



PROPOSED INVERCARGILL CITY DISTRICT PLAN

Decision No. 16

Biodiversity

Hearings Committee

Councillor Darren Ludlow (Chair)

Councillor Neil Boniface

Councillor Graham Sycamore

Keith Hovell

11 October 2016

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INTRODUCTION

We have been appointed by the Invercargill City Council to consider and issue decisions on the submissions lodged to the Proposed Invercargill City Plan. In this decision we consider the submissions lodged in relation to Biodiversity.

The Resource Management Act 1991 sets out various matters that impact on our considerations and deliberations. The key provisions are Sections 5 - 8, 32, 75, 76 of the Act, and the Second Part of the First Schedule to the Act. The Section 42A Report prepared for the Committee considered these matters in detail and we have had regard to those matters. Where the statutory provisions are of particular significance we have referred to them within this Decision.

In this Decision, the following meanings apply:

"The Council" means the Invercargill City Council.

"Further Submitter" means a person or organisation supporting or opposing a submission to the Proposed Plan.

"Forest and Bird" means Southland Branch of the Forest and Bird Society.

"FS" means Further Submission.

"Hearings Committee" means the District Plan Hearings Committee established by the Council under the Local Government Act.

"NPS" means National Policy Statement.

"NZAS" means New Zealand Aluminium Smelter Limited.

"NZCPS" means New Zealand Coastal Policy Statement 2010.

"Operative Plan" or "Operative District Plan" means the Invercargill City District Plan 2005.

"Proposed Plan" or "Proposed District Plan" means the Proposed Invercargill City District Plan 2013.

"RMA" means the Resource Management Act 1991.

"RPS" means the Southland Regional Policy Statement.

"Submitter" means a person or body lodging a submission to the Proposed Plan.

At the commencement of the hearings, Crs Boniface and Ludlow declared an interest as Directors of PowerNet Limited, Cr Sycamore declared an interest as a Director of Invercargill City Holdings Limited and Commissioner Hovell declared a conflict of interest in relation to submissions lodged by Cunningham Properties Limited. The Councillors and Commissioner took no part in deliberations in relation to the submissions of the submitters referred to.

THE HEARING

The hearing to consider the submissions lodged to the matters set out in this decision was held in the Council Chambers of the Invercargill City Council on 29 September 2014 and 6 October 2014.

Section 42A Report

The Hearings Committee received a report from William Watt, of William J Watt Consulting. In his report, Mr Watt referred to Section 6(c) of the RMA which required protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and Policy 11 of the NZ Coastal Policy Statement which required protection of indigenous biological diversity in the coastal environment. He noted that the RPS and Proposed RPS

gave effect to these requirements and similar principles were adopted in the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008. Mr Watt also referred to the New Zealand Biodiversity Strategy and the proposed National Policy Statement on Biodiversity that contains 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.

Mr Watt advised the Committee that the policy focus of the District Plan is on indigenous biodiversity. It was his view that the Proposed Plan should focus on indigenous biodiversity in its policies and non-regulatory methods, and narrow to areas of significant indigenous biodiversity in the rules. He recommended that the biodiversity policy framework should continue to apply to areas identified by criteria including those shown on the District Planning Maps, but rules should apply only to areas of significant indigenous biodiversity shown on the District Planning Maps.

In response to submissions that the information base used by the Council in drafting this section was inadequate, Mr Watt accepted that in the future updating of data would be advantageous and that is best achieved by way of a Plan Change. However, he noted that a Plan Change would be mandatory if the Proposed NPS on Biodiversity in its present form is formally adopted by government. In his view, it would be prudent to await the outcome of the Proposed NPS for the reason that the criteria to be adopted in determining significant indigenous biodiversity could change during the NPS submission process. In the meantime, Mr Watt recommended adopting a collaborative approach to maintain indigenous biodiversity, as provided for in the Proposed Southland RPS. 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.

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. Mr Watt acknowledged the need for access arrangements to be satisfactory to landowners, but he also noted that national and regional policy places a high priority on public access. He recommended some minor changes to reflect this.

Mr Watt also noted that concerns about farming practices in and around areas of significant indigenous biodiversity were raised by several submitters, including Federated Farmers, questioning in particular whether the presence of an area of significant indigenous biodiversity will impose restriction on farming practices on adjoining land and whether a farmer can maintain an existing access track – or build a new one. Mr Watt advised the Committee that the weight of national and regional policy favours conservation of significant indigenous biodiversity and the District Plan must give effect to this. He did however recommend that the requirement for a “buffer strip” around vegetation within identified areas of significant indigenous biodiversity be deleted. He saw this as unfair, imprecise and unworkable.

In response to questions from the Committee, Mr Watt expressed the view that GPS co-ordinates should be used to delineate the edge of the protected areas, so as to provide certainty to land owners. He also accepted that some of the changes recommended to Rule 3.1.3 may not be required given the definition of “earthworks” and “agriculture” in the Proposed Plan and if Environment Southland requires consent for any works in wetlands it is unnecessary in his view to duplicate that process by requiring a consent also from the City Council.

Mr Watt also agreed with the Committee that if there was an authorising submission then it would be appropriate to include a policy in the Biodiversity section of the Plan on collaboration, similar to that in the Natural Hazards section.

Submitters Attending the Hearing

Federated Farmers

Ms Tanith Robb appeared on behalf of Federated Farmers of New Zealand, reading a statement prepared by David Cooper, Senior Policy Adviser.

Mr Cooper in the written statement supported the recommendations in the Section 42A Report which rejected submissions 48.1 Forest and Bird, 54.1 Otatara Landcare Group and 56.20 Jenny Campbell, while seeking an amendment to the addition recommended in response to submission 18.7 Environment Southland.

In relation to submissions by Federated Farmers, Mr Cooper also supported the recommendations to submissions 88.26 and 88.27 but requested that arising from submission 88.28(a) reference to "restoration" be deleted from Objective 1. He was concerned that the objective and policy framework was going beyond the requirement of the RMA to protect "significant" indigenous biodiversity. Arising from that a change was also required to Policy 2 as set out in submission 88.30. Mr Cooper asserted that would be consistent with the change recommended to Method 1 arising from submission 88.34, which was supported.

Mr Cooper commented on the rules and the changes recommended, supporting the response in Rule 3.1.1 to submission 88.74, Rule 3.1.4 to submission 88.76 and Rule 3.1.2 to submission 64.10 by the Department of Conservation. He considered however that Rule 3.1.1(B) should be amended to provide for trees to be removed if they posed a risk to human or animal health and safety. He was also particularly supportive of the deletion of the 10 metre buffer zone in Rule 3.1.3(D) in response to submission 65.90 by ICC Environmental and Planning Services. He suggested that a considerable area of land could become substandard if cultivation of that buffer area was not permitted, and opined that the RMA did not require protection of areas adjacent to significant indigenous vegetation.

Mr Cooper commented that Federated Farmers remains opposed to Rule 3.1.3 which lists agriculture as a non-complying activity within areas of significant indigenous biodiversity. He opposed the recommendation in response to submission 88.75 requesting that the relief sought of discretionary activity or restricted discretionary activity be granted. He considers that light grazing in areas of intermittent indigenous vegetation cover is likely to provide significant benefits for native plants with less competition for water and light from weeds and grasses.

Mr Cooper asked that an amendment be made to Rule 3.1.4 arising from submission 77.6 Te Runaka o Waihopai and Te Runaka o Awarua by replacing the word "including" with "associated with".

In discussing submissions made on the identification of areas of significant indigenous biodiversity on the District Planning Maps Mr Cooper supported the rejection of submission 18.8 by Environment Southland that sought to have wetlands shown. The Federated Farmers position was that this should follow the plan change process with prior consultation with landowners, if done at all, as non-regulatory methods are likely to be more effective. Mr Cooper said that the best option is a voluntary strategy based on education and promotion, and this will empower landowners to protect native flora and fauna on their

properties. In this context he supported the recommendation on submission 48.5 by Forest and Bird.

In response to questions from the Committee, Ms Robb noted that Environment Southland is working towards a definition of "light grazing" to include in its regional plans and accepted that there was some uncertainty as to its meaning. She also noted that along riparian margins occasional grazing is considered essential to avoid erosion issues and promote weed management.

Jenny Campbell

Jenny Campbell made oral submissions to the Committee noting that monoculture should be avoided, with native trees having the capacity to enhance biodiversity, particularly by providing habitat for fauna, especially for bees and other insects which have an important role in pollination. Mrs Campbell referred to the public concern at the number of parks being reduced throughout the city, as they had an important role both for biodiversity and a healthy living environment. She supported the work of the Parks Department in caring for the various parks and making use of centre plots and roadside areas, as this helped enhance biodiversity and make an attractive landscape in the city.

In response to questions from the Committee Mrs Campbell said she did not consider rules to be effective and favoured different techniques other than rules, stating that people respond to positive actions and messages rather than rules.

Department of Conservation

Pene Williams, Senior Solicitor with the Department of Conservation, presented legal submissions, outlining the functions of the Department and the roles of the Director General, with particular reference to various provisions in the RMA. She referred to Objective 1 and Policies 11 and 14 of the New Zealand Coastal Policy Statement 2010 ("NZCPS") noting that the Council is required to give effect to these provisions in the Proposed Plan. She also referred to the Supreme Court decision of *Environmental Defence Society Inc. v NZ King Salmon Co Ltd* providing advice to the Committee on the implementation of the NZCPS and the wording of District Plan Policies.

Mrs Williams noted that the Section 42A Report had made reference to the draft Southland Murihiku Conservation Management Strategy. However, she submitted that regard should be had to the current document being the Mainland Southland/West Otago Conservation Management Strategy 1998 - 2008, and provided a copy of the relevant portions.

In assessing the functions of the Council, Mrs Williams submitted that the Council is required to consider all indigenous biodiversity, not just significant indigenous biodiversity.

Brian Rance, Technical Advisor - Ecology with the Department of Conservation, in evidence gave a brief overview of the biodiversity values within Invercargill City noting that as a consequence of a long human (particularly pastoral) use of the Invercargill District much of the remaining indigenous vegetation that remains has some degree of modification. In his view that does not mean that it does not have significance. He referred to a rich species diversity, including a wide range of birds, fish, lizards, invertebrates, plants, fungi, algae and other life forms, and noted the area is a national stronghold for some species of plants, birds and invertebrates.

Mr Rance advised the Committee that land development and land intensification had increased during the term of the current District Plan, particularly in lowland areas, reducing biodiversity. He considered a loss of wetlands as a particular concern, partly arising as a consequence of a lack of rules in the District Plan. He also described that areas of

biodiversity value also became degraded when the adjoining land was subject to change or where drainage occurs.

Mr Rance opposed Rule 3.1 Biodiversity because it only applied to significant indigenous biodiversity, stating that the lack of identification of areas of ecological significance outside those shown on the District Planning Maps is of major concern, particularly given that the base information used was collected in 1999. That information too, he said, had deficiencies in the criteria adopted and the rigor in which some areas were assessed. He also advised the Committee that as this work was undertaken before the 2007 Statement of National Priorities for Protection of Biodiversity the District Plan does not adequately represent any of the four national priorities which seek to protect:

- indigenous vegetation associated with land environments that have 20% or less remaining in indigenous cover
- indigenous vegetation associated with sand dunes and wetlands
- naturally rare ecosystems
- habitats of acutely and chronically threatened indigenous species.

Mr Rance also expressed concern that the District Planning Maps do not:

- take into account some areas of biodiversity significance that have previously been recorded and recognised by the Department
- adequately allow for ecological sequences and gradients
- allow for the ecological context of sites, for example, regenerating forest adjacent to intact mature forest

Mr Rance considered that as a result of these inadequacies the District Planning Maps should only be used as a guide where sites of biodiversity significance occur. In his view any site that contains indigenous vegetation or potential biodiversity values should require an ecological assessment by a suitably experienced person as part of any application which will damage significant indigenous biodiversity.

With reference to Rule 3.1.3(D) Mr Rance stated that there are sound ecological reasons to support avoiding earthworks and other ground disturbance within and near areas of significant indigenous biodiversity as this will impact on the integrity of the area and potentially introduce weeds.

Geoffrey Deavoll, RMA Planner with the Department of Conservation, gave evidence on those matters where he did not support or accept the recommendations in the Section 42A Report. In particular, having regard to the evidence of Mr Rance, he considered that the non-regulatory approach to managing significant indigenous biodiversity had not been successful and as a consequence a regulatory approach was now required. In his view, the Council had not given effect to the NZCPS and the Proposed Plan provisions were inconsistent with section 6(c) of the RMA. As a consequence, additional study and mapping was required, and in the interim he considered the rules in the plan should also apply to areas of significant indigenous biodiversity identified through the criteria listed in the Plan.

Mr Deavoll supported waiting to undertake the additional work required until the provisions for determining ecological significance in the proposed RPS had been finalised. A plan change could then be undertaken. However, on the basis of the evidence of Mr Rance, he opposed the recommendation to delete reference to activities within 10 metres of an identified significant site.

In reply to questions from the Committee Mr Rance accepted that the draining of wetlands required a consent from the regional council but he had concerns as to the extent that the provisions were being administered.

In reply to the suggestion that in many cases the Council would not know that areas of significant biodiversity had been subject to earthworks or other disturbance, Mr Rance stated that the key was awareness of land occupiers and advocacy. Mrs Williams added that while there may be issues in implementing the rule she considered there was sufficient certainty in having a rule based on criteria to meet the legal requirements of the RMA, and that the Council has responsibility to administer the provisions, notwithstanding this may require additional resourcing. She also referred to the criteria in the Canterbury RPS which she expected to also be included the Southland RPS after the consideration of submissions, and until they are finalised the Invercargill City Council cannot determine with clarity the long term approach it should adopt in identifying significant areas.

Material Tabled at the Hearing

Environment Southland

Gavin Gilder - Resource Planner at Environment Southland advised that he supported the recommendations contained within the Section 42A report for the Biodiversity provisions as they related to the submissions from Environment Southland.

Transpower

Mike Hurley, Senior Environmental Planner at Transpower advised that all of Transpower's submission and further submission points have either been accepted or accepted in part. On this basis Transpower supports or accepts all of the recommendations in the Section 42A report.

Invercargill Airport Limited

Kirsty O'Sullivan of Mitchell Partnerships Limited advised on behalf of Invercargill Airport Limited that it supported the retention of Rule 3.1.1(E) that provided for the trimming of vegetation that encroaches into the Airport Approach and Land Use Controls designation.

South Port Limited

Kirsty O'Sullivan of Mitchell Partnerships Limited advised that South Port Limited supported in principle the recommendation to their further submission FS7.1. With regard to the amendment recommended to the Introduction referring to collaboration, South Port considers that reference should be made to "significant indigenous vegetation".

PowerNet Limited

Joanne Dowd of Mitchell Partnerships Limited advised on behalf of PowerNet Limited that the amendment recommended to Rule 3.1.1 did not meet the needs of PowerNet because the NES on Electricity Transmission Activities did not apply to lines owned by that company. It was requested that Rule 3.1.1 make provision for:

- (F) The trimming of vegetation and non-notable trees to retain the operational efficiency of existing network utilities.

It was also requested that the recommended Rule 3.1.1A provide for:

- (f) Where required for the safe operation of the National Grid and electricity distribution networks.

MATTERS REQUIRING PARTICULAR CONSIDERATION

Approach to Areas of Significance

Mr Watt advised the Committee that the policy focus of the District Plan is on indigenous biodiversity. It was his view that the Proposed Plan should focus on indigenous biodiversity in its policies and non-regulatory methods, and narrow to areas of significant indigenous biodiversity in the rules.

The Department of Conservation opposed this approach seeking the adoption of rules for all areas of indigenous biodiversity regardless of whether they are classed as significant or not. Evidence was given by Brian Rance who stated that the lack of identification of areas of ecological significance outside those shown on the District Planning Maps is of major concern. He also referred to the 2007 Statement of National Priorities for Protection of Biodiversity stating the District Plan does not adequately represent any of the four national priorities which seek to protect. Geoffrey Deavoll, RMA Planner with the Department of Conservation, also gave evidence and having regard to the evidence of Mr Rance, he considered that the non-regulatory approach to managing significant indigenous biodiversity had not been successful and as a consequence a regulatory approach was now required. In his view, the Council had not given effect to the NZCPS and the Proposed Plan provisions were inconsistent with section 6(c) of the RMA.

The Committee carefully considered the evidence and submissions of the Department of Conservation but concluded that the approach of the Proposed Plan was to be preferred, particularly given the provisions of the RMA where section 31(1)(b)(iii) lists as a function of territorial authorities “the maintenance of indigenous biological diversity” while Section 6(c) requires protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. The Committee did not accept that the District Plan was required to protect all areas of biodiversity and concluded that it was necessary to set priorities, with areas of significant values being afforded protection, and the Council encouraging and promoting retention and enhancement of other areas. The Committee accepted that the values of these other areas are able to be considered at the time of a land use or subdivision consent but that rules should not apply to these other areas requiring consent for their modification or removal. It could not justify such an approach having regard to the matters set out in Section 32 of the RMA. However, the Committee does accept that some of the objectives and policies of this section of the Proposed Plan require rewording so as to be encompassing of all indigenous biodiversity.

Adequacy of Information Shown on the District Planning Maps

A number of submitters, through various submissions have raised concerns as to the extent of the areas of significant indigenous vegetation and significant habitats of indigenous fauna shown on the District Planning Maps.

In response to these submissions Mr Watt in his Section 42A Report accepted that updating of maps would be advantageous and that should be done by way of a plan change. However, he noted that a Plan Change would be mandatory if the Proposed NPS on Biodiversity in its present form is formally adopted by government. In his view, it would be prudent to await the outcome of the Proposed NPS for the reason that the criteria to be adopted in determining significant indigenous biodiversity could change during the NPS submission process. In the meantime, Mr Watt recommended adopting a collaborative approach to maintain indigenous biodiversity, as provided for in the Proposed Southland RPS. 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.

None of the submitters appearing at the hearing, or who provided material to be tabled at the hearing opposed the approach by Mr Watt to await the outcome of submissions on the Proposed NPS on Biodiversity. Similarly, the Committee held the view that the Proposed Regional Policy Statement becoming operative provided a further trigger point at which time the Council is required to give effect to the RPS provisions, and that may by itself trigger the need for reassessment and a Plan Change. The Committee is satisfied that the deficiencies referred to by submitters can be assessed within the appropriate criteria framework.

The Committee also noted that none of the original submitters identify with sufficient specificity, nor provide any factual information, that enables the Committee to consider the inclusion of any additional areas of significant biodiversity on the District Planning Maps. Nor have they sought deletion of areas shown on the District Planning Maps. As a consequence, the Committee resolved to not amend the information shown on the District Planning Maps in response to these submissions.

In the interim, until a further assessment is undertaken, the Department of Conservation considers that the rules should be amended so that consent was required to undertake activities within areas of significant indigenous biodiversity that met the criteria set out in Submission 64.1 or which were identified in future studies and through resource consent processes (Submission 64.8). Mrs Williams, Counsel for the Department of Conservation, advised the Committee that while there may be issues in implementing such a rule she considered there was sufficient certainty in having a rule based on criteria to meet the legal requirements of the RMA.

The Committee sought legal advice on the validity of the approach being promoted by the Department of Conservation. A copy of that advice is attached as **Appendix 3**. In summary, the effect of the legal advice to the Committee is that:

- (i) The submission of the Department of Conservation seeking the inclusion of a rule containing various criteria has been properly made as part of an original submission under Clause 6 of the First Schedule of the RMA, and other parties and other submitters have had an opportunity to support or oppose that submission. On that basis, the Committee is able to have regard to the merits of the request made by the Department.
- (ii) Section 6 of the RMA requires the protection of significant indigenous vegetation. However, the proposed wording does not only protect significant vegetation, but is seeking to protect all vegetation. Under the wording proposed, a full ecological assessment would be required to determine if, for example, the cutting down of two cabbage trees on a property was significant. That is not practical and is burdensome.
- (iii) While the wording and criteria is not so broad as to be vague and uncertain, the approach is so broad that it is unusable. It is making potentially every person who wishes to remove trees apply and/or undertake an ecological assessment to determine if that vegetation is significant, and the criteria therefore goes beyond what is meant to be protected.

The Committee favours the legal advice over the submissions made on behalf of the Department of Conservation, and concludes that it is not appropriate to include a rule requiring resource consent on the basis of the criteria suggested. It did however consider that the criteria should be had regard to in considering any application for land use consent or subdivision consent. It therefore resolved that the criteria should be included by way of a policy, and referred to in the matters to be included as part of any resource consent lodged with the Council.

Trimming Vegetation

Federated Farmers in Submission 88.74 requested that in Rule 3.1.1 provision should be made to allow the trimming, removal and maintenance of vegetation within areas of significant indigenous vegetation around existing tracks and fences. Submission 87.38 Transpower NZ Ltd sought 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. Submission 91.15 PowerNet Ltd adopted a wider perspective requesting that Rule 3.1.1 be amended to allow the trimming, felling and removal of vegetation where it is required to maintain the operational efficiency of existing network utilities. Submission 71.49 NZAS Ltd adopted a narrower stance seeking an addition to enable the trimming of vegetation that may impact on the safe operation of the smelter.

The Department of Conservation in Submission 64.9 recognised 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.

Mr Watt in his Section 42A Report adopted the approach that “trimming” adjacent to utilities and fences should be permitted but “felling or removing” requires greater consideration and should be subject to resource consent as a controlled activity. In relation to the Smelter Zone Mr Watt noted that there are no areas where Rule 3.1.1 would apply.

Mr Watt also referred to the National Environmental Standard on Electricity Transmission Activities noting this would enable trimming or removal of vegetation associated with maintenance of the National Grid to take place unless in areas of significant indigenous vegetation a rule stated otherwise.

The Committee noted the support of Transpower to the approach recommended by Mr Watt and agreed with PowerNet Limited that the amended rule should apply to all electricity lines, not just those of the National Grid. The Committee has however made minor amendments to the rules recommended by Mr Watt in order to provide certainty in their wording and clarify that the fences referred to were boundary fences.

Activities Within and Near Areas of Significant Vegetation

Within areas of significant indigenous vegetation shown on the District Planning Maps, Rule 3.1.3 as notified in the Proposed Plan required resource consent approval as a non-complying activity to:

- Remove any live indigenous vegetation, or alter such vegetation in a manner that destroys the biological viability of that vegetation.
- Erect any building or other structure with a footprint greater than 10 square metres in area.
- Plant exotic woodlots and commercial forestry.
- Carry out earthworks within that area or within 10 metres of it.

Submission 88.75 Federated Farmers opposed the status of the rule requesting that farming activities be “discretionary” or “restricted discretionary”. It also requested that Rule 3.1.3(D) be deleted, or if retained, amended to provide for farming activities such as the erecting of perimeter fencing or the planting of native trees.

Submission 65.90 ICC Environmental and Planning Services supported by

FS8.2 Department of Conservation was concerned that the definition of earthworks excludes cultivation of land and that there is a risk that this could enable the cultivation, and potential drainage of wetlands within the 10 metre buffer area.

Mr Watt in his Section 42A Report agreed with Federated Farmers that the 10 metre buffer area was not practical to identify, difficult to administer and created difficulty where that area extended onto an adjoining property. He also saw an inconsistency between a rule which stated that it applied to areas shown on the District Planning Maps, yet extended 10 metres beyond that. For those reasons he recommended deletion of the 10 metre buffer area.

Mr Watt also agreed with ICC Environmental and Planning Services that the definition of earthworks excludes cultivation of land, and as a consequence ploughing of land within identified areas was provided for. Mr Watt considered this undesirable. He also considered preparing the ground for building foundations to also be undesirable. Mr Watt therefore recommended additions to Rule 3.1.3 to require consent for agriculture and the "cultivation of farmland, and/or the preparation of ground for building foundations" as a non-complying activity.

At the hearing, Mr Cooper in his written evidence on behalf of Federated Farmers supported the deletion of the 10 metre buffer zone in Rule 3.1.3(D). However, he opposed the listing of agriculture as a non-complying activity within areas of significant indigenous biodiversity. He considered light grazing in areas of intermittent indigenous vegetation cover is likely to provide significant benefits for native plants with less competition for water and light from weeds and grasses.

Mr Rance, providing evidence in support of the Department of Conservation, stated that there are sound ecological reasons to support avoiding earthworks and other ground disturbance within and near areas of significant indigenous biodiversity as this will impact on the integrity of the area and potentially introduce weeds.

In considering these issues the Committee considered it important to assess the scope of the submissions lodged to Rule 3.1.3. The submissions related to:

- the erection of buildings within areas of significant indigenous vegetation (Submission 64.11 Department of Conservation)
- the definition of earthworks excludes cultivation of land (Submission 65.90 ICC Environmental and Planning Services)
- the status of Rule 3.1.1 (Submission 88.75 Federated Farmers)
- deletion of Rule 3.1.3(D) or as part of that rule which applies to earthworks allowing farming activities such as erecting perimeter fencing (Submission 88.75 Federated Farmers)

The Committee noted that additional controls were requested in relation to the cultivation of land. However, no submitter sought further controls on agricultural activities or on the construction of buildings within areas of significant indigenous vegetation. As a consequence, the recommendations of Mr Watt to include reference to agriculture and the "the preparation of ground for building foundations" went beyond the submissions lodged. Notwithstanding that, the Committee was not persuaded on the basis of the evidence before that controls should apply to these activities in the District Plan. It agreed with the evidence of Mr Cooper that limited grazing was at times appropriate within vegetated areas, and also the suggestions from Mr Cooper, Ms Robb, and Mrs Campbell that non-regulatory tools are more appropriate in such an instance.

The Committee also agreed with Mr Watt that the 10 metre buffer area was not practical to

identify, difficult to administer and created difficulty where that area extended onto an adjoining property. While being mindful of the concerns of Mr Rance, the Committee considered the certainties and practicalities involved had greater weight in a regulatory framework. The Committee therefore resolved to delete reference to the 10 metre buffer area.

In considering the concerns of Federated Farmers that the rule deeming earthworks a non-complying activity within areas of significant indigenous biodiversity would prevent farm fences being erected, the Committee noted that the definition of 'earthworks' in the Proposed Plan explicitly excludes "the digging of holes for the erection of posts, planting of trees or other vegetation, or the cultivation of farm land". Such activities are therefore not subject to Rule 3.1.3(D) and no change is required to that portion of the rule.

Finally, the Committee considered that any adverse effects from the various activities referred to above were appropriately managed by those parts of the rules applying to the trimming and removal of vegetation. This was acknowledged by the Department of Conservation in Submission 64.11.

SECTION 32 MATTERS

Requirements

The Committee was advised by Mr Watt that Section 32 of the RMA establishes the framework for assessing objectives, policies and rules proposed in a Plan, and that a Report was released at the time of notification of the Proposed Plan in compliance with those provisions. The Committee was also advised that 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, with the detail of the assessment corresponding with to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the changes made to the Proposed Plan.

As the Committee understands its obligations, it is required to:

- (i) Assess any changes made to objectives to determine whether they are the most appropriate way to achieve the purpose of the RMA.
- (ii) Examine any changes made to the policies and rules to determine whether they are the most appropriate way to achieve the objectives of the Proposed Plan. This includes:
 - Identifying 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)
 - Identifying other reasonably practicable options for achieving the objectives; and
 - Assessing the efficiency and effectiveness of the provisions in achieving the objectives.

The Committee however, is not required to assess in accordance with Section 32 of the RMA any changes to the issues and or explanatory text of provisions.

Assessment

This decision amends the layout of several provisions and makes minor changes to others and their explanations. Mr Watt in his Section 42A Report advised the Committee as follows:

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.

For those decisions that reflect the recommendations made by Mr Watt in his Section 42A Report, the Committee agrees with that approach and adopts it.

This decision makes a number of amendments to Objectives, Policies and Rules that differ from Mr Watt’s recommendations. These amendments are as follows:

- 2.3.2 Objective 1 – Redrafting of Objective (Decision 16/12).
- 2.3.3 Policy 2 – Delete existing policy and replace with new policy (Decision 16/4).
- 2.3.3 Policy 5 – Minor redrafting of the Policy (Decision 16/17).
- Rule 3.1.1 (E) – Minor amendments to (a), (b) and (c) and inclusion of new provisions (e), (f) and (g) (Decision 16/27(1)).
- Introduction of New Rule 3.1.2 - minor amendment to the wording recommended in Section 42A Report (Decision 16/27(2)).
- Rule 3.1.2 changed to Rule 3.1.3 and a minor change to wording (Decision 16/28).
- Rule 3.1.3 changed to 3.1.4 and a minor amendment to the structure of the rule (Decision 16/29 and 16/29(3)).
- Rule 3.1.4 changed to 3.1.5 and a minor amendment to the wording proposed in Section 42A Report.

Objective 1

The wording of this Objective covers the same issues recommended in Mr Watt’s Section 42A Report. It seeks to ensure that indigenous biodiversity values are maintained and, where appropriate, restored and enhanced. However, the wording has been slightly amended to clarify that the intent of the Proposed Plan is to have regard to all indigenous biodiversity regardless of its significance, with regulatory methods used to manage those areas of significance, and non-regulatory methods used for everything else. It is considered that the amendments to this Objective are of such a minor nature that it is not necessary or practical to evaluate in detail or quantify the economic, social, cultural, environmental and employment effects of the changes. The Objective is the most appropriate way of achieving the purpose of the RMA, and is consistent with the New Zealand Coastal Policy Statement.

Policy 2

Mr Watt recommended only a minor change to 2.3.3 Policy 2 Management of Effects to clarify that it is “significant” indigenous biodiversity that is subject to regulatory controls. The Committee has gone further by replacing the existing Policy with a new one that encompasses the management of all indigenous biodiversity. The policy is an appropriate

means of meeting the Objectives of the Plan and addresses a significant resource management issue. Due to the minor nature of these changes, it is not necessary or practical to evaluate in detail or quantify the economic, social, cultural, environmental and employment effects of the changes.

Rule 3.1.1 (E) and new Rule 3.1.2

Mr Watt recommended amendments to Rule 3.1.1 to provide for trimming of vegetation within access ways or tracks, and along fence lines where it is required to avoid damage to the fence. Removal of vegetation in the same situations was provided for as a controlled activity through a new rule proposed by Mr Watt. This decision provides for additional trimming activities as permitted activities where they are immediately adjacent to legal roadways, vehicle access ways and tracks, public walking tracks and boundary fences, and adjacent to buildings and other structures where there is a risk of damage to such structures. A similar amendment is made to the controlled activity rule for vegetation removal. The amendments will mean that land owners are able to undertake more trimming of vegetation, although only where the biological viability of the vegetation is retained, ensuring the environmental effect of the changes is only minor. The amendments are an efficient and effective means of achieving the objectives of the Plan and due to the minor nature of these changes, it is not necessary or practical to evaluate in detail or quantify the economic, social, cultural, environmental and employment effects of the changes.

Rules 3.1.3 – 3.1.5

This decision makes additional minor amendments to the Rules 3.1.2 to 3.1.4 over and above those recommended in the Section 42A report, including renumbering them 3.1.3 - 3.1.5. These amendments provide greater certainty and consistency with the amendments made to Rules 3.1.1 and 3.1.2, and are therefore considered minor. Due to the minor nature of these changes, it is not necessary or practical to evaluate in detail or quantify the economic, social, cultural, environmental and employment effects of the changes.

Dated at Invercargill this 11th day of October 2016



Councillor Darren Ludlow (Chair)



Councillor Neil Boniface



Councillor Graham Sycamore



Keith Hovell

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GENERAL	
<p>48.7 Forest & Bird Society and 54.6 Otatara Landcare Group The submitters are 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>FS2.7 NZAS Oppose Submissions 48.7 and 54.1 and while supporting the intention to protect biodiversity within the district considers it is important that there is appropriate recognition for other potential developments. Linking the biodiversity provisions to areas identified in the Planning Maps provides certainty as to when the biodiversity rules apply. 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><u>Decision Sought:</u> Criteria included in the Proposed District Plan is retained, or the further submitter has an opportunity to comment on any suggested amendments to the criteria</p> <p>FS4.5 Federated Farmers Oppose Submissions 48.7 and 54.1 considering there is adequate protection provided elsewhere in the Plan addressing indigenous biodiversity. 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. 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>Decision 16/1 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The issues raised are not relevant in considering the provisions of the Proposed Plan. 2. It is not practical for the Council to have a full range of expertise on staff. Rather, consultants are available to assist where required. That enhances the quality of advice available to the Council. 3. Determining "affected parties" on any resource consent is undertaken on a case by case basis within the framework of the RMA.
<p>56.16 Jenny Campbell 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 16/2 This submission is noted</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The policy framework in section 2.3.3 promotes enhancement of ecosystems and habitats, and is therefore provided for in the Proposed Plan. 2. If the submitter wishes to advocate the Council undertake more

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	<p>plantings on public land then this should be by way of parks management plans and the Council's Annual Plan.</p>
<p>56.20 Jenny Campbell 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>FS4.6 Federated Farmers oppose Submission 56.20 on the basis there is adequate protection in this section and in other areas of the plan that address indigenous biodiversity.</p>	<p>Decision 16/3 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The RMA requires having regard to positive and negative effects, while section 6(c) is more directive in requiring protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. It is not appropriate or practical to protect all remnants of native vegetation. Criteria must be used as a basis for determining which areas of vegetation are worthy of recognition and protection under the District Plan. The criteria adopted for the Proposed Plan do focus on the intrinsic matters not economic returns. Below a critical size however, integrity cannot be guaranteed and protection cannot be justified. 2. Estuaries are part of the coastal marine area and are managed by Environment Southland. The District Plan does not extend into the coastal marine area.
<p>48.1 Forest & Bird Society and 54.1 and 54.13 Otatara Landcare Group The submitters are concerned that the biodiversity rules only apply to areas of significant indigenous biodiversity, and then only to 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><u>Decision Sought:</u> 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>FS2.7 NZAS Oppose Submissions 48.7 and 54.1 and while supporting the intention to protect biodiversity within the district considers it is important that there is appropriate recognition for other potential developments. Linking the biodiversity provisions to areas identified in the Planning Maps provides certainty as to when the</p>	<p>Decision 16/4 These submissions are accepted in part.</p> <p>Amendments to District Plan</p> <ol style="list-style-type: none"> (i) Replace 2.3.3 Policy 2 with the following: <ol style="list-style-type: none"> (A) <u>To promote and encourage the establishment, protection, restoration and enhancement of indigenous ecosystems and habitats with indigenous biodiversity values.</u> (B) <u>To avoid, remedy or mitigate the adverse effects of subdivision, land use and development within areas containing ecosystems and habitats with significant indigenous biodiversity value.</u> (C) <u>Have regard to the following attributes in considering subdivision,</u>

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<p>biodiversity rules apply. 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><u>Decision Sought:</u> Criteria included in the Proposed District Plan is retained, or the further submitter has an opportunity to comment on any suggested amendments to the criteria</p> <p>FS4.5 Federated Farmers Oppose Submissions 48.7 and 54.1 considering there is adequate protection provided elsewhere in the Plan addressing indigenous biodiversity. 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. 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>48.9 Forest & Bird Society 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>64.1 Department of Conservation 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. 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><u>Decision Sought:</u> Replace the criteria listed in the Introduction with:</p> <p>(A) Representativeness:</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><u>land use and development that may adversely affect indigenous ecosystems and habitats with indigenous biodiversity values:</u></p> <ol style="list-style-type: none"> (i) <u>Representativeness</u> (ii) <u>Rarity / Distinctiveness</u> (iii) <u>Diversity and Pattern</u> (iv) <u>Ecological Context</u> <p>(ii) Amending the Introduction to section 2.3 as follows:</p> <p>The most important areas of significant indigenous biodiversity within the District include the Otatara Peninsula containing nationally significant totara-matai remnant forest on an ancient sand dune system; Ōmaui containing rare and threatened coastal turf communities; and Bluff Hill containing nationally significant podocarp forest.</p> <p>Reasons As noted on pages 6 and 7 of this Decision</p> <ol style="list-style-type: none"> 1. The Committee did not accept that the District Plan was required to protect all areas of biodiversity and concluded that it was necessary to set priorities, with areas of significant values being afforded protection, and the Council encouraging and promoting retention and enhancement of other areas. That is supported by Sections 31(1)(b)(iii) and 6(c) of the RMA. 2. Taking into account legal advice given to the Committee and the implications of the adoption of the technique of adopting criteria to determine whether a resource consent should be required for undertaking activities within areas of significant indigenous vegetation, the Committee concluded that such an approach was not valid, nor would it be capable of reasonable and fair implementation. The Council itself would not be able to practically monitor such activities nor was such an approach appropriate having regard to Section 32 of the RMA. 3. Overall, the Committee preferred the certainty provided by having rules that applied to areas shown on the District Planning Maps. However, it accepted that regard should be

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<p>(B) Rarity/Distinctiveness:</p> <p>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></p> <p>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></p> <p>6. <u>The site contains indigenous vegetation or an indigenous species at its distribution limit within Southland Region or nationally.</u></p> <p>7. <u>Indigenous vegetation or an association of indigenous species that is distinctive, of restricted occurrence, occurs within an 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 or 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>AND Reword the following statement:</p> <p>... The most important areas of significant indigenous biodiversity within the district include the Otatara Peninsula Omaui and Bluff Hill ...</p> <p>FS4.7 Federated Farmers Oppose Submission 64.1 and although supporting the criteria used by Council to assess areas of significant indigenous vegetation considers that this process should include full landowner involvement and collaboration. The further submitter considers that there are areas of indigenous</p>	<p>had to the attributes of indigenous ecosystems and habitats with indigenous biodiversity values when resource consents are being processed.</p> <p>4. While the areas shown on the District Planning Maps may not be current, no submitter provided details of additional areas that should be included on the District Planning Maps. In the absence of specifically identified areas and an opportunity for affected land owners to have input, no changes to the District Planning Maps were fairly justified at this time. Similarly, it is not appropriate at this time to include areas identified in technical and other reports without further investigation and consideration.</p> <p>5. At the hearing, the submitters and Council advisers agreed that although the District Planning Maps were not up-to-date in showing areas of significant indigenous ecosystems and habitats with indigenous biodiversity values, a review of these should await the Proposed Southland Regional Policy Statement and the National Policy Statement on Biodiversity being finalised and becoming operative. The Committee agrees with that approach.</p>

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<p>biodiversity that are more important than others and that it is appropriate to prioritise these so that resources can be directed accordingly.</p> <p>48.10 Forest & Bird Society and 54.9 Otatara Landcare Group Policy 1 - The submitters are 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”.</p> <p>64.4 Department of Conservation Support Policy 1 in part but the submitter 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. Amend Policy 1 as follows:</p> <p>To delineate on the District Planning Maps areas of significant indigenous biodiversity <u>using the criteria for identifying these areas detailed in the plan.</u></p> <p>48.12 Forest & Bird Society and 54.11 Otatara Landcare Group Method 1 - The submitters do not believe Planning Maps should be the sole method of determining significance.</p>	
SECTION 2.3 - ISSUES, OBJECTIVES AND POLICIES	
Introduction	
<p>54.8 Otatara Landcare Group The submitter generally supports Sections 2.2 and 2.3.</p>	<p>Decision 16/5 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitter supports the plan provisions and seeks not change to them in this particular submission.</p>
<p>18.7 Environment Southland 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,</p>	<p>Decision 16/6 This submission is accepted in part.</p> <p>Amendments to District Plan The following is added to the Introduction to Section 2.3 prior to the</p>

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<p>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><u>Decision Sought:</u> The submitter seeks that the introduction to Section 2.3 be amended, by inserting the following:</p> <p>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.</p>	<p>final paragraph in that section.</p> <p><u>The Council will work in collaboration with Environment Southland, other local authorities and the community to maintain indigenous biodiversity. This could include developing a Schedule of Threatened, At Risk and Rare Habitat Types and advocating for non-regulatory tools to manage biodiversity for the Southland region.</u></p> <p>Reason</p> <ol style="list-style-type: none"> 1. It is appropriate to highlight the collaborative approach envisaged for maintaining indigenous biodiversity in Southland and the continuing advocacy role in promoting adoption of non-regulatory methods. 2. Reference to the Proposed RPS is unnecessary and other wording changes to those sought are also appropriate.
<p>65.2 ICC Environmental and Planning Services</p> <p>Ramsar is not an acronym and therefore does not need to be typed in capitals. Amend references to "RAMSAR" by using the word "Ramsar".</p>	<p>Decision 16/7</p> <p>This submission is accepted.</p> <p>Amendments to District Plan</p> <p>Amend "RAMSAR" to "Ramsar" where it appears in the Proposed Plan.</p> <p>Reason</p> <p>The change corrects a minor error.</p>
<p>71.1 NZAS Ltd</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. 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><u>Decision Sought:</u> 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>Decision 16/8</p> <ol style="list-style-type: none"> 1. Submission 71.1 NZAS Ltd is accepted 2. Submission 88.26 is accepted in part. <p>Amendments to District Plan</p> <p>The final paragraph of the Introduction is changed to read:</p> <p>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 not give rise to adverse effects, either on the values of the areas themselves, or the use of private the land, including normal farm practices and animal welfare issues, and the privacy of the land occupier. The provision of public</p>

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<p>FS4.8 Federated Farmers supports in part Submission 71.1 noting there will be instances where the clearance of indigenous vegetation is necessary and where the effects can be appropriately managed. In regard to public access, 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>88.26 Federated Farmers 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.</p> <p>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.</p> <p>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.</p> <p>The submitter supports the plan's reference to the importance of non-regulatory methods in this area. The submitter states that any such public access to areas of indigenous 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><u>Decision Sought:</u> 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.e. 'numerous ponds within reserves and on farms that contribute to wetland habitat') • 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>FS 2.9 NZAS Ltd support Submission 88.26 by 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</p>	<p>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>. The provisions of the Trespass Act 1980 also remain in instances where people access areas that the land owner does not wish to open to the public.</p> <p>Reasons:</p> <ol style="list-style-type: none"> 1. Differences between land ownership and land occupation require some minor amendments to the Introduction. 2. The support of Federated Farmers for the use of criteria and non-regulatory methods is noted, as is their support for the recommendation made on their submissions in the Section 42A Report. 3. The reference to ponds and gravel extraction is appropriate within the context of this section of the Plan.

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on relevant landowner and occupier permission. Retain introduction as notified (subject to amendment sought in submission 71.1).	
2.3.1 Issues	
<p>77.1 Te Runaka o Waihopai and Te Runaka o Awarua Support Issues and seeks their retention.</p> <p>18.9 Environment Southland Issue 1 Support, and seeks its retention.</p>	<p>Decision 16/9 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitters support the plan provisions and seek no change to them.</p>
<p>88.27 Federated Farmers 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><u>Decision Sought:</u> Amend Issue 1 to read: 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>FS2.11 NZAS Ltd support Submission 88.27 and 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.</p>	<p>Decision 16/10 This submission is accepted in part.</p> <p>Amendments to District Plan Issue 1 is amended to read: Invercargill's indigenous ecosystems have been reduced in diversity and extent over time and are under threat from while further subdivision, land use change and development <u>has the potential to pose risks in some areas, it also provides opportunity for enhancement</u>.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The word “inappropriate” introduces uncertainty and confusion. 2. As noted by the submitter, subdivision, land use change and development can be positive or negative on biodiversity values.
2.3.2 Objectives	
<p>18.10 Environment Southland Objective 1 Support, and seeks its retention.</p> <p>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.</p> <p>77.2 Te Runaka o Waihopai and Te Runaka o Awarua</p>	<p>Decision 16/11 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitters support the Objective and seek no change to it.</p>

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Objective 1 - Support, and seeks its retention.	Changes to the wording as a consequence of Decision 16/13 do not alter its overall intent.
<p>88.28(a) Federated Farmers Objective 1 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. 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. 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><u>Decision Sought:</u> Objective 1 is amended to read:</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 enhanced.</p> <p>FS 12.1 PowerNet Ltd Support Submission 88.28 agreeing this is not always appropriate or necessary to maintain, restore or enhance indigenous vegetation, particularly in relation to Regionally Significant Infrastructure projects.</p> <p>71.2 NZAS Ltd Objective 1 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><u>Decision Sought:</u> 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</u> and <u>where appropriate</u> restored to a healthy functioning state, and where appropriate enhanced.</p> <p>FS 4.10 Federated Farmers Support in part Submission 71.2 considering 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 16/12 These submissions are accepted in part.</p> <p>Amendments to District Plan Objective 1 is amended to read:</p> <p>Indigenous vegetation-biodiversity and habitats with indigenous biodiversity values are maintained, and <u>where appropriate</u> restored to a healthy functioning state, and where appropriate enhanced.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. As discussed on page 6 of this Decision, it is appropriate at an objective level to have regard to all biodiversity. The intent of the Proposed Plan is to use regulatory methods for areas of significance and non-regulatory methods for other areas. Consistent with this approach the word "significant" is not required in the objective. 2. National and regional policy is strong on the need to “maintain” biodiversity. The addition of the words “where appropriate” in conjunction with maintaining biodiversity would weaken the objective to the point where it would no longer meet statutory tests regarding national and regional policy.

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<p>FS12.2 PowerNet Ltd Support Submission 71.2 and 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>18.11 Environment Southland Objective 2 - 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>FS2.12 NZAS Ltd oppose Submission 18.11. NZAS 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>64.3 Department of Conservation Objective 2 - Support. This objective gives recognition to the importance of Section 6(a) of the RMA and seeks its retention</p> <p>88.28(b) Federated Farmers Adopt Objective 2 as proposed.</p> <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> <p>FS4.11 Federated Farmers oppose Submission 77.3 considering 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.</p>	<p>Decision 16/13 Submissions 64.3 Department of Conservation and 88.28(b) Federated Farmers are noted.</p> <p>Submissions 18.11 Environment Southland and 77.3 Te Runaka o Waihopai and Te Runaka o Awarua are accepted in part.</p> <p>Amendments to District Plan Objective 2 is amended to read: The natural character <u>and biodiversity</u> of wetlands, rivers and their margins are protected from inappropriate subdivision and development.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The general support of the original submitter's is noted. 2. Objective 1 covers "indigenous biodiversity and areas of significant indigenous biodiversity" in general terms as required by Section 6(a) of the RMA, while Objective 2 is intended to be focused on the Section 6(c) matters. 3. The addition to Objective 2 clarifies the intention of Section 6 read as a whole.
<p>2.3.3 Policies</p>	
<p>77.4 and 77.6 Te Runaka o Waihopai and Te Runaka o Awarua Supports all policies, including Policy 10 – retain.</p> <p>88.29, 88.32 and 88.33 Federated Farmers Supports Policies 1, 4 - 9 - 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</p>	<p>Decision 16/14 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The submitters support various policies and seek no change to them.

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<p>Biosecurity Act 1994 and the Conservation Act 1987. Adopt the policies as proposed.</p> <p>18.12 - 18.16, 18.18 and 18.19 Environment Southland Policies 1 - 5, 7 and 8 Support, and seeks retention.</p> <p>64.5 Department of Conservation Policy 2 –The submitter supports the policy as it gives effect to Part 2 of the RMA and the Regional Policy Statement for Southland. Policy 4 - Support, and seeks its retention. It is important that the integrity of areas of significant indigenous biodiversity is maintained by using appropriate locally sourced plant stock.</p>	<p>2. There is no Policy 10.</p>
<p>71.3 NZAS Ltd Policy 2 - 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><u>Decision Sought:</u> Amend Policy 2 by including the word “inappropriate” before subdivision, land use and development AND amend the explanation by deleting the final sentence.</p> <p>88.30 Federated Farmers Policy 2 - 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</p>	<p>Decision 16/15 These submissions are accepted in part.</p> <p>Amendments to District Plan As provided for by Decision 16/4.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. As noted by the submitters, not all biodiversity should be treated in the same way, and the policy should reflect the dualistic approach intended by the Proposed Plan and the explanation given to the policy. 2. The use of the phrase "avoid, remedy or mitigate" in relation to areas of significance removes the need to include the words "protect" and "inappropriate". 3. 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 respect of areas of significance is mandated.

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<p>activities. The literal interpretation of this is too large in scope.</p> <p><u>Decision Sought:</u> Make the following amendments to Policy 2:</p> <p>To encourage the appropriate protection and enhancement protect and enhance of the ecological integrity and functioning of significant indigenous ecosystems and habitats with significant indigenous biodiversity values by avoiding, remedying or mitigating the adverse effects of inappropriate subdivision, land use and development.</p> <p>FS12.3 PowerNet Ltd support Submission 88.30 considering that the management of such effects should be limited to those areas of identified significant 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>88.31 Federated Farmers</p> <p>Policy 3 - Otatara - Support in part. The submitter considers that the biodiversity obligations under the RMA do not mean protection at all costs and 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><u>Decision Sought:</u> Amend the policy to below wording or similar:</p> <p>To encourage appropriate protection and enhancement of 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>FS8.1 Department of Conservation oppose Submission 88.31 stating that a regulatory approach is required to give effect to Section 6(c) of the RMA. 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 16/16</p> <p>This submission is rejected.</p> <p>Amendments to District Plan</p> <p>None required.</p> <p>Reason</p> <p>The values associated with biodiversity at Otatara are significant and the wording in the policy is appropriate having regard to Section 6(c) of the RMA.</p>

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<p>48.11 Forest & Bird Society and 54.10 Otatara Landcare Group Policy 5 - The submitters suggest an additional initiative as follows: (D) Indigenous species.</p>	<p>Decision 16/17 This submission is accepted in part.</p> <p>Amendments to District Plan Clause (C) in Policy 5 is amended to read: Indigenous <u>species, ecosystems and habitats.</u></p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The addition provides for encouraging the use of indigenous species for amenity plantings and this would be consistent with the general intent of the Proposed Plan. 2. The intent of the submission can be accommodated without the need for an additional clause in the policy.
<p>18.17 Environment Southland Policy 6 - 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 16/18 This submission is accepted in part.</p> <p>Amendments to District Plan Include an additional Method in Section 2.3.4: <u>Collaborate with Environment Southland and other local authorities where joint initiatives and processes will assist in achieving common goals and desired outcomes.</u></p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The Council is required to have regard to the provisions of the PSRPS in preparing the District Plan. 2. Collaboration is a method that can be used to achieve the objectives and policies of the District Plan, rather than a policy matter. 3. An addition to the methods is consistent with the addition being made to the Introduction to section 2.3 Biodiversity. 4. Policy 6 deals with a different matter to that raised in the submission.

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<p>65.3 ICC Environmental and Planning Services Policy 7 – Typo. Amend “pest” to “pests”.</p> <p>65.4 ICC Environmental and Planning Services Policy 8 – Typo. Change to read Biosecurity Act 1994 <u>1993</u></p> <p>65.5 ICC Environmental and Planning Services Policy 8 – The submitter notes that other legislation that may enable protection of the values of biodiversity may not always be more effective and efficient that the methods available under the RMA. Amend Policy 8 wording to read ... in a manner that <u>can be</u> more effective and more efficient.</p> <p>18.20 Environment Southland, 65.6 ICC Environmental and Planning Services and 77.5 Te Runaka o Waihopai and Te Runaka o Awarua Policy 9 - The submitters suggest there is incorrect reference to "diversity" instead of "biodiversity". Retain with the amendment.</p>	<p>Decision 16/19 These submissions are accepted.</p> <p>Amendments to District Plan</p> <ol style="list-style-type: none"> 1. Policy 7 – Amend “pest” to “pests”. 2. Policy 8 – Change "1994" to "1993". 3. Policy 8 - Amend the Explanation to read " that is <u>can be</u> more effective" 4. Policy 9 - Amend "diversity" to "biodiversity" <p>Reason The changes correct minor typographical errors.</p>
<p>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”</p> <p>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.</p> <p><u>Decision Sought:</u> That a new provision/s be inserted into the District Plan, that requires consideration of the use of biodiversity offsets in accordance with Policy BIO.8 of the PSRPS 2012 to support the provision in Rule 3.1.4.</p> <p>FS2.13 NZAS Ltd Oppose in part Submission 18.21. NZAS does not oppose to the use of offsets in principle but it would oppose offsets being mandatory given their potential costs.</p>	<p>Decision 16/20 This submission is rejected.</p> <p>Amendments to District Plan None required.</p> <p>Reason The Proposed District Plan 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. In considering the application, the Council is to “have regard to” a regional policy statement or proposed regional policy statement under Section 104(1)(b)(v). Hence, the provisions would be considered and do not require inclusion in the Proposed Plan.</p>

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SECTION 2.3.4 - METHODS OF IMPLEMENTATION	
<p>64.7 Department of Conservation 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. Retain the Methods of Implementation 2.3.4.</p> <p>77.7 Te Runaka o Waihopai and Te Runaka o Awarua and 18.22 - 18.30 Environment Southland Methods 1–9 - Support, and seeks their retention.</p> <p>FS4.12 Federated Farmers Oppose in part Submission 18.22 in that delineation should not extend to all areas of indigenous biodiversity, only those identified as significant.</p> <p>48.13 Forest & Bird Society and 54.12 Otatara Landcare Group Method 2 – Support</p>	<p>Decision 16/21 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitters support various provisions in Section 2.3.4 and request no changes to them.</p>
<p>88.34 Federated Farmers Methods 1–9 - 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. 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><u>Decision Sought:</u> Amend Method 1 as follows: Delineation on the District Planning Maps of areas of <u>significant</u> indigenous biodiversity. And adopt other methods as proposed.</p>	<p>Decision 16/22 This submission is accepted</p> <p>Amendments to District Plan Amend Method 1 to read: Method 1 Delineation on the District Planning Maps of areas of <u>significant</u> indigenous biodiversity.</p> <p>Reason The addition provides consistency with the objective and policy framework.</p>
<p>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. Delete Method 7.</p> <p>FS4.13 Federated Farmers support Submission 65.7. The further submitter agrees that there is unnecessary repetition.</p>	<p>Decision 16/23 This submission is accepted.</p> <p>Amendments to District Plan Method 7 is deleted.</p> <p>Reason This method duplicated Method 3.</p>

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SECTION 3.1 RULES	
<p>48.6 Forest & Bird Society 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 16/24 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitter supports the adoption of District wide Biodiversity Rules, and through this submission does not seek any change to them.</p>
<p>88.73 Federated Farmers 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><u>Decision Sought:</u> Ensure rules within 3.1 are only applied to identified mapped areas of significant indigenous biodiversity.</p> <p>FS25.17 Transpower NZ Ltd support Submission 88.73 agreeing that rules in 3.1 should only apply to mapped areas.</p>	<p>Decision 16/25 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The rules only apply to areas shown on the District Planning Maps. 2. Non-regulatory measures on their own are insufficient to prevent loss of and damage to significant indigenous biodiversity.
<p>103.62 Invercargill Airport Ltd Support 3.1.1. 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>18.91 Environment Southland Support 3.1.1 and seeks its retention.</p> <p>FS28.2 NZ Transport Agency support Submission 18.91 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>64.9 Department of Conservation Support 3.1.1. The submitter recognises that some trimming of indigenous vegetation</p>	<p>Decision 16/26 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitters support various provisions in Section 3.1.1 and request no changes to them.</p>

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<p>is required where it occurs adjacent to existing infrastructure and utilities, and for the purpose of clearing access ways to enable movement of vehicles.</p> <p>FS28.3 NZ Transport Agency support Submission 64.9 commenting 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>71.49 NZAS Ltd Support 3.1.1 in part. The submitter seeks an addition to enable the trimming of vegetation that may impact on the safe operation of the smelter.</p> <p><u>Decision Sought:</u> Add to Rule 3.1.1 as follows:</p> <p>(X) <u>Trim or remove vegetation that may impact on the safe operation of the Tiwai Point aluminium smelter.</u></p> <p>87.38 Transpower NZ Ltd Support 3.1.1 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><u>Decision Sought:</u> Add a new point to Rule 3.1.1(F) as follows and any consequential amendments.</p> <p>(F) <u>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>88.74 Federated Farmers Support 3.1.1 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><u>Decision Sought:</u> Adopt the permitted activity rule proposed with the following amendment (or similar):</p> <p>(F) <u>Trim, prune or remove indigenous vegetation to maintain existing tracks and fencing.</u></p> <p>91.15 PowerNet Ltd Support 3.1.1 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>Decision 16/27 These submissions are accepted in part.</p> <p>Amendments to District Plan</p> <p>1. Rule 3.1.1(E) Permitted Activity is amended to read:</p> <p>(E) Trim vegetation:</p> <ul style="list-style-type: none"> (a) <u>Within and immediately adjacent to formed legal roadways, where such trimming is required to maintain road safety.</u> (b) <u>On and immediately adjacent to formed vehicle access ways and vehicle tracks, where such trimming is required to enable use by vehicles (including emergency vehicles where necessary).</u> (c) <u>Immediately adjacent to structures and lines associated with network utility services, where such trimming is required to avoid damage to such structures and lines.</u> (d) <u>Immediately adjacent to open drains, where such trimming is required in order to undertake maintenance of the drain.</u> (e) <u>Immediately adjacent to boundary fences, where such trimming is required to avoid damage to the fence.</u> (f) <u>On and immediately adjacent to formed public walking tracks, where such trimming is required to enable safe passage by people.</u> (g) <u>Immediately adjacent to buildings and other structures, where such trimming is required to avoid damage to such buildings and structures.</u> <p>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.</p> <p>2. A new rule is added after Rule 3.1.1 as follows:</p> <p><u>It is a controlled activity to remove or fell vegetation</u></p> <p>(A) <u>Within and immediately adjacent to formed legal roadways, where</u></p>

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<p><u>Decision Sought:</u> Amend 3.1.1 by adding the following:</p> <p>(F) <u>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><u>such removal or felling is required to maintain road safety.</u></p> <p>(B) <u>On and immediately adjacent to formed vehicle access ways and vehicle tracks, where such removal or felling is required to enable use by vehicles (including emergency vehicles where necessary).</u></p> <p>(C) <u>Immediately adjacent to structures and lines associated with network utility services, where such removal or felling is required to avoid damage to such structures and lines.</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>Immediately adjacent to boundary fences, where such removal or felling is required to avoid damage to the fence.</u></p> <p>(F) <u>On and immediately adjacent to formed public walking tracks, where such removal or felling is required to enable safe passage by people.</u></p> <p>(G) <u>Immediately adjacent to buildings and other structures, where such removal or felling is required to avoid damage to such buildings and structures.</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>3. Consequential changes and reference to other rules as required.</p> <p>Reasons</p> <p>1. As discussed on page 8 of this Decision, in areas of significant indigenous vegetation, it is considered appropriate that trimming should be a permitted activity under particular circumstances, but that removal or felling should be a controlled activity.</p> <p>2. It is not appropriate to refer to particular activities such as the NZAS Smelter. However, the rules as amended provide for the trimming and removal of vegetation in order to avoid damage to buildings and structures.</p>
<p>64.10 Department of Conservation</p> <p>Oppose 3.1.2. The submitter considers that the activities covered by this rule should be non-complying not discretionary. The submitter is concerned that there is no definition of “access way” and that the scope of this provision is therefore open to</p>	<p>Decision 16/28</p> <p>This submission is accepted in part.</p> <p>Amendments to District Plan</p>

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<p>interpretation. Delete Rule 3.1.2.</p> <p>FS2.17 NZAS Ltd oppose Submission 64.10 noting 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. Retain the “discretionary” activity status in Rule 3.1.2 as notified.</p> <p>FS4.16 Federated Farmers oppose Submission 64.10 considering 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>FS25.1 Transpower NZ Ltd oppose Submission 64.10 stating 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>Rule 3.1.2(A) is amended to read:</p> <p>It is a discretionary activity to:</p> <p>Construct any <u>road, driveway or other such access way or road that is intended to be used by motorised vehicles.</u></p> <p>Reasons</p> <ol style="list-style-type: none"> 1. It can reasonably be expected that on some sites it will be necessary to make provision for the movement of vehicles through an area of significant indigenous vegetation so as to gain access to the site or to areas used for productive purposes. In the circumstances discretionary status is warranted. That does not however mean that any proposal will be approved. It will need to show that any adverse effects can be avoided, remedied or mitigated. 2. Amendment is required to the rule to avoid uncertainty.
<p>87.39 Transpower NZ Ltd</p> <p>Support 3.1.2 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. 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><u>Decision Sought:</u> Amend Rule 3.1.2 as follows:</p> <p>It is a discretionary activity to:</p> <ol style="list-style-type: none"> (A) Construct any access way or road. (B) Construct <u>utility services 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>And any consequential amendments.</p> <p>87.40 Transpower NZ Ltd</p> <p>Oppose 3.1.2 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</p>	<p>Decision 16/29</p> <p>These submissions are accepted in part.</p> <p>Amendments to District Plan</p> <ol style="list-style-type: none"> 1. Rule 3.1.3(B) is amended to read: <p>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.</p> 2. The following definition be included in Section 4 Definitions: <p>Network utility services: Means services provided by a network utility operator as defined in Section 166 of the RMA.</p> 3. Rule 3.1.3 (renumbered 3.1.4 as a consequence of other decisions) is amended to read: <p><u>Except as provided for in Rules 3.1.1, 3.1.2 and 3.1.3, it is a non-complying activity to:</u></p> <ol style="list-style-type: none"> (A) Remove any live indigenous vegetation, or alter such vegetation in a manner that destroys the biological viability of that vegetation, except

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<p>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><u>Decision Sought:</u> Amend Rule 3.1.3 as follows:</p> <p>“It is a non-complying activity to:</p> <ul style="list-style-type: none"> (A) Remove any live indigenous vegetation, or alter such vegetation in a manner that destroys the biological viability of that vegetation, except where permitted under Rule 3.1.1 <u>and 3.1.2</u> above. (B) Erect any building or other structure with a footprint greater than 10 square metres in area. (C) Plant exotic woodlots and commercial forestry. (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>And any consequential amendments.</p> <p>FS12.5 PowerNet Ltd Support in part Submission 87.40 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>91.16 PowerNet Ltd</p> <p>Oppose 3.1.2 - 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 “Controlled” rather than “Discretionary”.</p> <p>Further, the submitter notes that “Utility Services” are not defined under the Proposed Plan. Rule 3.1.2 should be amended to refer to “infrastructure” which is defined, or a definition for “Utility Services” is inserted into the Plan.</p> <p><u>Decision Sought:</u> Amend Rule 3.1.2 as follows:</p>	<p style="text-align: center;">where permitted under Rule 3.1.1 above.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. Network utility services provide for the needs of people, households and communities and have locational requirements that differ from other activities. In the circumstances it is appropriate for them to be provided for as a discretionary activity. 2. Transpower advised of its acceptance of these decisions as provided for above. 3. As noted by Environment Southland, 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.
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<p>3.1.2 It is a discretionary-controlled activity to:</p> <ul style="list-style-type: none"> (A) Construct any access way or road. (B) Construct <u>new</u> utility services in a manner that will compromise the biological viability of indigenous vegetation. 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>AND/OR Insert new controlled activity Rule specifically relating to network utility services. "Utility Services" are not defined under the Proposed Plan. Rule 3.1.2 should be amended to refer to "Infrastructure" which is defined, or a definition for "Utility Services" is inserted into the Plan.</p> <p>FS39.22 Environment Southland oppose Submission 91.16 noting 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>64.11 Department of Conservation</p> <p>Support 3.1.3 - However, 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><u>Decision Sought:</u> Retain Rule 3.1.3.</p>	<p>Decision 16/30 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The provision provides that any building in an area of significant indigenous vegetation large enough to require building consent also requires consent under this provision.</p>
<p>65.90 ICC Environmental and Planning Services</p> <p>Support 3.1.3 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><u>Decision Sought:</u> Amend the definition of earthworks to include "the cultivation of farmland more than 10m from an area of identified significant biodiversity".</p> <p>FS8.2 Department of Conservation support Submission 65.90 as 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. Amending the definition as sought will ensure</p>	<p>Decision 16/31 This submission is rejected.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. A full assessment of this submission is given on pages 8 - 9 of this Decision. 2. The definition of "earthworks" in the Proposed Plan explicitly excludes "the digging of holes for the erection of posts, planting of trees or other vegetation, or the cultivation of farm land".

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<p>that an appropriate buffer is maintained between these activities and areas of significant indigenous biodiversity.</p>	<p>3. Rules applying to the drainage of wetlands are adequately provided for in the Regional Water Plan, and given the complex nature of these provisions it is inappropriate and unnecessary to also have similar rules in the District Plan.</p>
<p>88.75 Federated Farmers Oppose 3.1.3 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 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><u>Decisions Sought:</u></p> <ul style="list-style-type: none"> • Reduce the activity status for farming activities to “discretionary” or “restricted discretionary”. • 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>FS32.1 Placer Investments Ltd support Submission 88.75 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 16/32 This submission is accepted in part.</p> <p>Amendments to District Plan Rule 3.1.3 (renumbered 3.13.4 as a consequence of other decisions) is amended to read:</p> <p><u>Except as provided for in Rules 3.1.1, 3.1.2 and 3.1.3, it is a non-complying activity to:</u></p> <p>(D) Carry out earthworks within any area of significant indigenous biodiversity or within 10 metres of it.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The definition of "earthworks" in the Proposed Plan explicitly excludes "the digging of holes for the erection of posts, planting of trees or other vegetation, or the cultivation of farm land". Such activities are not subject to Rule 3.1.3(D). 2. As discussed at page 8 of this Decision, if it is appropriate to retain a buffer zone adjacent to areas of significant biodiversity then that should be shown as part of that area of significant biodiversity on the District Planning Maps. Further, the 10-metre buffer zone provision would be difficult to administer and enforce.
<p>88.76 Federated Farmers Support 3.1.4 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><u>Decision Sought:</u> Adopt additional consideration criteria to acknowledge the economic</p>	<p>Decision 16/33 This submission is accepted in part.</p> <p>Amendments to District Plan The following is added to Rule 3.1.4 (renumbered 3.1.5 as a consequence of other decisions):</p> <p><u>(P) The economic costs and benefits of the activity for which consent is sought.</u></p> <p>Reasons</p> <ol style="list-style-type: none"> 1. By deleting the 10 metre buffer area as provided for in Decision 16/35 the restrictive effect on land uses outside those identified

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impact of the proposed activity, and its necessity to the business of the existing landholding.	<p>areas is avoided.</p> <p>2. The definition of "effect" in the RMA includes both positive and negative effects, and it is appropriate for that to be recognised in this rule.</p>
<p>77.6 Te Runaka o Waihopai and Te Runaka o Awarua The submitter suggests that clause 3.1.4(L) should be reworded as follows:</p> <p><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></p>	<p>Decision 16/34 This submission is accepted.</p> <p>Amendments to District Plan Rule 3.1.4(L) (renumbered 3.1.5(L) as a consequence of other decisions) is amended to read:</p> <p><u>The value of the affected land to tangata whenua and the effects of the activity on cultural values, associated with lands, water, sites, wahi tapu and wahi taonga.</u></p> <p>Reason The addition provides clarity to the provision.</p>
<p>64.12 Department of Conservation Supports 3.1.4 and 3.1.5. 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. Retain in their present form.</p> <p>FS4.17 Federated Farmers oppose Submission 64.12 as there will be minor activities proposed where an ecological assessment will not be necessary or appropriate all the time. Amend rule to ensure that ecological assessments are only required when appropriate and necessary to the activity proposed.</p> <p>18.92 Environment Southland Supports 3.1.5 and seeks its retention.</p> <p>48.14 Forest & Bird Society and 54.14 Otatara Landcare Group Supports 3.1.5. 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.</p>	<p>Decision 16/35 These submissions are noted.</p> <p>Amendments to District Plan None required.</p> <p>Reasons</p> <ol style="list-style-type: none"> 1. The submitters support the plan provisions and do not seek any change to them. 2. The issue raised by Federated Farmers in their further submission goes beyond the scope of the original submission.

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<p>87.41 Transpower NZ Ltd Oppose 3.1.5 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 supports Rule 3.1.5 as it will only apply to the development of new National Grid transmission lines and towers.</p> <p><u>Decision Sought:</u> 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>Decision 16/36 This submission is noted.</p> <p>Amendments to District Plan None required.</p> <p>Reason The submitter supports Rule 3.1.5 and seeks its retention.</p>
<p>88.77 Federated Farmers Oppose 3.1.5 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><u>Decision Sought:</u> 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>Decision 16/37 This submission is rejected.</p> <p>Amendments to District Plan None required.</p> <p>Reason If the scale of the proposed activity is minor, then the accompanying assessment will be commensurate to that. An assessment is required however and the wording used in the provision is appropriate.</p>
<p>PLANNING MAPS</p>	
<p>18.8 Environment Southland The submitter generally supports the areas defined in the Planning Maps as Areas of Significant Indigenous Biodiversity. However, 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><u>Decision Sought:</u> To amend Planning Maps in the district plan to include all indigenous vegetation that is less than 20% of the former extent remaining</p>	<p>Decision 16/38 These submissions are rejected.</p> <p>Amendments to District Plan None required.</p> <p>Reasons As discussed in Decision 16/4: 1. It would be appropriate to undertake a review of the areas of biodiversity significance taking into account criteria contained in the Proposed Regional Policy Statement and the draft National Policy Statement on Biodiversity once they are finalised. Deficiencies referred to by submitters can be assessed within that criteria framework, and where appropriate changes made to the areas shown on the maps. The submitters appearing at</p>

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<p>(threatened) including all naturally occurring wetland areas supporting an indigenous ecosystem;</p> <p>OR provide protection for all naturally occurring wetland areas supporting an indigenous ecosystem within the Invercargill district from subdivision, use and development through a specific rule in the District Plan.</p> <p>48.2 Forest & Bird Society and 54.2 Otatara Landcare Group</p> <p>The submitters believe 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 Ōmaui-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 not mapped including areas within the Smelter Sub-Area). <p>FS7.1 South Port New Zealand Ltd Support in part Submissions 48.2 and 54.2 noting 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>48.3 Forest & Bird Society and 54.3 Otatara Landcare Group</p> <p>The submitters consider 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>48.4 Forest & Bird Society and 54.4 Otatara Landcare Group</p> <p>The submitters are 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 submitters consider that the use of Planning Maps as the sole indicator of significant vegetation results in other deficiencies.</p> <p>48.5 Forest & Bird Society and 54.5 Otatara Landcare Group</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</p>	<p>the hearing accepted any further assessments should await finalising of the national and regional documents so as to avoid duplication. Any changes to the District Planning Maps will then require a variation or change to the Proposed District Plan, depending on when the national and regional documents are finally adopted.</p> <ol style="list-style-type: none"> 2. None of the original submitters identify with sufficient specificity, nor provide any factual information that enables the Committee to consider the inclusion of any additional areas of significant biodiversity on the District Planning Maps. 3. None of original submissions seek deletion of areas shown on the District Planning Maps. It is therefore beyond the scope of further submissions to request any deletions. 4. Taking into account legal advice given to the Committee and the implications of the adoption of the technique of adopting criteria to determine whether a resource consent should be required for undertaking activities within areas of significant indigenous vegetation, the Committee concluded that such an approach was not valid, nor would it be capable of reasonable and fair implementation. The Council itself would not be able to practically monitor such activities nor was such an approach appropriate having regard to Section 32 of the RMA. 3. Overall, the Committee preferred the certainty provided by having rules that applied to areas shown on the District Planning Maps. However, it accepted that regard should be had to the attributes of indigenous ecosystems and habitats with indigenous biodiversity values. 4. While the areas shown on the District Planning Maps may not be current, no submitter provided details of additional areas that should be included on the District Planning Maps. In the absence of specifically identified areas and an opportunity for affected land owners to have input, no changes to the District Planning Maps were fairly justified at this time. Similarly, it is not appropriate at this time to include areas identified in technical and other reports without further investigation and consideration.
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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.

64.8 Department of Conservation

Areas of Significant Indigenous Biodiversity in Planning Maps supported in part. However, 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.

Decision Sought: Amend the wording under the Biodiversity heading as follows:

This rule applies to areas of significant indigenous biodiversity identified in the planning maps, and to areas identified in future studies and through resource consent processes.

FS2.10 NZAS Ltd support in part and oppose in part Submission 18.8, supporting 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. However the further submitter opposes the extension of any of these areas.

FS2.15 NZAS Ltd oppose Submissions 48.2 - 48.5 and 54.2 - 54.5, not being aware of the areas of significant indigenous biodiversity that are not included in the Planning Maps as asserted in the above submissions. The further submitter supports the intention to protect biodiversity but considers it important that there is recognition of other potential development and also 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. The further submitter also notes that Planning Maps are not set in time and can be amended through the Plan Change process.

FS2.16 NZAS Ltd oppose Submission 64.8 and 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.

FS4.9 Federated Farmers oppose Submission 18.8 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

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address indigenous biodiversity.

FS4.14 and FS4.15 Federated Farmers oppose Submission 48.2 - 48.5, 54.3 - 54.5 and 64.8 noting 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. The rules with 3.1 should only apply to identified mapped areas of significant indigenous biodiversity. [Submissions 48.2 - 48.5, 54.3 - 54.5]

The further submitter considers that Council is already able to protect new indigenous plantings. The further submitter states that it 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. [Submission 64.8]

FS12.4 PowerNet Ltd oppose Submission 18.8 agreeing 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.

FS25.15 Transpower NZ Ltd oppose Submission 18.8 considering that “areas identified in future studies” and “through resource consent processes” should only be introduced by way of Plan Change. 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.

FS25.14 and FS25.16 Transpower NZ Ltd oppose Submissions 48.2, 54.2 and 64.8. The further submitter considers that “areas identified in future studies” and “through resource consent processes” should only be introduced by way of Plan Change. 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

FS32.5 Placer Investments Ltd oppose Submission 18.8 considering 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. The further submitter further considers that in any areas retained on the Planning Maps in the Tiwai Peninsula, earthworks

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associated with mining and consequential rehabilitation should not be accorded non-complying status. The further submitter considers that the submission is not in accordance with Part 2 of the RMA.

Decisions Sought: Remove the areas identified as Significant Indigenous Biodiversity within Tiwai Peninsula from the Planning Maps or reduce the area and amend maps so that these areas are clearer to assist with interpretation and application of control.

FS32.6 and FS32.7 Placer Investments Ltd oppose Submissions 48.2 and 54.2

The further submitter opposes the statements that some areas of significant indigenous biodiversity have not been mapped including areas within the Smelter Zone. 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.

Decision Sought: Remove areas identified as Significant Indigenous Biodiversity within the Tiwai Peninsula and amend Planning Maps so it is clearer where the areas of Significant Indigenous Biodiversity are to assist interpretation and application of control.

SECTION TWO – ISSUES, OBJECTIVES AND POLICIES

2.3 Biodiversity

The Invercargill City District contains areas of indigenous bush, wetlands and tussock, some of which are large in size, while others are isolated. These areas are important habitats in their own right as well as significant collectively.

The Statement of National Priorities ¹ provides a hierarchy for protecting biodiversity and outlines a national perspective as a basis for developing policy on biodiversity at a local level.

The protection of indigenous biodiversity is an important value for the tangata whenua of Murihiku. They place a high priority on protecting, maintaining and improving habitat for all biodiversity, be it in water, riparian margins, native bush or wetlands.

Areas of significant indigenous biodiversity have been identified having regard to the following criteria:

- (A) **Representativeness** – reflecting importance based on ecological districts (Southland Plains, Waituna and Foveaux) enabling a comparison between historic (typically prehuman) and present distributions.
- (B) **Rarity/Distinctiveness** – with rarity being the presence of species that are uncommon to a particular area, and distinctiveness relating to unusual features or species found on the site.
- (C) **Landscape Context** – incorporating a general assessment of:
 - (a) *Diversity/pattern* – whether or not an ecological sequence is represented within any one site.
 - (b) *Shape* – for example, discontinuous, irregular or compact.
 - (c) *Size* – for example, large, medium or small compared to other such remaining areas.
 - (d) *Connectivity* – for example, very isolated, semi-continuous, or part of a continuous landscape.
- (D) **Sustainability** – if the ecological role of the site, for example, providing a corridor for movement of birds, will remain intact under the current management regime then it is sustainable.
- (E) **Viability** – refers to the continued integrity of the ecosystem itself, as distinct from the role it provides.
- (F) **Threat/Fragility** – with potential threats being grouped as:

¹ Ministry for the Environment 2007. *Protecting Our Places: Introducing the National Priorities for Protecting Rare and Threatened Species on Private Land*, Wellington: Ministry for the Environment.

Note: Underline indicates additions, strikethrough indicates deletions.

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- (a) *Biotic* – for example, troublesome plants and introduced animals.
- (b) *Physical climatic* – for example, accelerated erosion.
- (c) *Human* – for example, logging, burning, people damage.

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. Where 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 on an ancient sand dune system; ~~Omaui~~Omaui containing rare and threatened coastal turf communities; and Bluff Hill containing nationally significant podocarp forest.²

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~~Ramsar³ Convention. This is also an important area for significant indigenous flora and fauna. The total area of wetland is approximately 23,500 hectares, including the New River Estuary.

There are other wetland areas in the District. Wetland areas and lagoons are situated behind the sand dunes at Sandy Point. Lake Murihiku provides a natural wildlife habitat. There are also numerous ponds within reserves and on farms that contribute to wetland habitat. Gravel extraction areas between the Oreti Beach sand dunes and the Oreti River have the potential, once extraction has been completed, to be turned into wetland areas.

Key threats to areas of indigenous biodiversity include lack of appropriate stock management, further fragmentation of land holdings which then become more vulnerable to the encroachment of surrounding land uses, the spread of pest plants and animals, fire and inappropriate recreational use. Any activity that modifies the edge of vegetation areas, or that opens the interior of vegetation areas, has the ability to result in future changes to the ecological stability of the area, particularly within bush, where light and wind intrusions are increased.

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

² Decision 16/4

³ Decision 16/7

Note: Underline indicates additions, strikethrough indicates deletions.

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approach contained in this District Plan for managing activities within these areas. That approach is highly reliant on the use of non-regulatory methods, supplemented where necessary with rules.

The Council will work in collaboration with Environment Southland, other local authorities and the community to maintain indigenous biodiversity. This could include developing a Schedule of Threatened, At Risk and Rare Habitat Types and advocating for non-regulatory tools to manage biodiversity for the Southland region.⁴

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 not give rise to adverse effects, ~~either on the values of the areas themselves, or the use of private the land, including normal farm practices and animal welfare issues,~~ and the privacy of the land occupier. 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 or occupier. The provisions of the Trespass Act 1980 also remain in instances where people access areas that the land owner does not wish to open to the public.⁵

2.3.1 Issues

The significant resource management issues for biodiversity:

1. Invercargill's indigenous ecosystems have been reduced in diversity and extent over time and ~~are under threat from~~ while further subdivision, land use change and development has the potential to pose risks in some areas, it also provides opportunity for enhancement.⁶
2. Amenity values can be adversely affected by clearing and altering areas of indigenous biodiversity.

2.3.2 Objectives

Objective 1: Indigenous ~~vegetation biodiversity~~ and habitats with indigenous biodiversity values are maintained, and where appropriate restored ~~to a healthy functioning state, and where appropriate enhanced.~~⁷

Objective 2: The natural character and biodiversity⁸ of wetlands, and rivers and their margins are protected from inappropriate subdivision, use and development.

⁴ Decision 16/6

⁵ Decision 16/8

⁶ Decision 16/10

⁷ Decision 16/12

⁸ Decision 16/13

Note: Underline indicates additions, strikethrough indicates deletions.

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2.3.3 Policies

Policy 1 Delineation: To delineate on the District Planning Maps areas of significant indigenous biodiversity.

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

(A) To promote and encourage the establishment, protection, restoration and enhancement of indigenous ecosystems and habitats with indigenous biodiversity values.

(B) To avoid, remedy or mitigate the adverse effects of subdivision, land use and development within areas containing ecosystems and habitats with significant indigenous biodiversity value.

(C) Have regard to the following attributes in considering subdivision, land use and development that may adversely affect indigenous ecosystems and habitats with indigenous biodiversity values:

(i) Representativeness

(ii) Rarity / Distinctiveness

(iii) Diversity and Pattern

(iv) Ecological Context⁹

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

(A) Coastal features, ecosystems and habitats.

(B) Aquatic ecosystems and habitats.

(C) Indigenous species,¹⁰ ecosystems and habitats.

Policy 7 Information collection: Gather and record information on Invercargill's biodiversity resources and the effects of activities, pests¹¹ 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 ~~1993~~ 1994¹² where this will result in the long term protection of areas indigenous biodiversity.

Explanation: *Other legislation also enables protection of the values of these areas, in a manner that ~~is~~ can be¹³ more effective and more efficient than the methods available under the RMA.*

⁹ Decision 16/4

¹⁰ Decision 16/17

¹¹ Decision 16/19

¹² Decision 16/19

¹³ Decision 16/19

Note: Underline indicates additions, strikethrough indicates deletions.

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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 biodiversity¹⁴.
- (B) Consultation with tangata whenua regarding the means of maintaining and restoring areas and habitats 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.

Explanation: *Recognising and providing for the relationship of Māori with indigenous biodiversity is important in recognising the role of Māori as kaitiaki in accordance with Section 7 of the RMA, and Te Tangi a Tauira.*¹⁵

2.3.4 Methods of Implementation

Method 1 Delineation on the District Planning Maps of areas of significant¹⁶ indigenous biodiversity.

~~**Method 7** Preparing and promoting the preparation of guidelines for the use and sustainable management of areas of indigenous biodiversity.~~¹⁷

Method 9 Collaborate with Environment Southland and other local authorities where joint initiatives and processes will assist in achieving common goals and desired outcomes.¹⁸

SECTION THREE - RULES

3.1 Biodiversity

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

3.1.1 It is a permitted activity to:

- (E) Trim vegetation:
 - (a) Within and immediately adjacent to formed legal roadways, where such trimming is required to maintain road safety.

¹⁴ Decision 16/19

¹⁵ Ngāi Tahu Ki Murihiku (2008) "The Cry of the People - Te Tangi a Tauira - Ngāi Tahu Ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008"

¹⁶ Decision 16/22

¹⁷ Decision 16/23

¹⁸ Decision 16/18

Note: Underline indicates additions, strikethrough indicates deletions.

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- (b) On and immediately adjacent to formed vehicle access ways and vehicle tracks, where such trimming is required to enable use by vehicles (including emergency vehicles where necessary).
- (c) Immediately adjacent to structures and lines associated with network utility services, 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) Immediately adjacent to boundary fences, where such trimming is required to avoid damage to the fence.
- (f) On and immediately adjacent to formed public walking tracks, where such trimming is required to enable safe passage by people.
- (g) Immediately adjacent to buildings and other structures, where such trimming is required to avoid damage to such buildings and structures.¹⁹

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.

²⁰3.1.2 It is a controlled activity to remove or fell vegetation:

- (A) Within and immediately adjacent to formed legal roadways, where such removal or felling is required to maintain road safety.
- (B) On and immediately adjacent to formed vehicle access ways and vehicle tracks, where such removal or felling is required to enable use by vehicles (including emergency vehicles where necessary).
- (C) Immediately adjacent to structures and lines associated with network utility services, where such removal or felling is required to avoid damage to such structures and lines.
- (D) Immediately adjacent to open drains, where such removal or felling is required in order to undertake maintenance of the drain.
- (E) Immediately adjacent to boundary fences, where such removal or felling is required to avoid damage to the fence.
- (F) On and immediately adjacent to formed public walking tracks, where such removal or felling is required to enable safe passage by people.

¹⁹ Decision 16/27(1) makes various changes to all of (E)

²⁰ Decision 16/27(2)

Note: Underline indicates additions, strikethrough indicates deletions.

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- (G) Immediately adjacent to buildings and other structures, where such removal or felling is required to avoid damage to such buildings and structures.

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.

3.1.23 It is a discretionary activity to:

- (A) Construct any road, driveway or other such access way or road that is intended to be used by motorised vehicles.²¹
- (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.²²

3.1.34 Except as provided for in Rules 3.1.1, 3.1.2 and 3.1.3, it is a non-complying activity to:²³

- (A) Remove any live indigenous vegetation, or alter such vegetation in a manner that destroys the biological viability of that vegetation, ~~except where permitted under Rule 3.1.1 above.~~²⁴
- (B) Erect any building or other structure with a footprint greater than 10 square metres in area.
- (C) Plant exotic woodlots and commercial forestry.
- (D) Carry out earthworks within any area of significant indigenous biodiversity ~~or within 10 metres of it.~~²⁵

3.1.45 Applications under Rules ~~3.1.2 and 3.1.3~~ and 3.1.4²⁶ 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 activity on cultural values, associated with lands, water, sites, wāhi tapu and wāhi taonga.²⁷
- (P) The economic costs and benefits of the activity for which consent is sought.²⁸

²¹ Decision 16/28

²² Decision 16/29(1)

²³ Decisions 16/29

²⁴ Decision 16/29(3)

²⁵ Decision 16/32

²⁶ Decision 16/27(3)

²⁷ Decision 16/34

²⁸ Decision 16/33

Note: Underline indicates additions, strikethrough indicates deletions.

APPENDIX 2 - Amended District Plan Provisions

SECTION FOUR - DEFINITIONS

Network utility services: Means services provided by a network utility operator as defined in Section 166 of the RMA.²⁹

²⁹ Decision 16/29(2)

Note: Underline indicates additions, strikethrough indicates deletions.

APPENDIX 3 – Legal Advice to Committee

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of submissions to the Invercargill City Proposed District Plan
AND	
IN THE MATTER	of criteria used in a rule to identify areas of biodiversity significance

A Minute from the Hearings Committee was issued on 12 November seeking advice regarding the decision relating to the proposed Biodiversity provisions of the Invercargill City District Plan.

The questions asked are:

- 1) Are the matters contained in the original submission of the Department of Conservation, sufficient for the Committee to consider the inclusion of a rule based on criteria set out in Submission 64.1; and
- 2) Is it valid to include in the District Plan a rule based on the criteria set out in Submission 64.1?

Original Submission

When considering whether the matters contained in the original submission of the Department of Conservation (DOC) or Royal New Zealand Forest and Bird Society (RNZFB) consideration must be given to the Resource Management Act 1991 (RMA) and its Schedules.

The first schedule to the RMA sets out the procedure to be used in a Plan change process.

Clause 7 sets out the requirement for Public Notice of submissions. This requires a Summary of all submissions to be prepared and made publicly available. It must (Clause 7(2)) be served on all people who made a submission. If there is an error then the Summary must be re notified and served.¹

Clause 8 then allows certain people to make further submissions. The further submissions can only be in support or in opposition and can not introduce new material.

Finally Clause 10 provides for the decisions to be made on matters raised in submissions. A key consideration is the “ambit” of a submission.

The test still applied in the Courts comes from *Countdown Properties (Northlands) Limited v Dunedin City Council*². While the Clause has been amended a number of times, the principle remains the same.

“... the local authority... must consider whether any amendment made to the plan change as notified goes beyond what is reasonable and fairly raised in submission on the plan change.”

¹ *Healthlink South Ltd v Christchurch International Airport* [2000] NZRMA 375

² [1994] NZRMA 145

Note: Underline indicates additions, strikethrough indicates deletions.

APPENDIX 3 – Legal Advice to Committee

In determining this issue, the Committee must consider if the amendment proposed by DOC / RNZFB is reasonable and fairly raised in the submission process. In this case, the submission was included in the original submission. It was made in a matter directly relating to the proposed Plan change in that it was suggesting changes to the criteria used to determine what a significant area is.

This is a different situation to that which arose in *Palmerston North City Council v Motor Machinists Limited*³ that case involved a Plan change to rezone land as the result of a roading network change in Palmerston North.

The respondent company made a submission. Part of its submission was that it wished to have some of its land rezoned as well. This additional land did not form part of the Proposed Plan Change as it was not needed for the road network. The High Court allowed the appeal as it held that this was spot zoning, and there had been not any real chance for people potentially impacted by the change to have a proper say or make any informed decisions.

Because of this, the High Court ruled that the submission made by the respondent company was not “on” the Plan change because it had gone beyond the scope of the proposed plan change.

That is not the case here. The criteria and identification of significant indigenous vegetation must form a substantial part of the proposed plan.

Further, there has been a chance for other parties/ submitters to make further submissions on the DOC submission and the proposed criteria.

On this basis, the submission by DOC is sufficient for the committee to consider and inclusion of the criteria so submitted.

Is the proposed Rule Clear enough to be valid?

DOC, RNZFB and the Otatara Landcare Group (OLG) have raised concerns that the proposed rules do not go far enough in the protection of Indigenous Biodiversity.

Of concern was that the proposed rules will only apply to those areas of indigenous vegetation noted as significant and recorded on the District Planning Maps of the District Plan. Concern was also raised in that the District Planning Maps rely on a 1999 assessment of the District’s biodiversity.

The major concern is that the assessment is now well out of date. DOC submits, also, that the proposed plan is inconsistent with the New Zealand Coastal Policy Statement.

DOC are seeking a list of criteria to be introduced that will enable a case by case determination of whether or not an area is “significant”. The criteria are set out in submission 64.1 and will not be repeated here.

While the suggested approach by DOC is commendable, the validity of this approach is questionable.

³ [2013] NZHC 1290, Kos J

Note: Underline indicates additions, strikethrough indicates deletions.

APPENDIX 3 – Legal Advice to Committee

In effect, DOC is seeking to deem all areas of indigenous biodiversity as “significant” until proven otherwise. The proving of this (or not) will fall onto the Applicant who is seeking Consent or seeking to tidy a garden (at the more extreme end).

Section 6 of the RMA requires the protection of areas of significant indigenous vegetation, when achieving the purposes of the RMA (and exercising powers under it).

The proposed wording does not only protect *significant* vegetation it is seeking to protect all vegetation.

The criteria itself is broad, but not so broad as to be unusable. The citizens of Invercargill can readily understand what is meant when looking at each of the criteria headings. They are all words that carry their everyday meanings. Nor are there many technical words that would confuse the meaning/ understanding of the criteria. In the *Western Bay of Plenty*⁴, the EC was considering an appeal where the Minister challenged the Western Bay Council’s inclusion of certain sites in a Schedule to the Plan setting out the sites of significant Indigenous vegetation.

Both the Minister and RNZFB argued that the method used by the Council to determine the significant sites was inaccurate and many significant sites were not listed and as such were not protected.

The Court found against the Council, and gave the Council a choice, it could either amend its Schedule to better reflect the sites (via a plan change) or the Court would implement a controlling provision (land clearance control) to protect these sites.

One of the major issues at the hearing was how significant does a site have to be before it meets the level contemplated by the Act?

The Court found that significant is an informed judgment as to the areas of a District that need to be protected.

That does not mean that everything needs to be protected. The Court was happy in that case for the Schedule to be modified to include other sites a witness for the Minister and RNZFB had identified. The Court did not require the protection of all possible sites nor did it require an assessment of each and every site whenever a party wished to complete an action on their land.

In this case to apply the proposed Criteria on a district wide scheme would burden many people unduly as they would need to seek a full ecological assessment to cut down two Cabbage trees (in applying the scheme to its full extent).

In that scenario as there are two cabbage trees – it would fit the meaning of indigenous vegetation. Would the householder need a full ecological assessment to determine if the site was in fact significant? That cannot be the intent nor is it practical and is burdensome.

The counter to this argument is that if there is no criteria then there is a risk that indigenous biodiversity will be lost as there are no controls in place (for sites not

⁴ *Minister of Conservation v Western Bay of Plenty District Council* Environment Court, A71/2001, 3 August 2001, Bollard J

Note: Underline indicates additions, strikethrough indicates deletions.

APPENDIX 3 – Legal Advice to Committee

already protected) and there is no new evidence or plan to review the sites to ensure the District Planning Maps are up to date.

Having a list of criteria to establish what is significant is of course useful (and this list is broadly similar to that referred to by the Court in the Western Bay case), however, it cannot readily be used each time there is an application involving indigenous vegetation no matter how small or insignificant (two cabbage trees). That is a step too far.

The only possible exception to this is the Coastal area. The NZ Coastal Policy Statement at Policy 11 requires the avoidance of significant effects of activate on areas of predominantly indigenous vegetation in the Coastal environment.

The Regional Council has an obligation to give effect to this and in turn the Territorial Council must do the same to the Regional documents.

This is wider than “significant areas”⁵ and requires implementation by the Regional Planning documents. The Part 2 requirements of the RMA do not override this. (See the majority decision in *King Salmon*⁶)

Conclusion

The wording and criteria is not so board as to be vague and uncertain. The intention is clearly to protect more indigenous vegetation than is currently protected and that may be a good thing.

However the district wide approach proposed is so broad that that it is unusable. It is making, potentially, every person who wishes to remove trees apply and/ or undertake an ecological assessment to determine if a site is significant. That is too burdensome for the public.

The criteria goes beyond what it is meant to protect.

⁵ Section 6 RMA

⁶ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Ltd and others*. 2014 NZSC 38.

Note: Underline indicates additions, strikethrough indicates deletions.