Recommendations of the hearing panel on decisions on provisions and matters raised in submissions to the Proposed Hurunui District Plan.

Chapter 13 - Ecosystems and Indigenous Biodiversity

Whole Chapter and General Approach

Provision

All provisions of Chapter 13 and the approach taken in the chapter to the management of ecosystems and indigenous biodiversity.

Submissions

CDHB supports the chapter as an interim position and Rooney requests the retention of the chapter.

Fed Farmers (supported by further submission from David Dicker) and SNA Group request the deletion of the Chapter in its entirety. SNA Group seeks the deletion of Chapter 13 on the basis that it fails to meet the purpose of the RMA. Fed Farmers’ view is that Chapter 13 goes further than what is required under the RMA or the CRPS for managing biodiversity. CRC oppose the Fed Farmers submission and other similar submissions seeking deletion of the chapter on the basis that the CRPS directs that territorial authorities will be responsible for specifying the objectives, policies and methods for the control of the use of land for the maintenance of indigenous biological diversity.

Te Rūnanga, through a further submission, oppose all requests to delete the chapter and delete rules relating to biodiversity and indigenous vegetation

Decision 13.1

Reject all submissions requesting the deletion of Chapter 13 and to retain Chapter 13 and the general approach proposed by the PDPD subject to the amendments made below.

Reasons

Chapter 13 of the PDP specifically addresses Councils duties under the Act in relation to the District’s indigenous biodiversity. The Act contains two key provisions in relation to a District Councils functions in respect of indigenous flora and fauna:

Section 31(1)(b)(iii) – Every District council shall have the function of controlling any actual or potential effects of the use, development, or protection of land including for the purpose of the maintenance of indigenous biological diversity.

Section 6 – In achieving the purpose of this Act all persons ...shall recognise and provide for the following matters of national importance ...(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
Biological diversity is defined in s.2 of the Act as “the variability among living organisms and the ecological complexes of which they are part, including diversity within species, between species and of ecosystems.” The function under Section 31 deals with the broad ecological state of the District while Section 6 (c) is aimed specifically at significant vegetation and habitat.

There are two other sections of the Act that have relevance in this context also. s6(a) requires recognition and provision for the preservation of the natural character of wetlands, lakes and rivers and their margins, and to protect them from inappropriate subdivision, use and development while Section 7 (d) requires Council to have particular regard be given to the intrinsic values of ecosystems.

A number of higher order documents are also relevant. The New Zealand Coastal Policy Statement 2010 (NZCPS), any National Policy Statements (for example, the NPSET and the NPSREG) and the Canterbury Regional Policy Statement (CRPS) must all be given effect to. There are also a number of regional plans which the PDP must not be inconsistent with.

Policy 11 of the NZCPS is significant in this regard. It reads as follows:

To protect indigenous biological diversity in the coastal environment:

(a) avoid adverse effects of activities on:

(i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
(ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
(iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
(iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
(v) areas containing nationally significant examples of indigenous community types; and
(vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

(i) areas of predominantly indigenous vegetation in the coastal environment;
(ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
(iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
(iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;
(v) habitats, including areas and routes, important to migratory species; and
(vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.
The King Salmon decision [Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38] confirmed that the word “avoid” should have its ordinary meaning of “not allow” or “prevent the occurrence of”. This sets a very high threshold for the management of indigenous biological diversity in the coastal environment of the District.

With respect to the land outside the coastal environment of the District, the higher order document of relevance is the CRPS, which sets out the framework for managing ecosystems and indigenous biodiversity in the Canterbury Region. In summary the objectives of that policy statement seek to:

a) Halt the decline in the regions indigenous biodiversity and ecosystems and:

b) Restore and enhance ecosystems and biodiversity in appropriate locations; and

c) Identify and protect significant indigenous biodiversity and ecosystems.

This policy statement directs that territorial authorities will be solely responsible for specifying the objectives, policies and methods for the control of the use of land for the maintenance of indigenous biological diversity on all land outside of wetlands, the coastal marine area, and beds of rivers and lakes. Of particular importance is Method 3 for Policy 9.3.1 (contained in Chapter 9 Ecosystems and Indigenous Biodiversity) which requires district plan provisions to:

- Set out objectives and policies, and may include methods in district plans to provide for the identification and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

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

- The CRPS also specifies shared responsibility between the Hurunui District Council and the Canterbury Regional Council for the control of the use of land in the beds of rivers and lakes and in wetlands for maintenance of indigenous biological diversity. It is within this statutory context that Section 13 of the PDP must be prepared and how the submissions on it must be determined.

Rather than adopt the ODP approach of identifying and listing SNA’s, the notified plan requires a case by case assessment of the biodiversity values where these may be threatened by development on a property. To assist in this process, the PDP introduces the concept of a biodiversity management plan (BMP). The section 42A report advised that the BMP is “a tool to manage the effects of land use on biodiversity in a more flexible manner and to provide for adaptive management. BMPs are provided for as a restricted discretionary activity. This provides for a case by case assessment of the biodiversity values on a property that is subject to development. The BMP is intended to provide a method where an integrated approach to land management and ecosystem protection can be considered. This then avoids the need for further consents provided subsequent work that involves the removal of any indigenous vegetation is in accordance with the approved BMP. It is considered a useful tool where a number of activities are proposed over a longer period and management techniques can be used to deal with those activities while protecting ecosystems and significant areas of indigenous vegetation. Such plans require a clear set of objectives that need to be met whatever techniques are being used and thus provide a baseline for understanding effects management.”

Outside of the BMP approach, the Plan provides for minor modification of indigenous vegetation for maintenance and repair works as permitted activities but proposes non-complying status for the removal of indigenous vegetation of more than 5,000m² within any site, in any 5 year continuous
period or where the removal is outside the parameters of an approved BMP or involves the planting of species that are susceptible to wilding spread.

As is normally the case with this particular issue, there were submissions from parties on both sides of the spectrum. The original submissions of the CDHB support the chapter as an interim position while Rooney Holdings requested the retention of the chapter. However Rooney Holdings (through a further submission and the evidence of their Corporate Manager, Mr Draper) modified their position at the hearing in light of reviewing the submissions and the officer’s report. In their view the framework described in the officers report, although initially trying to be permissive, had become quite the opposite given the BMP would need to be approved through a costly consent process. Rooney Holdings strongly agreed with the submission of the Hurunui SNA group that misplaced regulation as well as cost and compliance burdens can lead to counterproductive outcomes.

There were two submissions requesting the deletion of the Chapter in its entirety from Fed Farmers (supported by further submission from David Dicker) and SNA Group. Te Rūnanga, through a further submission, opposed all requests to delete the chapter and delete rules relating to biodiversity and indigenous vegetation.

The SNA Group sought the deletion of Chapter 13 on the basis that it fails to meet the purpose of the RMA. If this was not adopted by the Panel, they sought alternative wording to various provisions within the Chapter which are discussed in relation to the relevant provision sections. The group’s representatives (in the main Mrs Perriam and Mr McFadden) spent some time at the hearing outlining the issues with the previous approach to SNA issues and provided examples of SNA’s that were supposedly protected under this regime but that appeared ecologically degraded. Mr McFadden then provided numerous examples of voluntary protection work which had achieved good biodiversity outcomes. In his view most farmers are willing to do this work and the voluntary approach achieves better results.

He also commented on a number of photographs included in the evidence of the Canterbury Regional Council and the Department of Conservation. The SNA Group were of the view that the photos did not meet the standard required of professional witnesses and that they were used in an unethical and unprofessional manner, with at least one photo having been obtained illegally [by trespass on private land]. In the groups view, the photos were presented in a biased manner that omitted key facts and misrepresented the situation. The group believed that these photos formed the basis for the CRC and DOCs evidence of biodiversity loss and that regulatory intervention was required as a result.

He advised he had contacted the owners of the property shown into the photos and outlined what the photos actually represented. Mr Draper of the Rooney Holding’s confirmed that one of their properties was shown in the photos and the clearance work carried out was in response to receiving a non-compliance notice from the CRC in respect to noxious weeds on this part their property. Both parties, along with the Federated Farmers, are concerned the proposed approach will create perverse outcomes. In this context, the SNA group outlined how similar rules in Queensland and New South Wales had led to panic clearing in Australia. Mr McFadden spent some time explaining how trust between the Councils (Both HDC and the CRC) and private landowners had been severely damaged by the SNA process for the operative plan and he considered the issues with the photos only deepen this mistrust. He did say, however, that the HDC had made significant steps towards regaining that trust.

Both Mrs Perriam and Mr McFadden restated the group’s position as outlined in their submission, that there should be no regulation over private land and the matter should be left to individual landowners to voluntarily protect biodiversity. Similarly, Robert Fraser supported the voluntary
approach and removal of all references to identifying significant natural areas (SNAs) identified in the ODP. Mrs Perriam believes there was no longer any respect for landowners and it is they who are the biggest assets for biodiversity. With this lack of respect and trust, many landowners will no longer let Council officers and ecologists on to their land.

Federated Farmers raised similar concerns to the SNA group, with Ms Murchison, in her role as Provincial President, again highlighting the lack of recognition and appreciation farmers are given for their conservation work. In her experience, most farmers have a greater understanding of, and sense of responsibility towards, the local environment than most and are very concerned at the imposition of impractical rules coupled with the time and cost of resource consent applications. In Ms Murchison’s view the environmental issues that have led to the approach in the PDP have not been identified and the research she has carried out indicates that we have to do more than protect, we need to encourage regeneration. Her understanding is that the issue is not the principle of protection or restoration but how it is being done.

In her view the alternate approach of QEII covenants and catchment board run plans work the best in this context as the landowner is respected and the costs are shared. She was doubtful that a biodiversity farm management plan would work as well as these approaches due to the relationship between landholders and the regulatory authority, and the cost of developing such plans and who pays this. She believes the independent auditing of these plans reinforces the under current that farmers can’t be trusted. While she accepts there is a risk that a small minority will destroy sites of significance, she believes much more can be achieved by working with those who are willing to do something.

Ms Begley, a Senior Policy Advisor (Environment and Water) for Federated Farmers, provided planning evidence on this issue also. She noted the history in relation to SNA’s in HDC and acknowledged that Council is under increasing pressure to do something in relation to this issue. In her opinion the focus should be on significant vegetation (section 6(c) of the Act), not all vegetation. In her view the issue identified by Federated Farmers is one of how the methods within the CRPS will be given effect to, which she sees as being rather contradictory. In Ms Begley’s professional opinion, the CRPS does not require a rule framework that requires any clearance of indigenous vegetation to gain resource consent. Any such rule framework would be inefficient and could create unintended and perverse outcomes. Ms Begley believes that the proposed rule goes beyond the requirements of both the Act (s6(c)) and the CRPS. In her view a rule framework that requires consent for areas deemed significant by Council coupled with a district wide rule for clearance over a land based threshold (with exemptions where the area is subject to other protection) would meet the CRPS and is more efficient and effective.

The further submissions of David Dicker and Viticulture Management Ltd largely supported the Federated Farmers submission and opposed the submissions of Forest and Bird and DoC in relation to this issue. They also partially support the submission of Ms Demeter regarding the schedule insertion of SNA’s but submitted this needs to be an accurate remapping undertaken by Council. With respect to the Federated Farmers submission, the further submitters counsel, Mr van der Wal, advised that while they agreed with the intent of the Fed Farmers submission they differed as to how best to achieve the outcomes sought. Mr van der Wal presented comprehensive legal submissions on the matter but the crux of the argument was that it is better for all concerned, from a certainty and cost perspective, that important ecological areas are identified, ground-truthed and mapped within the plan for targeted protection with the involvement of the property owners. Outside those areas development should be enabled through less restrictive consent requirements. In Mr van der Wal’s submission, it is not possible to deal with this issue without regulation given the requirements of the Act and the various higher order documents. In his view identifying SNA’s is the
lesser of two evils. The expert ecological evidence presented by Mr Kessels supported this proposition.

In relation to the SNA groups position that no regulation should be put in place and that voluntary measures should be relied, counsel for the Department of Conservations, Ms Newell, brought to our attention the Royal Forest and Bird Protection Society of NZ Inc. v New Plymouth DC[2015] NZEnvC decision that held that reliance on voluntary methods alone does not provide the protection required by Section 6(c). The Court stated Councils duty under this section requires the use of a full palette of methods, including rules.

The CRC opposed the Fed Farmers submission and other similar submissions seeking deletion of the chapter. Ms Renay Weir, a planner with CRC, set out the relevant CRPS policy framework and the method that specifies what is required in district plan provisions. In the CRC submission, Council would not be fulfilling its responsibility under the RMA by deleting Chapter 13. In Ms Weir opinion, the CRPS sets out the minimum required to protect significant areas and beyond that territorial authorities can develop local solutions to respond to local issues. She was of the view that the provisions of the PDP represents a comprehensive approach to the issue and implements the CRPS.

Having considered all the evidence and submissions, the Panel considers there seems to be a degree of inconsistency in many of the arguments of various parties put forward on this matter. Ms Begley for Federated Farmers seemed to favour a rule framework (although not the one proposed) while Ms Murchison (also for Federated Farmers) seemed to be advocating a voluntary approach. The SNA group and Federated Farmers stressed that landowners are best placed to do this work without Council intervention and have been doing so with excellent biodiversity outcomes. The concern is Council regulation and how that will be imposed on private land. If this is the case, and the Panel has no reason to doubt that it isn’t given the many excellent examples provided by Mr McFadden, the question becomes why the landowners are so concerned at Councils involvement when they are committed to achieving good biodiversity outcomes already?

We understand the past history of this issue in the Hurunui District but Council is required to deal with this issue and we accept the arguments of the reporting officer, Ms Newell and Mr van der Wal that regulation via rules in the plan will be needed as part of this package. While we agree with Ms Begley in respect to the inconsistent drafting of Method 3 in the CRPS, the CRPS does require the use of rules to manage the clearance of indigenous vegetation. And we cannot see how requirements of s6(c) and the NZCPS could be met without rules. Hence reliance on voluntary measures alone will not meet the purpose of the Act.

Mr van der Wal submission that the certainty and cost issues would be dealt with by working with the landowner to the map of SNA’s does find favour. The SNA group and Federated Farmers stressed the need to work with the landowner. And we were advised by other submitters, such as Mr Little, that there has been a shift in mind-set over recent years with many landowners now viewing biodiversity on their farms as an asset rather than a liability. However the officer advised that the collaborative approach requested by many parties was indeed put in place through a collaborative working party process that began in mid-December 2014. A wide range of stakeholders were invited to the inaugural meeting including officers and appointed Commissioners from CRC and met thereafter every 3-4 weeks until April 2015. The officer advised that the working party was established in recognition that the management of indigenous biodiversity has been a contentious issue within the District since the ODP was notified 15 years ago and that the current regulatory methods for managing biodiversity continue to be challenged. The Officers report stated that “the purpose of the working party was to establish, through a collaborative process, a range of ways and means supported and endorsed by landowners and the wider community to enhance and protect
biodiversity within the Hurunui District, which would also give effect to the CRPS.” The Officer advised that the approach proposed by Mr van der Wal was in fact put into place and that many landowners were engaged in that process. However we understand that the SNA group pulled out of this process because of their objection to the potential for mapping SNA’s. This lead to the approach proposed in the PDP, which was presented to the working group in April. However by that time attendance at the meetings had dwindled but the Officers advised that was general support for the direction in the Chapter from those that were there.

As a consequence of this and the previous history around the SNA approach, it is clear to the Panel that the approach proposed by Mr van der Wal will not work in this district, despite the Councils intention to make it a thoroughly collaborative process. Indeed we have been told that many landowners simply won’t allow Council officers on to their land. So while that may be the most efficient approach in other Districts, it is unlikely to be in this District. If it was adopted, rules would still be required to ensure those areas of significance can be managed on the areas that no access was permitted to.

As a consequence of this the Panel cannot accept the submissions that request the chapter be deleted with the issue being left to voluntary protection. Even if the chapter was deleted, the provisions of the ODP would remain so the parties are no further ahead. While we note there are some issues with the drafting and practicality of the BMP approach, the Panel has concluded that this is the best approach for this particular District. We consider that this is a genuine attempt by the Council to achieve a collaborative approach to the issue without having to ‘draw lines on maps’. If no development is proposed on a property (i.e. development that affects indigenous vegetation), then there is no need for Council involvement. The approach also provides the flexibility of using the BMP on a catchment or project wide basis and has synergies with the other farm environment plans now required by the CRC. We accept that there is a cost with this and that the advantage of the SNA mapping approach is that the cost to landowner is reduced somewhat. While we cannot force Councils hand in this decision, we strongly recommend that Council fund the ecological input and consent costs for landowners that do need to go through this process. After all, a large proportion of benefit of maintaining indigenous biodiversity lies with the wider community so it is appropriate that they bear some of the cost of identifying the areas of vegetation to be protected. The landowner still bears the cost of retaining such areas on their property, because it will not produce an economic return.

The structure of the rules will be dealt with later but we comment here in respect to the concern raised by some (for example, Federated Farmers) that consent is needed if any (as opposed to significant) indigenous vegetation is to be cleared. If a SNA mapping programme is not to be undertaken, then we do not see how that can be avoided. Furthermore, many of the submitters that raised this concern focused only section 6(c) of the Act. As we highlighted above, the Council also has a general duty under Section 31(1)(b)(iii) to control the effects of land use for the purpose of the maintenance of indigenous biological diversity. We accept that not all indigenous biodiversity must be protected or treated in the same way as significant indigenous vegetation and habitats are under s6(c). Nor is the loss of some areas of indigenous biodiversity fatal to the goal of trying to maintain it. Trying to achieve this would simply be impractical and unrealistic, particularly when you consider the need to meet the overall sustainable management purpose of the Act. However the approach proposed by the PDP will enable this issue to be considered in a more flexible and holistic manner.

We also need to deal with Federated Farmers concern with the PDP provisions being identified as an “interim positon”. The reporting officer noted in her report that “the Chapter 13 introduction identifies that the Chapter is an interim position while the collaborative planning process was undertaken and states that the Council at the time of notification of the PDP was committed to a variation to the PDP to implement the outcomes of the collaborative planning process.” As she
went on to report, the provisions notified were the outcomes of the collaborative planning process and hence the reference in the PDP to an interim position was incorrect and has been deleted accordingly.

We also just briefly comment on the photos within DoC’s and Ecans evidence that were of concern to the SNA group. The issue was raised again after the closure of the formal hearing by a letter from Fran Perriam dated 26/5/2016. The letter requests that the evidence of the Department of Conservation and the Canterbury Regional Council be struck out because of perceived breaches of the Environment Court of New Zealand Practice Note 2014. We issued a minute that stated:

The Panel is well aware of the requirements of expert evidence but note that in local authority hearings, the position is governed by s 48 of the Commissions of Inquiry Act 1908 which provides that the “Commission may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry, whether or not it would be admissible in a Court of law”. As is always the case in such proceedings, the Panel must determine the value and hence weight of the evidence proffered. The Canterbury Regional Council provided clarification around their use of the subject photos at the hearing on the 19th of May. Furthermore, there is no ability for the Panel to ‘strike out’ evidence presented at a hearing (there is only ability to strike out the whole, or a part, of a submission in certain circumstances.)

The Panel does find it necessary to record their concern at the use of photos of activities that were undertaken in circumstances or for reasons other than for which they were being portrayed in the evidence. Expert witnesses are held to a higher standard than other witnesses and have the function of assisting the panel in an objective way, without advocacy.

In any event the photos had no bearing on our assessment that rules are a necessary part of the package to deal with this issue. The duties imposed by the Act and the higher order documents confirmed that. However the Panel did find the photos useful to illustrate the problems landowners faced in managing their land while balancing biodiversity outcomes.

The Section 42A Report dealt with Fed Farmers request to delete Objective 13, policies 13.1 to 13.5 and the associated explanation and replace them with alternate provisions in this section. These provisions were promoted on the basis that Chapter 13 goes further than what is required under the RMA or the CRPS for managing biodiversity. They submit that the CRPS requires a rule to manage the clearance of indigenous vegetation in order to enable an assessment of whether such a site meets the criteria for significance.

The replacement objective and policies proposed by Fed Famers are as follows:

**Objective 13.1 Significant areas of indigenous vegetation and habitats of indigenous fauna are protected and the indigenous biodiversity of the District is enhanced.**

**Policies**

13.1 To work with landholders to ensure significant areas of indigenous vegetation and habitats of indigenous fauna are protected from significant damage or destruction

13.2 To recognise a variety of forms of protection for sites of significant indigenous vegetation and habitats of indigenous fauna including but not limited to

(i) QE II covenants

(ii) The exercise of Kaitiakitanga by Ngāi Tahu

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(iii) The use of approved Farm Environment Plans under regional council rules and other farm management plans developed by suitably qualified people;

13.3 To allow the disturbance or modification of sites of significant indigenous vegetation or habitats of indigenous fauna where such activities are necessary for:
(i) The management of the site including the management of pests and the removal of diseased, damaged or dead plants;
(ii) To facilitate access for livestock, utility structures or farm vehicles past or through the site;
(iii) To allow reasonable use of a person’s interest in their land

13.4 To manage the removal of indigenous vegetation at a scale or involving species that may result in significant damage to or destruction of an areas which would meet the criteria in Appendix 13.1 as being a significant area of indigenous vegetation or habitat of indigenous fauna.

13.5 To encourage the retention and enhancement of indigenous biodiversity by allowing flexibility in management of indigenous vegetation to accommodate changes in landuse and to allow the use of offsets to mitigate the loss on indigenous vegetation with enhancement elsewhere.

Neither the CRC, Te Rūnanga or officers support the provisions. The officer considered them to be too narrow to achieve the purpose of the Act while Te Rūnanga consider the alternative wording would see only “significant damage or destruction” prevented and oppose moving away from the fundamental policy direction notified in the PDP.

For the most part the Panel agrees with the officer that the PDP objective provides a clearer outcome of how the district will manage ecosystems and indigenous biodiversity than that sought by Fed Farmers. Some elements of the changes requested to policies by Fed Farmers, such as working with land owners and the other management tools available, are discussed under the specific policies below.

Objective 13

Provisions

The proposed objective is:

Objective 13

Exercise Kaitiakitanga/guardianship by managing ecosystems and indigenous biodiversity within the District through:

(a) The protection of areas of significant indigenous biodiversity;

(b) The maintenance of other indigenous biodiversity;
(c) The encouragement and support for restoration and enhancement of ecosystems and the quality and quantity of indigenous biodiversity; and

d) Recognising and valuing indigenous biodiversity as an essential part of mahinga kai and the relationship of Ngāi Tahu with its ancestral lands and waters.

Submissions

Meridian supports the retention of Objective 13 and its associated policies while SNA Group requests removal of all references in the objective and policies that refer to the identification of significant indigenous vegetation.

DOC, supported in part by Te Rūnanga, seeks additional wording within Objective 13 as follows:

Objective 13

The Council and its partners that exercise Kaitiakitanga/guardianship will manage by managing ecosystems and indigenous biodiversity within the District through:

(a) the protection of ecological values, ecosystem functioning and areas of indigenous biodiversity;

(b) The maintenance of other indigenous biodiversity;

(c) the encouragement and support for restoration and enhancement of ecosystems and the quality and quantity of indigenous biodiversity; and

(d) Recognising and valuing indigenous biodiversity as an essential part of mahinga kai and the relationship of Ngāi Tahu with its ancestral lands and waters.

Decision 13.2

Reject the SNA Group and Ngāi Tahu Property Limited submissions.

Accept the submissions of DOC and Forest & Bird in part.

Amend Objective 13 as follows:

Objective 13

Exercise Kaitiakitanga/guardianship by managing ecosystems and indigenous biodiversity within the District through:

(a) The protection of ecosystem values, ecosystem functioning and areas of significant indigenous biodiversity;

(b) The maintenance of other indigenous biodiversity;

(c) The encouragement and support for restoration and enhancement of ecosystems and the quality and quantity of indigenous biodiversity; and

(d) Recognising and valuing indigenous biodiversity as an essential part of mahinga kai and the relationship of Ngāi Tahu with its ancestral lands and waters.
**Reasons**

As we have discussed in the section above on the reasons to reject all submissions requesting the deletion of Chapter 13 and to retain Chapter 13 and the general approach proposed by the PDPD that the Council has a duty to protect significant indigenous vegetation under s6(c) of the Act. Clearly identification of these resources is critical in that process and is necessary for Council to fulfil its duties in that regard. Hence the SNA submission has been rejected.

With respect to DOC’s requested addition of the word “partners”, we agree with the officer that this creates an unnecessary level of ambiguity but more importantly it refers to parties who do not have the duties under the RMA as the Council does. We also agree with the addition of the reference to ‘ecosystems and ecosystem functioning’ as the Objective seeks to manage ecosystems (first line) and the protection of these values is important in this context. The requested deletion of the words “quality and quantity” from part (c) is also accepted as they do not add to the objective in any significant way.

The additions sought by Ngāi Tahu Property Limited are not appropriate in an objective as they read more as a policy. An objective is a statement of what is to be achieved through the resolution of a particular issue while policies are the course of action to be pursued to achieve or implement the objective. This issue is rightly addressed in Policy 13.3.

**Policy 13.1 and Appendix 13.1**

**Provisions**

The proposed policy is:

> To identify areas of significant indigenous biodiversity value by applying criteria (set out in Appendix 13.1).

Appendix 13.1 which is referred to in Policy 13.1 of the PDP specifies the same criteria as that listed in the CRPS.

**Submission**

Forest & Bird, DOC and Jane Demeter support the retention of Policy 13.1.

SNA Group, Jamie McFadden & Linda Dodds and David Dicker oppose the criteria set out in Appendix 13.1. Ross Little seeks additional wording to the policy to clarify the application of the significance criteria. He has further submitted against DOC’s submission and is concerned the proposed policy will apply to trivial or insignificant examples.

Fed Farmers seek its deletion and replacement with wording that focuses on working with landowners to ensure significant areas are protected.

**Decision 13.3**

Reject the submissions of Fed Farmers, Ross Little, SNA Group, Jamie McFadden & Linda Dodds and David Dicker.

**Reasons**

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To fulfil its duty in terms of s6(c) of the Act, criteria around significance is clearly required. We note that Policy 9.3.1 of the CRPS directs how significant indigenous vegetation will be determined and that territorial authorities are required to give effect to the RPS. At the hearing, Mr Kessels, ecologist for Mr Dicker, did not consider it optimal to merely reflect the RPS criteria at a District Plan level. He advised that the criteria are very complex and difficult to apply, particularly on a case by case basis, for a number of reasons. By contrast, Mr Head for DOC considered the criteria to be consistent with the standard ecological assessment criteria used in New Zealand (which have evolved from the Protected Natural Areas Programme (PNAP)) and are appropriate for use in the Hurunui District.

While we acknowledge Mr Kessels concerns, Mr Head confirms that this criterion is consistent with the PNAP assessment framework and is appropriate for use in Hurunui. Given the direction of the CRPS, the Panel does not see any choice in terms of accepting the criteria as they are (and note that no viable alternative has been promoted). In any event, we agree with the officers that the criterion around identifying significant indigenous vegetation is well accepted and note that further guidelines on applying the significance criteria are on the CRC website and are also referenced at the bottom of Appendix 13.1 of the PDP. On this basis the policy is considered appropriate.

**Policy 13.2**

**Provisions**

Proposed Policy 13.2 is:

> To protect areas identified as having significant indigenous biodiversity value, including where identified through a resource consent process.

**Submissions**

Forest & Bird seek removal of the wording “including where identified through a resource consent process” and replacement with “by avoiding adverse effects”. Jane Demeter seeks the retention of the policy as worded. DOC seeks reference to avoiding adverse effects. Ngāi Tahu further submit that the avoidance test proposed by Forest & Bird for policy 13.2 will create a conflict with the offsetting proposal by DOC.

Further submissions from Rayonier and Transpower in relation to adding reference to avoiding adverse effects oppose using the word avoiding, as is too restrictive. They consider that it is more appropriate to use “avoid, remedy and mitigate” from Part 2 of the RMA.

Fed Farmers proposes the deletion of the policy and suggests an alternative policy that focuses on the method of protection including recognition for sites protected by QEII covenants and the exercise of Kaitiakitanga by Ngāi Tahu (the specific wording sought is set out in full in the earlier discussion of the package of changes sought by Fed Farmers).

Ross Little seeks additional wording to recognise that the input of landowners will be sought and considered for site specific management purposes.

**Decision 13.4**

Accept the submissions in part.

Amend Policy 13.2 as follows:
Policy 13.2

To protect areas identified as having significant indigenous biodiversity value, by avoiding, remedying or mitigating adverse effects using appropriate mechanisms including where identified through a resource consent process.

Reasons

Mr Deavoll, planner for DoC, believed the policy as amended by the officers report is necessary to give effect to Policy 9.3.1(3) of the CRPS. We agree and adopt the officers position and the further submissions from Rayonier and Transpower that it is more appropriate to use “avoid, remedy and mitigate” from Part 2 of the RMA. It also appropriate to include the words “using appropriate mechanisms” as otherwise the reference to resource consent process is superfluous.

The matters raised by Fed Farmers and Ross Little are better addressed in the context of Policy 13.3, and are therefore addressed below.

Policy 13.3 and 13.4

Provisions

Proposed Policy 13.3 and 13.4 are:

Policy 13.3

When considering resource consent applications, to:

(a) ensure that regard is given to any adverse effects of the activity on the indigenous biodiversity of the District’s environment,

(b) encourage opportunities to be taken to promote the restoration and enhancement of indigenous vegetation and habitats,

(c) encourage provision of mechanisms that assist in protection or enhancement of significant indigenous biodiversity, and

(d) provide for consideration of biodiversity offsets.

Policy 13.4

To consider indigenous biodiversity values during subdivision processes, and provide for conservation lots to be created or reduced site areas to be considered where significant indigenous biodiversity is protected.

Submissions

DOC seeks deletion of offsetting from Policy 13.3 and request the inclusion of a new policy and appendix to provide greater guidance. DOC considers that the policy as written does not provide sufficient guidance to ascertain where it is appropriate and how to apply offsetting. The new policy sought by DOC in relation to biodiversity offsetting is as follows:
Offsetting will only be considered where:

(a) it has been demonstrated that the adverse effects have been avoided as far as practical in the first instance, minimised when total avoidance is impracticable, and any remaining adverse effects are remedied and mitigated; and

(b) where the adverse effects cannot be avoided, remedied and mitigated:

i. it is demonstrated that an offset will achieve no net loss or preferably a net gain; and

ii. the offset is consistent with the offset framework detailed in Appendix X.

Forest and Bird, Te Rūnanga, Ngāi Tahu Farming Limited and Rooney also support the addition of a new policy which provides the basis for the consideration of biodiversity offsets in accordance with the CRPS and case law. They consider that a new policy would provide greater clarity on when the offset approach might be considered useful and support an approach to achieve net gain in biodiversity when offsets are provided. Jane Demeter seeks clarification for when offsets might be considered.

Rayonier, Hurunui Water Project, Transpower and Mainpower and Ross Little oppose, in further submissions, the inclusion of the offsetting framework sought by DOC. Hurunui Water Project opposes the new policy proposed by DOC as they consider that offsetting principles are provided for within the CRPS. Rayonier further submit that a new policy is not necessary as the matters are adequately covered by Policy 13.3. Transpower and Mainpower also oppose by further submission the DOC submission in relation to offsets. Transpower considers offsets sit outside of the RMA framework. Ross Little states that win/wins are possible through biodiversity offsets and a consideration of individual cases should be provided for.

John and Fran Perrian submit that Policy 13.3 can never be achieved while this biodiversity framework continues to make biodiversity a liability rather than an asset.

Jane Demeter, Forest & Bird and DOC all seek similar changes to Policy 13.3(a), which are as follows:

(a) Ensure that regard is given to any adverse effects of the activity on the indigenous biodiversity of the District’s environment are avoided, remedied or mitigated.

Rayonier oppose by further submission changes to Policy 13.3 as in their opinion as the matters raised are already covered by Policy 13.3 and Ngāi Tahu Farming Limited consider the amendments to part (a) creates uncertainty and are unnecessary.

Forest & Bird, Jane Demeter and DOC seek the deletion of Policy 13.4 and its explanation.

**Decision 13.5**

Accept submissions in part

Amend Policy 13.3 as follows:

**Policy 13.3**

When considering resource consent applications, to:
(a) ensure that regard is given to any adverse effects of the activity on the indigenous biodiversity of the District’s environment are avoided, remedied or mitigated,

(b) consider site specific management factors to encourage landowners to take opportunities to be taken, and consider the site specific management factors to promote the restoration and enhancement of indigenous vegetation and habitats,

(c) encourage provision of mechanisms that assist in protection or enhancement of significant indigenous biodiversity such as QE II covenants and the use of Biodiversity Management Plans, and

(d) provide for consideration of biodiversity offsets where it has been demonstrated that the adverse effects have been avoided as far as practical in the first instance, minimised when total avoidance is impracticable, and any remaining adverse effects are remedied or mitigated and where the adverse effects cannot be avoided, remedied or mitigated it is demonstrated that the offset will achieve no net loss.

(e) provide for conservation allotments to be created, or reduced site areas to be considered, where significant indigenous biodiversity is protected.

Delete Policy 13.4.

Add the following new paragraph to the explanation after the second paragraph:

In considering the protection of these areas site specific management practices will also be taken into account including the provision of perimeter fencing, weed and pest control, and the maintenance of existing farm infrastructure.

Add to Rule 13.4.3 2 (d)

The Council will restrict its discretion to the following matters:

Indigenous Vegetation Clearance:

(d) Any potential for mitigation or offsetting of effects on ecosystems and biodiversity values.

Add to Assessment criteria 13.5 new point 12:

11. In considering biodiversity offsets the NZ Government Guidance on Good Practice Biodiversity Offsetting in New Zealand, August 2014 (or its successor) should be taken in to account.

Reasons

In relation to the offsetting issue, officers noted that provision is made for offsetting in Policy 13.3(d) but there are a range of mechanisms that can be used to support the restoration and enhancement of indigenous biodiversity which includes, but is not limited to offsetting. She did not consider there to be a need to duplicate Policy 13.3(d). Instead the officer recommended additional wording to (d) to improve clarity as to when biodiversity offsets would be considered and also new assessment criteria in 13.5 to refer to the NZ Government Guidance on Good Practice Biodiversity Offsetting in New Zealand, August 2014.
Both Mr Deavoll (DoC) and Ms Weir (CRC) supported the amendments to the policy regarding offsetting. The Panel also supports the recommended changes and does not see the need for a separate policy on the issue. We are also comfortable with the guidance document being included in the assessment criteria as opposed to being referenced in a policy as there appears to be some inconsistency with the principles of the RMA. However the principles are considered a useful guide when the use of an offset is being considered.

As noted in the previous section, Fed Farmers sought amendments to Policy 13.2 related to recognising a variety of forms of protection for sites of significant indigenous vegetation. Officers considered this should be provided for in Policy 13.3 (c) through specific mention of QEII covenants and the use of Biodiversity Management Plans. The potential for synergy with the CRC farm environment plans (FEP) as suggested by Fed Farmers was acknowledged by the reporting officer but it was also noted that FEP's currently do not provide a regulatory framework to consider biodiversity and in the officers opinion they do not comply with the Council’s obligations under s6 of the RMA. We agree with the amendments proposed by the officer and note that the list is not exclusive so FEP’s in future may also deal with this issue.

Mr Little requested amendments to Policy 13.2 regarding landowner input for site specific management has been dealt with in relation to Policy 13.3 (b). Fed Farmers make a similar point and the officers recommended amendment to Policy 13.3(b) and the explanation has been adopted.

With respect to the change requested to Policy 13.3(a) by Jane Demeter, Forest & Bird and DOC, we agree with the officer that the current wording is not sufficient to ensure that Objective 13 or s6(c) of the Act is achieved and we have accepted these submissions accordingly.

With respect to Policy 13.4 we believe that it is appropriate to retain the ability to enable greater development rights where significant biodiversity is protected given the cost to the landowner of providing such a public benefit. In our view this goes some way at least to address the concerns raised by Fed Farmers and the SNA group regarding the lack of recognition given to landowners who provide biodiversity protection on their properties. However we agree that it should be included within Policy 13.4 as recommended by the officers.

Officers also recommended accepting the submissions from Ngāi Tahu Farming Limited and Fed Farmers that sought the provision for offsetting as a matter of discretion. We agree that this is appropriate.

**Policy 13.5**

**Provisions**

Proposed Policy 13.5 is:

_to encourage landowners to protect and enhance areas of indigenous biodiversity, and support them in a co-operative manner by considering a range of options and protection mechanisms._

**Explanation**

The Council is keen to encourage individuals and community groups to be aware of these issues and to protect and enhance biodiversity. Encouragement of such processes is primarily through non-statutory methods outside the District Plan._
Submissions

Ross Little seeks additional wording to the explanation as follows:

> Every site has its own individual characteristics and risks, every landowner has different matters to consider with regard to how it fits into farm management, and there are varying levels of conservation awareness and knowledge. Good outcomes will depend on applying some flexibility in the identification of significance and application of these rules in many cases.

Fed Farmers propose a new policy as follows:

> To encourage the retention and enhancement of indigenous biodiversity by allowing flexibility in management of indigenous vegetation to accommodate changes in landuse and to allow the use of offsets to mitigate the loss of indigenous vegetation with enhancement elsewhere.

**Decision 13.6**

Accept submissions in part

Add additional wording to the explanation

> The Council is keen to encourage individuals and community groups to be aware of these issues and to protect and enhance biodiversity. Encouragement of such processes is primarily through non-statutory methods outside the District Plan. The Council recognises that protecting and enhancing biodiversity requires a partnership with landowners and a flexible approach using a range of mechanisms to facilitate protection.

**Reasons**

Officers recommended additional wording to the explanation to reflect the elements of partnership and flexibility in approach required to achieve this policy as identified in Mr Little submission and to some degree the Fed Farmers submission. We agree that this wording is appropriate and is all that is necessary to address the issue raised by Mr Little.

The Fed Farmers policy, as worded, is not considered appropriate in terms of Councils duties under the Act. The Panel considers the BMP process will enable flexibility in management of indigenous vegetation to accommodate changes in landuse but that must be achieved under Policy 13.3 which is more aligned with Councils duties under the Act. Policy 13.5 deals with a different issue and recognises that landowners need to be supported in a co-operative manner to protect and enhance biodiversity and there are a range of methods for education, management and support of biodiversity available to Council that sit outside the District Plan. These include the rates remission policy and provision for grants and funds, education, information advice and encouragement, for example the Immediate Steps Programme administered through the Hurunui Waiau Zone Committee and the Council’s own management of property and reserves.

**New Policies requested**

Chapter 13 – Recommendations of the Hearing Panel on decisions on provisions and matters raised in submissions to the Proposed Hurunui District Plan 2015.
DOC seek a new policy as follows:

*To control the cumulative effects and maintain the values associated with indigenous biodiversity.*

Decision 13.7

Reject the submission

Reasons

DOC considers that the new policy is needed to implement objective 13(b) *The maintenance of other indigenous biodiversity.* The Panel does not agree with this as Policy 13.3(a) deals with all indigenous vegetation. The resource consent process will determine the significant vegetation that needs to be protected and the other indigenous biodiversity that needs to be maintained.

Chapter 13 Introduction

Provisions

The introduction to the chapter firstly sets out the statutory context for the protection of ecosystems and indigenous biodiversity. The introduction references section 6(a) and (c) and 7(d) and (h) of the RMA. Secondly, the chapter references the CRPS and in particular the requirements for District Plan provisions under the CRPS.

Submissions

Fed Farmers and Forest & Bird have submitted in relation to the references in the introduction to the chapter being interim to enable a collaborative process. Fed Farmers also seek the deletion of the reference to section 7(h). Transpower seeks specific reference to the National Grid through various parts of the chapter and through a further submission oppose offsetting within the policies and rules that do not recognise development associated with the National Grid. Mainpower support the Transpower submission for a policy which recognises that infrastructure may be located in areas with biodiversity values. AIC, by further submission, support a new policy to recognise infrastructure.

SNA Group, Robert Fraser and Fed Farmers seek deletion of references to the loss of indigenous biodiversity and Jane Demeter seeks specific reference to the Hurunui and Waiau River mouths.

Ross Little seeks additional wording to recognise the role of landowners in protecting areas of indigenous vegetation on private land and the funding challenges to protection.

Te Rūnanga support reference to values that are significant to Ngāi Tahu.

Decision 13.8

Reject the submissions of SNA Group, Transpower and Robert Fraser

Accept Fed Farmers and Forest & Bird submission in part

Accept submission of Jane Demeter
It is a matter of national importance under section 6(a) of the RMA to recognise and provide for the preservation of the natural character of wetlands, lakes and rivers and their margins, and to protect them from inappropriate subdivision, use and development. Section 6(c) requires the protection of areas of significant vegetation and significant habitats of indigenous fauna to be recognised and provided for, and section 7(h) requires particular regard to be given to the protection of the habitat of trout and salmon. Section 7(d) of the RMA requires that particular regard be given to intrinsic values of ecosystems.

Amend last sentence of fourth paragraph as follows

... Natural areas already identified by the community as being valuable include the Hurunui Lakes and Hanmer Basin, Lake Tennyson, the tussock grasslands of the upper Clarence and Molesworth country, the Hurunui and Waiau river mouths and remnant areas of indigenous vegetation and natural features ecosystems unique to the District such as the Weka Pass limestone outcrops and wetland areas.

Reasons

We dealt with Federated Farmers concern with the PDP provisions being identified as an “interim position” in the first decision on this section of the PDP. As we concluded there, the provisions notified were the outcomes of the collaborative planning process and hence the reference in the PDP to an interim position was incorrect and has been deleted accordingly.

With respect to Transpower’s request, Officers recommended that this is rejected “because the Chapter’s focus is ecosystems and indigenous biodiversity and the issue of the importance of the National Grid is considered in the Utilities Chapter. In particular, s6 matters need to be recognised and provided for in conjunction with many other considerations contemplated by the legalisation, and it is unnecessary to reference all those other considerations in each chapter of the PDP, as the plan as a whole provides a framework for achieving the RMA’s purpose.” They also recommended that AIC further submission, be rejected for the same reason.

Transpower’s planner, Ms McLeod, agreed that the provisions that relate to the National Grid are generally contained in Chapter 9 but she did not agree that Chapter 9 specifically provided guidance in relation to balancing s6 matters and nationally significant infrastructure. However she advised that equivalent recognition is satisfactorily achieved by the acceptance of the amendments made to Chapter 9’s introduction and Policy 9.3 including an acknowledgement that some utilities will not be able to avoid significant natural areas.

We agree with Ms McLeod that balancing s6 matters and the needs of nationally significant infrastructure is important and must be provided for. The amendments requested to Chapter 9 have been accepted by the Panel and we agree that this will satisfactorily deal with the matter. Hence no amendments are considered necessary here.

With respect to the other requested word changes, we agree with Officers that it is appropriate to keep introductory wording as concise as possible throughout the PDP and the amendments proposed do not add any particular value to the chapter. The minor wording changes to reflect the requests around the description of natural areas already identified by the community and deletion of the reference to section 7(h) of the RMA (not considered appropriate in this context) are considered acceptable and have been adopted accordingly.
Issues

Provisions

The Issues section in the Chapter is a brief section that sets out the three key issues as they relate to ecosystems and indigenous biodiversity management with the Hurunui District.

Submissions

A number of submitters identify that Section 13.2 Issues incorrectly refers to utilities. Fed Farmers seek wording changes to include references to people being able to make reasonable use of their land and the addition of wording that the enhancement of biodiversity should not restrict future land use options. SNA Group seek deletion to references to loss and degradation. Robert Fraser seeks that the issue be amended to reflect an acknowledgement of the growth and protection of biodiversity in the recent past and the deletion of the reference to needing to identify and define areas. Forest & Bird are concerned about the reference to balancing conflicts and submit that the Council should manage the conflicts rather than balance them.

Decision 13.9

Accept the submissions in part

Amend 13.2 issues as follows

13.2 Issues

Particular issues relating to utilities ecosystems and indigenous biodiversity in the District are:

...  

2. Despite There are many good examples of stewardship by landowners who have protected biodiversity, which has had a positive effect on the ecosystems and indigenous biodiversity of the District. However changing land uses and development have the potential to has contributed to the ongoing cause further loss and degradation of ecosystems and indigenous biodiversity, including and to adversely impacts on the significant natural resources of the District. Sustainable management of the District will require balancing the management of the conflicts between enabling land use and protection of ecosystems and indigenous biodiversity.

Reasons

The stated issues for this chapter reflect the requirements of s6 and s7 of the RMA. Submitters are concerned that there is not proper acknowledgement of the protection of biodiversity by landowners and seek deletion to the reference to loss and degradation. The Panel did receive evidence that many landowners have been actively protecting biodiversity but also that some loss and degradation is still occurring. As a consequence, slight amendments to the issues have been made to reflect this. The Panel also accepts that the Forest and Bird submission that ‘management’ is a more appropriate term in the context of these issues than the term ‘balance’.

The reference to “utilities” in this issue section is clearly a mistake and has been removed and replaced with the words “ecosystems and indigenous biodiversity” accordingly.
Rules

The PDP’s approach to protecting and managing ecosystems and significant indigenous vegetation is to provide for vegetation clearance for minor works as a permitted activity. Otherwise indigenous vegetation clearance is proposed to be a restricted discretionary or non-complying activity. The PDP as notified provided for the approval of a Biodiversity Management Plan (BMP) as a restricted discretionary activity to allow for indigenous vegetation clearance where in accordance with an approved BMP. Clearance of indigenous vegetation in specified sensitive environments or of specified types of vegetation is proposed to be a non-complying activity under Rule 13.4.4.3 unless it is in accordance with a BMP (with those environments and types set out in the rule).

Issue - Identification of Sites

Submissions

J McFadden, Robert Fraser, John and Fran Perrian, Hurunui Natives and Scott McFadden all oppose the listing of sites in the PDP including listing SNAs or the identification of significant indigenous vegetation. SNA Group and Robin and Christine Gardiner support the removal of SNAs from the PDP. Jamie McFadden and Linda Dodds, Hurunui Natives and SNA Group support the removal of Appendix A7.1 Schedule of significant natural areas and A7.1(A) Schedule of potentially significant natural areas. Conversely, Rayonier and Jane Demeter support the listing of SNA sites.

Decision 13.10

Accept submissions that oppose listing site in PDP

Reasons

This issue has been discussed in the first decision on this chapter. The PDP does not list areas of significance or the sites listed in the ODP. The PDP instead relies on a general vegetation clearance rule to protect areas of significant vegetation as required by s6 of the RMA. The PDP provides for the case by case assessment of sites at the time clearance of indigenous vegetation is proposed. A range of methods are proposed to protect sites which does not include listing SNAs in the District Plan.

Issue - Fed Farmers Submission

Provisions

Rule 13.4.2 to 13.4.4

Submission

Fed Farmers seek deletion of 13.4.2 to 13.4.4 and their replacement with a package of rules. Fed Farmers consider the proposed rules are complex and more restrictive than is necessary to give effect to the CRPS and the purpose of the RMA.

Decision 13.11

Reject submission

Reasons
The Fed Farmers submission proposes a rule framework that appears to rely on sites being listed in the PDP (see decision above regarding approach adopted). The submission also refers to clearance as a permitted activity if it is provided for as a condition of a Farm Environment Plan (FEP) approved under a Regional Plan. However as officers noted, the current rule structure in the CLWRP does not provide for the consideration of effects on biodiversity within the FEP.

While we note that many of the components of the rules suggested by Fed Farmers are incorporated in the proposed rule in some shape or form, we agree with officers that the proposed rule structure could potentially allow large areas of significant indigenous vegetation to be removed as a permitted activity, which in our view would fail give effect to the CRPS and is not in accordance with Part 2 of the RMA.

Specific comments in relation to the planting of exotic trees and the approval of the Biodiversity Management Plan are discussed separately below.

**Biodiversity Management Plans (BMP)**

**Provisions**

Chapter 13 introduces the concept of the BMP and allows for the clearance of indigenous vegetation as a permitted activity provided it is accordance with a BMP that is approved through a restricted discretionary consent process. A guideline is provided at the end of the chapter for the BMP framework.

**Submissions**

Jane Demeter and Forest & Bird oppose the inclusion of the BMP framework and seek its deletion. They do not support clearance in accordance with a BMP.

Forest and Bird have two major concerns with the rule framework. Firstly they submit that the rules do not give effect to the objectives and policies that provide that indigenous vegetation will be maintained and significant indigenous vegetation will be protected. Secondly they submit that the drafting of the rules and the approval process for the BMP is unclear.

Fed Farmers submit that the approval of a BMP in Rule 13.4.3 is not in itself an activity under the RMA for which a rule can be written. Forest & Bird also oppose Rule 13.4.3 because it refers to the approval of a BMP. They submit that s9 of the RMA relates to the use of land and the approval of a BMP is not a use of land.

Forest & Bird, Ngāi Tahu Farming Limited and Te Rūnanga also seek clarification of the role of the Chief Executive in the approval of a plan or process. Ngāi Tahu Farming Limited supports BMP’s as an effective tool in considering indigenous vegetation clearance. Ross Little seeks amendments to the framework. He submits that the management vision and objectives (as set out in the guideline for the BMP framework) should be revised to take account of the varying circumstances which affect the activities necessary to maintain the integrity of an indigenous biodiversity site. In his opinion, weed and pest management, fencing repair and the control of visitors are normally done when needed, rather than at a prescribed time. The specifying of SMART management objectives in his opinion is not practicable, or even possible for many farm activities. He is also concerned about the rigid monitoring and reporting regime and suggests the following alternative wording. He suggests the monitoring section in the BMP should be replaced with:
The landowner furnishes a Biodiversity Management Plan monitoring proposal which they can operate with, to the Council for consideration. The Council can then consider how the proposal will work given the site-specific details, and negotiate possible changes with the landowner.

He also suggests the reporting section in the BMP should be replaced with:

The landowner furnishes a Biodiversity Management Plan reporting proposal which they can operate with, to the Council for consideration. The Council can then consider how the proposal will work given the site-specific details, and negotiate possible changes with the landowner.

DOC opposes the incorporation of the BMP because in their view the BMP does not provide sufficient clarity and certainty that the requirements set out in the RMA, NZCPS and CRPS will be achieved. DOC are concerned that the BMP creates a de facto permitted activity and while a useful tool to managing biodiversity values it could be an effective non-regulatory tool that Council encourages landowners to adopt where they are looking to enhance to re-create areas of indigenous biodiversity. Ross Little in his further submission opposes the DOC submission to downgrade the BMP to a non-regulatory tool as it removes the incentive component which promotes measures to protect and enhance indigenous biodiversity. Hurunui Water Project oppose the removal of the BMP from the PDP as it is their opinion that it is appropriate and necessary and promotes the sustainable management of natural and physical resources.

Te Rūnanga support the PDP approach of encouraging landowners to take responsibility for maintenance of biodiversity on their properties; however they are concerned about the lack of clarity in the process of adaptive management in the proposed BMP framework. Te Rūnanga are concerned that this could allow for changes that compromise the biodiversity outcomes to be made without consultation or a clear assessment process. They are also concerned about the approval process for a BMP. Transpower supports the BMP approach.

Decision 13.12

Accept submissions in part.

Rename BMP as “Appendix 13.2 Criteria for Biodiversity Management Plan” so that it is consistent with the format of the chapter i.e. Appendix 13.1 relates to the significance criteria, 13.2 will set out the criteria for a BMP. Change title from “guideline” to “criteria”.

Add to the beginning of the framework the following:

**GUIDELINE: Appendix 13.2 CRITERA FOR BIODIVERSITY MANAGEMENT PLAN**

*Purpose of a Biodiversity Management Plan*

(a) To identify the biodiversity values within the property and any actual and potential threats to those values;

(b) To describe the methods that will be used to:

   (i) Protect the significant biodiversity values identified; and

   (ii) Manage other biodiversity values
(c) To specify the monitoring and reporting methods that will be used

The plan shall contain as a minimum:

Amend the following to BMP APPENDIX 3: Significance Assessment as follows

If there are areas of high biodiversity value within the site, an independent and suitably qualified ecologist should assess the significance of these areas against the criteria listed in Appendix 4 of the Canterbury Regional Policy Statement Appendix 13.1. The assessment against each of the criteria should be included here. This would include a plan showing the location and extent of these areas.

Delete Rule 13.4.2(1).

Amend Rule 13.4.3(1) as follows:

13.4.3 Discretionary activities (restricted)

The following activities are restricted discretionary activities:

1. The approval of a Biodiversity Management Plan to manage earthworks, indigenous vegetation clearance, buildings and/or planting of exotic trees within an area with significant indigenous biodiversity values

2. Any indigenous vegetation clearance (unless that clearance is in accordance with an approved Biodiversity Management Plan) or up to 5,000 m² in area in any 5-year continuous period, except where it is otherwise listed as a permitted or non-complying activity.

3. 1 Any indigenous vegetation clearance from a property that is subject to a Biodiversity Management Plan prepared in accordance with Appendix 13.2 except where it is otherwise listed as a permitted or non-complying activity.

2. Any indigenous vegetation clearance up to 5,000 m² in area in any 5 year continuous period, except where it is otherwise listed as a permitted, restricted discretionary or non-complying activity.

...

Amend as follows

The Council will restrict its discretion to the following matters:

1. Indigenous Vegetation Clearance under a Biodiversity Management Plans:

   (a) The quality of, and compliance with a Biodiversity Management Plan, including whether the Biodiversity Management Plan:

      (i) achieves the Purpose set out in Appendix 13.2;¹

      (ii)[a] Whether the Biodiversity Management Plan adequately identifies the biodiversity values and actual and potential threats to those values; and
Chapter 13 – Recommendations of the Hearing Panel on decisions on provisions and matters raised in submissions to the Proposed Hurunui District Plan 2015.

(iii) (b) Whether the Biodiversity Management Plan includes sufficient methods that will adequately protect the significant biodiversity values identified; and

(iv) (c) Whether the Biodiversity Management Plan includes appropriate monitoring and reporting methods to adequately protect the biodiversity values identified; and

(d) Whether the Biodiversity Management Plan appropriately deals with all proposed activities such that future resource consent consideration is not necessary.

(b) Whether the Biodiversity Management Plan has been audited or peer reviewed by a suitably qualified professional who has not been involved in its preparation, and the comments or outcomes of that review.

Reasons

While noting the issues with the drafting and practicality of the BMP approach as notified, the Panel has concluded in the first decision on this chapter that the BMP is the best approach for this particular District. As we stated in that decision, we consider the use of the BMP approach is a genuine attempt by the Council to achieve a collaborative approach to the issue without having to ‘draw lines on maps’. No Council involvement is needed if no development is proposed on a property that will impact on indigenous vegetation. We believe the approach also provides the flexibility of using the BMP on a catchment or project wide basis and has synergies with other farm environment plans now required by the Canterbury Regional Council.

In their comprehensive and thorough reply to the evidence presented at the hearing, officers again looked at the BMP approach. Their conclusion was summarised as follows:

*Overall, officers continue to consider that the Biodiversity Management Plan approach is the most appropriate way to achieve the PDP’s objectives. In reaching this conclusion, officers have considered other reasonably practicable options, and have considered the efficiency and effectiveness of the approach as well as its costs and benefits, as directed under s32 of the RMA. As we expand on further below, we acknowledge that the BPM approach does have cost impacts, and has an element of inefficiency and that these are factors that should be considered; however, on balance these do not result in another option being more appropriate.*

In terms of the specific rule package relating to BMPs, the officers have also identified a number of improvements that they recommend are made to improve clarity, particularly around the matters of discretion for the consideration of any BMP consent. These changes have been recommended in response to a number of submissions, in particular the submissions of the SNA Group and Fed Farmers.

First and foremost is the issue raised by Fed Farmers, Forest & Bird and DoC (who requested all references to BMP’s be removed and highlighted the legal and practical difficulties of the approach) regarding how the rule works as a BMP is clearly not a land use activity that can be controlled by a rule. As a consequence officers recommended that clearance of indigenous vegetation on land subject to a BMP should become a restricted discretionary activity under Rule 13.4.3. While noting the concerns raised by DoC, we agree with this approach although we have made some changes to the drafting in response to DoC’s concern. Any application under this rule will still require to be
Mr Deavoll (DoC’s planner) questioned why the BMP is necessary given the process is the same as a consent process. We think the answer to that is the past history in the District. In our view the BMP approach will assist in restoring the trust and respect between Council and landowners that was severely tested during the preparation and administration of the ODP. We were told by many people throughout this process that biodiversity protection needs to be in partnership with landowners in order for it to be successful and that the landowners’ efforts in biodiversity protection to date must be recognised. We agree with that sentiment and consider that the BMP, if used as a tool that incentivises stewardship in partnership with landowners as anticipated by officers, is likely to be the best tool to address the issue in this particular District.

Officers also addressed the concerns about the lack of clarity and certainty in the BMP framework, which does not include objectives or a clear directive on what it is seeking to achieve. In the officers view “the addition of objectives in the BMP that require the identification of the biodiversity values and actual and potential threats to those values, and the methods of protection that will be used, will mean that the BMP will better align with Objective 13... objectives of the BMP should ensure that effects of activities within a BMP area meet s6 of the RMA.” We agree and have adopted the changes as proposed by officers in their review of the evidence presented at the hearing.

**Issue - Activity Status**

**Submissions**

Forest & Bird oppose any clearance of indigenous vegetation as a permitted activity and seek a discretionary activity status for the clearance of indigenous vegetation that is not significant and the clearance of significant indigenous vegetation should be a non-complying activity. This is on the basis that the rule is contrary to Part 2 of the RMA and the requirement that indigenous biodiversity is maintained. They also submit that the permitted activity status circumvents s104 and the restricted discretionary status does not “protect” indigenous vegetation. Ngāi Tahu Farming Ltd oppose the submission as they consider that the Forest and Bird amendments do not give effect to the CRPS.

Rayonier, AIC, Transpower and Ngāi Tahu Farming Ltd oppose, by further submission, the Forest and Bird submission on the basis that it would be a significant change in approach from that notified and therefore should be subject to a robust s32 assessment to determine the appropriateness of the revised activity status and that such approach would not give effect to the CRPS.

Jane Demeter seeks restricted discretionary status for the removal of indigenous biodiversity and the clearance of significant indigenous vegetation as a non-complying activity. Rooney and David Dicker opposes this submission as the more stringent activity status could have negative effects on private landowners’ ability to manage their land in a productive and sustainable manner.

Meridian submit that the non-complying activities be deleted but replicated as discretionary activities. Meridian submits that given the provisions are interim and based on the objectives and policies it would be more efficient and effective if the default status were discretionary rather than non-complying. In their opinion the discretionary status is appropriate as it enables the full range of values to be considered without limitation and allows a resource consent to be refused. Te Rūnanga oppose this submission on the basis that indigenous species are taonga and require a greater level of protection in specific environments.
Decision 13.13

Reject submissions

Reasons

With respect to the Forest & Bird submission, we agree with officers that there are circumstances where the effects on indigenous biodiversity will be minor and do not need to be managed through a consent process to achieve the Plan’s objectives. This includes the effects of maintenance, repair and replacement of utilities and the like.

As we have discussed previously in this decision, we believe the BMP approach will enable better outcomes for biodiversity management in the District and we are comfortable with clearance on a property that is subject to the BMP being a restricted discretionary activity.

We also agree that where no BMP has been done, that a threshold of 5000m² for small clearance proposals as a restricted discretionary activity status is appropriate but that it become non-complying (as opposed to discretionary as requested by some submitters) above this level. This will encourage the use of the BMP approach and should achieve better outcomes as a consequence.

Officers also recommended that non-complying activity status remain in special environments such as outstanding natural character areas, riparian margins or sensitive ecosystems, given the important values within these areas. We agree.

With respect to Meridians submission regarding the interim status of the chapter, as we have already noted above the chapter is not interim and hence the reference in the PDP to an interim position was incorrect and has been deleted accordingly

13.4.2 Permitted Activities

Provisions

13.4.2 Permitted Activities

The following activities are permitted activities:

1. Any indigenous vegetation clearance or planting of exotic trees, if it is specifically covered by a Biodiversity Management Plan that has been approved by a resource consent pursuant to Rule 13.4.3.1 or under a process certified by the Chief Executive of the Hurunui District Council as being:
   (a) undertaken by suitably qualified and experienced people or organisations;
   (b) capable of identifying and adequately managing indigenous biodiversity; and
   (c) provides for periodic audits of outcomes

2. Indigenous vegetation clearance in the following circumstances:
   (a) For the purpose of maintenance, repair or replacement of existing fence lines, vehicle tracks, roads, walkways, firebreaks, drains, ponds, dams, waterlines, waterway crossings, or utilities, where it does not involve any extension of the area of these existing activities.
   (b) Where it has been planted and managed specifically for the purpose of harvesting.
   (c) Where it is growing beneath or within existing commercial forestry plantations or woodlots.
(d) Where it has been planted and/or managed as part of a domestic or public garden or has been planted for amenity purposes or as a shelterbelt.

(e) Where trees endanger human life, structures or utilities.

(f) By burning where a resource consent has been issued under a regional plan.

3 Indigenous vegetation clearance where it is within an area of improved pasture.

4 Indigenous vegetation clearance in the Residential 1 Zone at Mt Lyford, where it is for the purpose of erecting a dwelling or is within 50m of an existing dwelling or building site.

5 Planting of exotic tree species that would otherwise be a Non-Complying activity, where undertaken by the Regional Council for the purposes of erosion control, or within a domestic or public reserve.

Submissions

KiwiRail support Rule A13.4.2 (a) and (e). Rayonier support Rule 13.4.2.2 (c) but seek clarification of whether it can be cleared if it is within 20m of the bed or margin of any wetland, stream, river or lake as a part of this. They also seek additions to the rule to provide for the widening of existing tracks as a permitted activity on the basis that a track, road or firebreak may have to be widened slightly to accommodate larger machinery or meet improved safety standards and seeks removal of the words in 13.4.2 (2)(a) “where it does not involve any extension of the area of these existing activities”. Other submitters seek amendments or clarification for vegetation clearance around their anticipated business activities, including Meridian who sought an addition to the rule as follows:

\[(x) \text{ The clearance, modification or removal of indigenous vegetation where it is associated with the operation, maintenance, minor upgrading, repair or removal of any existing regionally significant infrastructure or existing renewable electricity facilities.}\]

Transwaste seek an amendment to the permitted activity rules to provide for indigenous vegetation clearance where it is associated with a conservation activity. Buxton Gore Bay Limited seeks inclusion, as a permitted activity, for indigenous vegetation clearance where it is for the purpose of giving effect to the outline development plan for the Buxton Valley Management Area.

DOC seeks deletion of Rule 13.4.2.1 given the previously stated concerns with the BMP approach and requested Rule 13.4.2.1 be amended to delete “an area of” and add “and it does not contain the species contained within Appendix XX Threatened Plant List”

Jamie McFadden and Linda Dodds oppose all vegetation clearance rules and consider there should be a voluntary not regulatory approach to protection of areas of significant indigenous vegetation. Te Rūnanga oppose this submission on the basis indigenous species are considered as taonga and in their view councils have a responsibility under the RMA to maintain indigenous biodiversity and they therefore consider it inappropriate to remove all provisions.

Decision 13.14

Accept the submissions of KiwiRail, Rayonier and Transwaste

Reject submission of DOC, Jamie McFadden and Linda Dodds

Amend Rule 13.4.2.2 as follows:

13.4.2 Permitted Activities
The following activities are permitted activities:

1. deleted (deleted in decision above in relation to discussion on BMP page 28)

21. Indigenous vegetation clearance in the following circumstances:

(a) For the purpose of maintenance, repair or replacement of existing fence lines, vehicle tracks, roads, walkways, firebreaks, drains, ponds, dams, waterlines, waterway crossings, or utilities where it does not involve any extension of the area of these existing activities.

(b) For the purpose of maintenance, repair, replacement or minor upgrading of existing energy activities

(bc) Where it has been planted and managed specifically for the purpose of harvesting.

(ed) Where it is growing beneath or within existing commercial forestry plantations or woodlots

(de) Where it has been planted and/or managed as part of a domestic or public garden or has been planted for amenity purposes or as a shelterbelt.

(ef) Where trees endanger human life, structures or utilities.

(ff) By burning where a resource consent has been issued under a regional plan

(g) Where it cannot be reasonably avoided in the course of removing pest plants and pest animals in accordance with any regional pest management plan or the Biosecurity Act 1993.

32. Indigenous vegetation clearance where it is within an area of improved pasture.

43. Indigenous vegetation clearance in the Residential 1 Zone at Mt Lyford, where it is for the purpose of erecting a dwelling or is within 50m of an existing dwelling or building site.

5. Planting of exotic tree species that would otherwise be a Non-Complying activity, where undertaken by the Regional Council for the purposes of erosion control, or within a domestic or public reserve

4. Indigenous vegetation clearance within settlement zones except Mt Lyford.

5. Indigenous vegetation clearance within the Buxton Valley Management Area where it is for the purpose of giving effect to the Outline Development Plan for Buxton Valley Management Area.

6. Indigenous vegetation clearance provided for under a conservation covenant.

Reasons
The main issue raised by Jamie McFadden and Linda Dodds has been dealt with in previous decisions as has DoC’s concern with the BMP approach. With respect to the amendments and clarification for vegetation clearance in relation to existing activities, we have noted above that there are circumstances where the effects on indigenous biodiversity are minor and do not need to be managed through a consent process to achieve the Plan’s objectives. This includes the effects of maintenance, repair and replacement of utilities and the like and such changes have been made where appropriate. In relation to the clarification sought by Rayonier in relation to the removal of indigenous vegetation that is part of existing plantation forest within 20m of the bed or margin of any wetland, stream, river or lake, in our view the vegetation can be cleared if it is part of existing plantation forest regardless of its set back to other resources.

The Transwaste submission has been accepted as recommend by officers with it limited to clearance allowed in accordance with a conservation covenant. This will provide more certainty. The Buxton Gore Bay Limited submission was also accepted on the basis that it was an oversight because the ODP currently provides for this exemption. Similarly the oversight for the exemption within urban areas has been corrected and is considered within scope of those submissions requesting that all such rules be deleted.

With respect to DOC’s concern that ‘area’ is not defined within the improved pasture rule, Mr Deavoll suggested at the hearing that some area threshold should be given to provide certainty. However he did not provide an area for consideration. He raised a similar concern with the rule that allows burring in accordance with a regional burning permit.

In the Panels view, the amendments proposed will add further uncertainty given it is unlikely lay people will recognise a threatened plant in amongst their pasture land. In any event such a plant is likely to already be modified by grazing and previous cultivation. In our view this would not be an efficient approach to the issue and we do not believe the level of risk posed warrants intervention in normal farming activities. However we anticipate that under BMP approach, the issue of concern to DOC may well be addressed when wider development proposals are considered.

We do accept the evidence presented that ecological values are not a matter assessed when consents for burning are issued under the regional plan, and that in the absence of district plan provisions, there would be no mechanism for assessing ecological values that may be adversely affected by controlled burning. Hence this rule has been deleted and a new rule addressing the issue raised by the SNA group, Mr Smart and the Rooney Group has been included addressing circumstances where it cannot be reasonably avoided in the course of removing pest plants and pest animals in accordance with any regional pest management plan or the Biosecurity Act 1993.

Discretionary activities (restricted)

Provisions

The proposed rules are

13.4.3 Discretionary activities (restricted)

The following activities are restricted discretionary activities:

Chapter 13 – Recommendations of the Hearing Panel on decisions on provisions and matters raised in submissions to the Proposed Hurunui District Plan 2015.
1. The approval of a Biodiversity Management Plan to manage earthworks, indigenous vegetation clearance, buildings and/or planting of exotic trees within an area with significant indigenous biodiversity values.
2. Any indigenous vegetation clearance (unless that clearance is in accordance with an approved biodiversity management plan), up to 5,000m² in area in any 5 year continuous period, except where it is otherwise listed as a permitted or non-complying activity.

The Council will restrict its discretion to the following matters:

2 Biodiversity Management Plans:
(a) Whether the Biodiversity Management Plan adequately identifies the biodiversity values and actual and potential threats to those values; and
(b) Whether the Biodiversity Management Plan includes sufficient methods that will adequately protect the biodiversity values identified; and
(c) Whether the Biodiversity Management Plan includes appropriate monitoring and reporting methods to adequately protect the biodiversity values identified; and
(d) Whether the Biodiversity Management Plan appropriately deals with all proposed activities such that future resource consent consideration is not necessary.

3 Indigenous Vegetation Clearance:
(a) Whether the indigenous vegetation subject to the application is significant (where it meets any one or more of the criteria in Appendix 13.1).
(b) The extent to which actual or potential impacts on biodiversity or ecological values will occur as a result of the proposal, and particularly the impact on significant values.
(b) The extent to which species diversity or habitat availability could be adversely impacted by the proposal.
(c) Any potential for mitigation of effects on ecosystems and biodiversity values.

Submissions

Hurunui Water Project supports the restricted discretionary status of the removal of indigenous vegetation. Transpower seek the addition of indigenous vegetation clearance associated with the National Grid as a discretionary activity.

Forest and & Bird request amendment to Rule 13.4.3 so that the rule includes earthworks, indigenous vegetation clearance, buildings and the planting of exotic trees as a restricted discretionary activity. DOC seeks that all indigenous vegetation clearance within the Coastal Environment is a restricted discretionary activity.

Te Rūnanga submit that Ngāi Tahu regard indigenous species as taonga and request that biodiversity values that are significant to Ngāi Tahu be considered in the assessment of BMP and proposals for indigenous vegetation clearance.

Decision 13.15

Reject the submissions of DOC and Forest and & Bird

Accept the submissions of Transpower and Te Rūnanga.
Amend Rule 13.4.3 as follows:

**13.4.3 Discretionary activities (restricted)**

The following activities are restricted discretionary activities:

4 Any indigenous vegetation clearance associated with development or upgrade of the National Grid except where it is otherwise listed as permitted activity.

The Council will restrict its discretion to the following matters:

1. Indigenous Vegetation Clearance under a Biodiversity Management Plan:

2. Indigenous Vegetation Clearance:

   (b) The extent to which actual or potential impacts on biodiversity or ecological values will occur as a result of the proposal, and particularly the impact on significant values including the values that are significant to Ngāi Tahu.

Reasons

With respect to the Forest and & Bird submission, we agree with the officer that matters related to earthworks, construction of buildings and planting of exotic trees is already sufficiently managed in the Rural Chapter and as such it is not appropriate to duplicate the provisions within Chapter 13. Similarly we agree with the officer’s position in respect to the DOC position within the Coastal Environment as the NZCPS does not preclude provision for appropriate activities to be enabled as a permitted activity.

Transpower seek the addition of indigenous vegetation clearance associated with the National Grid as a discretionary activity. Officers considered that a company like Transpower would be able to establish BMP’s for all their sites to address this issues. However as Ms McLeod pointed out, Transpower do not generally own the underlying land. She was also of the view that the provision did not give effect to Policy 2 of the NPSET. We agree with Ms McLeod and note that the officers revised their position after reviewing the evidence and recommended that Transpower’s change be accepted.

We also consider appropriate to identify values to Ngāi Tahu be considered in any assessments of BMP and other proposals for indigenous vegetation clearance.

**Non-complying activities**

**Provisions**

The proposed rules are:

**13.4.4 Non-complying activities**

The following activities are non-complying activities, unless in accordance with a biodiversity
management plan approved under Rule 13.4.3.1, or unless specified as a permitted activity:

1. Any indigenous vegetation clearance of more than 5,000m² within any site, in any 5 year continuous period
2. Any indigenous vegetation clearance of the following vegetation communities or in the following situations:
   (a) Any indigenous vegetation clearance:
      (i) within an area of Outstanding Natural Character in the Coastal Environment (as shown on the Planning Maps).
      (ii) in or within 20m of the bed or margins of any wetland, stream, river or lake.
      (iii) above 900m in altitude.
      (iv) on limestone substrate.
      (v) of any short tussock grassland.
      (vi) of any indigenous forest containing podocarp tree species (e.g. totara, matai, miro, kahikatea, rimu).
      (vii) of any beech forest.

(Note: Rule 13.4.4 (3) Non-complying activities is dealt with separately below.)

Submissions

Forest & Bird seek amendment so that all clearance of significant vegetation is a non-complying activity while DOC seeks additions to the rule as follows:

13.4.4 Non-complying activities:
The following activities are non-complying activities, unless in accordance with a biodiversity management plan approved under Rule 13.4.3.1, or unless specified as a permitted activity:

1. Any indigenous vegetation clearance of more than 5000m² within any site, in any 5-year continuous period
2a(i) within an area of Outstanding Natural Character in the coastal environment, Outstanding Natural Landscape or Feature or an area identified as a geopreservation site (as shown on the Planning Maps).
2a(x) Any significant indigenous vegetation clearance or clearance of significant habitats of indigenous fauna (where values trigger the criteria set out in Appendix 13.1)
2a(x) within a threatened land environment as shown in Schedule 13.X.
3(x) re-flowering currant
(x) holly

In DOC’s view Rule 13.4.4 is not sufficient to address the potential effects of vegetation clearance and is inconsistent with the CRPS. They also submit that the PDP rules do not take into account the effects of indigenous vegetation clearance on sensitive environments and that a map of threatened land environments should be added as an appendix to the chapter.

Ross Little further submits that the request to include any vegetation clearance as a non-complying activity is too restrictive and does not provide for examples of minimal effects from day to day farm
activities. He also opposes the reference to threatened land environments sought by DOC. His opinion is that the map of threatened environments is of doubtful value as a regulatory instrument.

Daniel Shand opposes the DOC submission on the basis the DOC position does not allow landowners the flexibility to make the best decisions for maintaining biodiversity and creates restrictions that encourage poor management of noxious weeds and pests.

Ross Little raises concerns about the inclusion of stream in Rule 13.4.4 (3) (ii) as “stream” is not defined in the PDP. He also seeks the following amendments to 13.4.4 (2):

(iv) on limestone substrate that underlies limestone outcrops, rock, or bluffs”.
(v) of any short tussock grassland excluding sparse populations where other species provide the general vegetative cover”.

Decision 13.16

Reject Forest & Bird submission

Accept the submission of Ross Little and DOC in part.

Amend Rule 13.4.4 as follows:

13.4.4 Non-complying activities

The following activities are non-complying activities, unless in accordance with a biodiversity management plan approved under Rule 13.4.3.1, or unless specified as a permitted activity or a restricted discretionary activity under Rule 13.4.3.2 or 13.4.3.4:

1. Any indigenous vegetation clearance of more than 5,000m² within any site, in any 5 year continuous period.
2. Any indigenous vegetation clearance of the following vegetation communities or in the following situations:
   a. Any indigenous vegetation clearance:
      i. within an area of Outstanding Natural Character in the Coastal Environment (as shown on the Planning Maps).
      ii. in or within 20m of the bed or margins of any wetland, stream, river or lake.
      iii. above 900m in altitude.
      iv. on limestone substrate that underlies limestone outcrops, rock, or bluffs.
      v. of any short tussock grassland.
      vi. of any indigenous forest containing podocarp tree species (e.g. totara, matai, miro, kahikatea, rimu).
      vii. of any beech forest.

Reasons

With respect to Forest & Bird and DOC’s submissions on status, mapping sites and the use of the BMP, we have decided these issues above.

We also agree with officers that the Regional Pest Management Strategy is not something the Council must give effect to under the RMA. The purpose of the strategy is to empower the Canterbury Regional Council to exercise the relevant advisory, service delivery, regulatory and funding provisions available under the Biosecurity Act 1993.

Chapter 13 – Recommendations of the Hearing Panel on decisions on provisions and matters raised in submissions to the Proposed Hurunui District Plan 2015.
Officers also accepted Mr Little concerns with the drafting of the rule limestone substrate and the reference to streams. However she did not support the addition of short tussock grassland as in her opinion it is covered in the definition of improved pasture which is defined as an area of pasture where species composition and growth has been modified and enhanced for livestock grazing within the previous 20 years, by clearance, cultivation, or topdressing and oversowing, or direct drilling, and where exotic pasture species have been deliberately introduced. We agree that the definition of improved pasture provides enough certainty and addresses the concern of Mr Little.

Ross Little raises concerns about the inclusion of stream in Rule 13.4.4 (3) (ii) as “stream” is not defined in the PDP. We agree and stream has been deleted from the rule.

13.4.4 (3) Non-complying Activities

Provisions

The proposed rules are

3. Planting of the following species of exotic trees in the Rural Zone:

(a) Lodgepole pine Pinus contorta
(b) Scots pine Pinus sylvestris
(c) Corsican pine Pinus nigra
(d) Dwarf mountain pine Pinus mugo
(e) Mountain pine Pinus uncinata
(f) Ponderosa pine Pinus ponderosa
(g) Muricata pine Pinus muricata
(h) Cluster pine Pinus pinaster
(i) Douglas fir Pseudotsuga menziesii
(j) Sycamore Acer pseudoplatanus
(k) Rowan Sorbus aucuparia
(l) Ash Fraxinus excelsior
(m) All larches Larix species
(n) All alders Alnus species
(o) All willows Salix species (except non-cracking or sterile varieties)
(p) All poplars Populus species (except Lombardy poplars: male clones)
(q) All birches Betula species

Submissions

DOC recommended a number of other plants for inclusion in the rule. Ross Little opposes this rule on the basis that many of the species are used as amenity plantings and in his opinion are not a threat to indigenous biodiversity. Ross Little and Hurunui Natives request amending the rule to include only those species that pose a genuine threat to biodiversity. Rayonier oppose the inclusion of Douglas fir as a non-complying activity and submit it should be permitted as plantation forestry provided it is subject to a Wilding Pine Management Plan.

Kerry and Elizabeth Prenter request amendment to the rule to exclude lowland areas. Benjamin Ensor seeks the rule be amended to allow willows and poplars for erosion control as a permitted activity. SNA Group seek deletion of the rule or an alternative relief to address Douglas Fir and larch species where they are an issue. David Pain, Nicholas Ensor, Robin and Christine Gardiner and
Hamish Pain seek deletion of the rule. Fed Farmers oppose the rule and seek that the rule be added to the Rural Chapter to deal with wilding tree spread.

Transwaste seek deletion of the rule on the basis that the rule is too restrictive as the rules apply to the entire Rural Zone and do not recognise the variety of environments within the Rural Zone.

**Decision 13.17**

Reject the submission of DOC

Accept the submissions of Kerry and Elizabeth Prenter, Benjamin Ensor, Ross Little, SNA Group, David Pain, Nicholas Ensor, Robin and Christine Gardiner, Hamish Pain, Fed Farmers, Rayonier, Transwaste and Hurunui Natives in part.

Delete Rule 13.4.4(3)

**Reasons**

Officers advised that that this rule was intended to control the spread of wildings and in particular relates to forestry activities within the Rural Zone. She recommended that provisions to control wilding trees be included in the Rural Chapter and agreed that some poplar species are used effectively on hill country for erosion control and requiring consent for these activities creates an unnecessary level of regulation comparative to the potential for adverse effects on indigenous biodiversity. She also noted that the other species recommended by DOC for inclusion in the rule are potential pest species and these should be controlled by the Regional Council under its Regional Pest Strategy.

We agree with officers on this issue and adopt the recommendation accordingly.

**Assessment Criteria**

**Provisions**

The proposed assessment criteria are:

**13.5 Assessment criteria**

In addition to the matters contained in the RMA (including section 104 and Part 2), the Council will also have regard to the relevant assessment criteria below when considering a resource consent application.

1. The relevant matters stated for the consideration of any restricted discretionary activity.
2. Whether the proposed activity would compromise the objectives and policies pertaining to Ecosystems and Indigenous Biodiversity.
3. The degree to which any adverse environmental effects on ecological systems are to be remedied or mitigated.
4. The extent to which any ecological values will be maintained and enhanced.
5. Whether the degree of non-compliance with any particular standard is minor, having regard to the purpose of that standard or whether it is unreasonable to require compliance with the standard in the circumstances.
6. Whether there are special environmental considerations, including preservation of the natural character of the area, or the enhancement of the neighbourhood environment quality.
7 Whether conditions can be imposed to avoid or mitigate any adverse environmental effects of the proposal resulting from the non-compliance with any standard.
8 The outcome of any recommendations made by a relevant expert.
9 The outcome of any consultation undertaken with the Regional Council, the Department of Conservation, iwi or any other organisation, including any recommendations made by those parties.

10 For planting of exotic trees:
   a) Effects on pest and weed control, particularly wilding tree spread.
   b) The siting of plantings and their exposure for seed dispersal.
   c) Intensity of land use downwind of the planting.
   d) The content of any planting, management or harvesting plan.
   e) The application of guidelines for controlling the spread of wilding trees.

11 For wetland areas:
   a) The extent to which there will be displacement of native vegetation.
   b) Whether there will be contamination, sedimentation or enrichment of indigenous wetlands.
   c) Whether the wetland is important to ecosystem integrity.
   d) Whether the wetland area is the habitat for indigenous fauna

Submissions

Forest & Bird seek deletion of the assessment criteria and the reason given is that the criteria add nothing to the process of considering resource consents. Ngāi Tahu Farming Limited consider the assessment criteria provide useful guidance for any resource consent.

Fed Farmers propose a whole new set of rules for Chapter 13 which do not include any assessment criteria.

Transpower, Rooney and Mainpower request additional assessment criteria as follows

   x. Technical and operational constraints and route, site and method selection process
   x. benefits that the activity provides to the community and beyond
   x the degree to which any adverse environmental effects have been sought to be avoided or minimised, or are to be remedied or mitigated.

DOC seek the following amendments on the basis the assessment criteria fail to fully address the range of potential effects on the environment.

13.5 Assessment criteria

2. Whether the proposed activity would compromise be inconsistent with the objectives and policies pertaining to ecosystems and indigenous biodiversity, RMA s.6 or any other objectives and policies.

5. deleted

8. The outcome of any recommendations made by a relevant expert, based on the effects on the ecosystems, biodiversity, natural character or values and applicability or otherwise of relevant criteria.
   New x. Effects on the values associated with ecosystems, indigenous biodiversity values, values in the coastal environment, Outstanding Natural Features or Landscapes or any geo-preservation site.
   New x. In addition to the assessment criteria above (1-9), for the planting of exotic trees:
   New x. Any effects on ecosystem functioning, hydrology, or from habitat fragmentation.
Decision 13.18

Reject the submission of Fed Farmers and Forest & Bird

Accept submissions of DOC Transpower, Rooney and Mainpower in part.

Amend 13.5 as follows:

13.5 Assessment criteria

2. Whether the proposed activity would compromise be inconsistent with the objectives and policies pertaining to ecosystems and indigenous biodiversity

... 8. The outcome of any recommendations made by a relevant expert, based on the effects on the ecosystems, biodiversity, natural character or values.

...

10. For planting of exotic trees:

   e) Effects on pest and weed control, particularly wilding tree spread.

   f) The siting of plantings and their exposure for seed dispersal.

   g) Intensity of land use downwind of the planting.

   h) The content of any planting, management or harvesting plan.

   i) The application of guidelines for controlling the spread of wilding trees.

...

11. Any technical and operational constraints and route, site and method selection process

12. The benefits that the activity provides to the local community and beyond

Amend Rule 13.4.3 by adding the following matters of discretion as follows:

2 Indigenous Vegetation Clearance:
   (a) Whether the indigenous vegetation subject to the application is significant (where it meets any one or more of the criteria in Appendix 13.1).

   ...

   e. Any technical and operational constraints and route, site and method selection process.

   f. The benefits that the activity provides to the local community and beyond

Reason

Officers considered the Transpower, Rooney and Mainpower requested additions unnecessary because they are already part of the assessment criteria in the utilities chapter. However given these activities may not trigger the rules in Chapter 9 but may trigger the rules in Chapter 13, we believe that Ms McLeod’s recommendation that “technical and operational constraints and route, site and method selection processes” along with the ‘benefits’ of the activity should be included in the assessment criteria and the restricted discretionary criteria matters. This will ensure the appropriate matters of the relevant national policy statements are considered and that a rounded assessment occurs, which must include the benefits of any activity that is being assessed. There was some
confusion over what ‘the community and beyond’ means. In the Panels view the reference to community was directed at the local community while the reference to ‘beyond’ is a recognition that network utilities such as the national grid benefit many other communities beyond the community it passes through. A change has been made to reflect that.

We agree with the officers recommendation in relation to DOC’s request to replace the word “compromise” with “be inconsistent” in 13.5 (2) but the reference to the RMA or other objectives and policies is unnecessary as they form part of the statutory tests under the RMA and do not add any further value or direction. The reference to “effects on the ecosystems, biodiversity, natural character or values” in (8) adds clarity to the criteria and has been accepted accordingly. The other criteria proposed have not been accepted as they are matters generally covered by existing assessment criteria.
Definitions

Lake

Submission

Ross Little proposes amendments to definitions for stream, river and lake. He seeks clarification of the definition of river.

Decision 13.19

Amend the definition of lake as follows:

Lake – means a body of fresh water which is entirely or nearly surrounded by land formed by natural geomorphic processes, whether modified by human activity or not, and excludes any artificially made lake or pond.

Reasons

Officers noted that Mr Little’s submission is incorrectly referenced as it relates to a rule in the Rural Chapter in relation to earthworks. As such this submission point is addressed in the decision for the Rural Chapter. For consistency sake, we agree the definitions from the CLWRP should be adopted.

No Net Loss

Submissions

DOC seek the addition of definition for no net loss as follows:

No Net Loss – No overall reduction in biodiversity, as measured by type, amount and condition

Meridian and Hurunui Water Project in their further submissions oppose the introduction of the definition on the basis it is not necessary.

Decision 13.20

Reject submission

Reasons

The NZ Government Guidance on Good Practice Biodiversity Offsetting in New Zealand, August 2014 has been added to the assessment criteria at 13.5 (12). The term is described in that document and no further definition is considered necessary in the PDP.
Biodiversity Offset

Submissions

DOC seeks a new definition for Biodiversity Offset as follows:

*Measurable conservation outcomes resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development after appropriate avoidance, minimisation, remediation and mitigation measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity on the ground.*

DOC submits that the proposed definition is not consistent with the New Zealand Government Guidance on Good Practice Biodiversity Offsetting in New Zealand August 2014.

Meridian seek an amendment to the definition as follows

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

Meridian submit that the definition is not appropriate as it seeks to limit consideration of any offset to after all appropriate prevention and mitigation measures have been taken. The submission states that it is not appropriate to seek net gain or no net loss as the RMA does not envisage the need for there to be no effects from such proposals, nor does it require there to be a net gain.

**Decision 13.21**

Reject Meridian submission

Accept the DOC submission

Adopt new definition of Biodiversity Offset from the DOC submission.
Biodiversity offset

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

Reason

The NZ Government Guidance on Good Practice Biodiversity Offsetting in New Zealand draws from the Business and Biodiversity Offsets Programme (BBOP) definition of biodiversity offsetting which is the same wording proposed in the DOC submission. While the Panel has some sympathy for Meridians position on this matter, we note the Council is directed by the CRPS on this issue.

Improved Pasture

Submissions

DOC seeks an amended definition to Improved Pasture as follows:

Means an area of pasture where species composition and growth has been modified and enhanced for livestock grazing within the previous 20 years prior to the date of notification of the Hurunui District Plan by clearance cultivation, or topdressing and oversowing, or direct drilling, and where exotic pasture species have been deliberately introduced and dominate in cover and composition.

DOC submits that the definition requires amendment to provide certainty and clarity. Ross Little opposes the DOC submission. He considers that the requested change does not acknowledge the longevity of many hill pastures where exotic/introduced species may remain vigorous without clearance, cultivation, topdressing and oversowing, or direct drilling more or less permanently. Natural regeneration of introduced species such as clover may remain dominant in cover and composition.

Decision 13.22

Reject submission.

Reason

We agree with the officers that the addition of 20 years prior to date notification provides unnecessary restriction to the interpretation of the rule.
Indigenous Vegetation

Provisions

Indigenous vegetation—means a plant community of species native to New Zealand, which may include a minor element of exotic vegetation but does not include plants within a domestic garden or used for screening/shelter belt purposes e.g. as farm hedgerows.

Submissions

Te Rūnanga seek the deletion of the definition and its replacement as follows:

means a plant community containing native species which occur naturally in that location. It includes vegetation that has regenerated with human help, but does not include plantations or vegetation established for commercial windbreak, aesthetic or gardening purposes.

Te Rūnanga submit that the reference to minor element of exotic vegetation is uncertain and inappropriate.

DOC seek amendments to the definition as follows:

means a plant community of species native to New Zealand, which may include a minor element of exotic vegetation but does not include plants within a domestic garden or has been planted for the use of screening/shelter belt purposes e.g. as farm hedgerows.

DOC submits that the definition requires amendment to provide certainty and clarity. Ross Little does not support the amendment as it does not provide for enhancement plantings of native species outside domestic gardens or shelterbelts. HWP also oppose the suggested amendment deleting the words “a minor element of” that relates to exotic vegetation. Hurunui Water Project consider these words form an important part of the definition and provide a context and sense of scale in relation to how much exotic vegetation may be included within indigenous vegetation.

Decision 13.23

Accept Te Rūnanga and DOC submission in part.

Amend definition as follows:

Indigenous vegetation—means a plant community of species native to New Zealand, which may include a minor element of exotic vegetation but does not include plants within a domestic garden or has been planted for the use of screening/shelter belt purposes (e.g. as farm hedgerows) or that has been deliberately planted for the purpose of harvest.

Reason

We agree with HWP that the words “a minor element of” form an important part of the definition and provide a context and sense of scale in relation to how much exotic vegetation may be included within indigenous vegetation. However we also agree with both Te Rūnanga and DOC that the definition should exclude vegetation planted for commercial reasons and this should be made clearer.
Chapter 13 – Recommendations of the Hearing Panel on decisions on provisions and matters raised in submissions to the Proposed Hurunui District Plan 2015.