

BEFORE THE MACKENZIE DISTRICT COUNCIL

UNDER The Resource Management Act 1991

IN THE MATTER OF Proposed Plan Change 18 to the
Mackenzie District Plan

**STATEMENT OF PRIMARY EVIDENCE OF SUSAN CLARE RUSTON
FOR
MERIDIAN ENERGY LIMITED
12 FEBRUARY 2021**

INTRODUCTION

1. My full name is Susan Clare Ruston.
2. I hold the qualification of a Bachelor of Forestry Science (Hons) degree from the University of Canterbury (1989); and an Executive Masters in Public Administration from Victoria University of Wellington (2011). I have also completed papers in Law and Mediation, Planning Law, Business Law, and Legal Method at Massey University and the University of Waikato. I am a member of the Resource Management Law Association, the New Zealand Planning Institute, and the Resolution Institute.
3. I am a director of PPM Consulting Limited, a resource management and planning consultancy based in Christchurch. I have over 30 years of experience in resource management and planning from within central and local government, and the private sector.
4. I have led policy development in the areas of Resource Management Reform, Environmental Risk, and Hazardous Substances and New Organisms at the Ministry for the Environment (during the periods 2002 to 2005 and 2009 to 2012). I have provided resource management policy and risk management expertise to large private sector organisations such as advising Fonterra Co-operative Group Ltd (as Environmental Policy Manager for the South Island 2013 to 2016) on water policy and preparing submissions on behalf of Fonterra to Commissioner Hearings on regional and district plan changes. As a consultant (with Enspire Consulting Ltd 2017-202, Pure Savvy Ltd 2008-200, Meritec Limited 1998 to 200, and PF Olsen and Company Ltd 1994 to 1997) I have served an extensive range of sectors, for example agriculture, forestry, horticulture, energy generation, aggregate extraction, waste management, hazardous substances, irrigation, roading, tourism, property development, and central and local government policy and regulatory design.
5. Core areas of my resource management practice include policy development and design of regulatory frameworks, evaluation of statutory planning

documents, preparation and evaluation of resource consent applications, and the preparation of planning evidence for council and Environment Court hearings. A list of recent examples of this work is attached as **Annexure 1** to this evidence.

6. Although this is a council hearing, I have read the Environment Court's Code of Conduct for Expert Witnesses, as contained in Section 7 of the Environment Court's Practice Note 2014, and have complied with it in the preparation of this evidence. The data, information, facts and assumptions that I have considered in forming my opinions are set out in my evidence that follows. The reasons for the opinions expressed are also set out in the evidence that follows.
7. I confirm that the matters addressed in this brief of evidence are within my area of expertise, with the exception of where I confirm that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from my opinions expressed in this brief of evidence. I have specified where my opinion is based on limited or partial information and I have identified any assumptions I have made in forming my opinions.

SCOPE OF EVIDENCE

8. This evidence addresses Proposed Plan Change 18 (**PC18**) to the Mackenzie District Plan (**MDP**).
9. I have been asked by Meridian Energy Limited (**Meridian**) to evaluate, under the Resource Management Act 1991 (**the Act**), the following PC18 matters:
 - a) Objectives 1 and 2, and Policies 1 and 2;
 - b) The provisions that directly apply to the Waitaki Power Scheme, that is Policy 7 and Rules 2.1.1, 2.1.1, 2.2.1 and 2.3.1;
 - c) The definition of 'indigenous vegetation'; and

- d) The new definitions sought by submitters for 'no net loss', 'biodiversity offsetting', and 'sites of natural significance', particularly with respect to their consistency with the relevant statutory and planning requirements.
10. **Annexure 2** to this evidence provides a summary of my recommended changes to the provisions listed in a) to d) of the preceding paragraph.
11. In preparing this evidence, I have considered the following:
- a) PC18;
 - b) The relevant sections of the Act;
 - c) The National Policy Statement for Renewable Electricity Generation 2011 (**NPSREG**);
 - d) The National Policy Statement on Electricity Transmission 2008 (**NPSET**);
 - e) The National Policy Statement for Freshwater Management 2020 (**NPSFM**);
 - f) The Canterbury Regional Policy Statement (**CRPS**);
 - g) The Section 32 Report (10 December 2017);
 - h) The submissions and further submissions of Meridian;
 - i) The submissions and further submissions of other submitters;
 - j) The Section 42A Hearings Report (14 December 2020) prepared by Liz White (**the s42A Report**);
 - k) The Section 42A Hearings Report – Ecology (10 December 2020) prepared by Mike Harding (**the s42A Ecology Report**);
 - l) The statement of evidence of Ms Catherine Bryant for Meridian;
 - m) The statement of evidence of Dr Mike Thorsen for Meridian; and
 - n) Te Mana o Te Taiao - Aotearoa New Zealand Biodiversity Strategy 2020.

12. I note that the government has developed a proposed National Policy Statement for Indigenous Biodiversity (**pNPSIB**) which, if gazetted, would require councils to take a more proactive role in protecting biodiversity. The opportunity to make submissions on the pNPSIB has closed and I understand that a National Policy Statement for Indigenous Biodiversity is expected to be gazetted in April 2021.¹ Until it is gazetted, the effect of the pNPSIB is limited to providing an indication of potential national policy. Once a gazetted version comes into force, Mackenzie District Council (**MDC**) will be required² to give effect to it. It is possible that a National Policy Statement for Indigenous Biodiversity will be gazetted prior to MDC's decisions on PC18. Following gazettal, the extent to which it is reasonably practicable for the provisions of PC18 to give effect to a new national policy statement will be confined by the scope within the submissions to make changes to PC18. As the pNPSIB has not yet been gazetted, I have given no weight to it in my assessments that follow.

EXECUTIVE SUMMARY

13. I understand that MDC is in the process of reviewing the MDP, including reviewing matters relating to *"the ongoing loss or potential loss of indigenous biodiversity within the District with a particular focus on meeting the requirements of the Canterbury Regional Policy Statement"*.³ PC18 proposes a new set of objectives, policies, rules and definitions for the management of indigenous biodiversity in the Mackenzie District.
14. Within PC18 I have assessed the proposed provisions with respect to their consistency with the relevant statutory and planning requirements, and more particularly Objectives 1 and 2, Policies 1, 2 and 7, Rules 2.1.1, 2.1.1, 2.2.1 and 2.3.1, and the definition of 'indigenous vegetation'. I have also assessed new definitions sought by submitters for 'no net loss', 'biodiversity offsetting', and 'sites of natural significance'.

¹ Source: <https://www.mfe.govt.nz/consultations/nps-indigenous-biodiversity>

² The Act, Section 75(3)(a)

³ PC18, Page 1

15. In summary, my key findings are as follows:
- a) The Act, the NPSREG, and the CRPS provide a clear regulatory framework for protecting areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna; halting the decline of indigenous biodiversity in Canterbury; and restoring and enhancing indigenous biodiversity in appropriate locations. Given the presence of the Waitaki Power Scheme in the Mackenzie District, the NPSREG is part of this regulatory framework and the Mackenzie District Plan is required to give effect to the NPSREG.⁴
 - b) In my opinion PC18 goes some way to meeting the regulatory requirements of these statutory instruments, however many of the provisions in PC18 are inconsistent with such requirements, and of particular note I consider that PC18 does not fully give effect to the NPSREG and the national significance of the Waitaki Power Scheme. With respect to the matters within the scope of this evidence, I recommend the following changes to PC18 to address the necessary regulatory requirements. Marked up amendments to the provisions are provided in Annexure 2 of this evidence.
 - c) With respect to Objectives 1 and 2 of PC18, I recommend that Objective 1 be deleted in its entirety and that Objective 2 be amended to better recognise the national significance of the Waitaki Power Scheme and that the framework for managing indigenous biodiversity with respect to the activities of the Waitaki Power Scheme differs from the framework that applies to other activities due to the requirements of the NPSREG.
 - d) With respect to Policies 1 and 2, I recommend amendments to remove matters that are not related to the management of indigenous biodiversity, and to remove unnecessary restrictions on development. The latter fails to recognise the no net loss approach set out in the CRPS

⁴ The Act, s75(3)

and the NPSREG, including the full the suite of management options that are available to achieve a no net loss outcome (for example offsetting and compensation).

- e) Policy 7 provides direction to the management of indigenous biodiversity in terms of activities associated to the generation of renewable energy. In my opinion the proposed policy is inconsistent with the NPSREG and the CRPS. In this regard, I consider that the policy does not recognise the national significance of such activities, nor does it provide for the development and operation of renewable energy generation.⁵ Additionally, it does not provide sufficient direction to decision makers when reconciling the management of indigenous biodiversity values with the NPSREG's requirement to provide for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities. To resolve these concerns, I recommend a number of amendments to Policy 7 (as set out in Annexure 2). Key to these changes is enabling indigenous vegetation clearance that is essential for the operation, maintenance and refurbishment of the Waitaki Power Scheme; and providing for the upgrading and development of renewable energy generation, while managing the effects of such activities and having particular regard to the locational and technical constraints associated with renewable electricity generation.
- f) Rules 2.1.1, 2.1.1, 2.2.1 and 2.3.1 in PC18 specifically address indigenous vegetation clearance associated with the Waitaki Power Scheme. I consider that these rules are not consistent with the requirements of the higher order documents, principally due to the rules failing to reflect both the nature and scale of the potential effects of the renewable electricity generation activities and the significance of the environment that may be impacted by the activities. To address these concerns, I recommend a rules framework that permits indigenous vegetation

⁵ NPSREG, Objective

clearance that results from emergency events, and from operating and maintenance activities; permits indigenous vegetation clearance that results from refurbishment in areas that have not been identified as containing significant indigenous vegetation and significant habitats of indigenous fauna, and controls such activities where they are within areas containing significant indigenous vegetation and significant habitats of indigenous fauna; and adopts a discretionary activity status for new structures, works or other activities that are not otherwise provided for in the plan.

- g) With respect to the definition of indigenous vegetation, I have referred to the evidence of Mr Thorsen and I agree that the adoption of his recommended definition for the same is more consistent with the higher order documents than the current definition in PC18 and it is more practical to apply 'on the ground'. Key to this definition is clarity on the extent of exotic versus indigenous vegetation present when determining whether the area is to be constrained by the vegetation clearance rules.
- h) With respect to submitters seeking new definitions for 'no net loss', 'biodiversity offsetting', and 'sites of natural significance', I recommend that the definitions sought not be adopted in PC18. This is principally due to definitions for 'no net loss' and 'biodiversity offsetting' already being established in the CRPS, and due to a definition of sites of natural significance, in my opinion, not being needed to apply the provisions within PC18.

RELEVANT STATUTORY AND PLANNING REQUIREMENTS

- 16. The Mackenzie District Plan must promote the sustainable management of natural and physical resources. This means that it must manage the use, development, and protection of natural and physical resources in a way, or at a rate, that enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while

sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; safeguarding the life-supporting capacity of air, water, soil, and ecosystems; avoiding, remedying, or mitigating any adverse effects of activities on the environment.⁶

17. For the purpose of giving effect to the Act, territorial authorities have the function of maintaining indigenous biological diversity (amongst other matters).⁷ In undertaking these functions, territorial authorities are required to recognise and provide for (amongst other matters) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna⁸; and to have particular regard to (amongst other matters) the intrinsic values of ecosystems⁹, maintenance and enhancement of the quality of the environment¹⁰, any finite characteristics of natural and physical resources¹¹, the efficient use and development of natural and physical resources¹², and the benefits to be derived from the use and development of renewable energy¹³.
18. To assist territorial authorities to carry out their functions, territorial authorities are required to have a district plan.¹⁴ A district plan must give effect to any national policy statement, New Zealand Coastal Policy Statement, a national planning standard and any regional policy statement.¹⁵ Given the location of the district, the New Zealand Coastal Policy Statement does not apply to the content of the Mackenzie District Plan. The National Planning Standards 2019 (**NPS**) requires that the Mackenzie District Plan comply with the standards by May 2024, or through notification of a proposed district plan, and accordingly does not apply to PC18 since the NPS was gazetted after the

⁶ The Act, s5

⁷ The Act, s31(1)(b)(iii)

⁸ The Act, s6(c)

⁹ The Act, s7(d)

¹⁰ The Act, s7(f)

¹¹ The Act, s7(g)

¹² The Act, s7(b)

¹³ The Act, s7(j)

¹⁴ The Act, s73

¹⁵ The Act, s75(3)

public notification of PC18. There are five national policy statements in place addressing urban development, freshwater management, coastal policy, renewable electricity generation and electricity transmission. Of these, the national policy statements for renewable electricity generation and electricity transmission are relevant to decisions on the management of indigenous biodiversity in the Mackenzie District. The relevant regional policy statement is the CRPS.

19. I have considered the relevant sections of the Act, the NPSREG, the NPSET and the CRPS, and with respect to the management of indigenous biodiversity, I understand that the following regulatory framework applies.

a) ***Protect areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna.***

This requirement is established through Section 6(c) of the Act which requires that all persons exercising functions and powers under it (in relation to managing the use, development, and protection of natural and physical resources) recognise and provide for the protection of areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna. Similar to Section 6(c) of the Act, Objective 9.2.3 of the CRPS requires that areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified, and that their values and ecosystem functions are protected; and Policies 9.3.1 and 9.3.2, and Appendix 3 of the CRPS set the criteria for identifying areas of significant indigenous biodiversity.

b) ***Halt the decline of indigenous biodiversity in Canterbury.***

This requirement applies regardless of whether the indigenous biodiversity is found to be 'significant' or not. This requirement is established through Sections 7(f) and 7(g) of the Act which require decision makers to have particular regard to maintaining and enhancing the quality of the environment, and to the finite characteristics of natural and physical resources; and through Section 31(1)(b)(iii) of the

Act which sets as a function of territorial authorities *“the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of...the maintenance of indigenous biological diversity”*. This requirement is also established through Objective 9.2.1 of the CRPS which seeks to halt the decline in the quality and quantity of indigenous biodiversity and to safeguard their life-supporting capacity and mauri.

c) ***Restore and enhance indigenous biodiversity.***

This is established through Section 7(f) of the Act which requires that particular regard be given to enhancement of the quality of the environment. It is also established through Objective 9.2.2 of the CRPS which requires *“Restoration or enhancement of ecosystem functioning and indigenous biodiversity, in appropriate locations, particularly where it can contribute to Canterbury’s distinctive natural character and identity and to the social, cultural, environmental and economic well-being of its people and communities”*, and through Policy 9.3.4 of the CRPS which requires decision makers to *“promote the enhancement and restoration of Canterbury’s ecosystems and indigenous biodiversity, in appropriate locations, where this will improve the functioning and long term sustainability of these ecosystems”*.

20. Further to the preceding provisions, Policy 10.3.2(2) of the CRPS requires that *“riparian zones”* be maintained and/or enhanced where they *“have ecological values for which protection and/or enhancement will assist in the establishment or re-establishment of indigenous biodiversity or ecosystems, particularly for ecosystems that are threatened or unrepresented in protected areas”*.
21. At the same time, the Act, the NPSREG and the CRPS direct that recognition be given to the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities.

22. Sections 7(i) and 7(j) of the Act require (respectively) that all persons exercising functions and powers under the Act have particular regard to the effects of climate change and to the benefits to be derived from the use and development of renewable energy.
23. Policy A of the NPSREG requires that decision makers recognise and provide for the national significance of renewable electricity generation activities, including the national, regional and local benefits relevant to renewable electricity generation. These benefits include (amongst other matters) maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions. Other policies within the NPSREG require that decision makers have particular regard to the following:
 - a) Maintenance of the generation output of existing renewable electricity generation activities requiring protection of the assets, operational capacity and continued availability of the renewable energy resource (Policy B (a)); and
 - b) The need to locate renewable electricity generation activity where the renewable energy resource is available (Policy C1 (a)); and
 - c) The logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity (Policy C1(b)); and
 - d) The location of existing structures and infrastructure including...the need to connect renewable electricity generation activity to the national grid (Policy C1(c)); and
 - e) Designing measures that allow operational requirements to complement and provide for mitigation opportunities (Policy C1(d)); and
 - f) Adaptive management measures (Policy C1(e)).

24. The NPSREG also requires that when considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision makers must have regard to offsetting measures or environmental compensation, including measures or compensation that benefits the local environment and community affected (Policy C2).
25. With respect to the CRPS, Objective 16.2.2 aims to achieve reliable and resilient generation and supply of energy for the region, and wider contributions beyond Canterbury, with a particular emphasis on renewable energy. Subsection (6) of Objective 16.2.2 recognises the locational constraints in the development of renewable electricity generation activities and that where adverse effects on significant natural and physical resources and cultural values cannot be avoided, they should be remedied or mitigated.
26. Policy 16.3.3 of the CRPS requires that decision makers recognise and provide for the local, regional and national benefits when considering proposed or existing renewable energy generation facilities; and, in doing so, that they have particular regard to (amongst other matters):
- “1. maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;*
 - 2. maintaining or increasing the security of supply at local and regional levels, and also wider contributions beyond Canterbury; by diversifying the type and/or location of electricity generation;*
 - 3. using renewable natural resources rather than finite resources.”*

27. I understand that the regulatory focus on increasing renewable electricity generation primarily stems from the need to replace the use of finite resources and avoid, reduce or displace greenhouse gas emissions and associated changes in climate.¹⁶

NATIONAL SIGNIFICANCE OF THE WAITAKI POWER SCHEME

28. Ms Bryant has described in her evidence the substantive infrastructure of the Waitaki Power Scheme (**the Scheme**), including the Scheme's existing footprint, core sites and areas covered by an operating easement. I understand from Ms Bryant's evidence that the Scheme is New Zealand's largest generator of electricity; that it provides on average approximately 18% of New Zealand's annual electricity generation requirements; and that at times the Scheme contributes approximately 30% of New Zealand's total generation during peak demand periods. Further to this, Lakes Tekapo and Pukaki together provide approximately 60% of New Zealand's active hydro storage, and this storage is critical to enabling the traditionally higher summer inflows into these lakes to be retained so that hydroelectricity can be reliably generated during winter when consumer demand is highest. Given the large storage and generation capacity of the Scheme, I understand that there is no readily available alternative generation in New Zealand that could substitute the volume of electricity produced by the Scheme.
29. The Scheme is recognised in the CRPS as "*nationally significant*"¹⁷; and the NPSFM identifies the Scheme as one of five large hydroelectricity generation schemes in New Zealand that warrant particular regard for their contribution to meeting New Zealand's greenhouse gas emissions and to maintaining the security of New Zealand's electricity supply (amongst other matters).¹⁸ I

¹⁶ NPSREG, Policy A (a) and (c)

¹⁷ CRPS, Page 96

¹⁸ NPSFM, Clause 3.31

understand that the Scheme is a key contributor to achieving the current government's target to have 100% of electricity generated from renewable resources in an average hydrological year by 2035¹⁹; and to achieving New Zealand's international commitment under the Paris Agreement to achieve net zero carbon emissions by 2050.

30. Based on the preceding matters, I understand that the Scheme is a nationally significant producer of renewable electricity, and that it has a key role in ensuring that the objective of the NPSREG is able to be achieved.
31. Accordingly, in combination, the Act, the NPSREG and the CRPS require that the Mackenzie District Plan recognise and provide for the national significance of the Scheme's renewable electricity generation activities, including the national, regional and local benefits relevant to these activities. With this, particular regard must be given to the need to locate the renewable electricity generation activity where the renewable energy resource is available, and to the logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity.
32. Meridian's submissions on PC18 focus on the consistency of PC18 with respect to the higher order documents (i.e., the Act, the NPSREG and the CRPS). In particular, Meridian submitted that PC18 does not adequately provide for the national significance of the Scheme, and sought changes to PC18 to ensure that the Scheme can continue to be operated, maintained, upgraded and developed.
33. I now consider the provisions of PC18 that Meridian has asked me to address.

OBJECTIVES 1 AND 2

34. Having considered PC18 as a whole in the first instance, in my opinion the regulatory requirements that are summarised in paragraph 19 of this evidence

¹⁹ <https://www.labour.org.nz/release-renewable-electricity-generation-2030>

are not clearly addressed in the PC18 provisions. In brief, I consider that inconsistent terminology, the inclusion of matters beyond the management of indigenous biodiversity, and duplication between objectives and between policies (amongst other issues) lead to PC18 lacking clarity. The lack of clarity will, in my opinion, make implementation of PC18 difficult and may result in unintended outcomes that could see indigenous biodiversity adversely impacted and/or activities (such as Meridian's operating, maintenance, upgrading and development activities) being unnecessarily constrained. Further to this, I consider that PC18, in a number of areas, is inconsistent with the higher order documents and I will address this in more detail for those matters that are within the scope of my evidence.

35. Within regulatory plans, objectives set out what is aimed for in overcoming an issue or promoting a positive outcome, and they need to be clear enough to allow policies to be drafted to ensure that the objectives are achieved. In my opinion, Objectives 1, 2 and 3 together lack such clarity for the following reasons:
- a) The outcomes of "*protection*", "*enhancement*" and "*maintenance*" are included in each of the objectives (in various formations); and each outcome is applied to differing environmental components (for example, 'indigenous vegetation', 'significant indigenous vegetation', 'values associated with significant indigenous biodiversity, 'habitats', 'riparian areas', and 'natural and biological and physical processes') or combinations of components;
 - b) Objective 2 requires the "*retention*" of indigenous vegetation, and it is not clear in PC18 or the s32 Report how this differs from "*maintain*"; further to this, "*retention*" is not used in the Act or the CRPS;
 - c) Each of the objectives are, in my opinion, more consistent with the character of a policy (that is the course of action to be pursued to achieve the objective) than the character of an objective.

36. More specifically, Objective 1, in my opinion, appears to be addressing the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and to halting the decline in indigenous biodiversity more broadly. However, this is made unclear by its references to *“enhancement”* of *“habitats”* and *“riparian margins”*.
37. I understand that the ‘habitats’ requiring protection are the significant habitats of indigenous fauna, and the riparian zones that are to be maintained and/or enhanced are those that *“have ecological values for which protection and/or enhancement will assist in the establishment or re-establishment of indigenous biodiversity or ecosystems, particularly for ecosystems that are threatened or unrepresented in protected areas”*²⁰.
38. Objective 1 also refers to *“the maintenance of natural biological and physical processes”*. In my opinion, it is not clear what processes Objective 1 is referring to. For example, as drafted Objective 1 could mean that the ‘natural processes’ of exotic weeds are to be maintained. It is possible that Objective 1 seeks to maintain natural biological and physical processes that will assist in the establishment or re-establishment of indigenous biodiversity or ecosystems, particularly for ecosystems that are threatened or unrepresented in protected areas, however this is not reflected in PC18’s Objective 1.
39. I have considered the s32 Report for PC18 and note that this does not provide an explanation of why Objective 1 would extend to all riparian areas or all natural biological and physical processes. Further, by adopting the phrase *“significant indigenous vegetation and habitats”* in Objective 1, rather than the phrase *“significant indigenous vegetation and significant habitats of indigenous fauna”*, as used in the higher order documents, Objective 1 fails to include management of habitats that may not include indigenous vegetation but that are important to significant indigenous fauna. The effects of Objective 1 as notified have not been assessed in the s32 Report.

²⁰ CRPS, Policy 10.3.2

40. Objective 2 appears, in my opinion, to be stating how Objective 1 will be achieved. My comments with respect to Objective 1 equally apply to Objective 2. In addition, Objective 2 includes *“the retention of indigenous vegetation”*. Given that Objective 2 also refers to *“maintenance of indigenous biodiversity”*, *“protection and/or enhancement of significant indigenous vegetation”* and *“the maintenance of natural biological...processes”*, it is not clear to me what is required with respect to *“the retention of indigenous vegetation”* and how retention differs from the other requirements of Objective 2.
41. Meridian’s submissions on Objectives 1 and 2 sought greater clarity between what is to be achieved for areas of significant indigenous vegetation and significant habitats of indigenous fauna, and what is to be achieved for biodiversity more generally. Their submissions also sought greater consistency with the CRPS, and the insertion of a new objective that specifically addressed the management of indigenous biodiversity within areas that are part of the Scheme.
42. The s42A Report did not support a specific objective addressing the management of indigenous biodiversity within areas that are part of the Scheme; and it recommended that Objective 1 be deleted and that Objective 2 be amended as shown in red below:

“Land use and development activities are managed to:

- a) ensure the maintenance of indigenous biodiversity; and*
- b) ~~including the protection and/or enhancement of~~ significant indigenous vegetation and significant habitats of indigenous fauna and riparian areas; ~~the maintenance of natural biological and physical processes; and the retention of indigenous vegetation.”~~*

43. I agree with the recommendation in the s42A Report to delete Objective 1, and I consider that the recommended changes to Objective 2 moves the objective closer to meeting the requirements of the higher order documents. However,

in my opinion, there remain three areas of concern with the changes recommended in the s42A Report.

44. My first concern is that Objective 2 does not recognise the national significance of the Scheme, and that this significance needs to be reconciled with the management of indigenous biodiversity in a different way than when reconciling the potential effects of other land use activities on indigenous biodiversity. The difference in approach is established by the requirements of the NPSREG and the CRPS; and I consider that Policy 7 of PC18 is the appropriate place to set the management approach (with respect to indigenous biodiversity) that is specific to the Scheme.
45. To address my concern, I recommend adding a further subsection to Objective 1 that reads:

“(c) despite (a) and (b) to recognise the national significance of the Waitaki Power Scheme and appropriately manage effects on indigenous biodiversity from the Scheme’s development, operation, upgrading and maintenance.”

46. In the absence of such a subsection in Objective 2, I consider that the objective is not recognising and providing for the national significance of the Scheme, and therefore PC18 is not giving effect to the NPSREG or the CRPS.
47. My next concern relates to the objective of enhancing significant indigenous vegetation and significant habitats of indigenous fauna, regardless of the situation. Objective 9.2.2 of the CRPS seeks to achieve the restoration or enhancement of indigenous biodiversity *“...in appropriate locations, particularly where it can contribute to Canterbury’s distinctive natural character and identity and to the social, cultural, environmental and economic well-being of its people and communities”*. Objective 9.2.2 of the CRPS does not require restoration or enhancement of indigenous biodiversity in all situations. For example, where biodiversity values are considered to be high, it may be unnecessarily costly to require further enhancement and the degree

of enhancement possible may diminish over time. Better environmental outcomes may be achieved by targeting efforts and funds to enhancing highly degraded areas of significant indigenous vegetation and significant habitats of indigenous. On this basis, I recommend that Objective 2 only require enhancement of significant indigenous vegetation and significant habitats of indigenous fauna where it is practicable.

48. My third concern relates to the reference to riparian areas in the s42A Report's recommended Objective 2. To achieve Objective 2, all riparian areas would need to be protected and enhanced regardless of whether they contain significant indigenous vegetation or contain ecological values for which protection and/or enhancement will assist in the establishment or re-establishment of indigenous biodiversity.
49. Since PC18 addresses matters related to the "*ongoing loss or potential loss of indigenous biodiversity within the District*"²¹, I consider that it is not necessary in PC18 to require the protection and enhancement of all riparian areas regardless of whether they contribute to indigenous biodiversity or not. If a riparian area contains or contributes to indigenous biodiversity generally, then Objective 2(a) of the s42A Report's recommended version requires that it be maintained; and if it contains or contributes to an area of significant indigenous vegetation or significant habitats of indigenous fauna, then Objective 2(b) of the s42A Report's recommended version requires that it be protected, regardless of whether the reference to riparian areas remains within the Objective. On this basis, I consider that there is no need to specifically refer to riparian areas in Objective 2.
50. Based on the preceding assessment, I recommend that Objective 2 be amended as follows (where the recommendations of the s42A Report are shown in red and my amendments are shown in blue).

²¹ PC18, Page 1

“Land use and development activities are managed to:

- a) *ensure the maintenance of indigenous biodiversity; and*
- b) *~~including the~~ protection and where practicable ~~for~~ enhance~~ment of~~ areas of significant indigenous vegetation and significant habitats of indigenous fauna ~~and riparian areas; the maintenance of natural biological and physical processes; and the retention of indigenous vegetation; and~~*
- c) *despite (a) and (b) to recognise the national significance of the Waitaki Power Scheme and appropriately manage effects on indigenous biodiversity from the Scheme’s development, operation, upgrading and maintenance.*”

POLICY 1

51. Meridian’s submissions on Policy 1 sought the removal of the part of the policy that seeks to prevent development where it reduces the values of significant indigenous vegetation and significant habitats of indigenous fauna. Meridian was concerned that preventing development where the values of significant indigenous vegetation or habitat are reduced is unnecessarily restrictive, and that such an approach is not consistent with the CRPS. I hold the same concern with Policy 1 and also consider that it is not consistent with the NPSREG. Policy 9.3.1(3) of the CRPS seeks to ensure 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”*. The no net loss approach is consistent with Policy C2 of the NPSREG which requires that when decision makers are considering any residual environmental effects of renewable electricity generation activities²² that cannot be avoided, remedied or

²² Renewable electricity generation activities are defined in the NPSREG as *“the construction, operation and maintenance of structures associated with renewable electricity generation. This includes small and community-scale distributed renewable generation activities and the system of electricity conveyance required to convey electricity to the distribution network and/or the national grid and electricity storage technologies associated with renewable electricity”*.

mitigated, they must have regard to offsetting measures or environmental compensation, including measures or compensation that benefits the local environment and community affected.

52. With respect to the CRPS, Policy 9.3.6 sets criteria to be applied when using “*biodiversity offsets*” to achieve no net loss. Further, Policies 16.3.5(2)(i) and 16.3.5(4) of the CRPS seek to ensure that efficient, reliable and resilient electricity generation within Canterbury is recognised and provided for by:

16.3.5(2)(i) *“enabling the upgrade of existing, or development of new electricity generation infrastructure...provided that, as a result of site, design and method selection... the adverse effects on significant natural and physical resources or cultural values are avoided, or where this is not practicable remedied, mitigated or offset”;*

16.3.5(4) *“maintaining the generation output and enabling the maximum electricity supply benefit to be obtained from the existing electricity generation facilities within Canterbury, where this can be achieved without resulting in additional significant adverse effects on the environment which are not fully offset or compensated”.*

53. On this basis, I consider that proposed Policy 1 puts undue focus on preventing development and that there is sufficient lack of clarity in the words “*which reduces the values of these sites*” (for example there is no reference to a net loss in values) to lead Policy 1 to be inconsistent with the CRPS and the NPSREG.

54. The s42A Report has recommended that Policy 1 be amended as follows (where the recommendations of the s42A Report are shown in red):

“To identify ~~in the District Plan~~ sites of significant indigenous vegetation or habitat in accordance with the criteria listed in the

Canterbury Regional Policy Statement ~~and to prevent development which reduces the values of these sites.~~

55. For the reasons previously set out, I agree with the recommended deletion of the words *“and to prevent development which reduces the values of these sites”*.
56. With respect to deletion of the words *“in the District Plan”*, my preferred approach to the management of areas of significant indigenous vegetation and significant habitats of indigenous fauna is to have such areas fully identified within the planning maps (through the Act’s required plan change process) and for the policies and rules to refer to these accordingly when constraining activities in the district. Such an approach provides the greatest opportunity for landowner certainty (and accountability) when undertaking activities. It also provides a process of natural justice for landowners and the community to present their evidence for, or against, the inclusion of certain areas in the district plan as identified areas of significant indigenous vegetation and significant habitats of indigenous fauna.
57. While this is my preferred approach, I appreciate that the MDP and PC18 do not currently contain such a comprehensive list of identified areas of significant indigenous vegetation and significant habitats of indigenous fauna. In the absence of such a list, I consider that it is consistent with the Act and the CRPS to establish a regulatory framework that allows for the identification and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna on an ongoing basis, and avoids the need for plan changes before such areas can be recognised as significant and thereafter be protected. On this basis, I agree with the s42A Report’s recommended deletion of the words *“in the District Plan”*.
58. Where my opinion differs from the s42A Report’s recommendations is use of the words *“sites of significant indigenous vegetation or habitat”*. All objectives and policies relating to indigenous biodiversity in the CRPS refer to *“areas of*

significant indigenous vegetation and significant habitats of indigenous fauna”, as does Section 6(c) of the Act. It is not clear to me what the intended difference is between an ‘area’ and a ‘site’, and if there is no intended difference then I consider it is most appropriate to use the term adopted in the Act and the CRPS. Further and as discussed with respect to Objectives 1 and 2, I consider that ‘significant indigenous vegetation or habitat’ (as used in Policy 2 and other parts of PC18) is not the same as ‘significant indigenous vegetation and significant habitats of indigenous fauna’ (as used in the Act and the CRPS). The former is less clear, and could be read as excluding areas of exotic vegetation that provide significant habitat for indigenous fauna. Such an approach would, in my opinion, be inconsistent with the Act and the CRPS. On this basis I consider that the phrase ‘significant indigenous vegetation and significant habitats of indigenous fauna’ should replace the term ‘significant indigenous vegetation or habitat’ throughout PC18.

59. Subject to adoption of my preceding recommendations, this leaves Policy 1 requiring the identification of sites of significant indigenous vegetation and habitats of indigenous fauna, and leaves the remaining policies to direct how indigenous biodiversity within these areas, and beyond, are to be managed. I consider this to be appropriate within PC18.
60. Based on the preceding assessment, I recommend the following amendments to Policy 1 (where the recommendations of the s42A Report are shown in red and my amendments are shown in blue):

“To identify ~~in the District Plan sites~~ areas of significant indigenous vegetation and ~~or~~ significant habitats of indigenous fauna in accordance with the criteria listed in the Canterbury Regional Policy Statement ~~and to prevent development which reduces the values of these sites~~”

POLICY 2

61. The notified version of Policy 2 seeks to avoid, remedy or mitigate adverse effects on “*remaining areas of significant indigenous vegetation and habitat, and linkages between these areas*”; and to avoid, remedy or mitigate adverse effects on matters beyond indigenous biodiversity, such as “*natural character*”, “*landforms*”, “*physical processes and hydrology*”, and “*water quality and quantity*”. In my opinion, management of adverse effects on matters beyond indigenous biodiversity should be addressed elsewhere in the MDP (where they fall within the function of a territorial authority). Where there is a relationship between indigenous biodiversity and other resource management matters, then the MDP should clearly set out how integrated management will be achieved.
62. Consistent with their submissions on Objectives 1 and 2, Meridian’s submissions on Policy 2 sought greater clarity on what is to be achieved for identified areas of significant indigenous vegetation and significant habitats of indigenous fauna, and what is to be achieved for biodiversity more generally. Their submissions also sought greater consistency with the CRPS and the NPSREG, and thereby the deletion of matters that are beyond management of indigenous biodiversity.
63. The s42A Report has recommended that Policy 2 be amended as follows (where the recommendations of the s42A Report are shown in red):

“Outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna, To avoid, remedy or mitigate adverse effects on the natural character and indigenous vegetation, ecological processes, ecosystem functions and linkages between areas of significant indigenous vegetation and significant habitats of indigenous fauna as necessary to ensure that indigenous biodiversity is maintained, land and water ecosystems functions in the District including:

~~a) Landform, physical processes and hydrology~~

~~b) Remaining areas of significant indigenous vegetation and habitat, and linkages between these areas~~

~~c) Aquatic habitat and water quality and quantity.”~~

64. I agree with the s42A Report’s recommended deletions to Policy 2 since they narrow the focus of the policy towards the management of indigenous biodiversity and remove matters that stray into regional council functions, (such as managing water quality and quantity matters. However, in my opinion, the recommended text for Policy 2 remains unclear. I understand that Policy 2 is addressing the management of indigenous biodiversity outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and that Policy 3 is addressing the management of indigenous biodiversity within identified areas of significant indigenous vegetation and significant habitats of indigenous fauna. This relationship, in my opinion, becomes unclear by inclusion of the words *“indigenous vegetation, ecological processes, ecosystem functions and linkages between areas of significant indigenous vegetation and significant habitats of indigenous fauna as necessary”*. In my opinion these words are not needed since an adverse effect on indigenous vegetation would also be an adverse effect on ecological processes and ecosystem functions; and where an activity occurs outside an area that has been identified as significant and has an adverse effect on an area identified as significant, then Policy 3 would apply to the activity. Further, *“the linkages between areas of significant indigenous vegetation and significant habitats of indigenous fauna”* are also addressed by Policy 3 which sets out to achieve no net loss in significant indigenous biodiversity values.
65. Based on the preceding assessment, I recommend the following amendments to Policy 2 (where the recommendations of the s42A Report are shown in red and my amendments are shown in blue):

~~“Outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna, To avoid, remedy or mitigate adverse effects on the natural character and indigenous vegetation, ecological processes, ecosystem functions and linkages between areas of significant indigenous vegetation and significant habitats of indigenous fauna as necessary to ensure that indigenous biodiversity is maintained land and water ecosystems functions in the District including:~~

~~a) Landform, physical processes and hydrology~~

~~b) Remaining areas of significant indigenous vegetation and habitat, and linkages between these areas~~

~~c) Aquatic habitat and water quality and quantity.”~~

INDIGENOUS VEGETATION CLEARANCE ASSOCIATED WITH THE WAITAKI POWER SCHEME

66. The PC18 provisions that directly apply to the Scheme include Policy 7 and Rules 2.1.1, 2.1.2, 2.2.1 and 2.3.1. The following evaluation addresses each provision in turn.

Policy 7

67. The notified version of Policy 7 reads as follows:

“To recognise the economic and social importance of renewable energy generation and transmission consistent with objectives and policies of this Plan, to provide for its upgrading, maintenance and enhancement.”

68. Meridian’s submissions on Policy 7 sought recognition of the national significance of renewable energy generation and transmission; deletion of the words *“consistent with the objectives and policies of this plan”*; better recognition of the practical, technical and locational constraints of the WPS; adoption of a range of options for managing potential adverse effects on

indigenous biodiversity; removal of overlaps with the NPSET; and amendments to give effect to the NPSET. The relief sought included the addition of a list of features to be ‘recognised and provided for’. Genesis lodged similar submissions.

69. In my opinion, the notified version of Policy 7 does not address the management of indigenous biodiversity, rather it broadly requires recognition of the importance of renewable energy generation and transmission and provision for its upgrading, maintenance and enhancement. On this basis, I consider that Policy 7, as notified, does not belong in a chapter that focuses on the management of indigenous biodiversity. In my opinion, Policy 7 should be redrafted to provide direction on how indigenous biodiversity is to be managed (to achieve the indigenous biodiversity objectives) where it is associated with nationally significant renewable energy generation and transmission. With this, I consider that it would be helpful to list in Policy 7 the matters that should be considered when a resource consent application is needed for indigenous vegetation clearance related to the development, operation, maintenance and upgrading of existing and new renewable electricity generation and transmission activities.

70. The s42A Report recommends that Policy 7 be amended as follows:

“To manage effects on indigenous biodiversity in a way that recognises the economic and social importance of renewable energy generation and transmission ~~consistent with objectives and policies of this Plan, to~~ and provides for its development, operation, upgrading, and maintenance ~~by: and enhancement.~~”

1. Enabling indigenous vegetation clearance that is essential for the operation and maintenance of the Waitaki Power Scheme; and

2. Providing for the upgrading and development of renewable energy generation, while managing the effects of

development on indigenous biodiversity, taking into account:

- a. The location of existing structures and infrastructure and the need to locate the activity where the renewable energy resource is available; and
- b. the wide extent and high value of significant indigenous vegetation and habitat within and associated with the Tekapo, Pūkaki and Ohāu river systems; and
- c. logistical or technical practicalities associated with the activity; and
- d. the importance of maintaining the output from existing renewable electricity generation activities; and
- e. In respect of Policy 6, environmental compensation which benefits the local environment affected, as an alternate, or in addition to offsetting, to address any residual environmental effects.”

71. While I generally consider that Policy 7, as recommended by the s42A Report, is an improvement on the notified version, I consider that it does not fully reflect the requirements of the higher order documents.
72. My first concern relates to the s42A Report’s recommended Policy 7(1). This focuses on enabling indigenous vegetation clearance that is essential for the operation and maintenance of the Scheme. I consider that this should be extended to also enable indigenous vegetation clearance that results from an emergency event or that is essential for the refurbishment of the Scheme.
73. Given the nature and scale of the Scheme’s infrastructure, an emergency event such as an emergency overflow may result in indigenous vegetation clearance that is not controllable by Meridian, or that may be a consequence of decisions

related to protecting human safety or the integrity of key infrastructure. On this basis, I consider that such vegetation clearance should be provided for without the need for authorisation.

74. Refurbishment of the Scheme is defined in PC18 as *“the upgrade or renewal (to gain efficiencies in generating and transmitting electricity) of machinery, buildings, plant, structure, facilities works or components and operating facilities associated with the Waitaki Power Scheme”*. I understand that enabling improvements in the efficiency of existing ‘machinery, buildings, plant, structure, facilities works or components and operating facilities’ avoids potential reductions in renewable electricity generation, and potentially increases renewable electricity generation, from existing structures. This is consistent with Policies A(a) and B(b) of the NPSREG which respectively require decision-makers to recognise and provide for *“the national significance of renewable electricity generation activities”* including the benefits of *“maintaining or increasing electricity generation capacity”*, and to have particular regard to *“even minor reductions in generation output of existing renewable electricity generation activities can cumulatively have significant adverse effects on national, regional and local renewable electricity generation output”*. It is also consistent with Policies 16.3.5(2)(i) and 16.3.5(4) of the CRPS which seek to enable the upgrading of existing electricity generation infrastructure, and to enable the maximum electricity supply benefit to be obtained from the existing electricity generation facilities. I do not consider that enabling refurbishment ignores the potential adverse environmental effects that may be associated with such an activity, since the act of enabling can be subject to appropriate management of such potential effects. I address this later in this evidence in regard to Rule 2.1.1.
75. Moving to my next concern, Meridian’s submissions on Policy 7 sought recognition of the national significance of renewable energy generation and the electricity transmission network, and I agree that this would assist the implementation of the plan. As previously identified in this evidence, the Scheme is the largest generator of electricity in New Zealand, and it is

recognised in the CRPS as being nationally significant. The Objective of the NPSREG is to *“recognise the national significance of renewable electricity generation activities...”*, and the *“national significance”* recognised in the NPSREG includes not only economic and social benefits (as referred to in PC18’s Policy 7) but also includes *“avoiding, reducing or displacing greenhouse gas emissions”*; *“using renewable natural resources rather than finite resources”*; and *“avoiding reliance on imported fuels for the purposes of generating electricity”*. On this basis, I consider that Policy 7 would be improved by referring to the *“national significance of renewable electricity generation activities and the electricity network”*, thereby recognising the full suite of national benefits from such activities. Further to this, in my opinion clear recognition of the national significance of renewable electricity generation activities in Policy 7 helps to establish the need for specifically addressing vegetation clearance related to the Scheme in Rules 2.1 to 2.3 in PC18.

76. Thirdly, the s42A Report’s recommended Policy 7(2) adopts the term *“taking into account”* and then lists particular matters. Amongst these matters are *“The location of existing structures and infrastructure and the need to locate the activity where the renewable energy resource is available”*, the *“logistical or technical practicalities associated with the activity”* and *“the importance of maintaining the output from existing renewable electricity generation activities”*. These are matters that the NPSREG requires decision-makers to *“have particular regard to”* rather than *“take into account”*. The s42A Report does not explain the rationale for, or implications of, the change in the directive used. In my opinion, it is more appropriate for Policy 7(2) to adopt *“have particular regard to”* when referring to matters identified in Policies B and C1 of the NPSREG. Further to this, Policy A (a) and (b) of the NPSREG requires that decision makers recognise and provide for the benefits of *“maintaining or increasing”* electricity generation and the security of electricity supply. On this basis I consider that recognition of the benefits of increasing renewable electricity generation should also be included in Policy 7 of PC18.

77. With respect to the s42A Report’s recommended inclusion of Policy 7(2)(b), that is *“the wide extent and high value of significant indigenous vegetation and habitat within and associated with the Tekapo, Pūkaki and Ohāu river systems”*, if these river systems are of sufficient significance to specifically identify them within Policy 7 then in my opinion the values referred to should also be considered when making decisions on activities beyond renewable electricity generation and transmission. At the same time, I consider that Policy 7(2)(b) is not needed since Policy 1 (regarding the identification of areas of significant indigenous vegetation and significant habitats of indigenous fauna) and Policy 3 (which requires no net loss of significant indigenous biodiversity) provide for the management of areas of significant indigenous biodiversity.
78. With respect to the s42A Report’s recommended inclusion of Policy 7(2)(e), I consider that the cross reference to Policy 6 (which identifies criteria for applying biodiversity offsetting) is unclear. For example, it is not clear whether the s42A Report’s recommended Policy 7(2)(e) is establishing a further criterion for adopting indigenous biodiversity offsetting that applies only when providing for the upgrading and development of renewable energy generation, or whether it replaces the criteria listed in Policy 6. To resolve this, I recommend adopting a specific subpart to Policy 7 that more clearly aligns with Policy C2 of the NPSREG (as set out in the following recommendations).
79. Based on the preceding assessment, I recommend the following amendments to Policy 7 (where the recommendations of the s42A Report are shown in red and my amendments are shown in blue):

“To manage effects on indigenous biodiversity in a way that recognises the economic and social national significance importance of renewable energy generation activities and the electricity transmission network ~~consistent with objectives and policies of this Plan, to~~ and provides for their its development, operation, upgrading, and maintenance ~~by: and enhancement.~~”

1. Enabling indigenous vegetation clearance that is essential for the operation, ~~and maintenance~~ and refurbishment of the Waitaki Power Scheme; and
2. Providing for the upgrading and development of renewable energy generation, while managing the effects of upgrading and development on indigenous biodiversity, ~~taking into account~~ and having particular regard to:
 - a) ~~The location of existing structures and infrastructure;~~ and
 - b) the need to locate renewable energy generation activities ~~the activity~~ where the renewable energy resource is available; and
 - ~~a. the wide extent and high value of significant indigenous vegetation and habitat within and associated with the Tekapo, Pūkaki and Ohāu river systems; and~~
 - c. the logistical or technical practicalities associated with the activity; and
 - d. the importance of maintaining and increasing the output from existing renewable electricity generation activities; and
 - ~~e. In respect of Policy 6, environmental compensation which benefits the local environment affected, as an alternate, or in addition to offsetting, to address any residual environmental effects.~~
3. When considering any residual environmental effects of renewable electricity generation activities or electricity transmission activities that cannot be avoided, remedied or mitigated, having regard to offsetting measures or

environmental compensation, including measures or compensation that benefits the local environment and community affected.”

80. For completeness, I note that this policy would not be read in isolation of the other policies in PC18, therefore it does not lead to potential adverse environmental effects arising from renewable energy generation activities being ignored.

Rules 2.1 to 2.3 Indigenous Vegetation Clearance Associated with the Waitaki Power Scheme

81. In brief, PC18 provides for indigenous vegetation clearance that is associated with the Scheme as follows:

Permitted activities:

- a) Clearance as a consequence of an emergency (Rule 2.1.1);
- b) Clearance for the operation and maintenance of the Scheme within the existing footprint of the Scheme, core sites associated with the Scheme, and areas covered by an operating easement associated with the Scheme (Rule 2.1.2);

Restricted discretionary activities:

- a) Clearance associated with refurbishment of the Scheme within the existing footprint of the Scheme, core sites associated with the Scheme, and areas covered by an operating easement associated with the Scheme (Rule 2.2.1);

Discretionary activities:

- a) Clearance associated with any new facility, structure or works associated with the Scheme (Rule 2.3.1).

82. Meridian’s submissions sought to retain Rule 2.1.1; add a new rule that permitted any activity that is otherwise permitted by Rule 1.1.1 of PC18; amend Rule 2.1.2 to provide for refurbishment of the Scheme as a permitted

activity and thereby delete Rule 2.2.1; and amend Rule 2.3.1 to address any activity that is not otherwise permitted and to address indigenous vegetation clearance that is necessary to increase the maximum operating level of a lake or water storage area to create a new lake or water storage area.

83. I agree with the s42A Report where it states that *“the NPSREG does not direct that the environmental effects arising from REG activities are ignored...What the NPSREG requires is that the provisions within PC18 continue to provide for the development, operation, maintenance and upgrading of the WPS, as a REG activity. Provision can still be made for these activities through a consenting framework provided that the requirement for consent in relation to indigenous vegetation clearance does not impede the direction of the NPSREG”*.²³ The resulting challenge is how to design a rules framework that provides the appropriate management of indigenous biodiversity while at the same time giving effect to the NPSREG.
84. In my opinion, the rules framework needs to reflect both the nature and scale of the potential effects of the renewable electricity generation activities and the significance of the environment that may be impacted by the activities.
85. The s42A Ecology Report discusses the potential effects of indigenous vegetation associated with the operation, maintenance and refurbishment of the Scheme. In this report, Mr Harding considers that the potential adverse ecological effects of refurbishment are likely to be greater than the adverse effects of maintenance and operation. In this regard, Mr Harding states that *“The ecological effects of refurbishment (upgrade and renewal) will likely be greater than the ecological effects of maintenance and operation, because any new works will likely remove or disturb additional areas of significant indigenous vegetation or habitat”*²⁴. It is not clear to me how this position is established since it implies that all areas not already hosting a structure or activity associated with the Scheme are, or will be, identified as an area of

²³ s42A Report, paragraph 302

²⁴ s42A Ecology Report, paragraph 86

significant indigenous vegetation. Whether Mr Harding’s statement is correct will be determined over time. In the interim, I consider that the rules addressing renewable electricity generation activities need to distinguish between activities within an area that has been identified as significant indigenous vegetation (in accordance with the criteria listed in the CRPS) and activities outside of such areas. Rules 2.1.1 to 2.3.1 in PC18 do not adopt such a distinction.

86. The s42A Report considered the distinction and associated rule framework provided in Table 1 of this evidence as “*a more appropriate approach*”, along with other alternative approaches.²⁵

Table 1. Alternative rule framework considered in the s42A Report

Location	Maintenance and Operation	Refurbishment
Within the WPS core sites – outside a SONS	Permitted	Controlled
Within the WPS core sites – within a SONS	Controlled	Restricted discretionary
Within operating easements	Restricted discretionary	Discretionary

87. For completeness, it is not clear to me why the s42A Report refers to “SONS” in this table. The MDP’s “Appendix I – Sites of Natural Significance: Mackenzie District” identifies known plant and animal communities and habitats that are representative, rare or unique within the Mackenzie District, or otherwise considered to be significant in terms of section 6(c) of the Act, however it also includes geological and geomorphic sites that are considered to be outstanding natural features in terms of section 6(b) of the Act. PC18 is focused on the management of indigenous biodiversity, and therefore the management of outstanding geological and geomorphic sites should sit elsewhere in the MDP, unless there is a clear relationship between such sites and indigenous biodiversity. In my opinion the reference to “SONS” in the preceding table

²⁵ s42A Report, pages 83 and 84

should refer to areas that have been identified, using the criteria set in Appendix 3 of the CRPS, as containing significant indigenous vegetation and significant habitats of indigenous fauna.

88. Despite the s42A Report considering that Table 1 “*might be a more appropriate approach*”, the recommendations did not adopt a rules framework that distinguished between activities inside or outside of areas that have been identified as containing significant indigenous vegetation and significant habitats of indigenous fauna. Rather the s42A Report’s recommendations were limited to adding new matters that the council’s discretion will be limited to under Rule 2.2.1. In my opinion, these recommendations do not go far enough in terms of ensuring that Rules 2.1.1 to 2.3.1 are consistent with the higher order documents.

89. Based on the statutory and planning requirements previously set out in this evidence, I recommend the rules framework in Table 2 of this evidence.

Table 2. Recommended rules framework

	Emergency events	Operating and maintaining the Scheme	Refurbishment (as defined in PC18)	New structures, works or other activities
Clearance of indigenous vegetation, other than in areas identified as <u>containing significant indigenous vegetation and significant habitats of indigenous fauna</u> , in the following areas: <ul style="list-style-type: none"> • The existing footprint of the Scheme • Core sites associated with the Scheme • Areas covered by an operating easement associated with the Scheme 	Permitted	Permitted	Permitted	Permitted where it meets Rule 1.1.1, otherwise discretionary

STATEMENT OF EVIDENCE

	Emergency events	Operating and maintaining the Scheme	Refurbishment (as defined in PC18)	New structures, works or other activities
<p>Clearance of indigenous vegetation, <u>in areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna</u>, in the following areas:</p> <ul style="list-style-type: none"> • The existing footprint of the Scheme • Core sites associated with the Scheme • Areas covered by an operating easement associated with the Scheme 	Permitted	Permitted	Controlled	Discretionary
<p>Clearance of indigenous vegetation <u>outside the following areas</u>:</p> <ul style="list-style-type: none"> • The existing footprint of the Scheme • Core sites associated with the Scheme • Areas covered by an operating easement associated with the Scheme 	Permitted	Not applicable as this would be a new structure, works or other activity	Controlled	Discretionary

90. Based on the above, I recommend no change to the activity status of indigenous vegetation clearance that is a consequence of an emergency occurring on, or failure of, the Scheme (which is a permitted activity in PC18). This is supported by my earlier recommended changes to Policy 7.

91. With respect to operating and maintaining the Scheme, the clearance of indigenous vegetation (within the existing footprint of the Scheme, core sites associated with the Scheme, or areas covered by an operating easement associated with the Scheme), whether it is within an area that has been identified as containing significant indigenous vegetation and significant habitats of indigenous fauna, or otherwise, should in my opinion be a permitted activity. This recognises the following:

- a) The Scheme has been lawfully established and is operating within its existing footprint, core sites, and areas covered by operating easements associated with the Scheme. Given this, the areas referred to are highly modified, as established in Ms Bryant’s evidence and well-illustrated by

the photographs provided in Ms Bryant's appendices; they have regularly undergone vegetation clearance for operating and maintenance purposes for over 50 years; and in my opinion, it is therefore reasonable to consider that any new vegetation that periodically establishes itself in these areas following normal operating and maintenance activities should be treated as temporary; and

- b) The national significance of operating and maintaining existing renewable electricity generation schemes; and
- c) The level of sunk investment in the Scheme and that investment decisions of this scale rely on certainty that the Scheme can function as intended when developed.

92. With respect to refurbishment activities, the clearance of indigenous vegetation (within the existing footprint of the Scheme, core sites associated with the Scheme, or areas covered by an operating easement associated with the Scheme), within an area that does not contain significant indigenous vegetation and significant habitats of indigenous fauna, should in my opinion be a permitted activity. This recognises the same matters as set out in a) to c) of paragraph 91 in this evidence, and that refurbishment allows for efficiency gains in the existing Scheme and this is consistent with the NPSREG's requirement to recognise and provide for increases in renewable electricity generation. It also recognises the importance of refurbishment in providing for the ongoing health and safety needs of people working on the Scheme.

93. Also, with respect to refurbishment activities, the clearance of indigenous vegetation (both within the existing footprint of the Scheme, core sites associated with the Scheme, or areas covered by an operating easement associated with the Scheme, and beyond) in an area that contains significant indigenous vegetation and significant habitats of indigenous fauna, should in my opinion be a controlled activity.

94. With this, I consider that the matters to which the Mackenzie District Council's control is reserved should be:
- a) Measures to avoid, remedy or mitigate potential adverse effects on areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna; and
 - b) Measures for offsetting or environmental compensation where the potential adverse environmental effects on areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna cannot be fully avoided, remedied or mitigated, and residual environment effects remain;
 - c) Measurement, monitoring, information and review requirements.
95. In my opinion, this approach recognises the same matters as set out in paragraphs 91 and 92 of this evidence. In addition, it recognises the following:
- a) That refurbishment activities can sometimes involve activities beyond the current area of activity, meaning that any significant indigenous vegetation and significant habitats of indigenous fauna present should not necessarily be treated as temporary and the potential effects of refurbishment on such values should be managed;
 - b) The effects of the existing structures and activities associated with the Scheme are well established and therefore the potential effects of refurbishing the Scheme can be readily identified, assessed and managed.
96. For indigenous vegetation clearance associated with all new structures, works or other activities, other than where it is permitted by Rule 1.1.1 of PC18, I recommend a discretionary activity status. This recognises that the new structure, works and activities may be within areas not previously disturbed by the Scheme; that new potential (and as yet unknown) effects on the

environment may result; and therefore, that discretion should be applied accordingly to indigenous vegetation clearance in such situations.

97. Based on the preceding assessment, I recommend the following amendments to Rules 2.1.1 to 2.3.1 (where the recommendations of the s42A Report are shown in red and my amendments are shown in blue):

Rules 2.1.1 and 2.1.2 are combined to read as follows:

“2.1 The clearance of indigenous vegetation associated with the Waitaki Power Scheme is a permitted activity where one or more of the following conditions are met

2.1.1. The clearance is a consequence of an emergency occurring on, or failure of, the Waitaki Power Scheme; *or*

2. The clearance is required for the operation and maintenance of the Waitaki Power Scheme, within one or more of the following areas;

- *The existing footprint of the Waitaki Power Scheme.*
- *Core sites associated with the Waitaki Power Scheme.*
- *Areas covered by an operating easement associated with the Waitaki Power Scheme;* *or*

3. The clearance is required for the refurbishment of the Waitaki Power Scheme, and is outside of an identified area of significant indigenous vegetation and significant habitats of indigenous fauna and, is within one or more of the following areas;

- *The existing footprint of the Waitaki Power Scheme.*
- *Core sites associated with the Waitaki Power Scheme.*
- *Areas covered by an operating easement associated with the Waitaki Power Scheme;* *or*

3.4. The clearance meets the conditions in Rule 1.1.1”

Rule 2.2 (both the PC18 version and the s42A Report's recommended version) is deleted in its entirety and replaced as follows:

"2.2 The clearance of indigenous vegetation associated with the Waitaki Power Scheme is a controlled activity where it is required for the refurbishment of the Waitaki Power Scheme and the clearance is within an identified area of significant indigenous vegetation and significant habitats of indigenous fauna."

Rule 2.3

"2.3 The clearance of ~~a~~Any indigenous vegetation ~~clearance~~ associated with ~~any new facility, structure or works associated with~~ the Waitaki Power Scheme ~~that is not permitted~~ provided for as a permitted activity under ~~Rule 2.1.1~~, or as a controlled activity under Rule 2.2, is a discretionary activity."

98. For completeness, I note that Meridian sought inclusion in PC18 of a new definition for the Waitaki Power Scheme Management Area and that this included the existing footprint of the Waitaki Power Scheme; core sites associated with the Waitaki Power Scheme; and areas covered by an operating easement associated with the Waitaki Power Scheme. In my opinion, adoption of this definition and its use in Rules 2.1 and 2.2 would be more efficient for readers of the plan.

DEFINITION – INDIGENOUS VEGETATION

99. The definition of indigenous vegetation in PC18 reads as:

"Means a plant community of species native to New Zealand, which may include exotic vegetation but does not include plants within a domestic garden or that have been planted for the use of screening/shelter purposes e.g. as farm hedgerows, or that have been deliberately planted for the purpose of harvest."

100. A number of submissions addressed this definition, and generally they can be grouped into submissions seeking greater inclusion in the definition, or seeking greater exclusion from the definition. In addition, Canterbury Regional Council sought amendments to the definition that make it specific to “*a plant community of species that are native to the district*”, and to elaborate on the characteristics of such communities, for example “*areas of mat and cushion vegetation... of open ground...individual or low numbers of threatened or at risk native plants species contained within non-native plant communities...with seasonal growth...*”

101. The s42A Report recommends amending the definition as follows:

“Means a ~~plant~~ community of vascular plants, mosses and/or lichens that include species native to the ecological district. ~~New Zealand, which~~ The community may include exotic species vegetation but does not include plants within a domestic garden or that have been planted for the use of screening/shelter purposes e.g. as farm hedgerows, or that have been deliberately planted for the purpose of harvest.”

102. Mr Thorsen has identified in his evidence a number of concerns with the notified version of the definition of indigenous vegetation, along with the versions of the definition recommended in the s42A Report and in the submissions of various parties. He notes that while indigenous vegetation in a fundamental sense does not include exotic species, “*it is pragmatic to recognise an element of exotic species in the definition of indigenous vegetation*” since “*very few vegetative communities in New Zealand...are now truly indigenous vegetation with no representation by exotic plant species*”.²⁶ In this regard, my concern with PC18’s version of the definition, and the version recommended in the s42A Report, is that the portion of exotic vegetation present in what is defined as indigenous vegetation is unspecified. By not specifying within the definition the quantity or extent of exotic vegetation that

²⁶ Evidence of Michael Thorsen, paragraph 13

can be present, the definition can capture a much greater extent of vegetation than may be intended. Mr Thorsen notes that such an approach could lead to the definition representing nearly any vegetative community, *“including those that would not usually be considered indigenous, and also exotic vegetation communities that are colonised by indigenous species”*²⁷ (for example areas of wildling pine, weedy exotic shrubland, fallow land and mown amenity grassland). In my opinion, the lack of clarity in the definition of indigenous vegetation in PC18 and in the s42A Report’s recommendation means that efficient implementation of the provisions of PC18 will be challenging. It is also my opinion that Section 31(1)(b)(iii) of the Act was not intended to apply to nearly any vegetative community, as would be the case if these definitions were adopted.

103. The definition of indigenous vegetation that has been recommended by Mr Thorsen provides a quantifiable measure of the vegetation types present to assist application of the related provisions in PC18, without capturing all vegetative communities in the district. On this basis, I recommend adoption of the definition of indigenous vegetation that has been recommended by Mr Thorsen, and this definition reads:

“Means a plant community in which plant species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity. For these purposes, coverage by indigenous species or number of indigenous species shall exceed 30% of the total vegetated area or total number of species present, where structural dominance is not attained. Where structural dominance occurs (that is indigenous species are in the tallest stratum and are visually conspicuous) coverage by indigenous species shall exceed 20% of the total area. Areas where indigenous species have been planted for the purposes of amenity, shelter, landscaping, or as part of a commercial forest, or

²⁷ Evidence of Michael Thorsen, paragraph 15

cultivated exotic crops and pasture, are excluded from this definition.”

104. Alternatively, the details of coverage and exclusions could, in my opinion, be included within the rules that refer to indigenous vegetation. While I consider that either approach would be acceptable, in my opinion it would be more efficient to address these details in the definition section of the plan.

NEW DEFINITION – NO NET LOSS

105. With respect to indigenous biodiversity, the submissions of EDS, the Department of Conservation (**DoC**), and Royal Forest and Bird Protection Society of New Zealand Inc (**FB**) sought inclusion in PC18 of a new definition of ‘no net loss’. DoC sought adoption of the definition “*No net loss: means no overall reduction in indigenous biodiversity as measured by type, amount and condition*”, while EDS and FB sought adoption of the definition of no net loss that is established in the CRPS.
106. The s42A Report recommends adoption of the CRPS’s definition of no net loss in PC18.
107. With respect to the possible adoption of DoC’s preferred definition, I consider that the general nature of the terms within the definition sought lead them to be not consistent with the more specific characteristics listed in a) to d) of the CRPS definition of no net loss. Therefore, in my opinion DoC’s preferred definition should not be adopted in PC18.
108. With respect to the submissions of EDS and FB, in my opinion there is no need to repeat the CRPS’s definition in PC18. Unless the term is otherwise defined in PC18, the definition in the CRPS presides. Notwithstanding this, I accept that it may assist the usability of PC18 by adopting the CRPS’s definition of no net loss within PC18.

109. Based on the above, I support the s42A Report’s recommendation to adopt the CRPS’s definition of no net loss in PC18.

NEW DEFINITION – BIODIVERSITY OFFSETTING

110. EDS sought adoption in PC18 of a definition of ‘biodiversity offsetting’ that includes the ‘Principles on Biodiversity Offsets’ that are established by the Business and Biodiversity Offsets Programme²⁸, while DoC sought adoption of the definition of ‘biodiversity offsetting’ that is established in the CRPS with the addition of the word ‘indigenous’ added to the second sentence.
111. The s42A Report considers that determining whether an offset meets the ‘Principles on Biodiversity Offsets’ will require an evaluative judgement to be made.²⁹ I agree with this position, particularly in terms of Principles 6 ‘Stakeholder participation’³⁰ and 7 ‘Equity’³¹, and I consider that the definition within the CRPS is more specific.
112. With respect to DoC’s submission to adopt the CRPS’s definition of ‘biodiversity offsetting’ in PC18, in my opinion there is no need to repeat the CRPS’s definition in PC18. As previously noted in this evidence, unless a term is otherwise defined in PC18, the definition in the CRPS presides. Notwithstanding this, I accept that it may assist the usability of PC18 by adopting the CRPS’s definition of biodiversity offset within PC18.
113. With respect to DoC’s submission to add the word ‘indigenous’ to the second sentence of the definition of biodiversity offset, I consider that it is important

²⁸https://www.forest-trends.org/wp-content/uploads/2018/10/The-BBOP-Principles_20181023.pdf

²⁹ s42A Report, paragraph 259

³⁰ Principle 6 reads: “*Stakeholder participation: In areas affected by the project and by the biodiversity offset, the effective participation of stakeholders should be ensured in decision-making about biodiversity offsets, including their evaluation, selection, design, implementation and monitoring.*”

³¹ Principle 7 reads: “*Equity: A biodiversity offset should be designed and implemented in an equitable manner, which means the sharing among stakeholders of the rights and responsibilities, risks and rewards associated with a project and offset in a fair and balanced way, respecting legal and customary arrangements. Special consideration should be given to respecting both internationally and nationally recognised rights of indigenous peoples and local communities.*”

to be clear when a regulatory tool is referring to indigenous biodiversity matters, or biodiversity matters more generally. The latter includes both indigenous and exotic flora and fauna and associated ecosystems, while the former focuses on indigenous flora and fauna and associated ecosystems. As PC18 addresses indigenous biodiversity, I agree with DoC's proposed adoption of the word 'indigenous'. Consistent with this, I consider that further clarification is needed to the definition to ensure that it is focused on indigenous biodiversity values. On this basis, I recommend adoption of the following definition of biodiversity offset within PC18 (where the recommendations of the s42A Report are shown in red and my amendments are shown in blue):

"Indigenous biodiversity offset means a measurable conservation outcome resulting from actions which are designed to compensate for significant residual adverse effects on indigenous biodiversity arising from human activities after all appropriate prevention and mitigation measures have been taken. The goal of an indigenous biodiversity offset is to achieve no net loss and preferably a net gain of indigenous biodiversity on the ground with respect to species composition, habitat structure and ecosystem function. They typically take the form of binding conditions associated with resource consents and can involve bonds, covenants financial contributions and biodiversity banking."

NEW DEFINITION – SITES OF NATURAL SIGNIFICANCE

114. EDS sought adoption in PC18 of a definition of 'sites of natural significance' (**SONS**) as follows:

"SONS means significant sites of indigenous vegetation and fauna habitat identified in the District Plan maps. Not all sites qualifying as significant under s6(c) RMA and Policy 9.3.1 RPS in the District have been mapped. Other sites will be identified on a case-by-case basis."

115. The s42A Report does not support this submission. Rather it considers that the definition sought is not needed to apply the provisions within PC18 that relate to SONS, and that a definition should not include a directive such as the last sentence of the definition sought by EDS.³²
116. I agree that a definition of SONS is not required within PC18. Further to this, I refer to my earlier comments that the focus of PC18 is the management of indigenous biodiversity, and that matters related to outstanding geological and geomorphic sites, beyond the management of indigenous biodiversity matters, should not be included within PC18.
117. Based on the preceding assessment, I recommend that the definition of sites of natural significance sought by EDS not be included in PC18.

CONCLUSIONS

118. PC18 proposes a new set of objectives, policies, rules and definitions for the management of indigenous biodiversity in the Mackenzie District.
119. I have been asked by Meridian to assess Objectives 1 and 2, Policies 1, 2 and 7, Rules 2.1.1, 2.1.1, 2.2.1 and 2.3.1, and the definition of 'indigenous vegetation' with respect to their consistency with the relevant statutory and planning requirements. Having completed my assessment, I consider that these provisions are not fully consistent with the Act, the NPSREG or the CRPS.
120. In particular, I consider that PC18 has not clearly provided direction for reconciling, within the Mackenzie District, the regulatory requirements related to the management of indigenous biodiversity and the regulatory requirements to recognise the national significance of renewable energy generation and to provide for the development, operation, maintenance and upgrading of new and existing renewable electricity generation. The Waitaki Power Scheme is recognised in the CRPS (and the NPSFM) as being nationally significant, and as such, I consider that it is being unnecessarily constrained by

³² s42A Report, paragraph 531

STATEMENT OF EVIDENCE

PC18 due to the requirements of the NPSREG not being fully addressed in PC18. To resolve this, I have recommended a number of changes to the provisions within the scope of this evidence and these are set out in Annexure 2 of this evidence.



Susan Ruston

12th of February 2021

ANNEXURE 1: EXAMPLES OF RECENT PLANNING PROJECTS AND PROCESSES

Expert planning evidence to Hearings Commissioners deciding consent application for NPD site in Cromwell (for NPD).

Expert planning evidence to the Environment Court regarding appeals on the proposed Southland Water and Land Plan (for Ballance Agri-Nutrients, Ravensdown, HortNZ and Federated Farmers).

Expert planning evidence to Hearings Commissioners and Environment Court regarding resource consents for Fulton Hogan's Roydon Quarry (for Christchurch City Council).

Planning services to King Country Energy Limited with respect to Proposed Waikato Regional Plan Change 1 – Waikato and Waipa River Catchments.

Planning services to the Next Generation Farmers Trust with respect to Proposed Plan Change 7 of the Canterbury Land and Water Regional Plan

Planning services to Amuri Irrigation Limited with respect to consent applications for water takes and discharges.

Planning services to Simons Pass Station Limited with respect to resource consent applications for water takes and discharges, discharges of contaminants, earthworks, land use.

Planning services to Trustpower Limited with respect to resource applications for the take and discharge of water.

Planning services to Graymont NZ with respect to applications for the take and use of water, and with respect to forestry related activities.

Planning services to Pioneer Energy Limited with respect to the damming and diversion of water.

Planning services to NZSki with respect to the discharge of contaminants.

Planning services to Gawler Downs with respect to development of production forestry blocks.

Planning services to Clutha District Council with respect to the take of water and discharges of contaminants.

Planning services to Rangitata Diversion Race Management Limited regarding consenting matters.

Planning services to Bay of Plenty Regional Council with respect to processing of resource consent applications.

Planning services to Gisborne District Council with respect to processing of resource consent applications.

ANNEXURE 2: RECOMMENDED DRAFTING SOLUTIONS

Based on the assessment within this evidence, the following provides my recommended drafting solutions.

In preparing these solutions, I have added my recommended amendments to the recommendations of the s42A Report. Accordingly, the officers' recommended changes are shown in red and my recommended changes are shown in blue.

Objective 1 is deleted in its entirety

Objective 2

"Land use and development activities are managed to:

- a) ensure the maintenance of indigenous biodiversity; and*
- b) ~~, including the protection and,~~ where practicable ~~/or~~ enhance ~~ment of~~ areas of significant indigenous vegetation and significant habitats of indigenous fauna ~~and riparian areas;~~ ~~the maintenance of natural biological and physical processes;~~ ~~and the retention of indigenous vegetation;~~ and*
- c) despite (a) and (b) to recognise the national significance of the Waitaki Power Scheme and appropriately manage effects on indigenous biodiversity from the Scheme's development, operation, upgrading and maintenance."*

Policy 1

"To identify ~~in the District Plan~~ ~~sites~~ areas of significant indigenous vegetation and ~~or~~ significant habitats of indigenous fauna in accordance with the criteria listed in the Canterbury Regional Policy Statement ~~and to prevent development which reduces the values of these sites"~~

Policy 2

“Outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna, To avoid, remedy or mitigate adverse effects on the natural character and indigenous vegetation, ecological processes, ecosystem functions and linkages between areas of significant indigenous vegetation and significant habitats of indigenous fauna as necessary to ensure that indigenous biodiversity is maintained land and water ecosystems functions in the District including:

- a) Landform, physical processes and hydrology*
- b) Remaining areas of significant indigenous vegetation and habitat, and linkages between these areas*
- c) Aquatic habitat and water quality and quantity.”*

Policy 7

“To manage effects on indigenous biodiversity in a way that recognises the economic and social national significance importance of renewable energy generation activities and the electricity transmission network consistent with objectives and policies of this Plan, to and provides for their its development, operation, upgrading, and maintenance by: and enhancement.

- 1. Enabling indigenous vegetation clearance that is essential for the operation, and maintenance and refurbishment of the Waitaki Power Scheme; and*
- 2. Providing for the upgrading and development of renewable energy generation, while managing the effects of upgrading and development on indigenous biodiversity; taking into account and having particular regard to:*
 - a) the location of existing structures and infrastructure; and*
 - b) the need to locate renewable energy generation activities the activity where the renewable energy resource is available; and*

- ~~b. — the wide extent and high value of significant indigenous vegetation and habitat within and associated with the Tekapo, Pūkaki and Ohāu river systems; and~~
- e. ~~the logistical or technical practicalities associated with the activity; and~~
- f. ~~the importance of maintaining and increasing the output from existing renewable electricity generation activities; and~~
- ~~e. — In respect of Policy 6, environmental compensation which benefits the local environment affected, as an alternate, or in addition to offsetting, to address any residual environmental effects.~~
3. When considering any residual environmental effects of renewable electricity generation activities or electricity transmission activities that cannot be avoided, remedied or mitigated, having regard to offsetting measures or environmental compensation, including measures or compensation that benefits the local environment and community affected.”

Rules 2.1.1 and 2.1.2 are combined to read as follows:

“2.1 The clearance of indigenous vegetation associated with the Waitaki Power Scheme is a permitted activity where one or more of the following conditions are met

~~2.1.1. The clearance is a consequence of an emergency occurring on, or failure of, the Waitaki Power Scheme-; or~~

2. The cEclearance is required for the operation and maintenance of the Waitaki Power Scheme, within one or more of the following areas;

- The existing footprint of the Waitaki Power Scheme.
- ~~On-€Core~~ sites associated with the Waitaki Power Scheme.
- ~~On-#Areas~~ covered by an operating easement associated with the Waitaki Power Scheme-; or

3. The clearance is required for the refurbishment of the Waitaki Power Scheme, and is outside of an identified area of significant indigenous vegetation and significant habitats of indigenous fauna and, is within one or more of the following areas;

- The existing footprint of the Waitaki Power Scheme.
- Core sites associated with the Waitaki Power Scheme.
- Areas covered by an operating easement associated with the Waitaki Power Scheme; or

34. The clearance meets the conditions in Rule 1.1.1”

Rule 2.2 is deleted in its entirety and replaced as follows:

“2.2 The clearance of indigenous vegetation associated with the Waitaki Power Scheme is a controlled activity where it is required for the refurbishment of the Waitaki Power Scheme and the clearance is within an identified area of significant indigenous vegetation and significant habitats of indigenous fauna.”

Rule 2.3

“2.3 ~~The clearance of a~~Any indigenous vegetation ~~clearance~~ associated with ~~any new facility, structure or works associated with~~ the Waitaki Power Scheme ~~that is not permitted~~ provided for as a permitted activity ~~under Rule 2.1.1~~, or as a controlled activity under Rule 2.2, is a discretionary activity.”

The definition of indigenous vegetation is deleted in its entirety and replaced as follows:

“Means a plant community in which plant species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity. For these purposes, coverage by indigenous species or number of indigenous species shall

exceed 30% of the total vegetated area or total number of species present, where structural dominance is not attained. Where structural dominance occurs (that is indigenous species are in the tallest stratum and are visually conspicuous) coverage by indigenous species shall exceed 20% of the total area. Areas where indigenous species have been planted for the purposes of amenity, shelter, landscaping, or as part of a commercial forest, or cultivated exotic crops and pasture, are excluded from this definition."

There be no definitions of 'no net loss' and 'biodiversity offsetting' in PC18, rather the corresponding definitions in the CRPS be relied on.

There be no definition of Sites of Natural Significance in PC18.

ANNEXURE 3: KEY STATUTORY AND PLANNING REQUIREMENTS

The following lists those provisions that I consider are of particular relevance to consideration of PC18.

RESOURCE MANAGEMENT ACT 1991

Sections 5(1) The purpose of this Act is to promote the sustainable management of natural and physical resources

Section 6(c) In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance: ...

c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

Section 7(b), (d), (f), (g), (i) and (j)

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to-

(b) the efficient use and development of natural and physical resources

(d) intrinsic values of ecosystems

(f) maintenance and enhancement of the quality of the environment

(g) any finite characteristics of natural and physical resources

(i) the effects of climate change

(j) the benefits to be derived from the use and development of renewable energy

Section 31(1)(b)(iii)

Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district: ... (1) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of...(iii) the maintenance of indigenous biological diversity.

Section 75

- (1) A district plan must state—
 - (a) the objectives for the district; and
 - (b) the policies to implement the objectives; and
 - (c) the rules (if any) to implement the policies.
- (2) A district plan may state—
 - (a) the significant resource management issues for the district; and
 - (b) the methods, other than rules, for implementing the policies for the district; and
 - (c) the principal reasons for adopting the policies and methods; and
 - (d) the environmental results expected from the policies and methods; and
 - (e) the procedures for monitoring the efficiency and effectiveness of the policies and methods; and
 - (f) the processes for dealing with issues that cross territorial authority boundaries; and
 - (g) the information to be included with an application for a resource consent; and
 - (h) any other information required for the purpose of the territorial authority's functions, powers, and duties under this Act.
- (3) A district plan must give effect to—
 - (a) any national policy statement; and

- (b) any New Zealand coastal policy statement; and
 - (ba) a national planning standard; and
 - (c) any regional policy statement.
- (4) A district plan must not be inconsistent with—
- (a) a water conservation order; or
 - (b) a regional plan for any matter specified in section 30(1).
- (5) A district plan may incorporate material by reference under Part 3 of Schedule 1

NATIONAL POLICY STATEMENT FOR RENEWABLE ELECTRICITY GENERATION 2011

Objective To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand’s electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government’s national target for renewable electricity generation.

Policy A Decision-makers shall recognise and provide for the national significance of renewable electricity generation activities, including the national, regional and local benefits relevant to renewable electricity generation activities. These benefits include, but are not limited to:

- a) maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;
- b) maintaining or increasing security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation;
- c) using renewable natural resources rather than finite resources;
- d) the reversibility of the adverse effects on the environment of some renewable electricity generation technologies;

- e) avoiding reliance on imported fuels for the purposes of generating electricity.

Policy B

Decision-makers shall have particular regard to the following matters:

- a) maintenance of the generation output of existing renewable electricity generation activities can require protection of the assets, operational capacity and continued availability of the renewable energy resource; and
- b) even minor reductions in the generation output of existing renewable electricity generation activities can cumulatively have significant adverse effects on national, regional and local renewable electricity generation output; and
- c) meeting or exceeding the New Zealand Government's national target for the generation of electricity from renewable resources will require the significant development of renewable electricity generation activities.

Policy C1

Decision makers shall have particular regard to the following matters:

- a) the need to locate the renewable electricity generation activity where the renewable energy resource is available;
- b) logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity;
- c) the location of existing structures and infrastructure including, but not limited to, roads, navigation and telecommunication structures and facilities, the distribution network and the national grid in relation to the renewable electricity generation activity, and the need to connect renewable electricity generation activity to the national grid;

- d) designing measures which allow operational requirements to complement and provide for mitigation opportunities; and
- e) adaptive management measures.

Policy C2 When considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected.

CANTERBURY REGIONAL POLICY STATEMENT

Objective 9.2.1 The decline in the quality and quantity of Canterbury's ecosystems and indigenous biodiversity is halted and their life-supporting capacity and mauri safeguarded.

Objective 9.2.2 Restoration or enhancement of ecosystem functioning and indigenous biodiversity, in appropriate locations, particularly where it can contribute to Canterbury's distinctive natural character and identity and to the social, cultural, environmental and economic well-being of its people and communities.

Objective 9.2.3 Areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified and their values and ecosystem functions protected.

Policy 9.3.1

1. Significance, with respect to ecosystems and indigenous biodiversity, will be determined by assessing areas and habitats against the following matters:
 - a) Representativeness
 - b) Rarity or distinctive features
 - c) Diversity and pattern
 - d) Ecological context

The assessment of each matter will be made using the criteria listed in Appendix 3.

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

Policy 9.3.2 To recognise the following national priorities for protection:

1. Indigenous vegetation in land environments where less than 20% of the original indigenous vegetation cover remains.
2. Areas of indigenous vegetation associated with sand dunes and wetlands.
3. Areas of indigenous vegetation located in “originally rare” terrestrial ecosystem types not covered under (1) and (2) above.
4. Habitats of threatened and at risk indigenous species.

Policy 9.3.3 To adopt an integrated and co-ordinated management approach to halting the decline in Canterbury’s indigenous biodiversity through:

1. working across catchments and across the land/sea boundary where connectivity is an issue for sustaining habitats and ecosystem functioning
2. promoting collaboration between individuals and agencies with biodiversity responsibilities
3. supporting the various statutory and non-statutory approaches adopted to improve biodiversity protection
4. setting best practice guidelines for maintaining indigenous biodiversity values, particularly maintaining conditions suitable for the survival of indigenous species within their habitats, and safeguarding the life-supporting capacity and/or mauri of ecosystems.

Policy 9.3.4 To promote the enhancement and restoration of Canterbury’s ecosystems and indigenous biodiversity, in appropriate locations, where this will improve the functioning and long term sustainability of these ecosystems.

Policy 9.3.5 In relation to wetlands:

1. To assess an ecologically significant wetland against the matters set out in Policy 9.3.1 and the national priorities listed in Policy 9.3.2. For the purposes of this policy, ecologically significant wetlands do not include areas that are predominantly pasture and dominated by exotic plant species and where they are not significant habitats of indigenous fauna.
2. To ensure that the natural, physical, cultural, amenity, recreational and historic heritage values of Canterbury’s ecologically significant wetlands are protected.
3. To generally promote the protection, enhancement and restoration of all of Canterbury’s remaining wetlands.
4. To encourage the formation of created wetlands that contribute to the restoration of indigenous biodiversity.
5. To protect adjoining areas of indigenous and other vegetation which extend outside an ecologically significant wetland and are necessary for the ecological functioning of the wetland.

Policy 9.3.6 The following criteria will apply to the use of biodiversity offsets:

1. the offset will only compensate for residual adverse effects that cannot otherwise be avoided, remedied or mitigated;
2. the residual adverse effects on biodiversity are capable of being offset and will be fully compensated by the offset to ensure no net loss of biodiversity;
3. where the area to be offset is identified as a national priority for protection under Policy 3.2, the offset must deliver a net gain for biodiversity;

4. there is a strong likelihood that the offsets will be achieved in perpetuity; and
5. where the offset involves the ongoing protection of a separate site, it will deliver no net loss, and preferably a net gain for indigenous biodiversity conservation.

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

Policy 10.3.2(2) To preserve the natural character of river and lake beds and their margins and protect them from inappropriate subdivision, use and development, and where appropriate to maintain and/or enhance areas of river and lake beds and their margins and riparian zones where:...

2. they have ecological values for which protection and/or enhancement will assist in the establishment or re-establishment of indigenous biodiversity or ecosystems, particularly for ecosystems that are threatened or unrepresented in protected areas...

Objective 16.2.2 Reliable and resilient generation and supply of energy for the region, and wider contributions beyond Canterbury, with a particular emphasis on renewable energy, which:

1. provides for the appropriate use of the region's renewable resources to generate energy;
2. reduces dependency on fossil fuels;
3. improves the efficient end-use of energy;
4. minimises transmission losses;
5. is diverse in the location, type and scale of renewable energy development;
6. recognises the locational constraints in the development of renewable electricity generation activities; and

- a. avoids any adverse effects on significant natural and physical resources and cultural values or where this is not practicable, remedies or mitigates; and
- b. appropriately controls other adverse effects on the environment.

Policy 16.3.3 To recognise and provide for the local, regional and national benefits when considering proposed or existing renewable energy generation facilities, having particular regard to the following:

1. maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;
2. maintaining or increasing the security of supply at local and regional levels, and also wider contributions beyond Canterbury; by diversifying the type and/or location of electricity generation;
3. using renewable natural resources rather than finite resources;
4. the reversibility of the adverse effects on the environment of some renewable electricity generation facilities;
5. avoiding reliance on imported fuels for the purposes of generating electricity; and
6. assisting in meeting international climate obligations

Policy 16.3.5 To recognise and provide for efficient, reliable and resilient electricity generation within Canterbury by:

1. avoiding subdivision, use and development which limits the generation capacity from existing or consented electricity generation infrastructure to be used, upgraded or maintained;
2. enabling the upgrade of existing, or development of new electricity generation infrastructure, with a particular emphasis on encouraging the operation, maintenance and upgrade of renewable electricity generation activities and associated infrastructure:

- a. having particular regard to the locational, functional, operational or technical constraints that result in renewable electricity generation activities being located or designed in the manner proposed;
- b. provided that, as a result of site, design and method selection:
 - i. the adverse effects on significant natural and physical resources or cultural values are avoided, or where this is not practicable remedied, mitigated or offset; and
 - ii. other adverse effects on the environment are appropriately controlled.
3. providing for activities associated with the investigation, identification and assessment of potential sites and energy sources for renewable electricity generation;
4. maintaining the generation output and enabling the maximum electricity supply benefit to be obtained from the existing electricity generation facilities within Canterbury, where this can be achieved without resulting in additional significant adverse effects on the environment which are not fully offset or compensated.

Definition of no net loss

In relation to indigenous biodiversity, “no net loss” means no reasonably measurable overall reduction in:

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

Definition of Biodiversity offset

means a measurable conservation outcome resulting from actions which are designed to compensate for significant residual adverse effects on biodiversity arising from human activities after all appropriate prevention and mitigation measures have been taken. The goal of a biodiversity offset is to achieve no net loss and preferably a net gain of biodiversity on the ground with respect to species composition, habitat structure and ecosystem function. They typically take the form of binding conditions associated with resource consents and can involve bonds, covenants financial contributions and biodiversity banking.