



PROPOSED INVERCARGILL CITY DISTRICT PLAN

Report No. 16

Biodiversity

**29 September 2014, 9.00 am
COUNCIL CHAMBERS
CIVIC ADMINISTRATION BUILDING**

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1. EXECUTIVE SUMMARY

The district-wide biodiversity provisions of the Proposed District Plan attracted a good deal of interest from submitters. The number of submission points (151) is significantly greater than for other district-wide provisions. Another feature is that attitudes tend to be more polarised, the submitter appearing either to be in strong support or in reasonably vigorous opposition.

In summary, the key issues and my recommendations with respect to them are as follows:

1. Whether the focus should be *all* biodiversity, or *indigenous* biodiversity, or identified *areas of significant indigenous biodiversity*. The policy focus of the District Plan is on *indigenous biodiversity*. The regulatory provisions focus on *areas of significant indigenous biodiversity*. In my view the Proposed District Plan is right in focusing on *indigenous* biodiversity in its policies and non-regulatory methods, and narrowing that to *areas of significant indigenous biodiversity* in the rules.
2. Whether policy should apply to areas *identified by criteria*, or to areas *identified by criteria AND shown on the Planning Maps*. I am recommending that biodiversity policy should continue to apply to areas identified by criteria including those shown on the Planning Maps, but rules should apply only to areas of significant indigenous biodiversity shown on the planning maps.
3. Whether the information base used by the Council in drafting this section was adequate. I have concluded that the 1999 Amber Bill study was a reasonable base on which to build policy in reviewing the District Plan. But I have also concluded that there also needs to be commitment to improving this information over time. I am strongly recommending that a collaborative approach with Environment Southland to develop knowledge of and planning for significant indigenous biodiversity be signalled in the District Plan and developed.
4. Several submitters commented on the provisions in the Proposed District Plan regarding public access, and the need (in their view) for it to be at the absolute discretion of the landowner. My recommendations to submissions acknowledge the need for access arrangements to be satisfactory to landowners, whilst giving effect to national and regional policy that places a high priority on public access.
5. A theme of the Proposed District Plan on biodiversity is that while the scope would cover biodiversity as a whole, the focus would be on indigenous biodiversity. Further, non-regulatory methods could be applied to all indigenous biodiversity but regulatory methods should apply only to areas of significant indigenous biodiversity identified on the Planning Maps. Several submissions either supported, or opposed, this. My recommendations support this approach.
6. Concerns about farming practices in and around areas of significant indigenous biodiversity were raised by several submitters, on several aspects of the issue. Perhaps the most significant of these was the concept of “buffer strips” and whether they are needed around areas of significant indigenous biodiversity. I have taken the view that if the area requires a buffer strip to secure its viability, that buffer strip should be included with the area identified as significant indigenous biodiversity.
7. Several submitters raised matters concerning the relationship between infrastructure in general and the National Environmental Standard on Electricity Transmission in particular, and the District Plan when such services fall within identified areas of

significant indigenous vegetation. The particular concern was trimming and removing. In general in my recommendations I have taken the line that “trimming” should be permitted but “felling or removing” requires greater consideration and should be subject to resource consent.

8. In relation to biodiversity offsets I am recommending that the initiative for any biodiversity offsets should come from the applicant, but that they remain a matter which will be taken into account by the Council in determining resource consent applications.

In this report:

- Part 2 considers several key procedural issues.
- Part 3 provides background information on the Biodiversity provisions.
- Part 4 summarises the various statutory provisions that apply to the consideration of the Proposed District Plan.
- Part 5 assesses the relevant issues raised by the submitters.
- Part 6 provides a discussion on the Section 32 matters.
- Part 7 sets out the overall conclusions.
- Appendix 1 sets out the recommendations on each of the submission points.
- Appendix 2 sets out the recommended changes to the text of the Proposed District Plan.
- Appendix 3 sets out the consent categories under the National Environmental Standard on Electricity Transmission Activities.

2. INTRODUCTION

2.1 Report Author

This report has been prepared by William J. Watt. My company, William J Watt Consulting Ltd, offers consultancy services in planning and resource management including research, consultation facilitation, policy formulation and evaluation, hearings commissioner and mediation roles. I am currently the sole practitioner in that company.

I hold the qualifications of Bachelor of Arts and Diploma of Town Planning. I am a Full Member of the New Zealand Planning Institute and also a Fellow of the New Zealand Institute of Management. I am also an accredited Hearings Panel Chairman under the MfE “Making Good Decisions” programme and a mediator accredited with LEADR. Before setting up my consultancy I had 40 years’ experience in local government in regional, local and project planning and senior management roles. I have been practising as a planning consultant for four years.

2.2 Peer Review

This report has been peer reviewed by Dan Wells and John Edmonds, from John Edmonds and Associates Ltd. Both John Edmonds and Dan Wells are practising resource management planners with a variety of experience throughout the plan change preparation process. Dan Wells has a Bachelor of Resource and Environmental Planning (Hons) and a Post Graduate Diploma in Development Studies, both from Massey University. John has a Bachelor of Regional Planning from Massey University.

2.3 How to Read this Report

This report is structured as follows:

- Interpretation (an explanation of some of the terms used).
- A summary of the hearing process.
- Background to the Biodiversity topic, and the provisions of the Proposed Invercargill City District Plan 2013.
- Description of the statutory framework within which the proposed provisions have been developed.
- Analysis of the submissions, including a discussion of the key issues raised through the submissions and further submissions received.
- Assessment of the proposed changes under Section 32 of the RMA.
- Concluding comments.
- Recommendations on individual submissions.
- Tracked changes of the Proposed District Plan provisions relating to Biodiversity.

To see my recommendation on an individual submission please refer to the table in **Appendix 1**. The table sets out the name and relevant submission number of those that submitted on the Biodiversity provisions; a brief summary of their submission and decisions requested, followed by my recommendation and the reasons for it.

2.4 Interpretation

In this report, the following meanings apply:

“*AEE*” means Assessment of Environmental Effects.

“*Council*” means the Invercargill City Council.

“*FS*” means further submitter - someone who made a Further Submission to the Proposed District Plan.

“*Hearings Committee*” means the District Plan Hearings Committee.

“*ICC*” means Invercargill City Council.

“*NES*” means National Environmental Standard.

“*NPS*” means National Policy Statement.

“*Operative District Plan*” means the Invercargill City District Plan 2005.

“*Proposed District Plan*” means the Proposed Invercargill City District Plan 2013.

“*Provisions*” is a term used to collectively describe Objectives, Policies and Rules.

“*PSRPS*” means the Proposed Southland Regional Policy Statement 2012.

“*RMA*” means the Resource Management Act 1991.

“*Submitter*” means a submitter to the Proposed District Plan.

2.5 The Hearing Process

Several hearings are to be held to consider the submissions lodged to the Proposed Invercargill City District Plan 2013. The hearings have been divided up to ensure that submissions on similar issues have been grouped together and to enable the District Plan Hearings Committee to make decisions on the provisions relating to those issues. This report applies to the Biodiversity provisions of the Proposed District Plan.

The Hearings Committee is comprised of accredited Invercargill City Councillors, with the assistance of an Independent Hearings Commissioner. This Committee is to consider the Proposed Plan and the submissions and further submissions lodged. The Hearings Committee has full delegation to issue a decision on these matters.

This report is prepared pursuant to Section 42A of the Resource Management Act 1991 (the “RMA”). Section 42A provides for a report to be prepared prior to a hearing, setting out matters to which regard should be had in considering a Proposed District Plan and the submissions lodged to it. This report highlights those matters that are considered appropriate by the author for the Hearings Committee to consider in making decisions on the submissions lodged. This report has been prepared on the basis of information available prior to the hearing.

While the Hearings Committee is required to have regard to this report, regard must also be given to the matters raised in submissions, and presentations made at the hearing. The comments and recommendations contained in this report are not binding on the Hearings Committee and it should not be assumed that the Hearings Committee will reach the same conclusions set out in the report after having heard from the submitters and Council advisers.

The hearing is open to the public, and any person may attend any part of the hearing. Those persons who lodged a submission have a right to speak at the hearing. They may appear in person, or have someone speak on their behalf. They may also call evidence from other persons in support of the points they are addressing.

At any time during or after the hearing, the Hearings Committee may request the preparation of additional reports. If that is done, adequate time must be provided to the submitters, to assess and comment on the report. The Hearings Committee may determine that:

- the hearing should be reconvened to allow responses to any report prepared, or
- any responses be submitted in writing within a specified timeframe.

At the conclusion of the hearing process, the Hearings Committee will prepare a written decision. The decision is sent to all persons who lodged a submission. If not satisfied with the decision the submitters have a right of appeal to the Environment Court. If an appeal is lodged, the RMA requires a copy to be served on all submitters with an interest in that matter. Any submitter served, if they wish, may become a party to the appeal either in support or opposition to it.

If there is an appeal, the Environment Court will provide an opportunity for mediation between the parties. If mediation is not accepted, or does not resolve the issues, a further hearing will take place before a Judge and Court appointed Commissioners.

Except on points of law, the decision of the Environment Court is final.

3. BACKGROUND

In the course of preparing the Proposed District Plan, it was noted that the current District Plan does not specifically address the issue of biodiversity as a separate stand-alone issue but (it) is instead covered by several related issues. These issues include:

- Section 2.3 (Coastal Environment) - the preservation and protection of the natural character of the coastal environment from inappropriate subdivision, use and development.
- Section 2.4 (Wetlands and Rivers and their Margins) – the preservation and protection of the natural character of wetlands, and rivers and their margins from inappropriate subdivision, use and development.
- Section 2.5 (Outstanding Natural Features and Landscapes) – the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.
- Section 2.6 (Areas of Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna) – the ecological integrity of areas of significant indigenous vegetation and significant habitats of indigenous fauna is at risk from inappropriate land use activities and practices, including subdivisions.
- Amenity values can be adversely affected by clearing and altering areas of significant indigenous vegetation and significant habitats of indigenous fauna by inappropriate land use activities and practices, including subdivisions.

The current relevant objectives under Sections 3.3 (Coastal Environment) and 3.4 (Wetlands, and Rivers and their Margins) of the Plan are intended to preserve the natural character of the coastal environment, wetlands, and rivers and their margins, and to protect them from inappropriate subdivision, use and development.

The objective under Section 3.5 (Outstanding Natural Features and Landscapes) is to identify and protect the district's outstanding natural features and landscapes from inappropriate subdivision, use and development.

The objective under Section 3.6 (Areas of Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna) is to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna for the purpose of preserving their ecological, intrinsic and amenity values.

The current District Plan policies relating to biodiversity include:

- Identification and mapping of areas of significant biodiversity;
- Protection and preservation of the natural character of areas of biodiversity;
- Managing the effects of subdivision and land use activities on areas of biodiversity;
- Utilising economic instruments and non-regulatory methods to promote and protect areas of biodiversity;
- Managing areas of biodiversity that abut the boundary with Southland District Council in an integrated manner.

In the Operative District Plan:

- Rule 4.22 (Outstanding Natural Features and Landscapes) requires that any land use activity, other than agriculture, shall alter the contour of the land by no more than two metres over 200m², and structures shall have a footprint area of less than 200m² and be less than 10 metres in height. This rule is designed to protect the District's

outstanding natural features and landscapes, particularly the relatively intact totara-matai forest remnants on the ancient sand dunes found on the Otatara Peninsula, and the Omaui/Bluff peninsula.

- Rule 4.23 (Areas of Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna) lists the situations when the removal or alteration of vegetation located within an identified area of significant indigenous vegetation or significant habitat of indigenous fauna is permitted and when it will require resource consent as a controlled, discretionary or non-complying activity. This rule only applies to those areas of significant indigenous biodiversity located within the Otatara Sub-Area. There are no rules relating to areas of significant indigenous biodiversity outside of the Otatara Sub-Area.

Plan Change 9 (Otatara) became operative on 2 September 2013. It included a proposal to decrease the area identified as an outstanding natural feature and landscape to the south-west quadrant of the Otatara Peninsula and to amend the rules so that any land use activity that alters the contours of the land or to erect a structure on a site identified as an outstanding natural feature or landscape is considered as a restricted discretionary activity.

Plan Change 9 also proposed to amend Rule 4.23 to promote the planting of local native species when any land use or subdivision consent is granted and to promote planting in a way that develops corridors of vegetation to improve the connectivity of significant indigenous vegetation remnants. The Plan Change also proposed to change the activity status for constructing access ways or roads and constructing utility services from controlled activities to discretionary activities and changing the erection of structures and the removal of live indigenous vegetation from discretionary activities to non-complying activities.

In reviewing the matters that needed to be addressed in preparing the review of the District Plan, it was concluded that the current District Plan has had mixed success in managing the effects of land use activities on areas containing indigenous biodiversity values. Despite the inclusion of rules in the Plan (with respect to Otatara) to control and manage land use activities that occur within identified Areas of Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna, a report commissioned by Council in 2008 found that there had been a reduction in the extent of significant indigenous vegetation in Otatara since 1999 as a result of residential development. The report also found that conditions being applied to resource consents for activities not permitted by the District Plan were not adequately compensating for the loss of significant vegetation. Outside of the Otatara Sub-Area other areas of significant indigenous biodiversity remain vulnerable to damage and destruction from land use activities unregulated by the current Plan provisions.

Clearly, the term “biodiversity” covers significant resource management issues that needed to be addressed in the preparation of the proposed District Plan.

3.1 Proposed Issues, Objectives and Policies

At Section 2.3.1 of the Proposed District Plan, the significant resource management issues for biodiversity are stated as follows:

1. *Invercargill’s indigenous ecosystems have been reduced in diversity and extent over time and are under threat from further subdivision, land use change, and development.*
2. *Amenity values can be adversely affected by clearing and altering areas of indigenous biodiversity.*

The introduction to this section

1. Acknowledges the importance of biodiversity to the tangata whenua of Murihiku.
2. Indicates that areas of significant indigenous biodiversity have been identified having regard to criteria set out in the 2007 MfE publication Protecting our Places: Introducing the National Priorities for Protecting Rare and Threatened Species on Private Land.
3. Indicates that sites within the district have been assessed and mapped by an ecologist employed by the Council.
4. Identifies the following as priorities, giving reasons for doing so:
 - i. The Otatara Peninsula, Omaui, and Bluff Hill.
 - ii. The river and stream systems in the city district.
 - iii. The Awarua Plain and its associated wetland of international importance.
 - iv. Other wetlands in the city district.
5. Identifies key threats to biodiversity as lack of appropriate stock management, further fragmentation of land holdings, spread of pests, and inappropriate recreational use.
6. Indicates that the research and assessments carried out will provide a baseline for future monitoring of any change.
7. Acknowledges voluntary efforts by landowners and occupiers to protect and enhance areas of indigenous biodiversity, and indicates its willingness to encourage public access to these areas by non-regulatory means.

The Proposed District Plan has two objectives for biodiversity: (Section 2.3.2)

Objective 1: *Indigenous vegetation and habitats with indigenous biodiversity values are maintained, and restored to a healthy functioning state, and where appropriate enhanced.*

Objective 2: *The natural character of wetlands, and rives and their margins, are protected from inappropriate subdivision, use and development.*

The proposed District Plan contains nine policies relating to biodiversity. (Section 2.3.3). In summary, they are:

Policy 1 is to delineate on the Planning Maps areas of significant biodiversity.

Policy 2 is to avoid, remedy or mitigate effects of subdivision, land use and development.

Policy 3 refers specifically to Otatara, and is to protect and enhance areas of significant biodiversity in Otatara, recognising in particular the ancient sand dune landscape.

Policy 4 is to promote use of locally sourced indigenous vegetation as part of any restorative, landscape or enhancement planting.

Policy 5 is to encourage and support biodiversity initiatives to maintain, restore and/or enhance indigenous, coastal and aquatic ecosystems and habitats.

Policy 6 is to promote the protection of significant biodiversity where boundaries adjoin those of other agencies.

Policy 7 supports collecting and reporting information on biodiversity.

Policy 8 is to use other legislation such as the Reserves Act to achieve long term protection of areas of significant indigenous biodiversity.

Policy 9 is to recognise the role of tangata whenua as kaitiaki and consult and involve them in planning for areas of significant indigenous biodiversity.

Section 2 of the Proposed District Plan lists nine methods (Section 2.3.4). Again in summary, they are:

Method 1: Delineation of areas of indigenous biodiversity on the Planning Maps.

Method 2: Adoption of rules in the District Plan.

Method 3: Ongoing information dissemination.

Method 4: Consultation and sharing information with landowners and other stakeholders.

Method 5: Financial incentives.

Method 6: Promotion of voluntary covenants.

Method 7: Publishing guidelines for use and sustainable management of areas of biodiversity.

Method 8: Environmental advocacy.

Method 9: Monitoring resource consents and information gathering on the state of indigenous biodiversity.

3.2 Proposed Rule

“Rules” are only one of nine methods set out in the Proposed District Plan for achieving the objectives and policies in relation to biodiversity. The Rules are district-wide and are set out in Section 3.1.

It is important to note that the Rules apply only to those areas of significant indigenous biodiversity identified on the Planning Maps.

Rule 3.1.1 lists permitted activities. In essence, the rule provides for maintenance trimming of vegetation within these areas to manage pests and disease, allow utilities to continue to function, avoid damage to structures and drains, enable access ways to continue to be used, and prevent encroachment into airspace affected by Airport Approach and Land Use Controls.

Rule 3.1.2 lists discretionary activities. They are: To construct an access way or road, and to construct utility services that will require damage to indigenous vegetation.

Rule 3.1.3 lists non-complying activities. They are:

- A. Remove or alter indigenous vegetation in a way that destroys the biological viability of that vegetation.
- B. Erect any building or structure larger than 10 square metres.
- C. Plant exotic woodlots and commercial forestry.
- D. Carry out earthworks in or within 10 metres of an area of significant indigenous biodiversity.

Rule 3.1.4 sets out matters to be considered in preparing resource consent applications under Rules 3.1.2 and 3.1.3.

Rule 3.1.5 requires an ecological assessment “*commensurate with the scale of the proposed activity*”.

3.3 The Planning Maps

An assessment of the areas of significant indigenous biodiversity was undertaken in December 1998 – April 1999 by Amber Bill, then working as a research officer for the Invercargill City Council. That assessment was documented in a three volume report entitled Significant Natural Areas – Invercargill City District, subtitled “*Information base for areas of significant indigenous vegetation and significant habitats of indigenous fauna.*” It was published in 1999. It is a comprehensive survey of areas of significant indigenous biodiversity in the Invercargill City District, “significance” being determined on the basis of an area’s representativeness, rarity and distinctiveness, landscape context and natural character.

In 2008 the Invercargill City Council promoted a Plan Change for Otatara. As part of that Plan Change process, a reassessment of significant indigenous areas within the Otatara Sub-Area was undertaken by Wildland Consultants in 2008 and reported in Assessment of Significant Indigenous Vegetation in the Otatara Sub-Area, Invercargill, Wildland Consultants Report No 2079, for the Invercargill City Council, December 2008. The Executive Summary to that report indicates that the investigation found:

1. Since 1999 there had been a reduction in the extent of significant vegetation in Otatara, caused by residential development.
2. Resource consent conditions involving indigenous vegetation are not adequately compensating for loss of significant vegetation because the restoration projects are too small and not adequately informed by expert ecological advice.
3. The ecological condition of forest remnants ranged from excellent to poor.
4. The major threats to sustainability of significant indigenous vegetation are clearance as a result of residential development, weeds and grazing.
5. Only a small area of privately owned forest is legally protected, and opportunities are being missed.
6. The long-term persistence of significant indigenous vegetation is by no means assured.
7. In general, residents have a poor understanding of significant indigenous vegetation and how to maintain it.
8. Two new areas of significant indigenous vegetation were identified.
9. Several previously identified areas of significant indigenous vegetation were no longer considered to be significant due to clearance, reassessment, or errors in the original survey.

The Wildland Consultants Report (No 2079) formed the basis for the Otatara Plan Change, which was duly advertised and submissions heard and received. Matters were appealed to the Environment Court. The Court’s decision formed the basis of provisions which were carried through largely unaltered with respect to the Otatara Zone within the District Plan Review.

My understanding is that the delineation of areas on the Planning Maps in the Proposed District Plan was done largely on the basis of the 1999 Amber Bill report, but modified with respect to Otatara by the findings of the Wildland report. In other areas outside Otatara, the 1999 information was compared with recently flown aerial photographs and the areas were modified where there were obvious changes. An example of this was in relation to farming development in the Awarua area where there has been “development” of wetland in recent years.

4. STATUTORY CONTEXT / LEGISLATIVE REQUIREMENTS

4.1 Resource Management Act 1991

In reviewing the District Plan, the Council must follow the process outlined in Schedule 1 of the RMA.

The First Schedule procedure includes notification for submissions (clause 5) and further submissions (clause 8), holding a hearing into submissions (clause 8(b)), and determining whether those submissions are accepted or rejected and giving reasons for the decisions (clause 10).

Clause 29(4) of the First Schedule to the RMA states that, after considering a plan, the local authority may decline, approve, or approve with modifications, the plan change, and shall give reasons for its decisions.

Under Section 74 of the RMA, in relation to changes to the District Plan, Council must consider Part 2 of the RMA (purposes and principles), Section 32 (alternatives, benefits and costs), and relevant regional and district planning documents.

4.1.1 Part 2 of the RMA

Part 2 of the RMA (Sections 5-8) sets out its purpose and principles of the Act.

The purpose of the RMA is set out in Section 5. I confirm that the provisions for managing biodiversity fall within the purpose of the Act. In particular (referring to subsection 2), provisions in the Proposed District Plan relating to biodiversity are intended to:

- (a) Sustain the potential of natural and physical resources,
- (b) Safeguard the life-supporting capacity of air, water, soil, and ecosystems, and
- (c) Avoid, remedy or mitigate adverse effects on the environment in accordance with Section 5(2)(c) of the RMA.

Section 6 of the RMA sets out matters of national importance which must be recognised and provided for. The following are directly relevant to biodiversity:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development; and*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development;*
- (c) ***The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna***
- (d)
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*
- (f)
- (g) *The protection of recognised customary activities.*

I have “boldfaced” (c) to stress that maintenance of biodiversity is specifically mentioned in the RMA as a matter of national importance. The other provisions quoted above depend on maintenance of biodiversity.

In my opinion the provisions in the Proposed District Plan relating to Biodiversity as notified address these matters in a comprehensive and reasoned manner.

Section 7 of the RMA sets out “other matters” for particular regard. It is considered that the most relevant of these matters to biodiversity are:

- (aa) *The ethic of stewardship.*
- (b) *The efficient use and development of natural and physical resources.*
- (c) *The maintenance and enhancement of amenity values.*
- (d) *Intrinsic values of ecosystems.*
- (f) *Maintenance and enhancement of the quality of the environment.*
- (g) *Any finite characteristics of natural and physical resources.*

In my opinion the provisions relating to biodiversity in the Proposed District Plan demonstrate particular regard to these matters.

Section 8 of the RMA obliges persons exercising functions and powers under the RMA to take account of the principles of the Treaty of Waitangi. Representatives from Te Ao Marama Inc have been part of the Plan Review process as members of the Council’s Plan Group that worked on developing the Proposed District Plan. Consultation with Iwi has also occurred. The topic of biodiversity and the principles and practice of its maintenance and enhancement are integral to the ways Iwi view, value and enjoy the environment.

In my opinion the provisions of the Proposed District Plan relating to Biodiversity have careful regard to Section 8 matters.

4.1.2 Functions of Territorial Authorities under the RMA

Section 31 of the RMA states the functions of a territorial authority under that Act. One of the functions set out in Section 31(1)(a) is:

“The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.”

Under Section 31(1)(b) of the RMA a territorial authority is required to “... control ... any actual or potential effects of the use, development, or protection of land , including for the purpose of

....

- (iii) *the maintenance of indigenous biological diversity.*

In my view the biodiversity provisions in the Proposed District Plan include objectives, policies, and methods intended to:

- **Manage the actual or potential effects of land use activities on biodiversity, and**
- **Maintain indigenous biodiversity**

4.1.3 Consideration of alternatives, benefits, and costs

Section 32 of the RMA states the Council’s obligations in assessing the alternatives, benefits and costs.

Whilst a Section 32 report was released at the time of notification of the Proposed District Plan, the Council is required to carry out a further evaluation through the hearing, consideration and deliberation process before making its decision on the Plan Change. Section 6 of this report includes my evaluation of the Proposed District Plan Provisions in accordance with Section 32AA.

4.2. Relevant Planning Policy Documents

The RMA specifies a number of documents that need to be considered in a decision on a Proposed District Plan and the weight that should be given to these. These are addressed in the following section.

4.2.1 New Zealand Coastal Policy Statement

Section 75 of the RMA requires that a District Plan must give effect to any New Zealand coastal policy statement. The relevant document is the New Zealand Coastal Policy Statement 2010 (NZCPS).

In this context, it is worth noting that the boundary of the planning district covered by the Proposed District Plan is MWHS (mean high water springs). This is different from the seaward boundary of the Invercargill City District, which is MWLS (mean low water springs). However, the “Preamble” to the NZCPS makes it clear that the NZCPS applies across the whole of the coast, extending from the open ocean to inland areas of coastal influence. Therefore, areas within the jurisdiction of the Proposed District Plan do fall within the bailiwick of the NZCPS.

Policy 11 of the NZCPS is directly applicable. It reads as follows:

Policy 11: Indigenous biological diversity (biodiversity)

To protect indigenous biological diversity in the coastal environment:

- a. *avoid adverse effects of activities on:*
 - i. *indigenous taxa⁴ that are listed as threatened⁵ or at risk in the New Zealand Threat Classification System lists;*
 - ii. *taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;*
 - iii. *indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare⁶;*
 - iv. *habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;*
 - v. *areas containing nationally significant examples of indigenous community types; and*
 - vi. *areas set aside for full or partial protection of indigenous biological diversity under other legislation; and*
- b. *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:*
 - i. *areas of predominantly indigenous vegetation in the coastal environment;*
 - ii. *habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;*
 - iii. *indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including*

- estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;*
- iv. habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;*
 - v. habitats, including areas and routes, important to migratory species; and*
 - vi. ecological corridors, and areas important for linking or maintaining biological values identified under this policy.*

Some submitters have commented on the provisions in the Proposed District Plan regarding public access and areas of significant indigenous biodiversity. It is worth noting here that “walking” access is covered in Policy 19, which seeks to recognise and enhance walking access for the public along the coastal marine area, imposing restrictions only where they are necessary to (inter alia) protect indigenous biodiversity. There is, therefore, national policy favouring public access along the coast.

With its combination of regulatory methods, including identification of areas of significant indigenous biodiversity, and non-regulatory methods, in my opinion the Proposed District Plan is consistent with, and provides a vehicle for implementing, the provisions of the NZCPS. However, commitment will need to be made to implementing the provisions of the Proposed District Plan in order to properly “give effect” to these provisions. This commitment will need to involve all “stakeholders”. In this regard, the Proposed District Plan is more of an “action plan” than a solution within itself.

4.2.2 National Policy Statements and National Environmental Standards

Section 75 of the RMA requires that a District Plan must give effect to National Policy Statements.

The New Zealand Biodiversity Strategy was published in the year 2000. It was prepared in response to the state of decline of New Zealand’s indigenous biodiversity. The purpose of the Strategy is to establish a strategic framework for action, to conserve and sustainably use and manage New Zealand’s biodiversity. The primary focus is on New Zealand’s indigenous biodiversity. However, because of the value and economic importance of much of our introduced biodiversity, the conservation of the genetic resources of our important introduced species is also addressed. The Strategy establishes national goals to “turn the tide” on the decline of our biodiversity, and to maintain and restore a full range of our remaining natural habitats and ecosystems and viable populations of all native species. The Strategy sets out a comprehensive range of actions to achieve these goals.

A further development was the publication of the draft National Policy Statement (NPS) on Biodiversity, on which the Ministry for the Environment consulted publicly between January and May 2011.

In June 2014 I confirmed with the Ministry for the Environment that:

“There has still been no formal decision on the proposed NPS on Indigenous Biodiversity.

“The Ministry is currently working on a comprehensive programme of Resource Management reforms. As part of these reforms the Ministry will be assessing

potential priorities for national policy direction and environmental regulation, including the proposed NPS on Indigenous Biodiversity.

(Adrian MacLeod MfE, pers comm.)

Although this proposed NPS does not have full legal effect, in my view any consideration of biodiversity at district plan level needs to have regard to the fact that Government has seen fit to initiate the NPS process, and to the direction that process appears to be heading.

The proposed National Policy Statement on Biodiversity contains a list of criteria for identifying areas of indigenous vegetation and habitats of indigenous animals that have been recognised as being rare and/or threatened at a national level. These criteria are based on the Government's Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land. That document identified four national priorities as follows:

National Priority 1: *To protect indigenous vegetation associated with land environments, (defined by Land Environments of New Zealand at Level IV), that have 20 percent or less remaining in indigenous cover.*

National Priority 2: *To protect indigenous vegetation associated with sand dunes and wetlands; ecosystem types that have become uncommon due to human activity.*

National Priority 3: *To protect indigenous vegetation associated with "originally rare" terrestrial ecosystem types not already covered by priorities 1 and 2.*

National Priority 4: *To protect habitats of acutely and chronically threatened indigenous species.*

The proposed National Policy Statement on Biodiversity would require district and relevant regional plans to identify areas of significant biodiversity within five years of that NPS taking effect. Local authorities would be required to manage the effects of activities through district and regional plans and resource consent decisions (or be satisfied that effects are managed by other methods) to ensure there is no net loss of significant indigenous biodiversity.

(Draft) Policies 2 and 4 would be particularly relevant:

POLICY 2

In considering the effects of any matter, local authorities shall, in addition to any area of significant indigenous vegetation or a significant habitat of indigenous fauna identified in, or by, provisions of any relevant regional policy statement, or regional or district plan, regard the following as significant indigenous vegetation or significant habitat of indigenous fauna:

- a. *the naturally uncommon ecosystem types listed in Schedule One*
- b. *indigenous vegetation or habitats associated with sand dunes*
- c. *indigenous vegetation or habitats associated with wetlands*
- d. *land environments, defined by Land Environments of New Zealand at Level IV (2003), that have 20 per cent or less remaining in indigenous vegetation cover*
- e. *habitats of threatened and at risk species.*

(With respect to (d) above, Land Environments New Zealand identifies area Q4.2, being “around Invercargill, east of Lake Te Anau, and valleys in the Catlins”, as “Level IV”. It is readily apparent that less than 20% of the original indigenous cover remains in this general area. It is also readily apparent that the canvas of this area is considerably greater than the Invercargill City District.)

POLICY 4

District plans and any relevant regional plans shall identify, using (where practical) maps and/or schedules, areas of significant indigenous vegetation and significant habitats of indigenous fauna. In identifying these areas, decision-makers must include in their plans the criteria of the relevant regional policy statement and, within five years of this national policy statement taking effect, the criteria of Policy 2a–d (to the extent that these may be broader in scope than those of the relevant regional policy statement) and 2e (to the extent that existing information enabling the application of this criteria is available).

For the purpose of this policy, a relevant regional plan is a regional plan that controls activities that could adversely affect areas of significant vegetation and significant habitat of indigenous fauna. (Boldfacing mine.)

The National Policy Statement on Electricity Transmission was gazetted on 13 March 2008. Amongst other things, it gives guidance to local decision makers in the management of the impacts of the transmission network on its environment. Policies 7 and 8 are relevant to consideration of biodiversity issues:

Policy 7

Planning and development of the transmission system should minimise adverse effects on urban amenity and avoid adverse effects on town centres and areas of high recreational value or amenity and existing sensitive activities.

Policy 8

In rural environments, planning and development of the transmission system should seek to avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities.

In my opinion the Proposed District Plan is consistent with, and provides a vehicle for implementing, the provision of the relevant NPSs outlined above. However, as noted elsewhere commitment will need to be made to implementing the provisions of the Proposed District Plan in order to properly “give effect” to such provisions. This commitment will need to involve all “stakeholders”. In this regard, the Proposed District Plan is more of an “action plan” than a solution within itself.

4.2.3 National Environmental Standards

Section 44A of the RMA prescribes how District Plans must be amended if a rule conflicts with a National Environmental Standard. It conflicts if the rule is more stringent, or the standard states that a rule may not be more stringent. This means that the Council is entitled to make rules that are less stringent than an NES.

The Proposed National Environmental Standard on Ecological Flows and Water Levels would affect biodiversity but is within the bailiwick of a regional council.

The National Environmental Standards on Electricity Transmission Activities came into effect on 14 January 2010. They are relevant to “biodiversity” insofar as electricity lines may cross areas of biodiversity. In essence, existing transmission lines and their maintenance, including access tracks to them, are permitted activities unless they occur in a “natural” area. The Ministry for the Environment website summarises the scope of the NES as follows: It

- sets out a national framework of permissions and consent requirements for activities on existing electricity transmission lines. Activities include the operation, maintenance and upgrade of existing lines.
- specifies that electricity transmission activities are permitted, subject to terms and conditions, to ensure that these activities do not have significant adverse effects on the environment.
- specifies the resource consent requirements for electricity transmission activities that do not meet the terms and conditions for permitted activities.

The NES only applies to existing high voltage electricity transmission lines. It does not apply to the construction of new transmission lines or substations or to electricity distribution lines. (Electricity distribution lines carry electricity from regional substations to electricity users.)

The NES covers activities relating to the operation, maintenance, upgrading, relocation or removal of an **existing transmission line**, including:

- a construction activity.
- use of land or occupation of the coastal marine area.
- activities relating to an access track to an existing transmission line.
- undergrounding an existing transmission line.
- access tracks to existing transmission lines

The NES establishes consent status for the activities associated with operating, maintaining, upgrading, relocating or removal of high voltage electricity transmission lines. A summary is included with this report as Appendix 3. :

In essence, a district plan cannot state provisions that are contrary to or conflict with the provisions of the NES. In relation to trimming or felling, the NES provides that it is a permitted activity unless it occurs within a “natural area”. This entitles councils to maintain rules to restrict activities related to the national grid in the identified significant natural areas. In this instance, in response to submissions, I am recommending (in summary) that “trimming” be a permitted activity but that “felling or removal” be a controlled activity.

In my opinion the Proposed District Plan with the amendments recommended in this report will give effect to the provisions of the National Environmental Standard on Electricity Transmission Activities.

4.2.4 Regional Policy Statement

Under Section 75 of the RMA, a District Plan must give effect to an operative Regional Policy Statement.

The issues, objectives and policies from the Southland Regional Policy Statement (operative since 1997) with special relevance, in my view, to the biodiversity provisions are set out below:

5.2.2 RESOURCE MANAGEMENT ISSUES

The following are considered to be the resource management issues within Southland relating to biodiversity-

1. *Human activity, and encroachment by exotic pest plants and pest animals has (reduced) and continues to reduce the areal extent and ecological value of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*
2. *There is insufficient available information to accurately determine the value and location of areas of significant indigenous habitat, and the flora and fauna contained within them.*
3. *Biodiversity within individual ecosystems can be adversely affected by activities, and the effects of activities, including:*
 - *burning;*
 - *drainage of wetlands;*
 - *inappropriate land use practices;*
 - *alterations to flows in natural water bodies and coastal water;*
 - *the presence of dams and other structures within water bodies and coastal water;*
 - *river management works;*
 - *removal of vegetation within urban areas;*
 - *significant changes in land use;*
 - *ground disturbance;*
 - *disturbance of the seabed;*
 - *clearance of indigenous vegetation;*
 - *reclamation within the coast, lakes and rivers;*
 - *pest plants and pest animals.*
4. *Changes to ecosystems can, because of food-chain linkages for example, adversely affect ecological values beyond the immediate area.*
5. *Reductions in biodiversity impact upon the values of the takata whenua.*
6. *There is a scarcity of information on the Region's ecosystems, the changes that are occurring to them, the rate of those changes, and the consequences for flora and fauna contained within them.*
7. *There is a lack of awareness of ecological processes and potential environmental impacts of activities.*
8. *The introduction of plants and animals in some instances has had adverse impacts upon biodiversity and the balance of ecosystems.*

I note that the Southland Regional Policy Statement cross-references to other issues relating to biodiversity under the headings Takata Whenua, Water Quality, Water Quantity, Lakes Rivers and Wetlands, Soils, Landscape and Natural Features, Built Environment, Transportation, Air Quality, Coast, Mineral and Energy Resources, and Cross-Boundary issues.

The following are the Objectives in the Southland Regional Policy Statement relating to Biodiversity:

Objective 2.1

To protect areas of significant indigenous vegetation and significant habitats of indigenous fauna within Southland where this will maintain or enhance biodiversity of indigenous ecosystems.

Explanation

*Protecting and enhancing species which are indigenous to New Zealand will make a significant contribution to the sustainable management of biodiversity and assist in protecting vulnerable ecosystems, resulting in retention of ecosystem diversity and viability, and the sustainable management of natural and physical resources. **This will require co-ordinated action by statutory organisations and land owners, and a willingness by landowners to provide an appropriate level of protection.***
(Boldfacing mine)

Objective 2.2

To maintain and enhance the biodiversity of indigenous species within the Southland Region.

Explanation

The variety of species found within Southland is a positive measure of the state of the Region's ecosystems. For ecological reasons, it is desirable for that biodiversity to be retained. Maintenance and enhancement of biodiversity is an integral part of the sustainable management of natural and physical resources.

The following are the biodiversity policies:

Policy 2.1

Identify and encourage the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna which maintain or enhance the biodiversity of indigenous ecosystems within Southland. (Boldfacing mine)

Policy 2.2

Apply and give effect to Maori values in relation to areas of significant indigenous vegetation and significant habitats of indigenous fauna.

Policy 2.3

Promote understanding of biodiversity and the factors that can impact positively and negatively upon it.

Policy 2.4

Avoid, wherever practicable, remedy or mitigate adverse impacts on biodiversity and the natural processes of ecosystems.

Policy 2.5

Reduce the adverse effects of pest plants and pest animals on:

- a. *biodiversity;*
- b. *areas of significant indigenous vegetation; and*

c *significant habitats of indigenous fauna.*

At Section 5.25 the Southland Regional Policy Statement details a number of methods by which it hopes to implement these objectives and policies. Many are non-regulatory (e.g. Method 2.3 – Advocacy), however some are directly relevant to the Proposed District Plan in a regulatory sense. They are:

Method 2.9

Prepare, implement and administer Regional and District Plans.

Regional and district plans shall recognise and provide for the protection of areas in the Southland Region identified as containing indigenous vegetation and significant habitats of indigenous fauna that are of significance because they maintain and enhance biodiversity of indigenous ecosystems and the biodiversity of indigenous species when considering the use, development and protection of natural and physical resources.

Method 2.11

Resource Consents

In considering resource consents, consent authorities shall recognise and provide for the provisions of section 6(c) of the Resource Management Act. For example, burning of vegetation within high country fire areas, gravel extraction, discharges to air, land and water, damming, diverting and taking water all require a resource consent under the (transitional) Regional Plan.

The Regional Policy Statement also refers to the role of territorial authorities at Section 5.2.8:

Territorial authorities have a role, within their districts, in relation to their legislative responsibilities to:

- *promote initiatives aimed at promoting biodiversity.*
- *provide within district plans for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*
- *consider the implementation of economic instruments.*

In my opinion the Proposed District Plan is consistent with, and gives effect to, these provisions of the Southland Regional Policy Statement.

4.2.5 Proposed Regional Policy Statement

In accordance with Section 74 subsection 2, the Council must “*have regard to*” any proposed Regional Policy Statement. The Proposed Southland Regional Policy Statement (PSRPS) was notified in May 2012. Submissions have been called for and have closed. They have not yet been considered by Environment Southland. In this context, therefore, the words “*have regard to*” can be taken to mean that the PSRPS must be considered but that the Council is not yet bound to give effect to it.

The PSRPS contains a complete section headed “Biodiversity” (Chapter 6). The provisions that are directly relevant to this report are set out below:

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

species, and of ecosystems". A more diverse ecosystem is better able to withstand environmental stress and has a greater chance of adapting to environmental change.

"

"The local authorities of the region shall be responsible for working together to develop and implement objectives, policies and methods, including rules, for the control of the use of land to maintain indigenous biodiversity in the Southland region."

The over-arching key issues that the PSRPS seeks to address are:

Issue BIO.1: Southland's indigenous ecosystems have been reduced in diversity and extent.

Issue BIO.2: Southland's remaining indigenous ecosystems are under threat.

There is only one objective but it is broad in its compass:

Objective BIO.1 – Understand, maintain, restore and enhance: *Indigenous ecosystems, habitats with indigenous biodiversity values and their range of significance are understood, maintained and restored to a healthy functioning state, and where appropriate enhanced.*

The PSRPS ~~explains its biodiversity~~ policies are as follows:

Policy BIO.1 – Identification of biodiversity. *Regional and district plans shall identify indigenous ecosystems, habitats and indigenous biodiversity values that have the highest levels of significance*

Policy BIO.2 – Collaborative decision-making framework. *Regional and district plans should consider policies, rules and methods to establish a collaborative decision-making framework for activities that*

- (a) provides for activities that affect indigenous ecosystems and habitats with indigenous biodiversity values that have low levels of significance*
- (b) manages activities that affect indigenous ecosystems and habitats with indigenous biodiversity values that have medium levels of significance, and*
- (c) does not allow activities that result in the destruction of indigenous ecosystems and habitats with indigenous biodiversity values that have the highest levels of significance.*

Policy BIO.3 – Ecological assessment. *In considering a resource management proposal which is not a permitted activity that may affect indigenous ecosystems, habitats or indigenous biodiversity values, an ecological assessment shall be completed prior to the activity taking place to determine whether the resource management proposal or proposed activity addresses the maintenance of the indigenous biodiversity values on the site.*

Policy BIO.4 – Community biodiversity initiatives. *Encourage and support community biodiversity initiatives to maintain, restore and/or enhance*

- (a) coastal features, ecosystems and habitats*
- (b) aquatic ecosystems and habitats*
- (c) indigenous ecosystems and habitats*

Policy BIO.5 – Gather, monitor, record and report information. *Continue to gather, monitor, record and report information on Southland’s biodiversity resources and effects of activities, pests and climate change on indigenous ecosystems, to assist with the sustainable management of the resource and the ongoing development and implementation of appropriate management regimes.*

Policy BIO.6 – Active Management.

- (a) *Promote the management of pest animals and pest plants in areas where this will maintain, enhance or restore indigenous ecosystems to a healthy functioning state; and*
- (b) *Encourage the establishment of additional indigenous riparian vegetation as a means of increasing connectivity and enhancing freshwater habitat for indigenous species; and*
- (c) *Encourage the planting of naturally occurring, locally sourced indigenous species and the creation of habitats for indigenous species.*

Policy BIO.7 – Tangata whenua. *To recognise the role of tangata whenua as kaitiaki, provide for:*

- (a) *Tangata whenua values and interests to be incorporated into the management of biodiversity*
- (b) *Consultation with tangata whenua regarding the means of maintaining and restoring areas and habitats identified in accordance with Policy BIO.1 that have particular significance to tangata whenua*
- (c) *Active involvement of tangata whenua in the protection of cultural values associated with indigenous biodiversity*
- (d) *Customary use of indigenous biodiversity according to tikanga*

Policy BIO.8 – Biodiversity offsets. *In considering the use of a biodiversity offset, local authorities shall have regard to the following criteria:*

- (a) *Adherence to the mitigation hierarchy: a biodiversity offset should only compensate for significant residual adverse effects on biodiversity identified after adverse effects have been avoided, or where this is not possible, remedied, or where this is not possible, mitigated*
- (b) *Net gain: a biodiversity offset should be designed and implemented to achieve in situ, measurable conservation outcomes which can reasonably be expected to result in a net gain of biodiversity;*
- (c) *Additional biodiversity outcomes: a biodiversity offset should achieve conservation outcomes above and beyond results that would have occurred if the offset had not taken place. The design and implementation of an offset should avoid displacing activities harmful to biodiversity to other locations*
- (d) *Like-for-like: The design and implementation of a biodiversity offset should re-establish or protect the same type of ecosystem or habitat that is adversely affected, unless an alternative ecosystem or habitat provides a significantly better indigenous biodiversity outcome;*
- (e) *Landscape context: A biodiversity offset should be designed and implemented in a landscape context to achieve the expected measurable conservation outcomes taking into account available information on the full range of biological, social and cultural values of biodiversity and supporting an ecosystem approach;*
- (f) *Long term outcome: The design and implementation of a biodiversity offset 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 project's impacts and preferably in perpetuity;

- (g) *Transparency: The design and implementation of a biodiversity offset, and communication of its results to the public, should be undertaken in a transparent and timely manner.*

There are limits to what can be offset because some vegetation or habitat and associated ecosystems are vulnerable or irreplaceable. In such circumstances off-setting will not be possible and local authorities will need to take full account of residual adverse effects in decision-making processes.

The "Methods" by which the PSRPS seeks to achieve these policies are (in summary):

- (a) The Southland Regional Council (Environment Southland) will:
- i. *Develop a schedule of habitat types for the Southland region. The schedule shall be supported by GIS datasets showing spatial extents of habitat types.*
 - ii. *Develop a biodiversity management plan in collaboration with each of the territorial authorities under the Resource Management Act 1991 providing for the preparation, implementation, and administration of a single set of policies and rules/methods for the management of biodiversity across the region.*
 - iii. *Collaborate –*
 - *with local authorities in classifying activities according to the schedule of habitat types (see (i) above) and in developing provisions to protect these areas; and in defining the spatial extent of wetlands and riparian margins within threatened, at risk and rare habitat types.*
 - *with 'key stakeholder groups' in addressing biodiversity issues in defining the spatial extent of wetlands and riparian margins within threatened, at risk and rare habitat type.*
 - *(direct consultation) with land owners whose properties contain threatened, at risk and/or rare habitat types.*
 - iv. *In relation to resource consents,*
 - *require ecological assessments to be included in resource consent applications where there is potential for activities to affect wetlands and/or threatened, at risk and/or rare habitat types, and*
 - *Include biodiversity enhancement measures and biodiversity offset measures in accordance with the criteria set out in Policy BIO.8 in resource consent assessment criteria.*
 - v. *Consult with key stakeholders and tangata whenua*
 - vi. *Carry out Investigations, research, monitoring and reporting – (particularly) continue to expand upon the High Value Areas (HVAs) programme to address knowledge gaps, especially in the Gore, Waipahi and Foveaux Ecological Districts and other areas facing biodiversity loss as identified in the Biodiversity Strategy for Southland.*

It is clear from the above that Environment Southland sees a very “hands on” approach for itself in managing biodiversity.

Local authorities would “*be encouraged to*”

- a. (In relation to resource consents) *require ecological assessments to be included in resource consent applications where there is potential for activities to affect threatened, at risk and rare habitat types, including those associated with riparian margins; and include biodiversity enhancement measures and biodiversity offset measures*
- b. Consult with key stakeholders and tangata whenua
- c. Actively carry out education, public awareness and promotion
- d. Provide financial assistance including rates relief
- e. “*Structure*” regional pest management programmes, and
- f. “*Collaborate*” with other local authorities to find additional methods.

In my opinion the Proposed District Plan, as publicly notified, certainly “has regard to” the PSRPS. As noted, the provisions of the PSRPS themselves are subject to change.

Note: It is understood that Environment Southland is preparing a variation to the Proposed Southland Regional Policy Statement on matters related to biodiversity. I have been made aware of the likely content of this variation in general terms. However, at the time of finalising this report (August 2014) the variation had not been publicly notified and therefore it is not relevant to this report. If a variation is notified prior to the matter being considered by the Hearings Committee, then it would become a matter that should be taken into account by the Committee, although the weight attributable to it would be expected to be very limited given the timing of its release.

4.2.6 Regional Plans

In accordance with Section 74 of the RMA, a District Plan must not be inconsistent with a Regional Plan.

The Regional Coastal Plan and the principles upon which it is developed is consistent with the concepts of biodiversity developed in later reports and, in particular, defined in the PSRPS.

Concern for “biodiversity” is evident throughout the Plan. For example, at Appendix 5 the following areas (within or adjacent to the Invercargill City District) were identified as “having significant values”.

Description	Maori Cultural Values	Protected Areas	Wetlands, Estuaries, Coastal Lagoons	Marine Mammals and Birds	Ecosystems, Flora and Fauna Habitats
New River Estuary and tidal reaches, from Oreti Beach to Steep Head, excluding "lagoon" adjacent to Invercargill rubbish dump	See listing of archaeological sites. - Consult with iwi	Part of area adjoins Sandy Point Domain (Recreation Reserve)	New River Estuary (Davis, 1987) - Rearing and spawning habitat for marine and freshwater fish species: giant kokopu, Lamprey, and long finned eel.	74 wading and waterfowl species in the New River Estuary area	New River Estuary is part of the Awarua Plains wetlands complex - Most important Southland habitat for birds - Nursery ground for numerous fish and marine invertebrate species: Galaxiids (whitebait), flatfish
Awarua Bay below MHWS, east of Tiwai Road.	As above.	Adjoins Waituna Wetlands Scientific Reserve and Tiwai Peninsula Conservation Land.	Awarua Bay habitat (nationally important (SSWI))for migratory waders and waterfowl	Awarua Bay and mudflats: migratory waders, local waders and waterfowl including Siberian tattler, sanderling, New Zealand dotterel.	Awarua Bay second most important feeding ground for waders in the Awarua Plains Wetland complex

In my opinion the Proposed District Plan is not inconsistent with the relevant provisions of the Regional Coastal Plan.

4.2.7 Iwi Management Plans

Section 74 of the RMA requires that a local authority must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority

Ngai Tahu has lodged an Iwi Management Plan with the Council. The relevant document is the Ngai Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 – The Cry of the People - Te Tangi a Tauria.

Maintenance and enhancement of biodiversity, in particular indigenous biodiversity, is a recurrent theme throughout the document. For example, the Introduction to Part 1 quotes from *Te Whakatau Kaupapa o Murihiku 1997* as follows:

“The land, water and resources in a particular area are representative of the people who reside there. They relate to the origin, history, and tribal affiliation of that group, and are for them a statement of identity. These natural resources also determine the welfare of the tribal group which owns or controls them.”

Fundamental to the document is the principle of *Kaitiakitanga* – the guardianship/stewardship of an area and resources. (Para 2.1, page 42).

In the “Southland Plains” section of the document, there is specific reference at 3.5.17 (page 165) to *Nga Pononga a Tane a Tangaroa – Biodiversity*.

“Tane and Tangaroa are the two atua who are responsible for all living things in the environment, or biodiversity. The protection of indigenous biodiversity is an important value for Ngai Tahu ki Murihiku. Indigenous species, and the habitats that support them, must be protected for future generations.”

Policies from Ngai Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 – The Cry of the People - Te Tangi a Tauria can be summarised as follows:

1. Use policy and consent processes to protect and where necessary enhance all native biodiversity.
2. Advocate for the establishment of indigenous vegetation corridors from mountains to sea.
3. All species are taonga (treasured things).
4. Indigenous vegetation that is removed or damaged as a result of land use activity should be replaced.
5. Use of enhancement of vegetation as a consent condition to mitigate adverse impacts.
6. Planting of indigenous species as a mitigation measure.
7. Recognition and provision for the cultural, spiritual, historic and traditional association of Ngai Tahu ki Murihiku within management/recovery plans.
8. Promote sustainable harvesting.
9. Promote the management of whole ecosystems and landscapes, in addition to single species.
10. Promote integration of biodiversity management across land ownership land use boundaries.
11. Direct efforts to finding solutions to problems of biodiversity decline.
12. Make full use of the knowledge of tangata whenua.

In the “Southland’s Coastal Environment” section general policies are set out at 3.6.1 (page 175) are relevant to the topic of biodiversity in this context:

1. *Ensure the land, water and biodiversity at the interface of Southland’s coastal environment are managed in an integrated way through careful planning and policy instruments which avoid compartmentalising the natural environment.*
2. *Recognise that the degree of connection between the coastal and inland environments is inherent when developing robust systems to address areas of degradation and mitigate for future and potential environmental effects.*
3. *Promote communication and collaboration between groups with an interest in or have links with the coastal environment and its management.*
4.
5.
6. *Respect, protect and enhance coastal areas of importance where possible.*
7.
8.

At Section 3.6.2 a number of issues are identified. Those with direct relevance to biodiversity are:

- *Management of cumulative effects on natural character*
- *Protection of natural dune systems*
- *Protection of coastal wetland ecosystems*
- *Promotion and protection of coastal indigenous biodiversity*

Policies with direct relevant to biodiversity are:

9. *Avoid adverse effects on the natural environment as a consequence of increased demands placed upon land, water and community infrastructure resulting from the granting of new subdivision consents for residential or commercial development.*

10. *Encourage the planting of native plants to enhance indigenous biodiversity*
11. *Promote the use of protection tools such as buffer zones or covenants (placed on titles) to ensure preservation of areas of indigenous vegetation and other culturally important features and places.*
.....
20. *Advocate for the protection of coastal dune systems and enhance and restore these areas as riparian margins between the coast and sea.*

In my opinion, regard has been had to Ngai Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 – The Cry of the People - Te Tangi a Taura in the preparation of the Proposed District Plan and the provisions of the Iwi Management Plan have been carefully taken into account.

4.2.8 Management Plans and Strategies Prepared under other Acts

A District Plan is required to have regard to management plans and strategies prepared under different Acts. For the District Plan review, reserve management plans prepared under the Reserves Act 1977 and the Conservation Management Strategy cover areas of indigenous biodiversity within the Invercargill City District. The Invercargill City Centre Outline Action Plan and The Big Picture also need to be considered.

The Reserves Act 1977 requires local authorities with responsibilities for reserves to prepare and maintain management plans covering each reserve. The following management plans are relevant to “biodiversity”:

Parks Strategy 2013

The Parks Strategy:

- Provides a framework for reserve management plans to be prepared.
- Provides general development standard guidelines for each park category.
- Analyses current and future demand for parks.
- Identifies current deficiencies and future needs for each type of park.
- Provides the context and framework for development contribution requirements.
- Establishes levels of service for each park category.

The strategy is intended to cover a planning period of 10 years (to 2023), with a review to reflect actual growth and community needs/expectations in five years (2018).

Environmental Reserves: Omnibus Management Plan

The Omnibus Management Plan for Environmental Reserves was approved at a meeting on November 22, 2011 by the Invercargill City Council. The plan has been broken down into files, each relating to a specific reserve.

Sandy Point Management Plan (July 2013)

Overall, these management plans

- Provide for maintenance and enhancement of biodiversity (most – but not all - parks and reserves are “green” places).

- Whether that biodiversity is indigenous or exotic, and the extent to which it is significant, varies with the purpose and context of the Plan.

In my opinion the biodiversity provisions of the Proposed District Plan complement, and are complemented by, the biodiversity provisions of these parks management plans.

Conservation Act 1987 – Conservation Management Strategy

The most up to date and relevant document is the Conservation Management Strategy 2014-2024 (CMS). The version used in this report is the June 2013 draft. The Conservation General Policy (2005) requires that regard be given to local government planning documents. In turn, local government planning processes are required to have regard to the Department's statutory plans when preparing documents under the RMA.

The Invercargill City District is within the "Awarua Place", described in the CMS as follows: *"The Awarua Place extends from Fortrose Spit in the east, to Omaui and New River Estuary in the west and The Bluff/Motupōhue in the south"*.

The values and attributes of the "Awarua Place" are set out in pages 98-105 of the CMS, together with the management philosophy of the Department of Conservation for this area.

In my opinion the Biodiversity Section of the Proposed District Plan has regard to the 2013 Conservation Management Strategy.

Local Government Act 2002

The Invercargill City Centre Outline Action Plan was prepared in December 2011. It is intended to guide priorities for action with respect to the built environment of the Invercargill City Centre. The creation and enhancement of urban open spaces are part of the strategy of the Plan. Biodiversity is not seen as a major formative, issue for the inner city of Invercargill, though it is acknowledged that opportunities should be taken to enhance biodiversity through plantings and landscape. The quest for "authenticity" and the theme of reflecting the character of southern New Zealand might well translate into planning for plantings featuring "indigenous biodiversity".

The Big Picture was a non-statutory spatial plan prepared and consulted on in 2011-2012, and intended to reflect and guide the City Council's thinking in carrying out its numerous planning responsibilities under the Local Government Act and other legislation. Conservation of indigenous biodiversity is noted as an "Issue" where relevant – for example on page 24 (map 15) in relation to Otatara and also on page 36 (map 23) in relation to the Awarua Wetlands.

In my opinion the Biodiversity provisions in the Proposed District Plan both reflect and develop the themes canvassed in The Big Picture. The Invercargill City Centre Outline Action Plan has less relevance to biodiversity, although opportunities for including indigenous species in plantings associated with the Inner City Upgrade are noted and the principle is supported in the Proposed District Plan.

4.3 Summary

It is considered that the purpose and principles of the RMA are met by the Biodiversity provisions set out in the Proposed District Plan. The proposed provisions fall within the functions of local authorities. The requirements of Section 32 of the RMA have been met through the evaluations carried out prior to notification and in this report. The various documents required to be considered have been appropriately addressed in the preparation of provisions relating to Biodiversity.

5. ANALYSIS OF SUBMISSIONS

The “Biodiversity” provisions of the Proposed District Plan attracted a large number of submissions and further submissions, compared with other provisions of the Plan. Moreover, there is a greater divergence of opinion and remedies sought evident in the submissions on Biodiversity than with respect to most other topics.

The table below sets out the number of points made in submissions and further submissions on each section of the Proposed District Plan. While numbers in themselves do not indicate the complexity of an issue, they are an indication of the degree to which a particular provision is contentious.

<i>Plan provision</i>	<i>(approximate) Number of submission points</i>
General	10
Introduction	10
Issues	4
Objectives	14
Policies	34
Methods	19
Rules	36
Planning Maps	24
TOTAL	151

The number of further submissions in opposition to the original submission is also unusually high.

It is important to approach any analysis of the submissions on biodiversity fully conscious of the significance placed on the topic both within the RMA itself and in policy documents drawn up at national and regional level under the RMA to which a District Plan must “give effect”. These documents have discussed in some detail in the previous section (Section 4) of this report. As noted in recent case law (*Environmental Defence Society Inc v New Zealand King Salmon Company SC 82/2013[2013] NZSC 101*) when the RMA uses the words “give effect to” it basically means “implement”.

The issues raised in the submissions are:

1. Whether the focus should be *all* biodiversity, or just *indigenous* biodiversity.
2. Whether policy should apply to areas *identified by criteria*, or to areas *identified by criteria AND shown on the Planning Maps*.
3. Was the information used by the Council adequate as a basis for identifying the areas of significant indigenous biodiversity delineated on the planning maps.
4. Public access.
5. Areas to which regulatory provisions should apply.
6. Farming and areas of significant indigenous biodiversity.
7. Significant Indigenous Biodiversity and Infrastructure.
8. Biodiversity offsets.

The key issues are discussed below, with the most contentious first:

5.1 Issue 1 - Whether the focus should be *all* biodiversity, or just *indigenous* biodiversity

The very first submission raises the issue of the scope of the “biodiversity” topic. Is it all biodiversity, indigenous biodiversity, significant indigenous biodiversity, areas of significant indigenous biodiversity, or significant areas of significant indigenous biodiversity?

The RMA at Section 6 identifies as a matter of national importance:

- (b) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.* (Underlining mine)

The word “significant” is generally taken to mean “having meaning”, or “having or likely to have an influence or effect”. “Indigenous” means occurring naturally in a particular environment.

At Section 31(1)(b)(iii) the RMA lists as a function of territorial authorities “*the maintenance of indigenous biological diversity*”.

The policy emphasis in the Regional Policy Statement, the Proposed Regional Policy Statement, the Regional Coastal Plan and other regional policy documents is on indigenous biodiversity.

The focus of the District Plan therefore should be on indigenous biodiversity, with an emphasis on significant areas of it.

This has been interpreted in the Proposed District Plan as follows:

- The canvas of the Plan, taken as a whole, is all biodiversity. (For example, in places the Plan recommends amenity planting and landscape – which indirectly increases biodiversity.)
- The focus of the Biodiversity provisions in the Plan is indigenous biodiversity. A number of policies and methods promote its conservation and enhancement.
- The regulatory provisions of the Plan focus on areas of significant biodiversity. These are areas that were identified in a study carried out by Amber Bill in 1999 and which are delineated on the Planning Maps.

My belief is that the focus of the rules on *significant* biodiversity is an appropriate and balanced policy approach, taking account of the policy framework that must be accounted for and the issues faced in the Invercargill District.

In my view the Proposed District Plan is right in focusing on *indigenous* biodiversity in its policies and non-regulatory methods, and narrowing that to *areas of significant indigenous biodiversity* in the rules.

5.2 Issue 2 - Whether policy should apply to areas *identified by criteria*, or to areas *identified by criteria AND shown on the Planning Maps*

Another submitter, Otatara Landcare Group, cites examples of areas which (in the submitter’s view) should have been included. They are:

- Wetlands in the south of the ICC district.

- Forests in Otatara and the Omaui-Greenhills area (stands of regenerating forest are frequently not included).
- The margins of estuaries (New River Estuary, Mokokoko Inlet, Awarua Bay, Bluff Harbour).
- Coastal vegetation (including sand dunes, gravel beaches, coastal turf vegetation and others).
- Tiwai Peninsula (the submitter claims that some areas of significant indigenous biodiversity are not mapped).

A district plan is a statutory document which must comply with the Rule of Law. The most important application of the Rule of Law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process. The principle is intended to be a safeguard against arbitrary governance.

An important implication of the Rule of Law in a planning context is that it must be clear where, and to whom, a planning provision applies. When areas are identified on publicly available planning maps their location and aerial extent is very clear. Either one's land is affected by such a provision, or it is not.

Where plan provisions regarding significant indigenous vegetation are triggered by criteria the situation is less clear because applying criteria always requires a degree of interpretation. In my view, whether one agrees with plan provisions or not, there should be no doubt whether they apply to a particular parcel of land or not.

Another way of looking at this issue is that by requiring areas of significant indigenous vegetation to be identified on Planning Maps, there is some certainty that regulatory provisions apply to "*areas of significant indigenous biodiversity*".

Recommendation: I am recommending that biodiversity policy should apply to areas identified by criteria including those shown on the Planning Maps, but rules should apply only to areas of significant indigenous biodiversity shown on the Planning Maps.

5.3 Issue 3 – The basis for identifying the areas of significant indigenous biodiversity

Several submissions claim that the information is inadequate and that better information is available and should have been used.

Claims were made by some submitters that the Council could, and should, have used other information.

Some submitters questioned the criteria used by the Council in identifying areas of significant indigenous biodiversity.

If, having heard the submissions, the Hearings Committee was of a view that they should be accepted and the Committee feels that minor changes to the Plan Are insufficient, then it would have the options of recommending to the Council either

- that the "Biodiversity" provisions of the Plan be withdrawn, redrafted and re-advertised, or

- continue toward issuing a decision on the notified Plan but recommend that a Plan Change be initiated in the near future to reflect improved information.

In my experience “withdrawing” a Plan or a section of it is fraught with procedural difficulties, not least of which is that whatever protection the Proposed District Plan does offer areas of significant indigenous biodiversity would be lost until the revised section is published.

Initiating a Plan Change would be a preferable procedure.

It is important to note that a Plan Change would be mandatory if the Proposed NPS on Biodiversity in its present form is formally adopted by central government.

I believe it would be wasteful to initiate a plan change or variation now, then initiate another one if the Proposed NPS comes into effect. This is a possibility if different criteria are eventually adopted in the final NPS than were used in the Council’s own assessment.

It is also relevant to reflect on the quality of the information on which the identification of the areas of significant indigenous biodiversity was based. That study was carried out by an appropriately qualified person (Amber Bill). Her investigations and field work were undertaken over the period December 1998 – April 1999 and the report is dated 1999. It is a lengthy and comprehensive report, comprising three volumes. From Volume 1 page 1:

“An effort was made to carry out field assessment at each property, however, in some cases this was not possible due to limited land access, or difficulty in contacting land owners. Where on-site assessments were not made, this was acknowledged in the report”

The preparation of the District Plan review started in 2010 – 11 years after the completion of the field work for this study. In my view the 1999 Amber Bill survey and report was a reasonable basis on which to draft the provisions of the District Plan review over 2010–2012. However it is acknowledged that this information is now becoming dated. The identified areas themselves may have changed. It is possible that other areas may now be regarded as “significant” that were not identified as such by Amber Bill at the time.

A possible solution is put forward by another submitter, Environment Southland. At submission point 18.7 Environment Southland is recommending an addition to Section 2.3 as follows:

“The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity, as provided for in the Proposed Southland Regional Policy Statement 2012. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.”

Properly managed, this process can offer an incremental and affordable way of improving knowledge and management of biodiversity resources. A future plan change (or changes) may be appropriate if there is shown to be a significant misalignment between the schedule and the areas of significant indigenous biodiversity shown in the District Plan. That matter can be assessed at a future point when the schedule is compiled.

Recommendation: I am strongly recommending that a collaborative approach with Environment Southland to develop knowledge of and planning for significant indigenous biodiversity be signalled in the District Plan and developed.

5.4 Issue 4 - Public access

Several submitters commented on the provisions in the Proposed District Plan regarding public access, and the need (in their view) for it to be at the absolute discretion of the landowner.

It is not quite as simple as that. As discussed in relation to individual submissions in Appendix 1, there is national and regional policy favouring the provision of public access, and in many cases there is a right of access (e.g. along an Esplanade Reserve or along the Queens Chain). On the other hand, the importance of a cooperative approach with landowners in making provision for practical access, including the need to take into account operational and safety matters, is fundamental to access arrangements working satisfactorily for all parties.

My recommendations to submissions acknowledge the need for access arrangements to be satisfactory to landowners, whilst giving effect to national and regional policy that places a high priority on public access.

5.5 Note - The use, or mis-use, of the word “appropriate”

This runs as a theme throughout the submissions on biodiversity. Generally, the word “inappropriate” causes difficulties when used in an objective, policy or method because it implies that other considerations will be brought to bear on a circumstance, but these other considerations are often unstated. Where the context is clear, or where the word is attached to a criterion or criteria, the word “appropriate” can be good practice.

Recommendation. Generally, in my view, the use of the word “appropriate” (*Suitable for a particular person, condition, occasion, or place; fitting*) should be avoided in a planning document unless the context is clear or clear criteria are stated.

5.6 Issue 5 – Areas to which regulatory provisions should apply

A theme of the Proposed District Plan on biodiversity is that non-regulatory methods could be applied to all indigenous biodiversity but that regulatory methods should apply only to areas of significant indigenous biodiversity identified on the Planning Maps. Several submissions either supported, or opposed, this.

As noted above in relation to Issue 2, when it comes to imposing rules, the Rule of Law is an important principle. It must be clear where, and to whom, a planning provision applies. When areas are identified on publicly available planning maps their location and aerial extent is very clear.

5.6.1 My recommendations throughout this report oppose imposing regulation on areas other than those identified on the Planning Maps. There should be no confusion as to the location and extent of these defined areas. To assist those who may need to use this information in the context of considering the need for resource consent, or developing an application, in my opinion it would be helpful if the District

Plan eventually included a schedule of the GPS coordinates identifying the areas of significant indigenous vegetation to which the regulatory provisions apply.

5.7 Issue 7 – Farming and areas of significant indigenous biodiversity

Concerns about farming practices in and around areas of significant indigenous biodiversity were raised by several submitters, on several aspects of the issue. There is concern about whether the presence of an area of significant indigenous biodiversity will impose undue restriction on farming practices on nearby land (“reverse sensitivity”). There is concern about the economic effect on a farming unit of not farming an area identified as significant indigenous biodiversity. There is concern about whether a farmer is allowed to fence off an area of significant indigenous biodiversity. There is concern about whether a farmer can maintain an existing access track – or build a new one. There is concern about whether a farmer, having done the “right thing” and fenced off an area of significant indigenous biodiversity, and maybe enhanced it, only to now have “rules” imposed on him/her about how he/she can use a piece of land he/she had voluntarily taken out of production.

5.7.1 It is of course necessary to respond one by one to these concerns, but the general approach I am recommending can be summarised as follows:

- Confirm the weight of national and regional policy which favours conservation of significant indigenous biodiversity and to which a district plan must give effect.
- Confirm that district-wide rules are necessary to “give effect” to national and regional policy.
- Confirm that “rules” will apply only to areas identified on the Planning Maps as areas of significant indigenous biodiversity.
- Confirm that “new” identified areas of significant indigenous biodiversity would only be introduced into the Planning Maps by way of the Plan Change process.
- Confirm that non-regulatory methods will be used to encourage the conservation of other areas of indigenous biodiversity.
- Delete the additional requirement for a “buffer strip” around vegetation within identified areas of significant indigenous biodiversity. It is unfair, imprecise and unworkable.

5.8 Issue 8 – Significant Indigenous Biodiversity and Infrastructure

This was the subject of several submissions.

The first consideration is that a district plan must give effect to both the National Policy Statement on Electricity Transmission and the National Environmental Standards on Electricity Transmission Activities. Several submitters had not realised the authority of the NES and the protection it gives to maintenance activities of **existing** transmission lines.

The use of the word “infrastructure” in the Proposed District Plan in relation to biodiversity raised difficulties. “Infrastructure” is defined in the Plan, but its scope is such that to enable “infrastructure” in, say, a delineated area of significant indigenous vegetation as a permitted activity could have unexpected consequences. (For example, the word “infrastructure” as defined could be construed to include field tile drains installed by a farmer through an area of wetland.)

The use of the words “network utility services”, linking back to the term *network utility operator* as defined in of the RMA Section 166 is a better choice of words.

In relation to new network utility services it needs to be clarified that the intent of the Plan is that they would need to go through a resource consent process in the course of which they would need to demonstrate how effects on significant indigenous biodiversity can be avoided, remedied or mitigated. The intent is also that such services should demonstrate their functional need to locate in such areas.

Other submitters sought clarification that the plan provisions on significant indigenous biodiversity would not stymie trimming or removal necessary to protect the operational requirements of infrastructure (such as the Airport) or established industry (such as the aluminium smelter).

5.8.1 In general, my recommendations clarify the impact of the NES on Electricity Transmission Activities, and also clarify the activity status of new network utility services in areas of significant indigenous biodiversity.

5.9 Other legislation

In some instances submitters have sought remedies in terms of the District Plan that would be better sought by other legislation under which the Council works, such as the Reserves Act (management planning) or the Local Government Act 2002 (Long Term Planning and Annual Planning).

5.10 Biodiversity offsets

Policy BIO.8 of the Proposed Southland Regional Policy Statement states certain criteria to which local authorities must “have regard” in considering biodiversity offsets. The Proposed District Plan does not contain provisions relating to biodiversity offsets, other than indicating at Rule 3.1.4 that proposals for biodiversity offsets will be considered (among other matters) by the Council in determining resource consent applications under Rules 3.1.2 and 3.1.3.

It was suggested that the Proposed District Plan should have given the possibility of biodiversity offsets more prominence.

5.10.1 In relation to biodiversity offsets I am recommending that the initiative for any biodiversity offsets should come from the applicant, but that they remain a matter which will be taken into account by the Council in determining resource consent applications.

5.11 Minor Amendments

In several instances submitters raised matters which were clearly typographical errors or minor errors of fact (e.g. the incorrect date for a piece of legislation). These have been identified, and corrections recommended, in Appendix 1.

6. SECTION 32 MATTERS

6.1 Scope of Section 32

Section 32 of the RMA establishes the framework for assessing objectives, policies and rules proposed in a Plan. This requires the preparation of an Evaluation Report. This Section of the RMA was recently amended (since the notification of the proposed District Plan) and the following summarises the current requirements of this section.

The first step of Section 32 requires that objectives are assessed to determine whether they are the most appropriate way to achieve the purpose of the RMA (as defined in Section 5).

The second step is to examine policies and rules to determine whether they are the most appropriate way to achieve the objectives. In this instance, the objectives are those proposed by the District Plan. This assessment includes requirements to:

- Identify the costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions (including effects on employment and economic growth).
- Identify other reasonably practicable options for achieving the objectives; and
- Assess the efficiency and effectiveness of the provisions in achieving the objectives.

An Evaluation Report was released at the time of notification of the Proposed Plan.

Section 32AA of the RMA requires a further evaluation to be released with decisions outlining the costs and benefits of any amendments made after the Proposed Plan was notified.

Section 32 states that Evaluation Reports need to contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. This means that if in its decision the Hearings Committee recommends minor changes from what was in the Proposed Plan, a further evaluation can be relatively brief.

6.2 Relevant Section 32AA Matters

The following is a summary of the recommended amendments to the Introduction and policies (listed in full as Appendix 2) and considered relevant for further evaluation under Section 32AA of the RMA.

- Minor changes to the text to the introduction to Biodiversity in Section 2 (Issues, Objectives and Policies) including signalling a commitment to work collaboratively with Environment Southland on improving information on areas of significant indigenous biodiversity.
- A very minor wording change to one of the issues.
- Very minor changes to the wording of Objectives 1 and 2 (adding the word “significant”).
- Very minor changes to the wording of the policies.

- Very minor changes to the methods of implementation.
- Minor changes to Rule 3.1.1 (permitted activities).
- The introduction of a new Rule 3.1.1A (controlled activities) covering the felling or removal of vegetation, within areas of significant indigenous vegetation, where that felling or removal is needed in relation to infrastructure.
- Very minor changes to the rules concerning discretionary and non-complying activities (Rules 3.1.2 and 3.1.3).
- Two additions to assessment criteria (Rule 3.1.4).
- A minor change to the definition of “earthworks”.
- A new definition of the term *network utility operator*, to help align the Plan with the RMA.

6.3. Section 32AA Further Evaluation

The “Biodiversity” section of the original Section 32 report (pages 21- 28) is relevant to this report. The changes proposed are within the scope of the original evaluation findings and do not raise any additional matters for consideration.

The changes that are recommended are minor. It follows that the environmental, economic, social or cultural effects anticipated to arise as a consequence of the changes are minor. A detailed assessment or quantification of costs and benefits is neither practical nor necessary with respect to the plan provisions pertaining to the biodiversity.

7. CONCLUDING COMMENTS

The Biodiversity provisions of the Proposed District Plan attracted a large number of submissions compared with other district-wide provisions of the Plan.

There are two over-arching themes.

The first is that a number of submissions felt that the Plan had not gone far enough in protecting indigenous biodiversity, or even biodiversity as a whole. They also submitted to the effect that the information base used by the Council in drafting the Plan was inadequate and additional areas 'should' have been identified or that other information "should" have been used. To accept and give effect to these submission points would, in my opinion, require a plan change process, involving additional expert assessments which are subject to public review and consultation. This possibility this may be best contemplated if and when the NPS is settled and the RPS is finalised.

The basis for the Biodiversity provisions in the Plan was a comprehensive study carried out for the Council in 1998-1999 by a qualified ecologist. In my view that was a reasonable basis for policy development. The question arises, what has happened since 1999 and has the problem changed? Some information review is required.

The answer to this need has been provided by one of the submitters – Environment Southland. This submission was in favour of:

".... working in collaboration with other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region."

It is relevant that government has seen fit to propose a National Policy Statement (NPS) on Biodiversity. The published draft of this document would require that territorial authorities prepare a plan change to give effect to its provisions. The information that will be provided through the collaborative approach advocated by Environment Southland will place the Council in a good position to respond to this NPS if and when adopted.

The second over-arching theme is how, and to what areas, should the District Plan provisions be applied. I have concluded that it would be inefficient and unreasonable to apply regulatory methods other than to areas clearly identified in the Planning Maps – the areas of significant indigenous biodiversity. However, I have also recognised that there are areas of indigenous biodiversity outside of these identified areas, and that it is reasonable for the District Plan to state issues and include objectives, policies and non-regulatory methods aimed at conservation of these areas.

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APPENDIX 1 – RECOMMENDATIONS ON SUBMISSIONS

Submitter	PROVISION	Submission	Recommendation
GENERAL			
<p>48.1 Forest & Bird Society</p>	<p>General</p>	<p>The submitter is concerned that the biodiversity rules only apply to areas of significant indigenous biodiversity, and then only areas that are shown on the Planning maps. The submitter believes that this does biodiversity a disservice and will ultimately result in further biodiversity losses.</p> <p>DECISION SOUGHT The submitter seeks that significant biodiversity recognised should not solely be shown on Planning Maps but also be able to be recognised through use of appropriate criteria</p>	<p>Reject</p> <p>The RMA at Section 6 identifies as a matter of national importance</p> <p>(c) <i>the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.</i> (Underlining mine)</p> <p>At Section 31(1)(b) (iii) the RMA lists as a function of territorial authorities “<i>the maintenance of indigenous biological diversity</i>”.</p> <p>The word “significant” is generally taken to mean “having meaning”, or “having or likely to have an influence or effect”. “Indigenous” means occurring naturally in a particular environment.</p> <p>The focus of the District Plan, therefore should be on indigenous biodiversity, with an emphasis on significant areas of it.</p> <p>This has been interpreted in the Proposed District Plan as follows:</p> <ul style="list-style-type: none"> • The “canvas” of the Plan, taken as a whole, is all biodiversity. • The focus of the Biodiversity provisions in the Plan is indigenous biodiversity. A number of policies and methods promote its conservation and enhancement. • The regulatory provisions of the Plan focus on areas of significant biodiversity. These are areas

Submitter	PROVISION	Submission	Recommendation
			<p>that were identified in a study carried out by Amber Bill in 1999 and which are delineated on the Planning Maps.</p> <p>My belief is that the focus of the rules on <i>significant</i> biodiversity is an appropriate and balanced policy approach, taking account of the policy framework that must be accounted for and the issues faced in the Invercargill District.</p> <p>A district plan is a statutory document and is subject to a legal principle known as the Rule of Law. An important implication of the Rule of Law in a planning context is that it must be clear where, and to whom, a planning provision (particularly a regulatory provision) applies. When areas are identified on publicly available planning maps their location and aerial extent is very clear.</p> <p>It is recognised in response to other submissions that there may be a need for ongoing research to refine knowledge of the location and extent of significant areas of biodiversity. If the results of such research indicate the need for formal identification of additional areas, then they should be introduced to the District Plan by way of the Plan Change procedure in order that the regulatory impact of a district plan rule on what in most cases will be private property can be properly justified.</p> <p>If a resource consent is triggered by another provision in the plan, in view of the national and regional policy already in place, a competent Assessment of Environmental Effects would be</p>

Submitter	PROVISION	Submission	Recommendation
			required to address the effect of the proposal on any indigenous biodiversity affected by the proposal.
48.7 Forest & Bird Society	General	<p>The submitter is concerned that the ICC has very limited in-house expertise in ecology and biodiversity when assessing resource consents involving biodiversity, and recommends that independent ecologists are utilised to assist with such consents, and that DoC and ES are involved as affected parties.</p> <p>DECISION SOUGHT The submitter seeks that ICC utilise independent ecologists to assist with assessing resource consents, and that the Department of Conservation and Environment Southland be considered as affected parties.</p>	<p>Noted</p> <p>This matter can be considered on a case by case basis as resource consents are processed.</p> <p>Depending on the matter to be determined, the use of independent professional ecological advice may well be good practice. In some instances a specific area of expertise or qualification is required to fulfil a statutory function e.g. a licensed cadastral surveyor has certain legal functions in relation to survey plans. In others, for example in the preparation of an Assessment of Environmental Effects, the quality of the document, and the weight than can be placed on it in decision-making, depends on the extent to which “appropriately qualified people” have contributed when specialised expertise is needed.</p>
54.1 Otatara Landcare Group	General	<p>The submitter is concerned that the biodiversity rules only apply to areas of significant indigenous biodiversity, and then only areas that are shown on the Planning maps. The submitter believes that relying on the Planning Maps only will inevitably result in further biodiversity losses.</p> <p>DECISION SOUGHT The submitter seeks that significant biodiversity recognised should not solely be shown on Planning Maps but also be able to be recognised through use of appropriate criteria.</p>	<p>Reject</p> <p>On the same basis and for the same reasons as 48.1.</p> <p>It is acknowledged that the submitter gives examples of general areas not included in the Planning Maps which the submitter considers should have been included. However, inclusion of further areas could be done by way of the plan change process, in order to give those affected the opportunity to participate in the process, and to ensure that qualified ecologists have assessed the significance of the biodiversity.</p>

Submitter	PROVISION	Submission	Recommendation
<p>FS2.7 NZAS</p>	<p>General</p>	<p>Oppose Submissions 48.7 and 54.1 The further submitter supports the intention to protect biodiversity within the district however considers it is important that there is appropriate recognition for other potential developments.</p> <p>The further submitter considers that linking the biodiversity provisions to areas identified in the Planning Maps provides certainty as to when the biodiversity rules apply.</p> <p>The further submitter does not consider all biodiversity within the district has uniform value and considers it appropriate that significant areas are identified and protected.</p> <p>DECISION SOUGHT Criteria included in the Proposed District Plan is retained.</p> <p>OR</p> <p>That the further submitter has an opportunity to comment on any suggested amendments to the criteria</p>	<p>Accept</p> <p>It is accepted that linking the biodiversity provisions to areas identified on the Planning Maps provides certainty as to when the biodiversity rules apply.</p>

Submitter	PROVISION	Submission	Recommendation
FS4.5 Federated Farmers	General	<p><i>Oppose Submissions 48.7 and 54.1</i> The further submitter considers that there is adequate protection provided elsewhere in the Plan addressing indigenous biodiversity.</p> <p>The further submitter considers that protecting all indigenous biodiversity would be unworkable in practice and there are times when the removal of vegetation may be necessary and where effects can be appropriately managed.</p> <p>The further submitter supports the criteria used by the Council to assess areas of significant indigenous biodiversity, but considers that this process needs to include full landowner involvement and collaboration.</p>	<p>Accept</p> <p>It is accepted that in protecting areas of significant indigenous biodiversity, the areas subject to regulation need to be clearly identified and unambiguous.</p> <p>It is also accepted that the process of identifying such areas and showing them in a public document needs to include full consultation with landowners.</p>
FS7.1 South Port New Zealand Ltd	General	<p><i>Support in part submission 48.2 and 54.2</i> The further submitter considers it appropriate to map areas of significant indigenous vegetation but believes that such mapping should be completed in association with the relevant stakeholders, and needs to take into consideration the level of development or, and alterations to, the natural environment.</p>	<p>Accept</p> <p>On the same basis and for the same reasons as FS 2.7.</p>

Submitter	PROVISION	Submission	Recommendation
<p>54.6 Otatara Landcare Group</p>	<p>General</p>	<p>The submitter is concerned that the ICC has no in-house expertise in undertaking ecological inspections, and recommends that consultant ecologists are employed to assist with such applications, and that DoC and ES are involved as affected parties.</p> <p>DECISION SOUGHT The submitter seeks that ICC employs consultant ecologists to assist with assessing resource consents, and that the Department of Conservation and Environment Southland be considered as affected parties.</p>	<p>Reject</p> <p>On the same basis and for the same reasons as 48.7.</p> <p>It should be also noted in response to this submission that in response to submission 18.7 (below), a collaborative approach with Environment Southland is recommended as an addition to the <i>introduction</i> to Section 2.3 on page 5 (adding a new paragraph above the final paragraph in that section).</p> <p><i>“In addition to providing</i></p> <p><u><i>The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.”</i></u></p> <p><i>The Council acknowledges.....”</i></p>
<p>56.16 Jenny Campbell</p>	<p>General</p>	<p>The submitter strongly supports the emphasis on biodiversity but it needs to go beyond ensuring protecting what we already have. The submitter believes much more planting of natives needs to be encouraged within the city limits.</p> <p>DECISION SOUGHT (No particular relief sought)</p>	<p>Accept</p> <p>Policies 2, 3, 4, 5 and 6 enable the remedy sought by the submitter.</p> <p>The submitter may wish to take the matter up in submissions under the Reserves Act (e.g. submissions to parks management plans) and the Local Government Act (e.g. Annual Plan).</p>

Submitter	PROVISION	Submission	Recommendation
56.20 Jenny Campbell	General	<p>The submitter considers it essential that significant heritage trees, all remnants of native vegetation on the coast need to be given special protection and valued for their intrinsic aspects, not just for economic returns. The values of estuaries need to be noted and retained.</p> <p>DECISION SOUGHT (No particular relief sought)</p>	<p>Reject</p> <p>On the same basis and for the same reasons as 48.1.</p> <p>The focus of national and regional policy, and therefore of the Biodiversity regulatory provisions of the Proposed District Plan, is on areas of significant indigenous biodiversity, not all biodiversity.</p> <p>The planning district boundary is MHWS (Mean High Water Springs) which means that estuaries are outside the bailiwick of a district plan.</p>
FS4.6 Federated Farmers	General	<p>Oppose submission 56.20</p> <p>The further submitter considers that there is adequate protection in the section and in other areas of the plan that address indigenous biodiversity.</p>	Accept
SECTION 2.3 - ISSUES, OBJECTIVES AND POLICIES			
Introduction			
54.8 Otatara Landcare Group	Sections 2,2 and 2.3	The submitter generally supports this section (No particular relief sought)	Accept

Submitter	PROVISION	Submission	Recommendation
<p>18.7 Environment Southland</p>	<p>Introduction</p>	<p>The submitter generally supports the overall direction of this chapter.</p> <p>The submitter explains that Environment Southland is currently developing a Schedule of Threatened, At Risk and Rare Habitat Types for the Southland Region, as well as a proposal for a Regional Biodiversity Strategy, and wishes to work in collaboration with the Invercargill City Council, other local authorities and the community to maintain, restore and enhance indigenous biodiversity across the Southland region.</p> <p>DECISION SOUGHT</p> <p>The submitter seeks that the introduction to Section 2.3 be amended, by inserting the following:</p> <p><i>“The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity, as provided for in the Proposed Southland Regional Policy Statement 2012. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.”</i></p>	<p>Accept</p> <p>It is recommended that the following be added to the <i>introduction</i> to Section 2.3 on page 5 (adding a new paragraph above the final paragraph in that section).</p> <p><i>“In addition to providing</i></p> <p><u><i>The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.”</i></u></p> <p><i>The Council acknowledges</i>”</p>

Submitter	PROVISION	Submission	Recommendation
<p>48.9 Forest & Bird Society</p>	<p>Introduction</p>	<p>The submitter considers that additional criteria should include information from ecological surveys and reports. The submitter says that there are several surveys and reports that document important biodiversity (e.g. The Southland Plains Ecological District Protected Natural Area Programme survey report).</p> <p>DECISION SOUGHT (No specific relief sought)</p>	<p>Reject</p> <p>The areas identified on the Planning Maps were done so on the basis of a specially commissioned study of the Invercargill city district carried out by Amber Bill in 1999.</p> <p>The submitter does not cite the “several other” surveys and reports that it is believed should have been used. The Southland Plains Ecological District Protected Natural Area Programme Survey Report is not cited on the DoC website, indicating that there is no final report.</p> <p>Additional areas could now properly be included only by way of Plan Change.</p>
<p>64.1 Department of Conservation</p>	<p>Introduction</p>	<p>Oppose. The submitter considers that the criteria detailed in the introduction detailing how to identify areas of significant indigenous biodiversity requires replacement to enable the correct identification of significant areas.</p> <p>The submitter also considers that areas of indigenous biodiversity should be either significant or not, and there should be no ranking of importance within significance.</p> <p>DECISION SOUGHT The submitter seeks to replace the criteria listed in the introduction with the following:</p>	<p>Accept in part, reject in part</p> <p>It is accepted that areas of indigenous biodiversity should be either “significant” – and identified on the Planning Maps – or not.</p> <p>It is not accepted that the criteria can be changed on which areas of significant biodiversity, identified on the Planning Maps, were chosen. The criteria (A) to (F) on page 2-4 are by way of explanation as to how the areas shown on the Planning Maps came to be identified. This is not a policy statement. If different criteria had been used, different areas may have been chosen (and there are submissions saying that is what should have happened).</p>

Submitter	PROVISION	Submission	Recommendation
		<p>(A) <u>Representativeness:</u></p> <ol style="list-style-type: none"> 1. <u>Indigenous vegetation or habitat of indigenous fauna that is representative, typical or characteristic of the natural diversity of the relevant ecological district.</u> 2. <u>Indigenous vegetation or habitat of indigenous fauna that is a relatively large example of its type within the relevant ecological district.</u> 3. <u>Indigenous vegetation or habitat of indigenous fauna that is degraded but retains key natural ecosystem functions (for example hydrology or soil formation processes).</u> <p>(B) <u>Rarity/Distinctiveness:</u></p> <ol style="list-style-type: none"> 4. <u>Indigenous vegetation or habitat of indigenous fauna that has been reduced to less than 20% of its former extent in the Region or relevant land environment ecological district or freshwater management.</u> 5. <u>Indigenous vegetation or habitat of indigenous fauna that supports an indigenous species that is threatened, at risk, or uncommon, nationally or within the relevant ecological district.</u> 6. <u>The site contains indigenous vegetation or an indigenous species at its distribution limit within Southland Region or nationally.</u> 7. <u>Indigenous vegetation or an association of indigenous species that is distinctive, of restricted occurrence, occurs within an</u> 	<p>If the draft National Policy Statement on Biodiversity were to be adopted in its present form, the Council would be required to identify in its district plan, in addition to areas already identified by Environment Southland, areas of significant indigenous biodiversity based on the following criteria:</p> <ol style="list-style-type: none"> a. The naturally uncommon ecosystem types (listed in Schedule One of the NPS). b. Indigenous vegetation or habitats associated with sand dunes. c. Indigenous vegetation or habitats associated with wetlands. d. Land environments, defined by Land Environments of New Zealand at Level IV (2003), that have 20 per cent or less remaining in indigenous vegetation cover. e. Habitats of threatened and at risk species. <p>Adopting the criteria suggested by the submitter and incorporating them in the Proposed District Plan now would not be consistent with the recommended response to submission 18.7 (above) which is to insert the following on page 2-5:</p> <p><i>“In addition to providing</i></p> <p><i><u>The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a</u></i></p>

Submitter	PROVISION	Submission	Recommendation
		<p><u>originally rare ecosystem, or has developed as a result of an unusual environmental factor or combinations of factors.</u></p> <p>(C) Diversity and Pattern</p> <p>8. <u>Indigenous vegetation or habitat of indigenous fauna that contains a high diversity of indigenous ecosystem or habitat types, indigenous species or genotypes, or has changes in species composition reflecting the existence of diverse natural features or ecological gradients.</u></p> <p>(D) Naturalness</p> <p>9. <u>Indigenous vegetation that is in a relatively intact state for the relevant ecological district i.e. has relatively little human modification.</u></p> <p>(E) Ecological Context</p> <p>10. <u>Vegetation or habitat of indigenous fauna that provides or contributes to an important ecological linkage or network, or provides an important buffering function.</u></p> <p>11. <u>A naturally occurring wetland.</u></p> <p>12. <u>Indigenous vegetation of habitat of indigenous fauna that provides important habitat (including refugees from predation, or key habitat for feeding, breeding or resting) for indigenous species, either seasonally or all year.</u></p> <p>13. <u>Contribution to ecosystem services.</u></p> <p>14. <u>Contribution to cultural values.</u></p>	<p><u>supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.”</u></p> <p>The Council acknowledges</p> <p>Furthermore, it would not be consistent with the wording of the Proposed National Policy Statement on Biodiversity.</p> <p>However, it is accepted that minor changes to the wording on the third last paragraph on page 2-4 of the Proposed District Plan can be made to improve its accuracy.</p> <p>It is recommended that the third last paragraph on page 2-4 be amended as follows:</p> <p><i>“The most important areas of significant indigenous biodiversity within the district include the Otago Peninsula</i>”</p>

Submitter	PROVISION	Submission	Recommendation
		<p>AND</p> <p>Reword the following statement:</p> <p>“... The most important areas of significant indigenous biodiversity within the district include the Otatarā Peninsula Omaui and Bluff Hill ...”</p>	
<p>FS4.7 Federated Farmers</p>	<p>Introduction</p>	<p><i>Oppose submission 64.1</i></p> <p>The further submitter supports the criteria used by Council to assess areas of significant indigenous vegetation but considers that this process should include full landowner involvement and collaboration.</p> <p>The further submitter considers that there are areas of indigenous biodiversity that are more important than others and that it is appropriate to prioritise these so that resources can be directed accordingly.</p> <p>DECISION SOUGHT (No specific relief sought)</p>	<p>Accept in part, reject in part</p> <p>The further submitter’s acceptance of the criteria used by the Council in identifying areas of significant indigenous vegetation identified on the Planning Maps is noted.</p> <p>In terms of formally identifying specific areas of significant indigenous biodiversity in a district plan, it is important to distinguish with some precision what is “significant” – and subject to regulatory provisions – and what is not.</p>
<p>65.2 ICC Environmental and Planning Services</p>	<p>Introduction</p>	<p>Typo. Ramsar is not an acronym and therefore does not need to be typed in capitals.</p> <p>DECISION SOUGHT The submitter seeks to amend references to “RAMSAR” by using the word “Ramsar”.</p>	<p>Accept</p> <p>At pages 2.4 – 2.5 change the paragraph that commences at the foot of page 2.4 as follows:</p> <p><i>“The Awarua Plain contains the district’s largest wetland, which extends into the Southland District. A significant part of this wetland area is managed by</i></p>

Submitter	PROVISION	Submission	Recommendation
			<p><i>the Department of Conservation (DOC), and makes up a part of the Seaward Moss Reserve. The Awarua Wetland is listed as a wetland of international importance under the RAMSAR—<u>Ramsar</u> Convention</i></p> <p>Note: The Convention on Wetlands of International Importance, called the Ramsar Convention, is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources.</p> <p>The Ramsar Convention is the only global environmental treaty that deals with a particular ecosystem. The treaty was adopted in the Iranian city of Ramsar in 1971 and the Convention’s member countries cover all geographic regions of the planet.</p>
<p>71.1 NZAS Ltd</p>	<p>Introduction</p>	<p>Support in part. The submitter acknowledges the importance of protecting the important and indigenous biodiversity but notes that this may not always be possible.</p> <p>The submitter also notes that public access will not always be possible, and also considers that it is necessary to recognise that there are areas where DOC owns land that is controlled by the submitter to avoid misinterpretation that access should be given over that land.</p>	<p>Accept in part.</p> <p>In response to this submission and also in response to submission 88.26 it is recommended that the final paragraph of the introduction be changed to read:</p> <p><i><u>“The provision of public access should not be subject to arbitrary restrictions. Any restrictions should be determined on a case by case basis if needed to protect important values including values to tangata whenua, avoid adverse environmental effects, protect river management works, protect public health and safety, provide for national security needs and avoid animal welfare issues and disruptions to normal farming practices should not compromise public</u></i></p>

Submitter	PROVISION	Submission	Recommendation
		<p>DECISION SOUGHT</p> <p>The submitter seeks to amend the final paragraph of the Introduction as follows:</p> <p>“... The provision of public access should not compromise public safety or security issues and the Council accepts that where private land is involved the final decision on whether to permit the public access, and the conditions of such access, will be that of the land owner <u>or occupier</u>.”</p>	<p>safety or security issues and the Council accepts that where private land is involved the final decision on whether to permit the public access, and the conditions of such access, shall be that of the landowner. The provisions of the Trespass Act 1980 also remain in instances where people access areas that the landowner does not wish to open to the public.</p> <p>Where there is an esplanade reserve or esplanade strip, or where the “Queen’s Chain” exists along coastal margins, there is likely to be a legal right of access to the public. Further, the NZ Coastal Policy Statement contains policy favouring the provision of walking access for the public along the coastal marine area.</p>
<p>FS 4.8 Federated Farmers</p>	<p>Introduction</p>	<p><i>The submitter supports in part submission 71.1</i></p> <p>The further submitter notes that there will be instances where the clearance of indigenous vegetation is necessary and where the effects can be appropriately managed.</p> <p>In regard to public access, the further submitter believes that where the land is owned by one party and occupied/managed by another, both parties should be required to consent to public access before access is granted.</p>	<p>Accept in part, reject in part</p> <p>Clearance of vegetation is not prohibited by the provisions of the Proposed District Plan but within the areas identified as significant areas of indigenous vegetation it would be a non-complying activity. This means that “necessary” clearance of significant indigenous vegetation could be authorised by way of resource consent.</p> <p>In relation to public access, the submission is rejected (in part) on the same basis and for the same reasons as 71.1 (above).</p>

Submitter	PROVISION	Submission	Recommendation
<p>88.26 Federated Farmers</p>	<p>Introduction</p>	<p>Support.</p> <ol style="list-style-type: none"> 1. As well as acknowledging the importance of indigenous biodiversity, the submitter considers it is also important to recognise the positive contribution of landowners as guardians of their land and to recognise that the economic, social and cultural well-being of people and communities depends on making reasonable use of land. 2. The submitter supports the use of set criteria to provide certainty in the identification of significant indigenous biodiversity, and encourages the use of an independent ecologist in the assessment of any such areas, in conjunction with ground-truthing and stakeholder involvement. 3. The submitter considers that reference to ponds within reserves, on farms and at gravel extraction areas adds a level of uncertainty and either needs to be clarified as being outside areas of significance or removed. 4. The submitter supports the plan's reference to the importance of non-regulatory methods in this area. 5. The submitter states that any such public access to areas of indigenous 	<p>Accept in part.</p> <p>Submission sub-points 1, 2 and 4 are accepted.</p> <p>In response to submission sub-point 3, it is not accepted that the references should be deleted at the second paragraph on page 5 to <i>“numerous ponds within reserves and on farms that contribute to wetland habitat”</i> and to <i>“gravel extraction areas between the Oreti Beach Sand Dunes and the Oreti River (that) have potential, once extraction has been completed, to be turned into wetland areas.</i></p> <p>These paragraphs are an interpretation of the “biodiversity” issue and form the context for the objectives and policies that follow. From my knowledge of these areas I believe the comment included in the Proposed Plan to be fair and reasonable.</p> <p>In response to submission sub-point 5, it is not accepted that public access to areas of significant biodiversity should be “fully dependent” on relevant landowner permission because national policy (notably the Coastal Policy Statement) favours public access to areas of biodiversity along the coast, and the public does have a right of access along the foreshore (below MHWS) and, in many cases, to the “Queens Chain” around the coastal margin.</p> <p>It is accepted and recommended, however, that public access to areas of significant indigenous biodiversity needs to be <u>“determined on a case by case basis if needed to protect important values</u></p>

Submitter	PROVISION	Submission	Recommendation
		<p>biodiversity needs to be at the permission of the landowner to ensure matters of safety, privacy, animal welfare and security are fully acknowledged.</p> <p>DECISION SOUGHT The submitter seeks that Council:</p> <ul style="list-style-type: none"> • Adopt its approach to identifying significant areas of indigenous biodiversity but ensure that any such process includes full landowner involvement and collaboration; • Either clarifies or removes reference to ‘other’ non-significant habitats as identified above; (<i>i.e. ‘numerous ponds within reserves and on farms that contribute to wetland habitat’</i>) • Ensure the strong use of non-regulatory methods in this area; • Ensure that any encouragement of public access to areas of indigenous biodiversity is fully dependent on relevant landowner permission. 	<p><u><i>including values to tangata whenua, avoid adverse environmental effects, protect river management works, protect public health and safety, provide for national security needs and avoid animal welfare issues and disruptions to normal farming practices”</i></u> as recommended in response to submission 71.1 (above).</p> <p>It is recommended that the final paragraph on page 2-5 of the Introduction be changed to read as set out in the recommendation to submission 71.1.</p>
<p>FS 2.9 NZAS Ltd</p>	<p>Introduction</p>	<p>Support Submission 88.26 The further submitter supports an approach of including landowner and occupier involvement and collaboration in identifying areas of significant indigenous biodiversity, and that public access to areas of indigenous biodiversity is dependent on relevant landowner and occupier permission.</p>	<p>Accept in part. The recommended response to submission 71.1 allows the relief sought but clarifies that it is the landowner, not the occupier, whose permission is needed for public access.</p>

Submitter	PROVISION	Submission	Recommendation
		<p>DECISION SOUGHT The submitter seeks to retain introduction as notified (subject to amendment sought in submission 71.1).</p>	
2.3.1 Issues			
<p>77.1 Te Runaka o Waihopai and Te Runaka o Awarua</p>	Issues	Support, and seeks their retention.	Accept
<p>88.27 Federated Farmers</p>	Issues	<p>Oppose in part. The submitter believes that the emphasis should be on the threats from further inappropriate subdivision, land use change and development, and suggests that often such land use changes will result in enhancement of biodiversity or little or no adverse effect on biodiversity.</p> <p>DECISION SOUGHT The submitter seeks that the following amendment is made to Issue 1, with additions underlined:</p> <p>“Invercargill’s indigenous ecosystems have been reduced in diversity and extent over time and are under threat from further <u>inappropriate</u> subdivision, land use change and development.”</p>	<p>Accept in part</p> <p>Generally, The words “appropriate” and “inappropriate” can cause difficulties when used in the context of a statutory plan because the words imply the need for a judgement on an individual circumstance, without necessarily indicating on what basis the judgement will be exercised.</p> <p>The submitter’s concern seems to be that the issue is trying to say that Invercargill’s indigenous ecosystems are under threat from all further subdivision, land use change and development – which is obviously not the case.</p> <p>If this is the submitter’s concern then it can be met with a different choice of words.</p> <p>It is recommended that Issue 1 (page 2-5) be changed to read:</p> <p><i>“Invercargill’s indigenous ecosystems have been reduced in diversity and extent over time and are under threat <u>in some areas</u> from further subdivision, land use change and development.”</i></p>

Submitter	PROVISION	Submission	Recommendation
FS2.11 NZAS Ltd	Issues	Support submission 88.27 The further submitter generally supports the intention to protect biodiversity, however it also considers that it is important that there is recognition of appropriate development. The further submitter seeks to amend issue 1 as sought by submission 88.27.	Accept On the same basis and for the same reasons as 88.27.
18.9 Environment Southland	Issue 1	Support, and seeks its retention.	Accept
2.3.2 Objectives			
88.28 (a) Federated Farmers	Objective 1	<p>Oppose in part. The submitter is concerned with the wording in Objective 1 as it may not always be appropriate or necessary to maintain, restore or enhance indigenous vegetation and habitats if the effects of any activity are no more than minor or can be mitigated.</p> <p>The submitter suggest the use of the term “where appropriate” should also be used for maintaining and restoring recognising that there will be instances where such maintenance or restoration will not always be possible.</p> <p>The submitter also considers that the appropriate emphasis here should be upon areas of significant indigenous vegetation and significant habitats of indigenous fauna. This more appropriately reflects the RMA priorities.</p>	<p>Accept in part</p> <p>It is not accepted that the words “where appropriate” should be used in the Policy in relation to maintenance or restoration.</p> <p>As noted in response to submission 88.27, generally, the words “appropriate” and “inappropriate” can cause difficulties when used in an objective or policy because they imply the need for a judgement on an individual circumstance.</p> <p>The word “appropriate” is used in the Proposed District Plan as notified. However, in Objective 1, the word is used in the context of “enhancement” to indicate that enhancement will not always be the right thing to do, but that it will be in certain circumstances.</p> <p>The submitter suggests that the word “where appropriate” should also apply to “maintenance”. National and regional policy is strong on the need to</p>

Submitter	PROVISION	Submission	Recommendation
		<p>DECISION SOUGHT The submitter seeks to make the following amendments to Objective 1:</p> <p><u>“Where appropriate, significant</u> indigenous vegetation and habitats with indigenous biodiversity values are maintained, restored to a healthy functioning state, and where appropriate or <u>enhanced.”</u></p>	<p>“maintain” biodiversity. The addition of the words “where appropriate” would weaken the policy to the point where it would no longer meet statutory tests regarding national and regional policy.</p> <p>It is accepted that adding the word “<i>significant</i>” in the context of “<i>areas of significant indigenous biodiversity</i>” would help promote consistency throughout the biodiversity provisions of the Proposed District Plan. The Plan is clear that its regulatory provisions apply only to “areas of significant biodiversity” but objectives, policies and non-regulatory methods apply to all biodiversity.</p> <p>It is recommended that Objective 1 be reworded:</p> <p><i>Objective 1: Indigenous vegetation <u>biodiversity</u> and areas of <u>significant indigenous biodiversity</u> are maintained and restored to a healthy functioning state, and where appropriate enhanced.</i></p>
<p>FS 12.1 PowerNet Ltd</p>	<p>Objective 1</p>	<p>Support submission 88.28 The further submitter agrees that this is not always appropriate or necessary to maintain, restore or enhance indigenous vegetation, particularly in relation to Regionally Significant Infrastructure projects.</p>	<p>Reject</p> <p>On the same basis and for the same reasons as 88.28.</p> <p>Note: The issue of what should be permitted in relation to nationally significant infrastructure will be dealt with under the “Infrastructure” topic at a later hearing.</p>
<p>18.10 Environment Southland</p>	<p>Objective 1</p>	<p>Support, and seeks its retention.</p>	<p>Accept</p>

Submitter	PROVISION	Submission	Recommendation
64.2 Department of Conservation	Objective 1	Support. The submitter considers the Objective is consistent with Part 2 of the RMA and the Regional Policy Statement for Southland.	Accept
71.2 NZAS Ltd	Objective 1	<p>Oppose in part. The submitter considers the Objective is too onerous and needs to be balanced with other considerations. Specifically the submitter considers that the Objective needs to be amended to recognise capacity for appropriate subdivision, use and development to occur in areas of identified indigenous biodiversity.</p> <p>DECISION SOUGHT The submitter seeks to amend Objective 1 as follows:</p> <p>“Indigenous vegetation and habitats with indigenous biodiversity values are maintained, <u>protected from inappropriate subdivision, use and development and where appropriate</u> restored to a healthy functioning state, and where appropriate enhanced.”</p>	<p>Reject</p> <p>As noted in response to submission 88.27, generally, the words “appropriate” and “inappropriate” cause difficulties when used in an objective or policy because it implies the need for a judgement on an individual circumstance.</p> <p>The word “appropriate” is used in the Proposed District Plan as notified. However, in Objective 1, the word is used in the context of “enhancement” to indicate that enhancement will not always be the right thing to do, but that it will be in certain circumstances.</p> <p>In this instance the submitter seeks that the word “inappropriate” would qualify the words “subdivision, use and development”. National and regional policy is strong on the need to “maintain” biodiversity. The use of the words “protected from ‘<i>inappropriate</i>’ subdivision, use and development” would weaken the policy to the point where it would no longer meet statutory tests regarding national and regional policy.</p> <p>Restoring areas of significant indigenous biodiversity to a “healthy functioning state” is an important element of their conservation. The words “where appropriate”, if they are going to be used at all, better apply to “enhancement” where there is likely to be a need for exercise of judgement.</p>

Submitter	PROVISION	Submission	Recommendation
FS 4.10 Federated Farmers	Objective 1	<p>Support in part submission 71.2 The further submitter considers that areas with indigenous vegetation should be able to be used appropriately by landowners. The emphasis should be on maintaining significant indigenous vegetation and habitats.</p> <p>DECISION SOUGHT (Specific relief sought was not stated)</p>	<p>Reject On the same basis and for the same reasons as 71.2.</p>
FS12.2 PowerNet Ltd	Objective 1	<p>Support submission 71.2 The further submitter agrees that this it not always appropriate or necessary to maintain, restore or enhance indigenous vegetation, particularly in relation to Regionally Significant Infrastructure projects.</p>	<p>Reject On the same basis and for the same reasons as 71.2.</p>
77.2 Te Runaka o Waihopai and Te Runaka o Awarua	Objective 1	Support, and seeks its retention.	Accept in part
18.11 Environment Southland	Objective 2	<p>Generally Support. The submitter would like to see the natural character of all indigenous vegetation and habitats with biodiversity values protected from inappropriate subdivision, use and development, not just wetlands, and rivers and their margins.</p> <p>DECISION SOUGHT The submitter seeks that the natural character of indigenous vegetation and habitats with biodiversity values including wetlands, and rivers and their margins are</p>	<p>Accept The submitter's general support for Objective 2 is noted. The wider canvas suggested by the submitter is covered in Objective 1. The amendment to Objective 2, suggested in response to submission 77.3 (below), addresses the point made by the submitter.</p>

Submitter	PROVISION	Submission	Recommendation
		protected from inappropriate subdivision, use and development.	
FS2.12 NZAS Ltd	Objective 2	<p>Oppose submission 18.11 The further submitter supports the objective as notified and considers that Objective 1 provides for indigenous vegetation that is not part of a wetland, lake, river or its margins.</p> <p>DECISION SOUGHT The further submitter seeks to retain Objective 2 as notified.</p>	<p>Accept in part</p> <p>Subject to the recommendation to submission 88.28, the first objective covers “<i>indigenous biodiversity and areas of significant indigenous biodiversity</i>” generally and inclusively. That would include wetlands, lakes, rivers and their margins.</p> <p>The RMA at Section 6 identifies as matters of national importance, inter alia, both (a) the preservation of the natural character of wetland, lakes and rivers and their margins, and (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.</p> <p>The recommended response to submission 77.3 (below) makes this clearer.</p>
64.3 Department of Conservation	Objective 2	Support. The submitter considers this objective gives recognition to the importance of Section 6a of the RMA and seeks its retention	<p>Accept</p> <p>The recommended change to Objective 2 in response to submission 77.3 (below) clarifies the intention of Section 6 read as a whole.</p>
77.3 Te Runaka o Waihopai and Te Runaka o Awarua	Objective 2	Support in part, subject to an amendment to see reference to all indigenous vegetation and habitats (as per Objective 1).	<p>Accept in part</p> <p>Both objectives as written are expressed in general terms. The first objective covers “<i>indigenous vegetation and habitats with indigenous biodiversity values</i>” generally and inclusively. The second</p>

Submitter	PROVISION	Submission	Recommendation
			<p>objective focuses specifically on the “<i>natural character of wetlands, and rivers and their margins</i>”. It would improve the focus of the objective to add the words “<i>and biodiversity</i>”. That wording fits better with the vernacular of the plan than the wording suggested by the submitter.</p> <p>It is recommended that Objective 2 be reworded to read:</p> <p><i>Objective 2:</i> <i>The natural character <u>and biodiversity</u> of wetlands, rivers and their margins are protected from inappropriate subdivision and development.</i></p> <p>Generally, the provisions of the Proposed District Plan favour the use of non-regulatory methods to encourage the conservation of areas of biodiversity in a general sense, but restricts the use of regulatory methods to areas identified on the Planning Maps as of significant indigenous biodiversity.</p>
<p>88.28 (b) Federated Farmers</p>	<p>Objective 2</p>	<p>Support - Adopt Objective 2 as proposed.</p>	<p>Accept</p> <p>It is not considered that the recommended change to Objective 2 significantly changes its meaning or relevance.</p>

Submitter	PROVISION	Submission	Recommendation
FS4.11 Federated Farmers	Objective 2	<i>Oppose submission 77.3</i> The further submitter considers that the decision sought would add considerable obligations on Council in relation to identification and would add considerable restrictions on legitimate existing land uses. The further submitter considers this would go beyond the requirements of Section 6 of the RMA.	Reject It is recommended that submission 77.3 be accepted only in part. The recommended change to Objective 2 aligns it better with Section 6 of the RMA.
2.3.3 Policies			
77.4 Te Runaka o Waihopai and Te Runaka o Awarua	Policies 1, 2, 3, 4, 5, 6, 7, 8	Support – retain all.	Accept It is not considered that minor changes to wording in response to other submissions materially alters the sense of the Policies.
18.12 Environment Southland	Policy 1 - Delineation	Support, and seeks its retention.	Accept
48.10 Forest & Bird Society	Policy 1 - Delineation	The submitter is concerned that the maps are the sole means of determining significant indigenous biodiversity and considers that the extent of significant indigenous biodiversity appears not to have been updated since 1999 and considers them “grossly inadequate”.	Reject A district plan is a statutory document and is subject to a legal principle known as the Rule of Law. An important implication of the Rule of Law in a planning context is that it must be clear where, and to whom, a planning provision applies. When areas are identified on publicly available Planning Maps their location and aerial extent is very clear. Where areas are identified by criteria the situation is less clear because applying criteria always requires a degree of interpretation. The areas identified on the Planning Maps were done so on the basis of a specially commissioned study of the Invercargill city district carried out by Amber Bill using valid criteria in 1999.

Submitter	PROVISION	Submission	Recommendation
54.9 Otatarā Landcare Group	Policy 1 - Delineation	The submitter is concerned that the maps are the sole means of determining significant indigenous biodiversity and the extent of significant indigenous biodiversity appears not to have been updated since 1999.	Reject On the same basis and for the same reasons as 48.10.
64.4 Department of Conservation	Policy 1 - Delineation	<p>Support in part. The submitter supports the policy, but does not believe all areas of significant indigenous biodiversity are included in the planning maps. The submitter considers that the Plan should provide a mechanism for protection of areas outside the mapped areas that contain or develop indigenous biodiversity values over time.</p> <p>DECISION SOUGHT The submitter seeks to retain Policy 1 and amend as follows:</p> <p><u>“To delineate on the District Planning Maps areas of significant indigenous biodiversity using the criteria for identifying these areas detailed in the plan.”</u></p>	Reject in part The submitter’s general support for the policy is noted but it is considered that the 1999 Amber Bill report provided a reasonable basis for preparing the relevant provisions of the Proposed District Plan.
88.29 Federated Farmers	Policy 1 – Delineation	Support.	Accept
18.13 Environment Southland	Policy 2 – Management of effects	Support, and seeks its retention.	Accept

Submitter	PROVISION	Submission	Recommendation
<p>64.5 Department of Conservation</p>	<p>Policy 2 – Management of effects</p>	<p>Support, and seeks its retention. The submitter considers the objective is consistent with Part 2 of the RMA and the Regional Policy Statement for Southland.</p>	<p>Accept</p>
<p>71.3 NZAS Ltd</p>	<p>Policy 2</p>	<p>Oppose in part. While generally supporting the intention to protect biodiversity, the submitter considers that it is important that there is appropriate recognition of other potential developments. The submitter also considers that not all indigenous biodiversity should be treated in the same way and as having the same value.</p> <p>DECISION SOUGHT: Amend Policy 2 by including the word “inappropriate” before subdivision, land use and development</p> <p>AND</p> <p>Amend the explanation by deleting the final sentence.</p>	<p>Reject. Generally, the words “appropriate” and “inappropriate” can cause difficulties when used in an objective or policy because they imply the need for a judgement on an individual circumstance. The more specific the context, the greater the need for precision as to the meaning for the plan provision and how it is to be applied.</p> <p>The “explanation” refers generally to the use of a range of non-regulatory methods. The “final sentence” referred to by the submitter reads as follows:</p> <p><i>“However, in some instances rules in the District Plan will need to be used to manage particular activities and their effects within areas of indigenous biodiversity.”</i></p> <p>Rules are one of several methods that may reasonably be used by a local authority to deliver on policies in a district plan. The nature of the biodiversity issues in the Invercargill city district, together with the weight of national and regional policy on biodiversity, are such that the use of rules in the Proposed District Plan is mandated.</p>

Submitter	PROVISION	Submission	Recommendation
<p>88.30 Federated Farmers</p>	<p>Policy 2</p>	<p>Oppose in part. The submitter considers that the management of such effects should be limited to those areas of identified significant indigenous biodiversity and there should be no such requirement for protection at all costs.</p> <p>The submitter is concerned that the use of the word “protect” implies that rules are necessary, and rules will result in these areas going from being considered assets which landowners are proud to protect and manage, to liabilities with yet more red tape and bureaucracy attached to them. The submitter considers non-regulatory methods will ensure the greatest landowner buy-in.</p> <p>The submitter suggests there may be instances where the avoidance, remedy or mitigation of adverse effects on biodiversity is not possible and may involve normal farming activities such as earthworks, vegetation clearance, wetland drainage, significant stormwater runoff, stock grazing, waste management and disposal. The submitter would be concerned if where there may be an effect on an ecosystem supporting indigenous species, such a policy resulted in the regulation of farming activities. The literal interpretation of this is too large in scope.</p>	<p>Accept in part, reject in part</p> <p>It is not accepted that rules in the proposed District Plan should apply only to those areas formally identified in the Planning Maps. The Plan promotes the use of non-regulatory methods with respect to all biodiversity.</p> <p>It is accepted that only “significant” areas of indigenous biodiversity should be so mapped.</p> <p>In terms of formally identifying specific areas of significant indigenous biodiversity in a district plan, it is important to distinguish with some precision what is “significant” – and subject to regulatory provisions – and what is not.</p> <p>It is recommended that Policy 2 be re-worded to read:</p> <p><i>“Policy 2: To protect and enhance the ecological integrity and functioning of indigenous ecosystems and <u>significant</u> habitats with indigenous biodiversity values by avoiding, remedying or mitigating the adverse effects of subdivision, land use and development.”</i></p> <p>It is not accepted that the proposed District Plan could condone adverse effects on areas of significant biodiversity involving normal farming activities. In view of the weight of national and regional policy to which the Proposed District Plan must give effect, regulation of farming activities in relation to identified areas of significant indigenous biodiversity is necessary.</p>

Submitter	PROVISION	Submission	Recommendation
		<p>DECISION SOUGHT Make the following amendments to Policy 2:</p> <p>“To <u>encourage the appropriate protection and enhancement</u> protect and enhance of the ecological integrity and functioning of <u>significant</u> indigenous ecosystems and habitats with <u>significant</u> indigenous biodiversity values by avoiding, remedying or mitigating the adverse effects of <u>inappropriate</u> subdivision, land use and development.”</p>	
<p>FS12.3 PowerNet Ltd</p>	<p>Policy 2</p>	<p>Support submission 88.30 The further submitter considers that the management of such effects should be limited to those areas of identified <i>significant</i> indigenous biodiversity and that there should be no requirement for protection at all costs. The further submitter considers that this is particularly the case in relation to network utilities where trimming, removal and maintenance of such vegetation may be required to maintain and promote operational efficiency.</p>	<p>Reject</p> <p>The submission is accepted insofar as the regulatory methods of the Proposed District Plan apply only to the identified areas of significant indigenous biodiversity.</p> <p>However the policy hierarchy to which the district plan must give effect is such that in assessing any proposal, the effects of biodiversity – whether or not it is identified as being within an area of significant biodiversity – must be considered.</p>
<p>18.14 Environment Southland</p>	<p>Policy 3 - Otatara</p>	<p>Support, and seeks its retention.</p>	<p>Accept</p>

Submitter	PROVISION	Submission	Recommendation
<p>88.31 Federated Farmers</p>	<p>Policy 3 - Otatara</p>	<p>Support in part. The submitter considers that the biodiversity obligations under the RMA do not mean protection at all costs and a a requirement to regulate protection of these areas. The submitter is concerned that the use of the wording “to protect and enhance” implies that rules are necessary, and rules will result in these areas going from being considered assets which landowners are proud to protect and manage, to liabilities with yet more red-tape and bureaucracy attached to them. The submitter considers non-regulatory methods will ensure the greatest landowner buy-in.</p> <p>DECISION SOUGHT Amend the policy to below wording or similar:</p> <p>“To <u>encourage appropriate protection and enhancement of</u> Protect and enhance areas of significant indigenous vegetation and significant habitats of indigenous fauna within the Otatara Zone recognising the nationally significant ecological and intrinsic values and the high amenity values of ancient sand dune landscape of that area.”</p>	<p>Reject</p> <p>The submitter’s support for the general thrust of the Policy is noted.</p> <p>The weight on national and regional policy to which the Proposed District Plan must “give effect” mandates a stronger policy response than “to encourage”, as suggested by the submitter.</p>

Submitter	PROVISION	Submission	Recommendation
FS8.1 Department of Conservation	Policy 3 - Otatara	<p>Oppose submission 88.31</p> <p>The further submitter considers that a regulatory approach is required to give effect to Section 6(c) of the RMA.</p> <p>The further submitter considers that the proposed Plan seeks to identify areas of significant indigenous vegetation and provides for an assessment of effects of activities on these areas, and is not a “protection at all costs” policy</p> <p>DECISION SOUGHT</p> <p>Decline relief sought in submission 88.31.</p>	Accept
18.15 Environment Southland	Policy 4 - Planting	Support, and seeks its retention.	Accept
64.5 Department of Conservation	Policy 4 - Planting	Support, and seeks its retention. The submitter considers that it is important that the integrity of areas of significant indigenous biodiversity is maintained by using appropriate locally sourced plant stock.	Accept (As per submission 18.15)
88.32(a) Federated Farmers	Policy 4 - Planting	Support, and seeks its retention.	Accept (As per submission 18.15)
88.32(b) Federated Farmers	Policy 5	Support, and seeks its retention.	Accept It is not considered that the addition of the words (D) Plantings of indigenous species in response to submission 48.11 (below) materially alters the sense of the Policy.

Submitter	PROVISION	Submission	Recommendation
18.16 Environment Southland	Policy 5	Support, and seeks its retention.	Accept On the same basis and for the same reasons as 88.32.
48.11 Forest & Bird Society	Policy 5	The submitter suggests an additional initiative. DECISION SOUGHT Add the following as an initiative: (D) Indigenous species.	Accept in part On their own, the words sought by the submitter do not make a lot of sense because in Policy 5 (C) already refers to “ <i>Indigenous ecosystems and habitats</i> ” – which obviously contain indigenous species. However the submitter may well be wishing to encourage the use of indigenous species for amenity plantings outside of areas of significant biodiversity, and this would be consistent with the general tenor of the Proposed District Plan but not stated in the Plan as notified. It is recommended that Policy 5 be amended to read: <i>Policy 5 Biodiversity Initiatives. To encourage and support biodiversity initiatives to maintain, restore and/or enhance</i> <i>(A) ...</i> <i>(B)</i> <i>(C)</i> <u><i>(D) Plantings of Indigenous species</i></u>

Submitter	PROVISION	Submission	Recommendation
<p>54.10 Otatara Landcare Group</p>	<p>Policy 5 – Biodiversity initiatives</p>	<p>The submitter suggests an additional initiative should include (D) Indigenous Species.</p> <p>DECISION SOUGHT Add the following as an initiative:</p> <p>(D) Indigenous species</p>	<p>Accept in part On the same basis and for the same reasons as 48.11.</p>
<p>18.17 Environment Southland</p>	<p>Policy 6</p>	<p>The submitter would like to see a more collaborative decision making framework to managing indigenous biodiversity and a co-ordinated approach in accordance with Policy Bio.2 of the PSRPS 2012.</p> <p>DECISION SOUGHT Ensure consistency with the PSRPS 2012.</p>	<p>Accept in part, reject in part</p> <p>Accept, in that the recommended response to submission 18.7 above is to <u><i>(work) in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.</i></u></p> <p>This would support the collaborative approach sought by the submitter.</p> <p>Reject, in that:</p> <p>Policy BIO.2 in the PSRPS reads as follows:</p> <p>“Regional and district plans should consider policies, rules and methods to establish a collaborative decision-making framework for activities that:</p> <p>a. Provides for activities that affect indigenous ecosystems and habitats with indigenous</p>

Submitter	PROVISION	Submission	Recommendation
			<p>biodiversity values that have low levels of significance</p> <p>b. Manage activities that affect indigenous ecosystems and habitats with indigenous biodiversity values that have medium levels of significance</p> <p>c. Does not allow activities that result in the destruction of indigenous ecosystems and habitats with indigenous biodiversity values that have the highest levels of significance.”</p> <p>This policy has a different focus from Policy 6 in the Proposed District Plan, which reads as follows:</p> <p><i>Policy 6 Other agencies:</i> <i>To promote the protection of areas of significant indigenous biodiversity, wetlands, and rivers and their margins where they abut areas with similar ecological values in the jurisdictions of other agencies.</i></p> <p>Policy BIO.2 is about provision for and management of activities, or their exclusion, depending on the level of biodiversity significance. Policy 6 is about cross-boundary issues and has a different focus. A district plan does not have to repeat policy in a proposed regional policy statement, just have regard to it.</p>

Submitter	PROVISION	Submission	Recommendation
88.33 Federated Farmers	Policies 6, 7, 8 and 9	<p>Support. The submitter considers it appropriate for Council to co-ordinate the management of areas of significant indigenous biodiversity where these abut areas with similar ecological values in the jurisdiction of other agencies, and that Council adheres to, and promotes the use of other relevant legislation – including the Biosecurity Act 1994 and the Conservation Act 1987.</p> <p>DECISION SOUGHT Adopt the policies as proposed.</p>	<p>Accept.</p> <p>With typo corrections to Policy 7 as noted in response to submission 65.3, Policy 8 in response to submissions 65.4 and 6.5, and Policy 9 in response to submission 18.20.</p>
18.18 Environment Southland	Policy 7 – Information Collection	Support, and seeks its retention.	<p>Accept</p> <p>With typo correction to Policy 7 as noted in response to submission 65.3. It is not considered that these corrections alter the sense or the policy.</p>
65.3 ICC Environmental and Planning Services	Policy 7 – Information Collection	<p>Typo</p> <p>DECISION SOUGHT Amend “pest” to “pests”.</p>	<p>Accept</p> <p>Amend Policy 7 to read:</p> <p><i>Policy 7 Information collection: Gather and record information on Invercargill’s biodiversity resources and the effects of activities, pest-pests and climate change on indigenous ecosystems to assist with the sustainable management of the resource and the ongoing development and implementation of appropriate management regimes.</i></p>

Submitter	PROVISION	Submission	Recommendation
18.19 Environment Southland	Policy 8 – Other Legislation	Support, and seeks its retention.	Accept With typo correction to Policy 8 as noted in response to submission 65.4.
65.4 ICC Environmental and Planning Services	Policy 8 – Other Legislation	Typo DECISION SOUGHT Biosecurity Act 1994 <u>1993</u>	Accept. Amend Policy 8 to read: <i>Policy 8 Other legislation:</i> <i>To use, and promote the use of, other legislation, including the Reserves Act 1977, the Conservation Act 1987 and the Biosecurity Act 1994<u>1993</u> where this will result in long term protection of areas of significant biodiversity.</i>
65.5 ICC Environmental and Planning Services	Policy 8– Other Legislation	The submitter notes that other legislation that may enable protection of the values of biodiversity may not always be more effective and efficient than the methods available under the RMA. DECISION SOUGHT Amend Policy 8 wording to read “in a manner that <u>can be</u> more effective and more efficient”.	Accept Amend the Explanation to Policy 8 to read: <i>Explanation:</i> <i>Other legislation also enables protection of the values of these areas in a manner that is<u>can be</u> more effective and efficient than the methods available under the RMA.</i>
18.20 Environment Southland	Policy 9 – Tangata whenua	Support in part. The submitter suggests there is incorrect reference to diversity instead of biodiversity. DECISION SOUGHT Retain with the following amendment: “(A)Tangata whenua values and interests to be incorporated into the management of <u>biodiversity</u> .”	Accept Amend (A) under Policy 9 to read: <i>(A) Tangata whenua values and interests to be incorporated into the management of diversity<u>biodiversity</u>.</i>

Submitter	PROVISION	Submission	Recommendation
65.6 ICC Environmental and Planning Services	Policy 9 – Tangata whenua	Typo. The submitter suggests there is an incorrect reference to diversity instead of biodiversity. DECISION SOUGHT As for submission 18.20.	Accept On the same basis and for the same reasons as 18.20.
77.5 Te Runaka o Waihopai and Te Runaka o Awarua	Policy 9 – Tangata whenua	Typo. The submitter suggests there is an incorrect reference to diversity instead of biodiversity. DECISION SOUGHT As for submission 18.20.	Accept On the same basis and for the same reasons as 18.20.
77.6 Te Runaka o Waihopai and Te Runaka o Awarua	Policy 10	Support, and seeks its retention.	Reject There is no Policy 10 in this section of the Proposed District Plan as publicly notified. This appears to have been a mistake by the submitter.
18.21 Environment Southland	New Policy	The submitter notes that Rule 3.1.4 outlines a number of matters for consideration by applications under Rules 3.1.2 and 3.1.3, including the requirement to address “Any proposals to compensate for or offset loss of indigenous biodiversity” The submitter states that biodiversity offsets can promote a “no net loss” and a “net gain” approach, and this is provided for in the PSRPS 2012. DECISION SOUGHT That a new provision/s be inserted into the District Plan, that requires consideration of	Reject. Policy BIO.8 of the PSRPS lists criteria that local authorities “shall have regard to” “in considering” the use of a biodiversity offset. The use of biodiversity offsets is not mandatory under this policy. Rule 3.1.4 of the Proposed District Plan lists matters “which shall be among those taken into account by the Council” when considering applications for discretionary and non-complying activities as set out in Rules 3.1.2 and 3.1.3. Under 3.1.4 (I) the Council must consider “ <i>any proposals to compensate for or offset loss of indigenous biodiversity ...</i> ”

Submitter	PROVISION	Submission	Recommendation
		the use of biodiversity offsets in accordance with Policy BIO.8 of the PSRPS 2012 to support the provision in Rule 3.1.4.	The Proposed District Plan thus puts the initiative with the applicant to suggest biodiversity offsets as a mitigation measure. It is part of the range of issues that should be considered in an Assessment of Effects (AEE). In considering the application, the Council would need to “have regard to” under Section .104 subsection (1)(b)(v) a regional policy statement or proposed regional policy statement. Hence, these provisions of the PSRPS are matters that would be addressed in a comprehensive AEE.
FS2.13 NZAS Ltd		<p>Oppose in part submission 18.21 The further submitter does not oppose to the use of offsets in principle but it would oppose offsets being mandatory given their potential costs.</p> <p>DECISION SOUGHT That the policy suggested makes it clear that offsets may be used but are not mandatory.</p>	<p>Accept</p> <p>The decision sought by the submitter appears to be the status quo in terms of the Proposed District Plan which puts the initiative to suggest biodiversity offsets, possibly as a means of mitigation of effects of a proposal, in the hands of the applicant.</p>
SECTION 2.3.4 - METHODS OF IMPLEMENTATION			
64.7 Department of Conservation	General	<p>The submitter supports these provisions as it considers the methods will assist the Council in achieving its responsibilities under Sections 6 and 31 of the RMA.</p> <p>DECISION SOUGHT Retain the Methods of Implementation 2.3.4.</p>	<p>Accept in part</p> <p>It is not considered that the addition of the word “significant”, in response to Submission 88.34, (below) affects the sense of the Method.</p>
77.7 Te Runaka o Waihopai and Te Runaka o Awarua	Methods 1–9	Support, and seeks their retention.	<p>Accept in part</p> <p>On the same basis and for the same reason as 64.7.</p>

Submitter	PROVISION	Submission	Recommendation
<p>88.34 Federated Farmers</p>	<p>Methods 1–9</p>	<p>Support in part. The submitter is concerned that Method 1 is inconsistent with Policy 1 and will add confusion to landowners and be difficult to manage. The submitter does not believe delineation should extend to all areas of indigenous biodiversity, only those identified as being significant.</p> <p>The submitter considers that non-regulatory methods are more appropriate in this area than any overly regulatory approach and on that basis Methods 3 to 9 are supported.</p> <p>DECISION SOUGHT</p> <ul style="list-style-type: none"> • Amend Method 1 as follows: <p style="margin-left: 40px;">“Delineation on the District Planning Maps of areas of <u>significant</u> indigenous biodiversity.”</p> • Adopt other methods as proposed. 	<p>Accept</p> <p>It is recommended that Method 1 be amended to read:</p> <p><i>Method 1 Delineation on the District Planning Maps of areas of <u>significant</u> indigenous biodiversity.</i></p>
<p>18.22 Environment Southland</p>	<p>Method 1</p>	<p>Support, and seeks its retention.</p>	<p>Accept in part</p> <p>It is not considered that the addition of the word “significant”, in response to Submission 88.34, affects the sense of the Method and it would bring the wording into line with the PSRPS.</p>

Submitter	PROVISION	Submission	Recommendation
FS4.12 Federated Farmers	Method 1	<p>Oppose in part. The further submitter does not think that delineation should extend to all areas of indigenous biodiversity, only to those identified as being significant.</p> <p>DECISION SOUGHT Not stated.</p>	<p>Accept</p> <p>On the same basis and for the same reasons as submission 88.34</p>
48.12 Forest & Bird Society	Method 1	<p>The submitter does not believe Planning Maps should be the sole method of determining significance.</p> <p>DECISION SOUGHT Not stated.</p>	<p>Reject</p> <p>The Planning Maps are the principal method of <i>identifying</i> the location of areas of significant indigenous biodiversity to which rules should apply. As a prelude to <i>identification</i>, there is a process of research and consultation to <i>determine</i> where these areas are and their significance. In response to other submissions, it is being recommended that a collaborative approach be undertaken with Environment Southland in this work.</p> <p>An important implication of the Rule of Law in a planning context is that it must be clear where, and to whom, a planning provision applies. When areas are identified on publicly available Planning Maps their location and aerial extent is very clear. Where areas are identified by criteria the situation is less clear because applying criteria always requires a degree of interpretation.</p>

Submitter	PROVISION	Submission	Recommendation
54.11 Otatarā Landcare Group	Method 1	The submitter does not believe Planning Maps should be the sole method of determining significance. DECISION SOUGHT Not stated.	Reject On the same basis and for the same reasons as 48.12.
18.23 Environment Southland	Method 2	Support, and seeks its retention.	Accept
48.13 Forest & Bird Society	Method 2	Support DECISION SOUGHT Not stated.	Accept
54.12 Otatarā Landcare Group	Method 2	Support DECISION SOUGHT Not stated.	Accept
18.24 Environment Southland	Method 3	Support, and seeks its retention.	Accept It should be noted that it is recommended that in response to submission 65.7, Method 7 be deleted (it is virtually a repeat of Method 3) but that the words “ <i>and promoting</i> ” be added to Method 3 as follows: Method 3. <i>The adoption of an ongoing information dissemination programme by the Council and in cooperation with other organisations, preparing brochures and leaflets, assisting the funding of community publications, including information on the Council’s website, preparing <u>and promoting</u> guidelines, undertaking environmental advocacy and making environmental awards to (A) – (F).</i>

Submitter	PROVISION	Submission	Recommendation
18.25 Environment Southland	Method 4	Support, and seeks its retention.	Accept
18.26 Environment Southland	Method 5	Support, and seeks its retention.	Accept
18.27 Environment Southland	Method 6	Support, and seeks its retention.	Accept
18.28 Environment Southland	Method 7	Support, and seeks its retention.	Accept
65.7 ICC Environmental and Planning Services	Method 7	Oppose. The submitter considers that the preparation of guidelines is referred to in Method 3. This is repeated unnecessarily in Method 7. DECISION SOUGHT Delete Method 7.	Accept
FS4.13 Federated Farmers	Method 7	Support submission 65.7. The further submitter agrees that there is unnecessary repetition. DECISION SOUGHT Delete Method 7.	Accept
18.29 Environment Southland	Method 8	Support, and seeks its retention.	Accept
18.30 Environment Southland	Method 9	Support, and seeks its retention.	Accept

Submitter	PROVISION	Submission	Recommendation
SECTION 3.1 RULES			
48.6 Forest & Bird Society	General	<p>The submitter strongly supports the adoption of district wide biodiversity rules and considers that the non-regulatory approach of the Operative District Plan to areas of significant biodiversity outside of Otatara failed dismally and resulted in the destruction of extensive areas of indigenous vegetation and habitats of indigenous species.</p> <p>DECISION SOUGHT Not stated specifically.</p>	<p>Accept in part, noted</p> <p>The support for its general approach is welcomed, but in the absence of more detailed information in the submission it is not accepted that the Council has “failed dismally” in avoiding destruction of biodiversity. That is too strong a term. It is accepted that there is an issue to be addressed, and that was why the approach taken with respect to Otatara in the Operative District Plan has now been widened to the whole district in the Proposed District Plan. The approach taken in the Proposed District Plan is to identify areas of significant indigenous biodiversity district-wide on the planning maps, and introduce regulatory methods for protection of these areas.</p> <p>There is probably a need for ongoing research to refine knowledge of the location and extent of significant areas of biodiversity. If the results of such research indicate the need for formal identification of additional areas, they could be introduced to the District Plan by way of the Plan Change procedure in order that the regulatory impact of a district plan rule on what in most cases will be private property can be properly justified.</p> <p>It should also be noted that the following change is being recommended in response to submission 54.6 (above).</p> <p>That the following be added to the <i>introduction</i> to Section 2.3 on page 5 adding a new paragraph above the final paragraph in that section.</p>

Submitter	PROVISION	Submission	Recommendation
			<p><i>"In addition to providing</i></p> <p><i><u>The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.</u></i></p> <p><i>The Council acknowledges"</i></p>
<p>54.13 Otatara Landcare Group</p>	<p>General</p>	<p>The submitter is generally supportive of this section but is opposed to the rules only applying to areas shown on the Planning Maps.</p> <p>DECISION SOUGHT Not stated specifically.</p>	<p>Accept in part</p> <p>The submitter's general support is noted. However an important implication of the Rule of Law in a planning context is that it must be clear where, and to whom, a planning provision applies. When areas are identified on publicly available Planning Maps their location and aerial extent is very clear. Where areas are identified by criteria the situation is less clear because applying criteria always requires a degree of interpretation.</p>

Submitter	PROVISION	Submission	Recommendation
88.73 Federated Farmers	General	<p>The submitter opposes rules on biodiversity and considers Council can best manage biodiversity issues via a voluntary strategy based on education, good-practice promotion and partnership with owners. However, the submitter supports Council restricting rules in this area to identified (and mapped) areas of significant indigenous biodiversity.</p> <p>DECISION SOUGHT That Council ensure rules within 3.1 are only applied to identified mapped areas of significant indigenous biodiversity.</p>	<p>Accept in part, rejected in part</p> <p>Accepted, in that the decision sought by the submitter is already stated in the Proposed District Plan as follows:</p> <p><i>“3.1 Biodiversity. This rule applies to areas of significant indigenous biodiversity identified in the Planning Maps.”</i></p> <p>Rejected, in that the Council has found that non-regulatory measures on their own are insufficient to prevent loss of and damage to significant indigenous biodiversity.</p>
FS25.17 Transpower NZ Ltd	General	<p>Support submission 88.73. The further submitter considers that rules in 3.1 should only apply to mapped areas.</p> <p>DECISION SOUGHT As for Submission 88.73.</p>	<p>Accept</p> <p>On the same basis and for the same reasons as 88.73.</p>
18.91 Environment Southland	3.1.1	Support, and seeks its retention.	<p>Accept</p> <p>The recommendations for changes to Rule 3.1.1 in response to other submissions do not change materially the intent or effect of the Rule.</p>
FS28.2 NZ Transport Agency	3.1.1	<p>Support Submission 18.91</p> <p>The further submitter comments that this rule will enable indigenous vegetation to be managed so that it does not adversely affect the safety of the roading network.</p>	<p>Accept</p> <p>On the same basis and for the same reasons as 18.91.</p>

Submitter	PROVISION	Submission	Recommendation
64.9 Department of Conservation	3.1.1	Support. The submitter recognises that some trimming of indigenous vegetation is required where it occurs adjacent to existing infrastructure and utilities, and for the purpose of clearing access ways to enable movement of vehicles.	Accept On the same basis and for the same reasons as 18.91. The response to submission 88.74 (below) will help address the point made by the submitter.
FS28.3 NZ Transport Agency	3.1.1	Support Submission 64.9 The further submitter comments that this rule will enable indigenous vegetation to be managed so that it does not adversely affect the safety of the roading network.	Accept On the same basis and for the same reasons as 18.91.
71.49 NZAS Ltd See also submissions 87.38, 88.74 and 91.15 (below).	3.1.1	Support in part. The submitter seeks an addition to enable the trimming of vegetation that may impact on the safe operation of the smelter. DECISION SOUGHT Amend 3.1.1 as follows: “It is a permitted activity to: <u>(X) Trim or remove vegetation that may impact on the safe operation of the Tiwai Point aluminium smelter.”</u>	Accept in part It is accepted that it is reasonable that any such vegetation may need to be trimmed. It is not accepted that this should extend to removal without a proper consideration of the need for removal or the effects of it. It is recommended in response to this submission and 87.38 (below) that The following be added as Rule 3.1.1A: <i><u>It is a controlled activity to:</u></i> <i><u>Remove or fell vegetation</u></i> <i><u>(A) Within legal roadways, where such removal or felling is required to maintain road safety.</u></i> <i><u>(B) On formed vehicle access ways, where such removal or felling is required to enable use by vehicles (including emergency vehicles where</u></i>

Submitter	PROVISION	Submission	Recommendation
			<p><i>necessary).</i></p> <p>(C) <u>Immediately adjacent to structures and lines, where such removal or felling is required to avoid damage to structures.</u></p> <p>(D) <u>Immediately adjacent to open drains, where such removal or felling is required in order to undertake maintenance of the drain.</u></p> <p>(E) <u>That may impact on the safe operation of the Tiwai Point aluminium smelter.</u></p> <p>(F) <u>Where required for the safe operation of the National Grid.</u></p> <p><u>The matters over which the Council shall exercise its control are:</u></p> <p>(a) <u>replanting; and</u></p> <p>(b) <u>disposal of trees and vegetation; and</u></p> <p>(c) <u>visual, landscape, and ecological effects.</u></p> <p>It is also recommended that 3.1.5 be amended to read:</p> <p>3.1.5 Note: <u>Where an application for resource consent is required under Rule 3.1.1A, 3.1.2 and 3.1.3 above the application shall include an ecological assessment commensurate with the scale of the proposed activity</u></p> <p>The submitter sought permitted activity status to “trim or remove” vegetation that may impact the safe operation of the smelter. The District Plan as notified limited the permitted activity to “trimming”. Vegetation grows. As trees grow root zones can spread. It is quite conceivable that a tree may grow sufficiently to obstruct one of the facilities or services</p>

Submitter	PROVISION	Submission	Recommendation
			mentioned in (a) to (e) above and that it may be neither practicable nor sensible to simply “trim” it. Trimming alone can result in a lopsided and destabilised tree. For this reason it is being recommended that “removal or felling” be given controlled activity status.
87.38 Transpower NZ Ltd	3.1.1	<p>Support in part. The submitter considers that the removal as well as the trimming of indigenous vegetation should be permitted where this is required for the safe operation and maintenance of the National Grid and to remove any potential fire hazard, whereby vegetation grows too close to the conductors (wires) of the National Grid lines.</p> <p>DECISION SOUGHT</p> <p>(i) Add a new point to Rule 3.1.1 (F) as follows.</p> <p><u>“(F) Trim or remove vegetation where required for the safe operation or maintenance of the National Grid or to remove a potential fire risk.”</u></p> <p>(ii) And any consequential amendments.</p>	<p>Accept in part</p> <p>The National Environmental Standard on Electricity Transmission Activities would apply to trimming or removal of vegetation associated with maintenance of the National Grid.</p> <p>At Section 30, in relation to an existing transmission line, trimming or removal of vegetation is a permitted activity unless there is a Rule saying otherwise.</p> <p>In areas of significant indigenous vegetation, it is considered that it is reasonable that trimming should be a permitted activity but that removal or felling should be a controlled activity.</p> <p>It is therefore recommended that felling or removal of vegetation where required for the safe operation or maintenance of the national grid be a controlled activity (see recommendation on submission 71.49 above).</p>

Submitter	PROVISION	Submission	Recommendation
<p>88.74 Federated Farmers</p>	<p>3.1.1</p>	<p>Support in part. The submitter also considers it appropriate and necessary to provide for trimming, removal and maintenance of such vegetation around existing tracks and fences.</p> <p>DECISION SOUGHT Adopt the permitted activity rule proposed with the following amendment (or similar):</p> <p><u>“(F) Trim, prune or remove indigenous vegetation to maintain existing tracks and fencing.”</u></p>	<p>Accept in Part</p> <p>It is reasonable that trimming vegetation be permitted along fence lines and along access tracks. Additional words in this section will address the point made by the submitter</p> <p><i>It is a permitted activity to</i></p> <p>.....</p> <p><i>(E) Trim or remove vegetation</i></p> <p><i>(a) Within formed legal roadways, where such trimming is required to maintain road safety,</i></p> <p><i>(b) On formed access ways <u>and tracks existing as at (date), where such trimming is required to enable use by vehicles (including emergency vehicles where necessary) and to maintain the access way or track for the purpose for which it was formed, and along fences existing as at (date) where trimming is required to avoid damage to the fence.</u></i></p> <p>It is not accepted that felling removal of such vegetation should be a permitted activity. It would be a non-complying activity under Rule 3.1.3.</p>
<p>91.15 PowerNet Ltd</p>	<p>3.1.1</p>	<p>Support in part. The submitter considers that Rule 3.1.1 should be amended to allow the trimming, felling and removal of vegetation where it is required to maintain the operational efficiency of existing network utilities.</p>	<p>Reject</p> <p>The National Environmental Standard on Electricity Transmission Activities would apply to trimming or removal of vegetation associated with maintenance of existing transmission lines.</p>

Submitter	PROVISION	Submission	Recommendation
		<p>DECISION SOUGHT Amend 3.1.1 by adding the following:</p> <p>“...<u>(F) The trimming, felling and removal of vegetation and non-notable trees to retain the operational efficiency of existing network utilities.</u></p> <p>(G) <u>The trimming and removal of branches likely to compromise the operational efficiency of overhead wires or utility networks ...”</u></p>	<p>Felling or removal should be a controlled activity, as recommended in response to submissions 71.49, 87.38, and 88.74 above.</p>
<p>103.62 Invercargill Airport Ltd</p>	<p>3.1.1</p>	<p>Support. The submitter considers it appropriate to be able to remove vegetation where it is necessary to achieve compliance with the Airport’s obstacle limitation surfaces.</p>	<p>Accept</p>
<p>64.10 Department of Conservation</p>	<p>3.1.2</p>	<p>Oppose. The submitter considers that the activities covered by this rule should be non-complying not discretionary.</p> <p>The submitter is concerned that there is no definition of “access way” and that the scope of this provision is therefore open to interpretation.</p> <p>DECISION SOUGHT Delete Rule 3.1.2.</p>	<p>Reject</p> <p>It may be necessary or desirable to construct some form of access through areas of significant indigenous vegetation. The discretionary activity status that the Proposed District Plan gives to such activities requires an application for resource consent, including a full Assessment of Environmental Effects. The application will need to show how any effects can be avoided, remedied or mitigated and it may be declined if this cannot be demonstrated.</p>

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FS2.17 NZAS Ltd	3.1.2	<p><i>Oppose submission 64.10</i> The further submitter notes that it may be necessary to construct a road through these areas in the future and that given the highly modified nature of the peninsula in the smelter area the “discretionary” activity status would give the Council sufficient scope to determine whether the access way or road was appropriate.</p> <p>DECISION SOUGHT Retain the “discretionary” activity status in Rule 3.1.2 as notified.</p>	<p>Accept</p> <p>On the same basis and for the same reasons as 64.10.</p>
FS4.16 Federated Farmers	3.1.2	<p><i>Oppose submission 64.10</i> The further submitter considers that these activities are vital for land use and development in the area and that it would be highly impractical and unnecessarily restrictive to make them non-complying activities.</p>	<p>Accept</p> <p>On the same basis and for the same reasons as 64.10.</p>
FS25.1 Transpower NZ Ltd	3.1.2	<p><i>Oppose submission 64.10</i> The further submitter considers that it is appropriate that the removal, trimming or changes in indigenous vegetation to construct a utility service is a discretionary activity. The further submitter considers that it is essential to provide for infrastructure and that a non-complying activity status would be too onerous and would imply that these types of activities are generally inappropriate.</p>	<p>Accept</p> <p>On the same basis and for the same reasons as 64.10.</p>

Submitter	PROVISION	Submission	Recommendation
<p>87.39 Transpower NZ Ltd</p>	<p>3.1.2</p>	<p>Support in part. The submitter states that they would not support a non-complying activity status for the removal of vegetation in areas of significant indigenous biodiversity, deeming this to be too restrictive given the locational requirements and importance of the National Grid.</p> <p>The submitter also notes that the rule refers to “utility services” which is not a term that is defined in the Proposed Plan and suggests that the term “infrastructure” is used.</p> <p>DECISION SOUGHT (i) Amend Rule 3.1.2 as follows:</p> <p>It is a discretionary activity to: “(A) Construct any access way or road. (B) Construct utility services <u>infrastructure</u> in a manner that will require the trimming, removal or changes to any indigenous vegetation or parts thereof, including any branches or roots, within the drip line of that vegetation.”</p> <p>And any consequential amendments.</p>	<p>Accept in part.</p> <p>The definition of <i>Infrastructure</i> in the Proposed District Plan is:</p> <p>Infrastructure: <i>Means the system, services, structures and networks associated with:</i></p> <ul style="list-style-type: none"> A. <i>The supply and distribution of electricity</i> B. <i>Water supply</i> C. <i>Storm water</i> D. <i>Street lighting and lighting of public land</i> E. <i>The receiving and sending of communications</i> F. <i>Navigation aids</i> G. <i>Data recording and monitoring systems, including but not restricted to meteorological facilities</i> H. <i>Roading and street furniture</i> I. <i>Sewage collection, treatment and disposal.</i> <p>“Infrastructure is too wide a term to use in this context. It would be better to use the term “<i>network utility services</i>”, and include a definition in the plan to the effects that “<i>network utility services</i>” are those provided by a “<i>network utility operator</i>” as defined in Section 166 of the RMA.”</p> <p>It is recommended that the word <u>network</u> be added to qualify “<i>utility services</i>”, to clarify the intention of the Plan.</p> <p>It is recommended that 3.1.2 read as follows:</p> <p>3.1.2 <i>It is a discretionary activity to:</i> A. <i>Construct any access way or road</i></p>

Submitter	PROVISION	Submission	Recommendation
			<p><i>B. Construct <u>network utility services</u> in a manner that will require the trimming, removal or changes to any indigenous vegetation or parts thereof, including any branches or roots, within the drip line of that vegetation.</i></p> <p>It is further recommended that the following be added to “Definitions”:</p> <p><u>Network utility services:</u> <i>Means services provided by a network utility operator as defined in Section 166 of the RMA as follows:</i></p> <p>network utility operator means a person who —</p> <ul style="list-style-type: none"> (a) Undertakes or proposes to undertake the distribution or transmission by pipeline of natural or manufactured gas, petroleum, biofuel, or geothermal energy; or (b) Operates or proposes to operate a network for the purpose of— <ul style="list-style-type: none"> (i) telecommunication as defined in Section 5 of the Telecommunications Act 2001; or (ii) radiocommunication as defined in Section 2(1) of the Radiocommunications Act 1989; or (c) Is an electricity operator or electricity distributor as defined in Section 2 of the Electricity Act 1992 for the purpose of line function services as defined in that section; or (d) Undertakes or proposes to undertake the distribution of water for supply (including irrigation); or (e) Undertakes or proposes to undertake a drainage

Submitter	PROVISION	Submission	Recommendation
			<p>or sewerage system; or</p> <p>(f) Constructs, operates, or proposes to construct or operate, a road or railway line; or</p> <p>(g) Is an airport authority as defined by the Airport Authorities Act 1966 for the purposes of operating an airport as defined by that Act; or</p> <p>(h) Is a provider of any approach control service within the meaning of the Civil Aviation Act 1990; or</p> <p>(i) Undertakes or proposes to undertake a project or work prescribed as a network utility operation for the purposes of this definition by regulations made under this Act, —</p> <p>and the words network utility operation have a corresponding meaning.</p>
<p>91.16 PowerNet Ltd</p>	<p>3.1.2</p>	<p>Oppose. The submitter considers that the trimming, felling and removal of vegetation and non-notable trees is vital to the operation of the lines and network facilities. Such activities should be provided for as permitted activities as sought in the relief relating to Rule 3.1.1 above.</p> <p>The submitter considers that a resource consent requirement should only be triggered if the biological viability of the vegetation would be compromised by the construction of a new utility service and that the activity status for such an application should be “<i>Controlled</i>” rather than “<i>Discretionary</i>”.</p>	<p>Reject</p> <p>The Proposed District Plan would fail to give effect to the applicable national and regional policy statements if it did not make provision for formal consideration of the effects of infrastructure on areas of significant indigenous biodiversity.</p> <p>In relation to existing national grid lines, consent the National Environmental Standard on Electricity Transmission Activities provides that trimming or removal are permitted activities unless there is a Rule that says otherwise. It is being recommended in response to other submissions (87.38, 88.74,71.49 and 91.95 above) that trimming be permitted, but that felling or removal be controlled.</p>

Submitter	PROVISION	Submission	Recommendation
		<p>Further, the submitter notes that “<i>Utility Services</i>” are not defined under the Proposed Plan. Rule 3.1.2 should be amended to refer to “<i>infrastructure</i>” which is defined, or a definition for “<i>Utility Services</i>” is inserted into the Plan.</p> <p>DECISION SOUGHT Amend Rule 3.1.2 as follows:</p> <p>3.1.2 It is a discretionary <u>controlled</u> activity to:</p> <p>(A) Construct any access way or road.</p> <p>(B) Construct <u>new</u> utility services in a manner that will <u>compromise the biological viability of indigenous vegetation.</u> require the trimming, removal or changes to any indigenous vegetation or parts thereof, including any branches or roots, within the drip line of that vegetation.</p> <p>AND/OR</p> <p>Insert new controlled activity Rule specifically relating to network utility services.</p> <p><i>Utility Services</i>” are not defined under the Proposed Plan. Rule 3.1.2 should be amended to refer to “<i>Infrastructure</i>” which is defined, or a definition for “<i>Utility Services</i>” is inserted into the Plan.</p>	<p>In relation to new services or facilities, the Plan provides that services that are part of a network and need to locate within areas of significant indigenous vegetation should be considered in the context of a resource consent application. Such an application would need to show why the “network utility service” needs to locate there. The Council – and the public – need to know that an area of significant indigenous biodiversity is not being compromised only because it is the preferred option from a cost perspective.</p> <p>However, the insertion of the word “<u>network</u>” before “<i>utility services</i>”, recommended in response to Submission 87.39, and the inclusion of a definition of “<i>network utility services</i>” partially addresses the point made by the submitter.</p>

Submitter	PROVISION	Submission	Recommendation
FS39.22 Environment Southland	3.1.2	<p>Oppose submission 91.16</p> <p>The further submitter notes that resource consent is only required for areas of significant indigenous biodiversity. They consider that reducing the activity status from discretionary to controlled would not adequately recognise and provide for the protection of significant indigenous vegetation and significant habitats of indigenous fauna, in accordance with Section 6 of the RMA.</p> <p>DECISION SOUGHT Disallow decision sought.</p>	<p>Accept in part</p> <p>On the same basis and for the same reasons as 91.16.</p>
64.11 Department of Conservation	3.1.3	<p>Support.</p> <p>Although the submitter supports its inclusion, the submitter questions the need to include buildings with a footprint greater than 10m² as it is likely that any associated removal of vegetation of earthworks would be covered elsewhere in the rule.</p> <p>DECISION SOUGHT Retain Rule 3.1.3.</p>	<p>Accept</p> <p>The provision clarifies that any building in an area of significant indigenous vegetation large enough to require building consent, also requires consent under this provision.</p>
65.90 ICC Environmental and Planning Services	3.1.3	<p>Support in part. The submitter is concerned that the definition of earthworks, which is otherwise non-complying, excludes cultivation of land and that there is a risk that this could enable the cultivation, and potential drainage of wetlands.</p>	<p>Accept in part.</p> <p>It is accepted that this area of the District Plan needs clarification. It is not accepted that the decision sought by the submitter is the right outcome.</p>

Submitter	PROVISION	Submission	Recommendation
		<p>DECISION SOUGHT Amend the definition of earthworks to include “the cultivation of farmland more than 10m from an area of identified significant biodiversity”.</p>	<p>This submission relates mainly to Rule 3.1.3(D) which deals with earthworks. Earthworks are defined in the Proposed District Plan. The definition specifically excludes the digging of holes for the erection of posts, planting of trees or other vegetation. It excludes the cultivation of farmland.</p> <p>The combination of Rule 3.1.3 (D) and the definition of “earthworks” raise several issues. The first issue is that as it stands, the effect of Rule 3.1.3(D) extends the regulatory impact of the identified area of significant indigenous biodiversity 10 m. beyond the actual vegetation. However, the actual areas of vegetation under Rule 3.1 are the “Areas of Significant Indigenous Biodiversity” marked on the Planning Maps. The definition of “earthworks” is somewhat clumsy but would certainly include creating a driveway or digging a service trench. To give an example – if you owned the property next to one of these identified areas, and wanted to dig a drain along your boundary, then under Rule 3.1.3 (D) that drain would be a non-complying activity. While this is a valid interpretation of the rule, it is a somewhat harsh imposition on the owner of a property which happens to be next door to, but not within, an identified area of significant biodiversity. It is an interpretation which neighbours of areas of significant indigenous biodiversity could not easily have foreseen given that it arrived through the submission process.</p> <p>To be consistent with the Rule of Law, the boundary of an area to which a district plan rule applies must be clearly defined. In this instance, it is very</p>

Submitter	PROVISION	Submission	Recommendation
			<p>reasonably the boundary of the area identified on the District Planning Maps as an area of significant indigenous biodiversity. It cannot, with any certainty, be identified simply by the presence of vegetation.</p> <p>If it is imperative for ecological reasons that a buffer zone surrounds an area of significant indigenous biodiversity, then the boundary of that area should be drawn (or re-drawn) to include the buffer zone.</p> <p>The second issue is that the definition of “earthworks” in the Proposed District Plan specifically excludes “cultivation” – as noted by the submitter. This would mean, under Rule 3.1.3 as notified, that ploughing a wetland would not come within the orbit of Rule 3.1.3. It is logical that ploughing an area of significant indigenous vegetation not be something that would normally be allowed but that could be considered in unusual circumstances. It therefore needs to clearly be a non-complying activity.</p> <p>The third issue that the submission raises is whether preparing the ground for building foundations or service trenches is, or should be, contemplated by the Plan. Consistency with other provisions in the Plan suggests that such activities should be provided for, but as a non-complying activity.</p> <p>There is a further wording problem with the decision sought by the submitter. The submitter is concerned about wetlands, and the possibility of a drainage ditch, incidental to cultivation, being dug too close. However the submitter seeks to prevent the cultivation of farmland “<i>more than 10 m</i>” from the</p>

Submitter	PROVISION	Submission	Recommendation
			<p>boundary. Presumably the submitter meant “less than”. As stated above, in my view if an area of significant indigenous vegetation requires a buffer zone, then that buffer area should be included within the area of significant indigenous vegetation identified on the planning maps.</p> <p>It is recommended that: Rule 3.1.3 be amended to read:</p> <p><i>It is a non-complying activity to:</i></p> <p>(A)</p> <p>(B)</p> <p>(C)</p> <p>(D) <u>Carry out earthworks, cultivation of farm land, and/or preparation of ground for building foundations within any area of significant indigenous biodiversity or within 10 metres of it.</u></p> <p>(Note: A further but complementary change to this provision is recommended in response to submission 87.4 below.)</p>
<p>FS 8.2 Department of Conservation</p>	<p>3.1.3</p>	<p>Support submission 65.90</p> <p>The further submitter considers that excluding the cultivation of land within the definition of earthworks potentially allows for farming activities to occur up to the boundary of an identified area of significant indigenous biodiversity, potentially damaging it.</p> <p>The further submitter considers that amending the definition as sought will ensure that an appropriate buffer is</p>	<p>Accept in part, reject in part</p> <p>It is accepted that the cultivation of land within an area of significant indigenous vegetation is a matter for which the consent category needs to be clarified in the Proposed District Plan. In response to submission 65.9 (above) it is recommended that the cultivation of farm land come within the orbit of Rule 3.1.3(D).</p> <p>It is not accepted that rules in relation to areas of</p>

Submitter	PROVISION	Submission	Recommendation
		maintained between these activities and areas of significant indigenous biodiversity.	significant indigenous biodiversity can reasonably be applied outside of the boundaries of areas delineated on the Planning Maps.
87.40 Transpower NZ Ltd	3.1.3	<p>Oppose in part. The submitter believes that the requirement to protect indigenous vegetation must be balanced with the need to provide an essential service to the community, and a non-complying activity status is overly restrictive when and a discretionary status would allow the Council to consider any relevant matters. Therefore, the submitter seeks that the erection of a building/structure associated with the National Grid is considered as a Discretionary Activity under Rule 3.1.2.</p> <p>The submitter also considers that the non-complying activity status does not provide for the operation, maintenance, upgrading or development of the National Grid as required by the NPSET, and seeks confirmation that the removal of indigenous vegetation for maintenance activities is provided for under Rule 3.1.1 and the construction of a new line associated with the National Grid is considered as a Discretionary Activity under Rule 3.1.2.</p> <p>DECISION SOUGHT</p> <p>(i) Amend Rule 3.1.3 as follows:</p> <p>“It is a non-complying activity to:</p> <p>(A) Remove any live indigenous vegetation, or alter such vegetation in</p>	<p>Accept in part.</p> <p>The submitter is correct in pointing out that a District Plan must give effect to NPSET. It is accepted that discretionary activity status is more appropriate in the context of NPSET.</p> <p>In response to submission 87.39 (above) it is recommended that Rule 3.1.2 be changed.</p> <p>It is recommended in response to this submission (87.40) that it would be consistent with the NPSET to add to (B) to read as follows:</p> <p>3.1.2 It is a discretionary activity to:</p> <p>(A)</p> <p>(B) <i>Construct <u>network utility services including associated trenches and earthworks</u> in a manner that will require the trimming, removal or changes to any indigenous vegetation or parts thereof, including any branches or roots, within the drip line of that vegetation.</i></p>

Submitter	PROVISION	Submission	Recommendation
		<p>a manner that destroys the biological viability of that vegetation, except where permitted under Rule 3.1.1 and <u>3.1.2</u> above.</p> <p>(B) Erect any building or other structure with a footprint greater than 10 square metres in area.</p> <p>(C) Plant exotic woodlots and commercial forestry.</p> <p>(D) Carry out earthworks (<u>other than associated with the National Grid</u>) within any area of significant indigenous biodiversity or within 10 metres of it.”</p> <p>(ii) And any consequential amendments.</p>	
<p>FS12.5 PowerNet Ltd</p>	<p>3.1.3</p>	<p><i>Support in part submission 87.40</i> The further submitter agrees with the submission in seeking to ensure a balance is required in relation to protecting indigenous vegetation and the needs of essential services to the community. The further submitter considers that a non-complying activity status is overly restrictive and should not apply to regionally significant infrastructure.</p>	<p>Accept in part The response recommended to submission 87.4 partially meets the matters raised by this further submitter by changing network utility services and associated earthworks from non-complying activity status to discretionary activity status.</p>
<p>88.75 Federated Farmers</p>	<p>3.1.3</p>	<p>Oppose in part. The submitter considers there is capacity for the rule to enable additional farming activities to be carried out with a more appropriate activity status. The submitter considers that Rule 3.1.3(A) is against the permissive presumption of</p>	<p>Reject In rejecting this submission it should be noted that the recommended response to other submissions of including any necessary buffer zone within a delineated area of significant biodiversity clarifies</p>

Submitter	PROVISION	Submission	Recommendation
		<p>Section 9 of the RMA, under which the use of land is presumed to be permitted unless it is restricted by a rule in a plan, and opposes the default to non-complying status for removal or alteration of vegetation not provided for within Rule 3.1.1.</p> <p>DECISION SOUGHT</p> <ul style="list-style-type: none"> • Reduce the activity status for farming activities to “discretionary” or “restricted discretionary”. • That Council delete Rule 3.1.3(D) OR specifically provide for activities that are appropriate – such as the planting of perimeter fencing (to keep stock off the area in question) or the planting of native trees. 	<p>what can be done on land outside that area.</p> <p>It is useful, to avoid confusion, to clarify that agriculture is a non-complying activity (within an area identified as an area of significant indigenous biodiversity – which is the focus of the Rule) and it is therefore recommended that Rule 3.1.3 (B) be amended to read:</p> <p>Rule 3.1.3 <i>It is a non-complying activity to:</i></p> <p>(A)</p> <p>(B)</p> <p>(C) <u>Carry out agriculture and/or plant exotic woodlots and commercial forestry.</u></p> <p>Having delineated an area of significant indigenous biodiversity, the activities listed in 3.1.3 (A) – (D) are likely to threaten the sustainability of that biodiversity and the appropriate status for them is non-complying.</p>
<p>FS32.1 Placer Investments Ltd</p>	<p>3.1.3</p>	<p>Support submission 88.75</p> <p>The further submitter supports the part of the submission that seeks to change the activity status from “non-complying” to “discretionary”. The further submitter considers that “non-complying” activity status is overly restrictive, especially in relation to mining in the Tiwai Peninsula area, which should be a discretionary activity.</p> <p>DECISION SOUGHT</p> <p>Change: <i>“It is a non-complying <u>discretionary</u> activity to”</i></p>	<p>Reject</p> <p>Having delineated an area of significant indigenous biodiversity, the activities listed in 3.1.3 (A) – (D) are likely to threaten the sustainability of that biodiversity and the appropriate status for them is non-complying.</p>

Submitter	PROVISION	Submission	Recommendation
<p>88.76 Federated Farmers</p>	<p>3.1.4</p>	<p>Support in part. The submitter considers there are strong environmental value considerations provided for alongside provision for consideration of amenity, social, cultural and recreational values, but there is no consideration as to the necessity of the activity to the functioning of the land involved, or any economic considerations to the landholder or community in general.</p> <p>The submitter believes there is a need to address the benefit of proposed activities to the business of farming as part of the consent consideration criteria to provide a more balanced view.</p> <p>DECISION SOUGHT Adopt additional consideration criteria to acknowledge the economic impact of the proposed activity, and its necessity to the business of the existing landholding.</p>	<p>Accept in part</p> <p>There is a considerable weight of national and regional policy, to which a district plan is required to give effect (or otherwise take account of), which requires effective methods including regulatory methods to maintain the ecological viability of areas of significant indigenous biodiversity.</p> <p>By confining the effect of Rules 3.1.1, 3.1.2, 3.1.4 and 3.1.5 to within the boundaries of areas of significant indigenous biodiversity identified on the planning maps, the restrictive effect on land uses outside those identified areas is minimised.</p> <p>Additional areas of significant indigenous vegetation can only be added by way of the plan change procedure, which requires under Section 32 a cost-benefit analysis which would cover the points raised by the submitter.</p> <p>However, it would be in keeping with the tenor of Section.32 and other related provisions of the RMA to include economic factors within consideration of any resource consent application made under Rules in the District Plan.</p> <p>It is therefore recommended that an addition be made to Rule 3.1.4 as follows:</p> <p>3.1.4 Applications under Rules 3.1.2 and 3.1.3 above shall address the following matters which will be among those taken into account by Council</p> <p>.....</p> <p>(P) <u>The economic costs and benefits of the proposed activity.</u></p>

Submitter	PROVISION	Submission	Recommendation
77.6 Te Runaka o Waihopai and Te Runaka o Awarua	3.1.4	The submitter suggests that clause (L) should be reworded. DECISION SOUGHT Amend 3.1.4L as follows: “ <u>The value of the affected land to tangata whenua and the effects of the action on cultural values, including lands, water, sites, wahi tapu and wahi taonga</u> ”	Accept It is recommended that 3.1.4 (L) be amended to read: (L) <u>The value of the affected land to tangata whenua and the effects of the activity on cultural values, including lands, water, sites, wahi tapu and wahi taonga</u>
64.12 Department of Conservation	3.1.4 and 3.1.5	Support. The submitter considers the list of matters to be considered and the requirement for an ecological assessment will provide adequate consideration of the adverse effects of land use activities on indigenous biodiversity. DECISION SOUGHT Retain in their present form.	Accept It is not considered that the addition of (P) - The economic costs and benefits of the proposed activity - recommended in response to submission 88.76 – as one of 16 matters to be taken into account by the Council, weakens the Plan provision.
FS4.17 Federated Farmers	3.1.5	Oppose submission 64.12 The further submitter considers that there will be minor activities proposed where an ecological assessment will not be necessary or appropriate all the time. DECISION SOUGHT Amend rule to ensure that ecological assessments are only required when appropriate and necessary to the activity proposed.	Reject Rule 3.1.5 as notified requires an ecological assessment “ <i>commensurate with the scale of the proposed activity detailing the impact of the activity on the significant indigenous biodiversity, including the current health of the biodiversity in the area in question and any maintenance regime proposed.</i> ” In response to other submissions, this Rule would apply only within areas of significant indigenous biodiversity identified on the planning maps. It is not considered that requiring an ecological

Submitter	PROVISION	Submission	Recommendation
			assessment of the effects of activities within areas of significant indigenous biodiversity, which have the potential to affect adversely that biodiversity, is unreasonable.
18.92 Environment Southland	3.1.5	Support and seeks its retention.	Accept
48.14 Forest & Bird Society	3.1.5	Support. The submitter considers that ecological assessments need to be undertaken by suitably qualified or skilled people and if this cannot be demonstrated the application should be publicly notified. DECISION SOUGHT Not specifically stated.	Accept in part If an ecological assessment is inadequate or incompetent, the Council has the option of not accepting an application, or notifying it.
54.14 Otatara Landcare Group	3.1.5	Support. The submitter considers that ecological assessments need to be undertaken by suitably qualified or skilled people and if this cannot be demonstrated the application should be publicly notified. DECISION SOUGHT Not specifically stated.	Accept in part On the same basis and for the same reason as 48.14.
87.41 Transpower NZ Ltd	3.1.5	Oppose in part. The submitter states that given that Rule 3.1.2 provides for the construction of roads and infrastructure, it is assumed that it will not apply to vegetation removed during maintenance and for safety reasons, which is provided for under Rule 3.1.1, and if this is the case, Transpower	Accept in part Rule 3.1.5 is clear that an ecological assessment is required only under Rules 3.1.2 and 3.1.3 – in other words, when a resource consent is required by those Plan provisions. The requirement for an ecological assessment does not apply to Rule 3.1.1 which

Submitter	PROVISION	Submission	Recommendation
		<p>supports Rule 3.1.5 as it will only apply to the development of new National Grid transmission lines and towers.</p> <p>DECISION SOUGHT</p> <p>That Rule 3.1.5 be retained as notified and that the trimming of vegetation for operational or maintenance purposes around the National Grid is a permitted activity under Rule 3.1.1.</p>	<p>provides for permitted activities.</p> <p>In response to other submissions (71.49) a new Rule is recommended recommending that removal of vegetation associated with infrastructure would be a controlled activity.</p>
<p>88.77 Federated Farmers</p>	<p>3.1.5</p>	<p>Oppose in part. The submitter considers there may be instances where a minor activity is proposed that falls within a rule requiring a consent application, and an ecological assessment will not be necessary or appropriate in every case. This should be acknowledged within the rule.</p> <p>DECISION SOUGHT</p> <p>Amend the rule to ensure that ecological assessments are only required when appropriate and necessary to the activity proposed. Suggested wording changes may be:</p> <p>“Where an application for resource consent is required under Rule 3.1.2 and 3.1.3 above the application shall include <u>may require</u> an ecological assessment commensurate with the scale of the proposed activity ...”</p>	<p>Reject</p> <p>An ecological assessment commensurate with the scale of a minor activity may well be quite brief, but requiring the assessment requires that the ecological impact be considered and that consideration documented.</p>

Submitter	PROVISION	Submission	Recommendation
PLANNING MAPS			
<p>18.8 Environment Southland</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>The submitter generally supports the areas defined in the Planning Maps as Areas of Significant Indigenous Biodiversity.</p> <p>The submitter is concerned that some of the remaining wetland areas in the District have been omitted from the planning maps and are therefore at risk to vegetation clearance from development activities as the rules only apply to the areas mapped. The submitter considers all wetlands in the Southland region to be significant as less than 20% of their original extent remains today.</p> <p>The areas that the submitter suggests have been omitted from the planning maps include naturally occurring wetlands in the Awarua and Greenhills areas as well as smaller areas to the north-east of Lake Murihiku.</p> <p>DECISION SOUGHT To amend Planning Maps in the district plan to include all indigenous vegetation that is less than 20% of the former extent remaining (threatened) including all naturally occurring wetland areas supporting an indigenous ecosystem;</p> <p>OR</p> <p>Provide protection for all naturally occurring wetland areas supporting an indigenous</p>	<p>Accept in part</p> <p>The submitter's support for the areas delineated on the Planning Maps is noted.</p> <p>It is recommended in response to Submission 18.7 (above) that the following be added to the <i>introduction</i> to Section 2.3 on page 5 (adding a new paragraph above the final paragraph in that section).</p> <p><i>In addition to providing</i></p> <p><u><i>The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.</i></u></p> <p><i>The Council acknowledges</i></p> <p>It is accepted that the areas of significant indigenous biodiversity delineated on the Planning Maps may not be all the areas of significant indigenous biodiversity that remain in the Invercargill city district. However the areas concerned were identified in the course of a comprehensive report undertaken for the Council by Amber Bill and completed in 1999.</p> <p>It is accepted that the information currently held by the Council could and should be refined over time.</p>

Submitter	PROVISION	Submission	Recommendation
		<p>ecosystem within the Invercargill district from subdivision, use and development through a specific rule in the District Plan.</p>	<p>The above response is a policy direction to work collaboratively with Environment Southland to carry out further investigation to identify further areas of significant indigenous biodiversity. This will progressively identify any areas missed so far.</p> <p>Having identified such areas, the plan change process is the right way to consider regulatory intervention. The plan change process ensures full consultation with affected parties and consideration of costs and benefits.</p> <p>If additional wetlands should be formally identified as areas of significant indigenous biodiversity, again the plan change process is the correct way to introduce them to the District Plan.</p> <p>It is not accepted that planning maps could be amended by including additional areas other than by way of the plan change procedure.</p>
<p>FS2.10 NZAS Ltd</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p><i>Support in part and oppose in part submission 18.8 and 18.9</i></p> <p>The further submitter supports the identification of areas of significant indigenous biodiversity on the Planning Maps, in particular it supports the area identified on and in close proximity to the smelter site.</p> <p>However the further submitter opposes the extension of any of these areas.</p>	<p>Accept in Part</p> <p>The submitter's support for the areas as currently delineated on the Planning Maps is noted.</p> <p>No extension of these areas is contemplated in the context of responding to submissions to the Proposed District Plan. Any future extensions would be introduced by way of Plan Change.</p>

Submitter	PROVISION	Submission	Recommendation
		<p>DECISION SOUGHT Retain the areas of significant indigenous biodiversity on and in close proximity to the smelter site as notified.</p>	
<p>FS4.9 Federated Farmers</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p><i>Oppose submission 18.8</i> The further submitter is concerned that the relief sought in submission 18.8 has the potential for all wetlands, including artificial wetlands, to be captured on the basis that over time these water bodies take on natural values. The further submitter believes that to require maintenance of all such vegetation and fauna would go beyond the intent of the RMA. The further submitter considers that there is adequate protection provided in the section and in other areas of the plan that address indigenous biodiversity.</p> <p>DECISION SOUGHT Not stated.</p>	<p>Reject in part On the same basis and for the same reasons as 18.8.</p>
<p>FS12.4 PowerNet Ltd</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p><i>Oppose submission 18.8</i> The further submitter agrees that it is appropriate to map the areas of significant indigenous biodiversity but considers such mapping to be completed in association with the landholders and needs to take into consideration the existing level of development of, and alterations to, the natural environment.</p>	<p>Accept</p>

Submitter	PROVISION	Submission	Recommendation
FS25.15 Transpower NZ Ltd	Areas of Significant Indigenous Biodiversity in Planning Maps	<p>Oppose submission 18.8</p> <p>The further submitter considers that “areas identified in future studies” and “through resource consent processes” should only be introduced by way of Plan Change.</p> <p>The further submitter considers it appropriate that interested parties have an opportunity to comment on amendments to Planning Maps to include additional wetlands or areas of significant vegetation.</p> <p>The further submitter also opposes the protection of any wetland that has not been assessed as having significant biodiversity values.</p>	Accept
FS32.5 Placer Investments Ltd	Areas of Significant Indigenous Biodiversity in Planning Maps	<p>Oppose submission 18.8</p> <p>The further submitter considers that the areas previously classified as “wetlands” on the Tiwai Peninsula should be removed from the Planning Maps due to the lack of wetlands in the area. The further submitter notes that the areas have been subject to much modification and does not include areas of significant indigenous vegetation.</p> <p>The further submitter further considers that in any areas retained on the Planning Maps in the Tiwai Peninsula, earthworks associated with mining and consequential rehabilitation should not be accorded non-complying status.</p>	<p>Reject</p> <p>The submitter does not include sufficient information the submission to justify the action sought. I would expect that a comprehensive ecological assessment made against recognised criteria be available to commissioners for them to make such a decision to remove an area of significant biodiversity from the planning maps. Ideally this information should also be available as part of a submission to enable others with an interest in this matter to review the findings.</p> <p>I consider that any amendments of this nature are best made via a plan change where the relative significance of site is comparable and public consultation undertaken.</p>

Submitter	PROVISION	Submission	Recommendation
		<p>The further submitter considers that the submission is not in accordance with Part 2 of the RMA.</p> <p>DECISION SOUGHT</p> <p>Remove the areas identified as Significant Indigenous Biodiversity within Tiwai Peninsula from the Planning Maps or reduce the area.</p> <p>Amend maps so that these areas are clearer to assist with interpretation and application of control.</p>	
<p>48.2 Forest & Bird Society</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>The submitter believes that not all of the significant natural features in the district have been adequately defined on the Planning Maps. In particular, the greatest deficiencies in the mapping of significant vegetation are:</p> <ul style="list-style-type: none"> – Wetlands in the south of the ICC district. – Forests in Otatara and Omaui-Greenhills areas (stands of regenerating forest are frequently not included). – The margins of estuaries (including New River Estuary, Mokokoko Inlet, Awarua Bay and Bluff Harbour). – Coastal vegetation (including sand dunes, gravel beaches, coastal turf vegetation and others). – Tiwai Peninsula (some areas of significant indigenous biodiversity are 	<p>Accept in part.</p> <p>It is recommended in response to Submission 18.7 (above) that the following be added to the <i>introduction</i> to Section 2.3 on page 5 (adding a new paragraph above the final paragraph in that section).</p> <p><i>“In addition to providing</i></p> <p><u><i>The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.”</i></u></p> <p><i>The Council acknowledges</i>”</p>

Submitter	PROVISION	Submission	Recommendation
		<p>not mapped including areas within the Smelter Sub-Area).</p>	<p>It is accepted that the areas of significant indigenous biodiversity delineated on the Planning Maps may not be all the areas of significant indigenous biodiversity that remain in the Invercargill city district. The above response is to work collaboratively with Environment Southland to carry out further investigation to identify further areas of significant indigenous biodiversity.</p> <p>Having identified such areas, the plan change process is the right way to consider regulatory intervention. The plan change process ensures full consultation with affected parties and consideration of costs and benefits.</p> <p>If additional wetlands should be formally identified as areas of significant indigenous biodiversity, again the plan change process is the correct way to introduce them to the District Plan.</p> <p>It is not accepted that Planning Maps should be amended by including additional areas other than by way of the plan change procedure.</p>
<p>FS32.6 Placer Investments Ltd</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p><i>Oppose submission 48.2</i></p> <p>The further submitter opposes the part of the submission that states that some areas of significant indigenous biodiversity have not been mapped including areas within the Smelter Zone.</p> <p>The further submitter considers that the areas previously identified as wetlands should be removed from the Planning Maps; that the area has been significantly modified</p>	<p>Reject</p> <p>It is accepted in response to other submissions that the areas of significant indigenous biodiversity delineated on the Planning Maps may not be all the areas of significant indigenous biodiversity that remain in the Invercargill city district.</p> <p>The submitter does not include sufficient information the submission to justify the action sought.</p> <p>Any amendment to the areas of significant</p>

Submitter	PROVISION	Submission	Recommendation
		<p>and that there are no longer areas of significant indigenous biodiversity present in the area.</p> <p>DECISION SOUGHT Remove areas identified as Significant Indigenous Biodiversity within the Tiwai Peninsula.</p> <p>Amend Planning Maps so it is clearer where the areas of Significant Indigenous Biodiversity are to assist interpretation and application of control.</p>	<p>indigenous biodiversity currently shown on the Planning Maps should be by way of Plan Change in order that all stakeholders can comment and a thorough ecological assessment using consistent recognised criteria applied. The plan change process ensures full consultation with affected parties and consideration of costs and benefits.</p> <p>It should be noted that mining within an area of significant indigenous biodiversity would fall within the ambit of Rule 3.1.3 and hence be a non complying activity.</p>
<p>48.3 Forest & Bird Society</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>The submitter considers that none of the four national biodiversity priorities referred to in Rule 3.1.4(A) are adequately defined on the Planning Maps and therefore the national priorities will not be adequately implemented.</p>	<p>Reject It is accepted in response to other submissions that the areas of significant indigenous biodiversity delineated on the Planning Maps may not be all the areas of significant indigenous biodiversity that remain in the Invercargill City District.</p> <p>The four National Priorities referred to by the submitter are set out on page 1 of Protecting our Places: Information about the Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land (Ministry for the Environment ME805 2007). They are:</p> <p>National Priority 1: To protect indigenous vegetation associated with land environments (defined by Land Environments of New Zealand at Level IV), that have 20% or less remaining in indigenous cover.</p>

Submitter	PROVISION	Submission	Recommendation
			<p>National Priority 2: To protect indigenous vegetation associated with sand dunes and wetlands; ecosystem types that have become uncommon due to human activity.</p> <p>National Priority 3: To protect indigenous vegetation associated with “originally rare” terrestrial ecosystem types not already covered by priorities 1 and 2.</p> <p>National Priority 4: To protect habitats of acutely and chronically threatened indigenous species.</p> <p>Those national criteria are implicit in the criteria used by Amber Bill in her Invercargill study (Page 3):</p> <ul style="list-style-type: none"> • Representativeness • Rarity/distinctiveness • Landscape context (diversity/pattern, shape, connectivity and size) • Threat/fragility (biotic, physical climatic, human impact) • Sustainability • Viability <p>Therefore the four national priorities are reflected in Amber Bill’s analysis and the policy that is based on it.</p>

Submitter	PROVISION	Submission	Recommendation
<p>48.4 Forest & Bird Society</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>The submitter is concerned that the Planning Maps are set in time and not flexible enough to take account of new information when it becomes available, including regenerating areas, or changes in public opinion and expectations. The submitter considers that the use of Planning Maps as the sole indicator of significant vegetation results in other deficiencies.</p>	<p>Accept in part</p> <p>It is accepted in response to other submissions that the areas of significant indigenous biodiversity delineated on the Planning Maps may not be all the areas of significant indigenous biodiversity that remain in the Invercargill city district.</p> <p>It is recommended in response to Submission 18.7 (above) that the following be added to the <i>introduction</i> to Section 2.3 on page 5 (adding a new paragraph above the final paragraph in that section).</p> <p><i>“In addition to providing</i></p> <p><u><i>The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.”</i></u></p> <p><i>The Council acknowledges</i>”</p> <p>This may well result in additional areas of significant indigenous biodiversity being identified on the Planning Maps by way of Plan Change over time.</p> <p>There are other voluntary methods, such as QE II covenants, available to landowners who wish to secure protection over areas of indigenous vegetation on private land.</p>

Submitter	PROVISION	Submission	Recommendation
48.5 Forest & Bird Society	Areas of Significant Indigenous Biodiversity in Planning Maps	The submitter is concerned by what is considered “significant” to be included on the Planning maps and believes that even regenerating vegetation provides significant habitat for indigenous species. The submitter believes that all remaining habitat should be included and that the consent process is the appropriate mechanism to judge the significance and the conditions to be set for the activity.	<p>Reject The use of the word “significant” is mandated by the RMA itself at Section .6 (c) “the protection of <u>significant</u> indigenous vegetation and <u>significant</u> habitats of indigenous fauna”.</p> <p>If the consent bar is set too high and the regime is too onerous, the reverse of what the Plan hopes to achieve may eventuate – that to have “indigenous biodiversity” on one’s property becomes a complication to any form of land use to the point where indigenous biodiversity is quietly got rid of before the authorities find out about it.</p>
54.2 Otatara Landcare Group	Areas of Significant Indigenous Biodiversity in Planning Maps	The submitter believes that not all of the significant natural features in the district have been adequately defined on the Planning Maps. In particular, the greatest deficiencies in the mapping of significant vegetation are: <ul style="list-style-type: none"> – Wetlands in the south of the ICC district. – Forests in Otatara and Omaui-Greenhills areas (stands of regenerating forest are frequently not included). – The margins of estuaries (including New River Estuary, Mekomoko Inlet, Awarua Bay and Bluff Harbour). – Coastal vegetation (including sand dunes, gravel beaches, coastal turf vegetation and others). – Tiwai Peninsula (some areas of significant indigenous biodiversity are not mapped including areas within the Smelter Sub-Area). 	<p>Reject On the same basis and for the same reasons as 48.2.</p>

Submitter	PROVISION	Submission	Recommendation
<p>FS25.16 Transpower NZ Ltd</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>Oppose submissions 48.2 and 54.2 The further submitter considers that “areas identified in future studies” and “through resource consent processes” should only be introduced by way of Plan Change.</p> <p>The further submitter considers it appropriate that interested parties have an opportunity to comment on amendments to Planning Maps to include additional wetlands or areas of significant vegetation.</p> <p>The further submitter also opposes the protection of any wetland that has not been assessed as having significant biodiversity values</p> <p>DECISION SOUGHT Not stated specifically.</p>	<p>Accept</p>
<p>FS32.7 Placer Investments Ltd</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>Oppose submission 54.2 The further submitter opposes the part of the submission that states that some areas of significant indigenous biodiversity have not been mapped including areas within the Smelter Zone.</p> <p>The further submitter considers that the areas previously identified as wetlands should be removed from the Planning Maps; that the area has been significantly modified and that there are no longer areas of significant indigenous biodiversity present in the area.</p>	<p>Accept in part</p> <p>It is accepted that the addition of new areas of significant biodiversity should be by way of plan change where these areas are to be identified on the Planning Maps and subject to regulatory intervention.</p> <p>The submitter has produced no evidence to support the claim that there are “no longer” areas of significant indigenous biodiversity within the Smelter Zone.</p>

Submitter	PROVISION	Submission	Recommendation
		<p>DECISION SOUGHT Remove areas identified as Significant Indigenous Biodiversity within the Tiwai Peninsula.</p> <p>Amend Planning Maps so it is clearer where the areas of Significant Indigenous Biodiversity are to assist interpretation and application of control.</p>	
<p>54.3 Otatara Group</p> <p>Landcare</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>The submitter considers that none of the four national biodiversity priorities referred to in Rule 3.1.4(A) are adequately defined on the Planning Maps and therefore the national priorities will not be adequately implemented.</p> <p>DECISION SOUGHT Not stated specifically.</p>	<p>Reject</p> <p>On the same basis and for the same reasons as 48.3.</p>
<p>54.4 Otatara Group</p> <p>Landcare</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>The submitter is concerned that the Planning Maps are set in time and not flexible enough to take account of new information when it becomes available, including regenerating areas, or changes in public opinion and expectations. The submitter considers that the use of Planning maps as the sole indicator of significant vegetation results in other deficiencies.</p> <p>DECISION SOUGHT Not stated specifically.</p>	<p>Reject</p> <p>On the same basis and for the same reasons as 48.4.</p>

Submitter	PROVISION	Submission	Recommendation
<p>54.5 Otatara Landcare Group</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>The submitter is concerned by what is considered “significant” to be included on the Planning maps and believes that even regenerating vegetation provides significant habitat for indigenous species. The submitter believes that all remaining habitat should be included and that the consent process is the appropriate mechanism to judge the significance and the conditions to be set for the activity.</p> <p>DECISION SOUGHT Not stated specifically.</p>	<p>Reject</p> <p>On the same basis and for the same reasons as 48.5.</p>
<p>FS2.15 NZAS Ltd</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p><i>Oppose submissions 48.2, 48.3, 48.4 and 48.5 and 54.2, 54.3, 54.4 and 54.5</i></p> <p>The further submitter is not aware of the areas of significant indigenous biodiversity that are not included in the Planning Maps as asserted in the above submissions.</p> <p>The further submitter supports the intention to protect biodiversity but considers it important that there is recognition of other potential development.</p> <p>The further submitter considers that there is clarity in linking planning regulation to areas identified on the planning maps. The further submitter believes the extent of the areas the submitters are seeking to include is unclear.</p>	<p>Accept</p> <p>It is accepted that regulatory intervention with respect to areas of significant biodiversity should apply only to areas formally identified on the Planning Maps.</p> <p>It is also accepted that the Plan Change process is the appropriate mechanism to amend the definition of areas of significant indigenous biodiversity on the planning maps.</p>

Submitter	PROVISION	Submission	Recommendation
		<p>The further submitter also notes that Planning Maps are not set in time and can be amended through the Plan Change process.</p>	
<p>FS4.14 Federated Farmers</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p><i>Oppose submissions 48.2, 48.3, 48.4 and 48.5 and 54.2, 54.3, 54.4 and 54.5</i></p> <p>The further submitter considers that the areas of significant indigenous vegetation on the maps should not be extended. The further submitter believes that the areas have been identified using appropriate criteria and that it would be unreasonable and resource intensive to go through another identification process.</p> <p>DECISION SOUGHT</p> <p>The rules with 3.1 should only apply to identified mapped areas of significant indigenous biodiversity.</p>	<p>Accept</p> <p>On the same basis and for the same reasons as FS2.15</p>
<p>64.8 Department of Conservation</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>Support in part.</p> <p>The submitter is concerned that there are areas of significant indigenous biodiversity that are not shown on the Planning Maps. The submitter also considers that the Plan does not provide for areas that over the lifetime of the plan may develop as areas of significant indigenous biodiversity, and that these areas will not be given the required protection.</p>	<p>Accept in part</p> <p>It is accepted in response to other submissions that the areas of significant indigenous biodiversity delineated on the Planning Maps may not be all the areas of significant indigenous biodiversity that remain in the Invercargill city district.</p> <p>It is recommended in response to Submission 18.7 (above) that the following be added to the <i>introduction</i> to Section 2.3 on page 5 (adding a new paragraph above the final paragraph in that section).</p>

Submitter	PROVISION	Submission	Recommendation
		<p>DECISION SOUGHT Amend the wording under the Biodiversity heading as follows:</p> <p>“This rule applies to areas of significant indigenous biodiversity identified in the planning maps, <u>and to areas identified in future studies and through resource consent processes.</u>”</p>	<p><i>“In addition to providing</i></p> <p><i><u>The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.</u></i></p> <p><i>The Council acknowledges</i>”</p> <p>This may well result in additional areas of significant indigenous biodiversity being identified on the Planning Maps by way of Plan Change.</p> <p>The proposed wording would be too vague with respect to identifying areas to which the rules apply leading to serious enforceability problems. It is considered preferable to identify areas clearly on maps.</p>
<p>FS2.16 NZAS Ltd</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p>Oppose submission 64.8 The further submitter does not consider that the planning maps are ‘set in time’ as further areas if identified could be incorporated into the proposed Plan by way of Plan Change.</p> <p>DECISION SOUGHT (Implied but not stated) Not to change the areas of significant indigenous vegetation shown on the Planning Maps other than by way of a formal Plan Change.</p>	<p>Accept</p> <p>As the further submitter notes, updating the planning maps as a plan change will provide more certainty to plan users than relying on identifying areas of significant indigenous biodiversity through other processes.</p>

Submitter	PROVISION	Submission	Recommendation
<p>FS4.15 Federated Farmers</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p><i>Oppose submission 64.8</i> The further submitter considers that the areas of significant indigenous vegetation on the maps should not be extended. The further submitter believes that the areas have been identified using appropriate criteria and that it would be unreasonable and resource intensive to go through another identification process.</p> <p>The further submitter considers that Council is already able to protect new indigenous plantings. The further submitter states that if private landowners have invested time and money in planting a new stand of native bush, they should be allowed to manage it as they see fit.</p> <p>DECISION SOUGHT Not stated specifically.</p>	<p>Accept in part</p> <p>It is accepted that the areas of significant indigenous biodiversity should not be extended other than by way of a formal Plan Change process.</p> <p>It is accepted in response to other submissions that the Council's knowledge of significant indigenous biodiversity needs to be developed over time, in collaboration with other local authorities and in consultation with landowners. This may, eventually, result in a Plan Change or a series of Plan Changes.</p> <p>It is accepted that private landowners deserve encouragement for, and recognition of, efforts to establish and maintain stands of indigenous biodiversity on private land. This is why the Proposed District Plan places a heavy emphasis on non-regulatory methods. For example, an "Environmental Award" may well be a more appropriate way to acknowledge the establishment or reestablishment of an area of significant indigenous biodiversity. The benefit versus the cost of any regulatory intervention in such cases would need to be very carefully considered.</p>

Submitter	PROVISION	Submission	Recommendation
<p>FS25.14 Transpower NZ Ltd</p>	<p>Areas of Significant Indigenous Biodiversity in Planning Maps</p>	<p><i>Oppose Submission 64.8</i> The further submitter considers that “areas identified in future studies” and “through resource consent processes” should only be introduced by way of Plan Change.</p> <p>The further submitter considers it appropriate that interested parties have an opportunity to comment on amendments to planning maps to include additional wetlands or areas of significant vegetation. The further submitter also opposes the protection of any wetland that has not been assessed as having significant biodiversity values.</p> <p>DECISION SOUGHT Not stated specifically.</p>	<p>Accept.</p> <p>It is accepted that changes to areas that are identified already as areas of significant indigenous biodiversity on the Planning Maps, or the addition of new areas, should be done by way of the Plan Change process.</p>

APPENDIX 2 – RECOMMENDED CHANGES TO THE TEXT OF THE PROPOSED DISTRICT PLAN

2.3 Biodiversity

Introduction – page 2-4

Sites within the district containing areas of significant indigenous biodiversity were assessed by an ecologist employed by the Council. Having regard to the criteria above, sites were ranked using a numerical scoring of each of the above factors. There was an additional qualitative assessment. When sites were not considered to be of significance, having regard to the above factors, they have not been included in the District Plan.

The ~~most~~ important areas of ~~significant~~ indigenous biodiversity within the district include the Otatara Peninsula containing nationally significant totara-matai remnant forest over an ancient sand dune system; Omaui containing rare and threatened coastal turf communities; and Bluff Hill containing nationally significant podocarp forest.

The river and stream systems in the district provide important habitats for native species of plants and animals.

The Awarua Plain contains the district's largest wetland, which extends into the Southland District. A significant part of this wetland area is managed by the Department of Conservation (DOC), and makes up a part of the Seaward Moss Reserve. The Awarua Wetland is listed as a wetland of international importance under the ~~RAMSAR~~ Ramsar Convention

Introduction – page 2-5, fourth paragraph:

In addition to providing the basis for identifying areas of significant indigenous biodiversity within the District Plan, the research and assessments carried out provide a baseline for future monitoring of changes to these areas, both on an individual property basis and over the entire district. Such monitoring will be required on a regular basis in order to determine the effectiveness of the approach contained in this District Plan for managing activities within these areas. That approach is highly relevant ~~on~~ (to) the use of non-regulatory methods, supplemented where necessary with rules.

The Council is committed to working in collaboration with the Southland Regional Council, other local authorities and the community to maintain indigenous biodiversity. This could include working together with Environment Southland to develop a Schedule of Threatened, At Risk and Rare Habitat Types, a supporting GIS layer and advocating for other non-regulatory tools to manage biodiversity for the Southland region.

The Council acknowledges that, in some areas, there have been concerted efforts made by land owners and occupiers to protect and enhance areas of indigenous biodiversity so that they are available for future use and enjoyment. The Council will encourage such voluntary activities to continue. The Council will also encourage by non-regulatory means the promotion of public access to areas of indigenous

biodiversity where this will no give rise to adverse effects, either on the areas themselves or on the use of private land and the privacy of the land occupier. The provision of public access should not be subject to arbitrary restrictions. Any restrictions should be determined on a case by case basis if needed to protect important values including values to tangata whenua, avoid adverse environmental effects, protect river management works, protect public health and safety, provide for national security needs and avoid animal welfare issues and disruptions to normal farming practices should not compromise public safety or security issues and the Council accepts that where private land is involved the final decision on whether to permit the public access, and the conditions of such access, shall be that of the landowner.—The provisions of the Trespass Act 1980 also remain in instances where people access areas that the landowner does not wish to open to the public.

2.3.1 Issues

The significant resource management issues for biodiversity are:

1. “Invercargill’s indigenous ecosystems have been reduced in diversity and extent over time and are under threat in some areas from further subdivision, land use change and development
2.

2.3.2 Objectives

Objective 1: Indigenous ~~vegetation~~ biodiversity and areas of significant indigenous biodiversity are maintained and restored to a healthy functioning state, and where appropriate enhanced.

Objective 2: The natural character and biodiversity of wetlands, rivers and their margins are protected from inappropriate subdivision and development

2.3.3 Policies

Policy 2: To protect and enhance the ecological integrity and functioning of indigenous ecosystems and significant habitats with indigenous biodiversity values by avoiding, remedying or mitigating the adverse effects of subdivision, land use and development.

Policy 5: Biodiversity Initiatives. To encourage and support biodiversity initiatives to maintain, restore and/or enhance

- (A) Coastal features, ecosystems or habitats
- (B) Aquatic ecosystems or habitats
- (C) Indigenous ecosystems and habitats
- (D) Plantings of Indigenous species

Policy 7: Information collection: Gather and record information on Invercargill’s biodiversity resources and the effects of activities, ~~pest~~ pests and climate change on indigenous ecosystems to assist with the sustainable management of the resource and the ongoing development and implementation of appropriate management regimes.

Policy 8: Other legislation: To use, and promote the use of, other legislation, including the Reserves Act 1977, the Conservation Act 1987 and the Biosecurity Act ~~1994–1993~~ where this will result in long term protection of areas of significant biodiversity.

Explanation: Other legislation also enables protection of the values of these areas in a manner that ~~is~~ can be more effective and efficient than the methods available under the RMA.

Policy 9: Tangata Whenua: To recognise the role of tangata whenua as Kaitiaki, and provide for:

(A) Tangata whenua values and interests to be incorporated into the management of ~~diversity~~ biodiversity.

2.3.4 Methods of Implementation

Method 1 Delineation on the District Planning Maps of areas of significant indigenous biodiversity.

Method 3 The adoption of an ongoing information dissemination programme by the Council and in cooperation with other organisations, preparing brochures and leaflets, assisting the funding of community publications, including information on the Council's website, preparing and promoting guidelines, undertaking environmental advocacy and making environmental awards to (A) – (F).

~~**Method 7** Preparing and promoting the preparation of guidelines for the use and sustainable management of areas of significant biodiversity~~

3.1 BIODIVERSITY

This rule applies to areas of significant indigenous biodiversity identified in the Planning Maps.

3.1.1 It is a permitted activity to:

- (A) Undertake maintenance and/or enhancement planting
- (B) Remove diseased, dead or damaged trees or vegetation, where this is necessary to avoid adverse effects on neighbouring trees or vegetation or to avoid risk to buildings
- (C) Remove pest plants as identified in the Regional Pest Management Strategy for Southland
- (E) ~~Trim or remove~~ vegetation
 - (a) Within formed legal roadways, where such trimming is required to maintain road safety,
 - (b) On formed access ways and tracks existing as at (date) , where such trimming is required to enable use by vehicles (including emergency vehicles where necessary) and to maintain the access way or track for the purpose for which it was formed, and along fences existing as at (date) where trimming is required to avoid damage to the fence.
 - (c) Immediately adjacent to structures and lines, where such trimming is required to avoid damage to such structures and lines
 - (d) Immediately adjacent to open drains, where such trimming is required in order to undertake maintenance of the drain

- (E) Trim or remove vegetation that encroaches into the Airport Approach and Land Use Controls as identified in the District Planning Maps
- (E) Trim or remove vegetation
- (a) Within legal roadways, where such trimming is required to maintain road safety
 - (d) On formed vehicle-access ways, where such trimming is required to enable use by vehicles (including emergency vehicles where necessary)
 - (e) Immediately adjacent to structures and lines, where such trimming is required to avoid damage to such structures and lines
 - (f) Immediately adjacent to open drains, where such trimming is required in order to undertake maintenance of the drain
 - ~~(g) That may impact on the safe operation of the Tiwai Point aluminium smelter.~~
 - ~~(h) On formed access ways and tracks, where such trimming is required to enable use by vehicles (including emergency vehicles where necessary) and to maintain the access way or track for the purpose for which it was formed, and along fences where trimming is required to avoid damage to the fence.~~

Provided that trimming shall relate to the removal of parts of trees for reasons as set out above, while retaining the biological viability of the vegetation association.

3.1.1A It is a controlled activity to:

Remove or fell vegetation

- (a) Within legal roadways, where such removal or felling is required to maintain road safety
- (b) On formed vehicle access ways, where such removal or felling is required to enable use by vehicles (including emergency vehicles where necessary)
- (c) Immediately adjacent to structures and lines, where such removal or felling is required to avoid damage to structures
- (d) Immediately adjacent to open drains, where such removal or felling is required in order to undertake maintenance of the drain
- (e) That may impact on the safe operation of the Tiwai Point aluminium smelter.
- (f) Where required for the safe operation of the National Grid

The matters over which the Council shall exercise its control are:

- (a) replanting; and
- (b) disposal of trees and vegetation; and
- (c) visual, landscape, and ecological effects.

3.1.2 It is a discretionary activity to:

- (A) Construct any access way or road.
- (B) Construct network utility services including associated trenches and earthworks in a manner that will require the trimming, removal or changes to any indigenous vegetation or parts thereof, including any branches or roots, within the drip line of that vegetation.

3.1.3 It is a non-complying activity to:

- (A) (No change)
- (B) (No change)
- (C) Carry out agriculture and/or plant exotic woodlots and commercial forestry.
- (D) Carry out earthworks, cultivation of farm land, and/or preparation of ground for building foundations within any area of significant indigenous biodiversity or within 10 metres of it.

3.1.4 Applications under Rules 3.1.2 and 3.1.3 above shall address the following matters which will be among those taken into account by Council

.....
(L) The value of the affected land to tangata whenua and the effects of the action on cultural values, including lands, water, sites, wahi tapu and wahi taonga

.....
(P) The economic costs and benefits of the proposed activity including its effect on the viability and profitability of the existing landholding.

3.1.5 **Note:** Where an application for resource consent is required under Rule 3.1.1A, 3.1.2 and 3.1.3 above the application shall include an ecological assessment commensurate with the scale of the proposed activity.....

DEFINITIONS

Earthworks: Means the disturbance of land surfaces by the removal or ~~depositing~~ deposition of material, excavation, filling or the formation of roads, banks, tracks. “Earthworks” includes preparing the ground for building foundations or service trenches. “Earthworks” includes or the cultivation of farm land. “Earthworks” # does not include the digging of holes for the erection of posts, planting of trees or other vegetation.

Network utility operator means a person who—

- (a) undertakes or proposes to undertake the distribution or transmission by pipeline of natural or manufactured gas, petroleum, biofuel, or geothermal energy; or
- (b) operates or proposes to operate a network for the purpose of—
 - (i) telecommunication as defined in section 5 of the Telecommunications Act 2001; or
 - (ii) radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989; or
- (c) is an electricity operator or electricity distributor as defined in section 2 of the Electricity Act 1992 for the purpose of line function services as defined in that section; or
- (d) undertakes or proposes to undertake the distribution of water for supply (including irrigation); or
- (e) undertakes or proposes to undertake a drainage or sewerage system; or
- (f) constructs, operates, or proposes to construct or operate, a road or railway line; or
- (g) is an airport authority as defined by the Airport Authorities Act 1966 for the purposes of operating an airport as defined by that Act; or
- (h) is a provider of any approach control service within the meaning of the Civil Aviation Act 1990; or

(i) undertakes or proposes to undertake a project or work prescribed as a network utility operation for the purposes of this definition by regulations made under the RMA

and the words **network utility operation** have a corresponding meaning

Network utility services: Means services provided by a network utility operator

APPENDIX 3 – Consent categories under the National Environmental Standard on Electricity Transmission Activities.

Summary of NES activities

P – permitted activity, **C** - controlled activity, **RD** - restricted discretionary activity, **D** - discretionary activity, **NC** - non-complying activity; EMF - electric and magnetic fields

Activity	P	C	RD
<u>Operating existing transmission lines and using access tracks- regulation 5</u>	P		
<u>Adding, replacing or maintaining overhead conductors</u> (but not adding circuits) (adding conductors subject to EMF conditions) - <u>regulation 6</u>	P		
<u>Adding, replacing or maintaining overhead earth wires and aerial communications cables - regulation 7</u>	P		
<u>Adding overhead circuits</u> (where support structure was designed and built to carry an extra circuit) (subject to EMF conditions) - <u>regulation 8</u>	P		
<u>Adding or replacing overhead circuits, conductors, earth wires or cables that do not meet permitted activity conditions</u> (subject to EMF conditions) - <u>regulation 9</u>			RD
<u>Increasing the voltage or current rating of a line</u> (subject to EMF conditions) - <u>regulation 10</u>	P		
<u>Adding, replacing or maintaining underground conductors</u> (adding conductors subject to EMF conditions) - <u>regulation 11</u>	P		
<u>Undergrounding of existing transmission lines, including termination towers</u> (subject to EMF conditions) - <u>regulation 12</u>		C	
<u>Specified activities that breach EMF conditions in regulation 10- regulation 13</u>	NC – non-complying		
<u>Altering, relocating or replacing support structures and foundations within height, size and relocation distance limits -regulation 14</u>	P		
<u>Altering, relocating or replacing support structures and foundations, exceeding permitted thresholds - regulation 15</u>		C	

<u>Altering, relocating or replacing support structures not meeting controlled activity conditions</u> (subject to EMF conditions) - <u>regulation 16</u>			RD
<u>Temporary structures and temporary line deviation</u> - <u>regulation 17</u>	P		
<u>Temporary structures and temporary line deviation exceeding time constraints</u> - <u>regulation 18</u>		C	
<u>Removal of transmission lines</u> - <u>regulation 19</u>	P		
<u>Removal of transmission lines not meeting permitted conditions</u> - <u>regulation 20</u>		C	
<u>Installing, modifying or maintaining a telecommunication device on a transmission line support structure</u> - <u>regulation 21</u>	P		
<u>Installing or modifying a telecommunication device on a transmission line support structure not meeting permitted conditions</u> - <u>regulation 22</u>			RD
<u>Signs attached to transmission line support structures</u> - <u>regulation 23</u>	P		
<u>Signs above the size limit or not attached to a support structure</u> - <u>regulation 24</u>			RD
<u>Preparing for and applying protective coatings to a support structure</u> - <u>regulation 25</u>	P		
<u>Application of surface coatings not complying with permitted conditions</u> - <u>regulation 26</u>		C	
<u>Wet, dry and non-abrasive blasting</u> - <u>regulation 25</u>	P		
<u>Wet, dry and non-abrasive blasting not complying with permitted conditions</u> - <u>regulation 26</u>		C	
<u>Wet, dry and non-abrasive blasting not complying with controlled conditions</u> - <u>regulation 27</u>			RD
<u>Discharging contaminants to water</u> - <u>regulation 28</u>	P		

<u>Discharging contaminants to water, not complying with permitted conditions - regulation 29</u>		C	
<u>Trimming, felling or removing trees or vegetation - regulation 30</u>	P		
<u>Trimming, felling or removing trees or vegetation - regulation 31</u>		C	
<u>Trimming, felling or removing trees or vegetation - regulation 32</u>			RD
<u>Earthworks relating to an existing transmission line - regulation 33</u>	P		
<u>Earthworks relating to an existing transmission line not complying with permitted conditions - regulation 34</u>		C	
<u>Earthworks relating to an existing transmission line in a historic heritage area unless archaeological authority obtained - regulation 35</u>			RD
<u>Earthworks relating to an existing transmission line on potentially contaminated land - regulation 36</u>			RD
<u>Construction noise and vibration associated with transmission activities</u> (noise complies with NZS6803:1999, vibration complies with DIN 4150-3:1999) - <u>regulation 37</u>	P		
<u>Construction noise and vibration associated with transmission activities</u> not complying with permitted conditions - <u>regulation 38</u>		C	
Any transmission activity not described in NES as permitted, controlled, restricted discretionary or non-complying -<u>regulation 39</u>	D – discretionary		