

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER the Resource Management Act 1991

AND of the proposed Gore District Plan

Hearing Stream 10: Response to Minute 41 and Further Information
From Elizabeth Williams, Senior RM Planner
on behalf of the Director-General of Conservation *Tumuaki Ahurei*

Submitter No. 190 Further Submitter No.31
Dated: 28 March 2025

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Introduction

1. The Hearings Panel, in Paragraph 2.4 of Minute 41 invites the submitters attending Hearing Stream 10 to provide feedback on:
 - i. the statement provided regarding the significance criteria assessment for the Hokonui Hills by ecologist Dr Andrew Wells (in consultation with ecologist Mr Glen Davis) dated 14 March 2025; and
 - ii. the draft update of the Biodiversity and Indigenous Vegetation chapter and supplementary evidence provided by Matt Heale dated 21 March 2025.
2. I have reviewed the above statements and proposed amendments to the Biodiversity and Indigenous Vegetation chapter with the supporting evidence from the S42A Officer, Mr Heale. I have also reviewed the comments provided by Technical Advisor Juzah Zammit-Ross on 28 March 2025.
3. My Hearing Stream 10 evidence sets out my qualifications and experience as an expert in planning. I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023.

Comments on the further Ecological Information and Significance Assessment Provided

The ecological assessment and further information

4. The ecological response to Minute 41 gives further details on the ecological assessments undertaken by Mr Davis and Dr Wells for the Hokonui Hills area. Based on the further comments by Dr Wells, it is confirmed that Areas A (Stoney Creek Station), C (Stoney Creek Station) and D (Wantwood Station) all meet the Southland Regional Policy Statement (SRPS) significance criteria and therefore these areas are identified as Significant Indigenous Vegetation Areas (SIVAs). Dr Wells further assessment identifies Area B on Wantwood Station as an Indigenous Vegetation Area (IVA).
5. Technical Advisor, Juzah Zammit-Ross comments that there are still gaps in information relating to how the ecologists have come to the conclusion that the permitted indigenous vegetation clearance within these areas identified as *significant* are appropriate and would have “*no significant adverse effects*” on the values of these areas. Ms Zammit-Ross also raises the point of not having thorough lizard surveys for the majority of the sites at Stony Creek and Wantwood Station making it

“impossible” to determine whether adverse effects would be minor. Ms Zammit-Ross has also raised some concerns about the uncertainties of where At-Risk - declining species are located on Wantwood Station and seeks further clarity on how the ‘rocky outcrops’ are identified on the map.

Approach of the ecological assessment and identifying areas of significance

6. My main concern is the approach taken under the next phase of the assessment. This is outlined in Dr Wells assessment where he states, *“Our next phase of assessment went beyond just considering whether an area was SIVA or IVA (i.e whether a significance criterion was met or not) and ranked indigenous-dominant vegetation as having either medium or high ecological values”* (Dr Wells, Page 2).
7. However, when taking into consideration the higher order planning documents, the purpose of mapping SNAs or SIVAs within a plan is to identify the values of these areas using a consistent approach and to protect these areas by avoiding or managing adverse effects from new subdivision, use and development (PDP ECO Policy 7 and NPSIB Clause 3.10). This aligns with Section 6(c) of the RMA to protect significant areas and SRPS Policies BIO.1 to identify and BIO.2 to protect.
8. Protection is achieved through the avoidance of adverse effects. Proposed plan provisions are then developed to control the clearance or modification of significant indigenous vegetation and habitats of indigenous fauna within these areas to ensure no further loss of extent or degradation of ecological integrity. There is no direction in the higher order documents that requires that these areas are ‘ranked’ in terms of the levels of significance to determine appropriate permitted clearance thresholds for new activities.
9. Whilst it is acknowledged that ranking the areas has been carried out to enable bespoke provisions in the Hokonui Hills, I would compare this further step in the process (and the level of detail required) to undertaking a site-specific resource consent assessment to determine the actual and potential effects of an activity on the environment. However, based on the further comments of Ms Zammit-Ross, I am not convinced that we have been presented with the level of information required to determine whether the permitted clearance would result in significant adverse effects or not.
10. I have also not been privy to the information reviewed by Dr Wells including farm management plans, fencing plans, farm practices and management actions for these

two sites to determine the level of activities and associated clearance proposed. Nor is this information before the Panel. Reviewing this information would provide some additional context in terms of what the activities proposed consist of, where onsite they are likely to take place and what level of effects they may have. Although I note that regardless, the proposed ECO R2(1)(j) & (k) would not limit clearance associated with new farming activities or fencing to those that are only set out in the properties farm plans.

11. As noted at the hearing, this is why there are still questions around the appropriateness of bespoke provisions within the proposed plan for this area and why a better approach may be to rely on ECO-R1 and to proceed down a resource consent pathway at a time when there is more certainty about what new activities are proposed for farming operations, where these are likely to be located, and where proposals are supported by a detailed assessment of effects.

The 'Significant Adverse Effects' test

12. Both Dr Wells and Mr Heale note that the test used to assess whether permitted indigenous vegetation clearance rules are appropriate within the Hokonui Hills was whether it would result in *significant adverse effects* on the values of the significant areas identified. Mr Heale states that because SIVAs have not yet been identified within the proposed plan as *NPSIB SNAs*, the relevant provision to apply in the NPSIB is Clause 3.16. Clause 3.16 addresses areas outside SNAs, that is, in the context of the NPSIB, areas that have not been assessed as meeting the significance criteria. Clause 3.16 requires that for any new activities, any significant adverse effects must be managed by applying the effects management hierarchy (EMH). Dr Wells' ecological assessment concludes that the proposed permitted clearance rules for new activities within the areas identified as significant would not have a *significant adverse effect*. On this basis, Mr Heale considers that the EMH does not need to be applied.
13. However, it is important to note that the areas on the Hokonui Hills have been identified as significant and have been assessed as such against the Southland Regional Policy Statement criteria. Therefore, the proposed approach is not consistent with the Objectives and Policies of the SRPS including Objective BIO.2 and Policy BIO.2 which seeks the protection of significant indigenous vegetation and significant habitats of indigenous fauna as a priority. In giving effect to Policy BIO.2, it requires that particular regard is had to the following:

- i. Fragmentation of, or reduction in the extent of, significant indigenous vegetation or significant habitats of indigenous fauna;*
 - ii. Fragmentation or disruption of connections and linkages between significant ecosystems or significant habitats of indigenous fauna;*
 - iii. Loss of, or damage to, buffering of significant ecosystems or significant habitats of indigenous fauna;*
 - iv. Loss or reduction of rare or threatened indigenous species populations or habitats.*
14. I am not clear on whether Dr Wells has considered these issues as part of his significant effects assessment on the proposed provisions.
15. Further, I consider that the approach taken is not consistent with the policy framework set out in the proposed District Plan. This is because both SNAs and SIVAs are identified as having significant values that should be protected. Therefore, both SNAs and SIVA are treated in the same way through the proposed Plan provisions. This is confirmed in Mr Heale's evidence at paragraph 30, page 8. In particular, the approach taken contradicts ECO-Policy 3 and ECO-Policy 7 which identify that new activities shall avoid adverse effects on an SNA/SIVA that result in effects including loss of ecosystem representation and extent, fragmentation or the loss of buffers, a reduction in the function of the SNA/SIVA and a reduction in the population size or occupancy of Threatened or At Risk (declining) species. It is important to note that proposed ECO-P3 and ECO-P7 align with both the NPSIB and also Policy BIO.2 in the SRPS in particular.
16. As noted above, there are still gaps in the ecological information provided to determine what the adverse effects of the proposed permitted clearance rules would be on the values of these significant areas. Further, as these areas meet the significance criteria, and the proposed plan provisions treat SIVAs as significant areas, the relevant planning policies that apply are those that relate to the protection of significant areas of indigenous vegetation and habitats of indigenous fauna and avoidance of adverse effects.

Comments on the Proposed Amendments

ECO-R1 clause (m)

17. In Dr Wells further information and response to Minute 41, he notes that “...*In the absence of field surveys of potential SIVA within the District, it may be prudent to restrict permitted vegetation clearance to lawfully established existing activities only within mapped SIVA outside of the Hokonui Hills Precinct*”. However, there have been no proposed amendments to ECO-R1 Clause (m) which provides for clearance associated with *any other activity* in relation to existing farming operations. I also refer to my evidence in chief at paragraphs 35-39 in regard to concerns raised about this clause.
18. Based on the ecological advice provided by Dr Wells and given my earlier concerns noted in my evidence in chief, I consider it appropriate to remove ECO-R1 Clause (m).

ECO-R2 Clause 1(a) maintenance of improved pasture

19. Given Ms Zammit-Ross’s concerns regarding the lack of comprehensive lizard surveys having been undertaken within the two sites in the Hokonui Hills, I am unsure as to whether the area mapped as improved pasture does avoid Threatened or At-Risk species such as lizards. Based on this, I do not support the proposed amendments to remove the provisions relating to avoiding Threatened or At-Risk species where it relates to the maintenance of improved pasture. ECO-R1(1)(e) is preferable in relation to the allowances for the maintenance of improved pasture.

127 ha Land Management Agreement and rocky outcrops – exemptions to permitted clearance rules for new activities

20. In relation to the 127-ha area, Dr Wells confirms that there should be: “...*no permitted vegetation clearance in areas where threatened flora and fauna is present or could be present – specifically within the 127-ha land management agreement area and within the rocky habitat at Stoney Creek Station*” as clearance in these areas could result in significant adverse effects (page 3). He also notes that “*Excluding areas of important rocky habitat from permitted clearance was therefore considered important to avoid possible significant adverse effects on lizards. This exclusion should also include the two areas of broadleaved species/coprosma shrubland and rocky outcrops at Wantwood Station*” (page 3). Despite this, he then goes on to state that the 127-ha area should be mapped as Area C (which is identified as having higher ecological values). Area C is still subject to proposed plan permitted clearance thresholds (ECO

R(2)(1)(k)) so this planning proposal appears to conflict with the ecological assessment.

21. Mr Heale notes that the Agreement area contains Threatened and At-Risk species and confirms (based on the ecological assessments provided) that the area is identified as a SIVA. However, Mr Heale does not comment on Dr Wells' conclusion in his further comments that clearance within the 127-ha land management agreement area and within the rocky habitat as identified at Stoney Creek Station and Wantwood Station *could result in significant adverse effects* (Dr Wells, page 3).
22. Mr Heale's proposed amendments recommends that wording is added to Rule ECO-R2 (1) (j and k) which allows for clearance as a permitted activity if it avoids threatened and at-risk species. However, I have concerns with this amendment as it is not sufficiently certain for a permitted activity in an area known to be significant and containing or likely to contain At-Risk or Threatened species. For one, Ms Zammit-Ross notes that it would be very difficult for a non-botanist to differentiate between non threatened and At-Risk or Threatened species (at para 14). This raises the question of how a Council planner or owner of these properties would be able to determine whether the indigenous vegetation clearance fell as a permitted activity. Although further guidance is proposed (see page 2 Appendix A of Mr Heale's Response to Minute 41) presumably this will be the significance assessment now produced, which would not help address Ms Zammit Ross' concern. Further, this guidance would not sit within the proposed plan provisions (other than the list provided in Appendix R & S). In practice, the owner would be able to undertake the clearance without any ecological advice or review by the Council. In addition, if there was a concern after the fact that At-Risk or Threatened species had been impacted, it would be difficult for Council to prove the existence of values which are now gone.
23. Further, the proposed amendment does not follow the proposed plan approach for the Hokonui Hills (if this is adopted) including ECO-P3, SRPS policies or the NPSIB (including Clause 3.16 if this is deemed applicable). Both Dr Wells and Mr Davis have confirmed that permitted indigenous vegetation clearance within these specified areas **would have** a significant adverse effect on indigenous biodiversity.
24. My recommendation, therefore, is to clearly map the 127ha area and rocky outcrop areas within Appendix 7 as identified in Dr Wells further information and to include an exemption from the permitted indigenous vegetation clearance rules (ECO-R2) for

any proposed clearance *for new activities* within these mapped areas. Resource consent should be required if the exemption was not met. Given this area contains Threatened and At-Risk species and is within a significant area, a non-complying activity status is appropriate where the rule is breached.

25. I further recommend that the Appendix 7 map is improved with a legend and key that uses colours that clearly distinguish between the different areas as at present it is difficult to decipher which areas are which when looking at the mapped areas and corresponding legend.

A handwritten signature in cursive script, appearing to read 'Elizabeth Williams'.

Elizabeth Williams

Senior Resource Management Planner

DATED: 28 March 2025