.44) to ensure readers were alert to other relevant aspects of the submission.

Recommended change

52 In response to the submissions, the section 42A officer has recommended that the BPA be extended to cover the areas identified on the Canterbury maps as bat habitat, as specifically requested by the Director-General of Conservation.

53 The recommended change extends the BPA (as shown in **Appendix A**) to include:

(a) Additional areas contiguous with the existing BPA:

(i) around the edges of both rivers; and

(ii) to the north of the Opihi River.

(b) Three new (separate) areas to the north near Woodbury, Peel Forest and Geraldine.

54 The effect of the recommended change is that ECO-P4 and ECO-R4 will apply to the additional properties. ECO-R4 requires resource consent (as a restricted discretionary activity) for the clearance of certain trees within the BPA. Trees requiring a consent to be cleared are those that:

(a) were not planted for timber production (plantation forest and woodlots) and are not within a domestic garden (ECO-R4 PER-1.1 and 1.2); and

(b) are not causing an imminent danger to human life, structures, or utilities and the clearance is undertaken in accordance with advice from a suitably qualified arborist (ECO-R4 PER-1.3);

(c) have a trunk circumference of more than 31.5cm (native trees), more than 70cm (exotic trees, excluding willow) or 120cm (willow) when measured at 1.5m above ground level (ECO-R4 PER-2).

55 The Council has also advised that the number of additional properties that will be captured by the BPA is approximately 2000.[43] However, it is unlikely that all of these properties will be affected by ECO-R4 because trees within a domestic garden, or that have been planted for plantation forest or woodlots, are not controlled by that rule. "Domestic garden" is not defined, however it is submitted that it would be reasonable to assume that term to include:

(a) trees on private land in residential zones; and

(b) in rural or rural lifestyle zones, trees within the curtilage of any residence.

56 In other words, the only trees likely to be captured by this rule are those located on rural or rural lifestyle lots that are not within the curtilage of the residence. The number of rural and rural lifestyle properties likely to be affected by the proposed change is approximately 650.[44] On those properties, trees captured by the rule need to be:

(a) outside a domestic garden, plantation forest or woodlot;

(b) of the size specified in ECO-R4 PER-2; and

(c) not dangerous.

Analysis of scope

57 It is submitted that the extension of the BPA recommended by the section 42A author was fairly and reasonably raised in, and within the scope of, submissions because:

[43] This is a calculated estimate, based on valuation units in the proposed extended BPA, not including those that fall within the notified BPA.

[44] This number is a rough estimate only, based on a number of assumptions, to provide a sense of magnitude. It excludes properties in any residential, industrial or commercial zone and any land owned by Department of Conservation, TDC, LINZ and the Crown.

(a) the recommendation is to accept the relief was specifically sought in the submission.

(b) The SDR fairly and accurately summarised the relief sought and was not misleading. It clearly identified that the submission related to the planning maps and the BPA, even where the submissions did not specifically identify the planning maps as a relevant provision.

(c) The area proposed to be included in the BPA was able to be specifically identified due to the inclusion of the link to Canterbury Maps in the D-G submission. While the summary did not include the link (and a simple internet search for Canterbury Maps may not reveal the maps with the correct data layers[45]) a reasonably informed person exercising due diligence could go to the original submission where the link provided directly links to the correct map.

(d) In the context of a full plan review, submissions can seek to extend any of the overlays identified in a proposed plan or include overlays in entirely new locations. Given that, it could be expected that a reasonably informed person exercising due diligence should confirm whether any submissions seeking an extension of an overlay, or new overlays, will affect them.

58 It is submitted in light of the above analysis, that the relief sought should have been reasonably contemplated by landowners taking an interest in the PDP process. However, if the Panel is troubled by the extent of the recommended BPA extension (and considers there is merit in the submission), an option that is available is to provide the opportunity for affected landowners to make late further submissions – although it is not considered necessary to do so.

59 If the Panel elected to adopt this approach, it would need to make directions along the following lines:

(a) requiring TDC to notify potentially affected landowners of the submission and recommended amendment. It is submitted that only landowners located in the GRUZ and RLZ would need to be notified, for the reasons outlined above;

[45] A search for "Canterbury Maps" provides an option to view the "map viewer" directly, which may not automatically contain the Ecology and Biodiversity layer. A person would need to either find the Ecology and Biodiversity maps on the Canterbury Maps home page, or a search with the terms "Canterbury Maps bat habitat" will also return a page that contains the Ecology and Biodiversity layer.

(b) inviting further submissions and signalling that valid further submissions from affected (notified) landowners are likely to be accepted;

(c) providing for an evidence timetable and additional time for hearing any late further submissions on the issue. It is expected that there would be sufficient time to enable the issue to be scheduled in Hearing G or H.

Vegetation clearance outside SNAs

Context

60 The PDP as notified permitted indigenous vegetation clearance, other than in specified sensitive areas.[46] Several submitters sought relief to include policies and rules to protect indigenous vegetation outside SNAs.

61 The relevant submissions and further submissions received are set out in the table below.

Submitter	**Relief sought**	**Further submitter/ position**	**Reasons for position**
Frank #90.23	Generally supported the objectives, policies and rules in the Ecosystem and Indigenous Biodiversity chapter, but sought new policies and rules to address significant indigenous vegetation outside SNAs, especially given that there may be significant values in areas not yet assessed	None	
RF&B #156.3	General submission (rather than in relation to a particular provision) sought: • provisions to identify further SNAs; • provisions to maintain biodiversity, such as general clearance rules; • mapping of improved pasture; ensure all	D-G[47] (support) Opuha Water Ltd[48] (oppose)	Opuha Water are opposed on the grounds that SNAs need to be included in the PDP in order to provide certainty for landowners.

[46] These include SNAs, riparian areas, wetlands and springs, coastal areas, higher altitudes and steep slopes.

[47] #166.11FS.

[48] #181.7FS.

	chapters give an appropriate level of recognition to SNAs (whether or not mapped); • ensure all chapters are subject to compliance with the ECO chapter		
RF&B #156.106	New policy relating to clearance of indigenous vegetation outside SNAs and sensitive areas, that would provide for low impact activities (of wider environmental or community benefit, or that enable existing activities) where effects on indigenous biodiversity would be less than minor. Proposed drafting included.	Federated Farmers[49] (support in part) Port Blakely[50] (oppose).	Federated Farmers support policy for indigenous vegetation clearance outside SNAs and sensitive areas, but oppose mapping of improved pasture. Port Blakely opposed regulation of plantation forestry activities that are more strict than the National Environmental Standards for Plantation Forestry (not relevant to present issue)
RF&B #156.116	• a new rule for general indigenous vegetation clearance outside of sensitive areas and SNAs (#156.116); and • mapping of improved pasture, within which vegetation clearance is permitted but controls are imposed outside those areas (#156.116).	Silver Fern Farms Ltd[51] (oppose) Alliance Group Ltd[52] (oppose) Federated Farmers[53] (support in part).	Silver Fern Farms and Alliance Group oppose on the grounds that the clause 3.16 NPSIB addresses management of indigenous biodiversity outside SNAs. Federated Farmers support a rule associated with the new policy and support limits on vegetation clearance, but oppose mapping of improved/ fully converted pasture.
D-G #166.29	Provisions do not provide certainty that indigenous biodiversity will be protected, maintained, enhanced and restored, including: • SNA survey is incomplete • there are many other areas of indigenous biodiversity not identifies that need to be maintained and enhanced.	RF&B[54] (support) Frank[55] (support)	

[49] #182.7FS.

[50] #94.9FS.

[51] #172.6FS.

[52] #173.9FS.

[53] #182.8FS.

[54] #156.31FS.

[55] #90.8FS.

D-G #166.35	Amendments ECO-P3 to include a new policy that addresses maintenance and enhancement of indigenous vegetation and habitats of indigenous fauna that do not meet significance criteria. Specifies matters to be set out in policy as: • ongoing assessment of state of indigenous biodiversity in the district • limiting vegetation clearance in areas that contain threatened, at risk and naturally uncommon ecosystems; • supporting non-regulatory mechanisms	RF&B[56] (support) Port Blakely[57] (oppose).	Port Blakely opposed regulation of plantation forestry activities that are more strict than the National Environmental Standards for Plantation Forestry (not relevant to present issue)
D-G #166.41	Amendments to ECO-R3 consistent with proposed amendments to ECO-P3 to maintain and enhance indigenous biodiversity inside any ecosystems considered to be rare or threatened (identified in the reasons given as including uncultivated dryland soils, tussock grasslands, shrublands, short and tall forest remnants, herbfields and any coastal or dune environments).	RF&B[58] (support)	

62 The SDR summarised the submissions fairly and accurately, using the same or similar language, including proposed drafting of the new policy by RF&B. Where the reasons for are not fully summarised (which is not required), the SDR refers the reader to the original submission for the full reason.

Recommended change

63 In response to submissions, Ms White recommended a new policy and rule as follows:[59]

[56] #156.37FS.

[57] #94.17FS.

[58] #156.43FS.

[59] Section 42A report: Ecosystems and Indigenous Biodiversity; Natural Character; and Natural Features and Landscapes (Liz White), at 7.1.26 and 7.1.27.

(a) A new policy (ECO-PX) to limit indigenous vegetation clearance outside SNAs, the Coastal Environment and other sensitive areas in order to maintain indigenous biodiversity, taking into account the value of that biodiversity; and

(b) A new rule (ECO-R1.4) to provide for indigenous vegetation clearance outside those areas as:

(i) a permitted activity in a limited, specified set of circumstances related to existing activities, cultural activities, preventing danger or for environmental benefit, and

(ii) otherwise, as a restricted discretionary activity.

64 The recommended amendments address:

(a) the identification and appropriate management of SNAs (through matters of discretion) that are not yet mapped - in accordance with section 6(c); and

(b) the requirement to maintain and enhance indigenous biodiversity outside SNAs in accordance with sections 7(f) and 31(1)(b)(iii).

Analysis of scope

65 It is submitted that the new policy and rule to provide for vegetation clearance outside SNAs as recommended by the section 42A author was fairly and reasonably raised in, and within the scope of, submissions because:

(a) Several submissions raised issues relating to the management of indigenous biodiversity outside SNAs. It is clear from reading those submissions that new policies and rules were being proposed to limit indigenous vegetation clearance outside SNAs for the purposes of maintaining and enhancing indigenous biodiversity.

(b) The scope of the policies and rules sought was wide – from:

(i) managing clearance of vegetation in areas that qualify as significant but are not yet mapped; to

(ii) restricting vegetation clearance in rare and threatened ecosystems; to

(iii) only providing for "low impact" activities with "less than minor effects" on indigenous biodiversity.

(c) While the new recommended policy and rule is different to those proposed in submissions, they address issues clearly raised in the submissions. The Panel is not limited to accepting or rejecting relief, and has flexibility to deal with the complexities of the process, particularly where there are multiple submissions on the same matter.

(d) Significantly, Federated Farmers (which organisation represents farmers and other rural businesses[60]) support a new policy and rule providing for "low impact" activities with "less than minor effects" on indigenous biodiversity – which is the approach adopted by the s42A officer – although seek amendments to enable day-to-day farming activities to continue as permitted activities.[61]

66 While none of the submissions specify the land that will be affected by the proposed new rules, it is clear from the submissions that they could potentially affect any land outside SNAs that are mapped in the PDP. These submissions were fairly and accurately summarised by the SDR and a reasonably informed person reading the SDR should have been alerted to the possibility that the proposed new policy and rule would affect them. It is therefore submitted that those landowners have not been deprived of the opportunity to participate in the process and no natural justice issues arise.

National Policy Statement on Indigenous Biodiversity

Context

67 At the time the PDP was notified, the NPSIB was in draft form. Some submissions sought amendments to better align the PDP with the draft NPSIB, in anticipation of it coming into force, and reflecting the requirement for district plans to give effect to the NPSIB (once in force, and in accordance with its specific terms). The relevant submission points, along with the updated relief sought in Hearing D evidence, are set out in **Appendix B**.

[60] See Evidence of Rachel Shalini Thomas and Greg Anderson on behalf of the South Canterbury Province of Federated Farmers of New Zealand (29 October 2024), at para [5].

[61] Evidence of Rachel Shalini Thomas and Greg Anderson on behalf of the South Canterbury Province of Federated Farmers of New Zealand (29 October 2024), at paras [26] – [29].

68 In summary:

(a) Two submissions (RF&B and D-G) made general submissions to the effect that the PDP should give effect to or align with the NPSIB through this process;

(b) The D-G submission specifically sought amendments to give effect to the following aspects of the NPSIB:

(i) clause 3.10 direction to avoid adverse effects on SNAs;

(ii) clause 3.16 direction to apply the effects management hierarchy to significant effects on indigenous biodiversity; and

(iii) relevant definitions of 'effects management hierarchy', 'biodiversity offset' and 'biodiversity compensation', which relate to the application of the effects management hierarchy;

(c) Two submissions (Road Metals and Fulton Hogan) sought policies and rules to reflect aspects of Clause 3.11, which provide an exemption from the requirement to avoid adverse effects on SNAs for certain mineral extraction activities.[62]

69 The SDR fairly and accurately summarised these submission points.

Recommendation by s42A officer

70 The section 42A report accepted that where the final version of the NPSIB reflects the draft NPSIB, amendments to align the PDP with the NPSIB are within the scope of submissions.

71 The report recommended accepting some submission points, but recommended rejecting the submissions by D-G, Road Metals and Fulton Hogan that sought specific amendments to give effect to clauses 3.10, 3.11 and 3.16 on the basis that:

(a) In relation to avoiding adverse effects on SNAs:

[62] It is noted that Rooney Group et al provided evidence in support of the Road Metals and Fulton Hogan submissions to provide for quarrying as a restricted discretionary activity. Those parties are not further submitters on these submission points, but are further submitters on the Road Metals (#169.19) and Fulton Hogan (#170.20) submission points relating to ECO-P5.

(i) That requirement in clause 3.10 NPSIB has a series of complex exceptions;

(ii) Evaluative judgements would need to be made about some of those exemptions such as quarrying, (e.g. as to the scale of public benefit) which would require further consideration in terms of how they might apply in this district and likely further amendments to rules;

(iii) The exercise is better undertaken in an integrated manner when the Council notifies a plan change to give effect to the NPSIB in full.

(b) In relation to applying the effects management hierarchy outside SNAs, clause 3.16 NPSIB only requires that *significant* adverse effects (on indigenous biodiversity outside SNAs) are managed via the effects management hierarchy (rather than any adverse effect);

(c) In relation to amendments to recognises the importance of aggregate extraction, clause 3.11 NPSIB does not support the exemption from clause 3.10 from any quarrying – extraction of aggregate needs to meet specific requirements (such as significance, functions/operational need/ no practicable alternatives) to be exempt.

72 Ms White maintains this recommendation following Hearing D.[63]

Analysis of scope

73 Clauses 3.6, 3.11 and 3.16 of the draft NPSIB are generally the same in effect as the final version of the NPSIB, although the draft NPSIB proposed to apply the effects management hierarchy to "irreversible effects", whereas the final version applies the effects management hierarchy to "significant effects". While the bar for applying the effects management hierarchy in the final NPSIB appears lower, the difference is unlikely to be significant. The definitions of "effects management hierarchy", "biodiversity compensation" and "biodiversity offset" are generally the same. No substantial issues therefore arise in terms of potential differences between the version of the NPSIB that was available at the time of notification and the final version.

[63] Elizabeth White – Hearing D Interim Reply, 18 December 2024.

74 While the amendments now being sought by the D-G differ from the specific amendments sought in the original submission, and relate to provisions not specifically identified in the submission, they remain directly addressed at the issues that were raised in that submission, namely avoiding adverse effects on SNAs and implementing the effects management hierarchy in relation to effects on other indigenous biodiversity.

75 As noted previously, the Panel is not limited to accepting or rejecting specific relief and is able to adopt a workable approach to making amendments in light of the full suite of submissions in front of it.

76 However, the key issue is that the amendments sought do not properly give effect to the NPSIB, because they do not reflect the intricacies of the NPSIB. None of the submitters have addressed this issue by providing proposed drafting that properly gives effect to the NPSIB. It is therefore only possible to consider whether specific amendments that would give effect to the NPSIB are within the scope of submissions or could reasonably have been contemplated by affected parties at a high level.

77 In principle, amendments that give effect to the NPSIB could be within the scope of submissions, given that the submissions clearly raise this issue. However, given the complexity of the NPSIB, it is possible to foresee significant amendments being required to the PDP which may cut across existing policy direction or rules that have been relied upon by parties who have decided not to participate.

78 It is therefore submitted that it is preferable to leave the Council to promote a future plan change to give effect to the NPSIB in its entirety, rather than the Panel attempting to do so partially in light of the submissions received.

Advisory notes in plans

79 Port Blakely Ltd seek that commercial forestry activities be regulated by the National Environmental Standards for Commercial Forestry (NESCF) rather than the PDP. Ms White agrees that this approach is appropriate and recommended that the PDP included an advisory note to that effect.

80 The Panel queried whether an advisory note would have the legal effect of excluding commercial forestry activities from the PDP, or whether a permitted activity rule would be required.

81 There is surprisingly little case law on the effect of advisory notes in district plans, or in resource consents. The Environment Court was required to consider the lawfulness of an advice note that purported to exempt dryland farming practices from a rule that would otherwise make those activities a non-complying activity.[64]

82 In the *Royal Forest and Bird Protection Society of New Zealand Inc v Canterbury Regional Council* line of cases, the advice note was prepared after the regional plan was made operative, did not go through a Schedule 1 process, was not adopted by council resolution and was effectively a statement as to the regional council's policy for interpreting the regional plan rather than a part of the plan itself. It was, in essence, an attempt to remedy a perceived defect in the regional plan without initiating a plan change. Therefore, while the Court acknowledged that the advice note did not have legal consequence,[65] it did so in that context rather than making a comment on advice notes in plans generally.

83 In that sense, the circumstances of that case were different to the current situation, in which the NESCF advice note is part of the PDP that is being prepared under Schedule 1.

84 In the context of resource consents, the Court has made the following observations:

(a) an advice note has no regulatory effect;[66]

(b) advice notes should not purport to create obligations or give directions, nor require a consent holder to carry out work – an advice note that goes that far effectively becomes a condition;[67]

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[64] See *Royal Forest and Bird Protection Society of New Zealand Inc v Canterbury Regional Council* [2018] NZEnvC 198 (Interim Decision); *Royal Forest and Bird Protection Society of New Zealand Inc v Canterbury Regional Council* NZEnvC 225 [2018] (Final Decision); *Royal Forest and Bird Protection Society of New Zealand Inc v Canterbury Regional Council* [2019] NZHC 2223. While the High Court decision varied the Environment Court's final decision, it did so on the basis that it found that the entire advice note (rather than parts of it) were unlawful. It did not vary the conclusions of the Environment Court in relation to the effect of advice notes generally.

[65] *Royal Forest and Bird Protection Society of New Zealand Inc v Canterbury Regional Council* [2018] NZEnvC 225 at [28]

[66] *Marlborough District Council v Aitken* [2016] NZEnvC 226, at [81].

[67] *Hapu Kotare Ltd v Manukau City Council* [2005] ELHNZ 360, at [80].

(c) advice notes can explain the purpose of conditions or assist the Council in the implementation of the resource consent;[68]

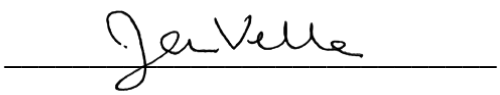
(d) advice notes should be used sparingly and for information purposes only.[69]

85 It is clear from these principles that advice notes do not have the legal effect of conditions. In the context of a district plan, rules have the force and effect of regulations,[70] and are "intended to bind"[71] – if advice notes were also intended to have legal effect, or to bind, they would themselves be rules.

86 While readers might be expected to interpret the plan in light of a clear statement that the rule did not apply to certain activities, an advice note would not legally have the effect of excluding those activities from the application of the rule. It would therefore be prudent to ensure that it is clear from the provisions of the plan as to how the PDP rules apply to activities regulated by the NESCF.

87 In her interim reply, Ms White recommends that a statement contained within the rule itself, which sets out that the rule does not apply to the clearance of indigenous vegetation/earthworks regulated by the NESCF. The inclusion of the statement in the rule itself gives it the force and effect of a regulation. In addition, given that interpreting the plan necessitates reading the plan as a whole, the existence of the statement as a provision should ensure the plan is correctly interpreted so as to exclude the clearance of indigenous vegetation/earthworks that is regulated by the NESCF.

88 The Council is grateful for the Panel's attention to these matters.



Jen Vella
Counsel for Timaru District Council

[68] *Te Maru o Ngati Rangiwewehi v Bay of Plenty Regional Council* [2009] ELHNZ 62, at [12].

[69] *Te Maru o Ngati Rangiwewehi v Bay of Plenty Regional Council* [2009] ELHNZ 62, at [13].

[70] Section 76(2), RMA.

[71] *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 at [108].

Appendix A
Bat Protection Overlay – Comparison between notified PDP and Canterbury Maps

Bat Habitat Comparison Map - Additional Land Owner Property Boundaries

TIMARU DISTRICT COUNCIL
Te Kaunihera ā-Rohe o Te Tihi o Maru

Legend

- ECAN Layer - Additional - Land Owner Property Boundaries
- Bat Protection Area
- ECAN - Roosting Habitat of Long Tailed Bat
- Townships
- Outside the Timaru District Boundary
- Railway Tracks
- State Highways
- Major Roads
- Roads

N

Peel Forest
Arundel
Woodbury
Geraldine
Orari
Winchester
Temuka
Waipopo Huts
Milford Huts
Pleasant Point
Albury
Lake Opuha

Rangitata Gorge Road
Peel Forest Road
Geraldine-Arundel Road
Lysaght Road
Burdon Road
Tripp Settlement Road
Woodbury Road
Mckeown Road
Rangitata-Orari Bridge Highway
School Road
Pye Road
Mackenzie Street
Talbot Street
Downs Road
Te Moana Road
Orari-Rangitata Highway
Orari Station Road
Old Main South Road
Coach Road
Geraldine-Fairlie Highway
Mullvihill Road
Brenton Road
Winchester-Hanging Rock Road
Farm Road
Muff Road
Wigley Road
Raincliff Road
Totara Valley Road
Opihi Road
Seven Sisters Road
Waitohi Pleasant Point Road
Waitohi Temuka Road
Factory Road
Rise Road
Bain Road
Ritchie Road
King Street
Domain Avenue
Milford Clandeboye Road
Cleland Road
Pleasant Point-Cave Highway
Main Road
Arowhenua Road
Sutherlands Road
Smart Munro Road
Doake Road
Levels Valley Road
Pleasant Point Highway
Timaru-Temuka Highway
Waipopo Road

Date Exported: Thursday, 12 December 2024

0 5 10 20 Kilometers

Scale: 1:135,000 (on an #A3 Layout)

Appendix B

Submissions seeking that the PDP give effect to NPSIB

Notes:

1 *The Director-General of Conservation's submission points contain a number of issues within one submission point. Those aspects of each of the Director-General of Conservation's submission points that relate to NPSIB are highlighted in green.*

2 *Fulton Hogan made identical submissions to Road Metals in relation to the NPSIB. They have not been included in this table for duplication reasons. The equivalent Fulton Hogan submission points are #170.20, #170.22 and #170.50. These submitters did not present evidence at Hearing D. Rooney Group et al are a further submitter on submission points #169.19 and #170.20,but presented evidence on submission points #169.21 and #170.22 (although they are not a further submitter on these points).*

Submitter	Relevant provision identified	Reason for submission	Decision requested	Relief sought in evidence
Royal Forest and Bird (**RF&B**) #156.96	General New	The Government has indicated that the NPS-IB will be gazetted in December 2022. The Plan should give effect to the NPS-IB as soon as it possibly can through this Plan change process where it has not already.	Where the plan does not give effect to the NPS-IB (if it is gazetted) then it should do so through this plan review process.	**ECO-P2** Recommended wording in relation to "the operation or maintenance of" the electricity distribution network and rail network is not appropriate. The electricity network (other than the National Grid) needs to be managed in accordance with the NPSIB in terms of adverse effects on SNAs. Enabling clearance of SNAs for operation or maintenance of electricity distribution network, without any reference to regionally significant infrastructure or the effects management hierarchy, does not give effect to the NPSIB. More limited wording, for example referring to trimming for the purposes of maintenance, could be appropriate.
Director-General of Conservation (**D-G)**	New Definition	In relation to other submission points made by the D-G, we seek that the effects management hierarchy is defined in the Plan to ensure that there is an	Insert a new definition of 'Effects Management Hierarchy' which is generally consistent with the draft	**Effects management hierarchy**

#166.14		appropriate cascade of effects management approaches, starting with avoidance, and ending with offsetting or compensation of residual adverse effects, to appropriately manage adverse effects on significant values. The draft National Policy Statement for Indigenous Biodiversity (NPS-IB) gives meaning to the effects management hierarchy in Clause 1.5(4).	National Policy Statement for Indigenous Biodiversity (NPS-IB).	*"an approach to managing the adverse effects of an activity on indigenous biodiversity that requires that:* *(a) adverse effects are avoided where practicable; then* *(b) where adverse effects cannot be avoided, they are minimised where practicable; then* *(c) where adverse effects cannot be minimised, they are remedied where practicable; then* *(d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, biodiversity offsetting is provided where possible; then* *(e) where biodiversity offsetting of more than minor residual adverse effects is not possible, biodiversity compensation is provided* *(f) if biodiversity compensation is not appropriate, the activity itself is avoided."*
#166.15	New Definition	Insert a new definition for "compensation", as the term is used within the Ecosystems and Indigenous Biodiversity chapter. It is considered necessary to define the term so it's meaning is clear. The draft National Policy Statement for Indigenous Biodiversity (NPS-IB) contains a definition for 'Biodiversity Compensation' which is recommended.	Insert a new definition for "compensation" as follows (or words to similar effect): *"means any positive actions (excluding biodiversity offsets) to compensate for residual adverse biodiversity effects arising from activities after all appropriate avoidance, remediation, mitigation and biodiversity offset measures have been sequentially applied."*	**Biodiversity Compensation** *"means a conservation outcome that meets the requirements in Appendix 4 of the NPSIB and results from actions that are intended to compensate for any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, remediation, and biodiversity offsetting measures have been sequentially applied."*

#166.16	New Definition	Insert a new definition of 'Biodiversity Offset'. Providing for the use of biodiversity offset (where the effects management hierarchy has been applied), enables Councils and applicants to address any residual adverse effects, that cannot otherwise be demonstrably avoided, minimised, or remedied as a result of the proposed activity. This aligns with Section 104(1)(b) of the RMA and the draft National Policy Statement for Indigenous Biodiversity (NPS-IB) which includes offsetting to address residual effects via the effects management hierarchy.	Insert a new definition for "biodiversity offset" as follows (or words to similar effect): *"means a measurable conservation outcome that results from actions that: a. redress any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied; and b. achieves a measurable net gain compared to that lost."* The definition recommended for 'Biodiversity Offset' has been copied from the NPS-IB.	**Biodiversity Offset** *"biodiversity offset means a measurable conservation outcome that meets the requirements in Appendix 3 of the NPSIB and results from actions that are intended to: (a) redress any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied; and (b) achieve a net gain in type, amount, and condition of indigenous biodiversity compared to that lost.*
#166.29	General comments on ECO – Ecosystems and Indigenous Biodiversity chapter	The D-G generally opposes the objectives, policies, and rules in the ECO Ecosystems and indigenous biodiversity chapter. Currently the provisions do not provide certainty that indigenous biodiversity will be protected, maintained, enhanced, and restored. *Alignment with the draft NPS-Indigenous Biodiversity (NPS-IB)* We encourage Council to align its provisions with the exposure draft as much as possible i.e., definitions, provisions, and criteria. This recognises that the exposure draft represents the current national best-practice on managing indigenous biodiversity in the RMA context.	Specific relief as outlined below.	**ECO-P3 Protection of indigenous biodiversity in sensitive areas** Protect indigenous biodiversity by managing the clearance of indigenous vegetation in the following sensitive areas: 1. riparian margins areas, wetlands and springs; and 2. coastal areas; and 3. areas at higher altitude; and 4. areas on steep slopes. *And by managing the adverse effects of activities within these sensitive areas by applying the effects management hierarchy, except as provided for in EI-P2.*

		Protection of SNAs and providing a process for the assessment of new SNAs Whist [sic] the D-G acknowledges that comprehensive surveys have been undertaken of the district's SNAs, there are many areas that still need to be assessed and some existing areas that may need to be re-surveyed against current criteria. Therefore, there needs to be a process in the plan for allowing identification and protection of new SNAs. *The maintenance and enhancement of areas outside of SNAs* Further it is noted that whilst some areas outside of mapped SNAs (as well as unmapped SNAs) such as waterbody margins and higher altitudes/steep slopes have specific rules, there are many other areas of indigenous biodiversity outside of these areas that are required to be maintained and enhanced. Examples of these areas are indigenous vegetation associated with uncultivated dryland soils, tussock grasslands, shrublands, short and tall forest remnants, herbfields, and any coastal or dune environments. It is recommended that a set of vegetation clearance thresholds is introduced to ensure that indigenous biodiversity in these areas is appropriately managed. *Application of the Effects Management Hierarchy* It needs to be made clear in the provisions of the proposed Plan that new		**ECO-PX Maintaining indigenous biodiversity** 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 *and managing the adverse effects of activities by applying the effects management hierarchy, except as provided for in EI-P2.*

		subdivision, use and development within a SNA should avoid certain effects as set out in the draft NPS-IB. The effects management hierarchy must also be applied to other effects within a SNA as well as for areas outside of mapped SNAs. This aligns with the requirements of the draft NPSIB as set out in Clause 1.5(4) and principles applied for biodiversity offset and compensation in Appendix 3 and 4.		
#166.38	ECO-P5	The D-G considers that the policy needs to align with the draft NPS-IB and set out the specific adverse effects on SNAs that must be avoided (NPS-IB, Clause 3.10) which applies to all SNAs. The D-G considers that it is necessary to include a policy setting out the need to protect and restore SNAs and other areas of significant indigenous biodiversity in line with the RMA (Part 2, Section 6(c)), CRPS (Policy 9.3.1). The draft NPS-IB (Clause 3.21) also requires Local Authorities to promote the restoration of indigenous biodiversity. The policy should set out the measures in the plan which seek to protect and restore SNAs which also gives effect to the suggested amendments to the objective ECO-01 and ECO02.	Re-order ECO-P5 to follow after ECO-P1 and amend ECO-P5 as follows (or similar): *Protect and restore SNAs and those other areas that meet the criteria set out in APP5 by:* *1. avoiding adverse effects on SNAs including:* *a. loss of ecosystem representation and extent:* *b. disruption to sequences, mosaics, or ecosystems within an SNA;* *c. fragmentation of SNAs or the loss of buffers or connection to other important habitats or ecosystems;* *d. a reduction in the function of the SNA as a buffer or connection to other important habitats or ecosystems;* *e. a reduction in the population size or occupancy of Threatened, At Risk (Declining) species that use an SNA for any part of their life cycle.*	**ECO-P5 Protection of Significant Natural Areas** Except as provided for in ECO-P2, avoid the clearance of indigenous vegetation and earthworks within SNAs, unless these activities: 1. are outside the coastal environment and can be undertaken in a way that protects the identified ecological values *by avoiding adverse effects*; and 2. are for regionally significant infrastructure and it can be demonstrated that adverse effects are managed in accordance with EI-P2 Managing adverse effects of Regionally Significant Infrastructure and other infrastructure.

			2. avoiding the clearance of indigenous vegetation and earthworks within SNAs unless these activities: *a. can be undertaken in a way that protects identified ecological values; and* *b. are for regionally significant infrastructure and it can be demonstrated that adverse effects are managed in accordance with EI-P2 Managing adverse effects of Regionally Significant Infrastructure and other infrastructure in accordance with the effects management hierarchy* *3. promoting the restoration and enhancement of significant indigenous vegetation and habitats; and* *4. supporting and promoting the use of covenants, reserves, management plans and community initiatives.*	
#166.41	ECO – R1.2 ECO – R1.2/ PER-5 ECO-R1.2 Activity status where compliance not achieved	The D-G supports the inclusion of rules that apply to indigenous vegetation clearance in areas next to waterbodies, in the coastal environment, on steep slopes, or at an altitude of 900m or higher. However, it is considered that the rule has missed the opportunity to provide protection for the indigenous vegetation remaining on: 1. threatened land environments, 2. naturally rare ecosystems; and 3. threatened ecosystems. For example, these could be found within uncultivated dryland soils, tussock	**ECO – R1.2** Include new rules to be consistent with the amended ECO-P3 (amendments above) to maintain and enhance indigenous biodiversity inside any ecosystems considered to be rare or threatened. For example, indigenous vegetation clearance should not occur where it is identified that there is the presence of threatened plant species or threatened indigenous fauna species. The threatened species and ecosystems for Timaru District could be listed in an attached Appendix.	**ECO – R-1.2, R-1.4 and ECO-R2/PER2** Add a new RD matter as follows: *Outside the coastal environment, the management of effects in accordance with the effects management hierarchy.*

		grasslands, shrublands, short and tall forest remnants, herbfields and any coastal or dune environments. This could be more specific in terms of what pest plants and pest animals' removal would be permitted. The D-G supports the restricted discretionary status for activities that do not comply with these rules and matters of discretion, however, application of the effects management hierarchy should be included in line with the draft NPS-IB (Clause 3.16). The principles for biodiversity offsetting and compensation provided within Appendix 3 and 4 of the draft NPS-IB could be referenced here to direct the user to these. It should also be clarified that if an area outside an already-mapped SNA is assessed as significant indigenous vegetation and significant habitat of indigenous fauna in accordance with the relevant SNA assessment criteria, the adverse effects on indigenous biodiversity should be managed as if the area were an SNA.	There should be some exclusions for permitted vegetation clearance rules applying to a threatened species and ecosystem list; and excluding clearance within sensitive ecosystems (these could be listed within a schedule or determined by using a suitably qualified ecologist). **ECO – R1.2/ PER-5** This could be more specific in terms of what pest plants and pest animals' removal would be permitted. **ECO-R1-2 Activity status where compliance not achieved** Amend the matters of discretion as follows: Matters of discretion are restricted to: *1. whether the indigenous vegetation is significant (when assessed against the APP5 – Criteria for Identifying Significant Natural Areas) ~~and the ability to retain any significant vegetation~~ then the adverse effects on the indigenous biodiversity in the area shall be assessed as if the area is an SNA; and* *x. the extent to which any adverse effect can be avoided, remedied or mitigated by applying the effects management hierarchy* *2. the condition and character of the indigenous vegetation; and*	

			3. whether the indigenous vegetation provides habitat for threatened, at risk or locally uncommon species; and *4. any adverse effects on indigenous vegetation and habitats of indigenous fauna due to the clearance; and* *5. any adverse effects on the mauri of the site, mahika kai, wāhi tapu or wāhi tāoka values; and* *6. whether species diversity would be adversely impacted by the proposal; and* *7. the role the indigenous vegetation plays in providing a buffer to effects or an ecological corridor; and* *8. any potential for mitigation or biodiversity offsetting or compensation of more than minor residual adverse effects on biodiversity values in accordance with the principles set out in Appendix 3 & 4 of the NPS-IB; and* 9. the economic effects on the landholder of the retention of the vegetation; and 10. any site specific management factors to promote the restoration and enhancement of indigenous vegetation and habitats; and 11. the potential for use of other mechanisms that assist with the protection or enhancement of significant indigenous vegetation such as QE II covenants and the use of Biodiversity Management Plans; and	

			12. any benefits that the activity provides to the local community and beyond.	
#166.43	ECO-R3	The D-G considers that it should be clarified that this rule only applies to the maintenance or repair of the existing National Grid and not for an extension. The matters of discretion should include the application of the effects management hierarchy when assessing the effects in line with the draft NPS guidance.	Amend the rule ECO-R3 PER-1 and the matters of discretion as follows: ECO-R3 PER-1 The vegetation clearance is to provide for the operation, maintenance or repair of the National Grid (but not extension), including maintenance of existing access to National Grid support structures; and… ***Matters of discretion are restricted to:*** *1. any adverse effects on indigenous vegetation and habitats of indigenous fauna and proposed mitigation measures and the extent to which any adverse effect can be avoided, remedied or mitigated by applying the effects management hierarchy.*	
Road Metals #169.19	ECO-P5	The exposure draft of the National Policy Statement for Indigenous Biodiversity (July 2022) (NPSIB) includes consideration of aggregate extraction activities in areas of indigenous biodiversity. This recognises that quarrying activities must be undertaken where the aggregate resources exist and provides for these activities in certain circumstances. We request that provision for aggregate extraction be provided for in ECO-P5, consistent with the exposure draft of the NPSIB.	Amend the wording of ECO-P5 to provide for quarrying activities, consistent with the NPSIB: **ECO-P5 Protection of Significant Natural Areas** *Avoid the clearance of indigenous vegetation and earthworks within SNAs, unless these activities:* *1. can be undertaken in a way that protects the identified ecological values; and*	

			2. are for regionally significant infrastructure and it can be demonstrated that adverse effects are managed in accordance with EI-P2 Managing adverse effects of Regionally Significant Infrastructure and other infrastructure; or *3. are for a quarry that provides significant national or regional public benefit that could not otherwise be achieved domestically.*	
#169.21	New Rule – ECO-R5	As noted in re ECO-P5, the NPSIB recognises the importance of aggregate extraction, which is locationally based. To reflect the policy direction provided by the NPSIB, a new rule should be added to reflect this policy direction and provide for quarrying activities.	**ECO-R5 Clearance of indigenous vegetation for quarrying activities** *Activity status: Restricted discretionary* *The matters of discretion are:* *1. The effects that the vegetation alteration or removal will have on ecological values, including on threatened systems and ecosystems.* *2. The effects that vegetation removal will have on soil conservation, water quality and hydrological function of the catchment* *3. Methods to offset and compensate for the adverse effects of vegetation alteration and removal.* *4. Methods to contain and control plant pathogens.*	Supported by Rooney Group et al (Evidence of Nathan Hole), although no further submission made on this submission point.