

**Mackenzie District Plan**

**Proposed Plan Change 18 - Indigenous  
Biodiversity**

**Section 42A Hearings Report**

**14 December 2020**

**Report on submissions and further  
submissions**

**Report prepared by**

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## Summary Statement

1. My evidence provides a full assessment of the submissions made on proposed Plan Change 18 (PC18), to the Mackenzie District Plan (MDP) and provides recommendations to the Hearing Panel in relation to these. While there were only 21 submissions made on PC18, several of the submissions were long and detailed and the length of my evidence reflects this.
2. PC18 seeks to revise the provisions in the MDP that relate to management of indigenous biodiversity. This reflects concerns that the current plan provisions relating to indigenous biodiversity do not sufficiently recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (s6(c) of the Resource Management Act 1991 (RMA)) and do not give effect to the direction in the Canterbury Regional Policy Statement (CRPS). Some operative rules also include statements indicating they will be reviewed within a specified period<sup>1</sup>; but this has not yet occurred. In my view, s6(c) of the RMA, Chapter 9 of the CRPS, and the functions given to territorial authorities under s31(1)(b)(iii) of the RMA to control effects of the use, development or protection of land for the purpose of maintaining indigenous biological diversity, are critical statutory elements in the consideration of PC18.
3. PC18 proposes to 'shift' the current framework relating to indigenous biodiversity, including some existing objectives and policies, into a new section within the MDP, while also strengthening the provisions contained within the new section to better manage indigenous biodiversity. Overall, submitters generally support PC18 as being an improvement on the status quo. However, there are a range of concerns raised in submissions about the specific detail of the provisions proposed; their appropriateness in achieving the purpose of the RMA and whether the policy and rule package is sufficient to achieve the outcomes sought by PC18 and the CRPS.
4. In considering the submissions on the objectives and policies proposed in PC18, my key overarching recommendation in respect to the approach taken to indigenous biodiversity management is to provide a clearer distinction between significant areas<sup>2</sup> and indigenous biodiversity more broadly. More specifically, I consider that:
  - The outcome sought for significant areas should be their protection and enhancement<sup>3</sup>, with the approach taken to achieving that being to: apply the

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<sup>1</sup> Rule 12.1.1.g, 12.1.1.h, 12.1.1.i.

<sup>2</sup> Significant indigenous vegetation and significant habitats of indigenous fauna.

<sup>3</sup> Recommended Objective 1 (refer to Attachment 1).

criteria specified in the CRPS to identify significant areas<sup>4</sup>; manage activities to provide for no net loss of significant biodiversity values<sup>5</sup>; and apply an effects management hierarchy<sup>6</sup>.

- The outcome sought for other areas should be to maintain indigenous biodiversity<sup>7</sup>, through: managing adverse effects on indigenous vegetation, ecological processes, ecosystem functions and linkages between significant areas<sup>8</sup>; and recognising and providing for activities that contribute to maintenance and enhancement of indigenous biodiversity<sup>9</sup>.
5. In addition to the above, I also consider that the drafting of the objective and policy framework can be strengthened, particularly in terms of providing greater clarity on the overall outcomes to be achieved and the pathway to get to those outcomes, and avoiding repetition or overlap between provisions.
  6. An important contextual component to this plan change is that while the current Plan identifies some “Sites of Natural Significance”, these do not include all significant areas. While the Council is currently working towards identification of these areas, the approach taken in PC18 is to require resource consent for the clearance of any indigenous vegetation, except in circumstances identified as a permitted activity. In particular, a restricted discretionary consenting pathway is introduced for clearance where a Farm Biodiversity Plan (FBP) is prepared. The FBP is intended to provide a more holistic approach, which integrates land development (where it involves indigenous vegetation clearance) with management of indigenous biodiversity across a whole property. Submitters are broadly supportive of the concept of FBPs, with most submissions pertaining to the detail of the provisions, particularly the matters of discretion and requirements for what must be included in FBPs. In broad terms, my recommendations are similarly intended to strengthen the FBP provisions, align them with the recommended objective and ensure a greater level of robustness around the consenting framework associated with the FBPs.
  7. As noted above, PC18 proposes to permit the clearance of indigenous vegetation in some specific circumstances. My understanding is that these are intended to be circumstances where the clearance is not expected to be of significant areas and would

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<sup>4</sup> Recommended Policy 1 (refer to Attachment 1).

<sup>5</sup> Recommended Policy 2 (refer to Attachment 1).

<sup>6</sup> Recommended Policy 3 (refer to Attachment 1).

<sup>7</sup> Recommended Objective 1 (refer to Attachment 1).

<sup>8</sup> Recommended Policy 9 (refer to Attachment 1).

<sup>9</sup> Recommended Policy 10 (refer to Attachment 1).

not compromise the overall maintenance of indigenous biodiversity. PC18 also proposes a range of new or revised definitions relating to indigenous biodiversity. In many cases, the definitions are critical to determining what is a permitted activity. While there is general support for providing for some permitted clearance, a range of submissions have raised concerns regarding the definitions, and their application within the permitted activity rule framework. This is particularly the case with the permitting of clearance within areas of 'improved pasture' and the way that is defined, as well as the definition of 'indigenous vegetation'. Mr Harding has provided technical advice regarding the potential ecological impacts of the current definitions, and I have recommended changes to the definitions taking into account this advice. These are intended to ensure that indigenous vegetation clearance is not permitted where the vegetation could be significant.

8. PC18 also includes a policy on offsetting, which a number of submitters raise concerns with. Notwithstanding that there may be practical difficulties associated with offsetting, I consider that the inclusion of this policy is required to give effect to the CRPS and that it is not appropriate for PC18 to preclude the opportunity for an offset to be evaluated in a later consenting process. Ultimately, if an offsetting proposal does not meet the criteria, it would be contrary to the policy and the application would be unlikely to succeed.
9. In terms of the Waitaki Power Scheme, PC18 proposes specific policy direction and rules relating to defined areas forming part of the scheme. In my view, there is a need to ensure that the provisions appropriately manage the effects of any indigenous vegetation clearance associated with the power scheme on indigenous biodiversity, while still giving effect to the direction in the National Policy Statement for Renewable Electricity Generation 2011 (NPSREG). I generally consider that the rule framework proposed in PC18 is appropriate to achieve both the outcomes sought for indigenous biodiversity and the direction in the NPSREG, but I consider that more specific policy direction would strengthen this part of the framework.

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## List of Abbreviations

CRPS	Canterbury Regional Policy Statement
MDP or 'Plan'	Mackenzie District Plan
PC18	Proposed Plan Change 18
RMA	Resource Management Act 1991
NPSET	National Policy Statement on Electricity Transmission 2008
NPSREG	National Policy Statement for Renewable Electricity Generation 2011
NPSFM	National Policy Statement for Freshwater Management 2014

## List of Submitters and Abbreviations

Submitter Number	Further submission?	Full Submitter Name	Abbreviation
1	Y	Federated Farmers of New Zealand	FFNZ
2		Maryburn Station	
3	Y	Simons Pass Station Limited	SPSL
4		Carol Linda Burke	C Burke
5		Colin John Morris	C Morris
6	Y	Mackenzie Guardians Inc	
7		Central South Island Fish & Game Council	Fish & Game
8		Canterbury Regional Council	CRC
9	Y	Environmental Defence Society	EDS
10		Hermann Frank	H Frank
11	Y	Genesis Energy Limited	Genesis
12	Y	Glenrock Station Limited	
13	Y	Meridian Energy Limited	Meridian
14	Y	Opuha Water Limited	OWL
15		Pukaki Tourism Holdings Limited	PTHL
16	Y	Mt Gerald Station Limited	Mt Gerald
17	Y	The Wolds Station Limited	The Wolds
18	Y	Director-General of Conservation	DOC
19		Blue Lake Investments New Zealand Limited	BLINZ
20	Y	Royal Forest and Bird Protection Society of New Zealand	Forest & Bird
21		Marion Seymour	M Seymour
	Y	Transpower New Zealand Limited	Transpower

## Introduction

10. My name is Liz White. I am an Associate Planning Consultant from the firm Incite, based in Christchurch. I hold a Master of Resource and Environmental Planning with First Class Honours from Massey University and a Bachelor of Arts with Honours from Canterbury University. I am a full member of the New Zealand Planning Institute.
11. I have 14 years' planning experience working in both local government and the private sector. My experience includes both regional and district plan development, including the preparation of plan provisions and accompanying s32 evaluation reports, and preparing and presenting s42A reports. I also have experience undertaking policy analysis and preparing submissions for clients on various RMA documents, preparing and processing resource consent applications and notices of requirements for territorial authorities.
12. With specific reference to indigenous biodiversity provisions, I was involved in the Biodiversity chapter of the second generation Hurunui District Plan, firstly in a peer review role for the s42A report, and then as the Council's planning witness for appeals on the chapter. I was also involved in a peer review and oversight role in the preparation of the s42A report for the Indigenous Biodiversity topic of the proposed Marlborough Environment Plan.
13. I have been contracted by the Mackenzie District Council (Council) to evaluate the relief requested in submissions and to provide recommendations in the form of a s42A report. I was not involved with the preparation of proposed Plan Change 18, nor have I provided advice to any submitters on the plan change. For transparency, I note that I have previously been employed by both Meridian Energy Limited and the Canterbury Regional Council (CRC), both of whom are submitters on proposed Plan Change 18, and I continue to undertake work as a consultant for CRC from time to time. However, none of these roles involved work relating to either proposed Plan Change 18 or indigenous biodiversity more broadly.
14. Although this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.



## Scope of Hearings Report

15. This report is prepared in accordance with s42A of the Resource Management Act 1991 (RMA). It provides my assessment and recommendations to the Hearing Panel on submissions made on proposed Plan Change 18 (PC18) to the Mackenzie District Plan. Evidence has also been prepared by Mr Mike Harding, an expert ecologist, which provides technical comments on various ecological matters. This report should be read in conjunction with his report, and I refer to his evidence, where relevant, throughout this report.
16. As submitters who indicate that they wish to be heard are entitled to speak to their submissions and present evidence at the hearing, the recommendations contained within this report are preliminary, relating only to the written submissions.
17. For the avoidance of doubt, it should be emphasised that any conclusions reached or recommendations made in this report are not binding on the Hearing Panel. It should not be assumed that the Hearing Panel will reach the same conclusions or decisions having considered all the evidence to be brought before them by the submitters.

## Current MDP Provisions

18. The current MDP became operative in 2004. It contains provisions relating to indigenous biodiversity in the Rural Section (Section 7). Section 7 is split into two parts, one containing an issue, objective and policy framework and the other a set of rules. Within the objectives and policies part, there is one overarching objective (Rural Objective 1) that pertains to indigenous ecosystems, vegetation and habitat and three related policies (Rural Policies 1A, 1B and 1C). There are also other policies, for example those pertaining to pastoral intensification and agricultural conversion, that include reference to indigenous vegetation, but are more focussed on landscape values.
19. The MDP also currently identifies, in Appendix I, Sites of Natural Significance (SONS). These are described as areas considered to be significant in terms of s6(c), as well as geological and geomorphic sites considered to be outstanding natural features in terms of s6(b) and areas adjoining or encompassing lakes, streams, rivers and wetlands considered to contribute to the natural character and functioning of these water bodies in terms of s6(a). There are currently a range of provisions that apply to SONS, including, but not limited to indigenous vegetation clearance rules.

20. As explained further by Mr Harding, the SONS listed in the MDP were identified in the 1990s and appear to be based on desk top analysis only. In his view, they are inadequate and incomplete.<sup>10</sup> In terms of the s6(c) areas, I also note that the identification of these was undertaken prior to the Canterbury Regional Policy Statement 2013 (CRPS). About 30% of the Appendix 1 SONS have been reviewed, and assessed against the CRPS criteria,<sup>11</sup> as part of an ongoing review programme. However, this review has not been formalised through amendments to Appendix 1 of the MDP.
21. The current rule framework (Rule 12) generally provides for clearance of indigenous vegetation up to a specified threshold as a permitted activity. The threshold varies depending on either the location of the clearance or the type of vegetation being cleared. There are also exemptions to these. These are set out in the table below:

<b>Area/Type</b>	<b>Amount</b>	<b>Exemptions</b>
Riparian areas – within: 20m of the bank of listed rivers or 10m of other rivers; 75m of listed lakes or 50m of other lakes; or 50m of any wetland.	Up to 100m <sup>2</sup> in any continuous 5 year period	<ul style="list-style-type: none"> <li>• Removal of declared weed pests</li> <li>• Clearance for the purpose of track maintenance or habitat enhancement</li> <li>• Where clearance has been consented by CRC</li> <li>• Where clearance is provided for under specified Acts.</li> </ul>
SONS	Up to 100m <sup>2</sup> in any continuous 5 year period	<ul style="list-style-type: none"> <li>• Where clearance is provided for under specified Acts</li> <li>• Earthworks for the purpose of track maintenance</li> </ul>
Tall Tussock	Up to 100m <sup>2</sup>	<ul style="list-style-type: none"> <li>• Removal of declared weed pests</li> <li>• Clearance for the purpose of track maintenance</li> <li>• Where clearance has been consented by CRC</li> </ul>
Indigenous vegetation with a canopy height of greater than 3 metres and larger area than 500m <sup>2</sup>	Nil	
Wetlands exceeding 1000m <sup>2</sup>	No modification by clearance of indigenous vegetation, cultivation, or damage by deposition of material	<ul style="list-style-type: none"> <li>• Removal of declared weed pests</li> <li>• Clearance for the purpose of track maintenance</li> </ul>

<sup>10</sup> Evidence of Mike Harding, paragraphs 41-45.

<sup>11</sup> Appendix 3 - Criteria for determining significant indigenous vegetation and significant habitat of indigenous biodiversity.

Land above 900m in altitude	Up to 100m <sup>2</sup> in any continuous 5 year period	<ul style="list-style-type: none"> <li>• Removal of declared weed pests</li> <li>• Clearance for the purpose of track maintenance</li> <li>• Where clearance has been consented by CRC</li> </ul>
Bog pine shrublands within Mackenzie Basin	Nil	
Open indigenous shrublands containing at least three of listed indicator species where these shrubs are prominent	Up to 2,000m <sup>2</sup> in any continuous 5 year period	<ul style="list-style-type: none"> <li>• Removal of declared weed pests</li> <li>• Clearance for the purpose of track or fenceline maintenance</li> <li>• Where clearance has been consented by CRC</li> </ul>
Dense indigenous shrublands containing at least five of listed indicator species		
Matagouri-dominated shrublands ( <i>Discaria toumatu</i> ) in specified areas, with an average canopy height of greater than 1.5 metres, where there are more than 5 shrubs of this height and where the vegetation has not been cleared since 1985.		
Short tussock grasslands (where tussocks exceed 15% canopy cover)		
Indigenous Cushion and Mat Vegetation and Associated Communities , where at least 50% of the vegetation ground cover comprises vascular and non-vascular indigenous species, OR where the number of vascular indigenous species is greater than 20.	Up to 10ha in any continuous 5 year period per property in the Mackenzie Basin	<ul style="list-style-type: none"> <li>• Removal of declared weed pests</li> <li>• Clearance for the purpose of track or fenceline maintenance</li> <li>• Where clearance has been consented by CRC</li> <li>• Any short tussock grassland/ indigenous cushion or mat vegetation where the site has been oversown, and topdressed at least three times in the last 10 years prior to new clearance so that the site/vegetation is dominated by clovers and/or</li> </ul>

		exotic grasses.
Matagouri which has an average maximum canopy height greater than 1.5 metres, outside Mackenzie Basin	Up to 500m <sup>2</sup> in any continuous 5 year period	<ul style="list-style-type: none"> <li>• Removal of declared weed pests</li> <li>• Clearance for the purpose of track or fenceline maintenance</li> <li>• Where clearance has been consented by CRC</li> </ul>
Tall tussock, outside Mackenzie Basin	Up to 100m <sup>2</sup>	
Indigenous vegetation which has an average maximum canopy height greater than 3 metres, outside Mackenzie Basin	Up to 500m <sup>2</sup>	
Other indigenous vegetation, outside Mackenzie Basin	Up to 5,000m <sup>2</sup> outside an area of improved pasture	

## Overview of PC18

23. The Council is currently in the early stages of reviewing the full District Plan. PC18, at the time of notification, was intended to form part of the first stage of the review.
24. PC18 relates to the management of indigenous biodiversity within the Mackenzie District and is intended to address the loss of indigenous biodiversity within the District, including giving effect to the direction in the CRPS. PC18 proposes to transfer the main indigenous biodiversity provisions from Section 7 into a separate section (Section 19) that specifically focuses on indigenous biodiversity, while also amending the approach taken to the management of indigenous biodiversity. Within the PC18 provisions, it is noted where an objective or policy is one being transferred from Section 7, rather than being an entirely new provision.
25. Prior to notification of PC18, MDC sought and obtained an Environment Court declaration that within the Mackenzie Basin Subzone, proposed Rules 1.1 – 1.3 in PC18 have immediate legal effect on notification, to the extent that they protect areas of significant indigenous vegetation or significant habitats of indigenous fauna, or control vegetation clearance of areas that are not significant under s6(c) of the RMA.
26. Key aspects of PC18 include:

- The removal of indigenous biodiversity provisions from Section 7 – Rural Zone. As well as the objective and policy suite, this includes deletion of most, but not all, parts of Rule 12 (the vegetation clearance rule described above). The rules remaining within Rule 12 are those that apply to vegetation clearance and are not specifically limited to indigenous vegetation.
- The inclusion of two new objectives (2 & 3), in addition to the existing objective transferred from Section 7 (now proposed Objective 1).
- The inclusion of seven new policies (3-9), in addition to the two existing policies transferred from Section 7 (now proposed Policies 1 & 2).
- A new suite of indigenous vegetation clearance rules that provide for:
  - o Clearance of indigenous vegetation as a permitted activity in certain specified circumstances.
  - o Provision for the clearance of indigenous vegetation through a restricted discretionary activity consent pathway, where either a Farm Biodiversity Plan (FBP) is prepared in accordance with the specifications set out in Appendix Y, or the clearance is 5,000m<sup>2</sup> or less within any site in any 5-year continuous period.
  - o Clearance of indigenous vegetation as a non-complying activity in specified circumstances (more than 5,000m<sup>2</sup> within any site in any 5-year continuous period without a FBP; within an identified Site of Natural Significance; above 900m in altitude; within specific distances of various waterbodies).
  - o A separate set of rules for indigenous vegetation clearance associated with the Waitaki Power Scheme.
- The Farm Biodiversity Plan (FBP) process is intended to provide a consenting pathway for the integration of land development proposals (that involve indigenous vegetation clearance) with management of indigenous biodiversity across a whole property. The FBP would specifically include assessment and identification of indigenous biodiversity values and as such would provide a process for the identification of areas of significance, assessed against the criteria in the CRPS.

## **Statutory and Planning Context**

27. This section sets out documents that are relevant to the provisions and submissions within the scope of this report. Although a summary of the way in which these provisions are relevant is provided below, the way in which they influence the assessment of the relief requested by submissions is set out in the actual assessment.

### **Resource Management Act 1991**

28. The purpose of the RMA, as set out in s5, is to promote sustainable management. In the context of indigenous biodiversity, this means managing the use, development and protection of natural and physical resources to enable people and communities to provide for their wellbeing; while sustaining the potential of those resources to meet the needs of future generations, safeguarding the life-supporting capacity of ecosystems and avoiding, remedying or mitigating adverse effects of activities on the environment.
29. Under s6(c) of the RMA, recognition and provision must be made for the protection of areas of significant vegetation and significant habitats of indigenous fauna. This is central to PC18. As raised by submitters, s6(b) also requires recognition and provision for protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development. Decision-makers must also have particular regard to matters set out in s7, which include (a) kaitiakitanga; (aa) the ethic of stewardship; (b) the efficient use and development of natural and physical resources; and (d) the intrinsic values of ecosystems.
30. Under s31(1)(a) of the RMA, the Council has the function of establishing, implementing and reviewing plan provisions to achieve integrated management of the effects of the use, development, or protection of land and associated natural resources of the district; and, under s31(1)(b)(iii), has the more specific function of controlling effects of the use, development or protection of land, including for the purpose of maintaining indigenous biological diversity.

### **National Policy Statement for Renewable Electricity Generation 2011 (NPSREG)**

31. The NPSREG sets out an objective and policies to enable the sustainable management of renewable electricity generation under the RMA. The overarching objective seeks recognition of the national significance of renewable electricity generation (REG) activities, by providing for their development, operation, maintenance and upgrade, to

increase the proportion of energy generated from renewable energy sources in line with Government targets.

32. The NPSREG policies broadly require recognition and provision for the national significance and benefits of REG activities; particular regard to be given to the nature and constraints of REG activities and the achievement of REG targets; and consideration of offsetting and compensation for any residual adverse effects that cannot otherwise be avoided, remedied or mitigated. In relation to hydro-electricity resources, the NPSREG also directs that district plans include provisions to provide for the development, operation, maintenance and upgrading of new and existing hydro-electricity generation activities.
33. The NPSREG is relevant to PC18 as it includes specific provisions that apply to indigenous vegetation clearance associated with the Waitaki Power Scheme.

### **National Policy Statement on Electricity Transmission 2008 (NPSET)**

34. The NPSET sets out the objective and policies for managing the electricity transmission network (the National Grid) and imposes obligations on both Transpower and local authorities. The NPSET seeks that the national significance of the electricity transmission network is recognised by facilitating the operation, maintenance and upgrade of the National Grid while managing adverse effects on the environment. It requires that the benefits of electricity transmission are recognised and provided for and provides direction on matters to be considered in managing the effects of the National Grid.
35. The NPSET is not central to PC18, however, Transpower, as the owner and operator of the National Grid is a further submitter on PC18 and in particular on the provisions that relate to the clearance of indigenous vegetation associated with the National Grid. The NPSET is therefore relevant to the consideration of the indigenous vegetation provisions as they relate to the National Grid.

### **National Planning Standards (NP Standards)**

36. In May 2019, the first set of NP Standards came into force. They are intended to improve consistency in plan structure, format and content by standardising basic elements of RMA plans. The current NP Standards are focussed on the structure and format of planning documents, rather than affecting the direction or intent of provisions within plans. The MDP is required to comply with the NP Standards by May 2024, or through notification of a proposed district plan.

37. PC18 is not required to align with the NP Standards<sup>12</sup>. However, there are some aspects of the NP Standards that may be relevant to consider, including how the Plan is structured and how provisions are numbered and ordered.

### **Draft National Policy Statement for Indigenous Biodiversity 2019 (dNPSIB)**

38. In 2019 the Government released the dNPSIB. When and if this comes into effect, the Council will be required to give effect to the NPS; however, as a draft it has no legal weight under the RMA. Notwithstanding this, I believe it is prudent to consider the direction within the draft.
39. As proposed, the dNPSIB is focussed on the maintenance and integrated management of indigenous biodiversity. It uses 'Hutia Te Rito' as the framework to achieve an integrated and holistic approach to maintaining indigenous biodiversity. This recognises that the health of indigenous biodiversity species, ecosystems that are taonga, the wider environment and the health of people are intrinsically linked. The dNPSIB requires the assessment of indigenous vegetation within the District to identify and map areas of significance in accordance with specified criteria, within 5 years.

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

40. Chapter 9 of the CRPS pertains to ecosystems and indigenous biodiversity. Its stated focus is on s6(c) of the RMA.
41. In accordance with s62 of the RMA, Chapter 9 sets out which local authority is responsible for specifying provisions relating to controlling the use of land to maintain indigenous biological diversity. This sets out that territorial authorities have sole responsibility for controlling the use of land for the maintenance of indigenous biological diversity on all land outside of wetlands, the coastal marine area, and beds of rivers and lakes. The Regional Council and Mackenzie District have joint responsibility for controlling use of land in beds of rivers and lakes and wetlands, if the District Plan identifies a significant area which includes a bed of a river/lake or a wetland, or includes indigenous vegetation clearance provisions that apply to these areas. Otherwise, the responsibility for control of these areas for the maintenance of indigenous biological diversity falls to the Regional council.
42. There are three objectives in this chapter:

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<sup>12</sup> Standard 17, clause 4.



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.*

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.*

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

43. Policy 9.3.1 directs how significance is to be determined and links to an Appendix containing criteria. Method 3 under this policy directs territorial authorities to provide for the identification and protection of significant areas, with District Plan rules managing indigenous vegetation clearance to provide for a case-by-case assessment of the significance of an area and whether protection is warranted. Method 5 also encourages working with landowners to identify significant areas for inclusion in district plans.
44. Policy 9.3.3 directs the adoption of an integrated and co-ordinated management approach to halting the decline in the region’s biodiversity through various methods. Of relevance to territorial authorities, Method 4 directs that provisions are included in district plans to achieve integrated management of the actual and potential effects of land use on the life-supporting capacity and/or mauri of ecosystems and the protection of indigenous biodiversity.
45. A number of the methods under different policies state all local authorities should protect significant areas/life-supporting capacity and/or mauri of ecosystems etc (depending on the focus of the policy), as they undertake their own operations, unless the adverse effects on the areas/habitats/ecosystems cannot be avoided, and are necessary for the maintenance of erosion or flood protection structures or for the prevention of damage to life or property by floods/fire or safeguarding public health.
46. Policy 9.3.4 seeks to promote the enhancement and restoration of Canterbury’ ecosystems and indigenous biodiversity in “*appropriate locations*” where it will improve the functioning and long term sustainability of the ecosystems.
47. Policy 9.3.6 sets criteria that are to be applied to biodiversity offsets. These are discussed further when I address the submissions on offsetting.

## **Te Mana O Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020**

48. In August 2020, the Department of Conservation released Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020 (Biodiversity Strategy). The Strategy is a strategic plan for biodiversity in New Zealand. Its vision is *Te Mauri Hikahika o te Taiao / the life force of nature is vibrant and vigorous*. It sets out why a strategy is needed, the current state of and problems faced by the country's biodiversity, and the opportunities for responding to the pressures and issues facing biodiversity.
49. The Strategy includes five overarching outcomes, supported by 13 objectives that are based around three pou/pillars, which are intended to provide direction and focus to guide towards change needed to achieve the outcomes. Each objective includes specific goals.
50. Under section 74(2)(b)(i), when changing its district plan, the Council is required to have regard to a strategy prepared under other Acts, to the extent that its content has a bearing on resource management issues of the district. The Strategy states that the strategic direction contained within it is intended to guide all who work with or have an impact on biodiversity, including local government. I note that while the strategy sets out the aspiration and direction intended for biodiversity, it states that the pathway for meeting the goals and objectives will be included in the next phase of strategy development, through an implementation plan. I anticipate that this will provide greater direction as to how territorial authorities are expected to contribute to the Strategy's implementation, including in performing their functions under the RMA.

## **Approach to Submission Analysis**

51. Twenty-one submissions were received on PC18 and 13 further submissions. These included submissions on the proposed objectives, policies, rules and related appendices to proposed Section 19, as well as consequential changes to Section 7 resulting from the proposed shifting of content from Section 7 to Chapter 19. Submitters are referred to by name, or by abbreviation (where set out at the start of this report) and the submission number allocated to them.
52. The analysis of submissions has generally been undertaken on a provision-by-provision basis. However, submission points that relate to a wider theme, or across several interrelated provisions, have been grouped and assessed together.

53. Depending on the number and nature of the submissions on a provision or topic, submissions are either all set out first and then analysed collectively; or are set out and analysed one-by-one. The approach is indicated by the sub-heading in each section.
54. Further submissions have been considered in the preparation of this report, but in general, they are not specifically mentioned because they are limited to the matters raised in original submissions and therefore the subject matter is canvassed in the analysis of the original submission. All but one further submitter is also a primary submitter on PC18 and in broad terms the reasons given in their further submission are consistent with the view set out in their original submission. The exception to this is Transpower, which only made a further submission. This further submission is set out in more detail where it raises a matter not canvassed in other submissions.
55. Where a change is recommended to PC18 as a result of the consideration of submissions, a recommendation sub-section is included that sets out the changes recommended, using underlining to indicate recommended additions and ~~striketrough~~ to indicate deletions from the notified provisions. Footnotes are used to indicate the scope for the change.
56. Attachment 1 sets out the recommendations this report makes on PC18 in full, shown without the use of tracking.

## **General direction of PC18**

### ***Submissions and Analysis***

57. There are several submitters<sup>13</sup> who broadly support the direction of PC18 as a step in the right direction to address biodiversity loss and better protect significant indigenous vegetation and habitats. While several of these submitters seek a range of changes to PC18, discussed in subsequent sections of this report, these submissions indicate a broad level of support for the introduction of PC18 and it being an improvement on the status quo for managing indigenous biodiversity within the District.

## **Section 32 report**

### ***Submissions***

58. Four submitters<sup>14</sup> raise concerns about the adequacy of the s32 evaluation, including the lack or insufficiency of assessment of:

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<sup>13</sup> FFNZ (#1), C Morris (#5), CRC (#8), EDS (#9), PTH (#15), DOC (#18), BLINZ (#19), Forest & Bird (#20)

<sup>14</sup> Genesis (#11), Meridian (#13), Mt Gerald (#16), The Wolds (#17).

- issues that have arisen in respect of the Waitaki Power Scheme that require more stringent regulation than under the current MDP;
- the costs and benefits of the proposed rules;
- the appropriateness of provisions shifted from Section 7 into Section 19; and
- the outcomes of the tenure review process.

### ***Analysis***

59. Council prepared and notified an evaluation report for PC18. Notwithstanding the criticism summarised above, in my view the submission and hearing process provides an opportunity to reconsider the proposed provisions in accordance with the direction in s32. My evaluation of submissions on provisions has been undertaken on the basis of considering whether changes sought to objectives are more appropriate than those proposed in PC18 in terms of achieving the purpose of the RMA; and similarly, considering whether changes to policies and rules (and other provisions) are more appropriate than the notified provisions in achieving the proposed (and where relevant, existing) objectives. Similarly, where the Hearing Panel consider that changes to PC18 are required, a further evaluation of those changes is required under s32AA of the RMA.
60. As a consequence of this, I have considered the relevance of the direction in s32 in my assessment of the provisions, rather than responding to the broader concerns of these submitters regarding the notified evaluation report.

## **Chapter Title and Numbering**

### ***Submissions and Analysis***

61. PC18 is based on inserting a new Section 19 into the MDP titled 'Indigenous Vegetation'. As notified, the proposed objectives have been numbered 1-3 and the policies 1-9. The proposed rules have been numbered chronologically from 1, with subclauses, e.g. 1.1, 1.1.1.1 and so on, with rules relating to the Waitaki Power Scheme numbered 2 (2.1, 2.1.1 and so on).
62. Given that the provisions sit in Section 19, many submitters have referred to the provisions using the preface of 19, e.g. Objective 19.1, Rule 19.1.1.1 and so on. PC18 itself, also refers to 'Rule 19.1' and 'Rule 19.2.1' within Rule 1.2.1 and 1.2.2 respectively.

63. OWL (#14) submits that the proposed numbering within PC18 is not consistent with the current format of the MDP and is confusing. It seeks that the numbering is updated to better align with the existing numbering format of the MDP.
64. In general, I consider the approach taken to numbering is similar to that used in the current MDP; except that in other Sections policies related to an objective are numbered with A, B, C as well, e.g. Policy 2A, Policy 2B. There is some internal inconsistency within proposed Section 19 with the way that the matters of discretion are numbered and the same numbering is used for conditions as for matters of discretion, which has the potential to lead to confusion.
65. The MDP, once reviewed, will also be required to meet the structure set by the NP Standards. In this instance, the content of proposed Section 19 would be required to be included within the 'Ecosystems and indigenous biodiversity' chapter<sup>15</sup>. The NP Standards will also dictate the way provisions are numbered.<sup>16</sup>
66. Notwithstanding future alignment with the NP Standards, I consider it appropriate to generally retain the current approach to numbering of provisions at this time. Attachment 1 to this report contains the full version of provisions recommended in this report, shown without track changes. In addition to the changes to the content of provisions set out in this report, the Attachment 1 version proposes changes to the numbering of the policies and takes a consistent approach to how the rules, including matters of discretion are numbered. These numbering changes do not affect the substance of the provisions, but are intended to provide greater clarity.
67. Mt Gerald (#16) and The Wolds (#17) seek that the chapter heading is amended to "*Vegetation Clearance*" rather than "*Indigenous Vegetation*". In a similar vein, Genesis (#11) and Meridian (#13) also raise concerns that within PC18, there is a lack of consistency in language and terms, with the objectives and policies addressing biodiversity, with rules focussed on vegetation clearance. They consider this impacts on the efficient implementation of provisions.
68. I note that naming the chapter 'vegetation clearance' would not align with the NP Standards. In my view, while control of vegetation clearance is central to the chapter, it is a method. The chapter as a whole is more broadly about management of indigenous biodiversity. This includes the proposed introduction of Farm Biodiversity Plans, which although triggered by vegetation clearance rules, are anticipated to provide a framework

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<sup>15</sup> Clause 19(c), Standard 7.

<sup>16</sup> Clauses 37-43, Standard 10.

that manages indigenous biodiversity holistically. In my view it would not be appropriate to confine the title of the chapter or the objectives to focus on vegetation clearance, because the outcome sought is much broader. It is, however, appropriate that the rules relating to vegetation clearance are focused on this particular activity, and how it is to be managed to assist with achieving the broader outcome. I also note that the approach taken in PC18 in terms of this is common in district plans.

69. Given this, I do not recommend changes to the title of the chapter, or any other provisions in relation to this matter. For consistency with the NP Standards I do however consider it prudent to adopt the NP Standards title and rename the Section 'Ecosystems and indigenous biodiversity'.
70. SPSL (#3) seek, for consistency with the objectives and policies, the CRPS and the RMA, that any references to "*biodiversity*" are amended to refer to "*indigenous biodiversity*". Based on a word search, Policy 6 refers to biodiversity, as do some matters of discretion in Rules 1.2.1 and 1.2.2 and 2.2.1, and in some parts of Appendix Y (Farm Biodiversity Plan Framework).
71. I note in relation to Policy 6, which discusses offsetting, that reference to biodiversity only is consistent with the offsetting policy in the CRPS (Policy 9.3.6) which refers to "*the residual effects on biodiversity are capable of being offset to ensure no net loss of biodiversity.*" However, in turn, the definition of no net loss only relates to indigenous biodiversity and the objectives in the CRPS all refer to indigenous biodiversity. I also agree with the submitter that under the RMA, the Council has a function of controlling activities for the purpose of the maintenance of indigenous biological diversity. In my view amending the provisions that only refer to biodiversity to explicitly refer to indigenous biodiversity is appropriate and removes any doubt. In my view this is consistent with Policy 9.3.6 of the CRPS, when that policy is read in conjunction with the related definitions.
72. Because the provisions affected by this recommendation are also considered further in this report, I have not set out recommended changes to these provisions below; however, these are incorporated into the recommendation made on the relevant provisions.

### **Recommendation**

73. **Amend** title of Section 19 as follows:

*SECTION 19 – ECOSYSTEMS AND INDIGENOUS BIODIVERSITY<sup>17</sup>*

74. **Amend** references within the provisions<sup>18</sup> from “*biodiversity*” to “*indigenous biodiversity*”<sup>19</sup>.

## Identifying significant areas

75. As noted earlier, the MDP currently identifies SONS, which are areas referred to in s6(a)(b) and (c) of the RMA. However, in terms of areas to which s6(c) would apply, not all significant areas within the District are listed as SONS. Mr Harding notes his opinion that much of the undeveloped land on depositional landforms within the Mackenzie Basin has significant ecological values, and notes that the currently identified SONS only includes a small portion of that undeveloped land.<sup>20</sup>
76. The operative rule package generally provides for clearance of indigenous vegetation up to a specified threshold as a permitted activity, with the threshold being related to either the location of the clearance (including within SONS) or the type of vegetation being cleared.
77. Under PC18, Appendix I, which lists the SONS, is retained, but PC18 does not propose to add to the list of SONS, or to continue with managing indigenous vegetation clearance by type/location. Instead, the proposed approach would require resource consent for any clearance of indigenous vegetation (except that specifically identified as a permitted activity), with the consent process used to assess and determine significance of indigenous biodiversity. The FBP process, provided for as a restricted discretionary activity across a farm area, would require an assessment of all areas of indigenous biodiversity, with management of both significant and non-significant areas addressed in the FBP.
78. The proposed PC18 rule package would also allow for clearance of any indigenous vegetation up to 5000m<sup>2</sup> within a site, over a five-year period as a restricted discretionary activity. The matters for discretion would allow for consideration of the significance of the vegetation. Clearance of over 5000m<sup>2</sup> (without a FBP) would be non-complying, regardless of its significance.

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<sup>17</sup> Clause 16(2) change to align with National Planning Standards.

<sup>18</sup> Policy 6, Rules 1.2.1, 1.2.2 and 2.2.1, and Appendix Y.

<sup>19</sup> SPSL (#3).

<sup>20</sup> Evidence of Mike Harding, paragraph 44.

## **Submissions**

79. Maryburn Station (#2) seeks that the objectives and policies are amended to recognise identified protected areas, as opposed to protecting all areas, with the Council working in consultation with landowners to identify these significant areas. It seeks permitted activity status (presumably for indigenous vegetation clearance) outside significant areas. Similarly, Mt Gerald (#16) and The Wolds (#17) consider that PC18 fails to strike the appropriate balance between achieving the outcomes required by the RMA and CRPS and providing a pathway for development and use of land in accordance with sustainable management. In particular, they consider it is inappropriate for the Council to adopt a threshold of zero for the clearance of indigenous vegetation or habitats that have not been identified or assessed as significant. They consider the requirement for consent for any development-related indigenous vegetation clearance is an inefficient approach to land management which does not provide for reasonable productive use.
80. In relation to identification, CRC (#8) notes that the operative MDP contains a list of sites of natural significance (SONS). It considers it is unclear what approach will be taken to identifying and listing new SONS in the Plan, which could be identified through surveys undertaken in cooperation with landowners, or through consents and/or through the development of FBPs. It submits that if it is intended that the current SONS will not be updated and FBPs will be the key mechanism to manage newly identified SONS, it would be beneficial to make this clearer through the policies. It also notes that the operative MDP includes policy recognition of significant geological or geomorphological features which are of significant value to the District, in Rural Policy 1B. CRC submits that as the SONS list includes a number of these sites, they should be addressed by the objectives and policies within the Plan. It seeks that the policy approach is clarified as to these sites.
81. EDS (#9) seek that all SONS are mapped, including "*mapping of the Mackenzie Basin's remaining contiguous/connected area of biodiversity (and geomorphological and landscape) value as a SONS*". It submits identification of these areas is consistent with the Environment Court's findings that where the Basin has not been subject to pastoral intensification/agricultural conversion, it is a SONS in terms of s6(c) of the RMA and an ONL in terms of s6(b). It considers that mapping is clear and simple for plan users, regulators and the public, allows rules targeted to each area and simplifies monitoring. It also submits that mapping "*removes issues over Council inability to access properties to undertake SONS assessments*", aligns with the Mackenzie Agreement shared vision and gives effect to various CRPS provisions.



82. C Burke (#4) seeks that the provisions throughout Section 19 and the wider MDP are amended to acknowledge that all remaining indigenous biodiversity in the Mackenzie Basin is significant. The submitter seeks this relief as:
- the nature of the tenure review process means that not all outcomes favoured the protection of extremely valuable areas of indigenous biodiversity
  - due to the significant change and loss that has occurred in the Mackenzie Basin under intensification of farming practices all remaining indigenous vegetation and habitats are now significant even when in depleted states
  - these biodiversity values are unique to, and in, New Zealand and are irreplaceable.
83. Related to this, Meridian (#13) submits that insufficient attention has been given to Chapter 9 of the CRPS and in particular, PC18 results in a higher level of regulation of indigenous vegetation removal, regardless of its significance, than is necessary to give effect to chapters 9 & 16 of the CRPS, also resulting in increased compliance costs.

### **Analysis**

84. As noted by some submitters, the MDP currently identifies SONS. However, most of these have not been reviewed in the context of the criteria for significance in the CRPS (and no formal changes have been made to the SONS in terms of sites that have been reviewed). As indicated by various submitters and outlined by Mr Harding<sup>21</sup>, the current SONS do not include all areas of significance.
85. Mr Harding outlines the work he has been undertaking in reviewing areas of significance within the District in accordance with the CRPS criteria. He notes that 24 of the 82 currently listed SONS have been reviewed, and 74 additional sites have been identified so far. He states that the timeframe for the completion of the review is unclear, but is unlikely to be completed before the District Plan is reviewed. He notes however, that the proposed NPSIB would require regular plan reviews to include additional areas of significance, stating that the review and identification of significant areas could be an ongoing project<sup>22</sup>.
86. It is my opinion that in absence of complete mapping of all significant areas, it is not sufficient to only recognise and protect SONS, and allow for vegetation clearance outside these areas, without some assessment of significance. Such an approach would not, in my view, give effect to the CRPS.

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<sup>21</sup> Evidence of Mike Harding, paragraph 44.

<sup>22</sup> Evidence of Mike Harding, paragraphs 46-50.

87. While mapping is intended to be progressed, and under the proposed NPSIB would be required within 5 years, this will need to go through a process that includes the opportunity for landowner input. That will take some considerable time. PC18 addresses identified gaps in the current MDP and seeks to better manage and protect indigenous biodiversity. In the absence of all significant areas being mapped, the proposed changes are required to give effect to the CRPS. The CRPS does not *require* mapping and can be given effect to through other methods. In particular, Method 3 under Policy 9.3.1 directs that the District Plan provisions includes:

*appropriate rule(s) that manage the clearance of indigenous vegetation, so as to provide for the case-by-case assessment of whether an area of indigenous vegetation that is subject to the rule comprises a significant area of indigenous vegetation and/or a significant habitat of indigenous fauna that warrants protection.*

88. The proposed policy framework and rule package, in the absence of all significant areas being identified, provides a pathway for identification of significance through the consent process. The criteria for significance are set out in the CRPS and reflected in PC18. In my view it is more appropriate to apply these criteria – whether through mapping and identification, or on a consent-by-consent basis - than make a blanket determination that all remaining indigenous biodiversity is significant.
89. I also note that the approach taken in PC18 is similar to that contained in the Hurunui District Plan, which does not contain mapped sites of significance from a s6(c) perspective, and instead provides a similar consent pathway for indigenous vegetation clearance. The Hurunui District is also in the Canterbury region and was prepared to give effect to the current CRPS.
90. In relation to CRC's point about identifying and listing new SONS in the Plan, I accept that a policy could be included in the Plan to set out the intended process for this, or to make it clearer that FBPs will be the key mechanism to manage newly identified SONS. However, in my view, this is currently uncertain, as the NPSIB requirements would supersede (over time) use of FBPs as a means of identifying significant areas. Notwithstanding this, the operative MDP includes explanations and reasons under objectives and policies. This is not continued in Section 19 and in my recent experience, plan drafting is steering away from this approach. The NP Standards do however allow for principal reasons to be included. Such a section could be included in Section 19 to better explain the approach taken to indigenous biodiversity management, if the Hearing Panel consider that is warranted.

91. I agree with CRC's submission that it is important to note the wider role of the SONS within the MDP, which includes sites that relate to s6(a) and (b) matters, not just to s6(c). I note that Rural Policy 1B in the MDP is largely to be shifted from Section 7 into Section 19. However, as is shown below, it is proposed that it would be amended such that it no longer applied to significant geological or geomorphological features.

*Rural Policy 1B - Identification And Protection Of Special Sites*

*To identify in the District Plan sites of significant indigenous vegetation or habitat (in accordance with the criteria listed in the Reasons below), and significant geological or geomorphological features, and to prevent development which reduces the values of these sites or features.*

*Proposed Policy 1*

*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.*

92. As noted in the explanation in Appendix I, significant geological or geomorphological features are those related to s6(b) of the RMA. As Section 19 relates to indigenous biodiversity (including s6(c) areas) it is my view that removing reference to these areas from what becomes Policy 1, is appropriate, but as noted by CRC, there is a need to consider if that leaves a gap in Section 7 as to how these features are to be managed. I also understand that some of these features can also serve an important role for biodiversity.
93. Having considered the direction in Rural Policy 1B (to be deleted), and that in various provisions remaining in Section 7, I am satisfied that appropriate provisions remain in the MDP to manage the identified significant geological or geomorphological features, even with the removal of Rural Policy 1B as it applies to significant geological and geomorphological features. This is because the following provisions are unchanged by PC18:
- Rural Objective 3A broadly aims for the protection of outstanding landscape values and those natural processes and elements which contribute to the District's overall character and amenity. In my view, this is more relevant to s6(a) and (b) matters than Rural Objective 1 (to be moved under PC18) which relates to s6(c) matters. In other words, reference in Rural Policy 1B to significant geological or geomorphological features does not fit particularly well under Rural Objective 1 in any case.

- Rural Policy 3A1 seeks to limit earthworks on land containing geopreservation sites to enable the landforms and landscape character to be maintained.
- Rural Policy 3A3 seeks to avoid or mitigate the effects of subdivision, uses or development which have the potential to modify or detract from areas with a high degree of naturalness, visibility, aesthetic value, including important landscapes, landforms and other natural features.
- Policy 3B1 (applicable within the Mackenzie Basin only) seeks to identify areas (including SONS) that “*assist in the protection and enhancement of the characteristics and/or values of the outstanding natural landscape contained in Objective 3B(1)*”.
- Policies 3B3 and 3B4 direct, in relation to subdivision and development within Farm Base Areas and residential, rural residential and visitor accommodation activity zones respectively, that the outstanding natural landscape and other natural values of the Mackenzie Basin are maintained or enhanced by avoiding adverse effects on the natural character and environmental values of SONS; Policy 3B5 directs that further subdivision of SONS are avoided; and similarly Policy 3B13 directs that pastoral intensification and/or agricultural conversion in SONS are avoided.
- There are also a range of rules and related assessment matters that apply to SONS which exclude buildings, tree planting, irrigators, pastoral intensification and agricultural conversion from these areas and impose stringent limits on earthworks and mining. The related assessment matters include consideration of natural features, geological and geomorphological sites.

94. To the extent that these features also serve a role in biodiversity, I consider that the objective and policy framework in PC18 would be relevant to the consideration of resource consents for activities involving these features. However, I do not consider that amendments are required to PC18 in relation to this.

## **How Chapter 19 relates to landscape matters**

### ***Submissions***

95. CRC (#8) seeks that the policy framework is amended to acknowledge that indigenous vegetation is a significant component of the outstanding natural landscape in the

Mackenzie Basin. It submits that PC13 established that indigenous vegetation is a significant contributor to the outstanding landscape values in the Mackenzie Basin. It submits it would be helpful to include a policy in the indigenous biodiversity chapter that recognises this and links to the Mackenzie Basin landscape provisions in the Rural chapter. It submits this would help integrate the consideration of pastoral intensification or agricultural conversion, landscape and indigenous vegetation clearance when they are considered in the consent process.

96. EDS (#9) seeks a new policy that recognises the overlap between ONL and biodiversity values, with the assessment matters and Appendix Y amended to provide for consideration of landscape effects. It submits that landscape values and ecological and biodiversity values are interlinked, pointing to the CRPS landscape criteria and the acknowledgment of this by the Environment Court. It submits it is necessary to recognise this overlap, through the ability to consider adverse effects on landscape values, in order for the Council to fulfil its obligations under s6(b) of the RMA, the RPS, and the landscape objectives and policies in the MDP.

### ***Analysis***

97. I agree the MDP already acknowledges there is a link between ONL and biodiversity values. This is reflected in the landscape-based provisions in Section 7 of the MDP. I agree with EDS that it would be appropriate, in particular, to ensure that the matters which the Council can consider in decision-making relating to vegetation clearance include potential effects on landscape values, as this would assist in achieving the wider Plan objectives.
98. However, I consider that the focus of Section 19 should be on indigenous biodiversity. In this regard, I do not consider it necessary to have a policy in this section that relates to landscape effects. This is because the outcomes sought in relation to landscapes, and the direction regarding how effects on landscapes are to be managed sit elsewhere in the District Plan. Expanding the matters of discretion within Section 19 to ensure that these effects and the landscape-based provisions can be taken into account is appropriate; but in my view further policy direction within this section is not required. For the same reason (and as expanded on later in this report) I do not consider it appropriate to expand Appendix Y, which sets out the requirements for Farm Biodiversity Plans, to include management of landscapes.

## How Section 19 relates to the rest of the MDP

### *Submission and Analysis*

99. EDS (#9) seek that additional policy direction is added stating that Section 19<sup>23</sup> and associated vegetation clearance rules apply to all activities and other parts of the MDP, including Section 16. They state that broad and poorly drafted exemptions in Section 16 have been relied on to allow for large-scale permitted clearance resulting in a loss of s6(b) and (c) of the RMA values. They consider that this is unacceptable and state that regulatory oversight is required to ensure those values are protected.
100. DOC (#18) similarly seek that a sentence is added at the start of the indigenous vegetation clearance rules, which states that: *“The rules [contained] in this part of Section 19 take precedence over any other rules that may provide for associated indigenous vegetation clearance as part of another activity, including those rules contained in Section 16”*. They consider this necessary as some activities permitted in other sections of the MDP provide for *“extensive vegetation clearance to occur unchecked”*.
101. Chapter 16 of the MDP relates to utilities. The introduction states that the rules within the section take precedence over other rules *“that may apply to utilities”* in the MDP. The rules provide for specified utilities as a permitted activity, subject to meeting standards set out. I agree that in order to achieve the outcomes sought in PC18, utilities should be subject to the rules in Section 19, and this can be achieved by including a statement at the start of the rules explicitly stating this.

### *Recommendation*

102. **Insert** the following at the start of the rules:

*The rules in this chapter apply to any indigenous vegetation clearance, including clearance undertaken as part of another activity, and apply in addition to the provisions in other sections of this Plan, including Section 16.*<sup>24</sup>

## Objective 1

103. Proposed Objective 1 reads:

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<sup>23</sup> The submission refers to Section 9, but it is assumed Section 19, being the section introduced by PC18 is what is intended.

<sup>24</sup> EDS (#9) and DOC (#20).

*To safeguard indigenous biodiversity and ecosystem functioning through the protection and enhancement of significant indigenous vegetation and habitats, riparian margins and the maintenance of natural biological and physical processes.*

104. The Objective is already included in Section 7 of the current MDP (“*Rural Objective 1 – Indigenous Ecosystems, Vegetation and Habitat*”), and it is proposed to ‘shift’ the current objective into Section 19, without any changes.

### **Submissions**

105. Mackenzie Guardians (#6) and DOC (#18) support the objective as notified.
106. CRC (#8) raises concerns about the PC18 provisions more broadly, stating that the policies do not explicitly distinguish between the management of indigenous vegetation and habitats that are significant, and wider biodiversity values below the threshold for significance. It notes that, for example, Objective 1, Objective 2 and Policy 2 refer to both significant indigenous vegetation and habitats as well as other terms including “*natural biological and physical processes*” and “*landforms, physical processes and hydrology*”. It notes that Objective 1 and Policy 2 have been transferred from the operative MDP but consider that PC18 provides an opportunity to rethink their usefulness and replace them with more targeted provisions.
107. CRC notes that Policies 2 & 5 refer to avoidance, remediation and mitigation. It submits that for significant vegetation and habitats, a hierarchy of avoiding adverse effects where practicable should be the first option. It submits such an approach would provide greater consistency with the CRPS and clear direction for those applying for and processing resource consents.
108. CRC’s submission seeks, broadly, that the objectives and policies are rewritten to clarify which provisions apply to significant indigenous vegetation and habitats of significant fauna, and those which apply to biodiversity more generally. To achieve this, a framework is suggested that:
- In relation to SONS, being areas known to be significant, seeks no net loss of significant indigenous biodiversity, with a hierarchical approach to addressing adverse effects.
  - Manages other areas of indigenous vegetation through identification of significance through consents and the FBP process, with a hierarchical approach to addressing adverse effects on areas identified as significant, and clearance of non-significant areas managed to maintain and enhance biodiversity and landscape values.

- Improved pasture, as areas known not to contain significant vegetation or habitats, can be maintained as a permitted activity.
- The hierarchical approach would require avoidance of adverse effects wherever practicable, and remediation, mitigation and then offsetting considered, in that order, only where avoidance is not practicable.

109. More specifically in relation to Objective 1, CRC (#8) seeks that the objective is amended as follows:

*To safeguard indigenous biodiversity and ecosystem functioning through:*

- *the protection and enhancement of significant indigenous vegetation and significant habitats of indigenous fauna,*
- *the protection and enhancement of riparian margins; and*
- *the maintenance of natural biological and physical processes.*

110. EDS (#9) note that the two limbs of the proposed objective align with the Council's obligations under s6 and s31 RMA. However, it suggests amendments to the objective to add clarity. EDS submits the proposed wording of the second limb is not clear as to what it is trying to achieve, in particular because the terms "*natural biological and physical processes*" are not clear or defined. Amendments to the objective are sought by EDS as follows:

*To safeguard indigenous biodiversity and ecosystem functioning through:*

- a. the protection and enhancement of significant indigenous vegetation and habitats, riparian margins; and*
- b. the maintenance of indigenous biological diversity ~~natural biological and physical processes~~.*

111. Genesis (#11) submits that the objective has been transferred from Chapter 7 of the MDP without consideration of its appropriateness "*in the context of indigenous biodiversity*". It considers that the focus on riparian margins and the maintenance of natural biological and physical processes are unnecessary in this new section of the Plan. Similarly, Meridian (#13) states that the focus on maintaining natural biological and physical processes and riparian margins are "*inappropriate and unnecessary in the context of this Plan Change*". Genesis notes that these aspects of the Plan may have been appropriate in the rural chapter previously, but consider this is a function of the regional council and the focus of the plan change should be specific to indigenous biodiversity. Meridian states that since development of the objective, the CRPS has changed and includes identification of which functions are most appropriately addressed



by the regional and district councils. Both also suggest that the objective should refer to the 'values' of significant indigenous vegetation and habitats as it provides greater consistency with Objective 9.2.3 of the CRPS. They seek that the objective be amended as follows:

*Except as provided for in Objective X, To safeguard indigenous biodiversity and ecosystem functioning through the protection and enhancement of the values of significant indigenous vegetation and habitats, ~~riparian margins and the maintenance of natural biological and physical processes.~~*

112. Glenrock Station Limited (#12) note that the objective largely reflects s6 of the RMA, with an additional obligation to enhance significant indigenous vegetation and habitats. It is not inherently opposed to this, if it is applied in an integrated fashion along with other provisions, for example, where an area of significant indigenous vegetation does not require enhancement but would be supported by enhancement of a surrounding area of vegetation. For consistency with Objective 2, it seeks that Objective 1 is amended to refer to "*protection and/or enhancement*".

113. Mt Gerald (#16) and The Wolds (#17) oppose the objective, on the basis that it fails to acknowledge the role of the landowner in achieving environmental outcomes and the need to balance protection of indigenous biodiversity with the need of landowners and communities to maintain and develop their livelihood to meet their needs, and the needs of future generations. They state that many landowners in the District value indigenous biodiversity and adjust their farm practices to voluntarily protect significant areas, which is why these areas remain. They seek that the objective is deleted and replaced with the following:

*Safeguarding the life-supporting capacity of indigenous biodiversity and ecosystems while also sustaining the reasonable use of land and natural resources.*

114. Forest & Bird (#20) supports the inclusion of objectives relating to maintaining indigenous biological diversity and providing for the protection of s6(c) matters. However, it considers that there is some uncertainty in the drafting of the objective and seek that it is split into two separate objectives that give clearer effect to the CRPS and better align with the policies that are to achieve the objectives. It submits that as currently drafted, the objective sets out two outcomes, but, as written, one is currently dependant on the other. Further, it considers the proposal does not include an objective(s) that state that further s6(c) areas will be identified and that ecologically significant wetlands are protected. It also submits that the term "*land development*" is uncertain and "*land use*" is preferable. The submitter does not provide specific wording as to how the objective

should be split. I also note that Objective 1 does not refer to “*land development*” and I presume that this comment relates to Objective 2, which does.

### **Analysis**

115. When considering the above submission points, I note that s32(1)(a) requires an evaluation of whether the objective is the most appropriate way to achieve the purpose of the RMA, which is set out in s5 of the RMA. This section requires that the sustainable management of natural and physical resources is promoted, and s5(2)(b) requires that the life-supporting capacity of ecosystems is safeguarded. Section 6(c) of the RMA requires the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. Section 31(1)(b)(iii) provides territorial authorities with functions under the RMA to establish, implement and review objectives, policies and methods for maintaining indigenous biological diversity.
116. At a broad level, I agree with CRC, Meridian and Genesis that PC18 represents an opportunity to reconsider the appropriateness of existing Plan provisions that are proposed to be shifted in Section 19. PC18 proposes a significant shift to how indigenous biodiversity is managed, and it is important to ensure that the objectives capture the most appropriate approach to achieving the purpose of the RMA in the context of the Mackenzie District. From a best practice point of view, I also note that the current wording is written more as a policy than an objective, by stating a course of action. It could therefore be more clearly reframed as an outcome.
117. I also agree with submitters seeking that the objective clearly distinguishes between the outcome sought for significant areas (under s6(c) of the RMA) and those sought in relation to more broadly maintaining biodiversity (31(1)(b)(iii)).
118. I also agree with EDS that greater clarity and alignment with 31(1)(b)(iii) would be provided by referring to “*indigenous biological diversity*” rather than “*natural biological and physical processes*”, although my preference is for “*biodiversity*” rather than biological diversity, for consistency with the terminology used in the rest of the chapter. While, in my view, consideration of effects on natural biological and physical processes is still important in managing indigenous biodiversity, it is the maintenance of indigenous biodiversity that is the outcome sought and which should be reflected at the objective level. I consider that this change will also somewhat address the concern of Meridian and Genesis, because it is clearly directed towards indigenous biodiversity and the functions of the district council.

119. In relation to reference to 'riparian margins' I note that Chapter 10 of the CRPS applies to the beds of rivers and lakes and their riparian zones. The methods under Policy 10.3.2 direct that territorial authorities include provisions in district plans to control the effects of the subdivision, use, development, or protection of land in riparian zones for protecting indigenous biodiversity and preserving natural character and protecting them from inappropriate subdivision and use. In my view, this clearly provides the mandate for management of indigenous biodiversity in riparian areas under the district plan. As such, I do not agree with the deletion of reference to riparian margins sought by Meridian and Genesis.
120. I have also considered whether it is more appropriate to refer to the 'values' of significant indigenous vegetation and habitats. Objective 9.2.3 of the CRPS seeks that "*Areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified and their values and ecosystem functions protected*" (emphasis added). Policy 9.3.1(3) also directs that areas identified as significant are protected "*to ensure no net loss of indigenous biodiversity or indigenous biodiversity values as a result on land use activities.*" Method 3 under Policy 9.3.1 directs that provisions are included "*to provide for the identification and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*" Section 6(c) also requires recognition and provision for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
121. In my view, the RMA (and CRPS) is clear that significant areas must be protected. The CRPS is useful in showing what it is about significant areas that requires protection – their values and ecosystem functions. The CRPS also requires that protection achieves no net loss of either indigenous biodiversity or indigenous biodiversity values. I have a slight preference towards the objective retaining reference to protection of significant areas, rather than values of these areas. How this protection is then achieved – through identifying values and ecosystem functions - can then be addressed in the policies. As proposed, the District Plan itself does not identify the values that makes particular areas significant, as not all significant areas are identified. In this case, what makes areas significant is driven by the criteria in Appendix 3 of the CRPS and outside of SONS this requires assessment on a case-by-case basis. In my view, amending the objective to refer to values might therefore lead to confusion as to what the 'values' are. However, at a policy level, I consider reference can be made to the identification and protection of values, because undertaking those actions will ensure protection of significant areas, as intended by the CRPS.

122. For completeness, if the objective is amended to refer to values, then I consider it should also refer to ecosystem functions, for consistency with Objective 9.2.3 of the CRPS.
123. In relation to whether the objective should refer to “*protection and/or enhancement*”, it is my view that the outcome sought is for both protection and enhancement and the current wording appropriately captures this.
124. In relation to the need to balance protection of indigenous biodiversity with the need of landowners and communities to maintain and develop their livelihood, I note that the consideration required under the RMA is whether the objective is the most appropriate to achieve the purpose of the RMA. That purpose requires managing resources to enable people and communities to provide for their wellbeing, while still achieving other outcomes. Namely, sustaining the potential of resources to meet the needs of future generations (s5(2)(a)); safeguarding the life-supporting capacity of ecosystems (s5(2)(b)); and managing effect of activities on the environment (s5(2)(c)). In achieving this overall purpose, the RMA also specifically directs, in s6(c), that areas of significant indigenous vegetation and significant habitats of indigenous fauna are protected. The alternate wording sought by Mt Gerald and The Wolds - to safeguard the life-supporting capacity of indigenous biodiversity and ecosystems while also sustaining the reasonable use of land and natural resources – in my view, does not assist in providing any detail as to how the purpose of the RMA, in relation to indigenous biodiversity, will be achieved in the Mackenzie District.
125. In relation to Forest & Bird’s concern that PC18 does not include an objective(s) that states that further s6(c) areas will be identified and that ecologically significant wetlands are protected, I consider that identification of further areas is an action and therefore sits better at a policy level. Significant wetlands will in any case be covered by this objective because they are areas of significant indigenous vegetation and habitats.
126. Notwithstanding the above analysis on specific submissions made on Objective 1, taking these into account along with broader comments on the plan change and submissions on Objective 2, I recommend that Objective 1 and 2 are combined. The recommended drafting, which takes into account the conclusions reached above, are set out at the end of the analysis on Objective 2.

### ***Recommendation***

127. I recommended that Objective 1 is **deleted**, subject to the changes recommended to Objective 2.

## Objective 2

128. Objective 2 reads:

*Land development activities are managed to ensure the maintenance of indigenous biodiversity, including the protection and/or enhancement of significant indigenous vegetation and habitats, and riparian areas; the maintenance of natural biological and physical processes; and the retention of indigenous vegetation.*

### **Submissions**

129. Mackenzie Guardians (#6), EDS (#9) and DOC (#18) support the objective as notified.

130. CRC (#8), as part of its broader comments about reviewing the objective and policy framework, seeks that the objective is deleted due to its overlap with Objective 1 and Policy 3.

131. Similar with concerns raised on a number of provisions within PC18, Genesis (#11) and Meridian (#13) consider that the objective should not address riparian areas and the maintenance of biological and physical processes, as they consider this to be unnecessary. Genesis considers reference to retention of indigenous vegetation is unnecessary as the objective already seeks to manage land to ensure the maintenance of indigenous biodiversity. Meridian considers the objective should be amended to more clearly focus on the matters in s6(c), s7(d) and s31(b)(iii) of the RMA. It also submits that addressing the maintenance of biological diversity and also separately referencing the retention of indigenous vegetation is repetitive and unnecessary. These submitters seek that the objective is amended to read:

*Except as provided for in Objective X, land development activities are managed to ensure the maintenance of indigenous biodiversity in the District, including the protection and/or enhancement of significant indigenous vegetation and habitats, and riparian areas; the maintenance of natural biological and physical processes; and the retention of indigenous vegetation.*

132. For completeness, "Objective X" which is referred to above is an additional objective sought by Genesis and Meridian, the detail of which is addressed in the Waitaki Power Scheme section of this report.

133. Glenrock Station (#12) seeks the deletion of the words "*and the retention of indigenous vegetation*" from the objective. It submits the objective needs to be applied in an integrated fashion, enabling holistic management of farming activities alongside indigenous vegetation values. It considers that the proposed phrase "*significantly*

*extends*” the scope of the objective and that this is not consistent with Policy 9.2.2 of the CRPS, that refers to restoration and enhancement of ecosystem functioning and indigenous biodiversity “*in appropriate locations*”. The submitter seeks amendment to the objective to recognise that retention of non-significant indigenous vegetation is considered in appropriate locations. It states that this amendment would further support Objective 1 and encourage land developers to identify opportunities for activities that can contribute to the values of the catchment, consistent with CRPS policies 9.2.2 and 9.3.4.

134. Mt Gerald (#16) and The Wolds (#17) state that the objective will curtail all development in the Mackenzie Basin. They consider that processes other than land development activities impact on indigenous biodiversity, including soil erosion, climate change, nutrient depletion and pests “*are arguably the main contributors to a decline in biodiversity*” and as such, land development activities should not be singled out. They also consider that restricting land use development opportunities may exacerbate a decline in biodiversity as a lower income will result in less spent on weed and pest control. They seek that Objective 2 is deleted and replaced with:

*To maintain and enhance indigenous biodiversity and ecosystem functioning by protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna.*

135. Forest & Bird (#20) considers that the term “*land development*” is uncertain and “*land use*” is preferable<sup>25</sup>.

### **Analysis**

136. I agree with CRC that there is overlap between Objective 1 and Objective 2. Because of this, and the way that Objective 1 is currently worded more as a policy, I recommend that the objectives are effectively combined.
137. As noted above in relation to Objective 1, I do not agree with Genesis and Meridian that reference to riparian margins should be removed, given the direction in the CRPS for territorial authorities to manage these areas to protect indigenous biodiversity.
138. In considering the specific wording for combining Objectives 1 and 2, I also agree with Glenrock Station that the objective should be focussed on the maintenance of indigenous biodiversity, rather than “*retention of all indigenous vegetation*”. The latter, in my view, goes beyond what is necessary to achieve the purpose of the RMA, and is

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<sup>25</sup> As noted above, this comment is made in relation to Objective 1 but is assumed to apply to Objective 2.

not reflected in the rule framework, which does provide a pathway for the clearance of indigenous vegetation. However, any clearance would still be expected to ensure that overall, indigenous biodiversity is maintained.

139. I agree with Forest & Bird that “*land development*” may be somewhat uncertain. However given that the RMA refers to use and development within its purpose, and the functions of territorial authorities in s31(1)(b) refers to control of the effects of use “*use, development, or protection of land*”, I consider it appropriate to refer to “*land use and development*”.
140. I also accept that there are other activities aside from land development that impact on indigenous biodiversity. However, some of the examples given by Mt Gerald and The Wolds are matters that are outside the control of the District Plan, or relate to the functions of regional councils.
141. Mr Harding, in his evidence, agrees that there are factors other than land development that contribute to the decline of indigenous biodiversity within the District, particularly grazing, animal and plant pests. However, he is unaware of any evidence that soil erosion, climate change or nutrient depletion are the main contributors to the decline in biodiversity. In his view, in addition to grazing and pests, land development is the main additional contributor to a decline in indigenous biodiversity in the Mackenzie Basin. He also notes, and I agree, that the impact of land development on biodiversity is the contributor that can be most effectively addressed by district plan rules.<sup>26</sup>
142. PC18 seeks to address adverse effects on biodiversity primarily through controls on vegetation clearance; this is a common approach in district plans. I accept that there is often a planning tension with rules being focussed on vegetation clearance, when animal and plant pests affect indigenous biodiversity; however the District Plan manages the subdivision, use, development and protection of land; it cannot compel a landowner to undertake pest control directly. PC18 does attempt to provide for more holistic management though, through the use of FBPs. This would allow for pest control to be identified as part of an overall approach to maintaining biodiversity, but ultimately would form part of a land use consent triggered by removal of some indigenous vegetation. For completeness, I consider the alternate wording sought by these submitters, which focusses only on maintaining and enhancing indigenous biodiversity by protection of significant areas would not give effect to the CRPS’ broader direction to halt the decline in Canterbury’s ecosystems and indigenous biodiversity.<sup>27</sup>

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<sup>26</sup> Evidence of Mike Harding, paragraphs 57-64.

## **Recommendation**

143. I recommended that Objective 2 is amended as follows:

*Land use and <sup>28</sup>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<sup>29</sup> and riparian areas; the maintenance of natural biological and physical processes; and the retention of indigenous vegetation.~~<sup>30</sup>*

## **Objective 3**

144. Objective 3 reads:

*To support/encourage the integration of land development proposals with comprehensive identification, and protection and/or enhancement of values associated with significant indigenous biodiversity, through providing for comprehensive Farm Biodiversity Plans and enabling development that is in accordance with those plans.*

## **Submissions**

145. Mackenzie Guardians (#6) support the objective, but seek that it is amended to include consideration of landscape values. They note that the Mackenzie Basin is an ONL, and that the CRPS provides an assessment framework for ONLs that includes “*natural science values*”, being the geological, topographical, ecological and dynamic components of the landscape.
146. CRC (#8) seeks that the objective is amended to say: “*support and encourage*” rather than “*support/encourage*” and for the direction to be “*...identification, protection and/or enhancement...*”
147. EDS (#9) notes that the objective only refers to the use of FBPs to protect significant areas. It submits that, in order to maintain biodiversity, non-significant areas cannot be ignored. Further, it considers that enabling of development in accordance with FBPs is only acceptable where FBPs are robust and address all biodiversity values. It seeks that the objective is amended to add “*and maintenance of indigenous biodiversity outside significant areas*”.

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<sup>27</sup> Objective 9.2.1.

<sup>28</sup> Forest & Bird (#20)

<sup>29</sup> ECan (#8)

<sup>30</sup> Genesis (#11), Meridian (#13). Also relates to EDC (#9).



148. H Frank (#10) seeks that the objective is amended to read “*To require and support the integration...*” rather than “*To support/encourage the integration...*” He considers that the objective needs to go further than encouragement only, in order to better protect biodiversity values that are under threat.
149. Glenrock Station (#12) considers that the objective requires amendment to give effect to Policy 9.2.2 of the CRPS, which refers to restoration and enhancement of ecosystem functioning and indigenous biodiversity “*in appropriate locations*”. It submits that the objective requires amendment to recognise that retention of non-significant indigenous vegetation is considered in appropriate locations. It states that this amendment (along with amendments sought to Objective 2) would further support Objective 1 and encourage land developers to identify opportunities for activities that can contribute to the values of the catchment, consistent with CRPS policies 9.2.2 and 9.3.4. The amendments sought are:
- To support/ and encourage the integration of land development proposals with comprehensive identification, and protection and/or enhancement of values associated with significant indigenous biodiversity and the retention and/or restoration of indigenous vegetation in appropriate locations, through providing for comprehensive Farm Biodiversity Plans and enabling development that is in accordance with those plans.*
150. Mt Gerald (#16) and The Wolds (#17) seek that the objective is deleted and replaced with “*Enable land use activities that achieve integration of development with protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*” They believe that there are other ways of achieving integration of protection of significant indigenous biodiversity values with development proposal, and that the Council needs to be able all types of integrated management, not only FBPs.
151. DOC (#18) seeks that the word “*significant*” is removed from the objective, as it considers that FBPs should identify all biodiversity values, so that the effects of comprehensive proposal can be assessed at a farm-wide scale. It also notes that the FBP provisions require all indigenous vegetation to be identified, and the change to the objective sought would be consistent with this.
152. Forest & Bird (#20) seeks that the objective is deleted. It submits that it is drafted in a way where it is uncertain what the objective is and instead is written as a policy or method. It does not support an objective that enables development in accordance with a plan that is developed outside of the district plan.

## **Analysis**

153. I agree with Forest & Bird that the proposed objective is currently drafted as a policy. In addition, I do not consider that the provision for FBPs is an outcome in itself; rather FBPs are a tool intended to achieve the outcomes discussed above in relation to Objectives 1 & 2; namely to maintain indigenous biodiversity overall and protect significant areas. As such, my view is that the objective should be deleted as what it is ultimately seeking is already captured in Objective 2. Relevant portions of it should however be transferred into the policies. The specific comments on the wording of Objective 3 are therefore discussed below in relation to policies 8 & 9, which provide direction in relation to FBPs.

## **Recommendation**

154. **Delete** Objective 3.

## **Policy 1**

155. Policy 1 reads:

*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.*

156. The policy has been shifted from Section 7 (currently it is Rural Policy 1B) but updated to refer to the criteria in the CRPS rather than to refer to criteria currently contained in the explanation and reasons to the policy. It also removes current reference to significant geological or geomorphological features.

## **Submissions**

157. Mackenzie Guardians (#6) support Policy 1. Fish & Game (#7) supports the identification of significant natural areas through mapping and considers these areas should be protected. However, it submits that it is unclear what “*reduces the values of these sites*” aims to achieve. It considers that it would be clearer and align better with the CRPS if SNAs were protected and seeks the following policy wording:

*To identify sites of significant indigenous vegetation or habitat in accordance with the criteria listed in the Canterbury Regional Policy Statement and to protect these areas from the adverse effects of land use and development activities.*

158. EDS (#9) and DOC (#18) both seek that the phrase “*in the District Plan*” is deleted, given that the MDP does not identify all significant sites and PC18 does not propose an approach that includes mapping all significant sites within the MDP.

159. Genesis (#11) and Meridian (#13) state that the provision has been transferred from Chapter 7 of the current Plan without consideration of its appropriateness in the context of indigenous biodiversity/PC18, or whether it gives effect to the since revised CRPS. They consider that the CRPS directs that significant areas are protected to ensure not net loss of biodiversity, rather than requiring prevention of development in its entirety. They seek that the policy is amended to delete the words “*and to prevent development which reduces the values of these sites*” and replaced with “*and [outside of the Waitaki Power Scheme Management Area<sup>31</sup>,] to provide for their protection*”. They consider, in relation to the Waitaki Power Scheme Management Area, that avoidance is not the only effects management option available, noting that Policy 16.3.5 of the CRPS provides for a range of options including offsetting and compensation.
160. Mt Gerald (#16) and The Wolds (#17) seek that the words “*and to prevent development which reduces the values of these sites*” is deleted, on the basis that this conflicts with policies 5 and 6, which provide for off-setting as a way of protecting significant indigenous vegetation and habitats. They consider that it is not possible to prevent development that reduces the value of sites while at the same time providing for a range of mechanisms to manage adverse effects on the value.
161. Forest & Bird (#20) supports the intent of the policy, but considers that use of the phrase “*to prevent development which reduces the values of these sites*” is not the same as direction in s6(c) to protect. It seeks that the policy is amended as follows:

*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 by avoiding significant adverse effects and avoiding, remedying or mitigating other effects on indigenous biodiversity ~~and to prevent development which reduces the values of these sites~~.*

### **Analysis**

162. I agree with EDS and DOC regarding deletion of the phrase “*in the District Plan*”. As they note, PC18 as a package does not seek to identify all sites within the District Plan by way of mapping or listing, but does propose to set up a framework where non-mapped sites are identified and protected on a case-by-case basis. Deletion of the words sought aligns with this.
163. Several submitters have also queried the use of the phrase “*to prevent development which reduces the values of these sites*”. I consider that there is a potential for conflict

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<sup>31</sup> Genesis seek the wording set out in square brackets, while Meridian instead seek “(Subject to Policy 7)” is inserted after the word provide.

between this policy and other policies that provide direction on significant areas. This is because Policy 1 refers to prevention of the reduction of values; Policy 3 refers to providing for no net loss of values; and Policy 5 refers to consideration of mechanisms to achieve protection of these areas.

164. Of the alternate wording presented by submitters, in my view the wording sought by Forest & Bird does not work, as the sites are not identified by managing effects. I also have some concerns with the wording proposed by Fish & Game which seeks to protect these areas from adverse effects of land use and development activities. This is because there may be adverse effects on these areas that do not affect indigenous biodiversity or biodiversity values. By way of example, land use or development could have adverse noise effects on significant areas; but the noise will not have any impact on their protection. In my view, the direction to provide for their protection, as suggested by Meridian and Genesis is most aligned with the achievement of the recommended objective.
165. However, I note that other policies provide direction on how effects on indigenous biodiversity, including significant areas, are to be managed. In my view, Policy 1 should either include *all* the direction relating to significant areas, or it should relate only to identification. My overall preference is for the latter, which aligns with the request by Mt Gerald and The Wolds to simply delete the words “*and to prevent development which reduces the values of these sites*”. This way, it is left to other policies to provide direction on how areas, having been identified as significant, are to be managed.
166. Because I am recommending that the policy is amended to only relate to identification, the exemption for the Waitaki Power Scheme sought by Genesis and Meridian to the subsequent direction in the policy is somewhat redundant. However, for completeness, and if my recommendation to remove the subsequent direction from the policy is not accepted, I note that in my view the exemption would be contrary to the CRPS and s6(c) of the RMA. I also note that the submitter infers that the policy directs prevention of development. This is not correct, as prevention of development would only be required where such development would reduce the values of the site.

### **Recommendation**

167. I recommend that Policy 1 is amended as follows:

*To identify in the District Plan<sup>32</sup> 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.~~<sup>33</sup>*

## Policy 2

168. Policy 2 has been shifted, almost exactly, from Section 7, and reads:

*To avoid, remedy or mitigate adverse effects on the natural character and indigenous 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*

### **Submissions**

169. Mackenzie Guardians (#6) support Policy 2.

170. CRC (#8) seeks that the policy is deleted and replaced with the following wording:

*To identify and protect other areas of significant indigenous vegetation or habitat for indigenous fauna through Farm Biodiversity Plans and the resource consent process.*

171. EDS (#9) seeks that the policy is deleted and replaced with two policies, as follows:

*Avoid adverse effects on significant indigenous vegetation and habitat, riparian areas, and linkages between these areas.*

*Avoid, remedy, or mitigate adverse effects on indigenous biological diversity outside of significant areas.*

172. It opposes Policy 2 on the basis that the Mackenzie Basin is “*in a state of crisis*”, with biodiversity and ecological values being lost rapidly. It views the Basin as being at a tipping point, beyond which the significant and outstanding values in s6(a) and (b) of the RMA, will not survive. It submits that robust and stringent effects management is required to halt and reverse this loss of values, and therefore avoidance of adverse effects on significant areas is required. Outside of significant areas it considers that a more flexible framework for managing adverse effects is acceptable. It further considers that the current terms used in the policy are not clear, nor how they fit with the requirements under the RPS and s6 and s31 of the RMA.

173. Genesis (#11) and Meridian (#13) consider that a lack of consideration has been given to the appropriateness of this policy, in transferring it from Section 7, in the context of indigenous biodiversity/PC18, and whether it gives effect to the CRPS. They state that

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<sup>32</sup> EDS (#9), DOC (#18).

<sup>33</sup> Mt Gerald (#16) and The Wolds (#17).

the policy overlaps with the functions of the regional council, and does not give effect to the functional split set out in the CRPS in relation to hydrology and water quality. They consider that the policy should focus on managing adverse effects of land use activities and practises on indigenous biodiversity, rather than natural character, aquatic habitat and water quality and quantity. In relation to clause (b), which relates to linkages between areas of remaining significant vegetation and habitat, they consider that the s32 report has not provided sufficient rationale as to the function of linkages. They consider that the approach may result in the value (and subsequently the protection) of non-significant vegetation and habitat in situations where it does not fulfil a linkage function. They consider that where linkages are important they will have been identified as significant under the RPS criteria.

174. Genesis seeks that Policy 2 is amended, and a new policy 2A included, as follows:

2. *To avoid, remedy or mitigate adverse effects of land use activities on significant indigenous vegetation and significant habitats of indigenous fauna in the District.*

2A. *To manage, or offset or compensate, actual or potential effects of the use, development and protection of land to maintain indigenous biological diversity in the District.*

175. Meridian seeks that Policy 2 is amended, and a new policy 2A included, as follows:

2. *To avoid, remedy or mitigate, adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna in the District.*

2A. *To manage actual or potential effects of the use, development and protection of land to maintain indigenous biological diversity in the District.*

176. In a further submission, Transpower supports the amendments proposed by Genesis and Meridian as they more appropriately confine the policy to s6(c) matters and align with the district council functions and provisions that implement the policy, as well as better reflecting and giving effect to Policy 9.2.3 in the CRPS. However, in relation to the specific wording of 2A proposed by Genesis, it seeks an amendment, in accordance with s104(ab) of the RMA, to make it clear that offsetting or compensation has to be proposed or agreed to by an applicant and cannot be required.

177. Mt Gerald (#16) and The Wolds (#17) seek that the policy is deleted and replaced with:

*Enable land use activities that make efficient use of land and resources while avoiding, remedying, mitigating or offsetting adverse effects on water, soil, ecosystems and the natural character of the Mackenzie District.*

178. DOC (#18) seeks that “*significant*” is deleted from clause (b). It considers that the policy should be directed towards maintaining indigenous biodiversity values within the District, consistent with the Council’s functions under s32(1)(b)(iii), as well as giving effect to Policies 9.3.3, 9.3.4 and 9.3.5 of the CRPS.

179. Forest & Bird (#20) submits that the policy does not go further than restating s5 of the RMA, and as currently drafted is inconsistent with s6(c) requirements to protect significant areas. It considers this to be a “*distinct and higher requirement*” to that of avoiding, remedying or mitigating. It also submits that the policy should include wetlands to give effect to the CRPS. As such, it seeks the following changes to the policy:

*To avoid, remedy or mitigate adverse effects on the natural character and indigenous biodiversity values of 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) Wetlands, Aquatic habitat and water quality and quantity.*

### **Analysis**

180. I agree with Genesis and Meridian that there is a need to reconsider the appropriateness of the direction in this policy, to ensure that it aligns with the direction in PC18. I also tend to agree that the policy as currently drafted potentially strays into areas that relate to regional council functions, in particular, aquatic habitat and water quality and quantity; or otherwise uses terminology that does not align with the matters of discretion or overarching objectives. In my view, the focus on this policy should be about direction as to how adverse effects on areas of indigenous biodiversity are managed. I therefore do not agree with the suggestion of Mt Gerald and The Wolds to amend the policy to focus on enabling land use activities – this is more specifically considered in other policies such as Policies 3 and 8. I also tend to disagree with those submitters who seek some changes to the policy but otherwise largely seek to retain its current direction.

181. In line with the recommended objective, I also agree with submitters that seek a clear differentiation between management of effects on significant versus non-significant areas of indigenous vegetation. While there is general support from various submitters for this, there is a difference between submitters as to how effects relating to each should be managed. EDS seek that adverse effects on significant indigenous vegetation and habitat, riparian areas, and linkages between these areas are avoided, with effects on non-significant areas avoided, remedied or mitigated. CRC (as part of its broader

submission) seeks direction that protects significant areas and provides for no net loss (which is discussed further in relation to Policy 3 below), and then applies a hierarchy to effects management. Genesis and Meridian seek that the direction is to avoid, remedy or mitigate adverse effects on significant areas, and manage effects on non-significant areas to achieve maintenance.

182. I also note the relevant portions of submission made in relation to Policy 1, as to how significant areas are to be managed. As noted above these include: direction to protect these areas from the adverse effects of land use and development activities<sup>34</sup>; or to provide for their protection<sup>35</sup>; or to avoid significant adverse effects and avoid, remedy or mitigate other effects on indigenous biodiversity<sup>36</sup>.
183. In line with the recommended objective, I do not agree with submitters that seek that adverse effects (whether significant or not) on significant areas are simply “avoided, remedied or mitigated”. In my view, this does not sufficiently guarantee the protection of significant areas to ensure no net loss of indigenous biodiversity or indigenous biodiversity values resulting from land use activities (CRPS Policy 9.3.1(3)); nor does it ensure achievement of protection of significant areas sought in the recommended Objective. As noted above in relation to Policy 1, I also consider that seeking to protect these areas from all adverse effects of land use and development goes beyond what is necessary to protect what makes these areas significant from a biodiversity perspective.
184. Because overall my view aligns with those submitters seeking substantive changes to the policy, including its deletion and replacement with a policy that focuses on how adverse effects are managed, I note that there is the potential for overlap with Policies 3 and 5, in relation to significant areas. I therefore recommend, that the matters set out above pertaining to significant areas are captured in policies 3 and 5 instead. I recommend that Policy 2 is, in effect, deleted and replaced with a policy setting out how effects on non-significant areas are to be managed. The recommended policy is based on that suggested by EDS, those components of the notified policy that I consider are important to retain, and taking into account CRC’s broader comments about providing clearer direction on how significant and non-significant areas are to be managed. While it is different to the wording sought by Meridian and Genesis I consider it generally aligns with the intent of their submissions.

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<sup>34</sup> Fish & Game (#7).

<sup>35</sup> Genesis (#11) and Meridian (#13).

<sup>36</sup> Forest & Bird (#20).



185. I note, however, that deletion of part (c) could result in a potential gap in the policy direction in relation to riparian areas. Both the notified and recommended objectives refer to protection and enhancement of riparian areas. The rule package then proposes a non-complying activity status for the clearance of indigenous vegetation within specified riparian areas.<sup>37</sup> While I do not consider it within the district council's functions to manage indigenous vegetation clearance in these areas in relation to aquatic habitat and water quality and quantity (as per the notified Policy 2), the CRPS directs that district plans include provisions to control the effects of the subdivision, use, development, or protection of land in riparian zones for protecting indigenous biodiversity and preserving natural character and protect them from inappropriate subdivision and use. Because of the approach taken in the rule framework and the outcome sought in the Objective to protect riparian areas, I consider that policy direction relating to riparian areas is most appropriately combined with that pertaining to ecologically significant wetlands (Policy 4).

### **Recommendation**

186. Amend Policy 2 as follows:

*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<sup>38</sup> 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 3**

187. Policy 3 reads:

*Rural development, including indigenous vegetation clearance and pastoral intensification, occurs in a way or at a rate that provides for no net loss of indigenous biodiversity values in areas identified as significant.*

### **Submissions**

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<sup>37</sup> 100m of a lake; 20m of the bank of a river; 100m of an ecologically significant wetland; 50m of other wetlands.

<sup>38</sup> CRC (#8), EDS (#9).

188. Mackenzie Guardians (#6) supports Policy 3.
189. C Burke (#4) opposes this policy, stating that clearance should not occur in any way or at any rate, stating that evaluation of no net loss is difficult and may not be able to be determined until after the clearance, by which time any ecosystems that have been destroyed cannot be re-established. She considers that all remaining indigenous vegetation should require a resource consent. She seeks that the policy be amended to exclude indigenous vegetation clearance and that the Council provide a level of protection that stops the ecological values of the Basin being chipped away. She considers that any activities that would undermine the values of landscape, landforms, functional ecosystems, flora and fauna should not be permitted.
190. Fish & Game (#7) submits that the wording of the policy is unclear as it makes an exception for clearing indigenous vegetation in an area “*identified as significant as possible*”, if this is done in a way that provides no net loss, and query if this would enable offsetting. It states that if an area is identified as significant, the area should be protected in accordance with Policy 9.3.1(3) of the CRPS and seeks amendments to the policy to clarify that any areas identified as significant are protected.
191. CRC (#8), as part of its broader comments about reviewing the objective and policy framework, seeks that the policy is amended as follows:
- Rural development, including indigenous vegetation clearance and pastoral intensification, only occurs in a way or at a rate that provides for no net loss of significant indigenous biodiversity values in areas identified as significant.*
192. EDS (#9) also seeks deletion of the words “*in areas identified as significant*”. It submits that the goal of no net loss applies to maintenance of indigenous biodiversity across the District, not only to significant sites. It views protection of significant sites as a key tool to achieving no net loss, and does not consider these to be areas where an ‘unders and overs’ approach to no net loss should be applied. It considers the amendment gives effect to Policy 9.3.1(3) of the RPS.
193. Mt Gerald (#16) and The Wolds (#17) note that any development, not just rural development may contribute to a decline in indigenous biodiversity, seeking that the policy is amended to refer to “*Development*” only, rather than “*Rural development including indigenous vegetation clearance and pastoral intensification*”. They also seek that the policy is extended so that reference to no net loss applies “*when assessed at a District wide scale*” rather than on a per property basis. They consider that no net loss

can be achieved if representative areas of significant vegetation are adequately protected within the district, such as through covenants, without every example of a particular species needing to be protected.

194. Although not a comment specifically on Policy 3, Mt Gerald (#16) and The Wolds (#17) also comment more broadly in their submission on no net loss. They consider that achieving no net loss of indigenous biodiversity values in significant areas is unrealistic in the Mackenzie Basin subzone where the majority of vegetation is likely to meet the CRPS' criteria for significance. Proposed provisions may frustrate other initiatives such as fencing of waterways, whereby consent is required and may act as a deterrent to landowners. They also consider that policies which address off-setting in exchange for development are unachievable as there is no ability to provide for a net gain in the Mackenzie Basin subzone due to the nature of the environment, and the costs of achieving net gain would exceed any economic benefit of undertaking vegetation clearance.
195. DOC (#18) also seeks deletion of the final words "*values in areas identified as significant*". It is concerned that the no net loss approach will only be taken for significant indigenous biodiversity, whereas it considers the approach should be taken to all indigenous biodiversity.
196. Forest & Bird (#20) seeks that the policy is deleted, because it allows for adverse effects on matters that are to be protected under s6(c) and it does not consider that no net loss is the same as protection.

### **Analysis**

197. I agree with Mt Gerald and The Wolds that the policy is narrowly focussed on rural development. Given that PC18 shifts content currently contained in a rural chapter into a standalone chapter – and consistent with the NP Standards which provides for an ecosystems and indigenous biodiversity chapter as a district-wide chapter – I consider it appropriate not to limit the policy direction to rural considerations only; even if from a practical perspective it is likely to apply only to rural areas. Consistent with my recommendation on Objective 2, I consider it more appropriate for the policy to be more broadly about land use and development. However, I think it is helpful to retain reference to land use and development 'including' indigenous vegetation clearance and pastoral intensification. This helps to provide a clear link to the indigenous vegetation clearance rules, and a cross-reference to the aims and management approach taken in the wider MDP to pastoral intensification.

198. The concept of no net loss is included in the CRPS, and in particular in Policy 9.3.1. This policy directs how areas and habitats are to be assessed, in relation to ecosystems and biodiversity, to determine whether they are significant or not, and then directs 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.*” No net loss is also defined in the CRPS, as follows:

*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*

199. While Mt Gerald and The Wolds may consider that achieving no net loss of indigenous biodiversity values in significant areas is unrealistic in the Mackenzie Basin subzone where the majority of vegetation is likely to meet the CRPS’ criteria for significance, the MDP is required to give effect to the CRPS. I consider that there are huge practical difficulties to taking a District-wide approach to no net loss, rather than taking a per property approach, given that FBPs and related resource consents will be undertaken on a per-property basis. I also disagree with Forest & Bird who consider that no net loss is not the same as protection – the CRPS seeks to achieve protection of the values and ecosystem functions of significant areas (Objective 9.2.3), and directs that this is achieved through taking a no net loss approach to protection (Policy 9.3.1).

200. I note that EDS & DOC seek that a no net loss approach is taken to all biodiversity. This is not required by the CRPS, but I agree with them that this approach could still be taken, if it is considered the most appropriate way to achieve the outcomes sought in the MDP for indigenous biodiversity more broadly. In my view, this is not the case, because: it does not distinguish between the approach taken to significant areas and non-significant areas, and therefore applies a higher threshold to non-significant areas; and the MDP proposes an integrated approach through the use of FBPs, which allows for the overall impact on indigenous biodiversity. In my view, this is a more appropriate way to ensure maintenance of indigenous biodiversity than a narrower focus on no net loss.

201. In relation to C Burke's concerns that the evaluation of no net loss is difficult and may not be able to be determined until after the clearance, I note that the CRPS includes a definition, and that this will need to be considered and applied through the resource consent process for any vegetation clearance.
202. I consider, in terms of the specific wording sought by CRC, that it is appropriate to strengthen the policy to add "only" and more succinct to refer to "significant biodiversity values".

### **Recommendation**

203. **Amend** Policy 3 as follows:

*Rural Land use and<sup>39</sup> development, including indigenous vegetation clearance and pastoral intensification, only<sup>40</sup> occurs in a way or at a rate that provides for no net loss of significant indigenous biodiversity values in areas identified as significant.<sup>41</sup>*

## **Policy 4**

204. Policy 4 reads:

*To ensure that land use activities including indigenous vegetation clearance and pastoral intensification do not adversely affect any ecologically significant wetland.*

### **Submissions**

205. Mackenzie Guardians (#6) support Policy 4. DOC (#18) supports the intention to protect ecologically significant wetlands from the adverse effects of development and seek the retention of the policy. Forest & Bird (#20) considers that the policy is consistent with the CRPS and seeks its retention.
206. Fish & Game (#7) queries if ecologically significant wetlands have been mapped, and whether there are other wetlands that deserve protection. It submits that all wetlands within the District are important not only in a local context, but also nationally, given the steep decline of wetlands through the country, and the important contribution they make to ecological processes and functions. It submits that if these wetlands are protected, the policy would better align with the CRPS. As such it seeks that the policy is amended to read: "To protect ecologically significant wetlands from land use activities including indigenous vegetation and pastoral intensification". It also seeks these wetlands be

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<sup>39</sup> Mt Gerald (#16) and The Wolds (#17).

<sup>40</sup> CRC (#8).

<sup>41</sup> CRC (#8).

identified by maps and that all wetlands in the District are acknowledged as ecologically significant.

207. EDS (#9) seeks that the policy is amended to apply to agricultural conversion as well, and a slight amendment is made to refer to “*the significant values of*” wetlands, instead of “*any ecologically significant*” wetlands. This is because agricultural conversion captures different activities to those of pastoral intensification, but which have the same potential to have adverse effects. The amendments in relation to wetlands are stated as being to give effect to the NPSFM which requires protection of the significant values of wetlands.
208. Mt Gerald (#16) and The Wolds (#17) seek that Policy 4 is deleted, as they consider that it is not required. This is on the basis that the CRPS provides that any ecologically significant wetland will also be a habitat of significant indigenous fauna, so vegetation clearance will be managed “*through other proposed provisions*”.

### **Analysis**

209. Policy 9.3.5 of the CRPS relates to wetlands. It directs how significance is to be assessed, and requires that “*the natural, physical, cultural, amenity, recreational and historic heritage values*” of ecologically significant wetlands (ESW) are protected, and the protection, enhancement and restoration of all of remaining wetlands are generally promoted. It also directs that adjoining areas of indigenous (and other) vegetation which extend outside an ESW, and are necessary for the ecological functioning of the wetland, are protected.
210. Of relevance to the consideration of this policy is the rule package, which applies a non-complying activity status to the clearance of indigenous vegetation within 100m of an ESW or 50m of any other wetland. The current rules in Section 7:
1. Provide for clearance of up to 100m<sup>2</sup>/ha of any vegetation in any continuous 5-year period where within 50m of, or in, any wetland (Rule 12.1.1.a)
  2. In addition, where a wetland is within a SONS, it is subject to the rules applying to SONS. These also permit indigenous vegetation clearance of 100m<sup>2</sup>/ha in any continuous 5-year period. (Rule 12.1.1.b)
  3. Notwithstanding the above, consent is required for any indigenous vegetation clearance within a wetland if the wetland is more than 1000m<sup>2</sup> (Rule 12.1.1.d)

211. Notwithstanding that PC18 proposes different rule regimes for ESW and other wetlands, neither PC18 (or the current MDP) define or map ESW.
212. I agree with Mt Gerald and The Wolds that the same criteria are applied to determine whether wetlands are significant or not, as applies to other indigenous vegetation and habitats. This is because Policy 9.3.5 of the CRPS directs that ESW are assessed against the matters set out in Policy 9.3.1, which in turn refers to the criteria in Appendix 3. As such, the broader policies in both the CRPS and PC18 that apply to all significant areas will apply equally to ESW. However, as noted above, there is specific policy direction relating to wetlands in the CRPS, which includes additional and more specific direction for ESW. Therefore, how protection is achieved in relation to wetlands is likely to need to be implemented by slightly different means.
213. In relation to EDS's request to extend the policy to apply to agricultural conversion as well, I note that the policy is an inclusive (rather than exclusive) one, in that it currently applies to all land use activities, which would include agricultural conversion, whether explicitly stated or not. However, given the discussion in the s32 evaluation report refers to both agricultural conversion and pastoral intensification when discussing the relationship between the indigenous vegetation clearance provisions and those in the wider MDP, I do not consider there is any particular reason to refer to one and not the other, so agree with the addition.
214. In relation to the EDS' request to align the wording of the policy with the NPSFM, I note firstly that since the submission period on PC18, the NPSFM has been replaced with a new version which came into force on 3 September 2020. While there is more direction in relation to how wetlands are to be managed, the previous wording, referred to by EDS, is not included in the new NPSFM. The key direction is in Policy 6, which directs that there is no further loss in the extent of natural inland wetlands, and that their values are protected and restoration promoted. I also note that under both the previous and current versions of the NPSFM, the direction relating to wetlands is aimed at regional, not territorial authorities.<sup>42</sup> Regional councils are therefore responsible for how wetlands are managed in relation to achieving the outcomes sought by the NPSFM. In my view, Policy 9.3.5 of the CRPS, which directs that various values of ESW are protected, is of more relevance to PC18 than the NPSFM.

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<sup>42</sup> For example, Policy 3.22, relating to natural inland wetlands, directs what regional councils must do.

215. In relation to mapping of wetlands, I agree that it would be more efficient for ESW to be identified and mapped, so that it is clear, where the rules distinguish between ESW and other wetlands, what rules apply. However, my understanding is that these areas have not yet been mapped and therefore this cannot be implemented through PC18. I also consider it would be necessary for any mapping to be tested through the consultation process. The result is that the application of the setbacks in the rules will need to be determined on a case-by-case basis.
216. In absence of mapping being available, I have considered whether it would be useful to include a definition of ESW, given the distinction in the rules continue to distinguish between ESW and other wetlands. Although not directly sought by Fish & Game, I consider this to be within scope of their submission as it would seek to address (at least in part), the concern expressed in their submission. The obvious definition to include would be that used by the CRPS. I do note however, that Mr Harding has concerns that use of the CRPS definition would introduce uncertainty and likely lead to debate regarding what is “*predominately pasture*” and “*dominated by exotic species*”<sup>43</sup>. My concern is that in not including a definition, the determination of ecological significance will be required on a case-by-case basis, which is not ideal for a permitted activity rule, and in any case is likely to default to an assessment against the CRPS, so Mr Harding’s concerns are likely to arise in any case.
217. In my view, to address the concerns of Fish & Game, a new definition of ecologically significant wetlands, as suggested by Mr Harding, could be included in PC18, which would apply the CRPS Appendix 3 criteria, but not include the “predominately pasture and dominated by exotic species” condition from the CRPS definition.<sup>44</sup> I note however, that this would still require a case-by-case assessment against the CRPS criteria to be made, before determining which setback would apply. An alternate approach would be to amend the rules to apply them to all to wetlands (i.e. removing the distinction between ESW and other wetlands) as is the case in the operative MDP, and which would align the setback distances with those applied to the clearance of non-indigenous vegetation. The policy could then be amended to provide direction on how ecological significance is to be considered. My preference for the latter, as I consider it more efficient to apply a single setback and consider the question of ecological significance through the consent process. My recommended policy and related rule amendments are therefore based on this option.

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<sup>43</sup> Evidence of Mike Harding, paragraph 54.

<sup>44</sup> Evidence of Mike Harding, paragraphs 55.



218. In relation to Fish and Game's request that all wetlands in the District are acknowledged as ecologically significant, I note that this is not supported by Mr Harding. He states that the only broad-scale mapping of wetlands that he is aware of in the Mackenzie District is Environment Canterbury's wetlands GIS layer. He notes that most of the Mackenzie District wetlands are mapped from high resolution aerial photography with a small number having been ground surveyed. He considers it unlikely that all wetlands in the Mackenzie District are ecologically significant.<sup>45</sup>
219. Fish & Game seek that the policy is amended so that it directs protection of ESW from land use activities, rather than ensuring that land use activities do not adversely affect ESW. My preference is to retain the current wording because protection of ESW is the overarching outcome sought (reflected in the wording of the objective) and the method through which it is to be achieved is through managing land use activities so that they do not adversely affect ESW. The submitters' proposed wording would instead require that ESW are protected from land use activities (rather than protection from the adverse effects of those activities on the wetland), and in my view this goes further than what the Plan or CRPS requires.

### **Recommendation**

220. **Amend** Policy 4, as follows:

*To ensure that land use activities, including indigenous vegetation clearance, agricultural conversion<sup>46</sup> and pastoral intensification, do not adversely affect any ecologically significant values of <sup>47</sup> wetlands or riparian areas<sup>48</sup>.*

## **Policy 5**

221. Policy 5 reads:

*To consider a range of mechanisms for achieving protection of significant indigenous vegetation and significant habitats of indigenous fauna, including avoidance, remediation, mitigation or offsetting of adverse effects, and to secure that protection through appropriate instruments including resource consent conditions (if approved).*

### **Submissions**

222. It is noted that Policy 6, which is considered below, relates to criteria to be applied to offsetting. Policy 5 provides broader direction about mechanisms for the management

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<sup>45</sup> Evidence of Mike Harding, paragraphs 52-56.

<sup>46</sup> EDS (#9).

<sup>47</sup> Fish & Game (#7), EDS (#9).

<sup>48</sup> Shifted as a consequence of changes to Policy 2.

of effects, including offsetting. Some submissions that comment on the approach to offsetting are therefore interrelated with the consideration of Policy 6.

223. C Burke (#4) seeks that Policy 5 is amended to remove provisions for offsetting. She states that offsetting is not a functional solution and provides no tangible result for maintaining ecosystems and provides no protection for biodiversity. She considers that ecosystems of equal value cannot be recreated or re-established. In her view, if there is a need to offset effects then a consent should not be granted.
224. Mackenzie Guardians (#6) support the policy in part. They state that offsetting should not be used as a first option, as the primary issue is to “avoid” additional loss of valued indigenous vegetation and significant habitats of indigenous fauna and landscape values.
225. Fish & Game (#7) seeks that offsetting is removed as an option within any policy or rule as being a means to safeguard indigenous biodiversity. In general, it does not support the use of offsetting and has concerns about its use and implications. In particular, it submits that there is no guarantee or mechanism to ensure offsetting activities are carried out and achieve the desired outcome.
226. CRC (#8) seeks that the policy is amended to provide a hierarchy for the different mechanisms for protecting significant areas, as follows:
- *avoiding the adverse effects of vegetation clearance and the disturbance of habitats as far as practicable; then*
  - *remedying any adverse effects that cannot be avoided; then*
  - *mitigating any adverse effects that cannot be remedied; and*
  - *where there are any significant residual adverse effects, offsetting them in accordance with Policy 6.*
227. EDS (#9) supports Policy 5 only insofar as it includes direction on how protection can be secured. Otherwise, it considers that the fragility of the District’s remaining significant areas “demand” an avoidance approach. It submits that offsetting is a process by which residual adverse effects on one area can be allowed by a gain in another area. It considers that this does not achieve “protection”. It seeks that Policy 5 is deleted and replaced with “*To consider a range of mechanisms for securing protection if consent is granted including a. Consent conditions b. Joint management agreements c. Covenants.*”

228. H Frank (#10) seeks that Policy 5 is amended to read “*To consider and implement a range of mechanisms...*” and deletion of the word “*that*”. He considers that the policy needs to go further than directing only consideration in order to better protect biodiversity values that are under threat.

229. Mt Gerald (#16) and The Wolds (#17) consider that achieving protection of significant indigenous vegetation and habitats on privately owned land is entirely dependent on landowners’ support and as such, they consider that other mechanisms that may achieve protection should be listed. To achieve this, they seek deletion of Policy 5 and its replacement with:

*Recognise that the maintenance [of] indigenous biodiversity is dependent on landowner support and will be achieved through a number of mechanisms, including:*

- *the listing of sites of significant indigenous vegetation and significant habitats of indigenous fauna;*
- *the use of rules regulating clearance of indigenous vegetation;*
- *legal protection by way of covenants; and*
- *landowner commitment to conservation and stewardship of the natural environment, including [through] the use of farm biodiversity plans and other farm management plans developed by suitably qualified people.*

230. DOC (#18) seeks deletion of Policy 5 and its replacement with the policy set out below. It submits that offsetting should not be used as a preference for avoiding, remedying or mitigating adverse effects, and that the mitigation hierarchy approach promoted by BBOP<sup>49</sup> – to avoid, remedy or mitigate first, with offsetting then used for any residual effects that cannot be avoided, remedied or mitigated.

*Manage the effects of activities on indigenous vegetation habitat by:*

- a) *Avoiding as far as practicable, and where total avoidance is not practicable, minimising adverse effect*
- b) *Requiring remediation where adverse effects cannot be avoided*
- c) *Requiring mitigation where adverse effects on the areas identified above cannot be avoided or remedied*

*Where (a), (b), or (c) cannot be met, residual adverse effects that are more [than] minor are to be offset through protection, restoration and enhancement actions in accordance with Policy (8) below.*

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<sup>49</sup> Business and Biodiversity Programme – Guidance on Good Practice Biodiversity Offsetting in New Zealand.

231. Related to this, DOC (#18) also considers that it is important to provide a clear policy hierarchy in the MDP which seeks to identify and protect significant values and maintain other values. In addition to the changes sought to Policy 5, it considers that an additional policy is necessary to provide clear direction in relation to the protection of significant values, and which gives effect to Policies 9.3.1 & 9.3.2 of the RPS and s6(c) of the RMA. The policy sought is:

*To avoid adverse effects of subdivision, use and development on significant indigenous vegetation and habitat.*

232. Forest & Bird (#20) recognises that the CRPS provides for offsetting, but does not consider that the proposed wording in PC18 is currently sufficient or adequate to meet the direction in the CRPS, nor achieve the objectives of the MDP. It submits that case law has established that offsetting is not mitigation, is a step beyond avoidance, remediation and mitigation, and does not directly address the adverse effects of an activity on the matter adversely affected. It submits that the CRPS principle reasons and explanations to Policy 9.3.6 state that “...*offsetting cannot be considered where the residual effects cannot be fully compensated because the biodiversity is highly vulnerable or irreplaceable.*” This is also consistent with good practise guidance.<sup>50</sup> It seeks that limits to offsetting, as provided for in the CRPS, are clearly set out in the relevant MDP policies and definitions.

233. Forest & Bird (#20) seeks that the policy is deleted, as it considers that protection of significant indigenous vegetation and significant habitats of indigenous fauna is not achieved by remediation, mitigation or offsetting. It seeks amendments to Policy 6 (see below) that it considers would cover those matters from Policy 5 (as notified) that should be addressed.

### **Analysis**

234. It is my view that the submissions highlight that the policy is potentially trying to do too many things: it provides some comment on management of adverse effects (to achieve protection); as well as direction on instruments to secure protection. In relation to the management of effects component of the policy, I agree with H Frank that for the policy to achieve the outcome sought in the objectives, it needs to provide greater direction than simply ‘consideration’ of mechanisms. I also note that EDS seeks that the policy is narrowed to focus on the mechanisms for how protection can be secured; rather than focussing on management of effects.

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<sup>50</sup> New Zealand Government. (2014.) *Guidance on Good Practice Biodiversity Offsetting in New Zealand.*

235. Overall, it is my preference that the two concepts are separated out: with one policy focussed on managing effects; and another on mechanisms for protection. Although the current policy mentions consent conditions, I also agree with EDS that there may be other mechanisms that can validly be considered, and these would be usefully captured in the policy. Changing the reference from “*achieving*” protection to “*securing*” protection will also, in my view, strengthen the direction in the policy.
236. In terms of the direction about how effects are to be managed, as noted earlier in this report, I agree with submitters that the Section 19 policies should provide a clear differentiation between management of effects on significant versus non-significant areas of indigenous vegetation. I also consider that in line with the recommended objective, the policy direction relating to significant areas must go beyond the direction to avoid, remedy or mitigate effects and more clearly align with what management is required to ensure protection of significant areas.
237. I do not agree with submitters who seek that offsetting is removed as an option, or only applied in relation to non-significant areas. The CRPS requires (Method 2 under Policy 9.3.6) that objectives and policies are set out in district plans “*to ensure that biodiversity offsets are included as appropriate mitigation in those circumstances set out in the policy*”. The explanation to Policy 9.3.6, as well as the direction in the policy to achieve no net loss of biodiversity, when read with Policy 9.3.1(3) which refers to no net loss in relation to significant areas, indicates that the policy applies to significant areas. That is not to say that offsetting will always be an appropriate response, as noted in the policy explanation; and it must align with the direction in CRPS Policy 9.3.6, as reflected in proposed Policy 6. In my view, offsetting could only be removed from the MDP as an option, if any effects on any significant vegetation in the Basin could never meet the criteria in the CRPS, thereby making such a policy redundant. Mr Harding’s evidence indicates that biodiversity offsets are complex and fraught and that in the context of the Mackenzie Basin it would be unlikely for a proposal to meet the criteria.<sup>51</sup> While accepting this, I note that it does not appear to be completely impossible. Given this and taking into account that not all significant areas have been assessed and identified, I consider it appropriate, and necessary in order to give effect to the CRPS, to retain offsetting as an option. However I do note the comments of Mr Harding regarding the difficulties associated with offsetting and note that retention of offsetting as an option should not be taken to mean that offsetting will be appropriate in many circumstances, as this is unlikely to be the case.

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<sup>51</sup> Evidence of Mike Harding, paragraph 66-71.

238. Overall, I agree with CRC and DOC that it is appropriate to apply a hierarchy to the management of effects. This would also align with the Mackenzie Guardians in making it clear (alongside Policy 6) that offsetting cannot be used as a first option. I accept that DOC would prefer that this hierarchy is applied to management of all indigenous vegetation rather than significant vegetation, but as noted earlier, I do not consider it appropriate or necessary to apply the hierarchy to ensure maintenance of indigenous biodiversity.
239. In relation to the alternate policy sought by Mt Gerald and The Wolds I do not consider that the policy is necessary as various aspects of it are covered in other policies (including in recommendations for changes to policies). For example, the identification of significant sites is included in Policy 1; it is recommended that Policy 5 is amended to refer to legal protection by way of covenants; and Policy 8 relates to FBPs. The only element of their proposed alternate policy that is not otherwise addressed elsewhere in the policies is 'recognition' that maintenance of indigenous biodiversity is dependent on landowner support. While I agree that landowner support can *assist* in maintaining indigenous biodiversity; I do not agree that it is 'dependent' on such support. In saying that, I consider it is useful to include a policy that encourages landowners and others to maintain indigenous biodiversity. Outside of activities regulated under the District Plan, landowners can undertake actions, that do not involve vegetation clearance, that will still contribute towards the outcome sought in the District Plan, including animal and plant pest control, voluntary protection, enhancement and restoration initiatives. There may also be other activities that require resource consent for reasons other than indigenous vegetation clearance and where, as part of the wider activity there are positive benefits for indigenous biodiversity, it is appropriate to have policy direction supporting this.

### **Recommendation**

240. **Amend** Policy 5 and split into two separate policies, as follows:

*To consider a range of mechanisms for ~~achieving~~ securing protection of significant indigenous vegetation and significant habitats of indigenous fauna, including ~~avoidance, remediation, mitigation or offsetting of adverse effects, and to secure that protection through appropriate instruments~~ including resource consent conditions, management agreements and covenants(if approved).<sup>52</sup>*

*To manage the adverse effects of activities on significant indigenous vegetation and significant habitats of indigenous fauna by:*

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<sup>52</sup> EDS (#9).

- avoiding the adverse effects of vegetation clearance and the disturbance of habitats as far as practicable; then
- remedying any adverse effects that cannot be avoided; then
- mitigating any adverse effects that cannot be remedied; and
- where there are any significant residual adverse effects, offsetting them in accordance with Policy 6.<sup>53</sup>

241. **Insert** new policy as follows:

To recognise and provide for activities, including voluntary initiatives, that contribute towards the maintenance and enhancement of indigenous biodiversity.<sup>54</sup>

## **Policy 6 and biodiversity offsets**

242. Policy 6 reads:

*Where offsetting is proposed, to apply the following criteria:*

- a) *the offset will only compensate for residual adverse effects that cannot otherwise be avoided, remedied or mitigated;*
- b) *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;*
- c) *where the area to be offset is identified as a national priority for protection in accordance with Policy 9.3.2 of the Canterbury Regional Policy Statement 2013 or its successor, the offset must deliver a net gain for biodiversity;*
- d) *there is a strong likelihood that the offsets will be achieved in perpetuity; and*
- e) *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.*

243. PC18 did not propose a definition for offsetting.

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<sup>53</sup> CRC (#8).

<sup>54</sup> Mt Gerald (#16) and The Wolds (#17).

## **Submissions**

244. C Burke (#4) seeks that Policy 6 is deleted, and the potential for the use of offsetting in Rule 1.2.1 – 3.2.d is removed. As noted above, the submits that offsetting provides no tangible result for maintaining ecosystems.
245. As with Policy 5, Mackenzie Guardians (#6) support Policy 6 in part, but consider that offsetting should not be used as a first option.
246. Fish & Game (#7) seeks that offsetting is removed as an option within any policy or rule as being a means to safeguard indigenous biodiversity. In general, it does not support the use of offsetting and has concerns about its use and implications. In particular, it considers that there is no guarantee or mechanism to ensure offsetting activities are carried out and achieve the desired outcome. It submits that it is not clear how condition 6(d), which states that there is a strong likelihood offsets will be achieved in perpetuity, can be enforced or ensured. It also submits that there may be situations where offsets cannot appropriately replace indigenous biodiversity, and a greater risk of trying to re-establish or mitigate through offsetting in this District, given its climate and pests.
247. CRC (#8) considers that Policy 6 is consistent with CRPS Policy 9.3.6.
248. EDS (#9) accepts consideration of biodiversity offsetting at a conceptual level, but considers that it should not apply to significant areas, for the reasons noted above in relation to Policy 5. It submits that the internationally agreed criteria for biodiversity offsetting should apply. It seeks that Policy 6 is deleted and replaced with “*To consider use of biodiversity offsetting to address residual adverse effects on indigenous biological diversity outside of areas of significant indigenous vegetation and habitats where effects cannot be avoided, remedied or mitigated.*”
249. OWL (#14) is concerned that the current drafting of clause (b) of Policy 6 is inconsistent with the wording of CRPS Policy 9.3.1 and Policy 3 of PC18, both of which relate to no net loss of significant indigenous biodiversity only. It seeks that clause (b) is amended to read:
- b) the residual adverse effects on biodiversity are capable of being offset, and to the extent that significant indigenous biodiversity is affected, it will be...*
250. Mt Gerald (#16) and The Wolds (#17) seek that Policy 6 is deleted and replaced by:



*Allow for a biodiversity offset to be offered by a resource consent applicant where an activity will result in residual adverse effects on significant indigenous vegetation and habitats of significant indigenous fauna that cannot be otherwise avoided, remedied or mitigated.*

251. They seek that the balance of what is currently contained in Policy 6 is then moved to a new Appendix that contains detail on offsetting. They state that an offset that provides for a net gain is unachievable in the Mackenzie Basin subzone, as there is no ability to obtain the number of indigenous species required to re-establish or protect a large enough area to provide a net gain where the proposed development area is large. They consider that offsetting may be seen as a tool to enable development that may justify more restrictive provisions elsewhere in a district plan, but state that this is not the case in the Mackenzie Basin subzone, where the only properties likely to benefit from the policy are smaller lifestyle blocks. While accepting that the policy replicates Policy 9.3.6 of the CRPS, they consider that the criteria for offsetting would be better located in a separate Appendix to make the MDP more user-friendly.
252. DOC (#18) supports there being a policy on how offsets are used. It seeks amendments that it considers better align with the mitigation hierarchy supported by BBOP and Policy 9.3.6 of the CRPS. It seeks deletion of reference to compensation as this is separate to a biodiversity offset, which must be a like-for-like offset. It submits that compensation is a method used where a biodiversity offset is not like-for-like, and which protects or enhances a different type of biodiversity. The changes sought are:

*~~Where~~ For any biodiversity offsetting is proposed, to apply the following criteria applies:*

- a) the offset ~~is~~ ~~will only compensate~~ for residual adverse effects that cannot otherwise be avoided, remedied or mitigated;*
- b) the residual adverse effects on biodiversity are capable of being offset and will be fully ~~compensated by the offset through protection, restoration and enhancement actions that~~ achieve to ensure no net loss of biodiversity;*

...

*Offsets should re-establish or protect the same type of ecosystem or habitat that is adversely affected. Where the offset is for the loss of significant indigenous vegetation or habitat, there must provide for a net gain for indigenous biodiversity.* ~~unless an alternative ecosystem or habitat will provide a net gain for indigenous biodiversity.~~

253. Forest & Bird (#20) considers that Policy 6 is poorly drafted, and confuses the concepts of offsetting and compensation, with offsetting relating to values that are the same as

those being impacted on; whereas compensation relates to values that are not the same as those impacted by an activity. It submits that the concept of “net gain” is misleading, implying that compensation will lead to improvements to biodiversity, when compensation relates to different values. In its view, achievement of a net gain in this instance is subjective. It also submits that as currently written the policy would not achieve the MDP objectives and would conflict with Policy 1. It considers that the use of offsetting in instances where the activity results in loss of significant value may not ensure biodiversity is maintained in all case. It submits that without limits and restrictions, offsetting will not be consistent with the objectives of the plan. It seeks the following changes:

*Where offsetting is proposed, to apply the following criteria:*

- a) *the offset will apply the mitigation hierarchy, and only relate to ~~only compensate for residual adverse effects that cannot otherwise be avoided, remedied or mitigated;~~*
- b) *the ~~residual adverse effects on biodiversity are capable of being offset and will be fully compensated by the offset~~ achieves to ensure no net loss of biodiversity;*
- c) *offsets and compensation are not appropriate in*
  - (i) *indigenous vegetation in land environments where less than 20% of the original indigenous vegetation cover remains.*
  - (ii) *areas of indigenous vegetation associated with wetlands.*
  - (iii) *areas of indigenous vegetation located in “originally rare” terrestrial ecosystem types not covered under (1) and (2) above.*
  - (iv) *habitats of threatened and at risk indigenous species.*
- d) *any proposals for biodiversity offsetting should be based on an adaptive management approach, incorporating monitoring and evaluation, with the objective of securing outcomes that last at least as long as the activity’s impacts, and preferably in perpetuity. In order to achieve this the proposed biodiversity offset will:*
  - (v) *demonstrate that management arrangements, legal arrangements (e.g. covenants) and financial arrangements (e.g. bonds) are in place that allow the positive effects to endure as long as the residual adverse effects of the activity, and preferably in perpetuity, and*
  - (vi) *be able to be implemented and enforced in line with any resource consent conditions associated with the activity. These conditions should include:*
    - A. *specific, measurable and time-bound targets, and*

B. mechanisms for adaptive management using the results of periodic monitoring and evaluation against identified milestones to determine whether the biodiversity offset is on track and how to rectify if necessary

(vii) establish roles and responsibilities for managing, governing, monitoring and enforcing the biodiversity offset, and

(viii) undertake methods by which analysis will identify when milestones of the biodiversity offset are not achieved, and the causes of non-achievement, and how to revise the offset management plan to avoid similar occurrences.

~~c) where the area to be offset is identified as a national priority for protection in accordance with Policy 9.3.2 of the Canterbury Regional Policy Statement 2013 or its successor, the offset must deliver a net gain for biodiversity;~~

~~d) there is a strong likelihood that the offsets will be achieved in perpetuity; and~~

~~e) 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.~~

254. Related to Policy 6, EDS (#9) seeks that an additional definition is added for 'biodiversity offsetting' that includes all BBOP principles, to align with international best practise and which "builds on and complements" the RPS criteria. DOC (#18) also seeks that a definition is included in the MDP for 'biodiversity offset', in order to provide clarity on what this means in terms of outcomes. It submits that its proposed definition, set out below, is taken from the CRPS, with the addition of the word 'indigenous' added to the second sentence:

*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 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.*

### **Analysis**

255. As noted above in relation to Policy 5, I do not agree with submitters who seek that offsetting is removed as an option, or only applied in relation to non-significant areas. This would not give effect to the direction in the CRPS. Related to this, I do not consider

the changes sought by OWL to be necessary, because of the recommended changes to Policy 5; meaning that the policy relating to offsets will apply to significant areas only.

256. Policy 9.3.6 of the CRPS sets criteria applying to the use of biodiversity offsets. These are exactly the same as those proposed in Policy 6. In considering the criteria, I do not agree that offsetting, where it meets the criteria, is not a functional solution or that it would not provide a tangible result for maintaining ecosystems and protecting biodiversity.
257. I do not agree that the current direction in Policy 6 should be shifted into an appendix. I do not consider the policy to be particularly long or cumbersome and the shift would result in the heart of the direction being removed from the policy which could lead to confusion.
258. In my view the changes to the policy sought by Forest & Bird and DOC go beyond the direction the CRPS. As noted in relation to other provisions, I accept that while the MDP provisions must meet the direction in the CRPS, they could go beyond this, if that was the most appropriate approach to achieving the objectives. My concern with what is sought by these submitters is that it appears to disagree with elements of the direction set in the CRPS. The changes are therefore not about expanding on what is required, in the context of the Mackenzie District, to give effect to the CRPS; rather they appear to be based on disagreement with the direction. The exception to this is that I consider the changes to the stem of the policy sought by DOC better align with CRPS wording. However, these submitters may wish to consider if extending the policy to refer to the BBOP principles (refer below) would address some of their concerns.
259. In terms of adding a definition for 'biodiversity offset', it is not clear to me how the principles proposed by EDS can be used within a definition. I consider that definitions need to be certain, and my understanding is that determining whether an offset meets the principles will require an evaluative judgement to be made. In my view, if reference to the BBOP principles is required, they would be better contained in an appendix, with Policy 6 amended to refer to the appendix, for example "*For any biodiversity offset, the following criteria, and the guidelines in Appendix XX, applies.*" I note that DOC's proposed definition, while aligning with that used in the CRPS, also largely aligns with the introduction to the BBOP Principles in any case. I recommend that this definition is used, which provides additional guidance for consideration of consent applications against Policy 6.

## Recommendation

260. **Amend** Policy 6 as follows:

~~Where~~ For any indigenous<sup>55</sup> biodiversity offsetting is proposed, to apply the following criteria apply:<sup>56</sup>

- a) *the offset will only compensate for residual adverse effects that cannot otherwise be avoided, remedied or mitigated;*
- b) *the residual adverse effects on indigenous<sup>57</sup> biodiversity are capable of being offset and will be fully compensated by the offset to ensure no net loss of indigenous<sup>58</sup> biodiversity;*
- c) *where the area to be offset is identified as a national priority for protection in accordance with Policy 9.3.2 of the Canterbury Regional Policy Statement 2013 or its successor, the offset must deliver a net gain for indigenous<sup>59</sup> biodiversity;*
- d) *there is a strong likelihood that the offsets will be achieved in perpetuity; and*
- e) *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.*

261. **Insert** the following definition:

**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 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.

## Waitaki Power Scheme - Policy 7, Rules 2.1-2.3 and Related Definitions

262. This section of the report considers provisions relating to the Waitaki Power Scheme (WPS). This includes general comments on how the plan change relates to the WPS, Policy 7, rules 2.1-2.3 and the definitions of 'Waitaki Power Scheme', 'Maintenance of Waitaki Power Scheme', 'Refurbishment of Waitaki Power Scheme', 'Core Sites' and 'Operating Easement'.

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<sup>55</sup> SPSL (#3).

<sup>56</sup> DOC (#18).

<sup>57</sup> SPSL (#3).

<sup>58</sup> SPSL (#3).

<sup>59</sup> SPSL (#3).

263. Before considering these provisions, it is also important to outline other existing MDP provisions that are relevant to the WPS and the consideration of PC18. Section 7 of the MDP includes outcomes sought in relation to the WPS in Rural Objective 3B and Rural Objective 11, which read:

***Rural Objective 3B – Activities in the Mackenzie Basin's outstanding natural landscape***

*(1) Subject to (2)(a), to protect and enhance the outstanding natural landscape of the Mackenzie Basin subzone in particular the following characteristics and/or values:*

- (a) the openness and vastness of the landscape;*
  - (b) the tussock grasslands;*
  - (c) the lack of houses and other structures;*
  - (d) residential development limited to small areas in clusters;*
  - (e) the form of the mountains, hills and moraines, encircling and/or located in, the Mackenzie Basin;*
  - (f) undeveloped lakesides and State Highway 8 roadside;*
- (2) To maintain and develop structures and works for the Waitaki Power Scheme:*
- (a) within the existing footprints of the Tekapo-Pukaki and Ohau Canal Corridor, the Tekapo, Pukaki and Ohau Rivers, along the existing transmission lines, and in the Crown-owned land containing Lakes Tekapo, Pukaki, Ruataniwha and Ohau and subject only (in respect of landscape values) to the objectives, policies and methods of implementation within Chapter 15 (Utilities) except for management of exotic tree species in respect of which all objective (1) and all implementing policies and methods in this section apply;*

***Rural Objective 11 – Rural Infrastructure***

*Rural infrastructure which enables the District and the wider community to maintain their economic and social wellbeing.*

264. The following two policies related to the above objectives are particularly relevant in relation to the WPS:

***Policy 3B6 – Lakeside Protection Areas***

- (a) To recognise the significance of the lakes of Te Manahuna/the Mackenzie Basin, their margins and settings to Ngāi Tahu and to recognise the special importance of the Mackenzie Basin's lakes, their margins, and their settings in achieving Objective 3B;*
- (b) Subject to (c), to avoid adverse impacts of buildings, structures and uses on the landscape values and character of the Mackenzie Basin lakes and their margins;*
- (c) To provide for the upgrading maintenance and enhancement of the existing elements of the Waitaki Power Scheme;*

- (d) *To avoid, remedy or mitigate the adverse impacts of further buildings and structures required for the Waitaki Power Scheme on the landscape values and character of the Basin's lakes and their margins.*

**Rural Policy 11A – Rural Infrastructure**

*To recognise the economic and social importance of transportation, electricity generation and transmission, and rural servicing infrastructure and, consistent with other objectives and policies of this Plan, to provide for its upgrading, maintenance and enhancement.*

265. In relation to Policy 3B6, Lakeside Protection Areas are identified areas around the major lakes which are visually sensitive. The policy explanation states that it appropriate to provide for maintenance and upgrading of existing WPS elements in these areas.
266. The WPS is a scheduled activity under the MDP. Schedule A to Section 7 sets out the areas and facilities that form the scheduled activities, as well as the activities that are permitted, controlled and discretionary.
267. In terms of PC18, Policy 7 directs that the economic and social importance of renewable energy generation and transmission is recognised and its upgrading, maintenance and enhancement is provided for. Rules 1.1.1, 1.2.1, 1.2.2, 1.3.1 and 1.3.2 do not apply to the WPS. Instead, Rule 2.1.1 and 2.1.2 provide for indigenous vegetation clearance associated with the WPS as a permitted activity, where the clearance is “*is a consequence of an emergency occurring on, or failure of*” the WPS; and where it is required for the operation and maintenance of the WPS, within the existing footprint of the WPS; on core sites associated with the WPS; and on areas covered by an operating easement associated with the WPS. Rule 2.2.1 provides for clearance associated with the refurbishment of the WPS in the same specified areas as a restricted discretionary activity. Any indigenous vegetation clearance associated with any new facility, structure or works associated with the WPS is a discretionary activity under proposed Rule 2.3.1. There is no non-complying activity rule for with indigenous vegetation clearance associated with the WPS.

**General comments and New Objective**

**Submissions**

268. At a broad level, Meridian (#13) seeks that the Waitaki Power Scheme (WPS) is appropriately provided for, in terms of its continued development, operation, maintenance and upgrading, when introducing controls on land use to protect indigenous biodiversity. It considers that amendments can be made to PC18 to “*better*

*reflect the NPSREG*”, and states that PC18 does not provide for the integrated management of the effects of the use, development or protection of land and associated physical resources, in relation to the WPS.

269. Genesis (#11) and Meridian (#13) seek that a new objective is included in Section 19 relating to the WPS. They note that while there is a policy supporting the WPS, there is no link to an objective, and that one is required to provide a linkage between their proposed objective, Policy 7 and Rule 2. The wording sought by Genesis<sup>60</sup> is:

*In respect of activities associated with the nationally significant Waitaki Power Scheme to:*

- (a) Recognise and provide for special characteristics and significance of the Waitaki Power Scheme*
- (b) Allow vegetation clearance for the continued development, operation, maintenance and upgrading of the nationally significant Waitaki Power Scheme within the Waitaki Power Scheme Management Area*
- (c) Provide for appropriate vegetation clearance necessary for the continued development, operation, maintenance and upgrading of the nationally significant Waitaki Power Scheme outside the Waitaki Power Scheme Management Area.*

270. Genesis (#11) also raise concerns that as PC18 is intended to be part of a staged review of the District Plan, it is difficult to understand how it is intended to integrate with the wider plan, which has not yet been reviewed.

### **Analysis**

271. It is my view that the objective proposed is written as a policy because it sets out actions to be taken, rather than identifying the outcome that is sought. Regardless, PC18 is concerned with the management of indigenous biodiversity. In my view, the outcomes sought within this chapter should relate to indigenous biodiversity; this is not the place in the Plan for outcomes regarding the WPS itself to be included.

272. In my view the policies and related rules in Chapter 19 are intended to achieve both the objectives in Section 7 and those in Section 19. Having considered the existing objectives in the MDP, and in particular Rural Objectives 3B and 11, I do not consider an additional objective relating to either the WPS more broadly, or in relation to clearance related to the WPS, to be necessary to include in Section 19.

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<sup>60</sup> Meridian seeks largely the same wording, except that the stem would use “For” instead of “In respect of”; clause (a) would use “Address” rather than “Recognise and provide for”; and clause (b) would use “Enable” instead of “Allow”.



273. In saying that, I appreciate the point about PC18 forming part of a staged review of the District Plan, and the difficulty with integrating the new provisions with older parts of the Plan that have yet to be reviewed; as PC18 needs to also achieve other relevant objectives in the MDP, but these objectives may alter in the subsequent review. I note that the Council intends to proceed with the review of the full district plan in the near future, rather than continuing to review parts of the plan in stages. From a timing perspective, PC18 is being progressed due to the issues it seeks to deal with and in particular the lack of adequate management in the current provisions. Therefore, waiting until the full plan review to tie in the indigenous biodiversity provisions to that process would risk further degradation in the interim. In my view the risk associated with this outweighs the potential for some integration issues to arise.
274. The full plan review will also offer the opportunity to address any integration issues. I consider that this is more appropriate than including a new objective in Section 19 specific to the WPS. For completeness, and noting that in my view the objective sought is in any case written as a policy, I consider that the matters within the suggested objective that are relevant to include in the MDP are better located in Policy 7.

## **Policy 7**

275. Policy 7 reads:

*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.*

## **Submissions**

276. Forest & Bird (#20) supports Policy 7 on the basis that it is consistent with the NPSREG.
277. EDS (#9) seeks that the policy is deleted and replaced with “*To recognise that the location of renewable energy generation structures and activities can overlap with indigenous biological diversity values.*” It accepts in principle the overlap between REG and the existence of indigenous biodiversity, but considers that the current wording, which is focussed on recognising values of REG, is not appropriate for inclusion in a chapter focussed on indigenous biodiversity.
278. Genesis (#11) and Meridian (#13) support the intent of the policy to recognise the importance of REG and transmission, noting that it forms the basis for Rule 2. They consider is it appropriate and necessary to provide separate provisions for activities

associated with the WPS given its significance and special characteristics. They seek changes to:

- Recognise the national significance of REG and transmission, as per the NPSREG.
- Delete the reference to consistency with the objectives and policies of the Plan, as they are not considered appropriate due to the manner in which the plan is being reviewed on a staged basis, with the full suite of provisions yet to be determined.
- Better recognise the practical, technical and locational constraints of the WPS.
- Reflect that for REG activities, Policy 16.3.5 of the CRPS provides for a range of management options, and allow for all available options to address environmental effects to be considered, given the existence of the WPS and its significance (Genesis).
- Ensure no overlap with the NESETA, which takes precedence over rules in the District Plan relating to operation, maintenance, upgrading, relocation and removal of existing national grid electricity transmission facilities (Meridian).
- Give effect to the direction in NPSET to recognise the national significance of the need to operate, maintain, develop and upgrade the electricity transmission network (Meridian).
- Provide an “intermediate provision” between objectives and rules to resolve the tensions in the objectives by providing greater specificity on how to reconcile them in future decision making (Meridian).

279. The wording sought is<sup>61</sup>:

*To recognise and provide for the national significance, economic and social importance of renewable energy generation and transmission, including in particular activities of the Waitaki Power Scheme and the special features of that activity, including:*

- a. *the need to locate the activity where the renewable energy resource is available;*
- b. *logistical or technical practicalities associated with developing, upgrading, operating or maintaining the activity;*
- c. *maintaining the output from existing renewable electricity generation activities;*
- d. *the location of existing structures and infrastructure*

*~~and consistent with objectives and policies of this Plan, to provide for its development, operation, upgrading and maintenance by: and enhancement.~~*

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<sup>61</sup> For completeness, the specific wording sought by Meridian is slightly different but maintains the same intent.

- (i) Treating indigenous vegetation clearance associated with development, operation, maintenance and upgrading of the Waitaki Power Scheme as distinct from Indigenous Vegetation Clearance for other activities*
- (ii) Permitting Indigenous Vegetation Clearance in areas that are part of the Waitaki Power Scheme Management Area where they involve Waitaki Power Scheme Activities*
- (iii) Despite Policy 6 in any areas outside the Waitaki Power Scheme Management Area to provide for development, maintenance and upgrading of the Waitaki Power Scheme by allowing appropriate environmental off-setting and/or environmental compensation of residual adverse effects (i.e. effects where it is not reasonably practicable to prevent adverse effects).*

### **Analysis**

280. My main concern with the drafting of policy sought by Genesis and Meridian, as a whole, is that it extends beyond the management of indigenous biodiversity, focussing instead on renewable electricity generation and transmission activities more broadly. Consistent with the point raised by EDS, in my view, such a broad and detailed policy is not best located in the indigenous biodiversity chapter. As noted earlier, and by EDS, there are existing provisions within the MDP that already apply to the WPS more broadly. The NP Standards will require provisions for energy to be located in another chapter, with appropriate cross-references identifying the interrelationship between the chapters. In my view, the policy should be focussed on the management of indigenous biodiversity, as it relates to activities associated with the WPS. I do accept that the notified version of the policy was also relatively broad and while I assume it was intended to be focussed on the effects of energy generation and transmission activities on indigenous biodiversity, this is not actually made explicit.
281. In my view, the alternate policy suggested by EDS does not however go far enough in directing *how* indigenous biodiversity is to be managed as it relates to WPS activities. In other words, having recognised the overlap between the location of REG activities and indigenous biodiversity values, what approach should be taken?
282. Overall, I agree that several of the additions and changes to the policy sought by Genesis and Meridian are helpful, and in particular I support changes to:
- a. draw out relevant parts of the NPSREG, in terms of directing what matters should be considered where a resource consent application is triggered for vegetation clearance;

- b. make it clearer how the policy applies to the chapter, i.e. to indigenous vegetation clearance and indigenous biodiversity more broadly;
  - c. remove reference to other objectives and policies of the plan. In my view this is unnecessary as the provisions within the MDP need to be read together. In my view such a reference is only appropriate where it is necessary to express a hierarchy, e.g. where one provision is subject to a particular provision. Reference to all provisions, in my view, does not add value.
  - d. Allow consideration of environmental compensation instead of offsetting, as directed in Policy C2 of the NPSREG.
283. Of the other changes sought by these submitters, I note that I have not recommended including explicit reference to national significance. I agree that the provisions need to recognise and provide for the national significance of REG activities, but in my view the policy better outlines how this is to be achieved in the MDP, rather than simply restating the importance. The distinction between operation and maintenance activities, versus upgrading and development activities is also articulated in the recommended policy in a way that aligns with the rules (as notified).<sup>62</sup> The recommended policy wording also takes into account advice from Mr Harding regarding the ecological values associated with the Tekapo, Pūkaki and Ohāu river systems.<sup>63</sup>
284. For completeness, while Policy 7 provides policy guidance specific to management of indigenous biodiversity in terms of REG activities, my view is that it should be read in conjunction with the other policies; in other words, clearance that is not permitted would still need to provide for no net loss of significant indigenous biodiversity values; apply the hierarchy of effects management; and any offsetting proposal would need to meet the criteria for off-setting. If the submitters consider there are tensions with this approach, it may be appropriate to include exclusions or additional considerations within Policy 7; but only as necessary to give effect to the NPSREG while still achieving the overall objective of Section 19.

***Recommendation***

285. Amend Policy 7 as follows:

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<sup>62</sup> For completeness I note that the section below contemplates changes to the rules applying to the WPS that might result in changes being needed to this aspect of the policy. However, at this stage I have not explicitly recommended changes to the rules so the policy reflects the rules as notified.

<sup>63</sup> Evidence of Mike Harding, paragraphs 80-86.

To manage effects on indigenous biodiversity in a way that<sup>64</sup> 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.<sup>65</sup>

## Rules

286. Rules 1.1.1, 1.2.1, 1.2.2, 1.3.1 and 1.3.2 do not apply to the WPS. Instead, Rule 2.1.1 and 2.1.2 provide for indigenous vegetation clearance associated with the WPS as a permitted activity, where the clearance is “*is a consequence of an emergency occurring on, or failure of*” the WPS; and where it is required for the operation and maintenance of the WPS, within the existing footprint of the WPS; on core sites associated with the WPS; and on areas covered by an operating easement associated with the WPS. Rule 2.2.1 provides for clearance associated with the refurbishment of the WPS in the same specified areas as a restricted discretionary activity. Any indigenous vegetation clearance associated with any new facility, structure or works associated with the WPS is a discretionary activity under proposed Rule 2.3.1. There is no non-complying activity rule for indigenous vegetation clearance associated with the WPS.

287. Also of relevance to these rules, are the following definitions:

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<sup>64</sup> EDS (#9).

<sup>65</sup> Genesis (#11) and Meridian (#13).

**Maintenance of Waitaki Power Scheme:** means undertaking work and activities, including erosion control works, necessary to keep the Waitaki Power Scheme operating at an efficient and safe level.

**Refurbishment of Waitaki Power Scheme:** means 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.

**Core Sites:** means land owned by Genesis Energy or Meridian Energy that is managed for hydro generation purposes associated with the Waitaki Power Scheme.

**Operating Easement:** means land Genesis Energy or Meridian Energy has an operating easement over. The purpose of this easement is to provide for activities to be undertaken by Genesis Energy or Meridian Energy as part of the management of the hydro facilities associated with the Waitaki Power Scheme.

### **Submissions**

288. EDS (#9) agrees in principle with providing specific provisions for the Waitaki Power Scheme, but raises several concerns with the proposed rules. It seeks additional controls on what clearance is permitted, including that clearance within a SONS is not permitted. It considers that as currently proposed, the potential extent and location of permitted clearance is unacceptable, and could result in clearance of mapped SONS or unmapped significant areas. It submits that such clearance could significantly adversely affect the remaining area of landscape and ecological connectivity in the Basin.
289. EDS also seeks that additional matters of discretion are added to the rule. These are consistent with changes sought to other restricted discretionary activity rules (and which are discussed later in this report) and are therefore not set out in full here.
290. Both Genesis (#11) and Meridian (#13) support there being a specific set of rules for indigenous vegetation clearance associated with the WPS, noting that if clearance associated with the WPS were assessed under Rule 1, it would be non-complying, due to the clearance required to support the WPS being within 100m of a lake or 20m of river banks, due to the location and nature of the WPS. As an example, they note that vegetation clearance is required to maintain the integrity of key structures in the WPS and is a requirement of dam safety.
291. Genesis (#11) and Meridian (#13) both seek that Rule 2.1.1, which provides permitted activity status for indigenous vegetation clearance associated with an emergency occurring on, or failure of the WPS, is retained.

292. Meridian seeks that Rule 2.1.2 is amended to refer to clearance required for ‘Waitaki Power Scheme Activities’ (WPSA), rather than to “*the operation and maintenance*” of the WPS. Genesis seeks that it refers to clearance required for operation, maintenance and upgrading of WPSA. They both seek that the rules apply within the ‘Waitaki Power Scheme Management Area’ (WPSMA), with locational areas referred to currently in the rule being shifted into the definition for WPSMA.

293. Related to the above, Genesis (#11) and Meridian (#13) also seek that the definitions of ‘Maintenance of Waitaki Power Scheme’ and ‘Refurbishment of Waitaki Power Scheme’ are deleted, with a definition instead included for ‘Waitaki Power Scheme Activities’ as follows:

*Means [the act of<sup>66</sup>] managing and using natural and physical resources for generation of electricity and ensuring the safe and efficient performance of the [lawfully established<sup>67</sup>] Waitaki Power Scheme.*

*It includes conducting and/or undertaking work, activities and the development and operation of activities associated with the generation of electricity. This includes erosion control works, necessary to keep the Waitaki Power Scheme operating at an efficient and safe level and includes upgrading or renewal of machinery, buildings, plant, structure, facilities, works or components.*

294. The effect of the change to the definition, as I understand it, is that it would also result in a permitted activity status for upgrading of the WPS, and development of new activities and facilities associated with the WPS. In relation to this, the submitters state that a discretionary activity status for any new facility, structure or works (as proposed under Rule 2.3.1) will impose significant regulatory costs and will not give effect to the NPSREG.

295. In relation to proposed Rule 2.2.1, which specifies a restricted discretionary status for indigenous vegetation clearance associated with refurbishment of the WPS, Genesis (#11) and Meridian (#13) seek its deletion, as they consider that refurbishment activities, which enable generation and transmission upgrades and renewals within the WPSMA should be permitted.

296. The changes sought relate to wider concerns the submitters have with PC18, including that while they support providing for the maintenance and operation of the WPS as a permitted activity, they consider this should be widened to include refurbishment,

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<sup>66</sup> Additional wording in square brackets sought by Meridian only.

<sup>67</sup> Additional wording in square brackets sought by Meridian only.

renewal and upgrading. They consider that any activity to enable generation and transmission upgrades and renewals occurring within the Management Area should be permitted, not discretionary as proposed. They consider that the activity status for activities associated with the WPS, particularly refurbishment, enhancement and upgrading is not appropriate and does not give effect to Chapter 16 of the CRPS or the NPSREG. They note that PC18 imposes additional regulation on activities and a different activity status for activities associated with the WPS than the operative Plan and that this is not addressed in the s32 report. They consider that the economic impact of the rules has not been adequately assessed. They also consider that their changes will ensure efficient and effective electricity generation associated with the WPS, consistent with the objective and Policy E2 of the NPSREG, and that the District Plan should provide for the lawful operation, maintenance, development and upgrading of the WPS, as the largest hydro generation scheme in New Zealand, without imposing unnecessary costs and constraints.

297. These submitters also seek that an additional permitted activity rule is added, providing for any clearance permitted under Rule 1.1.1. They consider that any indigenous vegetation clearance outside the management area of the WPS should have the same activity status as under Rule 1.
298. CRC (#8) seeks that the matter of discretion (b) under Rule 2.2.1 is amended to read:
- 1. The actual or potential impacts on biodiversity or ecological values expected to occur as a result of the proposal, particularly. This includes the impact on*
- a) significant indigenous vegetation values including the values significant to Ngāi Tahu.*
- b) linkages between areas of indigenous vegetation and ecosystems*
- c) values of significance to Ngai Tahu*
299. Genesis (#11) seeks that Rule 2.3.1 is amended so that it applies to clearance associated with the WPS or WPS Activities that are not permitted under 2.1 or their proposed Rule 2.1.3. Meridian (#13) seeks a similar change, but with reference to clearance activities not permitted under Rules 2.1.1, 2.1.2 or 2.1.3. Both also seek an additional rule is added as a discretionary activity for “*Indigenous vegetation clearance necessary to achieve an increase in the maximum operating level of a lake or water storage area or to create a new lake or water storage area.*” They consider that a discretionary activity status is appropriate for where an activity seeks to increase the maximum operating levels or creation of a new lake, and any activity that does not meet the permitted standards. They state that a consistent approach should be taken to



discretionary activity status for activities associated with the WPS as is taken in the operative Plan. Meridian considers that there are “*special features*” associated with the WPS that means activities outside the WPSMA, or resulting in any increase of the maximum operating level of a lake or water storage area or creation of a new area should be considered and provided for where appropriate, in order to achieve the purpose of the RMA.

300. As noted above, amendments are sought to Rule 2.1.2 that necessitate a new definition being added for the ‘Waitaki Power Scheme Management Area’. The submitters state that there are already management areas devoted to the operation of the WPS and this should continue, with the definition identifying the areas where activities currently and will continue to occur. They consider that there are no material risks to the achievement of no net loss from the continued development, operation, maintenance and upgrading of the WPS within the defined Management Areas. The definition sought is:

*Waitaki Power Scheme Management Area means land within the following areas:*

- a. The existing footprint of the Waitaki Power Scheme*
- b. On core sites associated with the Waitaki Power Scheme*
- c. On areas covered by an operating easement associated with the Waitaki Power Scheme*

### **Analysis**

301. The NPSREG requires that the national significance of REG activities is recognised by providing for the development, operation, maintenance and upgrading of REG activities (Objective). It explicitly directs that district plans include provisions to provide for the development, operation, maintenance and upgrading of existing REG activities (Policy E2). It directs that the national significance of REG activities are recognised and provided for, including its benefits, which include the reversibility of adverse effects on the environment of some REG technologies (Policy A). The NPSREG also directs that particular regard is given to maintaining generation output, which may require protection of the assets, operational capacity and continued availability of the energy resource (Policy B). It also requires that particular regard is had to practical constraints of REG activities, including the location of the energy resource, logistical or technical practicalities and location of existing infrastructure. More specifically it requires particular regard is had to designing measures which allow operational requirements to complement and provide for mitigation opportunities; and for adaptive management measures (Policy C1). Policy C2 also requires that regard is had to offsetting measures

or compensation, when considering any residual environmental effects that cannot be avoided, remedied or mitigated.

302. It is my view that the NPSREG does not direct that the environmental effects arising from REG activities are ignored. Policy C2 anticipates that environmental effects will be avoided, remedied or mitigated except where they “cannot” be. 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 in the NPSREG. For example, does needing a consent stop generation output being maintained, affect operational capacity or affect the availability of the energy resource? Does the consenting framework require environmental effects to be avoided, remedied or mitigated, and allow for offsetting or compensation where this cannot be achieved? Does the consent process provide adequate consideration of the practical constraints associated with the WPS?
303. It is also important to remember that the rule package is required to implement the proposed policy direction and ultimately achieve the objectives in PC18, as well as give effect to the CRPS (both in terms of biodiversity outcomes and energy outcomes) and the NPSET. PC18 introduces a new policy framework relating to management of indigenous biodiversity and while there is still a need to provide for REG activities, in my view it will be appropriate, in some instances, to manage the effects of these activities through the consent process. This is necessary to ensure that the indigenous biodiversity outcomes sought by the MDP and CRPS are achieved at the same time.
304. In my view, at a broad level, the separate set of provisions for the WPS gives effect to the direction in the NPSREG. This is because it recognises that in the case of the WPS – being a REG activity – its development, operation, maintenance and upgrading must be provided for. Where consent is required, the consenting framework then allows for consideration of how the effects of the WPS on indigenous biodiversity are managed, whilst still providing for these activities.
305. Mr Harding’s evidence considers the significance of indigenous vegetation and habitat in the area to which the WPS rules apply<sup>68</sup>. His evidence is that some parts of the core sites, and areas covered by operating easements are ecologically significant.<sup>69</sup> In his

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<sup>68</sup> Evidence of Mr Harding, paragraphs 80-86.

<sup>69</sup> Evidence of Mr Harding, paragraph 81.

view, clearance of vegetation within the core sites is unlikely to have major adverse effects on indigenous vegetation and habitat, except where it within areas identified as SONS. In the wider operating easements areas, he considers clearance of vegetation is very likely to have adverse effects on indigenous vegetation and habitat, especially within identified SONS.<sup>70</sup> This reflects the concerns raised by EDS.

306. Mr Harding’s evidence considers the ecological values of the areas to which the WPS set of rules applies, and the potential effects of clearance within these areas. I note that the proposed rule package distinguishes between different types of activities undertaken within these areas, i.e. operation and maintenance (2.1.1); refurbishment (2.2.1); and any other activities associated with the WPS that involve clearance (2.3.1). I consider that Mr Harding’s evidence indicates that the reason for the vegetation clearance is less relevant than the potential effects that clearance may have. In saying that, he does note that the ecological effects of refurbishment are likely to be greater than the effects of maintenance and operation, because new works are likely to remove or disturb additional areas of significant indigenous vegetation or habitat.<sup>71</sup> I consider the same would also apply to any development.

307. It is my view that permitting *any* vegetation clearance associated with REG activities is not appropriate, given the potential effects it could have on indigenous vegetation and habitats. Under a permitted activity framework, there are no limitations or parameters on the clearance (e.g. its location, scale, or way it is undertaken) and no ability for the Council to consider the effects of the clearance or impose any conditions. In my view, Mr Harding’s evidence indicates that such an approach would not, in some areas covered by the WPS rules, implement the policy direction about how effects of activities on indigenous biodiversity are to be managed and could compromise achievement of the objectives. It is my view that a more appropriate approach might be to amend the rule framework for indigenous vegetation clearance as follows:

<b>Location</b>	<b>Maintenance Operation</b>	<b>and Refurbishment<sup>72</sup></b>
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<sup>70</sup> Evidence of Mr Harding, paragraph 85.

<sup>71</sup> Evidence of Mike Harding, paragraph 86.

<sup>72</sup> I note that the definition of refurbishment refers to upgrading and renewals of structures and facilities associated with the WPS. The NPSREG refers to upgrading; and the current MDP in the Scheduled Activities rule refers to refurbishment, enhancement and upgrading. Genesis and Meridian also refer to upgrading and renewals. For the avoidance of doubt, when I refer to refurbishment, I am meaning this to encompass upgrading and renewals.

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

308. Notwithstanding this, I accept the need to ensure the NPSREG is given effect to. It is not clear to me to what extent indigenous vegetation clearance may be required in order to maintain and operate the WPS and this may alter my view. It is also not clear to me to what extent (if any), WPS activities have, to date, adversely affected the significance of the biodiversity values in these areas. For example, if the effects on indigenous biodiversity values have been minimal, and ongoing clearance (similar to that which has already been undertaken previously) is necessary in order to continue to maintain and operate the WPS, then the above rule regime may not be appropriate to achieve the outcomes sought by PC18.
309. Another alternate to the rule regime above might also be to place additional limitations on what vegetation clearance is permitted, that would allow for necessary maintenance and operation, while reducing potential effects of any clearance. In particular, my understanding is that effects are likely to be greater in areas of indigenous vegetation or habitat that have not previously been disturbed or modified and there may be an opportunity to craft the rules and definitions to encompass previously modified areas only (similar to the approach taken to areas of improved pasture). Because of this, I have not specifically set out any recommended changes to the activity status relating to the WPS set of rules at this stage. I have however, recommended changes to the current matters of discretion for those activities currently captured by the proposed restricted discretionary activity rule, where I consider the changes sought by CRC and EDS to be appropriate. Further changes might be appropriate if this rule is amended to include other activities.
310. I similarly consider that permitting the development of REG activities would not implement the policy direction regarding how effects of activities on indigenous biodiversity are to be managed and could compromise achievement of the objectives. In my view, a discretionary activity, combined with the proposed direction in Policy 7, will

still give effect to the NPSREG, while provides an appropriate pathway for the effects on indigenous biodiversity to be appropriately managed.

311. Because of the above, I do not agree with amending Rule 2.1 to refer to WPSA, and therefore do not consider the proposed definition of WPSA to be necessary. Notwithstanding this, and for completeness, it is my view that the proposed definition is in any case inappropriate. This is because I consider that the purpose of a definition is to provide clarity about what provisions relying on that definition apply to. It is therefore important that definitions do not require an element of subjective judgement, and do not lack sufficient clarity. In my view, the proposed definition for WPSA would introduce a subjective element as to what resource use would constitute safe and efficient performance. General reference to all management and use of natural and physical resources is also broad and unclear what this would or would not extend to. In any case, I consider that the definition goes far beyond the matters of concern identified by the submitters.
312. I consider that if the rules continue to apply to all the locational areas currently set out in the rules, that it would be simpler for the rule to refer to a single area (such as a Waitaki Power Scheme Management Area), with the locational areas referred to currently in the rule being shifted into the definition for WPSMA. This does not alter the effect of the rule but in my view is more concise. However, as noted above, I am not convinced that these areas should necessarily be managed in the same way. My recommended changes to the rules therefore do not currently include this change.
313. I also agree that it is appropriate to provide a permitted activity status for any clearance associated with the WPS, that, if not for being associated with the WPS, would otherwise be permitted under Rule 1.1.1. In this instance, the reason the clearance is being undertaken does not alter the effects. I also recommend that the wording of Rule 2 is amended to align with the way Rule 1 is worded. I also agree that greater clarity would be provided by amending Rule 2.3.1 to refer to clearance associated with the WPS that are not otherwise specified as a permitted or restricted discretionary activity.

### ***Recommendation***

314. **Amend** Rule 2.1.1 as follows:

*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:*<sup>73</sup>

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<sup>73</sup> Clause 16(2) amendment to provide clarity and internal consistency between provisions.

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 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 meets the conditions in Rule 1.1.1.<sup>74</sup>

315. **Amend** Rule 2.2.1 as follows:

*Any indigenous vegetation clearance associated with the refurbishment of the Waitaki Power Scheme within 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.*

*The Council will restrict its discretion to the following matters:*

- (a) *Whether the works are occurring on a surface that has previously been modified by the construction, operation, maintenance or refurbishment of the Waitaki Power Scheme.*
- (b) *The adequacy of the identification of biodiversity values, including, but not limited to identification of areas of significant indigenous vegetation or habitat of indigenous species using the criteria provided in Appendix 3 of the Canterbury Regional Policy Statement, and values outside of these areas or any Site of Natural Significance that is particularly important for ecosystem connectivity, function, diversity, and integrity.<sup>75</sup>*
- ~~(b)~~(c) *The actual or potential effects<sup>76</sup> on indigenous<sup>77</sup> biodiversity or and<sup>78</sup> ecological values expected to occur as a result of the proposal, particularly the impact on significant values including the values significant to Ngāi Tahu.*
- ~~(c)~~(d) *The extent to which species diversity or habitat availability could be adversely impacted by the proposal.*
- ~~(d)~~(e) *Any potential for mitigation or offsetting of effects on ecosystems and indigenous<sup>79</sup> biodiversity values, including methods to protect significant indigenous vegetation and significant habitats of indigenous fauna.<sup>80</sup>*

<sup>74</sup> Genesis (#11), Meridian (#13).

<sup>75</sup> EDS (#9).

<sup>76</sup> For consistency with other changes sought by Forest & Bird (#20).

<sup>77</sup> SPSL (#3).

<sup>78</sup> For consistency with other changes sought by Forest & Bird (#20).

<sup>79</sup> SPSL (#3).

<sup>80</sup> EDS (#9).

- ~~(e)~~(f) *Any technical and operational constraints and route, site and method selection process.*
- ~~(f)~~(g) *The benefits that the activity provides to the local community and beyond.*
- (h) *The adequacy of any proposed monitoring and reporting.*
- (i) *Any links between the vegetation proposed to be cleared and the visual or landscape values which are underpinned by the ecology present, including by reference to Appendices X & W.<sup>81</sup>*

316. **Amend** Rule 2.3.1 as follows:

*~~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 under Rule 2.1.1.<sup>82</sup>*

### **Definition of Waitaki Power Scheme**

317. PC18 also introduces the following definitions which are relevant to the policy and rule framework associated with the WPS:

**Waitaki Power Scheme:** *means the electricity generation activities in the Waitaki River Catchment including the structures, works facilities, components, plant and activities undertaken to facilitate and enable the generation of electricity from water. It includes power stations, dams, weirs, control structures, penstocks, canals, tunnels, siphons, spillways, intakes, storage of goods, materials and substances, switchyards, fish and elver screens and passes, boom, site investigation works, erosion and flood control, access requirements (including public access), jetties, slipways and landing places, signs, earthworks, monitoring, investigation and communication equipment and transmission network.*

### **Submissions and Analysis**

318. Genesis (#11) seeks an amendment to the definition of “*Waitaki Power Scheme*” so that it begins with “*is a nationally significant renewable electricity generation scheme comprising...*” Similarly, Meridian seeks that the start of the definition is amended to “*means the nationally significant...*” They both state that the NPSREG identifies the benefits of renewable electricity generation as a matter of national significance and it is appropriate that this be recognised in the definition. Both submitters also seek minor grammatical corrections.

319. It is my view that the purpose of a definition is to provide clarity about what provisions relying on that definition apply to. I do not consider that the national significance of the WPS is relevant to helping understand what does or does not form part of the WPS and

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<sup>81</sup> EDS (#9).

<sup>82</sup> Genesis (#11), Meridian (#13).

therefore does not assist in aiding the interpretation of the provisions to which the WPS definition applies. I do however agree with the grammatical corrections being made to the definition of 'Waitaki Power Scheme' as they will provide greater clarity.

320. Meridian (#13), as an alternate to the change sought to the definition of indigenous vegetation, seeks that an additional permitted activity rule is added for "clearance of indigenous vegetation required for Waitaki Power Scheme Activities where native species do not dominate and comprise less than 66% of groundcover", with 2.1.2 amended to refer to clearance above 66%, and where within the WPSMA, and Rule 2.2.3 also amended to refer to clearance above 66%. Mr Harding has advised that he does not consider referring to a cover of 66% to be appropriate, as he considers that there are very few indigenous plant communities on depositional landforms in the Mackenzie Basin where native species form more than 66% cover. He states that most basin-floor plant communities are degraded and include a high component of exotic species and may include a substantial portion of bare ground.<sup>83</sup> In light of this, I do not consider that the new permitted activity rule sought is appropriate.

### **Recommendation**

321. **Amend** the definition of 'Waitaki Power Scheme' as follows:

***Waitaki Power Scheme:** means the electricity generation activities in the Waitaki River Catchment including the structures, works,<sup>84</sup> facilities, components, plant and activities undertaken to facilitate and enable the generation of electricity from water. It includes power stations, dams, weirs, control structures, penstocks, canals, tunnels, siphons, spillways, intakes, storage of goods, materials and substances, switchyards, fish and elver screens and passes, booms,<sup>85</sup> site investigation works, erosion and flood control, access requirements (including public access), jetties, slipways and landing places, signs, earthworks, monitoring, investigation and communication equipment and transmission network.*

## **National Grid**

### **Submissions**

322. Transpower seeks, through a further submission, that various provisions sought by Genesis and Meridian are amended, to extend them to apply to the National Grid. For example, it supports the new objective sought by each submitter to the extent that the submitter identifies the need for an objective that is implemented through Policy 7 and Rule 2, but opposes the wording of the objective because it fails to address the electricity

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<sup>83</sup> Evidence of Mike Harding, paragraph 87 d).

<sup>84</sup> Genesis (#11), Meridian (#13).

<sup>85</sup> Genesis (#11), Meridian (#13).



transmission component of Policy 7; and as such does not give effect to the NPSET or Policies 5.3.9 and 16.3.4 of the CRPS and equally recognise and provide for the national significance of electricity transmission. Transpower similarly seek changes to the amendments sought to Policy 7 by Genesis and Meridian, to explicitly reference the National Grid. Transpower also seeks changes to Rules 2.1.1 (to which no amendments are sought by Genesis or Meridian), Rule 2.1.2 and Rule 2.3.1 so that they specifically reference the National Grid.

### **Analysis**

323. I consider that what is sought by Transpower extends beyond the scope of a further submission. This is because the additional provisions and changes sought by Genesis and Meridian are limited to the WPS and what is sought by Transpower is an extension beyond this, to apply it to the National Grid. In my view the changes sought are within the scope of PC18 itself, but should have been made as a primary submission. An example of this is that the further submission ‘supports in part’ Genesis and Meridian’s submission point on Rule 2.1.1. These submitters support the rule as notified as seek its retention. However, in their further submission, Transpower seek that the rule is amended to reference the National Grid – however what is sought therefore does not relate to the original submission, which did not seek changes.
324. While in general I do not consider that the extensions sought by Transpower can be pursued through a further submission, I do accept that there is inconsistency with the provision in PC18 as notified, in that Policy 7 refers to “renewable energy generation **and transmission**” (emphasis added), whereas the rules in section 2 only apply to the WPS. However, ultimately, no one sought to reconcile this tension by way of their primary submission.
325. If the Hearing Panel disagree and consider that the changes sought can be pursued through a further submission, then in my view there is merit in the changes sought. The National Grid is recognised as nationally significant and is subject to the NPSET. Although this is different to the NPSREG, it requires decisions-makers under the RMA to recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network<sup>86</sup>. It also provides direction on how adverse environmental effects of transmission activities and infrastructure are to be considered<sup>87</sup>. In my view, providing for the operation, maintenance, upgrading and

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<sup>86</sup> Policy 2.

<sup>87</sup> Policies 3 – 8.

development of transmission activities in the same way as renewable energy generation activities would appropriately give effect to the NPSET.

326. I also note that the changes sought by Transpower are specific to the amendments proposed by Genesis and Meridian, and I have not recommended that those submission points are accepted in full. Therefore, should there be scope to make the changes generally sought by Transpower, my recommendation would be to amend the provisions recommended in this report as follows:

- Amend Policy 7 clause (1) to refer to both the WPS and the National Grid. Amend clause (2) to refer to renewable energy generation and transmission. Amendments may also be needed to sub-clause (a) under (2) so that it better applies to transmission activities, or a further transmission-specific sub-clause may be appropriate.
- Amend Rule 2 to refer to the National Grid as well as the WPS. Consideration should be given to whether Rule 2.2.1 is amended to relate to the National Grid, or if a new standalone rule for National Grid is more appropriate.

## **Opuha Scheme**

### ***Submissions***

327. OWL (#14) seeks that Policy 7 is extended to irrigation, community supply and river enhancement schemes. This is sought so that appropriate recognition is given to the strategic importance of the Opuha Dam and the Scheme it facilitates; it more fully implements the Opuha Dam Special Purpose Zone objectives, and is consistent with the zone policies. OWL (#14) seeks that the rule framework applying to the Waitaki Power Scheme is extended to apply to the Opuha Scheme. It submits that this is necessary to recognise the strategic importance of the Opuha Dam and the Opuha Scheme, as reflected in the CRPS, CLWRP and in sections 9 & 16 of the MDP; and to fully implement proposed Policy 7 and the policy framework in Sections 9 and 16 of the MDP.

328. OWL (#14) also seeks that a new definition is added for the “Opuha Scheme”, with reference to the scheme then added to the definitions for “Maintenance of Waitaki Power Scheme” and “Refurbishment of Waitaki Power Scheme”. Similarly, it seeks that the definition of “Operating Easement” is amended to also refer to Opuha Water Ltd.

329. Genesis, Meridian and DOC, in further submissions, oppose the provisions being extended to apply to the Opuha Scheme, given that the specific provisions relating to

the WPS relate to REG activities, and therefore are intended to give effect to the NPSREG; which does not include provisions for irrigation or community supply.

### **Analysis**

330. It is my view that irrigation, community supply and river enhancement schemes should not be treated the same as REG activities. REG activities are *nationally* important and required under the NPSREG to be recognised as such. The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna is also a matter of *national* importance under s6(c) of the RMA. In my view, while the Opuha Scheme may be recognised as *regionally* significant infrastructure under the CRPS, this does not give it the same status as either REG or significant areas.
331. However, I accept that the NPSREG applies to all REG activities, regardless of their scale and therefore applies to the hydrogeneration electricity facility associated with the Opuha Scheme. Under the MDP, the Opuha Dam has its own Specific Purpose Zone – the Opuha Dam Zone. I note that because of this zoning, the current rules in Section 7 relating to vegetation clearance do not apply within this zone. There is a specific Objective (3) and Policy related to hydro generation within the Opuha Dam Zone, directing that provision is made for the construction and operation of hydro generation facilities associated with the Opuha Dam, subject to ensuring the effects of those activities on the environment are avoided, remedied or mitigated. Rule 1.4.2 permits the construction, maintenance and operation of a 7.5Mw hydrogeneration electricity plant, associated switchgear, yards and facilities. The rules do not appear to control indigenous vegetation removal within the Zone.
332. While Policy 7 and Rule 2 of Section 19 could be extended to apply to the hydrogeneration facility associated with the Opuha Dam on the same basis as that of the WPS, because of direction in the NPSREG, it is not clear to me whether this is actually necessary from a practical point of view. This is because the hydrogeneration facility is only a small component of the overall dam facility and infrastructure and as I do not agree that the approach taken for the WPS should apply to the wider dam activities, it seems unlikely that indigenous vegetation clearance would need to be undertaken solely for maintenance and operation of the hydrogeneration facility. As such I consider it would add a level of complexity to add the hydrogeneration facility associated with the Opuha Dam to the WPS-related policies and rules, that would have limited, if any, practical use. If this is not correct and indigenous vegetation clearance associated with only the hydrogeneration facility is likely, it may in any case be more appropriate to provide for this through an addition to Rule 1.1.1.

## Farm Biodiversity Plans - Policies 8 & 9, Appendix Y and Related Definitions

333. This section of the report considers provisions relating to Farm Biodiversity Plans (FBPs). This includes policies 8 and 9 which provide direction on FBPs. Proposed Rule 1.2.1 provides a restricted discretionary activity status for the clearance of indigenous vegetation, where the “*farm enterprise has a Farm Biodiversity Plan*”. The clearance also must not be within specified areas.<sup>88</sup> Discretion is restricted to a number of matters that relate overall to the quality of, and compliance with, a FBP. Appendix Y then sets out the details of what a FBP must contain. Related to these provisions are the definitions for ‘*Farm Biodiversity Plan*’ and ‘*Farming Enterprise*’.

### Policies 8 & 9

334. Policies 8 & 9 relate to Farm Biodiversity Plans (FBPs). They read:

*To enable rural land use and development at an on-farm level, where that development is integrated with comprehensive identification, sustainable management and long-term protection of values associated with significant indigenous vegetation and significant habitats of indigenous fauna, through a Farm Biodiversity Plan process.*

*Where a Farm Biodiversity Plan is proposed, to require comprehensive and expert identification of significant indigenous biodiversity values as part of that Plan, and to ensure that any development proposed under that Plan is integrated with protection for those significant values.*

### Submissions

335. CRC (#8) seeks deletion of the phrase “*values associated with*” from Policy 8.

336. EDS (#9) seeks that Policy 8 is amended to add “*and maintenance of indigenous biological diversity, through a...*”. It is concerned that both Policy 8 and Policy 9 focus only on significant biodiversity, but that achievement of the maintenance of indigenous biological diversity outside significant sites also requires management.

337. Glenrock Station (#12), consistent with changes sought to Objectives 1-3, seeks that Policy 8 is amended to add “*and where appropriate retention/restoration of indigenous vegetation where appropriate*”. It submits that this will better support the objectives of PC18 and the CRPS by providing for consideration of the management of indigenous vegetation more broadly, not just significant vegetation and will allow for more integrated

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<sup>88</sup> A SONS, land above 900m in altitude, 100m of a lake, 20m of the bank of a river, 100m of an ecologically significant wetland or 50m of all other wetlands.

and holistic management within sites. For the same reason, it also seeks that Policy 9 is amended to add additional direction, as follows:

*Where a Farm Biodiversity Plan is proposed, to require comprehensive and expert identification of the following as part of that Plan:*

- a.) significant indigenous biodiversity values ~~as part of that Plan~~, and to ensure that any development proposed under that Plan is integrated with protection for those significant values;*
- b.) where appropriate other indigenous biodiversity values and methods for retaining and/or restoring (where possible) those values.*

338. Mt Gerald (#16) and The Wolds (#17) seek that policies 8 & 9 are deleted, with the key matters combined into one policy, that also outlines that it will take time to achieve enhancement of indigenous biodiversity. They note that there needs to be a “*true collaborative process*” between the Council and the landowner. They consider that it is inappropriate for the Council to transfer the costs associated with obtaining expert advice to identify significant indigenous biodiversity values to the landowner and instead the costs should be shared in consideration of the proportion of the benefit derived by the public versus the landowner. The policy wording sought is:

*To enable rural land use and development at an on-farm level where development is integrated with a farm biodiversity process that provides for:*

- comprehensive identification and protection of significant vegetation and significant habitats of indigenous fauna;*
- encourages sustainable management;*
- adapts to the changing needs of land use and indigenous biodiversity management; and*
- achieves maintenance, and over time, the enhancement of indigenous biodiversity.*

339. DOC (#18) seeks that both Policy 8 & Policy 9 are amended to delete the words “*significant*”. It submits that extensive biodiversity losses that have occurred within the Mackenzie Basin due to previous land use activity, with any remaining biodiversity likely to be significant as a result, regardless of whether it has been mapped. In its view, farm development should consider this, and appropriate assessments should be undertaken of all remaining vegetation, to identify significant areas and then appropriately manage them. DOC considers the changes sought to be consistent with the FBP provisions, which require that all indigenous vegetation is identified.

340. Forest & Bird (#20) supports the intent of the policies to give direction for FBPs. However, it submits that Policy 8 as currently worded is uncertain, with the heading above the policies suggesting they will apply to farm plans, which are only provided for

under one restricted discretionary rule. It does not consider that the rule includes sufficient matters of discretion to consider all matters raised in these policies. It seeks that the heading above these policies are deleted and Policy 8 is amended to replace the word “enable” with “assist” and to delete “of values associated with”.

### **Analysis**

341. I agree with Mt Gerald and The Wolds, insofar as I consider it appropriate to combine policies 8 & 9 into one policy. At present, the policies overlap somewhat (for example, both talk about identification) and have the potential to add confusion. As with comments made on other provisions, I consider it appropriate that the focus of the revised policy is on land use and development, rather than restricting this to rural land use.
342. I agree with CRC and Forest & Bird that the words “*values associated with*” from Policy 8 should be deleted. Reference to protecting significant areas is consistent with s6(c) of the RMA. Although a minor matter, I tend to agree with Forest & Bird regarding deletion of the sub-title (“*Additional Policies applying to Farm Biodiversity Plans*”) as the content of the policies is sufficient to establish what they apply to and there are no other sub-titles used for other policies (for example, Policy 7, which applies to REG and transmission activities).
343. In my view, changing the direction in the policy from enabling, to assisting (as sought by Forest & Bird) is not appropriate. The policy is providing clear direction that land use and development can proceed, where it meets the stipulations in the policy. “*Assist*” instead suggests a non-regulatory method and is less likely to provide clear direction to a consent planner.
344. In relation to DOC’s request to remove the word “*significant*” from the policies, I agree in part. I consider that it is appropriate to require assessment of all indigenous biodiversity values, not just those of significance. In practical terms, all areas would in any case need to be assessed in order to determine what is significant. A broader assessment of all indigenous biodiversity values also better aligns with the direction in the objective, and what is proposed within the Appendix Y requirement for FBPs. This is reflected in the recommended composite policy.
345. In contrast, I consider it appropriate to retain reference to significance in terms of how those areas identified through assessment as being significant, are to be managed. In my view, DOC’s request would have required protection of all vegetation, regardless of significance and this goes beyond what is necessary to achieve the objectives. If, as it

considers, any remaining biodiversity is identified as meeting the threshold for significance, its protection will be required. I do however agree with EDS and Glenrock Station that reference should be added to the maintenance of indigenous biodiversity more broadly, as that is consistent with both the requirements outlined for FBPs as well as the overarching objective. This distinction, combined with the changes to what is assessed, may address DOC's concerns.

346. I also agree with submitters (Glenrock Station, Mt Gerald, The Wolds) who seek that the policy is extended to refer to restoring or enhancing indigenous biodiversity. I consider that this better aligns the policy with the objective and better allows for integrated management of all indigenous biodiversity across a farm. Ultimately, as the trigger for a FBP results from vegetation clearance, enhancement of indigenous biodiversity is likely to be a useful method to mitigate some adverse effects from vegetation clearance.
347. Although the recommended composite policy is fairly similar to that sought by Mt Gerald and The Wolds, I have not included an additional sub-point regarding "*adapts to the changing needs of land use and indigenous biodiversity management*". I note that the FBP forms part of a consenting process, which will also include consent conditions that will need to be adhered to. While this process may provide some flexibility for adaption, this will depend on how this is provided for (if at all) within the FBP and consent conditions; but in my view cannot extend beyond this and provide a broader level of flexibility.
348. I have also omitted the phrase "*sustainable management*" from the composite policy. In my view, the revised policy provides clearer direction about what constitutes sustainable management in the context of integrating land use and development with indigenous biodiversity and therefore retaining a broader reference to 'sustainable management' might add confusion.
349. I also note the comments made by Mt Gerald and The Wolds regarding collaboration between the Council and landowners and costs associated with expert advice. While they did not appear to seek specific changes to the policy wording relating to this, for completeness I note that the Plan sets a framework – through the FBP process – for collaboration to occur. The costs associated with expert advice is a matter for the Council to consider outside the District Plan.
350. In considering the direction in policies 8 & 9 (recommended to be combined), I have also considered the submissions relating to Objective 3. As noted earlier, I consider that

Objective 3 as notified was written as a policy and therefore any relevant elements of it, not already captured in Policies 8 & 9, should be considered. I consider that the revised policy (recommended below) addresses submissions on Objective 3 as follows:

- rather than support/encourage, the policy provides stronger direction about the integration that is to be achieved through FBPs in order for land use and development to be enabled (H Frank (#10))
- It provides direction in relation to both significant and non-significant areas (EDS (#9))
- It provides direction in relation to opportunities for enhancement of indigenous biodiversity (Glenrock Station (#12))
- It requires identification and assessment of all indigenous vegetation (DOC (#18))

351. I note that in relation to Objective 3, that Mt Gerald (#16) and The Wolds (#17) sought changes that focussed the objective on land use activities being integrated with protection of significant areas; rather than being focussed on FBPs. I consider that the recommended Objective is more appropriately focussed on the outcomes sought for indigenous biodiversity within the District, without the objective itself being focused on a particular method (i.e. FBPs) for how the outcomes are achieved. The recommended FBP policy then provides specific direction for consideration of FBPs and what they must achieve; with the other policies providing guidance that will apply to activities that do not involve a FBP.

352. In relation to Mackenzie Guardians' (#6) submission that Objective 3 is amended to include consideration of landscape values, I have not recommended that this be included in the recommended wording for Policy 8. As noted earlier, while I agree that it is important to recognise the relationship between indigenous biodiversity and landscape values, I consider that there is sufficient policy guidance in the MDP regarding how effects on landscapes are to be managed and further policy direction in Section 19 is not required.

### **Recommendation**

353. **Amend** Policy 8 as follows:

*To enable rural land use and development at an on-farm level, through a Farm Biodiversity Plan,<sup>89</sup> where ~~that development is integrated with comprehensive~~ and expert identification, of*



*indigenous biodiversity is undertaken<sup>90</sup> that demonstrates how that use and development will be integrated with.<sup>91</sup> sustainable management and*

- *the long-term protection of values associated with<sup>92</sup> significant indigenous vegetation and significant habitats of indigenous fauna, through a Farm Biodiversity Plan process.<sup>93</sup>*
- *the maintenance of other indigenous biodiversity,<sup>94</sup> and*
- *opportunities for enhancement of indigenous biodiversity, where appropriate.<sup>95</sup>*

354. Delete Policy 9.

### **Rule 1.2.1 and the Definitions of ‘Farming Enterprise’ and ‘Farm Biodiversity Management Plan’**

355. Proposed Rule 1.2.1 provides a restricted discretionary activity status for the clearance of indigenous vegetation, where the “*farm enterprise has a Farm Biodiversity Plan*”. The clearance also must not be within specified areas.<sup>96</sup> Discretion is restricted to a number of matters that relate overall to the quality of, and compliance with, a FBP.

356. The definition introduced in PC18 for a ‘farm enterprise’ is:

*means an aggregation of parcels of land held in single or multiple ownership (whether or not held in common ownership) that constitutes a single operating unit for the purpose of farming management.*

357. The definition proposed for ‘Farm Biodiversity Plan’ is also dependent on the definition for a farming enterprise, and reads:

*means a plan that covers the whole of a farming enterprise that is submitted to the Council as part of a resource consent application under Section 19 Indigenous Biodiversity, and is prepared in accordance with Appendix Y.*

### **Submissions**

358. CRC (#8) notes that the farm enterprise definition is similar to that contained in the LWRP. It submits that having similar definitions for different purposes may cause

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<sup>89</sup> Results from re-ordering of policy.

<sup>90</sup> Shifted from Policy 9 (Mt Gerald (#16) and The Wolds (#17)).

<sup>91</sup> Results from re-ordering of policy.

<sup>92</sup> CRC (#8), Forest & Bird (#20).

<sup>93</sup> Results from re-ordering of policy.

<sup>94</sup> EDS (#9), Glenrock Station (#12), Mt Gerald (#16), The Wolds (#17).

<sup>95</sup> Glenrock Station (#12), Mt Gerald (#16), The Wolds (#17).

<sup>96</sup> A SONS, land above 900m in altitude, 100m of a lake, 20m of the bank of a river, 100m of an ecologically significant wetland or 50m of all other wetlands.

confusion, and seeks that the PC8 definition is amended to refer to something different, for example “*farming operation*”. It also considers it would be helpful to amend the definition further to clarify that parcels of land referred to in the definition are not necessarily contiguous, by adding “*whether contiguous or non-contiguous*” to the reference to parcels of land. Forest & Bird (#20) seeks retention of the definition, but considers that the split between a restricted discretionary activity for a ‘Farm Enterprise’ and a non-complying activity, on the basis of not being a Farm Enterprise, is not robust. It submits that the Farm Enterprise concept was developed in relation to the LWRP for nutrient management and does not consider the approach taken in that plan is applicable to the approach to managing biodiversity under PC18.

359. Mackenzie Guardians (#6) support the definition of FBP, provided that it is clear that the FBP is part of a resource consent. DOC (#18) supports the proposed definition for Farm Biodiversity Plan, subject to changes sought to related provisions (Objective 3, Policy 9, Rule 1.2.1 and Appendix Y). Forest & Bird (#18) seeks retention of the definition of Farm Biodiversity Plan.

360. CRC (#8) considers that Rule 1.2.1 could be amended to make it explicit that it is specific to indigenous vegetation clearance for which a FBP has been prepared and submitted as part of the consent application, by amending it as follows:

*Unless permitted under Rule 19.1 the clearance of indigenous vegetation clearance on a farming operation is a restricted discretionary activity provided the following conditions are met:*

1. *The farm enterprise has a Farm Biodiversity Plan (see Definitions) is prepared for the farming operation and is submitted with the application for resource consent.*

361. EDS (#9) supports provisions for clearance through a FBP at a conceptual level, but submits that the requirements around FBPs needs amendment and seeks a range of changes to the proposed assessment matters. The changes sought are:

1. *The quality of a Farm Biodiversity Plan, including whether the Farm Biodiversity Plan:*
  - a) *Achieves the purpose set out in in Appendix Y;*
  - b) *Adequately identifies the biodiversity values, including:*
    - a. *SONS*
    - b. *Other areas of and in particular significant indigenous vegetation or habitat of indigenous species using the criteria provided in Appendix 3 of the Canterbury Regional Policy Statement.*

c. Biodiversity values outside (A) and (b) areas in particular those important for ecosystem connective, function, diversity, and integrity.

~~c) ,and also Adequately identifies actual and potential threats to those values;~~

~~ed) Includes methods that will adequately protect the significant biodiversity values identified; and~~

~~de) Includes appropriate monitoring and reporting methods to adequately protect the biodiversity values identified.~~

f) Includes methods that will maintain indigenous biodiversity outside significant areas, including effects on the wider ecosystem form the proposed clearance and how this may impact connectivity, function, diversity and integrity.

g) Includes methods that will protect outstanding natural landscape values resulting from links between the vegetation proposed to be cleared and the visual or landscape values which are underpinned by the ecology present, including with reference to Appendices X & W.

2. Compliance with a Farm Biodiversity Plan

~~a) Whether the proposal achieves no net loss of indigenous biodiversity values identified as significant.~~

...

~~d) Any potential for avoiding, remedying, mitigating or otherwise offsetting or compensating for adverse effects on~~ Includes methods that will protect significant indigenous vegetation and significant habitats of indigenous fauna.

...

~~g) The benefits that the activity provides to the local community and beyond.~~

362. The reasons for these changes (in summary) are:

- That reliance on achievement of the purposes in Appendix Y is only acceptable if those purposes are consistent with the objectives and policies in Section 9, and the Council's obligations under ss6 & 31 of the RMA.
- That because not all significant areas have been mapped, reliance in the matters on mapped SONS is inadequate, and a significance assessment of remaining areas on a property is required.
- Identification and threats are two separate matters and should be split to ensure clarity.
- Reference to "adequate" protection are redundant as either protection is "achieved" or it is not.

- Biodiversity outside significant areas needs to be addressed in order for the Council to fulfil its functions under s31 of the RMA.
- No net loss should not be applied to significant areas.
- Focus should be on the adequacy of proposed measures to address effects, not on the 'potential' to address effects.
- Matter 2(g) does not relate to compliance with a FBP.
- A new matter is required to ensure consideration of the link between biodiversity values and landscape values.

363. Glenrock Station (#12) seeks that the following matter is added to the matters of discretion in the rule, relating to compliance with a FBP, to provide more options and flexibility to manage indigenous biodiversity:

*Where relevant, the proposal achieves retention and/or restoration of indigenous vegetation.*

364. Mt Gerald (#16) and The Wolds (#17) seek that the rule is changed from a restricted discretionary status to a controlled activity, with express provision for non-notification of any resource consent application made under the rule. They consider that given the expense to a landowner of developing an FBP, they should receive the benefit of a less restrictive activity status that complies with the FBP, and the Council should not be able to decline consent if the FBP meets the requirements in Appendix Y. They also view non-notification as a way of encouraging landowners to buy into the concept of FBPs where development is proposed. They also seek that the setbacks in condition 3 are consequentially amended to align with the changes sought to those in 19.1.1.1. They also seek that the matters of discretion are deleted and replaced with the following as matters of control:

- *The extent to which the nature, scale, intensity and location of the proposed activity will adversely affect indigenous biodiversity and the methods proposed in the farm biodiversity plan to avoid, remedy, mitigate or offset these effects;*
- *The extent to which the methods proposed in the farm biodiversity plan will achieve overall maintenance and/or enhancement of indigenous biodiversity and the protection of significant indigenous vegetation and significant habitats of indigenous fauna;*
- *The extent to which the methods, targets, monitoring and reporting proposed in the farm biodiversity plan are adequate to protect the biodiversity values identified; and*
- *The benefits that the activity provides to the local community and beyond.*

365. DOC (#18) supports the use of FBPs, provided that consent is required to establish these in the first instance. DOC's understanding of PC18 is that FBPs would form part of a comprehensive, farm wide resource consent that would signal what development

will occur over the whole farm, and which would require an assessment of significance. It supports this approach, if:

- the FBP can be amended by the Council through the resource consent process;
- areas identified in the FBP are confirmed on the ground by the Council;
- the methodologies used in the FBP are agreed by an independent ecologist;
- implementation of the FBP is monitored;
- any changes to the FBP are approved through a resource consent process;
- there is transparency around the content of the FBP and any changes to it; and
- it is enforceable, and any non-compliances with the FBP as approved can be enforced by the Council.

366. DOC (#18) seeks that the following additional matters of discretion are added to the rule, so that the effects of indigenous biodiversity clearance on visual and landscape values are part of the consideration of any resource consent. It accepts that the FBP focuses on indigenous biodiversity and ecological values but considers that where clearance would cause adverse effects on significant landscape or visual values, an assessment of those effects is warranted. It also submits that the additional matters better recognise that ecological values often contribute to visual or landscape values.

*Where the proposed clearance is within an geopreservation site, Area of High Visual Vulnerability, or Scenic Grassland Area, and how the indigenous vegetation proposed to be cleared contributes to the values of these areas and how any proposed clearance will impact on the values of these areas.*

*Where the clearance is within an Outstanding Natural Feature or Landscape, whether the vegetation proposed to be cleared contributes to the Outstanding Natural Feature or Landscape values and the degree to which the proposed clearance would avoid adverse effects on these values.*

367. Forest & Bird (#20) considers that the rule is poorly drafted, with the second and third matters of discretion being effectively the same thing and not distinguishable. It states that any restriction of discretion must enable the Council to consider all relevant matters to achieving the stated purpose of the FBP and through identifying the effects to be considered. It submits that given the necessarily broad matters for discretion, a discretionary rule status is more appropriate when considering effects of vegetation clearance on biological diversity. As such it seeks that the rule is deleted.

## **Analysis**

368. There is broad support for the restricted discretionary activity status and provisions for the use of FBPs to manage the effects of indigenous vegetation clearance. The exception to this is that Mt Gerald and The Wolds seek a controlled activity status and Forest & Bird seek a discretionary activity status.
369. I do not consider it appropriate to provide for indigenous vegetation clearance – which could include significant vegetation - as a controlled activity. A controlled activity consent cannot be declined, and what is proposed in any consent application cannot be substantially altered or limited through consent conditions. In my view, given that the FBP includes identification and protection of significant indigenous biodiversity, a controlled activity status presents too great a risk that the Plan's objectives would not be achieved and the requirements of s6(c) would not be met.
370. In my experience, restricted discretionary activities are generally used, and appropriate, where the effects that a council consider need to be managed are narrow and easy to identify and define. A discretionary status is then more appropriate where the effects are less well known (and therefore not easy to identify or define) or are so numerous or broad that there is no real limit to the discretion. In my view, consideration of indigenous vegetation clearance where a FBP is provided is most appropriately treated as a restricted discretionary activity. The potential effects from the vegetation clearance are generally understood and are not so broad that the discretion proposed is effectively unlimited. Therefore, I do not agree with deletion of the rule.
371. I also note Forest & Bird's point that the current drafting of the rule seems to imply that the FBP could only be used by a farm enterprise, which, as proposed in the definition for this, only applies to an "*aggregation of parcels of land held in single or multiple ownership*" that are operated as a single unit for the purpose of farming management. In my view, this is unnecessarily narrow. I also agree with the comments for CRC and Forest & Bird that use within PC18 of a definition within the CLWRP that was designed for a different context (nutrient management) is potentially problematic. In considering its use in the CLWRP, I note that the purpose of the definition is to allow for rules to apply to either a single property *or* a farming enterprise. In looking at Appendix Y, and the objective and policy framework for PC18, it is not clear to me why the rule should not be applied on a similar basis – i.e. to a single property, or more broadly across several properties where they are part of a wider farming enterprise. As such, I

recommend that the definition of a 'farming enterprise' is changed to 'farming operation' and amended to apply to either a single property or a multiple property operation.

372. In relation to the definition of Farm Biodiversity Plan, I have some concerns that the definition requires compliance with Appendix Y, but is a term used within Appendix Y, making it circular. It also refers back to the requirements in Section 19 which is somewhat problematic. In my view, the requirements would sit better within the Rule itself. This is effectively sought by CRC and while they have not sought deletion of the definition, I consider it can be made as a consequential amendment of shifting the requirements into the rule itself. This may also help address Mackenzie Guardians and DOC's comments regarding it being clear that the FBP is part of a resource consent.
373. In terms of the matters of discretion I generally agree with the changes sought by EDS that relate to aligning the matters of discretion with the recommended objective and policy direction. There are some changes I do not agree with, because they do not align with the recommended changes to policies and objectives; for example, in matters 2(a) and 2(d), I have recommended retaining references to significant areas, because this aligns with my recommendations that the relevant policies continue to be applied to significant areas only. I also do not agree with changes relating to identifying values associated with SONS as under the proposed rule (condition 2) as clearance within a SON would be non-complying and therefore not subject to this rule. I do not support the shorter list of assessment matters suggested by Mt Gerald and The Wolds as I consider they provide less direction to applicants and decision makers.
374. In relation to proposed assessment matter 2(g), I agree with EDS that there is a tension with how it is currently drafted, as it is included under the title 'Compliance with a Farm Biodiversity Plan', but this matter does not relate to compliance with a FBP. If the assessment matter is retained, then I consider that the tension can be resolved by making this a third matter of discretion, rather than a subset of the consideration regarding compliance with an FBP. However, I have some reservations about the appropriateness of this matter, as it is relatively broad and not well-linked to policy direction. In particular, the policy direction seeks to enable land use and development, where it is integrated with the identified matters. It is not clear to me how the benefits of such an activity should be considered in determining whether the identified matters are achieved. Therefore, my preference is for the criterion to be deleted.
375. As noted earlier, I agree with including reference to the effects of indigenous biodiversity clearance on visual and landscape values, as this will better ensure integration of

provisions across the MDP, ultimately better ensuring achievement of the MDP's objectives. I have suggested that these be standalone considerations as sought by DOC, rather than a sub-set of consideration of an FBP; however I consider this will still align with the intent of what is sought by EDS.

376. For the reasons set out elsewhere in this report, I agree with aligning the setback distances in this rule with those used elsewhere, but do not agree with all of the specific changes to those setback distances sought by Mt Gerald and The Wolds.

### **Recommendation**

377. **Delete** the definition of 'Farm Biodiversity Plan'.<sup>97</sup>

378. **Change** the definition of 'Farming Enterprise' to 'Farming Operation' and **amend** it as follows:

*Means an area of land, including<sup>98</sup> an aggregation of parcels of land, held in single or multiple ownership (whether or not held in common ownership), that constitutes a single operating unit for the purpose of farming management.*

379. **Amend** Rule 1.2.1 as follows:

*1.2.1 Unless permitted under Rule 19.1,<sup>99</sup> the clearance of indigenous vegetation ~~clearance~~<sup>100</sup> is a restricted discretionary activity provided the following conditions are met:*

- 1. ~~The farm enterprise has a~~ A Farm Biodiversity Plan (see Definitions)<sup>101</sup> is prepared in accordance with Appendix Y for the whole of a farming operation and submitted with the application for resource consent.<sup>102</sup>*
- 2. The clearance is not within a Site of Natural Significance or on land above 900m in altitude.*
- 3. The clearance is not within:*
  - a) ~~100~~<sup>103</sup>m of a lake*
  - b) 20m of the bank of a river*
  - c) ~~100m of an ecologically significant wetland~~*

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<sup>97</sup> Relates to CRC (#8).

<sup>98</sup> Relates to Forest & Bird (#20).

<sup>99</sup> Clause 16(2) amendment to provide clarity and internal consistency between provisions.

<sup>100</sup> CRC (#8).

<sup>101</sup> Consequential amendment resulting from recommendation to delete definition. Even if definition is not deleted, reference to defined terms is not considered necessary and is not consistently applied to all definitions in either PC18 or the wider MDP in any case.

<sup>102</sup> CRC (#8).

<sup>103</sup> Mt Gerald (#16) and The Wolds (#17).



d)–50m of all other any wetlands<sup>104</sup>

The Council will restrict its discretion to the following matters:

1. The quality of a Farm Biodiversity Plan, including whether the Farm Biodiversity Plan:
  - a) Achieves the purpose set out in in Appendix Y;
  - b) Adequately identifies ~~the~~ indigenous<sup>105</sup> biodiversity values and actual and potential threats to those values,<sup>106</sup> ~~and in particular including:~~
    - i. Area of significant indigenous vegetation or habitat of indigenous species using the criteria provided in Appendix 3 of the Canterbury Regional Policy Statement; and
    - ii. Other biodiversity values important for ecosystem connectivity, function, diversity, and integrity<sup>107</sup>, ~~and also identifies actual and potential threats to those values;~~
  - c) Includes methods that will ~~adequately~~<sup>108</sup> protect the significant indigenous<sup>109</sup> biodiversity values identified; and
  - d) Includes appropriate monitoring and reporting methods to ~~adequately~~<sup>110</sup> protect the indigenous<sup>111</sup> biodiversity values identified.
  - e) Includes methods that will maintain or enhance<sup>112</sup> indigenous biodiversity outside significant areas, including effects on the wider ecosystem from the proposed clearance and how this may impact connectivity, function, diversity and integrity.<sup>113</sup>
2. Compliance with a Farm Biodiversity Plan
  - a) Whether the proposal achieves no net loss of indigenous biodiversity values identified as significant.
  - b) The actual or potential ~~impacts effects~~<sup>114</sup> on indigenous<sup>115</sup> biodiversity ~~or and~~<sup>116</sup> ecological values expected to occur as a result of the proposal, particularly the impact on significant values including the values significant to Ngāi Tahu.

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<sup>104</sup> Mt Gerald (#16) and The Wolds (#17). Also relates to Fish & Game (#7) – refer to discussion regarding Policy 4.

<sup>105</sup> SPSL (#3).

<sup>106</sup> Shifted.

<sup>107</sup> EDS (#9)

<sup>108</sup> EDS (#9)

<sup>109</sup> SPSL (#3).

<sup>110</sup> EDS (#9)

<sup>111</sup> SPSL (#3).

<sup>112</sup> Relates to Glenrock Station (#12).

<sup>113</sup> EDS (#9).

<sup>114</sup> For consistency with other changes sought by Forest & Bird (#20).

<sup>115</sup> SPSL (#3).

<sup>116</sup> For consistency with other changes sought by Forest & Bird (#20).

- c) *The extent to which species diversity or habitat availability could be adversely impacted by the proposal.*
  - d) *Any potential for avoiding, remedying, mitigating or otherwise offsetting or compensating for adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna.*
  - e) *Monitoring requirements including collection, recording and provision of information and how these can be adapted over time in response to information on the effectiveness of measures to avoid, remedy or mitigate adverse effects on indigenous biodiversity.*
  - f) *Conditions to ensure obligations in respect of indigenous<sup>117</sup>biodiversity endure, including beyond any changes of ownership (wholly or partially) of the landholding and review of conditions.*
  - (g) The benefits that the activity provides to the local community and beyond.<sup>118</sup>*
3. Where the clearance is within an Outstanding Natural Feature or Landscape, a geopreservation site, Area of High Visual Vulnerability or Scenic Grassland Area, whether the indigenous vegetation proposed to be cleared contributes to the values of these areas and the degree to which the proposed clearance would adversely affect these values.<sup>119</sup>

## **Farm Biodiversity Plans – Appendix Y**

380. PC18 includes proposed Appendix Y, which sets out the framework for Farm Biodiversity Plans. Due to the number of submissions on the FBP and the relatively discrete nature of each submission point, this section includes a summary of the submission points and an analysis of this.

### ***Submissions and Analysis***

381. FFNZ (#1) supports inclusion of the appendix, stating that FBPs will enable development and production to continue on a property whilst also identifying and protecting significant areas to ensure no net loss of biodiversity. It submits that this allows a comprehensive and holistic approach to be taken to the farming enterprise and for ongoing working relationships between the Council and landowners. SPSL (#3) generally agrees with approach of allowing landowners option to prepare FBPs, agreeing that it allows a holistic and integrated view of biodiversity values in the wider context of farm

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<sup>117</sup> SPSL (#3).

<sup>118</sup> EDS (#9).

<sup>119</sup> DOC (#18). Also relates to EDS (#9).

management practises. For example, it considers that land set aside for ecological protection and enhancement should be taken into account in applications made to carry out farming activities in other areas that do not have significant biodiversity. No particular changes are sought by these submitters and I do not consider that changes are required to the framework in relation to these.

382. SPSL (#3) seeks that changes are made to section B(3)(a) to replace reference to no net loss of "*identified values of significance*" to "*indigenous biodiversity*", because in the introduction to Section B, the purpose of this section of the FBP is stated as being to achieve the maintenance and enhancement of indigenous biodiversity. As noted earlier, I have recommended that the policy relating to no net loss is applied to significant areas only. As a consequence, I do not agree with amending B(3)(a) to remove reference to significance. However, I agree with the submitter that the introduction to Section B does not align with this and consider it more appropriate to change the introduction.
383. C Burke (#4) considers that the assessment of existing ecological values (in section B(1)) needs to be peer reviewed and subject to an independent process that includes consideration of information from any agencies who have information relating to the area covered by the FBP. She also considers that within a FBP, there should be a framework for showing all consents applied for and implemented and a history of any activity that has caused loss of indigenous biodiversity or landscape values, whether with or without consent. She seeks that such a process is clearly stated so that identification and protection of ecological values are inherent in a FBP. I do not consider it appropriate to include a history of consents and activity on a farming operation. The requirement for a FBP to be prepared is vegetation clearance and in my view each application must be assessed on its merits against the framework of the Plan current at the time. In my view it is not the appropriate process to address historic activities. I also consider it more appropriate to allow for matters of process to be considered on a case-by-case basis at the time a consent is applied for. This includes whether a peer review and whether information from other agencies might be relevant to consideration of any FBP.
384. Mackenzie Guardians (#6) consider that the Council should have the final say if any future changes of condition are sought, through the process for a variation of conditions. They also support Appendix Y, provided there is a clearer definition of improved pasture and landscape values are included as a consideration in the FBP. They further support the Council providing suitably qualified ecological experts to identify, assess values and provide ecological advice on the management of those values. As with other resource consents, a change of conditions to any consent under the proposed rule will be

determined by the Council, so I do not consider any changes in relation to this to be necessary. I have also recommended changes to Rule 1.2.1 to allow for consideration of effects on landscape values and the definition of improved pasture is discussed elsewhere in this report. In relation to the Council providing ecological experts, I note that this is currently included in a 'note' to the Appendix.

385. EDS (#9) supports in principle the use of FBPs to control vegetation clearance, but have a number of concerns about the content of Appendix Y. These include:

- The need to clarify that FBPs form part of a resource consent, and that required actions and review must be included in consent conditions.
- Within Section A, the failure to require identification of: all areas with s6(c) values; Farm Base Areas; the different areas subject to different management regimes; and ONL values.
- Within Section B, the failure to require identification of: protection of significant areas as the outcome sought; values associated with mapped SONS; recommended outcomes to achieve protection of significant areas; the link between ecological and biodiversity values and ONL values.
- Within Section B, matter 3(a) should be expanded to relate to biodiversity generally, not only significant areas.
- Within Section C, the failure to require identification of: effects on ONL values; effects on non-mapped significant sites and biodiversity more generally.
- Within Section C, the chapeau should capture significant areas identified as a result of the process in Sections A & B and Matter 3 should be amended to clearly distinguish between and require assessment of effects on significant areas identified in Sections A & B.
- Within Section D, the chapeau should require decision-makers to have regard to Sections B & C, so that the specific activity to which the management methods apply can also be considered.
- Within Section D, add further direction in Matter 1 to tie "*no net less*" to an outcome, as well as a description of how no net loss will be met and protection of significant areas will be achieved. Fails to require identification measures to ensure protection of ONL values.
- Within Section E, amend to ensure that elements that should be included in consent conditions are not included within the FBP, including requirements for reviews.

386. The submitter has not provided specific wording changes to achieve the above. However, I have recommended various changes to Appendix Y to address these

concerns where I consider a change to the framework is appropriate to align with the recommended changes to other PC18 provisions. In the following respects, I have not recommended any changes in relation to the above. While I agree with considering the effects of vegetation clearance on ONL values, I consider that it is most appropriate to consider this as part of the wider resource consent application, rather than within a FBP. The FBP is intended to be informed by an ecological expert; effects on landscape values would be more appropriately considered by a landscape expert. Any mitigation measures required to address effects on landscape would still form part of the wider resource consent consideration. However, I agree that identification of ONL and Farm Base areas should be included within the FBP – as factual matters in line with other matters listed in Section A. This way, identification of these areas will act as a trigger for ensuring an appropriate assessment (as part of the resource consent, but outside the FBP itself).

387. Glenrock Station (#12) seeks various additions to Appendix Y, to carry through changes they seek to other provisions that will enable them to be more effectively implemented. These additions are:

- Adding to the purpose of a FDP so that it refers to the identification of areas of indigenous vegetation that can be retained and/or restored, where appropriate.
- Requiring mapping of areas within the property that have been identified for retention/restoration of indigenous vegetation
- Adding to the assessment of ecological values to include reference to *“recommended and measurable outcomes to demonstrate retention and or restoration of indigenous vegetation that does not meet criteria in Appendix 3 of the Canterbury Regional Policy Statement but can contribute to the maintenance of indigenous biodiversity within the Farming Enterprise.”*
- Adding reference to, as relevant, a description of how indigenous vegetation identified will be retained and/or restored.

388. I consider that the changes that I have recommended to Appendix Y generally address these matters.

389. PTH (#15) and BLINZ (#19) consider that greater weight should be given to the voluntary formulation of FBPs, with approval of such voluntary FBPs being enabled without having to clear indigenous vegetation and without necessarily needing requiring resource consent to gain approval. They consider this will assist with integrating development with the sustainable management and long-term protection of indigenous vegetation values.

They state voluntary approval should be achieved by the Council certifying that an FBP meets the criteria in Appendix Y. No specific changes to the provisions in PC18 to address this are identified.

390. It is not clear to me what provisions in PC18 are necessary to address the submitters' concerns. The MDP does not preclude any person preparing a FBP. What it does propose, is to require such a plan when indigenous vegetation clearance is proposed. This is not dissimilar to the approach taken to other management tools, such as Farm Environment Plans, which can be prepared by any landowner on a voluntary basis, but which are often required in certain circumstances under the regional plan framework. I am also unsure what benefit there would be in the Council certifying a voluntary FBP. As such, I do not recommend in changes to PC18 in relation to this.

391. Mt Gerald (#16) and The Wolds (#17) support FBPs as an effective and accurate way of identifying and protecting areas of significance and identifying where development is possible within a farm enterprise. They consider that in order to encourage landowner buy in, the information requirements for FBPs must not be overly onerous, or difficult or expensive to obtain. They consider, given the costs of preparing a FBP, that they should remain the property of the landowner and should be confidential between the landowner and the Council. As such, they seek that a new condition is added under the 'Framework' heading which states this. They also state that it is not appropriate that the Council use FBPs to establish existing use rights on a property, with previous land management practises only relevant where they relate to an area proposed for development. To address this, they seek that section C(1) is amended to add "*In relation to the development area(s)*" at the start of the sentence. They also consider that an assessment of effects should not be required, as this will be a requirement for any resource consent application, and therefore seek that Section C(3) be deleted. They seek that Section E(2), which relates to reviewing management methods, is deleted, and that Section D is amended as follows:

~~Having regard to the information in B above, the purpose of this section is to set out information on management methods to ensure the values areas of significant vegetation and habitats of significant indigenous fauna identified in the assessment at B are protected to ensure no net loss of indigenous biodiversity values in areas identified as significant:~~

1. A description of how the ~~objective~~ goal of 'no net loss' of significant indigenous vegetation and habitats of significant indigenous fauna will be met by the proposal/s, including a description of tools and methods to achieve this. These may include:

...

c) ~~Grazing regimes/management to protect values;~~

...

2. ...

3. *Confirmation from an appropriately qualified and experienced ecologist that the proposed methods will likely achieve the objective goal.*

392. I do not agree that the FBP should remain confidential as the PC18 framework is reliant the FBP forming part of a resource consent application, making it publicly available information. I also do not agree with restricting the description of land management to only areas proposed for development. This runs contrary to the intent of the FBP process to provide for integration of biodiversity management with development across a property and would not align with Policy 8. Similarly, I consider that removal of this C(3) and E(2) from the FBP would result in a less integrated approach. I have recommended changes in relation to Section D that align with recommended changes to policies or which I agree improves the content of PC18; other changes I do not consider assist with implementing the policy direction.

393. DOC (#18) seeks a range of changes to Appendix Y. These are intended to clarify that that the FBP functions in a similar way to conditions on a resource consent and as such the Council can influence the management methods, as they would resource consent conditions. While supporting the proposed requirements relating to involvement of a suitably qualified and experienced ecologist, DOC consider the information must also be peer reviewed by the Council's ecologist, with any differences in opinion addressed before the FBP is approved. It also submits that when an FBP is reviewed, any changes to it should be undertaken as a variation to the resource consent. It also seeks changes to require assessment and approval of what is improved pasture by the Council's independent ecologist.

394. I recommend that some minor additions are included, (although worded or located slightly differently to that suggested by DOC,) to refer to the MDP's definition of improved pasture, and to make it clearer of the relationship between the FBP and the resource consent process. This is in addition to providing clarification that a FBP forms part of a resource consent through changes recommended to Rule 1.2.1. I consider that there is sufficient discretion provided in the matters of discretion to allow for the Council to influence the management methods. Depending on exactly how the consent conditions are related to the FBP, and the level of flexibility within the conditions and the FBP, I would generally expect that if changes are made to the FBP in future, or any indigenous vegetation clearance proposed that was not consistent with the original FBP, a variation

to the original consent would be required. The additional advice note relating to reviews may also assist with addressing this concern. In terms of peer review, my view is that this should be determined, as with other resource consents, on a case-by-case basis. I also note that the proposed note contained in Appendix Y anticipates that it may in any case be the Council's ecological expert who provides input into the FBP in any case and therefore mandating an additional peer review is, in my view, overly onerous.

395. Forest & Bird (#20) states that the FBP approach generally appears to encourage a good management approach to managing effects on indigenous biodiversity and for protecting s6(c) matters. However, it is concerned that the extent to which non-significant indigenous biodiversity will be maintained is uncertain. It submits that reliance on FBPs as the only regulatory requirements is uncertain, and considers it better for rule conditions to set out specific requirements to be achieved in order for an activity to be restricted discretionary, including that sites identified as meeting the CRPS Policy 9.3.2 criteria have measures to protect them set out in an approved FBP. It also considers that it is not appropriate for a rule to be dependent on a FBP without clear conditions setting out the purpose of the FBP, and matters of discretion must allow the Council to consider all relevant matters to achieving that purpose. It submits that the matters of discretion required to achieve this will necessarily be broad, and as noted earlier in relation to Rule 1.2.1, therefore consider a discretionary status is more appropriate.
396. Forest & Bird (#20) also considers that some of the terminology is uncertain and inconsistent with the CRPS. It submits that "*no net loss of biodiversity*" is not consistent with the CRPS which defines it in terms of indigenous biodiversity, and "*significant ecological areas*" does not align with the objectives and policies of the Plan, with a definition being required. It notes that the appendix refers to the "*whole of property basis*", which is unclear, when it is also stated as applying to a farming enterprise, which is defined as a group of properties. It is also concerned that in Section B there is no requirements to identify the extent of all indigenous biodiversity, making it difficult to establish how its maintenance will be achieved, particularly when "*there is no limit to the extent of clearance set out in the plan rules and no matter of discretion for council to consider maintenance under Rule 19.2.1.*" It has similar concerns with Section D not including consideration of how biodiversity will be maintained, despite the Council's functions to maintain biodiversity. It seeks that Appendix Y is amended to address their concerns. No specific text is provided.
397. I have taken the above matters into account and consider that a number of the recommended changes, either within Appendix Y or to other provisions, should allay



several of these concerns. This includes more specific reference at the objective and policy level, as well as within Appendix Y itself to maintenance of indigenous biodiversity outside of significant areas; changes within Rule 1.2.1 and Appendix Y to make it clearer how the resource consent and FBP relate; and changes to the definition for farming operation/enterprise. Other changes sought relate to wider submission points, where for the reasons set out elsewhere in this report, I do not agree with this submitter.

### **Recommendation**

398. **Amend** Appendix Y as follows:

#### **APPENDIX Y - FARM BIODIVERSITY PLAN FRAMEWORK**

##### **Introduction**

*The purpose of a Farm Biodiversity Plan is to facilitate integration of land use and development activity<sup>120</sup> with the identification and protection of significant indigenous vegetation and significant habitats of indigenous fauna-ecological areas<sup>121</sup> to ensure no net loss of indigenous<sup>122</sup> biodiversity, and the maintenance of other indigenous biodiversity,<sup>123</sup> on a comprehensive whole of property basis. A Farm Biodiversity Plan forms part of comprehensive property-wide resource consent.<sup>124</sup>*

##### **Development of a Farm Biodiversity Plan**

*A Farm Biodiversity Plan can be developed through a collaborative process between the Council and the landowner / land manager, ~~(refer footnote)~~<sup>125</sup> but is only authorised by the Council through the resource consent process.<sup>126</sup>*

##### **Framework**

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

1. *A Farm Biodiversity Plan can be provided in one of the following formats:*
  - a) *as a separate stand-alone Farm Biodiversity Plan; or*
  - b) *as an additional section to a farm environment plan prepared according to an industry template such as the Beef and Lamb New Zealand Canterbury Farm*

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<sup>120</sup> Consequential amendment (due to change to Policy 8).

<sup>121</sup> Forest & Bird (#20).

<sup>122</sup> SPSL (#3).

<sup>123</sup> Glenrock Station (#12).

<sup>124</sup> DOC (#18).

<sup>125</sup> NOTE The Council will work with landowners / land managers in developing a Farm Biodiversity Plan and may provide a suitably qualified ecological expert to identify and assess the indigenous biodiversity of the farming enterprise, and to provide ecological advice on management of those values. Advice may also be provided from an appropriately qualified person who has expertise in land/farm management, where appropriate. Council will not fund experts other than those provided by the Council.

<sup>126</sup> DOC (#18).

*Biodiversity Plan or a plan prepared to meet Schedule 7 of the Canterbury Land and Water Regional Plan.*

*Note: Where an industry farm biodiversity plan template is used, the Council is only concerned with the sections of that plan which address the matters outlined in this Appendix Y.*

2. *A Farm Biodiversity Plan shall apply to a farming operation ~~enterprise~~ (see ~~Definitions~~).<sup>127</sup>*
3. *A Farm Biodiversity Plan must contain as a minimum:*

**A Description of the property and its features:**

1. *Physical address;*
2. *Description of the ownership and name of a contact person;*
3. *Legal description of the property; and*
4. *A map(s) or aerial photograph at a scale that clearly shows, where relevant:*
  - a) *The boundaries of the farming operation ~~enterprise~~;<sup>128</sup>*
  - b) *The boundaries of the main land management units on the property or within the property;*
  - c) *The location of all water bodies, including riparian vegetation;*
  - d) *Constructed features including buildings, tracks and any fencing to protect indigenous<sup>129</sup> biodiversity values (including around riparian areas);*
  - e) *The location of any areas within or adjoining the property that have been identified as a Sites of Natural Significance or are legally protected by way of covenant;*
  - f) *The location of any other areas within the property that may have ecologically significant values;*
  - g) *The location of any areas within or adjoining the property that have been identified as an Outstanding Natural Landscape or Feature;<sup>130</sup>*
  - h) *The location of any Farm Base Areas;<sup>131</sup>*
  - i) *Areas of improved pasture (as defined in the Mackenzie District Plan)<sup>132</sup>;*
  - j) *Areas of retired land; and*
  - k) *Location of any proposed developments, including intensification of production, new tracks or buildings and areas to be cleared.*

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<sup>127</sup> Consequential amendment (due to change to definition).

<sup>128</sup> Consequential amendment (due to change to definition).

<sup>129</sup> SPSL (#3).

<sup>130</sup> EDS (#9).

<sup>131</sup> EDS (#9).

<sup>132</sup> DOC (#18).

### **B Description of existing ecological values:**

The purpose of this section of the Farm Biodiversity Plan is to describe the indigenous biodiversity of the farming enterprise to understand what the ecological values are and any threats or risks to these values. This will inform how these values are to be managed to achieve the:

- protection of significant indigenous vegetation and significant habitats of indigenous fauna; and<sup>133</sup>
  - ~~overall goal(s) of maintenance, and over time, enhancement, of indigenous biodiversity on the property/catchment.~~<sup>134</sup>
1. This assessment shall be undertaken by a suitably qualified and experienced ecologist.
  2. This assessment shall describe existing ecological values within the farming enterprise and identify any significant sites in accordance with Policy 9.3.1 (1) and 9.3.1 (2) and the criteria in Appendix 3 of the Canterbury Regional Policy Statement 2013.
  3. This assessment shall contain:
    - a) Recommended and measurable outcomes to demonstrate achievement of no net loss of significant indigenous biodiversity identified values of significance, including areas identified in (2) above as well as a Sites of Natural Significance.<sup>135</sup>
    - b) Recommended actions to achieve these outcomes;
    - c) Recommendations to achieve maintenance, and where appropriate enhancement of indigenous biodiversity outside significant area; and<sup>136</sup>
    - d) Recommendations for monitoring and review of progress in achieving the outcomes.

### **C Development Areas and Activities:**

The purpose of this section is to understand how the land, ~~including any Sites of Natural Significance,~~<sup>137</sup> has been managed, what the future management will be, and how this will affect the indigenous biodiversity.

1. Describe historic and current land use management, including stocking policy, water supply, grazing regimes, improved pasture, indigenous<sup>138</sup> biodiversity management, where relevant;
2. Describe any proposed land use management or activities to be undertaken that would require the clearance or disturbance of indigenous biodiversity and the time frames over which these activities are proposed to occur. Such activities may include

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<sup>133</sup> EDS (#9).

<sup>134</sup> Clause 16(2) amendment to reflect area the FBP applies to.

<sup>135</sup> EDS (#9).

<sup>136</sup> Glenrock Station (#12).

<sup>137</sup> Consequential amendment (to reflect that assessment is required of all indigenous biodiversity, not only SONS).

<sup>138</sup> SPSL (#3)

construction of new farm tracks or buildings, intensification of land use, vegetation clearance of previously undisturbed areas, earthworks or cultivation; and

3. Describe any potential adverse effects of the proposed activities described above on areas of indigenous biodiversity, including any Site of Natural Significance.<sup>139</sup>

#### **D Management Methods to Achieve Protection of Values**

Having regard to the information in B and C<sup>140</sup> above, the purpose of this section is to set out information on management methods to ensure the values identified in the assessment at B are protected to ensure no net loss of indigenous biodiversity values in areas identified as significant; and maintained in other areas.<sup>141</sup>

1. A description of how the objective of 'no net loss' will be met by the proposal/s in areas identified as significant and maintained in other areas,<sup>142</sup> including a description of tools and methods to achieve this. These may include:
  - a) Formal legal protection;
  - b) Pest or weed control;
  - c) Grazing regimes/management to protect values<sup>143</sup>;
  - d) Fencing;
  - e) Restoration planting or other restoration measures;
  - f) Confirmation of which that area/s will not be subject to future land use change or development activity that would will<sup>144</sup> impact on the identified values present;
  - g) Confirmation that the tools and methods will endure beyond any fragmentation of the farming operation-enterprise<sup>145</sup> e.g. as a result of changes in ownership.
2. The plan shall include for each proposed management method above:
  - a) Detail commensurate with the scale of the identified values,<sup>146</sup> environmental effects and risks;
  - b) Defined measurable targets that clearly set a pathway and timeframe for achievement;
  - c) Any proposed monitoring and information or records to be kept for measuring performance and achievement of the targets.
3. Confirmation from an appropriately qualified and experienced ecologist that the proposed methods will achieve the objective.

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<sup>139</sup> Consequential amendment (to reflect that assessment is required of all indigenous biodiversity, not only SONS).

<sup>140</sup> EDS (#9).

<sup>141</sup> Glenrock Station (#12).

<sup>142</sup> Glenrock Station (#12).

<sup>143</sup> Mt Gerald (#16) and The Wolds (#17).

<sup>144</sup> Clause 16(2) amendment for clarity.

<sup>145</sup> Consequential amendment (due to change to definition).

<sup>146</sup> Clause 16(2) amendment for clarity and internal consistency within Appendix Y.

### ***E Monitoring and Reporting on actions:***

*The Farm Biodiversity Plan shall include the following:*

- 1. Having regard to B (3.) above, describe how the outcomes will be monitored, and how the results will be reported.*
- 2. Describe when a review of management methods will be necessary; how such reviews/s will be undertaken, who by and within what timeframes; and how the results of any review will be implemented.*

*Advice Note: The review described in E (2.) above does not supersede the requirement to apply for a change of condition(s) to any resource consent associated with the Farm Biodiversity Plan that may be necessary as a result of the review. It is also separate to any review of consent conditions that the Council may initiate under section 128 of the Resource Management Act 1991.*<sup>147</sup>

## **Additional policies**

399. This section of the report addresses submissions seeking additional policies are added to Section 19, that are not otherwise addressed above.

### ***Submissions and Analysis***

400. Glenrock Station (#12) seeks that two additional policies are added, to align with changes it seeks to Objective 2, and to further support the implementation of Objective 3. It submits that these policies will encourage land developers to identify opportunities to enhance or restore non-significant indigenous vegetation and encourage a more integrated and holistic approach to indigenous biodiversity. It considers that the policies sought support Objective 9.2.2 and Policy 9.3.4 in the CRPS.

*When rural development is being pursued promote/encourage opportunities to enhance or restore indigenous biodiversity in appropriate locations.*

*Consider a range of mechanisms or methods, where appropriate, to promote/encourage the enhancement or restoration of indigenous vegetation including avoidance, remediation, mitigation or offsetting and compensation, and secure these methods through appropriate instruments including resource consent conditions (if approved).*

401. As noted earlier in this report, I agree that it is appropriate to include within Section 19 a policy which generally encourages the maintenance and enhancement of indigenous biodiversity and have recommended such a policy is included. The recommended policy is not limited to rural development, as I consider it should apply more broadly. I do not

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<sup>147</sup> EDS (#9).

consider it necessary for the policy to be extended (or for another policy to be included) relating to mechanisms or methods.

402. Glenrock Station (#12) also supports acknowledgment of the importance of electricity generation activities within the District through Policy 7. However, it considers that it raises queries about the importance of other activities, and states that it is necessary to ensure an appropriate link between Section 19 of the Plan and other Section's objectives and policies, so that indigenous biodiversity management is not considered in a vacuum. It seeks the following additional policy:

*Recognise the importance of rural land use and development (including pastoral intensification) in enabling people and communities to provide for their social, economic, and cultural well-being.*

403. As noted elsewhere, in my view the focus of Section 19 should remain on how indigenous biodiversity is managed, rather than providing broader direction about activities. For this reason, I have recommended narrowing the focus of Policy 7 to how REG activities are managed in relation to their effects on indigenous biodiversity. I therefore also consider that the additional policy is not appropriate, as it is not focussed on managing effect on indigenous biodiversity and is more broadly about rural land use and development.

404. Mt Gerald (#16) and The Wolds (#17) consider that the MDP should provide for minor works undertaken as part of normal farming activities to occur to ensure that landowners are "*permitted reasonable use of their interest in the land.*" They seek a new policy is inserted into the MDP along these lines, which they view as aligning with the concept of sustainable management and the need to provide firm direction that indigenous biodiversity "*needs to co-exist with development*" subject to development proposals protecting significant areas. The policy sought is:

*To allow clearance of significant indigenous vegetation or habitats of indigenous fauna where such activities are necessary for:*

- *The management of the site including the management of pests and the removal of diseased, damaged or dead plants;*
- *To facilitate access for livestock, utility structures or farm vehicles past or through the site;*  
*and*
- *Enable the reasonable use of land and the maintenance or existing infrastructure.*

405. I note that under s32 of the RMA, the test for consideration of policies (and rules) is whether they are the most appropriate to achieve the objectives. In my view, the rule package – discussed further below, should provide for clearance in situations where it

will achieve the overarching objective, which is that significant areas are protected. In my view, the policy sought does not align with the objective because it would allow for significant areas to be cleared for the specified activities, regardless of the effects of the clearance, and therefore risk achievement of the objective. I also consider that policy would not align with the direction in s6(c) of the RMA to protect significant areas.

## Permitted Activity Rules

406. Rule 1.1.1 sets out the circumstances in which the clearance of indigenous vegetation is a permitted activity. These circumstances are:

1. *The clearance is for the purpose of maintenance or repair of existing fence lines, vehicle tracks, roads, firebreaks, drains, stockyards, farm buildings, water troughs or airstrips;*
2. *The clearance is of indigenous vegetation which has been planted and is managed specifically for the purpose of harvesting and subsequent replanting of plantation forest within 5 years of harvest;*
3. *The clearance is of the indigenous understorey to plantation forest, and is incidental to permitted or otherwise authorised plantation forest clearance;*
4. *The clearance is of indigenous vegetation which has been planted and/or is managed as part of a domestic garden or has been planted for amenity purposes or as a shelterbelt;*
5. *The clearance is essential for compliance with the Regional Pest Management Strategy;*
6. *The clearance is of indigenous vegetation within an area of improved pasture (refer Definitions);*
7. *The clearance is not within a Site of Natural Significance or on land above 900m in altitude;*
8. *The clearance is not within:*
  - a. *100m of a lake*
  - b. *20m of the bank of a river*
  - c. *100m of an ecologically significant wetland*
  - d. *50m of all other wetlands*

407. Condition 6, which applies to improved pasture, is addressed in a separate section of this report.

## **How the Conditions in Rule 1.1.1 apply**

### ***Submissions and Analysis***

408. A number of submitters (Maryburn Station (#2), SPSL (#3), C Burke (#4), CRC (#8) Mt Gerald (#16) and The Wolds (#17)) raise concerns either more broadly about the rule requiring greater clarity, or more specifically about how the conditions are intended to work together and seek that amendments are made to provide clarification. In particular, some note that if all conditions must be met, this would not work in practice as some are mutually exclusive; while if they operate in isolation then conditions 7 & 8 in particular, would allow for extensive vegetation clearance. This would include potential areas of significant vegetation that are not currently identified as SONS. CRC consider that this is best addressed by conditions 1 to 6 being applied on an exclusive basis, where only one condition needs to be met for the permitted status to apply; with conditions 7 & 8 being exclusions that apply to those activities set out in conditions 1-6 (such that if any of conditions 1 – 6 are met, but 7 or 8 are not, the clearance is not permitted).
409. Also related to this is that EDS (#9) supports conditions 7 & 8, as SONS and the identified waterbodies are some of the District's highest value environments. It considers that the proposed protection for these areas is appropriate. DOC (#18) similarly supports the proposed rule hierarchy for clearance of indigenous vegetation within sensitive areas, as proposed in these conditions.
410. I agree with submitters that it is not clear how the conditions relate to each other and that changes are required to clarify this. In considering the rest of the rule framework and in particular proposed Rule 1.3.2, I agree with CRC that the intent was most likely to permit those matters identified in conditions 1 – 6, subject to the clearance not being in an area identified in condition 7 or 8. Where the clearance is within an area identified in those conditions, the clearance is proposed to be non-complying under 1.3.2. This aligns with EDS and DOC's support for what they consider is the intended activity status/application of conditions 7 & 8; but I agree with other submitters that this is not clear. I recommend that amendments to the rule are made to align with what is generally sought by CRC, except in the circumstances identified in the following section. This will also address C Burke's concerns, as it would only permit clearance outside SONS in the circumstances specified in conditions 1 – 6.



## Changes sought to condition 1 and additional permitted activities

411. The following section addresses changes sought to condition 1 in Rule 1.1.1, as well as submissions requesting additional conditions/circumstances are added to the permitted activity rule.

### **Submissions**

412. FFNZ (#1) notes that while water troughs are included in the permitted activity rule, the associated piping is not. It submits that as stock drinking water enters troughs via a piping network, the essential nature of this farm infrastructure needs to be provided for in the permitted activity. It seeks that condition 1 is amended to add “*water trough and associated reticulation piping or airstrips.*”

413. Maryburn Station (#2) seeks that where consent has been granted by the regional council for water for irrigation, vegetation clearance should be permitted when it relates to conveying water for irrigation purposes.

414. SPSL (#3) seeks that clearance of indigenous vegetation in a farm base area is a permitted activity, to be consistent with the status of pastoral intensification and agricultural conversion in these areas.

415. CRC (#8) seeks that permitted activity status is provided for “*some, non-targeted, consequential clearance of indigenous vegetation*” while undertaking its statutory responsibility for flood and erosion control in riverbeds. It submits that this is important to allow the work to be carried out efficiently, and seeks that this type of clearance is not required to meet condition 8.

416. EDS (#9) considers that all permitted clearance should be subject to a maximum cap, or alternate specific parameters around clearance. It submits that clearance for a specified permitted activity could be extensive, such as clearance for a farm track, and a cap or other parameters are important to control the extent of clearance and cumulative effects. It considers that this is “*imperative*” given that not all SONS have been identified, meaning that regulatory intervention must be set at a level that ensures protection of significant ecological values.

417. Mt Gerald (#16) and The Wolds (#17) seek that condition 1 is extended to allow for:

*The clearance is for the purpose of maintenance, ~~or~~ repair, replacement or minor upgrade of existing fence lines, vehicle tracks, roads, stock crossings, firebreaks, drains, ponds, dams,*

stockyards, farm buildings, water troughs, or airstrips, waterlines, waterway crossings or any other utility;

418. They support the MDP providing for some level of permitted indigenous vegetation clearance, but consider that a greater level of clearance should be authorised without the need for a resource consent, including clearance associated with new small scale farming activities that are integral to farm management. The submitters also view clearance within a farm base area, being areas that have been identified as appropriate for more intensive development, as being appropriate as a permitted activity. Similarly, they seek that provision is made for vegetation clearance for the purpose of excluding stock from waterways. They also seek changes to the setbacks within the standard. They seek the addition of the following conditions to Rule 19.1.1.1:

- *The clearance is associated with small scale farming activities including but not limited to new fence lines, tracks, roads, stock crossings, firebreaks, drains, ponds, dams, small farm buildings, water troughs, waterlines, waterway crossings, providing alternate stock water supply and any other utility.*
- *Clearance is within a farm base area contained in Appendix R.*
- *Clearance is for the purpose of with excluding stock from a river, lake, wetland or other waterway.*
- *For the avoidance of doubt, existing pastoral intensification and agricultural conversion activities may be maintained and this land exempt from the indigenous vegetation clearance rules.*

419. Mt Gerald (#16) also seeks that vegetation is classified into three categories as follows, with clearance of introduced and mixed vegetation provided for as a permitted activity:

*Indigenous vegetation means a plant community where species native to New Zealand dominate and comprise between 66% to 100% ground cover of the total area.*

*Mixed vegetation means a plant community comprised of species both native to New Zealand and introduced to New Zealand, and the ground cover of each group of species comprising between 33% to 66% ground cover of the total area.*

*Introduced vegetation means a plant community where species introduced into New Zealand dominate and comprise between 66% to 100% ground cover of the total area.*

420. Forest & Bird (#20) considers that in some cases, the activities identified in condition 1 may necessarily be required within the setbacks required under condition 8 that would not have more than minor adverse effects and which may be necessary for the safe operation of those activities. It therefore seeks changes to condition 1, to extend it to say

*“and within the setbacks identified under condition 8 is not more than 1.5m on either side of the existing fence line, vehicle track, road, drain, stockyards, farm building [or] water trough.”* It consequentially seeks that reference to firebreaks and airstrips are moved to a separate clause, which means these are not exempted from the water body setbacks. It considers this approach to be consistent with other plans, and notes that the CLRWP provides rules to manage effects on water quality and erosion within these areas.

421. M Seymour (#21) seeks that the list of permitted clearance is amended to include stock, as well as vehicle tracks, so that if these tracks are affected by debris they can be cleared to provide openings for stock, and to open up creeks and bogs for drainage. She considers it better that this is permitted, rather than being done regardless.
422. M Seymour (#21) is also concerned that there is no differentiation between the Basin and Gorge areas, despite their vastly different terrain, land cover, rainfall and so on. She considers that greater allowance for vegetation clearance in gorge areas should be provided in recognition of the low presence of indigenous vegetation, difficulties with terrain, and need to provide greater accessibility for finding stock. She considers that these areas do not compare with the Basin.

### **Analysis**

423. My understanding is that the intent behind providing an exception for the activities identified in conditions 1 – 6 of Rule 1.1.1, is because either these activities are those not expected to include any significant vegetation, or the clearance is necessary to manage pests that would likely threaten biodiversity values. In terms of the former, this is because the exemptions relate to areas that have previously been cleared and therefore would involve regenerating vegetation, or it relates to areas planted for a particular (non-restoration) purpose.
424. Therefore, in my view, consideration of further restrictions on what is permitted by condition 1, need to be considered from the perspective of whether the restriction is necessary to ensure protection of significant indigenous biodiversity. Similarly, in considering whether it is appropriate to extend condition 1, or include further conditions to allow for additional permitted clearance, it is necessary to consider if there is reasonable certainty that the clearance will still ensure significant areas are protected. I therefore do not agree with submitters who consider that the test should be whether the clearance activity is *“integral to farm management”*; rather I consider the appropriate test, as required by the RMA, is whether such clearance will achieve the relevant plan

objectives. Similarly, in my view, it is not appropriate to permit an activity simply because it is expected that people will not comply with a rule; this approach would not achieve the outcomes sought by the Plan.

425. Taking into account Mr Harding's technical comments<sup>148</sup> I consider:

- That additional parameters should be included in condition 1, so that the clearance permitted does not result in adverse effects on adjacent vegetation or habitat. Mr Harding notes that this could arise from some fence lines, vehicle tracks or roads having been constructed with small or no machinery, whereas modern maintenance and repair of these could be undertaken with larger machinery and therefore disturb adjacent vegetation. He suggests that appropriate parameters to limit this potential would be to restrict the extent of vegetation to within 2m of the existing fence line or existing road edge.<sup>149</sup> I consider this will help better achieve the proposed Objective.
- It is appropriate to extend the condition to apply to reticulated piping associated with water troughs, as this only allows for maintenance and repair of existing piping (not new piping, or upgrading) and aligns with the other activities for which maintenance and repair is provided.
- Similarly, it is appropriate to extend the conditions to stock tracks and stock crossings, subject to the parameters identified by Mr Harding above, as this only allows for maintenance and repair of existing activities on a similar basis to other activities.
- It is appropriate to provide for the clearance of indigenous vegetation within a Farm Base Area as a permitted activity, as these areas have been surveyed by Mr Harding and the boundaries were set to exclude any areas of significant indigenous vegetation.<sup>150</sup>
- The removal of indigenous vegetation associated with maintenance of ponds and dams, will, in my view, be aquatic vegetation and therefore not a matter controlled under the district plan.
- It is not appropriate to permit vegetation clearance for new or upgraded infrastructure. Depending on the nature of the clearance, the vegetation proposed for removal could be significant and this would not align with the proposed objective and policy framework. With particular regard to clearance relating to the conveyance of water for irrigation purposes, I note that the activity authorised by

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<sup>148</sup> Evidence of Mike Harding, paragraphs 72-79.

<sup>149</sup> Evidence of Mike Harding, paragraph 74.

<sup>150</sup> Evidence of Mike Harding, paragraph 79.

the water take for irrigation does not take into account the effects of vegetation clearance associated with the conveyance of that water.

- That allowing for the ‘opening up creeks and bogs for drainage’ is not appropriate, as it goes beyond maintenance and repair of existing infrastructure and could have significant impacts on indigenous vegetation that require assessment.
- That it is not appropriate to provide for clearance of ‘mixed’ and ‘introduced’ vegetation as a permitted activity. Mr Harding notes that there are very few indigenous plant communities on depositional landforms in the Mackenzie Basin where native species form more than 66% cover and that most basin-floor plant communities are degraded and include a high component of exotic species and/or bare ground.<sup>151</sup>
- It is not clear to me how a standard could be applied to “existing” pastoral intensification or agricultural conversion, as these are land use changes, not ongoing activities. I note, subject to further discussion on the condition 6 and the definitions, that clearance within areas of improved pasture (i.e. when intensification or conversion is complete) is already permitted.
- In relation to the gorge areas, as noted earlier in this report, in absence of all significant areas being mapped, I consider it necessary, to require an assessment of significance on a case-by-case basis, except in those circumstances already identified in Rule 1.1.1, where the clearance is not expected to involve significant vegetation.
- That where the activities identified in Condition 1 are located within an identified waterbody setback, it is appropriate to provide for vegetation clearance associated with maintenance and repair, as this only provides for clearance in limited circumstances and in areas where vegetation is likely to have already been cleared to establish the facility.

426. In relation to flood and erosion control works in riverbeds, I note that the CRPS directs (Method 8 under Policy 9.3.1) that local authorities “should” protect significant areas as they undertake their own activities and operations, except where “*the adverse effects on the areas or habitats cannot be avoided, because they are necessary for the maintenance of erosion or flood protection structures or for the prevention of damage to life or property by floods.*” Mr Harding’s evidence is that flood protection works have contributed to the degradation of ecological values.<sup>152</sup> If erosion and flood control works are permitted, there is no way to scrutinise the necessity of works, nor to ensure that

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<sup>151</sup> Evidence of Mike Harding, paragraph 87 d).

<sup>152</sup> Evidence of Mike Harding, paragraph 33.

significant areas are protected as far as possible; the reliance is entirely on the local authority to follow the CRPS. However, I agree that the proposed non-complying activity status that would apply to this activity does not align with the method in the CRPS. I consider that a more appropriate balance would be for the activity to be restricted discretionary, with the necessity for the works being a matter for discretion.

427. In terms of new fences within the identified water body setbacks, I do agree that there is a tension with new fences required to exclude stock from waterways, where such fences are a statutory requirement, either from the regional council or by national legislation. At present, if the erection of such fences involves vegetation clearance, the clearance would require consent as a non-complying activity under Rule 1.3.2.3. However, my understanding is that these statutory requirements set out a minimum setback. For example, the Resource Management (Stock Exclusion) Regulations 2020 requires specified types of stock to be excluded from lakes and rivers within 3 metres. This does not mean a fence is required at exactly 3m, and where indigenous vegetation is present near the waterbody, the fence could be setback further so as to avoid the need to clear the vegetation. However, depending on the extent of vegetation, and the size of the setback proposed in PC18, it may not be practicable or feasible to avoid clearance of indigenous vegetation entirely. My preference would be for clearance within the water body setbacks, where it is to install new fencing, to be specified as a restricted discretionary activity. This would allow for a case-by-case assessment of the significance of the vegetation to be cleared, and the practicality of avoiding the clearance of indigenous vegetation while still meeting the regulations.

### **Changes sought to other conditions in Rule 1.1.1**

428. The following section addresses changes sought to the conditions 2 - 5 in Rule 1.1.1.

#### ***Submissions and Analysis***

429. Forest & Bird (#20) seeks that condition 2 is amended so that to that it refers to the clearance of indigenous vegetation “*that is Plantation Forest under the NES for Plantation Forestry*”. It seeks this so that it only applies to harvesting and cannot be interpreted as providing clearance for afforestation. My view is that condition 2 cannot be interpreted as applying to clearance of indigenous vegetation to provide for afforestation. The condition is clear that it applies to indigenous vegetation that has been planted for the purpose of being harvested. I therefore do not consider a change to be necessary.

430. Fish & Game (#7) supports the proposed rules, but also seek that springs are protected from vegetation clearance. It submits that springs are important to protect because they can be degraded by land use change. It considers that any vegetation clearance around springheads will adversely affect water quality and habitat downstream. I note that under s30, regional councils have the function of controlling land use for the purpose of maintaining and enhancing water quality in water bodies. Therefore I do not consider it appropriate for this to be controlled under the district plan.
431. CRC (#8) seeks that condition 5, which provides for clearance that is essential for compliance with the Regional Pest Management Strategy as a permitted activity, is deleted. While stating that the exemption for this has been appropriate in the past, CRC note that the focus of the Regional Pest Management Plan (RPMP) has changed from that of the previous Strategy, and that it would now be inconsistent to enable removal of indigenous vegetation solely based on compliance with the RPMP. It submits that there are alternate methods to address pest impacts than through vegetation clearance, and that this is best considered through a resource consent process. I accept the advice of the regional council, who is responsible for preparing and implementing the RPMP on this matter, and agree with the deletion.
432. As noted above in relation to condition 1, EDS (#9) considers that all permitted clearance should be subject to a maximum cap, or alternate specific parameters around clearance. Mr Harding has considered the other permitted conditions and has identified concerns that condition 5, relating to plant pest control, frequently includes application of broad-spectrum herbicides which may also kill sensitive indigenous species. He also notes that removal of wilding conifers has been used in the Mackenzie Basin (and elsewhere) as a proxy for land development, with wilding pines, along with remnant indigenous vegetation being removed with heavy machinery and allowing for subsequent cultivation. He considers that it would be appropriate to restrict soil disturbance and the control methods used.<sup>153</sup> I note that as a result of CRC's submission I have recommended that this condition is removed, which means the additional restrictions are not necessary.
433. Mt Gerald (#16) and The Wolds (#17) seek that condition 8 is amended as follows, to align with the setbacks in Rule 12.1.1.a. In the case of lakes, this involves reducing the setback distance to 75m to align with the existing distance in Rule 12.1.1.a, and in relation to wetlands, they seek that the distance is reduced in both Rule 12.1.1.a and

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<sup>153</sup> Evidence of Mike Harding, paragraph 75.

condition 8, to 20m for any wetland. They state that it is not necessary to prevent clearance within 50m of a wetland and a more appropriate setback is 20m:

*The clearance is not within:*

- a) ~~100~~75m of a lake
- b) 20m of the bank of a river
- c) ~~100~~m of an ecologically significant wetland
- d) ~~50~~20m of all other wetlands

434. It is not clear to me why the setback for vegetation clearance from lakes has been increased from the current 75m (under Rule 12.1.1a) to 100m. My preference would be to retain consistency with the distances and therefore amend condition 8, and other related rules. With respect to the changes sought in relation to wetlands, no technical support has been provided to demonstrate how a reduced setback will achieve the outcomes sought. I also consider the related changes sought to Rule 12.1.1a are outside the scope of the PC18 (this is expanded on later in this report). That being the case, reducing the setback to 20m in this rule would result in a different distance being applied in both rules. I therefore do not agree with the reduced setback distance of 20m. However, as set out earlier in relation to the discussion on Policy 4, I do agree with a single setback distance to any wetland.

### **Recommendation**

435. **Amend** Rule 1.1.1 as follows:

*Clearance of indigenous vegetation is a permitted activity provided one or more of<sup>154</sup>the following conditions are met:*

1. *The clearance is within 2m of, and <sup>155</sup>for the purpose of, maintenance or repair of existing fence lines, vehicle tracks, roads, stock tracks, stock crossings, <sup>156</sup>firebreaks, drains, stockyards, farm buildings, water troughs and associated reticulation piping<sup>157</sup> or airstrips; or*
2. *The clearance is of indigenous vegetation which has been planted and is managed specifically for the purpose of harvesting and subsequent replanting of plantation forest within 5 years of harvest and the clearance is not within a location specified in Rule 1.3.2<sup>158</sup>; or*

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<sup>154</sup> Maryburn Station (#2), SPSL (#3), CRC (#8).

<sup>155</sup> EDS (#9).

<sup>156</sup> Mt Gerald (#16), The Wolds (#17), M Seymour (#21).

<sup>157</sup> FFNZ (#1)

<sup>158</sup> Maryburn Station (#2), SPSL (#3), CRC (#8).



3. *The clearance is of the indigenous understorey to plantation forest, and is incidental to permitted or otherwise authorised plantation forest clearance and the clearance is not within a location specified in Rule 1.3.2<sup>159</sup>; or*
4. *The clearance is of indigenous vegetation which has been planted and/or is managed as part of a domestic garden or has been planted for amenity purposes or as a shelterbelt and the clearance is not within a location specified in Rule 1.3.2<sup>160</sup>; or*
5. *~~The clearance is essential for compliance with the Regional Pest Management Strategy;~~<sup>161</sup>  
The clearance is of indigenous vegetation within a defined Farm Base Area (see Appendix R); or<sup>162</sup>*
6. *The clearance is of indigenous vegetation within an area of improved pasture and the clearance is not within a location specified in Rule 1.3.2<sup>163</sup> (refer Definitions);*
7. *~~The clearance is not within a Site of Natural Significance or on land above 900m in altitude;~~*
8. *The clearance is not within:*
  - a. *100m of a lake*
  - b. *20m of the bank of a river*
  - c. *100m of an ecologically significant wetland*
  - d. *50m of all other wetlands*<sup>164</sup>

436. **Insert** new Rule 1.2.3 as follows:

1.2.3. The clearance of indigenous vegetation within 75m of a lake, 20m of the bank of a river or 50m of any wetland, for the purpose of installing a fence to exclude stock, is a restricted discretionary activity.<sup>165</sup>

The Council will restrict its discretion to the following matters:

1. The adequacy of the identification of biodiversity values, including, but not limited to identification of areas of significant indigenous vegetation or habitat of indigenous species using the criteria provided in Appendix 3 of the Canterbury Regional Policy Statement, and values outside of these areas or any Site of Natural Significance that is particularly important for ecosystem connectivity, function, diversity, and integrity.

<sup>159</sup> Maryburn Station (#2), SPSL (#3), CRC (#8).

<sup>160</sup> Maryburn Station (#2), SPSL (#3), CRC (#8).

<sup>161</sup> CRC (#8).

<sup>162</sup> SPSL (#3), Mt Gerald (#16), The Wolds (#17).

<sup>163</sup> Maryburn Station (#2), SPSL (#3), CRC (#8).

<sup>164</sup> Maryburn Station (#2), SPSL (#3), CRC (#8).

<sup>165</sup> Mt Gerald (#16), The Wolds (#17).

2. The actual or potential effects on indigenous biodiversity and ecological values expected to occur as a result of the proposal, particularly the impact on significant values including the values significant to Ngāi Tahu.
3. Whether they are alternate locations for the fencing which would avoid the removal of indigenous vegetation.
4. The extent to which the location for the fence:
  - avoids the removal of significant indigenous vegetation; and
  - minimises the amount of other indigenous vegetation removal.

437. **Insert** new Rule 1.2.4 as follows:

The clearance of indigenous vegetation carried out by or on behalf of a local authority for erosion and flood control works is a restricted discretionary activity.

The Council will restrict its discretion to the following matters:

1. The adequacy of the identification of biodiversity values, including, but not limited to identification of areas of significant indigenous vegetation or habitat of indigenous species using the criteria provided in Appendix 3 of the Canterbury Regional Policy Statement, and values outside of these areas or any Site of Natural Significance that is particularly important for ecosystem connectivity, function, diversity, and integrity.
2. The actual or potential effects on indigenous biodiversity and ecological values expected to occur as a result of the proposal, particularly the impact on significant values including the values significant to Ngāi Tahu.
3. The extent to which adverse effects on areas of significant indigenous vegetation or significant habitat of indigenous species cannot be avoided due to their necessity for the maintenance of erosion of flood protection structures, or for the prevention of damage to life or property for floods.

## **Improved Pasture – Rule 1.1.1.6 and related definitions**

438. Condition 6 of Rule 1.1.1 provides for the clearance of indigenous vegetation as a permitted activity where it is within an area of improved pasture. Improved pasture is defined as follows:

*means an area of pasture where:*

- a) *Species composition and growth have been modified and enhanced for livestock grazing within the previous 15 years, by clearance, cultivation or topdressing and oversowing, or direct drilling; and*
- b) *Exotic pasture species have been deliberately introduced and dominate in cover and composition. For the purposes of this definition the assessment of dominance shall disregard indigenous vegetation which is growing upon land that has previously been modified and enhanced for livestock grazing in accordance with clause a) above and is less than 15 years old.*

### **Submissions**

- 439. Maryburn Station (#2) seeks that the definition is amended to include all existing pastures sown into exotic plants for past and future grazing, by cultivation, topdressing, oversowing or direct drilling.
- 440. SPSL (#3) agrees with the definition as it considers it balances the need to retain areas with significant biodiversity while allowing farming activities to continue on areas already converted to pasture. It considers that the definition is straightforward and easy to apply.
- 441. C Burke (#4) seeks that 1.1.1.6 is deleted, as she considers the clause confusing and unnecessary, stating that based on the definition of indigenous vegetation, it would not exist within improved pasture in any case.
- 442. C Morris (#5) considers the definition of improved pasture is too ambiguous. He considers that if this exception is allowed, it could create a loophole that allows indigenous vegetation clearance as a permitted activity, which would be contrary to the proposed objectives and policies. He seeks that 19.1.1.6 is deleted on this basis.
- 443. Mackenzie Guardians (#6) oppose 1.1.1.6 on the basis of the definition of improved pasture. They consider that a clearer definition of improved pasture will make the exemption unnecessary, because if vegetation has been developed to exotic pasture, such that it no longer meets the definition of indigenous vegetation, and *“the land is not essential to maintain and enhance biodiversity and landscape values, it will already be exempt”*. They consider that as currently written, the definition would create loopholes that would enable clearance of large areas of indigenous vegetation with significant value to the landscape and biodiversity and which would not “complement” the provisions introduced through Plan Change 13. They consider that there needs to be a clearer, simpler, accurate way of defining improved pasture, suggesting that land should be clearly identified and mapped where fully cultivated and converted to exotic pasture.

444. Fish & Game (#7) considers that the definition is not easily understood as to what areas would currently be classified as improved pasture, and it does not provide adequate protection for indigenous flora and fauna. It considers that it would be clearer if the areas fitting the definition were mapped.
445. CRC (#8) notes that the definition is critical to determining the extent of clearance that is permitted under Rule 1.1.1.6, and therefore will determine when consents are triggered, and how much control the Council has over future loss of indigenous vegetation. It submits that under the proposed definition, there is “*considerable difficulty*” in determining what constitutes improved pasture. It notes that much of the rural land in the District has been subject to some degree of improvement in the past, but that much of it still contains indigenous plant communities with significant values. It submits that there needs to be clear understanding of where on the spectrum there is little likelihood of significant vegetation remaining, with the definition drafted to reflect this. It also considers that it is important to consider the relationship between the definition and the wider set of rules, as if the definition is confined to areas intensively improved, with land maintained and cultivated almost exclusively in exotic pasture, the rules need to be clear about what clearance is allowed within partially improved areas, for example, extensive grazing areas where significant vegetation may remain, in part due to the grazing regime. It considers that the definition is focussed on actions undertaken in previous years, rather than the nature and values of existing vegetation. The open-ended timeframe also means there is no fixed date to form a baseline. It submits that it will be unclear and uncertain for landowners and the Council in implementation.
446. CRC provide three possible options for changes to the definition or provision that would address its concerns. The first is to amend the definition to read:
- Means an area of pasture where exotic pastoral species have been deliberately introduced and dominate in cover and composition as at December 2017.*
- For the purposes of this definition the assessment of dominance shall disregard indigenous vegetation which is less than 15 years old.*
447. As an alternate to this, the second option CRC provides is to introduce a threshold for clearance of indigenous vegetation within areas of improved pasture as a permitted activity, to allow for small-scale farm improvements, while still allowing most vegetation clearance to be considered on a case-by-case basis through the resource consent process. As a third alternative option it suggests that the clearance of indigenous vegetation within areas of improved pasture could be treated as a controlled activity.

448. CRC further note that within the Mackenzie Basin pastoral intensification and agricultural conversion generally require resource consent, and therefore indigenous vegetation clearance could be included as part of the consideration in this process.
449. EDS (#9) seeks that both Rule 1.1.1.6 and the definition are deleted. Combined with the definition of improved pasture, it submits that 1.1.1.6 provides for extensive clearance across the whole of the Mackenzie Basin as a permitted activity. It opposes this because of the significance of the Basin's ecological values, the complexity, diversity and fragility of those values and the need to protect them and because not all SONS in the Basin have been identified. It considers that regulatory oversight on what is potentially large-scale clearance is appropriate given these factors. It submits that the definition is uncertain and relies on "ambiguous concepts" and considers that this makes it unsuitable for use in a permitted activity framework. It states that it allows for areas that are predominantly indigenous to be treated as if that is not the case and permits their clearance, and that the ambit of what it would permit is far too broad. EDS also query various aspects of the definition, including what constitutes "*modification and enhancement*", "*previous 15 year*", "*deliberately introduced*" and "*dominate in cover*". In relation to the 15 year period, it also states that its expert advice is that the time period is not appropriate, as indigenous vegetation with significant values will persist in areas where there have been improvements within a 15 year period. Overall, it submits that the ambit of the definition, combined with its use within a permitted activity rule would facilitate wide-spread clearance across the Mackenzie Basin on areas that have significant values that are referred to in s6(c) of the RMA and which would have a corresponding adverse effect on s6(b) values.
450. Glenrock Station (#12) supports the intent of the definition and the reason for its inclusion, but has concerns about its application. It submits that it is unclear how the age of indigenous vegetation will be able to be assessed, and due to this lack of clarity seek that paragraph (b) of the definition is deleted.
451. Mt Gerard (#16) and The Wolds (#17) consider it is critical that the MDP provide a pathway for continued clearance of vegetation, including significant vegetation and habitats on land already modified for farming, to preserve the significant investments already made. They consider that the terms "cover" and "composition" within the definition are uncertain and that there is no guidance to determine "dominance". Their view is that dominance should be restricted to percentage of ground cover, not canopy. They also consider it important for landowners to be able to interpret and apply the

provisions without requiring expert ecological advice. They seek that clause b) of the improved pasture definition is amended as follows:

*b) Exotic pasture species have been deliberately introduced and dominate in ground cover and composition. For the purposes of this definition the assessment of dominance shall be conducted on a representative area within the area of improved pasture and shall...*

452. DOC (#18) considers that the identification of improved pasture in the Mackenzie Basin context is problematic, particularly given the significant biodiversity loss that has occurred to date. It submits that in order to sustainably manage the significant indigenous biodiversity community, there needs to be a more accurate method for identifying what is improved pasture. As a result, it submits that there needs to be clearer identification of what is improved pasture and when something is considered to be “within” improved pasture. It considers that the best approach is to identify areas of improved pasture through the plan change. As such, DOC are comfortable with the 19.1.1.6, if identification and assessment occurs, and seek that the clause is amended to refer to “*an identified area of improved pasture...*”.

453. DOC (#18) seeks similar changes to the definition so that areas of improved pasture have to be identified in the planning maps. Its submission also includes a map of known cultivated areas, noting there may be other areas where cultivation has been lawfully consented. It agrees with landowners being able to maintain existing sprayed or irrigated land where the values are already lost, but also seeks that that top dressing, oversowing and direct drilling are removed from the definition, on the basis that in many cases indigenous values, including significant values, can still be present where these activities have been undertaken. DOC seek that clause b) of the definition is deleted and the following clauses are added “*It has been determined by a suitably qualified ecologist that indigenous biodiversity values have been lost*” and “*Is recorded with the Council as ‘Improved Pasture’*”.

454. Forest & Bird (#20) seeks that the definition of improved pasture and condition (6) of Rule 1.1.1 is deleted, as it considers it relies on subjective judgement, is unenforceable and could lead to the clearance of significant indigenous vegetation or habitats.

### **Analysis**

455. Mr Harding agrees with the concerns raised by the submitters regarding ambiguity and considers that the definition is poorly worded and difficult to apply. He notes that the determinations required to be made by someone assessing whether an area is improved pasture or not are difficult to make. He also agrees with those submitters who consider

that as currently worded, the definition (and related permitted activity rule) will risk clearance of indigenous vegetation and further loss of indigenous biodiversity.<sup>166</sup> In my view, the identified ambiguity will create difficulties when applied within a permitted activity framework. Based on the evidence of Mr Harding, the current definition, as applied in that permitted framework, would also risk achievement of the outcomes sought by PC18.

456. Mr Harding considers that defining the location and extent of improved pasture on a map would avoid the need to assess vegetation against a definition each time vegetation clearance is proposed, and would provide clarity and certainty to landowners, the Council and the wider public.<sup>167</sup> His evidence includes indicative mapping for what the extent and location of mapping of what he has referred to as 'converted land' and 'partially converted land' would look like. He sets out the methods used by Landcare Research to identify these converted and partially converted land areas from satellite images and the methods he himself used to ground-truth and edit the maps. The converted areas mapped are those which have fully and obviously been converted, and partially converted areas are those where the extent of the conversion is unclear and requires determination through a more thorough field check.<sup>168</sup> Mr Harding's preference would be to include a map of 'converted land' in the MDP, with the map being used to define what areas are considered to be improved pasture.<sup>169</sup>
457. While I understand the rationale behind the mapping, I do not consider it appropriate for the mapping to be pursued through PC18. While there is scope in submissions for this to occur, I note that the actual mapping will affect various landowners, who may not have submitted on PC18, and those who are submitters would have limited time in which to dispute the mapping. There is the potential to resolve this tension through a variation process, whereby the maps (and related changes to the definition and rule framework) are notified and subject to the submission process, but the timing restrictions for PC18 do not allow for this to occur. In addition, the mapping undertaken so far only relates to the Mackenzie Basin and therefore excludes areas of improved pasture outside the Basin.
458. In addition, I note that mapping in itself does not resolve the issues associated with the definition, in that a set of criteria or methodology still has to be established in order to identify areas to be mapped. In other words, while the mapping makes it much clearer

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<sup>166</sup> Evidence of Mike Harding, paragraphs 101-106.

<sup>167</sup> Evidence of Mike Harding, paragraph 110.

<sup>168</sup> Evidence of Mike Harding, paragraphs 116 – 131.

<sup>169</sup> Evidence of Mike Harding, paragraph 25.

how a definition applies, the maps still have to be based on matters/criteria/methodology that are defined.

459. In my view, the most appropriate approach at this point in time would be to amend the definition to align with the definition recommended by Mr Harding, being any area where indigenous vegetation has been fully removed and the vegetation converted to exotic pasture or crops.<sup>170</sup> This allows for the continued development of these areas, without the need for resource consent to remove any indigenous vegetation that recolonises. In my view, the definition will need to specify the date at which indigenous vegetation was fully removed and converted to exotic pasture or crops. Otherwise, the permitted rule will become redundant, because by definition there would need to be no indigenous vegetation at all. Mr Harding suggests the use of May 2020, because it aligns with the dates used for the mapping exercise.<sup>171</sup> I have adopted that date in the recommended change to the improved pasture definition.
460. This definition would not apply to, and therefore not allow clearance of indigenous vegetation as a permitted activity within, any partially converted areas. Mr Harding notes that within the Mackenzie District, most areas that have not been fully developed/converted still support remnant indigenous vegetation (and habitat) and are frequently ecologically significant.<sup>172</sup> I therefore consider that it is appropriate that clearance of indigenous vegetation within these areas is considered through a resource consent process.
461. The maps provided in Mr Harding's evidence<sup>173</sup> provide an indicative starting point for where this definition would apply, while leaving it to a separate process to map where the areas meeting that definition apply. That separate process would likely include consulting with landowners, surveying any disputed areas and updating the mapping as required, and including the map in either another plan change or the district plan review process.

### **Recommendation**

462. **Amend** the definition of 'improved pasture' as follows:

*Means an area where, as at May 2020, indigenous vegetation had been fully removed and the vegetation converted to exotic pasture or crops.*<sup>174</sup>

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<sup>170</sup> Evidence of Mike Harding, paragraph 112.

<sup>171</sup> Evidence of Mike Harding, paragraph 115.

<sup>172</sup> Evidence of Mike Harding, paragraph 113 b).

<sup>173</sup> Evidence of Mike Harding, Attachment 3.

<sup>174</sup> Relates to Maryburn Station (#2), C Burke (#4), C Morris (#5), Mackenzie Guardians (#6), Fish &



~~means an area of pasture where:~~

- ~~a) Species composition and growth have been modified and enhanced for livestock grazing within the previous 15 years, by clearance, cultivation or topdressing and oversowing, or direct drilling; and~~
- ~~b) Exotic pasture species have been deliberately introduced and dominate in cover and composition. For the purposes of this definition the assessment of dominance shall disregard indigenous vegetation which is growing upon land that has previously been modified and enhanced for livestock grazing in accordance with clause a) above and is less than 15 years old.~~

### **Rule 1.2.2**

463. Rule 1.2.1 provides a restricted discretionary activity status for indigenous vegetation clearance that is not permitted under Rule 1.1.1, and where a FBP is provided. This rule and related provisions have been addressed earlier in the report.
464. Rule 1.2.2 also provides a restricted discretionary activity status for indigenous vegetation clearance of up to 5,000m<sup>2</sup>, within any site, in any 5-year continuous period. This excludes clearance within SONS; land above 900m in altitude; or within specified distances of various waterbodies.

### **Submissions**

465. C Burke (#4) opposes Rule 1.2.2, as she considers that there should be no indigenous vegetation clearance within any site in any 5-year period, whether it is under or over 5000m<sup>2</sup>, because everything left is significant and should be protected.
466. CRC (#8) seeks that both Rule 1.2.2 and Rule 1.3.1 is amended to apply to clearance of up to/more than 5000m<sup>2</sup> “per 100ha” rather than “per site”. It notes that the definition of ‘site’, which is relied on in these rules is based on lots and CTs, which it considers work best in urban areas. However, in rural areas, landholdings are often made up of different land parcels. It submits that using a threshold per site also does not relate to the effects of the clearance, as effects will depend on the overall size of the site. CRC consider it would be more certain to set a threshold for clearance based on a “specific area”. It submits that this will provide clarity about how the rule functions, and avoid the clearance thresholds being applied to multiple lots within one property or farming management unit.

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Game (#7), CRC (#8), EDS (#9), Glenrock Station (#12), Mt Gerald (#16), The Wolds (#17), DOC (#18), Forest & Bird (#20).

467. CRC (#8) also states that there is no explicit policy that addresses the linkages between areas of indigenous vegetation and ecosystems, despite this being an important issue in the Mackenzie Basin and potentially the wider district. It submits that a further matter of discretion in Rule 1.2.2 would allow for consideration of this wider context in the decision-making of consents. To address the matters raised, it seeks the following amendment to the rule:

*Unless provided for in Rule 19.2.1 any indigenous vegetation clearance up to 5000m<sup>2</sup>, ~~within any site per 100ha in any 5-year continuous period~~ is a restricted discretionary activity provided the following conditions are met:*

468. In relation to the matters of discretion, CRC seeks that the first matter for this rule (and for Rule 2.2.1, which has been considered earlier in this report) is amended to read:

*1. The actual or potential impacts on biodiversity or ecological values expected to occur as a result of the proposal, ~~particularly. This includes the impact on~~*

*a) significant indigenous vegetation values including the values significant to Ngāi Tahu.*

*b) linkages between areas of indigenous vegetation and ecosystems*

*c) values of significance to Ngai Tahu*

469. EDS (#9) accepts in principle the provision for some clearance as a restricted discretionary activity but raises a number of concerns with the proposed rule. It considers that the proposed threshold is too high and would only be acceptable if additional matters of discretion are added. It is concerned that in significant areas, the remaining values are fragile and demand an avoidance approach to provide protection - and explicit discretion on this is required. EDS is also concerned that the discretion to consider the impacts of a proposal is too limited as it does not extend to how those impacts are addressed. For areas that are not significant it also submits that remediation should be able to be considered by the Council as a tool for addressing effects. It also submits that monitoring effects is equally important in respect to general clearance as it is where the clearance is undertaken under a FBP. The amendments and additional matters of discretion sought are:

*The Council will restrict its discretion to the following matters:*

*...*

*3. Any potential for remediation, mitigation or offsetting of effects on ecosystems and biodiversity values.*

*....*

*5. Adequately identifies biodiversity values including:*

- a. SONS
  - b. Other areas of significant indigenous vegetation or habitat of indigenous species using the criteria provided in Appendix 3 of the Canterbury Regional Policy Statement.
  - c. Biodiversity values outside (a) and (b) areas in particular those important for ecosystem connective, function, diversity, and integrity.
6. Includes methods that will maintain indigenous biodiversity outside significant areas, including effects on the wider ecosystem form the proposed clearance and how this may impact connectivity, function, diversity and integrity.
  7. Includes methods that will protect outstanding natural landscape values resulting from links between the vegetation proposed to be cleared and the visual or landscape values which are underpinned by the ecology present, including by reference to Appendices X & W.
  8. The adequacy of proposed monitoring and reporting.

470. H Frank (#10) seeks that the threshold is reduced to 1,000m<sup>2</sup>, with Rule 1.3.1 accordingly changed to this threshold. He considers that while PC18 brings the District Plan into line with the RMA, RPS and Environment Court decisions, biodiversity values within the District are still under threat.

471. Mt Gerald (#16) and The Wolds (#17) seek that the rule is amended so that it has a restricted discretionary, rather than discretionary status, so that it is consistent with Rule 1.2.1. They also consider that the proposed 5000m<sup>2</sup> limit is only appropriate for small properties, and for larger rural properties the limit should be 5000m<sup>2</sup> per 100ha. They further seek a consequential change to condition 2 so that the setbacks align with those sought in relation to Rule 19.1.1.1, and seek that the matters of discretion are deleted and replaced with the following:

- *Whether the site meets the criteria for a significant area of indigenous vegetation or habitat of indigenous fauna in Appendix Z, and if so;*
- *Whether the activity will result in significant effect on the significant values of the long-term viability of the site; and*
- *Whether denying the activity will prevent the landowner making reasonable use of their interest in the land; and*
- *The appropriateness of any indigenous biodiversity offsets or other mitigation measures proposed.*

472. DOC (#18) seeks that the matters of discretion are amended to address the following matters (the text is set out in full in their submission), as they are important considerations for the Council and will assist in implementing the policies:

- Provide a mechanism to undertake significance assessment against the CRPS criteria;
- Require assessment of effects on significant values and how they are avoided;
- Require assessment of effects on other values and how they are avoided, remedied or mitigated;
- Consider effects on adjacent vegetation and habitat, ecosystems processes in the Mackenzie Basin and on the wider ecosystem and its function, diversity and integrity; and
- Consider linkages between vegetation clearance and visual and landscape values that are underpinned by the ecology present.

473. Forest & Bird (#20) states that it is not clear if this rule provides for additional clearance to what may be provided for by a resource consent obtained under Rule 19.2.1, whereby an applicant could seek to clear 5,000m<sup>2</sup> under this rule and then also apply for additional clearance under Rule 19.2.1. It submits that the matters of discretion are unclear and require amendment to better reflect RMA terminology and allow the Council to consider the effects of the effects, particularly those on significant s6(c) matters, as well as making it clear that the applicant is required to identify the indigenous vegetation on the property and assess its significance under the CPRS criteria. It states that there is no need to specify what methods to manage effects the Council will consider, if the effects to be considered are clearly set out, as otherwise it implies that some methods will not be considered. It also seeks that reference to offsetting also refers to compliance with the appropriate principles. To address these concerns Forest & Bird seeks the following amendments to the matters of discretion:

1. *The actual or potential effects impacts on biodiversity or and ecological values expected to occur as a result of the proposal, particularly the*
  - 1a. *impact adverse effects on significant values of areas meeting the criteria provided in Appendix 3 of the Canterbury Regional Policy Statement;*
  - 1b. *including effects on the values significant to Ngāi Tahu.*
2. *The extent to which species diversity or habitat availability could be adversely impacted by the proposal.*

3. *Any potential for mitigation or offsetting of effects on ecosystems and biodiversity values in accordance with Policy 6.*
4. *Alternatives and aAny technical and operational constraints and route, site and method selection process.*
4. ~~*The benefits that the activity provides to the local community and beyond.*~~

## **Analysis**

474. As noted earlier, I do not agree with C Burke that there is sufficient evidence that all indigenous biodiversity within the District is significant. Notwithstanding this, I note that that the rule does not permit vegetation clearance – rather it allows for consideration, through a resource consent process, of removal of indigenous vegetation and only up to the specified threshold. The consent process, like that for FBPs, enables consideration of the significance of the vegetation proposed to be cleared and will be subject to the direction in the proposed policies.
475. I do not consider the changes to the matters of discretion sought by CRC are necessary. This is partly because the matter is inclusive rather than exclusive and therefore the additional matter (linkages between areas of indigenous vegetation and ecosystems) does not need to be explicitly stated in order to be considered. It is also because the criteria for determining significant indigenous vegetation includes consideration of vegetation or habitats of indigenous fauna that provides or contributes to an important ecological linkage or network. As such, where a linkage is significant, it is already covered by the current wording of the matter of discretion. However, I agree with the changes sought by CRC to the stem of the rule to ensure it is consistent with the drafting of other rules. This will also better clarify that the activity status is restricted discretionary, consistent with what is sought by Mt Gerald and The Wolds.
476. In terms of whether it is more appropriate to apply the threshold based on a specific area, I understand the concern of CRC to be that the ‘per site’ threshold could mean that several areas of up to 5,000m<sup>2</sup> could be cleared across what is technically more than one site, but which is in effect several sites managed as one property. Given a consent would be required for any clearance under this rule, I presume the concern is that it would be used to avoid the application of a non-complying activity status, if overall the clearance would be more than 5,000m<sup>2</sup>, but it can be applied for through several consents for smaller amounts. Ultimately, each area of clearance would still have to be on a separate piece of land falling within the definition of a ‘site’ though. The alternate suggested by submitters would, by my interpretation, mean that a site/property would

need to be at least 100ha in area, and for properties smaller than this, any vegetation clearance would therefore default to the non-complying activity status. In my view, this distinction does not relate to the effects of the activity. If a 'per area' threshold is considered appropriate, I therefore tend to prefer the suggestion by Mt Gerald and The Wolds that the proposed 5000m<sup>2</sup> limit be applied on either a per site basis, or for sites of 100ha or greater, it should be applied per 100ha. However, my overall preference is to retain the 'per site' measure, as ultimately the rule is restricted discretionary and allows for the clearance to be considered on a case-by-case basis against the policy framework.

477. As noted above in relation the changes sought to matters of discretion for Rule 2.2.1, I consider the changes sought by EDS are not drafted in a way that aligns with the way the matters are drafted for this rule; but I consider changes can be made to capture the intent of some of these, where I consider it to be appropriate. In general, I agree with them that the current matters are too limited and greater discretion is appropriate to better align with the policy and objective framework. I have also considered the changes sought by DOC and Forest & Bird to the matters of discretion, and generally agree with their intent. I have recommended changes that broadly align with what is sought, albeit my recommended wording in some cases differs and seeks to combine similar changes sought by different submitters. Conversely, I consider that the matters sought by Mt Gerald and The Wolds are too narrow and will not assist with ensuring the overarching objective is achieved.

478. In relation to the threshold used, I note that 5,000m<sup>2</sup> is consistent with the threshold used in the Hurunui District Plan. I also note that the threshold does not allow for a permitted level of clearance, rather it sets a threshold beyond which (if being undertaken without a FBP) the activity status changes to non-complying. On this basis, I am comfortable with the 5,000m<sup>2</sup> level being retained.

479. In relation to the changes sought to the setbacks from waterbodies sought by Mt Gerald and The Wolds, for the reasons set out elsewhere, I agree with some of the changes but not others.

### **Recommendation**

480. **Amend** Rule 1.2.2 as follows:

*1.2.2. Unless provided for in Rule 49:<sup>175</sup>1.2.1 any indigenous vegetation clearance up to 5000m<sup>2</sup>, within any site in any 5-year continuous period is a restricted discretionary activity,<sup>176</sup> provided the following conditions are met:*

1. The clearance is not within a Site of Natural Significance or on land above 900m in altitude.
2. The clearance is not within:
  - a) ~~75~~100<sup>177</sup>m of a lake
  - b) 20m of the bank of a river
  - c) 100m of an ecologically significant wetland
  - d) ~~50m of all other~~ any wetlands<sup>178</sup>

The Council will restrict its discretion to the following matters:

1. The adequacy of the identification of biodiversity values, including, but not limited to identification of areas of significant indigenous vegetation or habitat of indigenous species using the criteria provided in Appendix 3 of the Canterbury Regional Policy Statement, and values outside of these areas or any Site of Natural Significance that are particularly important for ecosystem connectivity, function, diversity and integrity.<sup>179</sup>
2. The actual or potential impacts-effects<sup>180</sup> on indigenous<sup>181</sup> biodiversity or and<sup>182</sup> ecological values expected to occur as a result of the proposal, particularly the impact on significant values including the values significant to Ngāi Tahu.
3. The extent to which species diversity, or habitat availability or ecological function<sup>183</sup> could be adversely impacted, modified or damaged<sup>184</sup> by the proposal.
4. For significant indigenous vegetation or habitats, how the proposed clearance has considered the avoidance of adverse effects on the significant values, including if alternative options have been considered.<sup>185</sup>
5. Outside significant areas, the methods proposed to maintain or enhance indigenous biodiversity, including effects on the wider ecosystem from the proposed clearance and how this may impact connectivity, function, diversity and integrity.<sup>186</sup>
6. Any potential for remediation,<sup>187</sup> mitigation or offsetting of effects on ecosystems and indigenous<sup>188</sup> biodiversity values.
7. The quantity of indigenous vegetation to be cleared and the reason for the removal.<sup>189</sup>

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<sup>175</sup> Clause 16(2) amendment to provide clarity and internal consistency between provisions.

<sup>176</sup> CRC (#8), Mt Gerald (#16) and The Wolds (#17).

<sup>177</sup> Mt Gerald (#16), The Wolds (#17)

<sup>178</sup> Mt Gerald (#16), The Wolds (#17). Also relates to Fish & Game (#7) – refer to discussion regarding Policy 4.

<sup>179</sup> EDS (#9).

<sup>180</sup> Forest & Bird (#20).

<sup>181</sup> SPSL (#3).

<sup>182</sup> Forest & Bird (#20).

<sup>183</sup> Relates to DOC (#18).

<sup>184</sup> DOC (#18).

<sup>185</sup> DOC (#18).

<sup>186</sup> EDS (#9), DOC (#18).

<sup>187</sup> EDS (#9).

<sup>188</sup> SPSL (#3).

<sup>189</sup> DOC (#18).

8. *Any technical and operational constraints and route, site and method selection process.*
  9. *The adequacy of any proposed monitoring and reporting.*<sup>190</sup>
  10. *Where the clearance is within an Outstanding Natural Feature or Landscape, a geopreservation site, Area of High Visual Vulnerability or Scenic Grassland Area, whether the indigenous vegetation proposed to be cleared contributes to the values of these areas and the degree to which the proposed clearance would adversely affect these values.*<sup>191</sup>
- ~~4. The benefits that the activity provides to the local community and beyond.~~<sup>192</sup>

## **Non-complying Activity Rule (Rules 1.3.1 and 1.3.2)**

481. Rules 1.3.1 and 1.3.2 read:

### *1.3 Non-Complying Activity – Indigenous Vegetation Clearance*

*The following activities are Non-complying activities unless specified as a Permitted Activity, Restricted Discretionary Activity or Discretionary Activity:*

- 1.3.1 *Any indigenous vegetation clearance of more than 5000m<sup>2</sup> within any site in any 5-year continuous period.*
- 1.3.2 *Any indigenous vegetation clearance in the following location:*
  1. *Within a Site of Natural Significance.*
  2. *Above 900m in altitude.*
  3. *Within 100m of a lake, 20m of the bank of a river, 100m of an ecologically significant wetland or 50m of all other wetlands*

## **Submissions and Analysis**

482. DOC (#18) supports the rules as notified. Forest & Bird (#20) also supports the proposed non-complying status under Rule 19.3.2, as it considers the identified areas require protection to meet the objectives of the MDP and to give effect to the CRPS. EDS (#9) supports the proposed non-complying activity rules, as it considers stringent control and regulatory oversight are appropriate for the environments listed in these rules. I agree with retaining the non-complying activity status in general for these activities, except where I have otherwise recommended exemptions to these in this report.

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<sup>190</sup> EDS (#9).

<sup>191</sup> EDS (#9), DOC (#18).

<sup>192</sup> Forest & Bird (#20).



483. For the reasons set out earlier, CRC (#8), Mt Gerald (#16) and The Wolds (#17) seek that Rule 1.3.1 is amended to apply to clearance of more than 5000m<sup>2</sup> “*per 100ha*” rather than “*per site*”. As set out earlier, I do not consider this change to be necessary.
484. Mt Gerald (#16) and The Wolds (#17) also seek that the setbacks in 1.3.2 are amended to align with those sought in relation to Rule 1.1.1. As noted earlier, I agree with retaining the 75m setback from rivers as currently applies under the operative MDP, and with providing a single setback from any wetland, but do not agree with reducing the setback from wetlands down to 20m.
485. Forest & Bird (#20) notes that the introductory words refer to activities that are not specified as permitted, restricted discretionary or discretionary, but consider this confusing given that there are no discretionary activity rules proposed for the chapter. It seeks that the introductory words are amended to refer to permitted and restricted discretionary activities only, with reference made to the specific rule numbers. I agree that the introductory words lack clarity because they refer to discretionary activities, of which none are proposed and should be amended.

### **Recommendation**

486. **Amend** Rule 1.3 as follows:

#### *1.3 Non-Complying Activity – Indigenous Vegetation Clearance*

*The following activities are Non-complying activities unless specified as a Permitted Activity, or Restricted Discretionary Activity or ~~Discretionary Activity~~:*

- 1.3.1 *Any indigenous vegetation clearance of more than 5000m<sup>2</sup> within any site in any 5-year continuous period.*
- 1.3.2 *Any indigenous vegetation clearance in the following location:*
1. *Within a Site of Natural Significance.*
  2. *Above 900m in altitude.*
  3. *Within 75100m of a lake, 20m of the bank of a river, ~~100m of an ecologically significant wetland~~ or 50m of all other any wetlands.<sup>193</sup>*

### **Rule 12 - Section 7**

487. PC18 proposes to delete the rules in Section 7 relating to the clearance of vegetation clearance which are contained in Rule 12. However, because Rule 12.1.1.a applies to

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<sup>193</sup> Mt Gerald (#16), The Wolds (#17).

vegetation clearance in riparian areas and this applies to any vegetation clearance, not just indigenous vegetation, PC18 does not propose to delete this part of Rule 12. It is proposed under PC18 to be amended, as follows:

## 12 VEGETATION CLEARANCE

### 12.1 Permitted Activities - Vegetation Clearance

~~Reference in this rule to the Mackenzie Basin means that part of the District known as the Mackenzie Basin and identified as such on the map in Appendix E of the Plan~~

12.1.1 Clearance of vegetation is permitted where it complies with the following standards:

#### 12.1.1.a Riparian Areas

*Clearance of vegetation shall not exceed 100m<sup>2</sup> per hectare in any continuous period of 5 years*

- *within 20m of the bank of the main stem of any river listed in Schedule B to the Rural Zone; or*
- *within 10m of the bank of any other river; or*
- *within 75m of any lake listed in Schedule B to the Rural Zone; or*
- *within 50m of or in any wetland or other lake.*

*Exemptions:*

....

### **Submissions and Analysis**

488. H Frank (#10) considers that as a result of transferring parts of Rule 12 from the Rural Zone section into Section 19, Rule 12 needs clarification as it could lead to misunderstanding. He seeks that Rule 12.1 and 12.1.1 are amended to refer to non-indigenous vegetation clearance, otherwise he considers that it would conflict with Section 19.

489. I agree that because the intent of PC18 is to shift all rules relating to indigenous vegetation into Section 19, that it is appropriate to make it clear that Rule 12.1.1 does not apply to indigenous vegetation. The effect of the rules in PC18 are that clearance of indigenous vegetation within the specified distance to identified water bodies are generally non-complying; whereas Rule 12.1.1.a allows for clearance of up to 100m<sup>2</sup> per hectare in any continuous 5-year period. While the PC18 rules would override Rule 12.1.1.a, I consider it appropriate to remove any potential conflict. I therefore recommend changes are made to the title of the remaining rule to refer to 'non-indigenous' vegetation, and a note added to cross-reference to Section 19.

490. Both CRC (#8) and OWL (#14) raise concerns with the proposed deletion of Rule 12.2, which provides a discretionary activity status to vegetation clearance not provided for as a permitted or non-complying activity. They seek that discretionary status is retained for riparian vegetation clearance that does not comply with Rule 12.1.1.a. I agree with these submitters that it is appropriate to retain the discretionary rule so that the activity status currently applying to activities which do not meet Rule 12.1.1.a is retained.
491. CRC (#8), OWL (#14), Transpower (further submission), Mt Gerald (#16) and The Wolds (#17) also seek changes to various parts of Rule 12.1.1 that PC18 does not propose to amend. I have not summarised those changes here, as in my view, the changes sought by these submitters are outside of the scope of PC18. This is because the submitters seek a change to the current framework as it applies to non-indigenous vegetation clearance. PC18 however, does not propose changes to provisions relating to non-indigenous clearance. For the avoidance of doubt, I consider that reinstating Rule 12.2.1 as it applies to non-indigenous vegetation clearance is within scope, because it is a consequential change relating to the shifting of the indigenous biodiversity provisions. Regardless of scope, I consider that these changes are in any case more appropriately considered as part of the wider District Plan review in due course, at the same time the overall policy framework is also reviewed.
492. Forest & Bird (#20) notes that PC18 significantly alters the rules for vegetation clearance in the Rural Zone, with only Rule 12 being retained in the Rural Zone section. It raises a number of concerns about the certainty and clarity of what the rule applies to, how it relates to the proposed rules in Section 19, the way the rule is drafted in terms of exemptions, and its lack of appropriate standards. It considers that Rule 12 should be deleted and replaced by a new rule permitting clearance authorised by the regional council, and otherwise require clearance within riparian areas to be considered under the Chapter 19 rules. It submits that as riparian areas provide habitat for indigenous fauna, they are important in terms of biodiversity regardless of modification by land use activities or the presence of exotic plant species. However, Forest & Bird's submissions also separately states that it supports Rule 12 and seeks that it is retained, with the only change specified being a consequential change to amend the definitions of "Riparian Margin" to instead refer to "Riparian Area".
493. It is not clear to me exactly what changes, if any, are sought to Rule 12. I consider in any case that the reinstatement of Rule 12.2.1 and the amendment to make it clear that Rule 12.1.1 does not apply to indigenous vegetation should address their concerns about clarity and certainty. As noted above in relation to other submissions, I consider it

to be outside the scope of PC18 to consider and make changes to the rule as it applies to clearance of non-indigenous vegetation and that this is better considered as part of the wider District Plan review.

### **Recommendation**

494. **Amend** Rule 12 as follows:

#### *12 NON-INDIGENOUS<sup>194</sup> VEGETATION CLEARANCE*

*Note: This rule applies to the clearance of non-indigenous vegetation. Clearance of indigenous vegetation is controlled in Section 19 of this Plan.*<sup>195</sup>

#### *12.1 Permitted Activities - Non-Indigenous<sup>196</sup>Vegetation Clearance*

*~~Reference in this rule to the Mackenzie Basin means that part of the District known as the Mackenzie Basin and identified as such on the map in Appendix E of the Plan~~*

*12.1.1 Clearance of non-indigenous<sup>197</sup> vegetation is permitted where it complies with the following standards:*

*...*

495. **Retain** Rule 12.2.1 and **amend** as follows:

#### *12.2 Discretionary Activities – Non-Indigenous<sup>198</sup>Vegetation Clearance*

*12.2.1 Any clearance of non-indigenous<sup>199</sup> vegetation not provided for as a Permitted Activity or ~~Non-Complying Activity.~~<sup>200</sup>*

## **Definitions**

496. This section of the report addresses any submission made on definitions associated with PC18 that have not otherwise been addressed earlier in the report.

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<sup>194</sup> H Frank (#10), Forest & Bird (#20).

<sup>195</sup> H Frank (#10), Forest & Bird (#20).

<sup>196</sup> H Frank (#10), Forest & Bird (#20).

<sup>197</sup> H Frank (#10), Forest & Bird (#20).

<sup>198</sup> H Frank (#10), Forest & Bird (#20).

<sup>199</sup> H Frank (#10), Forest & Bird (#20).

<sup>200</sup> CRC (#8), OWL (#14).

## **Biodiversity (or biological diversity)**

### ***Submissions and Analysis***

497. Mackenzie Guardians (#6) and DOC (#18) support this definition. Forest & Bird (#20) note that the wording is slightly different to that used in the RMA as it refers to variability “of” rather than the RMA’s variability “among” living organisms and seek that it is amended to be consistent. I agree that this is appropriate as it ensures consistency.

### ***Recommendation***

498. Amend the definition of Biodiversity (or biological diversity) as follows:

*means the variability of among living organisms and the ecological complexes of which they are a part, including diversity within species, between species and of ecosystems*

## **Indigenous Vegetation**

499. The proposed definition is as follows:

*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.*

### ***Submissions***

500. C Morris (#5) supports this definition.

501. Several submitters<sup>201</sup> consider that the definition should be amended so that it does not include the exclusions (i.e. the wording from “*but does not include...*”) This is generally on the basis that the definition should recognise indigenous vegetation as such regardless of the purpose it was planted for or by whom. Instead, they consider that exemptions that provide for the clearance of such vegetation, where they are appropriate, should be included within the rules, not within the definition. Some also note that the exemption is in any case included in Rule 1.1.1.4. I agree with submitters that it is more appropriate for the definition to define what is indigenous vegetation. Where the management of this vegetation should differ depending on the purpose it was planted for, I agree that this better sits as an exemption within the relevant rules than within the definition.

502. CRC (#8) considers that the definition requires amendment to better reflect the communities of plants that occur widely in the District. It submits that significant

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<sup>201</sup> Mackenzie Guardians (#6), CRC (#8), EDS (#9), DOC (#18), Forest & Bird (#20).

indigenous vegetation and significant habitats of indigenous fauna can include areas with a mosaic of low growing species and a component of open ground. It seeks that the definition is amended to read:

*means a plant community of species that are native to the district. It includes*

- *areas of mat and cushion vegetation*
- *areas with a component of open ground*
- *areas with individual or low numbers of threatened or at risk native plant species contained within non-native plant communities*
- *areas with seasonal growth of indigenous vegetation.*

503. Mr Harding has advised that there are species native to other parts of New Zealand that are not native to ecological districts within the Mackenzie District. He therefore agrees with that part of CRC's submission. However, we both have concerns with the definition including listed examples, as this risks other legitimate communities that are not explicitly listed being taken to be excluded.<sup>202</sup>

504. EDS (#9) considers that the proposed definition is unclear and includes terms that in themselves require definition. While viewing recognition of overlap between exotic and indigenous vegetation positively, EDS considers clarity is required as to the relationship between the two and seeks that definition is deleted and replaced with:

*Means any plant community, which supports plant species naturally originating in New Zealand and their associated ecosystems, including where exotic species (species not naturally occurring in New Zealand) form part of that ecosystem (including tussock grasslands).*

505. Mr Harding agrees with the intent of EDS' definition, but considers it to be unnecessarily complex.<sup>203</sup>

506. Genesis (#11) and Meridian (#13) consider that the current definition is too broad and, when taken into account with the provisions reliant on the definition, would have a significant impact on the WPS and would not be the most appropriate way to achieve the Plan's objectives and policies. They have concerns that the current rule set would apply to individual native plants within a landscaped area and more broadly would result in consent being required for the removal of any plant regardless of its significance. They consider that the implications of the definition, combined with the rule set have not been properly considered with respect to activities associated with the WPS. They consider that determining whether a plant community is indigenous should be based on estimated

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<sup>202</sup> Evidence of Mike Harding, paragraph 87 b).

<sup>203</sup> Evidence of Mike Harding, paragraph 87 c).

vegetated cover, and that native species should dominate the community. They seek that the definition is amended to read: “...*New Zealand that dominate and comprise 66% or more of the ground cover, which...e.g. as farm hedgerows, for landscaping, or...harvest, or planted as part of the construction Waitaki Power Scheme*”<sup>204</sup>

507. As an alternate to the change to the definition, they suggest amending the permitted activity rules 1.1.1 and 2.1 to provide for clearance of indigenous vegetation where native species do not dominate and comprise less than 66% of ground cover as a specific permitted activity, with the current rules (1.1.1 and 2.1.2) then applying to clearance above the 66% ground cover.
508. I consider their reference to individual plants is incorrect, as the definition requires the vegetation to be a community, not an individual plant. As noted above, I also consider that any exemptions, if they are appropriate, should be located within the rules, not within the definition. Mr Harding does not consider that a cover of 66% is appropriate. He states that there are very few indigenous plant communities on depositional landforms in the Mackenzie Basin where native species form more than 66% cover; most basin-floor plant communities are degraded and include a high component of exotic species and/or bare ground.<sup>205</sup> In my view, the amendment to the definition could therefore have the effect of allowing for clearance of areas of ecologically significant vegetation which would not achieve the outcomes sought by PC18.
509. Mt Gerald (#16) and The Wolds (#17) consider that the definition is too broad and will capture nearly all vegetation in the Mackenzie Basin subzone. They argue that it is inappropriate for areas of non-indigenous vegetation to be subject to the clearance rules, and that the definition goes beyond what is required under the RMA and CRPS. They seek that the definition is amended to refer to inclusion of “*a minor element of*” exotic vegetation, which will enable a landowner or Council staff member to make an on-the-spot assessment.
510. Mr Harding considers the definitions to be inclusive, rather than broad. He accepts that the definition will capture most remaining vegetation in the Mackenzie Basin and considers that to be appropriate, as the vegetation is still indigenous vegetation and most of it is ecologically significant. He states that the presence (and dominance) of exotic species and bare ground is typical of indigenous vegetation in a rain-shadow (dryland) inter-montane basin such as the Mackenzie Basin. He therefore considers that

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<sup>204</sup> For completeness, the specific wording sought by Meridian is slightly different but maintains the same intent.

<sup>205</sup> Evidence of Mike Harding, paragraph 87 d).

restricting the definition to vegetation which includes only a “*minor element*” of exotic species is not appropriate, as this would exclude large areas of ecologically significant indigenous vegetation.<sup>206</sup> On this basis, I consider that the amendments would compromise the achievement of the outcomes sought and are therefore not appropriate.

511. DOC (#18) supports that the definition encompasses exotic vegetation where it is part of a plant community.

512. Forest & Bird (#20) agrees with the definition following the dictionary definition, while adding to it by clarifying that it may also contain exotic vegetation, “...*consistent with best practice for definitions and common to other definitions clarifying vegetation in the context of a plant community.*” It seeks that the definition is amended to read “*Indigenous vegetation means naturally occurring vegetation containing plant species that are indigenous to the area/site*”.

513. Taking the above submissions into account, Mr Harding has recommended amending the definition to read: “*Means a community of vascular plants, mosses and/or lichens that includes species native to the ecological district. The community may include exotic species.*” His reasoning for the proposed definition is as follows:

- “*community*” means that it cannot be a single native plant species in exotic vegetation.
- “*vascular plants, mosses and/or lichens*” ensures that the definition includes non-vascular species (such as mosses) and lichens, which are an important component of native plant communities in the Mackenzie Basin.
- “*native to the ecological district*” means that the plant species must be native to the area, which is important because some native species are weedy outside their natural range. He also notes that ‘Ecological Districts’ are already defined and mapped.
- Inclusion of “*exotic species*” is not essential but is important in the context of the Mackenzie Basin.<sup>207</sup>

514. I accept the reasons provided by Mr Harding for the recommended changes to the definition, and consider them to be within the scope of what is sought by submitters.

### **Recommendation**

515. Amend the definition of ‘indigenous vegetation’ as follows:

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<sup>206</sup> Evidence of Mike Harding, paragraph 87 e) and f).

<sup>207</sup> Evidence of Mike Harding, paragraphs 88-89.



*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<sup>208</sup> 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.<sup>209</sup>*

## **Vegetation Clearance**

516. The MDP already contains a definition for “*vegetation clearance*”. It is proposed through PC18 to amend it as follows:

*Means the felling, clearing or modification of trees or any vegetation by cutting, crushing, cultivation, spraying, or burning or irrigation. Clearance of vegetation shall have the same meaning.*

## **Submissions**

517. Fish & Game (#7) considers that it is not clear if the definition relates to any vegetation clearance or only to clearance of indigenous vegetation. It also submits that indigenous vegetation clearance should be protected from clearance mechanisms other than those specified. It considers that referring to “*clearance of indigenous vegetation*” would better align with the direction in the CRPS Policy 9.3.1 for territorial authorities to manage the clearance of indigenous vegetation. It seeks that if the definition of vegetation clearance is considered necessary for a permitted activity, then a definition could be introduced for indigenous vegetation clearance that also includes additional activities to those listed in the vegetation clearance definition, such as grazing, artificial drainage, overplanting and over sowing.

518. CRC (#8) supports the definition being amended to include irrigation as a method of vegetation clearance. However, it notes that it impacts on how Rule 12.1.1.a functions, with the rule permitting vegetation clearance in riparian areas where the clearance has been authorised by a discretionary or non-complying resource consent from CRC. It submits that under the current definition, this would only apply where resource consent has been issued for the burning of vegetation. It notes that irrigation is commonly discretionary in regional plans, which would result in this exemption applying more broadly.

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<sup>208</sup> CRC (#8), EDS (#9).

<sup>209</sup> Mackenzie Guardians (#6), CRC (#8), EDS (#9), DOC (#18), Forest & Bird (#20).

519. H Frank (#10) seeks that the definition is extended to include other ways of clearing vegetation, including “*topdressing, oversowing or planting of non-site specific plants*”, noting that includes clearance methods used in the improved pasture definition, and in relation to planting, as exotic trees can displace indigenous vegetation, resulting in the same effect.
520. Mt Gerald (#16) and The Wolds (#17) oppose reference to irrigation being added to the definition. They state that irrigation is not an activity that leads to the clearance of vegetation, as water application encourages plant growth. While accepting that sustained irrigation may change the structure and composition of plant species, they consider it is distinguished from the other methods in the definition because it is not capable of directly clearing vegetation. They note that irrigation is already included in the definition of agricultural conversion and consider it inefficient to require a landowner to obtain two separate resource consents for the same activity.
521. DOC (#18) and Forest & Bird (#20) support the definition being amended as proposed by PC18. Forest & Bird notes that the indigenous vegetation of the District is particularly adapted to dryland condition, with irrigation (proposed to be added to the definition) effectively destroying this vegetation in the same way as other methods contained within the definition would.

### **Analysis**

522. I note in relation to Fish & Game’s comments, that the application of definition depends on how it is used in the MDP framework. In this case, its application in Section 19 is to indigenous vegetation, whereas there are rules currently (and proposed to be retained) in Section 7 that apply to any vegetation clearance.
523. In regards to the additional matters sought to be included in the definition - grazing, artificial drainage, overplanting, oversowing, topdressing and planting of non-site specific plants - I note that the definition is ultimately about the “*felling, clearing or modification of trees or any vegetation*” by particular methods. Therefore, it is not the undertaking of these activities in themselves, but where they will result in the felling, clearing or modification of trees or any vegetation that the definition will capture. I accept the advice of Mr Harding that artificial drainage, overplanting, oversowing and topdressing can result in the clearance or modification of vegetation.<sup>210</sup> As such, I consider that they should be included within the definition.

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<sup>210</sup> Evidence of Mike Harding, paragraphs 93-95.

524. I also note Mr Harding's comments that intensive grazing can completely remove indigenous vegetation, and can be intentionally used for that purpose.<sup>211</sup> However, I consider that there are difficulties with adding 'grazing' to the definition as this would capture any grazing that might modify vegetation and would therefore extend beyond the particular types of intensive grazing that Mr Harding considers may require control in order to protect indigenous biodiversity. Although this might leave a 'gap' I consider that either any addition to the definition in relation to grazing would need to be narrowed in order to ensure only specific types of grazing are captured; or this may be a matter better considered through the wider District Plan review in terms of controlling land use change.
525. I also note that the reference to these activities in the improved pasture definition is in addition to reference to clearance and in terms of the latter definition is about the modification and enhancement of species composition and growth; not about felling, clearing or modification of vegetation. In any case, it is recommended that the definition of improved pasture is amended such that it would no longer refer to these methods.
526. I note that there is disagreement about the addition of irrigation to the definition, with some submitters considering that application of water does not directly clear vegetation; whereas other submitters consider application of water within the District's context would clear vegetation in the same way as other methods noted in the definition. My understanding is that the type of indigenous vegetation within the District and particularly within the Mackenzie Basin is such that in many cases, irrigation does directly result in vegetation being killed. I consider it important that the definition captures this. Mr Harding also states that irrigation is an important, if not essential, activity to effectively convert vegetation to exotic pasture or crops, especially in the drier eastern part of the Mackenzie Basin. He notes that while other methods (e.g. top dressing, direct drilling) will introduce exotic pasture or crop species, they will not necessarily displace all indigenous species, and land subject to these activities will frequently still provide habitat for indigenous fauna. He notes that often, the application of water is required to complete the conversion.<sup>212</sup>
527. Overall, I consider the definition should include reference to irrigation.
528. It is not clear to me what, if any changes CRC are seeking. The submitter may wish to clarify this.

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<sup>211</sup> Evidence of Mike Harding, paragraph 91.

<sup>212</sup> Evidence of Mike Harding, paragraph 97.

## **Recommendation**

529. **Amend** the definition of *vegetation clearance*, as follows:

*Means the felling, clearing or modification of trees or any vegetation by cutting, crushing, cultivation, spraying, burning, or irrigation, artificial drainage, oversowing, topdressing or overplanting*<sup>213</sup>. *Clearance of vegetation shall have the same meaning.*

## **New definitions**

### **Submissions and Analysis**

530. EDS (#9) seeks that a definition is added for SONS, as these are an important concept in PC18 and the MDP, and as such should be defined. It submits that the Environment Court has found, and the Council has acknowledged, that not all significant areas have been mapped as SONS, and that non-mapped sites must also be protected to fulfil the Council's obligations under s6(c) of the RMA and Section 9 of the RPS. It considers that as a result, a definition of SONS should be included that acknowledged that the mapped SONS are not exhaustive.

*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.*

531. As noted earlier, my view is that the purpose of a definition is to provide clarity about what provisions relying on that definition apply to. The definition of SONS is not required in order to apply the provisions within the MDP that relates to SONS. Further I do not consider it appropriate for a definition to include direction.

532. EDS (#9), DOC (#18) and Forest & Bird (#20) seek that a definition is added for 'no net loss' because it is a key outcome sought by PC18 and therefore important that clarity is provided around the outcome. DOC proposes taking the definition from the Business Biodiversity Offsetting Programme, meaning "*no overall reduction in indigenous biodiversity, as measured by type, amount and condition*". EDS and Forest & Bird propose using the following definition, which is taken from the CRPS.

*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*

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<sup>213</sup> Fish & Game (#7).

- 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*

533. I consider that providing a definition for no net loss will be useful to help guide consideration of resource consent applications against Policy 3. Although DOC's definition is simpler, my preference is for the CRPS definition to be used as this ensures alignment between the MDP and CRPS.

534. EDS (#9) seeks that a definition is added for 'maintenance', as it is another important concept in PC18 and the MDP, and therefore requires definition. It submits that its proposed definition, set out below, relies on the common dictionary definition and incorporates the concept of no net loss, consistent with the approach taken in PC18:

*In relation to indigenous biodiversity, maintenance means to enable indigenous biodiversity to continue by achieving no net loss.*

535. I have set out earlier in the report why I consider that no net loss should only be applied to significant areas, and therefore do not agree with defining maintenance to refer to no net loss. In general, I do not consider a definition for maintenance to be required.

536. Mt Gerald (#16) and The Wolds (#17) seek that a new definition is inserted for 'significant indigenous vegetation', which would refer to indigenous vegetation that meets the criteria set out in a new Appendix. The new appendix would be similar to Appendix 3 of the CRPS, but modified to more specifically relate to the Mackenzie Basin. They state that the plan needs to "provide guidance" as to what constitutes significant indigenous vegetation in the Mackenzie Basin, to help landowners interpret and apply the proposed provisions. DOC (#18) seeks that a definition is added for 'significant indigenous vegetation and habitat' meaning "*indigenous vegetation [or] habitat of indigenous fauna which meets the criteria listed in the Canterbury Regional Policy Statement.*"

537. In my view, the current approach taken in PC18 is more appropriate. It includes clear direction about what are considered to be significant areas, by direct reference to the CRPS criteria.

### **Recommendation**

538. **Insert** new definition for 'no net loss':

**No net loss:** *means, in relation to indigenous biodiversity, 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*

## **Miscellaneous Matters**

539. This section of the report deals with submission points that do not relate to a particular provision and have not otherwise been addressed in the broader topics covered in this report.

### ***Submissions and Analysis***

540. Maryburn Station (#2) considers that MDC needs to acknowledge how landowners are going to be compensated financially for “*loss of land*”, given the benefits to the wider public through constant plan changes. I accept that restrictions on vegetation clearance impact on what landowners can do on their land. There is an inherent tension with biodiversity provisions, where landowners are affected by provisions that relate to wider community or environmental values. However, this applies in relation to other matters too, including heritage and landscape provisions. My understanding is that compensation is not required for such provisions.
541. Maryburn Station (#2) considers that the policy framework should “*recognise that invariably analysis is more conceptual and provision should be made to recognise that these [significant] areas may include areas which are able to be cleared*”. It is my view that the policy and rule framework allows for consideration of the clearance of areas, where it meets the policy direction and objectives of the MDP, including for example, achievement of no net loss. I do not consider that further changes are required in relation to this submission point.
542. C Burke (#4) seeks that all consents issued by all agencies including MDC are “*logged and reviewed*” and their combined impacts taken into account, so that the effectiveness of protection measures can be checked. This is a matter that sits outside consideration of PC18, as it relates to compliance and monitoring.

543. C Burke (#4), in addition to comments on specific provisions seeks that “*Intent to have no further loss of landscape, landforms, functional ecosystems, flora and fauna should be clearly stated*”. She also seeks: strong definitions; clear strong rules; peer reviewed and independent identification of indigenous biodiversity values; robust and independent monitoring of consents with national oversight; ability for Council to request a consent is ceased if identified by error or omission the intent to protect is breached or likely to be breached; clearly set out how compliance is to be achieved and penalties for breaches.
544. In my view, to the extent that PC18 should address these matters, they are already taken into account. For example, the policy direction includes management of land use and development to achieve no net loss of significant values; specific submissions on definitions have been considered in this report and recommendations made where changes are considered appropriate to provide greater clarity; and the resource consent process, including development of FBPs provide for expert input into identification of biodiversity values. The ability for the Council to reconsider resource consents and the process for considering non-compliance with resource consents is dictated by the RMA and does not form part of the provisions within a district plan. As such I do not consider that further changes to PC18 are required in relation to this submission point.
545. Maryburn Station (#2) seeks that objectives and policies are amended to recognise the importance of re-establishing vegetation cover of bare soil to avoid, remedy or mitigate the effects of soil loss. SPSL (#3) also considers that the provisions within the plan change should be amended to recognise the issues associated with land at risk of significant soil erosion. It considers this is a potential issue where land has limited vegetation and is therefore prone to significant loss of topsoil through erosion processes. It is concerned that any cultivation of the land to respond to the soil erosion issue could be subject to the indigenous vegetation clearance rules. It seeks that a policy be introduced recognising the importance of responding to the risk of soil erosion in these circumstances, and allowing for further risk of soil erosion to be taken into account as a matter of discretion in 19.1.2.1, 19.1.2.2 and in FBPs.
546. I note that PC18 is focused on management of indigenous biodiversity and not soil erosion. Where activities are proposed to address soil erosion, but which involve clearance of indigenous vegetation, they will still need to be considered in terms of the direction in Section 19. In my view, it might be appropriate to include specific policy direction and assessment matters in relation to this, if activities that involve vegetation clearance, but which relate to addressing erosion, need to be treated differently to other activities involving vegetation clearance. For example, where a different approach is

needed to achieve the objectives in Section 19 as well as other Plan objectives relating to soil erosion, or where necessitated by a higher order policy document, such as the situation that applies to activities associated with the WPS. The submitters have not identified this as being the case. As such, I do not consider the additional provisions to be appropriate.