



**SECOND
GENERATION
DISTRICT PLAN**

**Natural Environment
Decision of Hearings Panel**

**Proposed Second Generation Dunedin City
District Plan (2GP)**

7 November 2018



User guide to the decision reports and the marked-up decisions version of the 2GP

The decisions of the 2GP Hearings Panel are presented in 29 decision reports (one report per hearing topic).

The reports include the Panel's decisions and reasons and incorporate the requirements under s32AA.

At the end of each report a table has been included summarising all the decisions on provisions (Plan text) in that decision report.

Marked-up version of the Notified 2GP (2015)

The decisions include a marked-up version of the notified 2GP, which shows the amendments made to the notified plan in ~~strike-through~~ and underline. Each amendment has a submission point reference(s) or a reference to 'cl.16' if the amendment has been made in accordance with Schedule 1, clause 16(2) of the Resource Management Act. Schedule 1, clause 16(2), allows minor and inconsequential amendments to be made to the Plan.

Amendments to the Schedules below are not marked up as in other sections of the plan as they are drawn from a different source. Any changes to Schedules are detailed in the decision report for the relevant section.

Some very minor clause 16 changes such as typographical errors or missing punctuation have not been marked up with underline or strikethrough. More significant cl. 16 changes (such as where provisions have been moved) are explained using footnotes, and in some cases are also discussed in the decision.

Hearing codes and submission point references

As part of the requirement of the DCC to summarise all original submissions, all submission points were given a submission point reference, these references started with 'OS'. Further submissions were also summarised and given a submission point that started with 'FS'.

The submission points are made up of two numbers the first is the submitter number, which is followed by a full stop, the second part is the submission point number for that submitter.

For example, OS360.01 is submitter 360 and their first submission point.

The 2GP Hearings Panel has used these same submission point references to show which submission points different amendments were attributed to. However, to enable these changes to be linked to different decision reports, the reference code was changed to start with a decision report code, e.g. Her 308.244.

A list of hearing codes can be found on the following page.

It should be noted that in some cases where several submitters sought a similar change, the submission point reference may not include all of these submission points but rather include only one or say, for instance, "PO 908.3 and others".

Master summary table of all decisions

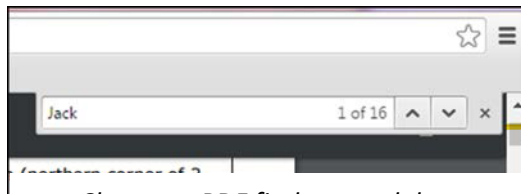
In addition to the summary table at the end of each decision report there is a master summary table that lists all decisions on provisions (Plan text), across all hearing topics, including details of the section(s) of the decision report in which that decision is discussed, and the relevant section(s) of the s42A reports. The s42A report sections will be helpful for appellants needing to identify which other parties have submitted on that provision, as notices of the appeal must be served on every person who made a submission on the provision or matter to which the appeal relates. The master summary table of decisions can be found on the decisions webpage of the 2GP website (2gp.dunedin.govt.nz).

List of hearing codes

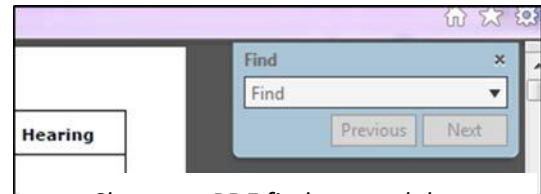
Hearing topic	Code
Commercial Advertising (cross plan hearing topic)	CP
Commercial and Mixed Use Zones	CMU
Community Correction Facilities (cross plan hearing topic)	CP
Defence Facilities and Emergency Services (cross plan hearing topic)	CP
Designations	Des
Earthworks	EW
Heritage	Her
Industrial Zones	Ind
Major Facilities (without Port and Mercy Hospital)	MF
Manawhenua	MW
Mercy Hospital	Mer
Natural Environment	NatEnv
Natural Hazards	NatHaz
Natural Hazard Mitigation	HazMit
Network Utilities	NU
Plan Overview and Structure	PO
Port Zone	Port
Public Amenities	PA
Public Health and Safety (PHS)	PHS
Quarries and Mining Activities (cross plan hearing topic)	CP
Recreation Zone	Rec
Residential Zones	Res
Rural Zones	RU
Rural Residential Zones	RR
Scheduled Trees	ST
Service Stations (cross plan hearing topic)	CP
Temporary Activities	TA
Transportation	Trans
Urban Land Supply	ULS

How to search the document for a submitter number or name

1. If you want to search for particular submitter name, submission point or Plan provision in any of the reports (decision report, marked-up version of the Plan, or s42A report) the easiest way to do this is to use the 'Find' function.
2. When you have the document open, press the keys CTRL and F (Windows) or CMND and F (Mac) to bring up the 'PDF Finder'.



Chrome – PDF finder search box



Chrome – PDF finder search box

3. Once the PDF search box appears (in the top left or right corner of your browser) type in the submission number or submitter name and press enter on your keyboard.
4. The PDF finder will search for all instances of this term. Depending on the size of the document and your internet connection it may take a minute or so.
5. Press on the up or down arrows (Chrome) or 'next' (Internet Explorer) in the search box to view the different instances of the term until you find the one you are looking for.
6. An 'advanced search' function is available under the Edit tab in some PDF viewers, this allows you to search 'whole words' only to look for exact strings of letters or numbers

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1.0 Introduction

1. This document details the decision of the Proposed Dunedin City District Plan Hearings Panel/Te Paepae Kaiwawao Motuhake O Te 2GP with regard to the submissions and evidence considered at the Natural Environment Hearing, held on 14 - 29 June 2017 at the 2GP Hearings Centre, and reconvened on 30 November 2018 at the Municipal Chambers.

1.1 Scope of Decision

2. Unless otherwise noted, this decision addresses the 836 original and 852 further submission points addressed in the Natural Environment Section 42A Report. These include:
 - submissions on related definitions, strategic directions, and objectives, policies and rules of the Natural Environment section; as well as on the mapping of natural environment features including: Areas of Significant Conservation Value and Urban Conservation Management Areas, and landscape and coastal character overlays
 - submissions on provisions in some management and major facility zones sections; in particular, the Rural Zones section has significant linkages to the Natural Environment section, as do the Rural Residential Zones and Recreation Zone sections. The decisions on those sections should also be read in conjunction with this decision.
3. The decision also addresses a number of submission points transferred from other topics, as follows (note that when an original submission point is transferred between topics, all associated further submission points are transferred with it).
 - Transferred from the Rural Section 42A Report:
 - o *Forest and Bird NZ* (OS958.111) requesting the addition of a new policy to Section 16 Rural Zones requiring all activities to maintain indigenous biodiversity and protect significant areas of indigenous vegetation and habitats for indigenous fauna and
 - o *Horticulture NZ* (OS1090.11) requesting the addition of a new objective and policy under Strategic Direction 2.2, to manage biosecurity risk
 - Transferred from the Earthworks Section 42A Report:
 - o *Nigel Harwood* (OS96.6) requesting a more enabling approach to earthworks occurring within in a Significant Natural Landscape or Natural Coastal Character Overlay Zone, where the underlying zoning is rural residential
 - o *Timothy George Morris* (OS951.56) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.56) requesting that certain exemptions from earthworks rules apply within overlay zones and mapped areas, along with a further submission from *Geoff Scurr Contracting Limited* (FS2391.30) supporting OS1054.56.
 - o *Christopher Dean Valentine* (OS464.5) requesting a change to permitted earthworks thresholds in the Outstanding Natural Landscape Overlay Zone
 - o *Forest and Bird NZ* (OS958.100) requesting that effects on biodiversity be assessed for earthworks in rural zones.
 - Transferred from Network Utilities Section 42A Report:
 - o *Vodafone* (OS576.62), *Spark* (OS923.62), *Chorus* (OS925.62) and *Aurora* (OS457.30, OS457.31, OS457.32 and OS457.33) requesting that Section 10 objectives and policies be amended to provide for

- network utilities that need to locate within natural areas for operational reasons.
- o Part of *Save the Otago Peninsula Inc Soc (STOP)* (OS900.85) requesting a more restrictive activity status for earthworks – small scale in ONCCs and HNCCs (the rest of the submission point relates to network utilities and is addressed in the Network Utilities Decision).
 - o *STOP* (OS900.62) requesting that the effects test in Policy 10.2.5.16, which applies to restricted discretionary network utility activities in ONFs, be amended to add the phrase “essentially unidentifiable”.
4. Finally, this decision does not address certain submission points that were addressed in the Natural Environment Section 42A Report but have been transferred to the decision report for other topics. These are as follows:
- Transferred to the Rural Zones Decision
 - o *Saddle Views Estate Limited* (OS458.13), *Blackhead Quarries Ltd* (874.17), *Tussock Top Farm Ltd* (901.12), *Save The Otago Peninsula (STOP) Inc Soc* (900.60) relating to provisions for identified ridgelines, in particular Policy 10.5.2.10
 - o *Graham and Nothburga Prime* (OS399.2) and *Robyn and Stephan Smith, Rick and Jill Clarke, Alan Brown, Carrowmore Properties Ltd (on behalf of the “Pigeon Flat Road Group”)* (OS717.27) relating to rural zoning in Flagstaff-Mt Cargill SNL
 - Transferred to the Network Utilities Decision
 - o The aspect of *Save The Otago Peninsula (STOP) Inc Soc* (OS900.58) that relates to the activity status of network utility poles and masts in SNLs has been addressed in the Network Utilities Decision. The other aspects of OS900.58 are addressed in this decision.
 - o *Save the Otago Peninsula (STOP) Inc Soc* (OS900.138), and *Forest and Bird NZ* (OS958.91 and OS958.93) relating to the activity status of network utilities in ASCVs.

1.1.1 Structure of Report

5. The Decision Report is structured by topic. The report does not necessarily discuss every individual submitter or submission point; instead it discusses the matters raised in submissions and records our decisions and reasons on the provisions relevant to each topic¹. Appendix 2 at the end of the report summarises our decision on each provision where there was a request for an amendment. The table in Appendix 2 includes provisions changed as a consequence to other decisions.
6. Schedule 1 of the Resource Management Act, 1991 (RMA) outlines key aspects of the process that must be used to prepare and make decisions on a Plan change (including the submission and hearing process).
7. Clause 16(2) of that schedule allows a local authority to make an amendment where the alteration “is of minor effect”, and to correct any minor errors, without needing to go through the submission and hearing process.
8. This decision includes some minor amendments and corrections that were identified by the DCC Reporting Officers and/or by us through the deliberations process. These amendments are referenced in this report as being attributed to “cl.16”. These amendments are summarised in Section 5.0.

¹ In accordance with Schedule 1, section 10 of the RMA.

1.2 Section 32AA Evaluation

9. Section 32 of the Resource Management Act 1991 (RMA) establishes the framework for assessing proposed objectives, policies and rules. Section 32AA of the RMA requires a further evaluation to be released with decisions, outlining the costs and benefits of any amendments made after the proposed Plan was notified.
10. The evaluation must examine the extent to which each objective is the most appropriate way to achieve the purpose of the RMA and whether, having had regard to their efficiency and effectiveness, the policies and rules proposed are the most appropriate for achieving the objectives. The benefits and costs of the policies and rules, and the risk of acting or not acting must also be considered.
11. A section 32AA evaluation has been undertaken for all amendments to the notified Plan. The evaluation is incorporated within the decision reasons in section 3.0 of this decision.

1.3 Statutory Considerations

12. The matters that must be considered when deciding on submissions on a district plan review are set out in Part 2 (sections 5-8, purpose and principles) and sections 31, 32 and 72-75 of the RMA. District plans must achieve the purpose of the RMA and must assist the council to carry out its functions under the RMA.
13. The s42A Report provided a broad overview of the statutory considerations relevant to this topic. These include:
 - Section 75(3) of the RMA, which requires us to ensure the 2GP gives effect to any National Policy Statement (NPS) or National Environmental Standard (NES) that affects a natural or physical resource that the Plan manages. We note that the following NPS and NES are directly relevant to this particular topic:
 - The New Zealand Coastal Policy Statement 2010 (NZCPS) sets out policies guiding the management of the coastal environment which includes policies relating to indigenous biodiversity, natural character, natural features and natural landscapes and public access.
 - The National Policy Statement for Freshwater Management 2014 (NPSFM) recognises the national significance of freshwater for New Zealand and directs local government to manage freshwater resources in an integrated and sustainable way. While freshwater is managed through Otago Regional Council processes, appropriate management of land use and development by territorial authorities also has a major impact on the protection of freshwater resources.
 - The National Environmental Standards for Plantation Forestry were enacted on 31st of July 2017 and came into force on the 1st May 2018. Earlier draft standards consulted on in 2011 and 2015 were incorporated in some provisions of the notified 2GP. Now that the standards are finalised they have been incorporated into the 2GP as far as is practical in the time available, but this is a complex exercise where the National Standards allow for more stringent requirements to recognise local circumstances, for example where areas with significant natural values have been identified. Further work is required to fully incorporate and integrate all the NES provisions into the 2GP. This does not require a public consultation process.
 - Section 74(2)(a) of the RMA, which requires us to have regard to the proposed Otago Regional Policy Statement (pRPS) and section 75(3)(c) of

the RMA, which requires us to ensure the 2GP gives effect to the operative Otago Regional Policy Statement (oRPS). We note that the proposed RPS was notified on 23 May 2015, and decisions released on 1 October 2016. At the time of making these decisions on 2GP submissions some of the proposed RPS decisions are still subject to appeal, and therefore it is not operative.

- Section 74(2)(b)(i), which requires us to have specific regard to any other key strategies prepared under the Local Government Act. The s42A Report highlighted the Dunedin Spatial Plan 2012 as needing to be considered as this DCC strategic document sets the strategic directions for Dunedin's growth and development for the next 30 plus years.

14. These statutory requirements have provided the foundation for our consideration of submissions. We note:

- where submissions have been received seeking an amendment of a provision and that provision has not been amended, we accept the advice in the original s42A Report that the provision as notified complies with the relevant statutory considerations
- where a submitter has sought an amendment in order to better meet the statutory considerations, we have discussed and responded to these concerns in the decision reasons
- in some cases, while not specifically raised, we have made amendments to the Plan as the evidence indicated this would more appropriately achieve these statutory considerations, in these cases we have explained this in our decision reasons
- where we have amended the Plan in response to submissions and no parties have raised concerns about the provisions in terms of any statutory considerations, and we have not discussed statutory considerations in our decision, this should be understood to mean that the amendment does not materially affect the Plan's achievement of these statutory considerations.

2.0 Hearing appearances and evidence presented

15. Submitters who appeared at the hearing are shown below in Table 1. All evidence can be found on the 2GP Hearing Schedule webpage under the relevant Hearing Topic <https://2gp.dunedin.govt.nz/2gp/hearings-schedule/index.html>

Table 1: Submitter Appearances at Natural Environment Hearing

Submitter (Submitter Number)	Represented by / experts called	Nature of evidence
Penguin Place Limited (FS2339)	Nicola McGrouther (representative)	Appeared at hearing. Tabled map and images.
Nigel Harwood (OS96)	Nigel Harwood	Appeared at hearing. Tabled statement.
Simon Ryan (FS2438)	Simon Ryan	Appeared at hearing.
Jeremy & Julie Cameron (OS969)	Jeremy & Julie Cameron	Appeared at hearing.
Department of Conservation (OS949, FS2379)	Pene Williams (DOC solicitor)	Legal statement tabled at hearing.
	Nadia Yozin (DOC planner)	Pre-circulated planning evidence. Appeared at hearing.
	Brian Rance (DOC ecologist)	Pre-circulated ecological evidence. Appeared at hearing.
	Laurence Barea (DOC ecologist)	Pre-circulated ecological evidence. Appeared at hearing.
Robert Van Turnhout (OS388, FS2155)	Robert Van Turnhout	Appeared at hearing & reconvened hearing. Tabled statement.
Murray Soal (OS291)	Murray Soal	Appeared at hearing & reconvened hearing. Tabled statement.

Submitter (Submitter Number)	Represented by / experts called	Nature of evidence
John Kaiser (OS165)	John Kaiser	Appeared at hearing. Tabled statement.
Yellow-eyed Penguin Trust (OS690)	Murray Brass (trustee) David McFarlane (Field Manager)	Appeared at hearing. Tabled statement.
William Ellison (OS323)	William Ellison Desiree Williams (Ngai Tahu Maori Law Centre)	Appeared at hearing.
David Middleton (OS992)	Emma Peters (planning consultant) Hugh Forsyth (landscape architect)	Planning and landscape evidence pre-circulated. Appeared at hearing.
Silverpeaks Station Ltd (OS469)	Michael and Virginia Cowie	Appeared at hearing & reconvened hearing. Tabled statement and showed video.
<i>Oceana Gold</i> (New Zealand) Limited (OS1088, FS2439)	Jackie St John, Debbie Clarke (<i>Oceana Gold</i>) Mark Christensen (legal counsel) Michael Thorsen (ERA Ecology Ltd)	Legal submission pre- circulated by Mark Christensen. Ecological evidence pre-circulated by Michael Thorsen and Debbie Clarke. All appeared at hearing. Documents tabled by Mark Christensen.
Timothy Ritchie (OS382)	Emma Peters (planning consultant) Hugh Forsyth (landscape architect)	Planning and landscape evidence pre-circulated. Appeared at hearing.
Horticulture New Zealand (OS1090, FS2452)	Lynette Wharfe (Agribusiness Group)	Planning evidence pre- circulated by Lynette Wharfe. Did not appear at hearing.

Submitter (Submitter Number)	Represented by / experts called	Nature of evidence
Graeme & Marie Bennett (OS289)	Graeme Bennett	Appeared at hearing. Tabled statement.
Geraldine Tait (FS2160)	Geraldine Tait	Appeared at hearing. Tabled statement.
Federated Farmers (OS919, FS2449)	David Cooper (Senior Policy Advisor)	Pre-circulated statement. Appeared at hearing.
Aurora Energy Limited (OS457, FS2375)	Campbell Hodgson (legal counsel)	Tabled legal statement. Did not appear at hearing.
Timothy George Morris (OS951), Timothy Morris (on behalf of RG and SM Morris Family Trust) (OS1054), Robert George & Sharron Margaret Morris (OS355)	Timothy Morris	Pre-circulated statement. Appeared at hearing (by teleconference).
Christopher Valentine (OS464)	Christopher Valentine	Appeared at hearing. Showed powerpoint presentation.
Transpower NZ Ltd	Ainslie McLeod (Beca Limited)	Appeared at hearing. Tabled documents.
Bruce Norrish (OS461)	Bruce Norrish	Tabled statement. Did not appear at hearing.
Peter Macmillan (OS140)	Peter Macmillan	Appeared at hearing. Tabled statement.
Christian Jordan (OS927)	Christian Jordan	Appeared at hearing. Showed powerpoint presentation.
Liz McLennan (OS680)	Liz McLennan Andrew Robinson (Patterson Pitts)	Appeared at hearing. Tabled statement.
Chorus NZ (FS2079), Spark NZ (FS2146), Vodafone NZ (FS2076)	Chris Horne (Incite)	Planning evidence tabled. Did not appear at hearing.
Ravensdown Ltd (OS893, FS2481)	Chris Hansen (Planner for Ravensdown)	Pre-circulated evidence. Did not appear at hearing.

Submitter (Submitter Number)	Represented by / experts called	Nature of evidence
Blueskin Resilient Communities Trust (OS1070, FS2229)	Ben Farrell (John Edmonds & Associates)	Planning evidence pre-circulated by Ben Farrell. Did not appear at hearing.
Bruce Bohm (OS632)	Bruce Bohm	Tabled statement. Did not appear at hearing.
Radio NZ Ltd (FS2332)	Grace Bennett (legal counsel)	Legal statement tabled. Did not appear at hearing.
Port Otago Ltd (OS737)	Len Andersen (legal counsel)	Legal statement tabled. Did not appear at hearing.
BP Oil NZ Ltd and Mobil Oil NZ Ltd and Z Energy Ltd (FS2487)	Georgina McPherson (Burton Consultants)	Planning evidence tabled. Did not appear at hearing.
Harboursides and Peninsula Preservation Coalition (OS447, FS2267)	Craig Werner	Tabled statement. Did not appear at hearing.
Save the Otago Peninsula (STOP) Inc. (OS900)	Lala Fraser	Appeared at hearing. Tabled statement.
Barbara and Donald McCabe (OS251)	Barbara and Donald McCabe	Tabled statement. Did not appear at hearing.
David Randle (OS707)	David Randle	Tabled statement. Did not appear at hearing.
David Holdsworth (OS73)	David Holdsworth	Appeared at reconvened hearing.
Bruce Bohm (OS632)	Bruce Bohm	Appeared at reconvened hearing.

16. Appearances for the Dunedin City Council were:

- Michael Bathgate, Jane Macleod, Katie James, Peter Rawson (Reporting Officers)
- Mike Moore (Landscape Architect)
- Marion Read (Landscape Architect)
- Kelvin Lloyd (Ecologist)

- Richard Ewans (Ecologist)
17. Evidence provided by the Reporting Officers included:
- Section 42 Report organised primarily under topic heading where responded to each submission point
 - opening statement (tabled and verbal)
 - revised recommendations (tabled and verbal) responding to each submitter who attended hearing or tabled statements and evidence
18. Planning assistance to the Hearing was provided by:
- Anna Johnson (City Development Manager)

3.0 Decisions on provisions sought to be amended

3.1 Definitions

3.1.1 Definition of Conservation

19. The definition of Conservation is: “The use of land for the establishment, maintenance or enhancement of indigenous vegetation and/or habitat for indigenous fauna. Examples of component activities of conservation are:
- restoration planting
 - pest and weed control
 - track construction and maintenance;
 - fencing.”
20. Submissions on the definition of Conservation were as follows:
- *Federated Farmers of New Zealand* (OS919.155) supported the definition, including the specific examples of component activities.
 - *Oceana Gold (New Zealand) Limited* (OS1088.4) supported the definition and noted that the activities contained in the definition are often proposed as part of development activities by way of mitigation or compensation.
 - The *Yellow-eyed Penguin Trust* (YPT) (OS690.1) sought to add the following clause to the definition of Conservation “This includes other activities such as grazing and vegetation clearance where undertaken in order to meet conservation requirements.” The submitter believed it should be as general as possible so that a wide range of conservation activities are supported and enabled by the Plan.
 - *Dunedin Rural Development Inc.* (OS853.5) sought to amend the definition to align closely with the Otago Regional Council Regional Policy Statement.
 - *Save the Otago Peninsula Inc. (STOP)* (OS900.1) and *Forest and Bird NZ* (OS958.1) sought to amend the definition to require restoration planting to use eco-sourced indigenous species. The *STOP* submission was opposed by *Geoff Scurr Contracting Limited* (FS2391.123), because of concerns about the implications of the term “ecosourced”.
 - *Otago Regional Council (ORC)* (OS908.95) sought to clarify whether Conservation activity in relation to Rule 11.3.2 (vegetation clearance – dune system mapped area) requires authorisation and by whom. This submission was supported by *Geoff Scurr Contracting Limited* (FS2391.35), who sought clarification of the definition of Conservation Activity.
21. In response to *Yellow-eyed Penguin Trust*, the Reporting Officer, Michael Bathgate, did not support the proposed expansion of the definition, as this would likely cause conflict with the rules and policies and how Conservation activity was intended to be considered in light of these rules. Mr Bathgate noted that Grazing is already permitted and that there are already exemptions for vegetation clearance as part of Conservation activity (s42A Report, p.29).
22. In response to *Dunedin Rural Development Inc.*, Mr Bathgate noted that there was no definition of ‘conservation’ in either the operative or decisions version of the proposed Regional Policy Statement (pORPS-dv).
23. Mr Bathgate did not support the *STOP* and *Forest and Bird* submissions, as he considered the suggestion to be too much of an imposition on landowners and people seeking to undertake restoration planting, as well as being difficult to monitor.

24. In relation to the *ORC* submission, he did not consider the intent of Rule 11.3.2.2.a to be that Conservation activity requires authorisation by any authority. As with the use of Conservation in exemptions to other Vegetation Clearance rules, or when used as an activity elsewhere in the 2GP, compliance with the rules relies on the activity itself meeting the definition of Conservation.
25. Mr Murray Brass and Mr Dave McFarlane appeared for *YPT* at the hearing and tabled a statement indicating concern that valid conservation activities could be unreasonably restricted. As well as light grazing and vegetation clearance, this included signs, nesting boxes, and viewing hides. *YPT* sought the definition of Conservation to be as broad as possible.
26. In response, the Reporting Officer noted that if 60m² or less, viewing hides would be permitted, except in ONCC, HNCC and ONF overlay zones.
27. At the hearing, Ms Lala Fraser appeared for *STOP* and tabled a statement. She noted the Reporting Officer's response regarding eco-sourcing which made reference to planting guidelines, and queried where these guidelines could be found and if they could form part of Environment Strategy implementation.
28. Mr Bathgate, in response to *STOP*, noted the comments regarding provision of planting guidelines by the Council, and drew these to the Panel's attention. With regard to the use of eco-sourcing for restoration planting, he did not change his recommendation and noted that the matter of eco-sourcing was discussed in the hearing with Dr Lloyd (ecologist called by DCC) who favoured, were some term required, some variation of "ecologically appropriate" that could also reference being appropriate to an area or ecological district.
29. Mr Bathgate also noted that the definition of indigenous vegetation refers to the dominance of "species indigenous to that part of New Zealand". He also noted the assessment rules for indigenous vegetation clearance included that, as a potential circumstance that may support an application, "clearance is of a non-local indigenous species that has extended beyond its range".
30. The Panel questioned whether a preference for this approach should be signalled at some point elsewhere in the 2GP, rather than in the definition of Conservation. Mr Bathgate was not opposed to this suggestion, but had not had time to fully consider how and where this might be incorporated.

3.1.1.1 Decision and Reasons

31. We reject the submission of *Yellow-eyed Penguin Trust* (OS690.1) to amend the definition of Conservation. We accept the Reporting Officer's evidence that broadening the definition to include Grazing and Vegetation Clearance is likely to cause conflict with the rules and policies, and consider it appropriate that these development activities (and others) be subject to the provisions associated with these activities. We note that rules associated with some development activities include exemptions for various activities associated with Conservation (for example the exemption of some vegetation clearance associated with Conservation activities from vegetation clearance rules, discussed in section 3.4, and the exemption of bird hides and viewing structures from setback from the coast and water body requirements, discussed in section 3.8.10). We therefore do not agree the definition constitutes "unreasonable restriction" of Conservation activities.
32. We reject the submissions of *Dunedin Rural Development Inc.* (OS853.5) and *Otago Regional Council* (OS908.95). We accept the Reporting Officer's evidence that there is no definition in the pORPS-dv to align with, and that it is not intended Conservation activity requires authorisation by any authority, with compliance instead relying on the activity itself meeting the definition of Conservation.

33. We reject the submissions of *STOP* (OS900.1) and *Forest and Bird NZ* (OS958.1). We accept that, to achieve the Objective 2.2.3 and Objective 2.4.5, it is desirable for Conservation activity to use ecologically appropriate species. However, we agree with the Reporting Officer that constraining the definition of Conservation activities to those activities using only locally sourced seed (as requested by these submitters) would be an imposition on people seeking to undertake restoration planting (particularly in the absence of readily available information about what constitutes ecologically appropriate in any given locality), along with being difficult to monitor. Instead, we recommend that the publication of planting guides, signalled by the Reporting Officer as a possible method outside of the 2GP, be progressed.

3.1.2 Definition of Biodiversity

34. *Yellow-eyed Penguin Trust (YPT)* (OS690.2) sought to either add a definition of biodiversity, as it is used extensively but is not defined in the 2GP or the RMA; or reference that it is equivalent to "biological diversity" as defined in the RMA. *Oceana Gold (New Zealand) Limited* (FS2349.69) opposed this submission as there was no proposed wording provided by YPT.
35. The Reporting Officer, Michael Bathgate, noted that a review of other district plans found that some provide a definition, in some cases using the RMA definition of biological diversity, while others refer to the Act for terms that are not defined within the plan. He noted that the operative Otago Regional Policy Statement includes a lengthier version of the RMA definition for biodiversity: "the variability among living organisms from all sources including, among other things, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems."
36. In contrast, he noted the pORPS-dv uses the term biological diversity in full and does not include a definition, referring instead to the interpretation found in the RMA.
37. He considered it was appropriate that the term biodiversity used in the 2GP had the meaning of biological diversity as defined in the RMA, and recommended that this definition be added to the 2GP. He considered that the word biodiversity is in common usage and is understood to have the same meaning as biological diversity so should be used (Section 42A Report, p.31).
38. This part of the YPT submission was not discussed by the submitter at the Hearing.
39. However, in evidence, Dr Thorsen (ecological expert), called by *Oceana Gold (New Zealand) Limited* commented that he suspected the words "biodiversity" and "biodiversity values", used throughout the 2GP, are not the right terms. He stated that biodiversity simply means the number of species in an area, including exotic species (unless qualified by "indigenous biodiversity") and does not automatically include other important considerations such as species' habitat, species' distributions, biogeographic patterns, ecological patterns, interconnections, ecotones, habitat corridors, ecosystems, ecosystem services, or the management and protection of species of conservation interest or other inherent characters such as public appreciation or landscape. He considered biodiversity is a value in of itself and therefore there are few biodiversity "values" except the relative qualifiers "high" or "low" biodiversity (neither of which automatically transcribe as important values – some areas with low biodiversity are very unique), "intact", or technical subgroups such as endemic, indigenous, exotic, adventitious.
40. He further commented that he suspected what is meant in many of the instances is "biota", or "biotic environment"/"natural environment" which are broader terms incorporating fauna and flora (and their habitat), or "habitat(s)", and "ecosystems".

He suggested better consideration of the correct term where the words “biodiversity” or “biodiversity value” are used in the 2GP.

41. Specifically, in response to the recommended definition of “biodiversity”, he disagreed with the statement that “as its abbreviated form ‘biodiversity’ is in common usage”. He stated that the scientific literature is littered with examples of studies in which ‘biodiversity’ is defined solely as the diversity of species present to definitions that include the ecosystems that support a diversity of species. He recommended that the unabbreviated words “biological diversity” are used to provide consistency with the Act. He did not support the definition of ‘biodiversity’ provided, considering it clumsily worded, not attributed to any source, containing terms open to interpretation (‘variability’, diversity) or not in common usage by ecologists (‘ecological complexes’). He said it is not clear if the use of the term ‘biodiversity’ includes exotic species, and considered it doubtful that the implied diversity of ecosystems is what is meant by the use of biodiversity in the 2GP, which emphasises single habitats. He also stated the definition does not include important considerations such as ecosystem services.
42. In revised recommendations, the Reporting Officer stated that he did not agree with the assessment that biodiversity means simply the number of species in an area. In his interpretation, ‘biodiversity’ as the truncated version of ‘biological diversity’, has a wider meaning, as ascribed in the RMA. He noted that Dr Lloyd is of the view that “biodiversity generally refers to genes, species, ecosystems, and ecological interactions.” The Reporting Officer also considered that ‘biodiversity’ is a commonly used term, for instance used by the Department of Conservation as well as the Business and Biodiversity Offsets Programme. He noted the definition recommended in the Section 42A Report is identical to the definition for biological diversity contained in the RMA, and a shorter version of the definition used in the Convention on Biological Diversity, and that it is in common usage as a definition in policy documents.

3.1.2.1 Decision and Reasons

43. We accept the submission of YPT (OS690.2). We accept the Reporting Officer’s evidence that the definition proposed for insertion in the 2GP reflects the definition of “biological diversity” in the RMA, that it is in use in a number of plans around the country, and that it is a shorter version of the definition used in the Convention on Biological Diversity. While we acknowledge questions raised by Dr Thorsen about elements of the definition, we agree with the Reporting Officer’s assessment that it is appropriate for the 2GP’s definition of “biodiversity” to align with the RMA definition of “biological diversity”.
44. We have added therefore a new definition of “biodiversity” as follows:
The variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems {NatEnv690.2}
45. We do accept the evidence of Dr Thorsen insofar as he identifies an issue of clarity around the way the terms “biodiversity” and “biodiversity values” are used in the 2GP. In particular, we agree that there is a lack of clarity about whether the objectives, policies and rules that refer to “biodiversity” or “biodiversity values” are concerned with exotic species, and the extent to which these provisions include considerations such as species’ habitat, ecosystems, ecosystem services, and other matters. As discussed in section 3.6.1.6 we have added a definition of “Biodiversity Values” in response to the submission of *Forest and Bird NZ* (OS958.60), which we consider addresses the issues of clarity raised in the evidence of Dr Thorsen.

3.2 Strategic Directions

3.2.1 Objective 2.2.3 Indigenous biodiversity

46. Objective 2.2.3 states “Dunedin's indigenous biodiversity is retained, enhanced and restored, with improved connections and resilience”.
47. *University of Otago* (OS308.39) and *Yellow-eyed Penguin Trust* (OS690.3) sought to retain Objective 2.2.3 and associated policies 2.2.3.1-2.2.3.4. They believed that protection of indigenous biodiversity is an appropriate requirement under the Act.
48. *Urban Cohousing Otepoti Ltd* (OS818.2) sought to retain Objective 2.2.3. They would like to see a return to native vegetation and a removal of pestilent vegetation such as gorse, broom, old man's beard, passion fruit vines etc., which they believe are flourishing on DCC reserve land presently.
49. *Otago Regional Council* (OS908.21) sought to retain Objective 2.2.3 and associated Policies 2.2.3.1, 2.2.3.2 and 2.2.3.4. They considered that, overall, the strategic direction objective and policies of the proposed district plan recognise the importance of biodiversity and ecosystem services and give effect to the Proposed RPS.
50. *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (OS1071.133) sought to retain Objective 2.2.3 that provides for retaining, enhancing and restoring indigenous biodiversity, because these objectives and policies are consistent with the Kai Tahu ki Otago Natural Resource Management Plan 2005.
51. *Forest and Bird NZ* (OS958.7) sought to amend Objective 2.2.3 to read “Dunedin's indigenous biodiversity is identified, protected, retained, enhanced and restored, with improved connections and resilience”. This submission was opposed by *Federated Farmers* (FS2449.36), who stated that matters relating to identification are adequately covered elsewhere in the 2GP and that protection of indigenous biodiversity will not always be necessary and appropriate.
52. *Oceana Gold (New Zealand) Limited* (OS1088.13) sought to amend Objective 2.2.3 to read “Dunedin's indigenous biodiversity is managed so that it is retained, enhanced and restored, or when adversely affected by other land use activities, those adverse effects are remedied, mitigated or compensated so that overall Dunedin's indigenous biodiversity has ~~with~~ improved connections and greater resilience”. The submitter sought recognition that some appropriate activities unavoidably result in some loss of or change to indigenous biodiversity, and to provide for remedying, mitigating or compensating any such loss.
53. In response to *Forest and Bird*, the Reporting Officer, Michael Bathgate, acknowledged that Objective 2.2.3 was the overarching strategic objective in relation to biodiversity and, as such, encompassed the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as set out under section 6(b) of the RMA. He noted, however, that Objective 2.2.3 also encompassed the management of other areas of indigenous biodiversity that may not be considered ‘significant’ according to the criteria set out in Policy 2.2.3.1. With this in mind, he had the view that identification and protection are important methods in achieving this outcome, but sit better at the policy level as they do necessarily apply to all indigenous vegetation managed by the 2GP (Section 42A Report, pp.47-48).
54. In response to *Oceana Gold's* requested addition of “managed so that it is”, Mr Bathgate thought that “management” should not be an objective in itself and did not

reflect the general drafting protocol which presented objectives in terms of desirable end states, that may be aspirational. Mr Bathgate acknowledged that indigenous biodiversity cannot always be retained, enhanced and restored, but noted that, as this was a strategic objective, it was seeking these outcomes at an overall or city-wide level rather than applying to indigenous biodiversity on a specific site, affected by a particular proposal.

55. In terms of the *Oceana Gold* request to add “or when adversely affected by other land use activities, those adverse effects are remedied, mitigated or compensated so that overall Dunedin’s indigenous biodiversity has”, Mr Bathgate considered that this addition was expanding the objective to include elements which were more appropriately addressed through policies which explained how the objective should be achieved. He did note, however, that a framework for biodiversity offsetting had been recommended for inclusion by adding a new policy under Objective 2.2.3.
56. In terms of the request to add the word “greater” before resilience, Mr Bathgate noted that the way the sentence was constructed the word “improved” was intended to apply to both connections and resilience, and “improved” could be considered a close synonym to “greater”. He then stated that the inclusion of the word “greater” might improve the clarity of the objective and emphasis around increased resilience, and recommended that this part of the submission of *Oceana Gold* was accepted.
57. At the hearing, Dr Mike Thorsen (ecological expert) appeared for *Oceana Gold* and tabled evidence that considered the word “retain” to be inconsistent with land use and development, such as mining. He also stated that mitigation and ecological compensation in other locations are mechanisms by which an activity’s impact can be compensated, but would be inconsistent with the word “retain”.
58. In response, the Reporting Officer did not consider that mitigation and compensation to improve biodiversity elsewhere are inconsistent with a citywide objective to retain biodiversity (Revised Recommendations Summary, p.13).
59. At the hearing, in relation to Objective 2.2.3 the Panel questioned whether “...both improved connections and ~~greater~~ resilience” would improve the drafting of this Objective as “greater” is not quite synonymous with “improved”, which has scale as well as quality implications.
60. In response, Mr Bathgate agreed that “both improved connections and resilience” was better drafting. However, upon reviewing the *Oceana Gold* original submission he was uncertain whether the inclusion of “greater” was an intended part of their submission or a copying error on the submitter’s part, as the word was not underlined. In any case, he considered an amendment could be made as a clause 16 amendment as it did not change the substance of the rule as “improved” was intended to apply to both nouns.

3.2.1.1 Decision and reasons

61. We accept in part the submission of *Forest and Bird NZ* (OS958.7). We accept the evidence of the Reporting Officer that this strategic objective encompasses the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. As discussed in section 3.3, the higher order policy framework (including s6(c) of the RMA, and the pORPS-dv) mandates protection of significant indigenous vegetation and habitats. We consider Objective 2.2.3 should reflect this insofar as it relates to significant indigenous vegetation and habitats, as “retained” can be interpreted to have a slightly different meaning.
62. However, accepting the Reporting Officer’s evidence that Objective 2.2.3 also encompasses the other areas of indigenous biodiversity, we consider a distinction needs to be made in the objective as these areas of biodiversity are not subject to the

same management approach. We also agree with the Reporting Officer that the word “identified” sits better at a strategic directions policy level, as it is a method to achieve protection, rather than a desirable outcome in and of itself.

63. We accept in part the submission of *Oceana Gold (New Zealand) Limited* (OS1088.13). We accept the Reporting Officer’s evidence that the submitter’s recommended amendment does not reflect the general drafting protocol and that the objective presents a desirable city-wide end state, rather than a management regime. However, we were persuaded by the evidence of Dr Thorsen that the word “retained” sets a higher bar for biodiversity than provisions elsewhere in the 2GP, which seek to “maintain” and/or enhance biodiversity (including through provisions that guide the application of biodiversity offsetting and environmental compensation). We consider replacing “retained” with “maintained” as far as the wording of the objective relates to biodiversity not deemed significant, constitutes partial alternative relief for the submission of *Oceana Gold (New Zealand) Limited* (OS1088.13).
64. We also agree that the wording of Objective 2.2.3 benefits from a clause 16 change to clarify that “improved” applies to both nouns, and (consequential to the amendments described above) all biodiversity.
65. In response to submissions, we have therefore amended Objective 2.2.3 to read: “Dunedin’s significant {NatEnv 958.7} indigenous biodiversity is ~~retained~~, protected or {NatEnv 958.7} enhanced, and restored; and other indigenous biodiversity is maintained or enhanced, and restored; {NatEnv 1088.13} with all indigenous biodiversity having {NatEnv cl.16} improved connections and improved {NatEnv cl.16} resilience.”
66. We have also made a consequential change to assessment Rule 10.7.2.1 to reflect the amendments to Objective 2.2.3.

3.2.2 Policy 2.2.3.2

67. Policy 2.2.3.2 states: ““Maintain or enhance indigenous biodiversity in the rural environment through rules that:
 - a. restrict indigenous vegetation clearance along coastal margins, riparian corridors and in wetlands;
 - b. protect indigenous vegetation in Scheduled Areas of Significant Conservation Value (ASCVs);
 - c. protect threatened species and mature examples of important native trees, and otherwise limit the removal of indigenous vegetation;
 - d. manage the location and scale of development adjacent to the coast and water bodies; and
 - e. require esplanade reserves or esplanade strips when land is subdivided adjacent to the coast and identified water bodies”.
68. *Yellow-eyed Penguin Trust* (OS690.5) sought to amend Policy 2.2.3.2 to include reference to habitats of indigenous fauna.
69. *STOP* (OS900.10) and *Forest and Bird* (OS958.9) sought to amend the word “restrict” in clause (a) to “avoid”. *Forest and Bird* stated that indigenous vegetation in coastal and riparian areas and wetlands should not be cleared. *Geoff Scurr Contracting* (FS2391.74) and *Federated Farmers* (FS2449.39, 40) opposed these submissions as they believed that “avoid” will be taken as “prohibit” and some indigenous vegetation clearance will be appropriate in certain circumstances.
70. *STOP* (OS900.10) and *Forest and Bird* (OS958.9) also sought to add reference to “coastal dunes and turfs” in clause (a).

71. *STOP* (OS900.10) and *Forest and Bird* (OS958.9) requested clause (c) be amended to read “otherwise ~~limit~~ minimise the removal of indigenous vegetation”. This part of clause (c) leads, via Policy 10.2.1.3, to Rule 10.3.2.2 Maximum area of indigenous vegetation clearance. *Forest and Bird* (OS958.9) also sought to add to clause (c) “and provide for the maintenance of indigenous vegetation and habitats of indigenous species”.
72. *Federated Farmers of New Zealand* (OS919.9) sought to amend Policy 2.2.3.2.c by removing the phrase “and otherwise limit the removal of indigenous vegetation”. The submitter considered that with the overall approach taken in Policy 2.2.3.1 and other matters proposed within Policy 2.2.3.2, Policy 2.2.3.2.c was unnecessarily restrictive. *HPPC* (FS2267.2) opposed this submission as they disagreed that it was unnecessarily restrictive. *Forest and Bird NZ* (FS2482.11) opposed this submission as they said minimising impacts on indigenous vegetation provides flexibility where appropriate.
73. In response to *Yellow-eyed Penguin Trust*, the Reporting Officer, Mr Bathgate, considered that the policy already encompassed the habitats of indigenous fauna as this was a necessary part of indigenous biodiversity. He stated that the reference to indigenous vegetation rather than habitats in clauses (a) and (c) of the policy was because these set up a tool to achieve this policy, namely the indigenous vegetation clearance rules. However, Mr Bathgate agreed the terminology in clause (b) was too limited, as ASCVs are intended to protect both areas of significant indigenous vegetation and significant habitats of indigenous fauna. He recommended an amendment to clause (b) to rectify this (s42A Report, pp. 68-71).
74. Mr Bathgate did not support the *STOP* and *Forest and Bird* submissions to use the word “avoid”, as he considered that avoidance would be too strict and be taken to mean prohibition. He considered the wording of “restrict”, which led to a performance standard that restricted indigenous vegetation clearance in the areas described in clause (a), was appropriate.
75. In response to the *STOP* and *Forest and Bird* requests to add reference to “coastal dunes and turfs” in clause (a), Mr Bathgate considered that clause (a) provided a broader set of restrictions on indigenous vegetation clearance in coastal areas than was implied by the current wording of clause (a). Rather than the amendment proposed by the submitters, he considered the wording of “coastal margins” should be changed to “the coastal environment” to recognise this broader protection.
76. Mr Bathgate also did not agree with the requests of *STOP* and *Forest and Bird* to use the term “minimise” in clause (c), stating “I consider the word “limit” to be a more accurate reflection of this method used in the plan which sets limits, not a sliding target to “minimise”” (s42A Report, p.70).
77. In terms of the *Forest and Bird* (OS958.9) request to add to clause (c) “and provide for the maintenance of indigenous vegetation and habitats of indigenous species”; Mr Bathgate stated that clause (c) relates to Rule 10.3.2.2, the performance standard for maximum area of indigenous vegetation clearance, and Rule 10.3.2.4, the performance standard for protected species. He considered the clause as worded was an accurate description of these methods.
78. In response to *FFNZ*, Mr Bathgate reiterated that this part of clause (c) leads to Rule 10.3.2.2 (Maximum area of indigenous vegetation clearance). It was an accurate description of the method and he recommended it was not removed unless the related performance standard was also removed from the Plan.
79. At the hearing, *Oceana Gold (New Zealand) Limited* called Dr Mike Thorsen (ecological expert) whose evidence questioned the word “threatened” which has a specific meaning under DOC’s 2008 Threatened Classification System Manual, and suggested changing it to “protected indigenous species” (para 43 of Thorsen evidence). Note

that this related to an *Oceana Gold* further submission (FS2439.36) opposing *STOP* submission (OS900.157) to add a new rule to protect non-scheduled significant indigenous vegetation and habitats, which is discussed in section 3.3.1 below.

80. In response, Mr Bathgate did not consider there was scope to make such a change based on *Oceana Gold's* further submission. Mr Bathgate considered the use of the word "threatened" acceptable, as long as the 2GP is clear in defining these species and their threat classifications in Appendix 10A (Revised Recommendations Summary, p.13).
81. At the hearing, Mr David Cooper appeared for *Federated Farmers* and tabled a statement. *Federated Farmers* agreed with the Section 42A Report discussion that clause (c) was necessary to give direction to the subsequent rules, and also had no issue with the rewording of Policy 2.2.3.2 as recommended in the Section 42A Report as this would provide greater clarity.

3.2.2.1 Decision and reasons

82. We accept in part the submission of the *Yellow-eyed Penguin Trust* (OS690.5). We accept the Reporting Officer's evidence that the policy already encompasses the habitats of indigenous fauna (as part of "indigenous biodiversity"), but that amendment is required in clause (b) to clarify that the method is also intended to protect habitat. We note that, as a result of decisions outlined in section 3.4.7, "threatened species" in clause (c) also relates to threatened indigenous fauna species listed in new Appendix 10A.2. We note the rules described in clauses (a), (d), (e) and new clause (f) all describe rules that protect in some way the habitats of indigenous fauna.
83. In relation to the submissions of *STOP* (OS900.10) and *Forest and Bird* (OS958.9):
- We do not support the suggested replacement of "restrict" with "avoid" in clause (a), as we agree with the Reporting Officer that would suggest prohibition of indigenous vegetation clearance in these areas, which is not the approach we have taken. We do however consider it within the scope of these submissions to amend the clause so that it more accurately describes the rule framework (which entails setback requirements for indigenous vegetation clearance along the coast, wetlands and water bodies, and restricted discretionary activity status for indigenous vegetation clearance in the coastal environment mapped area and wetlands).
 - We do not support adding reference to "coastal dunes and turfs" in clause (a), as it would suggest these vegetation types are explicitly referenced in the rule, which they are not. However, we do agree that the rules provide a broader set of restrictions on indigenous vegetation clearance in coastal areas than implied by the current wording of clause (a), and therefore support the Reporting Officer's recommended change from "coastal margins" to "the coastal environment".
 - We do not support the submission that clause (c) be amended to read "otherwise ~~limit~~ minimise the removal of indigenous vegetation". We agree with the Reporting Officer's assessment that "limit" is a more accurate reflection of the method used in the plan which sets limits to the area of indigenous vegetation that can be cleared.
 - We do not support adding "and provide for the maintenance of indigenous vegetation and habitats of indigenous species" to clause (c). We agree with the

Reporting Officer that clause (c) accurately describes the methods in the Plan, and no clarification is required.

84. We consider this constitutes acceptance in part of *STOP* (OS900.10) and *Forest and Bird* (OS958.9), noting that other aspects of these submissions, and corresponding amendments, are outlined in section 3.3.1.
85. We reject the submission of *Federated Farmers of New Zealand* (OS919.9) seeking to remove the phrase “and otherwise limit the removal of indigenous vegetation”. We agree with the Reporting Officer that the clause is a relatively accurate description of the method, and note also that *Federated Farmers of New Zealand* said, at the hearing, it no longer sought removal of the phrase. We do however consider that “removal” should be amended to “clearance” as a clause 16 change, as it is a clearer description of the method.
86. We agree with the Reporting Officer’s assessment that there is no scope from submissions to amend reference to the word “threatened”, as suggested in the evidence of Dr Thorsen, and accept the Reporting Officer’s evidence that use of the word “threatened” is acceptable, as long as the 2GP is clear in defining these species and their threat classifications in Appendix 10A.
87. In response to submissions, we have therefore amended Policy 2.2.3.2 as follows (note that this also includes amendments in response to OS958.60, discussed in section 3.6.1.6 below, and OS900.35, discussed in section 3.6.1.7):
- “Maintain or enhance indigenous biodiversity in the rural environment through rules that:
- a) require indigenous vegetation clearance to be set back from the coast, wetlands and water bodies, and that restrict indigenous vegetation clearance along in the coastal margins environment, riparian corridors and in wetlands; {NatEnv 900.10, 958.9}
 - b) protect significant indigenous vegetation and/or significant habitats of indigenous fauna {NatEnv 690.5} in Scheduled Areas of Significant Conservation Biodiversity Value (ASCBVs); {NatEnv 958.60}
 - c) protect threatened species and mature examples of important native trees, and otherwise limit the removal clearance {NatEnv cl.16} of indigenous vegetation;
 - d) manage the location and scale of development adjacent to the coast and water bodies; and {NatEnv cl.16}
 - e) require esplanade reserves or esplanade strips when land is subdivided adjacent to the coast and identified water bodies; and {NatEnv cl.16}
 - f) require the assessment of effects on biodiversity values for discretionary and non-complying land use, development and citywide activities. {NatEnv 900.35}”

3.2.3 Policy 2.2.3.3

88. Policy 2.2.3.3 states: “Encourage conservation activity in all zones through:
- a. rules that enable conservation activity; and
 - b. assessment rules that encourage the consideration of the positive effects of conservation (protection or enhancement of indigenous biodiversity) as part of consent applications”.
89. *Yellow-eyed Penguin Trust* (OS690.6) sought to retain Policy 2.2.3.3 as the policy was appropriate.

90. *Federated Farmers of New Zealand* (OS919.100) sought to retain Policy 2.2.3.3, as the policy, in conjunction with their proposed amendments to Policies 2.2.3.1 and 2.2.3.2, provided for a reasonable balance between regulating for protection of significant indigenous vegetation and habitat values and providing a supportive framework which encouraged conservation activity in partnership with landowners and resource users.
91. *Otago Regional Council (ORC)* (OS908.24) sought to amend Policy 2.2.3.3.b to add restoration to the types of conservation that form part of the assessment for consent applications. They considered that, overall, the strategic direction objective and policies of the 2GP recognised the importance of biodiversity and ecosystem services and gave effect to the Proposed RPS. *STOP* (OS900.11) and *Forest and Bird* (OS958.10) also sought reference to 'restoration' in Policy 2.2.3.3.b.
92. *STOP* (OS900.11) and *Forest and Bird* (OS958.10) requested that the policy be amended to add a new clause "c. Requiring restoration of indigenous vegetation to utilise indigenous species that naturally occur in the area." The submitters did not provide any particular reason for this request, stating that they "generally support, but need to add restoration". *Geoff Scurr Contracting Limited* (FS2391.75) and *Federated Farmers of New Zealand* (FS2449.41) opposed these submissions, because they believe that restoration in the way proposed goes over and beyond the principles of sustainable management within the RMA in this area.
93. The Reporting Officer agreed with *ORC* that restoration was one of the components of conservation activity that should be considered as a positive effect when assessing consent applications. Mr Bathgate recommended an amendment to Policy 2.2.3.3 to this effect, and noted that, in the relevant assessment rules where the positive effects of conservation activity are considered, conservation activity is referred to as a whole, rather than referring to component parts such as restoration (s42A Report, pp.73-74).
94. Mr Bathgate acknowledged the *STOP* and *Forest and Bird* concerns that it may be considered good conservation practice to use naturally occurring species. He did not, however, consider it should be a mandatory requirement that restoration should utilise naturally occurring indigenous species, as he considered this may be too restrictive an imposition on landowners and people seeking to undertake restoration planting and may have a negative impact on the willingness of people to undertake such conservation activities. He noted the need for this amendment had not been justified, and considered that non-regulatory methods may be available to achieve the same intended outcome, such as the use of planting guides with suggested local species (s42A Report, p.74).

3.2.3.1 Decision and reasons

95. We accept the submission of *ORC* (OS908.24) and accept in part the submissions of *STOP* (OS900.11) and *Forest and Bird* (OS958.10), and have amended Policy 2.2.3.3.b to include the word "restoration" (refer Appendix 1). We note that "restoration planting" is part of the definition of Conservation activity, and thus agree with the Reporting Officer's assessment that restoration should be listed alongside other elements of Conservation in Policy 2.2.3.3.b.
96. We reject that part of the submissions of *STOP* and *Forest and Bird* to add a new clause (c) to Policy 2.2.3.3. We accept that, to achieve Objective 2.2.3 and Objective 2.4.5, it is desirable for Conservation activity to use ecologically appropriate species. We agree with the Reporting Officer, however, that constraining the definition of Conservation activities to those activities using only locally sourced seed would be an imposition on people seeking to undertake restoration planting, along with being difficult to monitor. We recommend that the publication of planting guides, signalled by the Reporting Officer as a possible method outside of the 2GP, be progressed.

3.2.4 Policy 2.2.3.4

97. Policy 2.2.3.4 states: "Encourage maintenance and enhancement of biodiversity values in the urban environment through:
- a. identification of an urban conservation mapped area and rules that restrict vegetation clearance in these areas;
 - b. rules that restrict vegetation clearance along water bodies;
 - c. requiring esplanade reserves or esplanade strips when land is subdivided adjacent to the coast and identified water bodies; and
 - d. rules that require buildings, structures and earthworks to be set back from the coast and identified water bodies"
98. *Urban Cohousing Otepoti Ltd* (OS818.12) sought to amend Policy 2.2.3.4 to encourage replacement of exotic with native flora. They would like to see a return to native vegetation and a removal of pestilent vegetation such as gorse, broom, old man's beard, passion fruit vines etc., which they believe are flourishing on DCC reserve land presently.
99. *STOP* (OS900.12) and *Forest and Bird NZ* (OS958.11) sought to amend Policy 2.2.3.4 as follows: "~~Encourage maintenance~~ Maintain and enhancement of biodiversity values in the urban environment through: b. rules that restrict vegetation clearance along water bodies and coastal margins;...". The submitters stated that Policy 2.2.3.2 correctly provides for the maintenance and enhancement of indigenous biodiversity, whereas this policy is only to encourage maintenance. They also stated that vegetation clearance needs to be restricted along coastal margins in order to fulfil obligations under the NZ Coastal Policy Statement.
100. *Federated Farmers of New Zealand* (FS2449.43, 44) opposed *STOP* and *Forest and Bird* because the best outcomes for biodiversity can be attained through 'encouragement' via education and promotion of biodiversity values. *John Scott* (FS2140.4), *Ben Graham* (FS2279.4), *Mathew O'Connell* (FS2300.4), *Geoff Scurr Contracting Limited* (FS2391.79) and *Pigeon Flat Road Group* (FS2416.4) opposed *Forest and Bird NZ* because any amendment of this nature must take account of the need for farming to be able to continue without undue compromise to the use of land.
101. The Reporting Officer, Michael Bathgate, did not support the amendment requested by *Urban Cohousing Otepoti Ltd* because it did not align with any rules in the plan, and rules requiring pest plant clearance were generally a regional requirement under the Regional Pest Management Strategy (Section 42A Report, pp.76-77).
102. Mr Bathgate supported the amendment proposed by *STOP* and *Forest and Bird* to amend the start of Policy 2.2.3.4, although he favoured "Maintain or enhance" to align with Policy 2.2.3.2. He considered this wording to be a more accurate reflection of the methods used in the plan which include performance standards.
103. Mr Bathgate also supported the second amendment proposed by the submitters, to add "and coastal margins" to clause (b), and noted that this part of the policy leads to a performance standard that applies to mean high water springs as well as water bodies, so he considered this amendment more accurately reflected the related method that the policy sets up.

3.2.4.1 Decision and reasons

104. We reject the submission of *Urban Cohousing Otepoti Ltd* (OS818.12). We consider the vegetation clearance provisions of the 2GP (discussed in section 3.4) encourage the replacement of pest species with indigenous species, and thus no change is

required to achieve the outcome sought. Specifically, we note that the 2GP permits (as Indigenous Vegetation Clearance – Small Scale, and in protected areas) clearance:

- that is part of conservation activity involving vegetation clearance and replacement with indigenous species;
 - that is consistent with or provided for as part of a conservation management strategy, conservation management plan, reserve management plan or covenant established under the Conservation Act 1987 or any other Act specified in the First Schedule of that Act; and
 - of pest plants listed in Appendix 10B.
105. In addition, the 2GP vegetation clearance controls in protected areas exempt clearance of non-indigenous plant species where there is replanting within 3 months with plant species, not on the pest plant list in Appendix 10B, that will attain at least the same height and coverage as the plants that have been cleared.
106. We accept in part the submissions of *STOP* (OS900.12) and *Forest and Bird NZ* (OS958.11), and have amended Policy 2.2.3.4 by starting the policy with “~~Encourage maintenance and enhancement of~~ Maintain or enhance...” (refer Appendix 1). We accept the Reporting Officer’s evidence that “Maintain or enhance” better reflects the provisions of the 2GP, which include performance standards, as well as better delivering on Objective 2.2.3, and better aligning Policy 3.1.9 of the pORPS-dv and with Council’s functions under s31(b)(iii) of the RMA.
107. We do not support appending the words “and coastal margins” to clause (b). We note that the 2GP does not manage vegetation clearance along coastal margins in the urban environment, outside of the Recreation Zone. While there may be merit in revisiting this as part of a future plan review, given the extensive nature of the amendments that would be required to introduce such an approach, taking into account the principles of natural justice we consider any such change would be better progressed as part of a future plan change process.

3.2.5 Request to add new policies under Objective 2.2.3

108. *Dianne Reid* (OS592.2) and *Pigeon Flat Road Group* (OS717.3) sought to add a new policy under Objective 2.2.3, as follows: “Recognise that retention, enhancement and restoration of indigenous biodiversity can compromise other values of land, such as productive capacity. Where that is the case enable alternative subdivision and development options that will enable the retention, enhancement and restoration of indigenous biodiversity.” The submitters considered it appropriate to support alternative development options where indigenous biodiversity values exist that will enable those values to be maintained and enhanced, and that simply encouraging conservation activity is not sufficient. *David and Kerry Hiom* (FS2473.2) opposed *Dianne Reid*, due to opposition to more intensive zoning and land use in the vicinity of Saddle Hill Road.
109. *Federated Farmers of New Zealand* (OS919.10) sought to add a new policy as follows: “Recognise anticipated activities in rural areas such as farming and the efficient use of land and resources while having regard to the maintenance, protection or enhancement of indigenous biodiversity values”, to specifically recognise anticipated activities in rural areas such as farming while at the same time seeking to protect indigenous biodiversity values. This submission was supported by *John Scott* (FS2140.34), *Ben Graham* (FS2279.34), *Mathew O’Connell* (FS2300.34), and *Pigeon*

Flat Road Group (FS2416.38) who considered this provides appropriate recognition of the importance of farming activity; and *Horticulture New Zealand* (FS2452.76) who believed the new policy supports the intent of the Plan to enable rural production activities. The submission was opposed by *HPPC* (FS2267.3) as the wording is too weak and vague; and *Forest and Bird* (FS2482.13) who thought the suggested policy unnecessary and repetitive of the RMA purpose.

110. *Forest and Bird NZ* (OS958.57) sought to add a specific objective and policies to give effect to the New Zealand Coastal Policy Statement (NZCPS), including Policy 11, which seeks the protection of indigenous biological diversity in the coastal environment. The submitter considered that while various policies meet some of these, it would be more helpful if they were covered specifically, both in the Strategic Directions and the Natural Environment section of the Plan.
111. The Reporting Officer, Michael Bathgate, did not support the inclusion of a new policy requested by *Dianne Reid* and *Pigeon Flat Road Group*. While he acknowledged the comments of the submitters that non-productive land uses (such as use of land for rural residential activity) may have the potential to support positive outcomes for indigenous biodiversity, he noted that Policy 2.2.3.3 already set out the use of “assessment rules that encourage the consideration of the positive effects of conservation (protection or enhancement of indigenous biodiversity) as part of consent applications” (Section 42A Report, pages 80-83).
112. In response to *FFNZ*, Mr Bathgate stated that the proposed policy was not an appropriate course of action necessary to achieve Objective 2.2.3, but rather related to an objective about enabling farming, which was included in other objectives in the 2GP. The protection of the capacity for productivity, including the productivity of farming and other rural activities, was covered under Strategic Objective 2.3.1. In his view, it would detract from plan clarity to have these matters repeated under this strategic objective. In terms of the substantive change sought by the policy change – to ensure adequate and balanced recognition of anticipated activities such as farming in rural areas alongside the protection of indigenous vegetation – he noted recommended amendments to the rural zones assessment rules that would introduce the assessment of positive effects in terms of supporting farming or conservation activity and the consideration of Objective 16.2.1 in any consideration of consent applications for development performance standard contraventions, restricted discretionary or discretionary activities.
113. In response to *Forest and Bird NZ* (OS958.57), Mr Bathgate did not agree the notified objectives and policies were not appropriate methods to give effect to NZCPS Policy 11, 13 and 14. He did agree that, in terms of ensuring the outcomes in Policy 11 which require the avoidance of adverse effects on specific types of biodiversity, the Plan has some weaknesses. In response, he noted amendments he had recommended in response to other submissions to remedy these flaws. He also agreed with *Forest and Bird* that the recognition of the need for protecting indigenous biodiversity in the coastal environment could have more prominence in the 2GP. Mr Bathgate recommended that 10.1 Introduction was amended to reference how the Natural Environment section gives effect to the NZCPS in this respect.

3.2.5.1 Decision and Reasons

114. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
115. We reject the submissions of *Dianne Reid* (OS592.2) and the *Pigeon Flat Road Group* (OS717.3) to add new policies under Objective 2.2.3. We agree with the Reporting Officer’s assessment that Policy 2.2.3.3 already describes the use of assessment rules

that encourage the consideration of the positive effects of conservation as part of consent applications, and consider this achieves the outcome sought by the submitters.

116. We reject the submission of *Federated Farmers of New Zealand* (OS919.10). We accept the Reporting Officer's evidence that outcomes relating to the protection of the capacity for productivity are covered under Strategic Objective 2.3.1, and that it would detract from plan clarity to repeat these issues under Objective 2.3.3. We agree that amendments to assessment rules (discussed in sections 3.4.6 and 3.10.4 below) ensure adequate and balanced recognition of anticipated activities in rural areas, alongside the protection of indigenous vegetation.
117. We accept in part the submission of *Forest and Bird NZ* (OS958.57). We accept that Policy 11 of the NZCPS specifically addresses indigenous biodiversity in the coastal environment, and is particularly directive in relation to significant indigenous biodiversity, upon which it states adverse effects should be avoided. It also states significant adverse effects on other (listed) aspects of indigenous biodiversity should be avoided, and other effects on these values avoided, remedied or mitigated. We accept that amendments are required to the 2GP to give effect to this direction. We consider the following amendments (described in detail in sections 3.3.1, 3.3.3, 3.3.4, 3.4.7, 3.5.5, 3.6.1, 3.6.6.) achieve the outcome sought by the submitter. In summary, we have:
- Added new Policy 2.2.3.5, which states that a biodiversity offset should only be considered where it is not contrary to Policy 11 of the New Zealand Coastal Policy Statement.
 - Added new Policy 10.2.1.X, which provides a policy test relating to effects on biodiversity values for activities in areas of significant indigenous vegetation and significant habitats of indigenous fauna outside of ASBVs.
 - Added assessment guidance to relevant performance standard contraventions, restricted discretionary and discretionary assessment rules in the Natural Environment section of the 2GP clarifying that, in assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one of more of the significance criteria set out in Policy 2.2.3.1.
 - Added new Policy 10.2.1.Y, which provides a policy test relating to effects on biodiversity values for non-complying activities in ASBVs.
 - Amended Policy 10.2.1.4, to provide a strict policy test for contraventions of the protected species indigenous vegetation clearance performance standard, requiring that there is not net loss and preferably a net gain in biodiversity values.
 - Added new Policy 10.2.1.W, to provide a policy test relating to effects on biodiversity values for all discretionary and non-complying land use, development and city-wide activities.
 - Amended Policy 10.2.1.9, to ensure consistency of the policy test relating to biodiversity values for subdivision activities, comparative to that for other activities.
 - Amended the activity status of Indigenous Vegetation Clearance – Large Scale to non-complying in ASBVs, with the associated amendments to relevant policies.

- Added a definition of “biodiversity values” and amended relevant assessment matters to refer to “effects on biodiversity values”, to clarify that provisions relate not only to the intrinsic values of indigenous biota, but also to those of indigenous or mixed habitats and ecosystems that support indigenous biota.
118. In addition, we accept the Reporting Officer’s recommendation that an additional sentence be added to the Natural Environment Section Introduction as follows: “Further, the New Zealand Coastal Policy Statement 2010 requires protection of indigenous biological diversity in the coastal environment. {NatEnv 958.57}”. We consider this helps to clarify that many Natural Environment Section provisions are a response to the NZCPS.
119. Policy 13 of the NZCPS is directive in relation to avoidance of adverse effects on parts of the coastal environment identified as having outstanding natural character values, and the avoidance of significant adverse effects and the avoidance, remediation or mitigation of other adverse effects on natural character in all other areas of the coastal environment. The pORPS-dv is also directive in relation to avoidance of adverse effects on the values that contribute to the outstanding natural character of an area, and the avoidance of significant adverse effects on the values that contribute to the high natural character of an area (Policy 3.2.9 and Policy 3.2.10). We accept that amendments are required to the 2GP to give effect to this direction. Amendments are described in detail in section 3.7. However, in summary, we have:
- Applied a strict “insignificant” policy test to all activities in ONCC and HNCC overlay zones, irrespective of activity status, in recognition of the outstanding or high values of these sites and the direction provided by the NZCPS. The only exception to this is for natural hazard mitigation activities, for which an alternative “adequately mitigated” policy test is available in situations when there are “no practicable alternative locations”, in recognition of the fact that the management of significant risks from natural hazards is also a s6 matter under the RMA.
 - Confirmed the notified “no more than minor” policy test to activities in the NCC overlay zone, with an alternative “adequately mitigated” policy test available only to some city-wide activities which may need to locate in the NCC overlay zone for operational reasons, in which case they must demonstrate there are “no practicable alternative locations”.
 - Amended the activity status of Landfills and Mining to prohibited, and of Indigenous Vegetation Clearance – Large Scale to non-complying in ONCCs and HNCCs, with the associated amendments to relevant policies.
 - Amended Objective 10.2.3 to use the word “preserved”, and Policy 10.2.3.7 to use the words “preserve and enhance”, consistent with use of the word “preserve” in relation to natural character in NZCPS Policy 13.
120. We note that the coastal character overlay zones do not reflect the full extent of the coastal environment. Rather, the coastal character overlay zones (and the coastal environment mapped area) have been applied only where natural character values have been assessed as being medium-high. In addition, because our decisions have amended NCC overlay zone provisions such that they are no longer aligned with SNL overlay zone provisions, the management of the coastal environment mapped area is misaligned with that of coastal overlays. In our view, this falls short of meeting the requirements of the NZCPS, which specifies the avoidance of significant adverse effects and the avoidance, remediation or mitigation of other adverse effects on natural character in “all other areas of the coastal environment”. With the principles of natural justice in mind, we consider the extent of the changes required to give proper

effect to this to be more appropriately progressed as a Plan change. However, we do recommend that a future Plan review reconsiders the appropriateness of the coastal environment mapped area method, and the extent of coastal character overlay zones.

121. Policy 14 of the NZCPS seeks to promote restoration or rehabilitation of the natural character of the coastal environment. We consider the amendment discussed in section 3.2.5 above, to add reference to “restoration” in Policy 2.2.3.3, helps give effect to this direction.

3.2.6 Request for new objectives and policies under 2.3 Dunedin is economically and socially prosperous

122. *HPPC* (OS447.1) and *STOP* (OS900.13) sought to add a new objective and two new policies under Strategic Direction 2.3 to: recognise current residents as stakeholders in the rural and natural environments; to accord equal standing to residents and property owners in planning and consent decisions; and to grant highest priority to neighbours in any particular locale in any consent involving rural, rural residential or natural environment areas (refer Section 42A Report, pp. 84-85 for requested provisions). The submitters stated that this would provide recognition that an important public good can outweigh the desires of a single individual seeking a new activity, development or subdivision, especially in areas cited to be “outstanding”, “significant”, “natural”, and of “high character”. They also stated neighbouring properties are the most greatly affected as it is their home location rather than solely a cultural or recreational use destination.
123. These submissions were opposed by *Howard Saunders* (FS2373.39, 65), *Geoff Scurr Contracting Limited* (FS2391.15, 106), *FFNZ* (FS2449.10, 286) and *Horticulture New Zealand* (FS2452.8, 39). *Howard Saunders* considered the provisions would lead to unworkable decision-making and that existing resource consent provisions are adequate to enable interested parties to participate in consent processes. *Geoff Scurr Contracting* considered the objective and policies proposed to be unnecessary. *FFNZ* stated the proposed changes were entirely inconsistent with the Resource Management Act 1991 and that it was not appropriate for general residents to be considered stakeholders in the preservation of private land, nor to have city residents provided with equal input as landowners on resource consenting decisions as proposed. *Horticulture New Zealand* believed that the new objective and policy is inappropriate as they seek to give urban dwellers rights over privately owned rural land, and the Plan should not specifically confer special status on a potential group of submitters.
124. *HPPC* (OS447.30) and *STOP* (OS900.66) sought to add a new Section 10 objective stating: “It is recognized that regarding new activities in the Natural Environment all current residents are key stakeholders, be they adjacent property owners or part of the greater Dunedin community. They will be accorded an equal priority standing with that of developers and those seeking to introduce new activities in the Rural Zones. This shall apply when Council discretion is directed to assessment determinations of ‘no more than minor’, ‘insignificant’, and ‘contrary to’ District Plan provisions”. They believed that the rural environment contributes to the broader environment of our citizens’ lives, and current residents are key stakeholders in Dunedin’s rural environment. They considered the discretionary decision of what is ‘no more than minor’ or ‘insignificant’ needs to be primarily from their perspective and not determined by expert witnesses, landscape architecture principles, formulas, or their judgments, for example. They stated that decision makers need to consider what consensus opinion might most likely be formed by neighbours and the broad Dunedin citizenry. Consent applications must be more broadly announced to the public in a more visible and prominent fashion. *STOP* believed that wider stakeholders than

developers need to be consulted when developments will impact within rural areas or where visual impact will be felt by others.

125. *Howard Saunders* (FS2373.18, FS2373.56), *Geoff Scurr Contracting Limited* (FS2391.101, FS2391.115) and *Federated Farmers of New Zealand* (FS2449.149, FS2449.150) opposed *HPPC* (OS447.30) and *STOP* (OS900.66). *Howard Saunders* believed that it is an unnecessary addition of a new objective as existing consent processes already allow affected parties to participate; efficient and acceptable processes exist without this. *Geoff Scurr Contracting* considered that the objective proposed is unnecessary. *FFNZ* believed that the proposed objective is inconsistent with the purpose and principles of RMA, and is both uncertain and unfair. Residential interests will be represented adequately through the current district plan rules and appropriate notification decisions when resource consent applications for development are made, it is impractical and unfair to allow unrestrained third party interest.
126. *Dianne Reid* (FS2200.1) opposed *STOP* (OS900.66) because she opposes the wider consultation and potential notification proposed. She believes this is unnecessary and does not meet the legal tests in the RMA.
127. The Reporting Officer agreed with *HPPC* and *STOP* that the natural environment can be valued by a wide range of stakeholders for different reasons, but did not recommend accepting their submission for the same reasons as given in response to the submitters' request to add a new objective and policies under Strategic Direction 2.3 in section 5.2.7 above.
128. The Reporting Officer agreed with *STOP* and *HPPC* that the rural and natural environments can be valued by a wide range of stakeholders for different reasons. However, he did not support the necessity of a strategic objective or policy related to affected parties identification, nor the addition of a new Section 10 objective. While the plan does contain some rules related to affected parties and notification (such as under Rule 16.4), he believed that the RMA gave enough context for the inclusion of these rules, and that strategic objectives to override the broad direction of the Act was both unnecessary and inappropriate.

3.2.6.1 Decision and Reasons

129. We reject the submissions of *HPPC* (OS447.1, OS447.30) and *STOP* (OS900.13, OS900.66) to add a new objective and policies relating to the recognition of current and local residents in planning and consenting processes and decisions. We accept the evidence of the Reporting Officer, and do not consider there is a need for a strategic objective or policy directing the identification of affected parties in this instance. We were not convinced that there is any reason why the normal tests for notification in the RMA are not sufficient, especially given the wide variety of issues traversed in the Natural Environment Section of the Plan.

3.2.7 Request for new Objective and Policy to cover Biosecurity Act 1993 activities

130. *Horticulture New Zealand* (OS1090.11) sought that a new objective and policy be added under Strategic Direction 2.2 to manage biosecurity risks and enable disposal of infected material and treatment of infected areas. This submission was considered in the Rural Section 42A Report and at the Rural hearing. We have included it in this Decision as we have also considered requests from the same submitter to exempt the removal of material infected by unwanted organisms from controls on vegetation clearance under Rule 10.3.2 (OS1090.27) and from the definition of vegetation clearance (OS1090.5). Another submission from *Horticulture NZ* (OS1090.2), which we address in the Earthworks Decision, sought that earthworks associated with the

burying of material infected by unwanted organisms be exempt from earthworks provisions.

131. *Horticulture NZ* made these requests because "in the event of a biosecurity incursion of an unwanted organism there is the need to be able to respond rapidly to manage spread... and it is only when a biosecurity emergency is declared by the Minister that the emergency provisions of the Biosecurity Act override the RMA provisions. In other situations a declaration may be made by the Chief Technical Officer of Ministry of Primary Industries (MPI). In such a declaration the regional and district plan rules need to be met in terms of disposal of infected material. Given the urgency required it is not practical to have to obtain resource consent. Therefore provisions are sought to be included in the 2GP to enable disposal or treatment of material to be undertaken in response to a biosecurity incursion."
132. The Reporting Officer to the Rural Hearing, Jane Macleod, did not agree that a new strategic objective or policy should be added to the plan in relation to the management of biosecurity risks, as this was not a key function of the District Plan. Rather, it was a Regional Council function to lead pest control on a regional basis including measures to protect rural production. Notwithstanding this, pest and weed control is an important consideration in the management of biodiversity and the Natural Environment section of the 2GP includes provisions to address this, specifically Policy 10.2.1.6, Rule 10.3.4 and Rule 10.4.3.11, which restrict the planting of species that have a tendency to wilding spread.
133. At the Rural Hearing, *Horticulture NZ* called *Lynette Wharfe* who circulated evidence and spoke at the hearing. Ms Wharfe noted that adequately managing biosecurity risks is part of providing for rural production activities, which is a function of the 2GP. Ms Wharfe was particularly concerned with ensuring that 2GP does not contain "regulatory hurdles to a rapid response" to the incursion of an unwanted organism, "such as limitation of earthworks for burying infected material or clearance of infected vegetation, including in riparian areas." She noted that the earthworks aspect of this submission was addressed in the Earthworks hearing and that the vegetation clearance aspect was to be addressed at the Natural Environment Hearing. However, she also considered that there should be recognition in the strategic direction to provide an appropriate policy framework.
134. Ms Macleod agreed with *Horticulture NZ* that the 2GP should not contain rules that hinder or delay the earthworks and vegetation clearance necessary to respond rapidly to the incursion of an unwanted organism. She considered that the exemptions recommended to earthworks provisions at the Earthworks Hearing appropriately addressed *Horticulture NZ's* concerns about earthworks rules and, that equivalent exemptions should be made to the vegetation clearance provisions. However, Ms Macleod did not agree that it was necessary to include a specific strategic direction objective and policy in the plan to provide the policy framework for these exemptions. She considered that an appropriate policy framework was already in place under strategic direction Objective 2.3.1 and associated Policy 2.3.1.2.a: "Maintain or enhance the productivity of farming and other activities that support the rural economy through: a. rules that enable productive rural activities; ..."

3.2.7.1 Decision and Reasons

135. We accept in part *Horticulture NZ's* submission (OS1090.11) in relation to enabling the disposal of infected material. However, we do not consider it is necessary or appropriate to add a new strategic objective or policy in relation to this matter. We agree with the Reporting Officer that the exemptions we have made to both the Earthworks provisions (discussed in the Earthworks Decision Report) and to the

Vegetation Clearance provisions (discussed in section 3.4) appropriately address the concerns of the submitter.

3.3 Areas of Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna

3.3.1 Submissions seeking substantive amendment to the 2GP approach to significant indigenous vegetation and the significant habitats of indigenous fauna outside of scheduled ASCVs

Background

136. Appendix A1.2 Schedule of Areas of Significant Conservation Value provides a summary of the location, description and ecological values of the ASCVs that are identified and protected in the 2GP.
137. In the operative Plan there are 115 areas of significant conservation value (ASCVs) listed in schedule 25.4. Most of these ASCVs are publicly owned (by DCC, DOC, ORC or City Forests), although there are some which are also QEII covenanted and privately owned.
138. Over the 2008-2015 period, as part of development of the 2GP, a process was followed which sought to review and improve the accuracy of the ASCVs listed in the Operative Plan, which involved consultation with private and public landowners. This involved a desktop exercise undertaken by ecological consultants to identify properties likely to contain potential ASCVs, and a subsequent approach to these landowners offering an ecological survey.
139. Largely because of the uncertainty at the time about what provisions would apply within ASCVs, no additional privately-owned land was included as ASCVs as part of that process, although staff were aware that 7 landowners indicated that they were going to separately protect these areas through a QEII covenant.
140. The ASCV schedule was also updated by including 24 new wetland ASCVs that are listed in the Regional Plan: Water for Otago, and a number of ASCVs on public land. Some boundaries of existing ASCVs were also reviewed for accuracy and were subsequently altered.

3.3.1.1 Submissions seeking to add all areas that qualify as ASCVs to the Schedule

141. The *Department of Conservation* (OS949.3) raised concerns that scheduled ASCVs are almost exclusively located on public conservation land or on Council reserve land. The submitter noted that other areas of land with similar value had not been scheduled and so considered they were missing out on the appropriate level of protection. The *Department of Conservation* (OS949.21) submitted that any land which qualifies through the criteria to be an ASCV should be included in the Plan, noting in particular that s6(c) of the RMA does not differentiate between public and private land. *Forest and Bird NZ* (FS2482.42) also considered that the schedule is incomplete.
142. *STOP* (OS900.9) and *Forest and Bird NZ* (OS958.8) stated that Appendix A1.2 only includes land that is already protected as public conservation land, land administered by the DCC and LINZ as reserves, wetlands listed in the Regional Water Plan and the WERI data base and QEII covenants, and therefore does not include all significant sites.
143. The Reporting Officer, Michael Bathgate, agreed that the schedule does not include a full list of ASCVs, and that there are other areas that are potentially significant (s42A Report, Section 5.14.2, p593). He said ecological assessments have been undertaken

at some sites but that significant areas have not been included as scheduled ASCVs due to landowner opposition.

144. Mr Bathgate noted that through the development of the 2GP the scheduling of ASCVs has been undertaken on a voluntary basis, with the DCC paying for ecological assessments of potential ASCVs but relying on landowner willingness to schedule sites that met the criteria for being an ASCV (s42A Report, Section 5.2.2, p60). He understood that there had been a strict understanding between Council and the landowner at the time of assessment, that there would be no requirement for these sites to be scheduled as an ASCV. He acknowledged this approach had been questioned by some submitters, in recognition that the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna is a matter of national importance under s6(c) of the RMA.
145. Mr Bathgate said that the operative RPS and the pORPS have a number of objectives and policies relating to the identification and protection of ASCVs, and the ownership of the land is irrelevant in this context (s42A Report, Section 5.14.2, p594).
146. By way of comparison, Mr Bathgate noted that landowners do not have an 'opt-out' option when their land is identified as being part of an outstanding natural feature or landscape under s6(b), but that inclusion of items on other 2GP schedules does operate on a landowner-willingness basis, including heritage (also a s6 matter) and the tree schedule (s42A Report, Section 5.2.2, p60).
147. Mr Bathgate explained that he understood this voluntary approach is to encourage Conservation activity and positive outcomes for biodiversity for these significant sites, while avoiding landowner antipathy and the risk of poor outcomes through forced-protection measures (s42A Report, Section 5.2.2, p60). He considered that the voluntary approach to scheduling recognises that often these significant ecological areas only exist because of the management practice of landowners. Further, he understood that it is the continuation of an approach employed under the operative Plan and that, where potential ASCVs have been identified but not scheduled, a number of landowners have indicated that they wish to pursue protection through a QEII covenant instead. In his view, this is likely to provide similar biodiversity outcomes to that sought by the 2GP, without directly employing the 2GP method of ASCV scheduling, and indeed, Policy 2.2.3.1 provides for QEII covenants as an "and/or" option to ASCV scheduling.
148. He also noted (s42A Report, Section 5.14.2, p594) that Council has incentives outside of the 2GP to encourage protection of these areas, including the Biodiversity Fund, which gives priority to sites that are scheduled as ASCVs.
149. Mr Bathgate stated (s42A Report, Section 5.2.2, p60-61 and Section 5.14.2, p594) that, if the Panel are of a mind to change this approach to ASCV scheduling to require mandatory scheduling (as requested by submitters), in his opinion this would require consideration of:
 - An amendment to Policy 2.2.3.1 along the lines of that requested by *STOP and Forest and Bird NZ*, so that the policy is more directive in intent. For example, "identify and protect areas of significant vegetation..."
 - The development of a programme of works to liaise with landowners, commission any ecological assessments required on potentially significant sites not yet assessed, and revisit and map sites that are considered significant but are not yet scheduled. In his view extensive consultation with affected landowners should be undertaken as a separate Plan Change process, so there is an understanding of the implications of owning land with an ASCV overlay.
 - Other forms of protection, notably QEII covenants.
 - A review of the adequacy of incentives and other non-regulatory assistance

available for landowners with ASCVs (e.g. Biodiversity Fund, rates relief), noting that such a review should be conducted in any event, due to the more restrictive nature of the recommended vegetation clearance provisions.

150. He noted that, based on the previous consultation with private landowners, there is likely to be some controversy in changing from the current voluntary approach to the mandatory scheduling of ASCVs (s42A Report, Section 5.14.2, p594).
151. Mr Bathgate considered that, if the Panel were of a mind to retain the voluntary approach, it may improve Plan clarity to spell out in Policy 2.2.3.1 that landowner willingness is required to achieve ASCV scheduling (s42A Report, Section 5.2.2, p61). Alternately, the existing drafting could be relied upon with the words “promote the protection of these” indicating a non-mandatory approach.
152. Mr Bathgate summarised in a table what he considered to be the advantages and disadvantages of mandatory vs voluntary scheduling (s42A Report, Section 5.2.2, p61). It suggested that mandatory scheduling was more effective than voluntary in achieving RMA s6 and Objective 2.2.3. The advantages of voluntary scheduling were assessed to be a lower cost approach which has been largely completed through 2GP development, and landowner willingness being more likely to result in better stewardship of significant areas. Mandatory scheduling was identified as likely to entail greater cost through staff time e.g. more landowner liaison, more ecological assessments and potential legal challenges. The Reporting Officer considered it may result in negative impacts for biodiversity through landowner dissatisfaction (e.g. poor stewardship of biodiversity both within ASCVs and in other areas).
153. The Reporting Officer did not make any recommendation with respect to the approach to ASCV scheduling, instead deferring discussion to the Hearing (s42A Report, Section 5.2.2, p61 and Section 5.14.2, p594)
154. While Mr Bathgate did not recommend acceptance of the *Department of Conservation* submission to schedule all areas that are known to qualify as significant, he noted that during consultation two additional sites were identified as potential ASCVs (with owners expressing support for their inclusion): Grassy Point and Alexanders Creek. He recommended the *Department of Conservation* (OS949.21) submission be accepted in part by the inclusion of these two sites on the ASCV schedule (s42A Report, Section 5.14.2, p594).
155. At the Hearing, a number of submitters and experts addressed matters relating to the 2GP approach to ASCVs.
156. Mrs Lala Frazer, spokesperson for *STOP*, noted there had been a very low conversion rate of potential ASCVs to scheduled ASCVs through previous Council engagement with landowners. She stated the organisation had “long been critical of the fact that the ASCVs cover only already covenanted areas and is dependent on landowner permission”. She considered there is “no easy answer” on the matter of compulsory as opposed to voluntary scheduling.
157. In his evidence, Mr Brian Rance (ecologist called by *Department of Conservation*) summarised Dunedin’s ecological context (paras 9.1-9.11). He described it as having “huge ecological diversity”, containing part or all of seven Ecological Districts, with at least twenty-seven original ecosystems and a further nine induced ecosystems. He stated that Dunedin has a “rich diversity of species”, including threatened species, species at distributional limits, and endemic species, and a “high rate of loss of indigenous vegetation” since pre-human times, with LENZ maps showing most of Dunedin comprising units with 30% or less native vegetation remaining. He stated that land use intensification is resulting in ongoing loss and modification of indigenous ecosystems, and that loss of indigenous vegetation has resulted in rarity of many species.

158. Mr Rance described (para 10.2) the mapped ASCVs as “woefully inadequate in identifying the extent of ecologically significant sites within Dunedin”, and promoted an alternative approach, identifying significance wherever indigenous vegetation is to be removed or modified.
159. In his written evidence, Dr Michael Thorsen (ecologist called by *Oceana Gold (New Zealand) Limited*) commented that not all ASCVs have been identified, as there is no comprehensive survey for this purpose within the DCC boundaries (para 42). He also noted that programmes to identify areas of significant biodiversity, employed by other authorities, are usually voluntary for landowners, but can result in some areas of their land being reclassified as ‘significant’ which can restrict future land use. He considered this could be viewed as a penalty for entering into the scheme.
160. The Reporting Officer, Michael Bathgate, responded in a memo entitled ‘Natural Environment S42A Section 5.2.2, Evidence of Michael Thorsen for Oceana Gold (New Zealand) Limited’ dated 22 March 2018, setting out his planning response where appropriate, and responses to any ecological questions provided by Dr Lloyd (ecologist called by DCC).
161. Dr Lloyd agreed not all Areas of Significant Conservation Value (ASCVs) have been identified, as there has not been a comprehensive survey for this purpose within DCC boundaries. Mr Bathgate noted Dr Lloyd also made the same comment at the Natural Environment Hearing.
162. Mr Bathgate agreed restrictions may be viewed as a disincentive to voluntary scheduling of ASCVs, and noted that there was a discussion of the voluntary approach to scheduling on pages 59-61 of the Section 42A Report. He also noted there was discussion at the Hearing of the non-regulatory methods that may be used in conjunction with ASCVs, including financial and other forms of assistance for landowners, and that the DCC is currently reviewing its level of support in this area.

3.3.1.1.1 *Decision and Reasons*

163. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
164. We reject the submissions of *Department of Conservation* (OS949.3, OS949.21), *STOP* (OS900.9) and *Forest and Bird NZ* (OS958.8) insofar as they sought to add to the Schedule all areas which qualify through the criteria to be an ASBV. However, we note that other elements of all of these submissions have been accepted in part, as discussed in sections 3.3.1.3, 3.3.2.2, 3.3.2.3, 3.3.2.4 and 3.3.5.6.
165. As discussed elsewhere, we accept that the higher order policy framework (the RMA s6(c), the operative and proposed RPS, and the NZCPS) supports the scheduling of areas with significant values, and a management regime that protects them.
166. We accept the evidence of Mr Rance that:
 - Dunedin is ecologically diverse and home to a number of species that meet significance criteria,
 - there has been significant loss of indigenous vegetation in Dunedin, and
 - this resulted in rarity of many species.
167. We note that Mr Rance's assertion that land use intensification is resulting in ongoing loss, while not supported with data, was not challenged by any other expert evidence. In light of the evidence of historic loss of biodiversity, we accept that there is a strong case for protection of remaining values.

168. We accept that Appendix A1.2 represents only a subset of Dunedin's areas of significant indigenous vegetation and significant habitats of indigenous fauna (noting that the evidence of the Reporting Officer, Dr Lloyd, Dr Thorsen and Mr Rance all agreed on this point). We further note, as described by the Reporting Officer, there are some areas that the DCC has formally assessed and identified as significant that are not scheduled in the 2GP.
169. However, we acknowledge that where the ecological assessments have been conducted and landowners have opted to not proceed with inclusion of qualifying areas as ASBVs, these areas have not been notified in the 2GP as ASBVs, and therefore the affected landowners have not had the opportunity to comment on their potential inclusion. Taking this into account, with the principle of natural justice in mind, we agree with the Reporting Officer's assessment that, unless landowner consent has been specifically provided, any additional scheduling of areas considered to meet the ASBV criteria would need to be conducted by way of a separate plan change process.
170. We do however note that, as discussed in section 3.3.5.6, it is within the scope of the submission of the *Department of Conservation* (OS949.21) to add two additional ASBVs to the schedule (C163 Alexanders Creek and C164 Grassy Point), the inclusion of which has in both cases have been requested by the landowners.
- 3.3.1.2 Submissions seeking that provisions be restricted to scheduled ASCVs, or scheduled areas that meet significance criteria
171. Objective 10.2.1 states 'Areas of indigenous vegetation and the habitats of indigenous fauna are maintained and enhanced'.
172. *Federated Farmers of New Zealand* (OS919.21) sought to restrict Objective 10.2.1 and subsequent policies to scheduled ASCVs. Their submission stated that while they support the intention to promote the maintenance and enhancement of indigenous vegetation and fauna beyond the scheduled areas, they did not agree this could be achieved efficiently or effectively through a regulatory approach. They stressed the importance of certainty for farmers, stating that if there is no degree of significance introduced, there is a lack of clarity, and farming within the city boundaries runs the risk of becoming unnecessarily hindered. They stated that farmers are generally willing to trade-off areas of land for the purpose of indigenous biodiversity and fauna protection in return for the certainty that they may make reasonable use of the remaining area.
173. In commentary on a related submission point, they stated that protection of indigenous vegetation on private land should strike a balance between ensuring indigenous species are appropriately protected, while providing for reasonable use of that land. *Federated Farmers of New Zealand* said that while they accepted it is useful for Council to identify and promote areas of significance through scheduled ASCVs and/or through QEII covenants, they sought more flexibility for land areas where indigenous vegetation or indigenous fauna are not regarded as significant.
174. *Federated Farmers of New Zealand* (OS919.21) was opposed by *HPPC* (FS2267.8), who considered some varying degree of regulatory control appropriate for ASCVs, overlays and the 'standard' rural zone, and *Forest and Bird NZ* (FS2482.18), who considered the amendments are inconsistent with Part 2 of the RMA, the provisions of the 2GP, and the NZCPS.

175. *Oceana Gold (New Zealand) Limited* (OS1088.30) sought to amend Objective 10.2.1 to restrict its application to “Impacts on significant Areas of indigenous vegetation and the important habitats of indigenous fauna...”.²
176. *Ben Graham* (OS361.3, OS361.6), *Mathew O’Connell* (OS364.1, OS364.5) and *John Scott* (OS1084.3, OS1084.5) sought a number of amendments to restrict vegetation clearance provisions to a new overlay “Area of Significant Indigenous Vegetation” (following a process to accurately identify and map areas of significance). They considered that the 2GP provisions fail to allow for clearance and removal of indigenous vegetation in appropriate areas or circumstances, and that in some situations the removal of indigenous vegetation might be appropriate. They felt the amendments would allow landowners to sustainably manage their property in accordance with the RMA 1991.
177. A number of these submission points were supported by *Federated Farmers of New Zealand* (FS2449.60, FS2449.62, FS2449.64, FS2449.154, FS2449.155) because they did not feel that all indigenous vegetation needs to be maintained or enhanced/protected, and the 2GP should provide flexibility in managing non-significant indigenous vegetation. *Waste Management (NZ) Limited* (FS2444.12) opposed *Ben Graham* (OS361.6) because they would like to be involved in any discussions relating to performance standards relating to vegetation clearance.
178. A number of submissions sought to limit the criteria used to determine the significance of a site, and to remove rules linked (through policies) to Objective 10.2.1. These included submissions to amend Policy 2.2.3.1³, remove Rule 10.3.2.2.a⁴, Rule 10.3.2.3⁵, and Rule 10.3.4⁶. Those matters are discussed in full elsewhere, but are highlighted here to illustrate the extent of submissions received which, if accepted, would have the effect of restricting provisions associated with Objective 10.2.1, to those primarily applying to scheduled areas meeting significance criteria.
179. The Reporting Officer, Mr Bathgate, noted (s42A Report, Section 5.4.2, p131-132) that Objective 10.2.1 is given effect to through policies linked to rules on:
- activity status of conservation activity in all zones
 - activity status of land use, development subdivision and city-wide activities in scheduled ASCVs
 - performance standards for vegetation clearance and indigenous vegetation clearance
 - the performance standard relating to wilding tree species
 - the site restoration standard for mineral exploration and prospecting
 - rules guiding the assessment of mining and landfill activities in relation to site restoration.
180. Mr Bathgate noted that any change to Objective 10.2.1 limiting it to scheduled areas would require consequential change to remove both policies and rules related to non-scheduled areas, which he did not support (s42A Report, Section 5.4.2, p134). He considered the 2GP has a wider mandate to protect indigenous biodiversity and should not just be limited to areas and habitats that are scheduled and considered significant under s6(c) of the RMA. He stated that this mandate is provided through one of the

² A second aspect of this submission is discussed in section 3.6.2.3.

³ *Federated Farmers of New Zealand* (OS919.8)

⁴ *Lynnore Joan Templeton* (OS735.1), *Bevan Thomas Wilson* (OS850.1), *Barry James Williams* (OS886.4), *Strath Taieri Community Board* (OS905.3), *Alistair Hope* (OS1018.1).

⁵ *Robert George & Sharron Margaret Morris* (OS355.12), *Lynnore Joan Templeton* (OS735.2), *Federated Farmers of New Zealand* (OS919.39).

⁶ *Robert George and Sharron Margaret Morris* (OS355.2), *Timothy George Morris* (OS951.51) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.51).

functions of territorial authorities listed under RMA s31(1)(b)(iii), namely the control of any effects of the use, development, or protection of land, for the purpose of the maintenance of indigenous biological diversity. Policy 3.1.9 of the pORPS-dv and Method 4.1.3 requires city and district plans to include provisions to maintain or enhance ecosystems and biological diversity and to protect significant indigenous vegetation and the significant habitats of indigenous fauna. He considered this suggests a wider duty beyond just those areas that are considered significant.

181. For these reasons, he also did not support the approach promoted by *Ben Graham* (OS361.3, OS361.6), *Mathew O'Connell* (OS364.1, OS364.5) and *John Scott* (OS1084.3, OS1084.5). In his view, ASCV provisions provide for the scheduling of areas of significance, but enabling indigenous vegetation clearance outside of ASCVs would be too encouraging and would run counter to those 2GP objectives and be in conflict with both the RMA requirements and the RPS. He acknowledged the submitters' view that indigenous vegetation clearance may be appropriate in some areas or circumstances and drew attention to recommendations to expand the list of exemptions to vegetation clearance rules (s42A Report, Section 5.8.4, p.315).
182. Mr David Cooper appeared for *Federated Farmers of New Zealand* at the Hearing, speaking to a tabled statement. He reiterated farmers' desire for recognition and acknowledgement of positive work already being carried out, help understanding on-farm values, and "ownership of the issues, rules and regulations...at the individual and community level" (paras 14-21). Associated with their submission on Policy 2.2.3.1, *Federated Farmers* commented that it is important that farmers are clear on what areas of their property they are able to farm (paras 27-28). In their view, Council should be using landowner engagement and encouragement to enable and support positive actions on-farm, rather than relying too heavily on regulation.
183. *Federated Farmers* considered that ASCVs would have more voluntary uptake if it was clear what provisions apply, combined with some assistance or recognition of positive efforts from landowners (para 21). They cited the Landcare-led Biodiversity Southland Partnership as an example of a behaviour-led approach, and stated that "if effective and efficient preservation of indigenous flora and fauna in Dunedin is the end goal, the Council needs to adopt a broader campaign promoting and enabling indigenous vegetation which goes beyond simple regulation".

3.3.1.2.1 *Decision and Reasons*

184. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
185. We reject the submissions of *Ben Graham* (OS361.3, OS361.6), *Mathew O'Connell* (OS364.1, OS364.5) and *John Scott* (OS1084.3, OS1084.5) insofar as they sought to introduce a new overlay "Area of Significant Indigenous Vegetation" (following a process to accurately identify and map areas of significance). We accept the evidence of the Reporting Officer that provisions for ASBVs provide an appropriate mechanism for scheduling these areas, and that introducing an additional schedule into the Plan is therefore not necessary.
186. We reject the submissions of *Federated Farmers of New Zealand* (OS919.21), *Ben Graham* (OS361.3, OS361.6), *Mathew O'Connell* (OS364.1, OS364.5) and *John Scott* (OS1084.3, OS1084.5), and the submission of *Oceana Gold (New Zealand) Limited* (OS1088.30) insofar as it sought to limit Objective 10.2.1. to "significant areas of indigenous vegetation and the important habitats of indigenous fauna".

187. As discussed elsewhere, we note the shared view of the Reporting Officer and various experts that the ASBVs listed in Appendix A1.2 represent only a subset of Dunedin's areas of significant indigenous vegetation and significant habitats of indigenous fauna.
188. In the absence of a comprehensive schedule of ASBVs, we consider there is a need for the 2GP to employ methods that recognise and provide for the protection of these values outside of ASBVs, in line with s6(c) of the RMA, both the operative RPS and pORPS-dv (seeking to "maintain and enhance" and "identify"/"protect and enhance" these areas respectively) and the NZCPS (specifically Policy 11). We accept the evidence of the Reporting Officer, that restricting the provisions of Objective 10.2.1 (and associated policies) to scheduled ASBVs (and/or restricting vegetation clearance rules to ASBVs) would be in conflict with higher order policy direction.
189. We also concur with the Reporting Officer's assessment that higher order policy direction mandates maintenance or enhancement of indigenous biodiversity beyond areas that are considered significant – most notably RMA s31(1)(b)(iii), and Policy 3.1.9 and Method 4.1.3 of the pORPS-dv.
190. However, as discussed elsewhere, we do accept the expert evidence that, outside of scheduled ASBVs a degree of indigenous vegetation clearance can be permitted, and that certain activities or types of vegetation clearance can be exempt from vegetation clearance provisions, without unduly compromising the outcomes sought by Objective 10.2.1 and higher order policy direction. Our decision therefore expands the types of vegetation clearance that can be carried out as permitted activities. We consider that providing for these exemptions is the best way to ensure that the rule framework is efficient as well as effective.
191. We also recommend that a comprehensive and sustained Council-initiated work programme outside of the 2GP is essential to assist landowners with interpretation of the new rules; to help them understand on-farm values; to recognise and support good practice; and to encourage "ownership of the issues, rules and regulations...at the individual and community level". We consider this will not only help achieve the certainty that *FFNZ* and others sought by increasing the rate of scheduling of areas of ASBVs, but will also support the broader ambitions for maintenance or enhancement of biodiversity outlined in the Plan.

3.3.1.3 Submissions seeking to treat all areas that meet the criteria as ASCVs

192. *STOP* and *Forest and Bird NZ* requested a range of amendments to provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna that have not been identified or included in the ASCV schedule, through the resource consent process.
193. Submission points included:
 - *STOP* (OS900.9) and *Forest and Bird NZ* (OS958.8), which sought to amend Policy 2.2.3.1 to "Identify and protect" areas of significant indigenous vegetation and/or significant habitats of indigenous fauna "through resource consent processes".⁷
 - *STOP* (OS900.10) and *Forest and Bird NZ* (OS958.9), which sought to amend Policy 2.2.3.2 by adding "and areas that meet the criteria for significance" (as outlined in Policy 2.2.3.1 or an equivalent schedule) to a clause outlining the method to protect indigenous vegetation in ASCVs.
 - *STOP* (OS900.157) and *Forest and Bird NZ* (OS958.74), which sought a new rule to provide, through the resource consent process, for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna not scheduled as ASCVs.

⁷ Other aspects of this submission are discussed in sections 3.3.1.1, 3.3.2.2, 3.3.2.3 and 3.3.2.4.

- *STOP* (OS900.142) and *Forest and Bird NZ* (OS958.20), which sought to replace Policy 10.2.1.2 with a policy stating “Avoid land use and development activities” within a number of specified areas, including ASCVs and “within an area that meets the criteria in Policy 2.2.3.1...” (or an equivalent schedule).⁸
 - *Forest and Bird NZ* (OS958.79), which sought to amend Rule 10.4.3 so that matters for discretion for all activities that contravene performance standards in the Natural Environment section of the 2GP are subject to an assessment of the significance of the indigenous biodiversity.
194. A number of additional *STOP* and *Forest and Bird NZ* submission points also sought to reference, amongst other objectives and policies, Policy 2.2.3.1 (which outlines the criteria for determining whether an area is significant) from a range of assessment rules⁹. These submissions are discussed in full elsewhere, but are highlighted here to illustrate the extent of submissions seeking to link assessments against significance criteria to 2GP provisions.
195. *STOP* and *Forest and Bird NZ* observed that the 2GP does not have a process for identifying and protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna not already scheduled as ASCVs, other than encouraging voluntary scheduling or covenanting. *STOP* stated that, because the scheme is voluntary, any reference in the 2GP that only includes scheduled ASCVs or relies solely on ASCVs to achieve the aim will be flawed and not achieve the purpose required. Both *STOP* and *Forest and Bird NZ* stated that any process of adding sites to the schedule is complex and uncertain (Natural Environment Section 42A Report, Section 5.13.2, p561).
196. *STOP* and *Forest and Bird NZ* did not believe that indigenous vegetation clearance should be permitted in “potential” areas of significant indigenous vegetation and habitats of indigenous fauna, within rural, rural residential and recreation zones. Both submitters considered that change was necessary to protect areas of significant indigenous vegetation and habitats of indigenous fauna that have not been identified or included in the ASCV schedule (Natural Environment Section 42A Report, Section 5.2.3, p69). *Forest and Bird NZ* stated that “in order to meet s6(c) requirements and maintain indigenous biodiversity any activities affecting indigenous vegetation need to be assessed to ensure that sites with significant values are identified to enable their protection through consent conditions.” (Natural Environment Section 42A Report, Section 5.2.2, p69).
197. *Department of Conservation* (OS949.3) stated that ASCVs are almost exclusively located on public conservation land or on council reserve land, and that areas of similar value on non-scheduled land do not receive the same level of protection. They considered that, to meet the requirements of section 6(c) of the RMA, the 2GP should provide for further identification of ASCVs (using relevant criteria) through ecological assessments associated with development activities on private land. To achieve this, they sought to replace Policy 10.2.1.2 with a procedural policy: “Identify the District’s Areas of Significant Conservation Value (ASCV) and schedule them in the District Plan, including the ongoing identification of Significant Natural Areas through resource consent applications, using the criteria set out in Schedule XX (new schedule), the list of Protected species in Appendix 10.A, and avoid the clearance of indigenous vegetation within ASCV’s that would reduce significant indigenous biodiversity values.”
198. *Department of Conservation* (OS949.13) also sought to amend Rule 10.3 (outlining the activity status of various activities) so that any vegetation clearance within an

⁸ Other aspects of this submission are discussed in sections 3.3.3.3 and 4.4.1.1.

⁹ *STOP* (OS900.77, OS900.79, OS900.134, OS900.159, OS900.160, OS900.161, OS900.162), *Forest and Bird NZ* (OS958.80, OS958.81, OS958.82, OS958.83, OS958.85, OS958.86, OS958.89)

ASCV or any area determined to be an ASCV through a site specific ecological assessment is a non-complying activity. They considered that without this the 2GP does not provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as required by section 6(c) of the RMA. In the *Department of Conservation's* view, any proposed clearance should be subject to a high test ensuring any adverse effects are avoided.

199. Those submissions were opposed by a number of further submitters¹⁰. Their concerns included that the suggested amendments were too restrictive, unnecessary, overly complicated and unjustified, that they go beyond the intent and purpose of the RMA, and that protection of indigenous biodiversity (and associated resource consent) is not always necessary or appropriate. *Oceana Gold* (FS2439.36, FS2439.38, FS2439.29) considered that introducing "potential areas of significant indigenous vegetation and significant habitats of indigenous fauna" and making the status of these areas equivalent to that of ASCVs creates uncertainty for plan users, and that it is unduly restrictive for locationally constrained activities such as mining.
200. The Reporting Officer, Michael Bathgate, considered the submissions constituted a mapping or scheduling request as well as a policy amendment, insofar as they sought the scheduling of any areas that meet the significance criteria in Policy 2.2.3.1, including the identification of potential ASCVs through resource consent applications (s42A Report, Section 5.2.2, p59-60). He noted that the policy wording suggested by *STOP, Forest and Bird* and *Department of Conservation* could be read to mean that the identification of ASCVs could be done through the resource consent process, but that the inclusion of ASCVs in Appendix A1.2 still required a plan change from a procedural point of view.
201. In relation to *DOC's* request to apply non-complying activity status to vegetation clearance in "any area determined to be an ASCV through a site specific ecological assessment", Mr Bathgate considered tagging an activity status rule to an ecological assessment that has not yet taken place would be *ultra vires* (s42A Report, Section 5.12.1, p.514).
202. However, Mr Bathgate did agree that in order to meet the requirements of s6(c) of the RMA, any application that involves the clearance of indigenous vegetation or vegetation that may contain habitats of indigenous fauna should consider the potential significance of the area affected (s42A Report, Section 5.13.2, p560). He recommended changes to vegetation clearance and indigenous vegetation clearance assessment rules 10.4.3.2, 10.4.3.3, 10.4.3.4 and 10.4.3.5, to include general assessment guidance that considers whether vegetation or habitats that meet the criteria in Policy 2.2.3.1 are affected¹¹.
203. Mr Bathgate acknowledged that while this was not providing the level of protection that the submitters requested, he considered it gave partial relief to submissions requesting policy amendment and a new rule (s42A Report, Section 5.2.3, p70).

¹⁰ *Geoff Scurr Contracting Limited* (FS2391.66, FS2391.74, FS2391.96, FS2391.118), *Federated Farmers of New Zealand* (FS2449.37, FS2449.38, FS2449.39, FS2449.40, FS2449.72, FS2449.73, FS2449.74, FS2449.258, FS2449.261), *Oceana Gold* (FS2439.36, FS2439.38), *John Scott* (FS2140.21), *Ben Graham* (FS2279.21), *Mathew O'Connell* (FS2300.21), *Pigeon Flat Road Group* (FS2416.54), *Waste Management (NZ) Limited* (FS2444.48)

¹¹ *Forest and Bird NZ* (OS958.79) sought that the criteria set out in Appendix One to their submission (the criteria in the pORPS-dv) were used in assessment. In his recommended amendment, the Reporting Officer referenced instead the significance criteria in Policy 2.2.3.1, noting a recommendation in section 5.2.2 of the Section 42A Report that these be amended to better have regard to the criteria in the pORPS-dv. In addition, he stated he did not consider that the amendment necessary for the other assessment rules under Rule 10.4.3, such as minimum building separation and reflectivity.

204. Mr Bathgate also noted other (notified or recommended) provisions that he considered would provide greater protection than in the operative Plan for areas of significant vegetation and significant habitats of indigenous fauna (including reductions to the maximum thresholds for permitted indigenous vegetation clearance, an expansion of the threatened plant species list and the inclusion of a threatened fauna species list, and amendments to the significance criteria in Policy 2.2.3.1 (s42A Report, Section 5.2.2, p.60).
205. In terms of specific amendments sought:
- The Reporting Officer did not recommend the addition of “and protect” to Policy 2.2.3.1, as “promote the protection of these” is mentioned later in the same sentence, which he considered aligned with the approach taken to date of not requiring mandatory scheduling where an area meets one or more of the criteria for significance. He considered it also signals that the 2GP cannot direct an area to be protected under a QEII covenant (s 42A Report, Section 5.2.2, p.55).
 - Mr Bathgate did not consider the phrase “through resource consent processes” in Policy 2.2.3.1 appropriate, as the purpose of the policy is to set up the ASCVs as a method. He noted protection of areas through resource consents is covered through the substantive policies in Section 10 of the Plan that relate to activities that require consent and how they are assessed (s42A Report, Section 5.2.2, p.55).
 - He did not consider the proposed amendment to Policy 2.2.3.2.b or the proposed new rule were appropriate, as they would signal an *ultra vires* method. He considered that the policy as currently worded more accurately reflects the Plan methods (s42A Report, Section 5.2.3, p.70).
 - He did not consider Policy 10.2.1.2 should be replaced with the policy suggested by *Department of Conservation*. He noted the suggested policy concerns the process of scheduling ASCVs (a procedural policy), whereas Policy 10.2.1.2 is to do with the management of land use and development activities in already-scheduled ASCVs (a substantive policy) (s42A Report, Section 5.2.2, p.59).
206. *Forest and Bird* (OS958.111) also sought to add a new policy to Section 16 Rural Zones requiring all activities to maintain indigenous biodiversity and protect significant areas of indigenous vegetation and habitats for indigenous fauna. The submitter stated that, although biodiversity is covered in the Natural Environment section, it should be referenced in a new policy in the Rural Section for certainty. This submission was opposed by *Oceana Gold* (FS2439.63) because the policy would unduly restrict locationally constrained activities such as mining, and by *Federated Farmers* (FS2449.305) who stated that the policy “goes considerably beyond the sustainable management principles and intent of the RMA, its associated case law and the remainder of the 2GP”.
207. In the Rural Zones Section 42A Report, the Reporting Officer, Michael Bathgate, did not recommend accepting the new policy proposed by *Forest and Bird* in relation to indigenous biodiversity, significant areas of indigenous vegetation and habitats. He explained that these were matters that were widely traversed in Section 10 Natural Environment and he did not consider that a new policy was necessary in Section 16 Rural Zones, as this would confuse the structure of the Plan and lead to duplication and confusion for plan users. He noted that there was a recommended amendment to 16.1 Introduction (in section 5.3.2 of the Rural Zones Section 42A Report) to clarify that there are provisions in Section 10 Natural Environment that apply widely in the rural zones, and considered this to be an appropriate response to the submitter on this matter, rather than any duplication of policies in different sections of the 2GP.

208. At the Natural Environment Hearing, Mr Brian Rance (ecologist called by DOC) stated (para 10.6) that, in his view, there are fundamental problems with the use of maps and schedules, including
- insufficient knowledge of significant natural areas,
 - limited ability or desire to update maps/schedules as new information emerges, including through new ecological assessment tools and criteria,
 - changes in site conditions over time, and
 - changes in distribution of species over time.
209. He considered that, if the ASCV maps are to be retained, they should be co-referenced to a schedule that listed each ASCV and provided some information about it including extent, land status and key ecological features (para 10.7).
210. In his view it would be better to remove the ASCV map layer from the 2GP, which he considered would have limited effect due to the limited reference to ASCVs in policies and rules (para 10.5). He said it would be preferable, instead of the ASCV map layer, to use the criteria in Policy 2.2.3.1 to identify significance wherever indigenous vegetation is to be removed or modified. He considered that, without adequate utilisation of these criteria, the loss of significant vegetation and status of threatened and notable species within the district would not only continue, but possibly accelerate (para 11.9).
211. Ms Nardia Yozin, planner for the *Department of Conservation*, noted Mr Rance's evidence that the 2GP approach was likely to lead to further loss of significant indigenous vegetation and significant habitats of indigenous fauna. Accordingly, she considered the approach to identification and management of ASCVs¹² inconsistent with the ORPS, the pORPS, the NZCPS and the RMA (paras 6.4-6.11). She considered that ASCVs, and the management of areas that meet the criteria of an ASCV, should be based on the values present on the land, and not on Schedule A1.2. She agreed with the reasoning to retain Policy 10.2.1.2, but suggested the word "Scheduled" be deleted from Policy 2.3.3.1, and that it be amended to state that areas will be considered ASCVs where they meet the criteria (para 6.9). Ms Yozin also requested a range of consequential changes, including updating Schedule A1.2, removing the word "scheduled" from all relevant parts of the 2GP, and (para 10.3) amending the definition of ASCVs to read "Scheduled Areas of Significant Conservation Value are those areas which meet the criteria outlined in Schedule A1.2 and Policy 2.2.3.1" (paras 6.12-6.15).
212. In legal submissions for the *Department of Conservation*, Ms Pene Williams emphasised that the s6(c) requirement is imposed on Council whenever it is a decision-maker under the RMA.
213. We also note that Mr Cooper, for *Federated Farmers of New Zealand* told us of farmers' desire for recognition and acknowledgement of positive work underway, assistance to understand on-farm values, and "ownership of the issues, rules and regulations...at the individual and community level" (paras 14-21). Associated with their submission on Policy 2.2.3.1, *Federated Farmers of New Zealand* said that it is important that farmers are clear on what areas of their property they are able to farm (paras 27-28). In their view, Council should be using landowner engagement and encouragement to enable and support positive actions on-farm, rather than relying too heavily on regulation.

¹² We observe that Ms Yozin appears to have used the terms "ASCVs", "potential ASCVs" and "areas of significant indigenous vegetation and the habitats of significant indigenous fauna" interchangeably in her evidence. In this instance, we understand her to be referring to identification and management of areas of significant indigenous vegetation and the habitats of indigenous fauna that are not scheduled in the 2GP as ASCVs.

214. *Federated Farmers of New Zealand* considered that ASCVs would have more voluntary uptake if it was clear what provisions apply, combined with some assistance or recognition of positive efforts from landowners (para 21). They cited the Landcare-led Biodiversity Southland Partnership as an example of a behaviour-led approach, and stated that “if effective and efficient preservation of indigenous flora and fauna in Dunedin is the end goal, the Council needs to adopt a broader campaign promoting and enabling indigenous vegetation which goes beyond simple regulation” (para 19-20).
215. In its hearing statement, *STOP* supported the s42A Report recommendations (summarised on page 60 of the s42A Report) that “vegetation clearance assessment rules should include the significance criteria” (along with the considerable proposed reduction in permitted vegetation clearance thresholds), stating that these “will catch areas that have not yet had ASCVs placed on them”. They said, drawing on *STOP*’s own history of persuading landowners to protect areas, that it is “often an exercise in compromise”. Further, that when even ecotourism operators were objecting to their areas becoming ASCVs, “there is obviously a concern that any advantage in having an ASCV is not apparent”.
216. In evidence, Dr Thorsen (Principal Ecologist, ERA Ecology) for *Oceana Gold (New Zealand) Limited* commented (para 42) on Policy 2.2.3.1 as follows:
- The word “identify” implies that Council are planning a programme to identify significant areas within the city boundary, and suggested “Identify” and “and promote” be amended to “In identified” and “to promote”, if this were not the case.
 - The word ‘Conservation’ in relation to ASCVs was queried, because ‘biodiversity’ is used elsewhere in the 2GP and these terms do not have the same meaning (as also had been noted by Dr Lloyd in the Ecological Significance Report).
 - The word “habitats” should be changed to “habitat”, as the plural suggests more than one habitat would have to be present to be considered significant.
 - ASCVs and other natural areas may change over time and become more or less significant, and that some of the areas identified as ASCVs include areas that would not be considered ‘significant’ and that in some cases, these areas could be extensive.
 - That nearly all ASCVs are in fact lands protected by legal act, and a better term could therefore be ‘Protected Areas’.
217. Dr Thorsen also highlighted what he considered to be potential confusion of use of the word ‘significant’, stating it has a different meaning under the RMA as opposed to when using the word in the term ‘ASCV’ (para 42, para 75).
218. He also supported the relief sought by *Oceana Gold (New Zealand) Limited* in amending the wording of Policy 2.2.3.1 (para 56).
219. Dr Thorsen also drew on his experience planning the mitigation and environmental compensation activities for the recent Coronation North Project (which affected a number of ecological values considered ‘significant’ under the operative Plan), to explain that (para 18) “mining, by its very nature, makes it difficult to avoid an ecological feature where it overlays a targeted resource”. He reiterated the importance of allowing for appropriate compensatory measures.
220. Mr Mark Christensen, counsel for *Oceana Gold*, emphasised similar themes in legal submissions.
221. The Reporting Officer, Mr Michael Bathgate, responded in a memo entitled ‘Natural Environment S42A Section 5.2.2, Evidence of Michael Thorsen for Oceana Gold (New Zealand) Limited’ dated 22 March 2018, setting out his planning response where

- appropriate, and responses to any ecological questions provided by Dr Lloyd (ecologist called by DCC).
222. Mr Bathgate did not support changing the wording at the start of Policy 2.2.3.1, as he considered the more active phrasing “Identify areas of significant...” appropriate in this strategic policy. He noted that this is not solely a DCC responsibility, and that other agencies or private landowners can also fulfill this RMA requirement to identify significant areas.
 223. Dr Lloyd agreed that “conservation” and “biodiversity” have different meanings, noting that under the Conservation Act 1987 conservation addresses both natural and historic values. Mr Bathgate concurred with this as a valid issue that he considers detracts from plan clarity. He recommended that Areas of Significant Conservation are renamed as Areas of Significant Biodiversity Value (ASBVs) in Policy 2.2.3.1 and consequently throughout the 2GP, in response to the *Oceana Gold* (OS1088.14) submission.
 224. Mr Bathgate noted that both “habitats” and “habitat” are used in Policy 2.2.3.1. In some cases he considered use of the plural appropriate, particularly where it refers to a collective outcome. However, he reviewed the use of habitat(s) in the recommendations version of Policy 2.2.3.1, considering the usage in Schedule 4 to the proposed Regional Policy Statement (RPS), and recommended changing two instances to singular usage – the first instance in the introductory clause and the second instance in clause (b).
 225. Dr Lloyd agreed that significant and other natural areas may change over time and become more or less significant, but he did not see this as a major issue. Mr Bathgate noted that the 2GP has objectives which seek to maintain or enhance indigenous biodiversity, so the fact that an area may degrade to a certain extent over time did not in his view mean that there should not be a focus to restore or enhance those values which contribute to its significance.
 226. Dr Lloyd agreed that since the existing ASCV schedule is based on protected land it is likely that areas that would not be considered significant may be included, but that improvement in biodiversity values of current non-significant areas may be expected in many cases. Mr Bathgate also agreed, and noted that there was discussion at the Hearing that ASCVs are sometimes drawn to cadastral boundaries rather than following the actual boundaries of significant areas of biodiversity. However, he again noted that improvement in biodiversity values is a focus of 2GP objectives. He considered the remapping of ASCV boundaries could be the focus of future Plan work but he did not see it as a priority at this time, noting also that there were very few submissions on the mapping of ASCVs.
 227. Mr Bathgate agreed “significant” was a relatively common term that may have other usage, but considered it obvious that its usage for ASCVs corresponds to the meaning prescribed under RMA s6(c). Mr Bathgate did not consider it unclear how ASCVs relate to “significant natural areas” under the RMA (although this term is not used in the RMA). He stated that he did not understand Dr Thorsen’s reference to “2.2.1.1 44” in paragraph 75(a)(iii).
 228. Mr Bathgate did not agree with the suggestion to rename ASCVs as “protected areas” as there should be the intent that the schedule of ASCVs is broadened to include more sites on private land that may not have other forms of legal protection. While recognising that the term “protected areas” has wider and more general use in relation to land legally protected for natural, conservation or cultural purposes, he did not consider it descriptive enough for use in the 2GP in association with areas of significant biodiversity.

3.3.1.3.1 *Decision and reasons*

229. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
230. We accept in part the submissions of *Forest and Bird NZ*, (OS958.8, OS958.9, OS958.74, OS958.79, OS958.20, OS958.111), *STOP* (OS900.9, OS900.10, OS900.157, OS900.142) and the *Department of Conservation* (OS949.3, OS949.13) insofar as they sought to amend the 2GP to provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna where they are identified through assessments of effects on biodiversity associated with resource consent processes.
231. We note the aspect of the submission of *Forest and Bird NZ* (OS958.111) relating to the maintenance of indigenous biodiversity more generally, is discussed in section 3.6.1.7.
232. As discussed elsewhere, we agree that the higher order policy framework (including s6(c) of the RMA, and the pORPS-dv) supports a management regime that protects areas of significant indigenous vegetation and significant habitats of indigenous fauna. In the context of evidence of the extent of historic loss of biodiversity, we accept there is a strong case for protection of remaining values.
233. We accept the contention of *Federated Farmers of New Zealand* that a work programme outside of the 2GP will assist landowners to better understand Plan provisions and values on their properties (and indeed, as outlined elsewhere, we recommend this approach). We accept that finalisation of 2GP provisions, coupled with this work programme, may result in an increased rate of scheduling. However, we consider the very low rate of scheduling of private land flowing from Council's 2008-2015 outreach process, evidence that relying on scheduling alone to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna under protection is unlikely to meet the requirements of s6(c) of the RMA.
234. We accept the Reporting Officer's evidence that policies relating to the protection of areas of significant indigenous vegetation and the significant habitats of indigenous fauna are more appropriate within Section 10 Natural Environment than in Section 16 Rural Zones. We do not, however, agree with the Reporting Officer's assessment that a policy relating to the protection of significant indigenous vegetation and the significant habitats of indigenous fauna would detract from Plan clarity or duplicate existing provisions, as there is no existing policy to guide assessment of effects on these areas where they are not scheduled as ASBVs.
235. We do consider that a policy framework is required to guide the assessment of effects on significant areas of indigenous vegetation and the significant habitats of indigenous fauna, where these are not scheduled ASBVs, to achieve Objective 10.2.1 (incorporating amendments, as outlined in section 3.6.2), and to align with other higher order policy direction.
236. While we do not support the replacement of Policy 10.2.1.2 with the amended policy promoted by *STOP* (OS900.142) and *Forest and Bird NZ* (OS958.20), or that promoted by *Department of Conservation* (OS949.3) (because we consider Policy 10.2.1.2 provides a policy framework for the assessment of the effects of activities on the values of ASBVs), we agree that it is necessary (to meet the requirements of s6(c) of the RMA, and to be consistent with the pORPS-dv) to add a new Policy 10.2.1.X, to provide a policy framework to assess effects associated with activities in areas of significant indigenous vegetation and the significant habitats of indigenous fauna, where these are outside of ASBVs. Our decision aligns the Policy 10.2.1.X

policy test with that for Policy 10.2.1.2 (discussed in section 3.3.3), as set out at the end of this section.

237. To guide implementation of this policy, our decision also amends most Section 10 assessment rules associated with restricted discretionary activities or performance standard contraventions for which effects on biodiversity values and/or natural character values is a matter of discretion, Rule 10.6.2.1 (All discretionary activities that are linked to Section 10.6) and Rule 10.7.2.1 (All non-complying activities that are linked to Section 10.7) by adding a link to Policy 10.2.1.X, along with assessment guidance clarifying that:
- in assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1, and
 - the Council will generally only consider activities to have no practicable alternative locations where an assessment that meets the requirements set out in new Rule 10.8.4 (discussed in section 3.7.7 below) demonstrates that the proposed site, including any proposed mitigation measures, is the option that has the least impact on biodiversity values, while meeting the operational needs of the activity.
238. We note the addition of assessment guidance relating to the criteria set out in Policy 2.2.3.1 was recommended by the Reporting Officer for rules associated with vegetation clearance. However, noting that land use, development and city-wide activities other than vegetation clearance can also affect the values of areas that meet significance criteria, our decision applies assessment guidance to most instances in which effects on biodiversity values and natural character values are assessed, leaving out only the assessment rules associated with activities for which any effects on natural character values are very unlikely to relate to biodiversity.
239. We also consider there is a need for amendments to the strategic directions policy framework to set up this method, and to guide assessment of effects on areas of significant vegetation and the significant habitats of indigenous species outside of ASBVs.
240. To achieve this, we consider it clearer to split Policy 2.2.3.1 into two, with new Policy 2.2.3.X setting up the two methods that the 2GP (as amended) employs to protect the values of areas of significant vegetation and the significant habitats of indigenous species, and Policy 2.2.3.1 outlining the criteria used to identify areas as significant.
241. We consider the word “Protect” appropriate in relation to Policy 2.2.3.X, as the higher order policy framework (including s6(c) of the RMA, and the pORPS-dv) mandates protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. We also consider this amendment also addresses the question of clarity around use of the word “identify” raised by Dr Thorsen. We do not consider the addition of the words “through resource consent processes” appropriate in this policy, accepting the Reporting Officer’s evidence that scheduling of ASBVs requires a plan change. However, we consider new clause (b) (“assessment rules which require the consideration of significance as part of the assessment of effects on biodiversity values”) describes the role of the new assessment guidance as a method in the Plan (refer also to section 3.6.1.6 for a discussion of amendments relating to “biodiversity values”).
242. Turning to concerns of further submitters, we acknowledge that some of these amendments amount to additional regulation of activities in areas of significant indigenous vegetation and the significant habitats of indigenous species. However, we consider the Plan provisions, as amended, strike an appropriate balance between the protection of significant indigenous vegetation and significant habitats of indigenous

fauna, and the imposition of resource consent requirements on landowners, particularly farmers. We accept the *Federated Farmers of New Zealand* contention that the most efficient and effective approach to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna is for these areas to be scheduled in the Plan, but in the absence of a comprehensive schedule of ASBVs there is a need for rules that recognise and provide for the protection of significant values outside of these areas, in line with s6(c) of the RMA. As discussed in section 3.4, we have expanded the types of vegetation clearance that can be undertaken as a permitted activity, as we consider specific exemptions to be the best way of ensuring the framework is efficient as well as effective.

243. In relation to the concerns of *Oceana Gold (New Zealand) Limited*, as outlined in section 3.5, we accept the need to provide a framework for biodiversity offsetting and environmental compensation in the 2GP. We note that new Policy 10.2.1.X provides an alternative policy test referencing biodiversity offsetting provisions for activities that are unable to meet the default test of “no net loss and preferably a net gain in the biodiversity values of the area” (whether due to locational constraints or for any other reason). Any biodiversity offsets or environmental compensation offered up as part of an application will be taken into account as positive effects under s104 of the RMA, and will be assessed against new Policy 2.2.3.5 and Policy 2.2.3.6. We consider this constitutes allowance for appropriate compensatory measures.
244. In terms of the other issues raised by Dr Thorsen:
- We accept the evidence of Dr Thorsen that some areas scheduled as ASBVs may not meet the new significance criteria outlined in Policy 2.2.3.1 (noting the example of *Penguin Place Limited* discussed in section 3.3.5.5). However, we also accept the evidence of the Reporting Officer that the intention of the ASBV method is to schedule areas that meet significance criteria in line with s6(c) of the RMA. We discuss reviewing the boundaries of existing ASBVs as part of a future work programme in section 3.3.5.5.
 - We accept that “biodiversity” and “conservation” have different meanings. As outlined in section 3.6.1.6, we have amended all instances of “Areas of Significant Conservation Value” to “Areas of Significant Biodiversity Value”, in response to the submission of *Forest and Bird NZ* (OS958.60). We do not consider it appropriate to amend “Areas of Significant Conservation Value” to “Protected Areas” as we consider “Areas of Significant Biodiversity Value” better describes the values of interest, and as there were no submissions seeking such an amendment.
 - We agree with the Reporting Officer’s assessment that changing two instances of “habitats” to singular usage (the first instance in the introductory clause, now part of both new Policy 2.2.3.X and Policy 2.2.3.1, and the second instance in clause (b) of Policy 2.2.3.X) provides greater clarity.
245. Therefore, in response to the submissions of *STOP* (OS900.9, OS900.10, OS900.157, OS900.142) and *Forest and Bird NZ* (OS958.8, OS958.9, OS958.74, OS958.20, OS958.79, OS958.111) and *Department of Conservation* (OS949.3, OS949.13) we have made the following amendments:
- Amended Policy 2.2.3.1 as follows, including by splitting the policy to create new Policy 2.2.3.X and amending the start of Policy 2.2.3.1:

Policy 2.2.3.X

Protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna, including by:

- a. promoting the protection of these in a schedule as Areas of Significant Biodiversity Value (ASBVs), QEII covenants, and/or other legal covenants; and
- b. assessment rules which require the consideration of significance as part of the assessment of effects on biodiversity values. {NatEnv 900.9 and 958.8}

Policy 2.2.3.1

"Identify as areas of significant indigenous vegetation and/or as significant habitats of indigenous fauna ~~and promote the protection of these as Scheduled Areas of Significant Conservation Value (ASCVs) and/or through QEII covenants.~~ Identify, {NatEnv 900.9 and 958.8} areas which have all or a number meet one or more {NatEnv 900.9 and 958.8} of the following criteria..."

- Added new Policy 10.2.1.X as follows (noting that clauses b and c are discussed in detail in section 3.5 below):

Policy 10.2.1.X

Avoid adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna or, if avoidance is not practicable, ensure that: {NatEnv 900.142}

- a. there is no net loss and preferably a net gain in the biodiversity values of the area; or {NatEnv 900.142}
- b. where there are no practicable alternative locations, any proposal for a biodiversity offset is in accordance with Policy 2.2.3.5; or {NatEnv 949.29}
- c. where a biodiversity offset is not practicable, environmental compensation is proposed in accordance with Policy 2.2.3.6. {NatEnv 1088.15}

- As a consequential change, added new Policy 10.2.1.X under 'Relevant objectives and policies' to assessment rules 10.4.3.1, 10.4.3.2, 10.4.3.4, 10.4.3.5, 10.4.3.10, 10.4.3.11, 10.4.4.6, 10.5.2.1, 10.5.2.B, 10.5.2.C, 10.5.2.3, 10.5.2.4, 10.5.2.5, 10.5.2.10, 10.6.2.1 and 10.7.2.1.
- Added 'General assessment guidance' to assessment rules 10.4.3.1, 10.4.3.2, 10.4.3.4, 10.4.3.5, 10.4.3.10, 10.5.A.1, 10.6.2.1 and 10.7.2.1 as follows:

In assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1. {NatEnv 900.9 and 958.8}

- Added 'General assessment guidance' to assessment rule 10.5.A.1 as follows:
 - iii. For those activities for which effects on the natural character of the coast is a matter of discretion, Council will consider the natural character values that have been identified in Appendix A5, which include biodiversity values among others. These values may not be comprehensive, as they are not based on site-specific assessments. Therefore, a more detailed assessment may be required, under Policy 10.2.1.X, to determine the effects of activities on areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- Added 'General assessment guidance' to assessment rules 10.4.3.2, 10.4.3.4,

10.4.3.5, 10.5.A.1, 10.6.2.1 and 10.7.2.1 as follows:

With respect to Policy 10.2.1.X, Council will generally only consider activities to have no practicable alternative locations where an assessment that meets the requirements set out in Rule 10.8.4 demonstrates that the proposed site, including any proposed mitigation measures, is the option that has the least impact on biodiversity values, while meeting the operational needs of the activity. {NatEnv 900.142 and others}

- Added new Special Information Requirement Rule 10.8.4, to set out the information requirements for an assessment of alternative locations with respect to effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna {NatEnv 900.142 and others} (note that the addition of this rule is also discussed in section 3.7.5.2, because the rule also relates to assessments of alternative locations with respect to effects on the identified values of a landscape or coastal character overlay zone, and is referred to in provisions relating to overlays)
246. We concur with the Reporting Officer's assessment that other changes to the 2GP will also better achieve the protection of significant indigenous vegetation and the significant habitats of indigenous fauna outside of ASBVs, relative to the operative Plan. These include amendments to vegetation clearance provisions, most notably to manage indigenous vegetation clearance where threatened fauna species are present, which are discussed in section 3.4.
247. We consider the amendments outlined above also constitute acceptance in part of the submission of *Forest and Bird NZ* (OS958.57), which sought to add a specific objective and policies to give effect to the NZCPS, including Policy 11, and the submissions of *Forest and Bird NZ* (OS958.20, OS958.22, OS958.61) and *STOP* (OS900.43, OS900.8), which sought manage effects on the values of Important Bird Areas.
248. We consider the addition of the 'General assessment guidance' which considers the criteria in Policy 2.2.3.1 also constitutes acceptance in part of the submissions of *STOP* (OS900.77, OS900.79, OS900.134, OS900.159, OS900.160, OS900.161, OS900.162), *Forest and Bird NZ* (OS958.80, OS958.81, OS958.82, OS958.83, OS958.85, OS958.86, OS958.89) which sought to reference Policy 2.2.3.1, amongst other objectives and policies, from a range of assessment rules.

3.3.1.4 Submissions seeking additional protection for Important Bird Areas

249. *Forest and Bird NZ* (OS958.8) sought to amend Policy 2.2.3.1 so that Important Bird Areas (included in their submission as Appendix Two) are identified and protected as ASCVs and/or through QEII or other legislative covenants. The suggested Important Bird Areas (IBAs) are 'Taiaroa Head', 'Aramoana Otago Harbour' and 'Otago Peninsula'.
250. *Forest and Bird NZ* (OS958.20, OS958.22) also sought to amend Policy 10.2.1.2 to avoid land use and development activities within IBAs, and Policy 10.2.1.4 to manage indigenous vegetation clearance in IBAs. *Federated Farmers of New Zealand* (FS2449.73, FS2449.85, FS2449.86) opposed these proposed amendments as they considered them unnecessarily restrictive, inconsistent with the RMA purpose and principles, and too vague and ill-defined.
251. *Forest and Bird NZ* (OS958.61) and *STOP* (OS900.43, OS900.8) requested a new policy to manage the effects of "use and development" on IBAs, by avoiding significant adverse effects and avoiding, remedying or mitigating other adverse

- effects. These submissions were opposed by *Geoff Scurr Contracting Limited* (FS2391.105, FS2391.110) who considered wide community input is required before any new policies are considered, and *Federated Farmers of New Zealand* (FS2449.35, FS2439.19, FS2439.20) who considered habitats are adequately covered elsewhere in the Plan and in the regional council planning framework, so the addition is unnecessary.
252. *Oceana Gold (New Zealand) Limited* (FS2439.19, FS2439.20) supported the intent of the policy in principle, provided focus is appropriately placed on identified significant indigenous birds and/or identified areas of significant habitat.
253. In relation to the IBAs, Dr Lloyd (ecologist called by DCC) said (paras 91-94) they:
- “...were identified according to global IBA criteria, and are sites that are recognised as internationally important for bird conservation and known to support key bird species and other biodiversity. In my opinion the process for identifying these sites, which involved contributions by numerous expert ornithologists, and which documents sources of information, is robust. Indigenous bird populations utilising these areas would meet several of the amended ecological significance criteria (2.2.3.1)...”*
254. Dr Lloyd went on to note that the IBA sites include land in farming use, which may cause a conflict with ASCV rules and that:
- “The process for delineation of IBA boundaries is to an extent subjective, and it is noted that consultation and field work may be required to determine IBA boundaries.”*
255. The Reporting Officer, Michael Bathgate, presented an analysis of the overlap of IBAs with ASCVs, stating that some of the IBAs identified were below MHWS and therefore outside the jurisdiction of the 2GP, and some areas are already reasonably well covered by ASCVs (s42A Report, Section 5.2.2, p57-58). He noted it may be that the descriptions and values in the schedule need to be updated to provide additional information on the IBA sites.
256. Mr Bathgate did not consider that Policy 2.2.3.1 should be expanded to specifically list IBA sites, noting Dr Lloyd’s evidence that they will meet more than one of the existing criteria in Policy 2.2.3.1 (s42A Report, Section 5.2.2, p58). In terms of expanding the ASCV schedule to include those IBAs not included, he considered this should be the work of a future plan change involving field assessment, more refined mapping and consultation with landowners.
257. Mr Bathgate also did not support the inclusion of reference to the new schedule in Policy 10.2.1.2 or 10.2.1.4, in the latter case stating that these potentially significant areas are not directly controlled by the associated performance standards (rules 10.3.2.3 and 10.3.2.4). He did, however, note that he had recommended some changes to relevant assessment guidance such that any contravention of these and other vegetation clearance standards will assess whether the area affected meets one or more of the significance criteria (s42A Report, Section 5.4.4, p143 and Section 5.8.7.1, p366).
258. Mr Bathgate also did not support adding a new policy specifically to identify, and avoid effects on the habitats of, indigenous bird habitats (s42A Report, Section 5.2.6, p82). He considered that this is already provided for at the strategic level by Policy 2.2.3.1 and Policy 2.2.3.2, specifically Policy 2.2.3.2.a and Policy 2.2.3.2.d.
259. The Panel requested the reporting officers undertake further assessment of options to protect IBAs from adverse effects on biodiversity caused by activities outside their boundaries. These were presented in a memorandum at the Final 2GP Hearing.
260. The Reporting Officers said that in theory, additional assessment rules could be applied to activities that already require consent within mapped areas around

identified IBAs, to provide for the management of effects on biodiversity values within the IBAs (para 45-49, 'Management of effects on biodiversity' Memorandum). However, they noted that this approach had not been directly requested in any submission point, with most of the submission points being requests to manage activities within these areas rather than around them, with the exception of the request to add a new policy to manage the effects of "use and development" on "habitats of indigenous birds in wetlands, beds of rivers and lakes and their margins for breeding, roosting, feeding and migration".

261. The Reporting Officers considered that these submission points do not provide sufficient scope to manage activities outside of IBAs. Because there was no clear request to take this action, potential further submitters could not reasonably be expected to anticipate it. They also considered that, prior to implementing a new mapped area of this kind, appropriate expert input would be needed with regard to both the types of activity around IBAs that are likely to threaten values within them, and the appropriate boundaries of the buffer areas. Without this evidence, a full s32 evaluation of the new mapped areas and associated provisions could not be undertaken.
262. They therefore did not recommend that this approach be implemented as a part of the 2GP process, stating that order to avoid undue prejudice and meet the requirements of the RMA, it would be necessary to undertake this work via a future plan review.

3.3.1.4.1 *Decision and Reasons*

263. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
264. We reject the submission of *Forest and Bird NZ* (OS958.8) insofar as they seek inclusion of a schedule of IBAs, and reference to the schedule in Policy 2.2.3.1.
265. We accept the evidence of Dr Lloyd, that the bird populations using these areas would meet several of the criteria outlined in Policy 2.2.3.1, and that the process for identifying the sites is robust. However, we also note his assessment that further field work may be required to determine IBA boundaries. In light of this, and the evidence of the Reporting Officer that above MHWS some IBAs are already covered by existing ASBVs, we accept the Reporting Officer's assessment that expanding the ASBV schedule to include those IBA areas not included, would be more appropriately progressed as a future plan change.
266. In coming to this conclusion, we do note that above MHWS, many of the IBAs are included in coastal character overlay zones. As a result of decisions outlined elsewhere, effects on natural character values will be assessed for restricted discretionary, discretionary and non-complying activities in these areas, enabling assessment and consideration of any effects. As outlined in section 3.3.1.3, above, in the case of most of these activities, where areas that meet the Policy 2.2.3.1 significance criteria are identified through this process, the acceptability of effects will be assessed against new Policy 10.2.1.X.
267. We accept in part the submissions of *Forest and Bird NZ* (OS958.20, OS958.22, OS958.61) and *STOP* (OS900.43, OS900.8). We do not support the addition of a new policy to specifically manage effects of activities on "habitats of indigenous birds in wetlands, beds of rivers and lakes and their margins for breeding, roosting, feeding and migration", or the inclusion of a reference to IBAs in Policy 10.2.1.2 and Policy 10.2.1.4, as we consider this would incorrectly imply the Plan has a method or rule specific to the management of effects of those values in those areas. However, we

consider inclusion of new Policy 10.2.1.X (discussed in section 3.3.1.3) constitutes partial acceptance of these submissions.

268. We note that some areas of the IBAs occur below MHWS (and therefore outside of the jurisdiction of the DCC). We accept the Reporting Officers' evidence that in theory, additional assessment rules could be applied to activities within mapped areas adjacent to identified IBAs (where these are within the jurisdiction of the DCC), to protect the values of those areas. We consider this approach would be consistent with s31 of the RMA, if it is considered necessary to maintain the biodiversity values of the IBAs.
269. However, we also accept the Reporting Officers' evidence that there is a lack of clear scope for such an approach, and that it is more appropriate for a future plan review to evaluate the options for addressing effects from land use and development on the biodiversity values of these areas, including evaluating the potential need for rules managing these activities.

3.3.1.5 Submissions seeking protection for the East Otago Taiapure, and a precautionary approach to additional residential development in coastal and estuarine areas

270. *The East Otago Taiapure Management Committee* (OS329.5) sought to retain the Plan approach that recognises the vulnerability of the coastal environment, the need for future planning around areas of cultural, historic, biodiversity and natural character in the coastal/marine environment and the need to give priority to protecting local food sources. The submitter identified the land and waterways adjacent to the East Otago Taiapure as an area where a precautionary approach to development and land use should be taken. *The East Otago Taiapure Management Committee* commented that the Taiapure-local fishery is established under the Fisheries Act, that protection and enhancement of the Taiapure is a matter of national importance, and that Councils are required to have particular regard to kaitiakitanga.
271. *The East Otago Taiapure Management Committee* (OS329.4) also sought to ensure additional residential development in coastal and estuarine areas is managed in a way that decreases risk to waterways and fisheries. *The Committee* sought recognition of the complexity of land and waterways adjacent to the East Otago Taiapure and considered that a precautionary decision-making approach should be taken. The submitter believed that "land based decisions and activities (including contaminated storm water and effluent run-off to waterways) can have negative effects on locally managed fisheries".
272. The Reporting Officer, Katie James, noted that the Taiapure falls outside of the jurisdiction of the DCC (as it covers the marine area to MHWS), and that discharges (including land based discharges) are primarily managed by the Otago Regional Council (s42A Report, section 5.3.1, pp.107-108). However, she considered that the 2GP recognises and provides for sites of significance to Rūnaka as matters of national importance (RMA s6(e)) and has particular regard to kaitiakitanga (RMA s7(a)) through the mapping of wāhi tūpuna along the coastline. She explained that mahika kai is identified as being one of the values to be protected, while activities affecting water quality including earthworks and sediment discharge is identified as a principal threat to values in areas including Blueskin Bay, Matainaka/Hawksbury Lagoon, and subdivision in Okahau (Warrington). She noted that the Manawhenua Section 42A Report recommended an additional 20m buffer around the water at Matanaka/Hawksbury, Blueskin Bay and Pūrākaunui and additional assessment rules where not already present.
273. Dr James noted that Section 10 also contains a number of provisions seeking to protect biodiversity and natural character of the coast, recognising the impact on, and

directly influencing the health of, the adjacent marine environment including Objective 10.2.2, Policy 10.2.2.2, Policy 10.2.2.3, Policy 10.2.2.4 and Policy 10.2.2.5. She commented that these policies are implemented by performance standards relating to esplanade strips and reserves as well as setbacks from coast and water bodies. For those areas that are zoned rural residential or residential around Blueskin Bay and at Karitane and Waikouaiti, she explained that any new development must be set back 20m from MHWS and any wetland identified as an ASCV, and 5m from a water body. He further noted that vegetation clearance rules also have a protective effect on coastal and estuarine areas by requiring that indigenous vegetation clearance must not occur within 20m of water (wetland, MHWS, water body >3m width) in the rural or rural residential zones or within any Coastal Environment Mapped Area (Seacliff, Purakaunui Beach, Matanaka). Finally, she observed that any subdivision activities adjacent to the coast or estuaries must provide esplanade reserves and potential circumstances that may support a consent application for subdivision include that the subdivision is designed to minimise any adverse effects from drainage on water bodies and in rural zones, to maintain natural overland flow paths and hydrology.

274. Dr James also noted that part of the coastal area adjacent to the East Otago Taiapure sit within a Natural Coastal Character overlay (Karitane Beach, Waikouaiti Beach) which provides additional controls relating to residential development, by way of requiring consent for buildings and structures greater than 60m². In addition, much of the coastal area adjacent to the Taiapure has a rural zoning, restricting residential development, and standard residential activities are non-complying activity within the ONFs at Huriawa and Mapoutahi.
275. Dr James acknowledged the submitter's support for the approach of the 2GP with respect to the coastal environment. She was satisfied that the 2GP policies and rules promote a precautionary approach in seeking to avoid or minimise any adverse effects on coastal and estuarine areas associated with residential development, reducing risk to water bodies and fisheries, including the East Otago Taiapure. She recommended that the submitter's point be accepted and that no amendment is required.
276. It is relevant that at the Urban Land Supply 2 Hearing, *Mr Gerald Fitzgerald* presented his own statement of evidence as a resident in the locality and also calling on his professional experience including a 10 year term on the Lake Taupo Protection Trust. He also called expert evidence from Dr Marc Schallenberg (aquatic scientist), and a statement from Mr David Redshaw (operations manager for Southern Clams Ltd) on behalf of himself and *The Waitati Beach Society Inc.*
277. While the original submissions of *Gerald Fitzgerald* and *The Waitati Beach Society Inc.* did not seek additional protections for the East Otago Taiapure, the evidence presented addressed matters relating to the relationship between residential development adjacent to Blueskin Bay (which is part of the East Otago Taiapure), and the health of estuary (for biodiversity generally, and fisheries specifically), and therefore was considered relevant to the Panel's deliberations on this submission point.
278. Drawing on 50 years of personal experience of Blueskin Bay, *Mr Fitzgerald* explained that the Bay supports a diverse range of fish – including flounder, sole, stargazer, octopus, whitebait species, sea-run brown trout, kahawai, sea horse, moki, and mullet – and that fur seals and New Zealand sea lions are observed within the estuary from time to time. Wading and coastal birds of the immediate and surrounding area that he has observed include royal spoonbill, heron (grey-faced and white), oyster catchers, gulls, kingfisher, stilts, dotterels, terns, penguins, shags, and shearwater.
279. He noted that the current Otago Regional Council Plan includes Blueskin Bay (and all estuarine areas) in the coastal protection zone because they are particularly valuable in terms of biological productivity, and noted the described values of the Bay.

280. He described the commercial Southern Clams cockle-harvesting operation and the presence of recreational shellfish collectors almost every weekend (and commonly during the week) collecting shellfish from the area closest to Doctors Point.
281. *Mr Fitzgerald* also commented on the lack of water quality monitoring in Blueskin Bay, and a report commissioned by the Otago Regional Council suggesting that the majority of existing septic tank systems throughout Otago are failing. He said his observations were that the soils of the area did not absorb water easily, and that there were already problems with leaching from older septic tank systems. Drawing on his experience with the Lake Taupo Protection Trust, he considered some of the algal blooms occurring in Blueskin Bay to be suggestive of run-off from surrounding land.
282. Dr. Marc Schallenberg commented on the biodiversity values of Blueskin Estuary and the potential impacts of residential development on those values. While he was called in relation to submissions primarily concerning proposed Township and Settlement zoning at 135-145 Doctors' Point Road, Dr Schallenberg commented that "other proposals for residential development in the Blueskin Bay catchment (including along Doctors' Point Road, the Warrington area and below the Orokonui Sanctuary)...should be considered in the same context" (para 16 of evidence).
283. Dr Schallenberg commented that the estuary is one of Otago's largest estuarine environments, and the largest near Dunedin (paras 9-11). He described it as an ecosystem rich in birds, shell fish, fish and other forms of life. He noted that it is part of the East Otago Taiapure, and that both recreational and commercial shellfish harvesting are undertaken on the estuary. He described the cockle productivity of the estuary as "outstanding" both regionally and nationally. In his view the Blueskin Bay catchment and estuary warrant consideration as a special management zone designed to protect against cumulative negative effects of land-derived contaminants on the outstanding marine resources of the estuary.
284. Dr Schallenberg's evidence included concern about:
- Cumulative contaminant flows arising from existing residential development, and that would be further exacerbated by any future developments (para 15).
 - The proximity of the site means there will be little if any attenuation of contaminants in waste water and storm water produced on site, and that any impacts on the estuary would not be mediated by catchment processes (para 18).
 - Excessive blooms of algal growth can have a "smothering also effect" on other life in the estuarine environment, noting that this is "generally fuelled by nitrogen and/or phosphorus inputs to the estuary" (para 19).
 - "Two critical knowledge gaps" –being the absence of "robust nutrient, sediment and *E.coli* budgets for the Blueskin catchment and estuary" and the lack of monitoring of Blueskin Estuary upon which to assess individual and cumulative environmental impacts (para 21).
 - Modern septic tanks overall effectiveness in reducing nitrogen leaching is generally minor, and for phosphorus, highly variable (para 23)
285. Dr Schallenberg concluded that the "enormous" challenges and costs of rectifying the adverse impacts of diminished ecosystem health in the estuary require catchment-specific research to be undertaken prior to further rapid, large-scale development (para 30).
286. Mr David Redshaw, operations manager for Southern Clams Ltd, spoke to a powerpoint presentation about the companies monitoring in the Bay which confirmed or corroborated some of the concerns that Dr Schallenberg suggested.

287. We also note that a number of other submitters at the Urban Land Supply 2 Hearing (including *Blueskin Bay Watch*, *John Kaiser* and *Anthony Parata*) expressed concerns about the impact of new residential development around Blueskin Bay on estuarine health and biodiversity. These submitters did not, however, produce any expert evidence on the efficacy of septic tank systems compared with newer waste water systems.
288. The Panel requested the reporting officers undertake future assessment of options to protect the East Otago Taiapure from adverse effects on biodiversity caused by activities outside their boundaries. Specifically, the Panel queried whether it may be appropriate to map an area around the Taiapure, within which activities that may result in adverse effects on the Taiapure's biodiversity values would be subject to additional controls.
289. The reporting officers responded in a memorandum presented at the Final 2GP Hearing. They stated that a mapped area would work in the same way as the wāhi tūpuna mapped area – i.e. within this area no additional consent requirements apply, but for activities that already require consent for other reasons, and that have been identified as a threat to the values of the mapped area, effects on protected values are assessed.
290. Their memorandum highlighted an issue of scope. They considered that although the approach outlined could be used as a way to achieve the outcome sought in the *East Otago Taiapure Management Committee's* submission point OS329.4, the submission itself does not provide any detail on the methods sought to achieve the outcome. They noted this meant affected parties and other members of the public have not had the opportunity to comment on these methods via further submissions.
291. In addition, they considered that expert input would be needed in order to undertake a full section 32 evaluation of the costs and benefits of the mapped area and associated provisions to identify:
 - the extent to which residential development poses a risk to the Taiapure – and whether any other activities would also threaten its values; and
 - appropriate boundaries for a potential mapped area adjacent to the Taiapure, covering the area within which development would be likely to pose a level of risk that warranted management.
292. Overall, and given the extent of work and assessments required, the reporting officers recommended that it was not feasible for such an approach be undertaken at this stage. In their view, in order to avoid undue prejudice and meet the requirements of the RMA, it would be necessary to undertake this work via a future plan review.

3.3.1.5.1 *Decision and Reasons*

293. We accept in part the submissions of the *The East Otago Taiapure Management Committee* (OS329.4, OS329.5).
294. We accept that the East Otago Taiapure area has been recognised under the Fisheries Act. We note that areas recognised under Part 9 are of special significance to iwi or hapu, to “make...better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi”. We therefore accept that the protection of customary rights, and the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga are both relevant matters of national importance under s6(e) and s6(g) of the RMA respectively. We also accept that the need to have particular regard for kaitiakitanga under s7(a) of the RMA is of particular relevance to the East Otago Taiapure area.

295. While little evidence was received on the values of the Taiapure outside of Blueskin Bay, we accept the evidence of Dr Schallenberg that Blueskin Bay itself has important biodiversity values, and associated with these, significant recreational and commercial fisheries. We note this evidence is corroborated by the statement of Mr Redshaw on Southern Clams Ltd's operations, monitoring of water quality, and observations of recreational shellfish harvesting supplied by *Mr Fitzgerald* on behalf of both himself and *The Waitati Beach Society Inc.* We consider the submissions received on proposed urban zoning in the vicinity of Blueskin Bay, many of which raised concerns about potential impacts on the health of the estuary, to be a very good indication of the importance of the health of the Blueskin Bay ecosystem to the local community.
296. We accept Dr Schallenberg's evidence that run-off from residential activities can have adverse effects on the health of estuarine environments, most notably through the increased nitrogen, phosphorous and *E.coli* loading, and that the efficacy of any measures to attenuate or mitigate this additional loading can vary significantly depending on site-specific conditions. We further accept that those activities closer to the estuary are more likely to have direct effects on water quality and thus ecosystem health. We were persuaded by his evidence that there is inadequate monitoring data available upon which to judge the current state of health of the estuary, although we do consider that the data presented by Southern Clams Ltd evidence that current levels of contaminants entering the estuary are adversely impacting on existing fisheries.
297. We note that the evidence of Dr Schallenberg aligns with the submission of the *East Otago Taiapure Management Committee* insofar as it suggests the Blueskin Bay catchment and estuary warrant consideration as a "special management zone designed to protect against cumulative negative effects of land-derived contaminants on the outstanding marine resources of the estuary."
298. With respect to the Reporting Officer's evidence that the Taiapure falls outside of the jurisdiction of the DCC, we accept, as discussed in sections 3.4.7.3, 3.6.1.6, 3.8.10 and 3.9.1, that the control of land use for the maintenance and enhancement of water and ecosystems in water bodies and coastal water is a responsibility of regional councils under s30(c) of the RMA. We have suggested the issue of whether this role has been delegated to the territorial authority, as suggested at the Rural Hearing, be clarified as a matter of urgency.
299. We also accept the Reporting Officer's evidence that a range of 2GP policies and rules seek to avoid or minimise any adverse effects of residential development on coastal and estuarine areas, and note that a number of amendments made in response to decisions have further strengthened these protections. In particular, we note (as discussed in the Public Health and Safety Decision Report), amendments to the shape performance standard in the residential, rural, rural residential, commercial and mixed use and industrial zones, and the Campus Zone, to require that in unreticulated areas, resultant sites must provide for a waste disposal area to be located at least 50m from any water body and Mean High Water Springs.
300. However, in light of the evidence presented, we are unconvinced that 2GP provisions are adequate where they manage activities that abut environments with particularly significant biodiversity values and/or where the maintenance of ecosystem health is of particular importance in the context of s6(e) and s6(g), s7(a) and s8 of the RMA. The East Otago Taiapure area appears to be of particular cultural significance, and at least in the case of Blueskin Bay, appears to have significant biodiversity values. Given this, we consider it would be appropriate to clearly and specifically identify values and threats for this area, and to evaluate the options to protect those values. In light of evidence presented we have considerable sympathy with the concerns of *The East*

Otago Taiapure Management Committee (OS329.4, OS329.5), particularly in relation to Blueskin Bay.

301. As discussed in the Manawhenua Decision Report, we accept that the Taiapure is a community management tool, rather than just a site of significance to Rūnaka, and that applying a wāhi tūpuna mapped area over the extent of the Taiapure is therefore not appropriate. We agree with the reporting officers' assessment that to avoid undue prejudice and meet the requirements of the RMA, it would be necessary to introduce any new method via a future plan review.
302. As outlined in the Manawhenua Decision Report, amendments have been made to the Matainaka/Hawksbury Lagoon, Te Tauraka Poti/Merton Tidal Arm, Blueskin Bay and Pūrākaunui wāhi tūpuna mapped areas (all of which sit within the East Otago Taiapure), extending them to include an adjacent 20m strip of land above MHWS. As any buildings, structures or earthworks – large scale associated with residential activity within this area would be breaching the 20m setback performance standard, they would require resource consent, and thus would trigger an assessment of 'Effects on cultural values of manawhenua'. In these areas, water quality and/or public access have been identified as values to be protected. We consider these amendments constitute alternative partial relief for the submissions of *The East Otago Taiapure Management Committee* (OS329.4, OS329.5).

3.3.2 Policy 2.2.3.1

Background

303. Policy 2.2.3.1 sets the criteria for identifying areas of significant indigenous vegetation and significant habitats of indigenous fauna. It states:

"Identify areas of significant indigenous vegetation and/or significant habitats of indigenous fauna and promote the protection of these as Scheduled Areas of Significant Conservation Value (ASCVs) and/or through QEII covenants. Identify areas which have all or a number of the following criteria:

 - a. existing protected areas set aside by statute or covenant or listed in an operative Otago Regional Council Regional Plan as having significant indigenous biodiversity value;
 - b. habitats for indigenous species that are nationally threatened, at risk, or uncommon;
 - c. indigenous vegetation and/or fauna habitat types that are rare, acutely or chronically threatened;
 - d. indigenous vegetation or indigenous fauna that is distinctive or representative of the natural diversity of the ecological district;
 - e. areas important for their ecological context as an ecological buffer, connection or as a habitat for indigenous fauna;
 - f. areas with a relatively high indigenous diversity and pattern; and/or
 - g. areas that are of a size to make them significant."

3.3.2.1 Submission in support

304. *The Yellow-eyed Penguin Trust* (OS690.4) sought to retain Policy 2.2.3.1 because it believed that identifying and protecting key areas through the District Plan is an important element of protecting indigenous biodiversity.

3.3.2.1.1 *Decision and Reasons*

305. We accept in part the submission of *The Yellow-eyed Penguin Trust* (OS690.4), noting that we have retained Policy 2.2.3.1 with the amendments outlined in the sections below.

3.3.2.2 Requests to amend Policy 2.2.3.1 to refer to other covenanting options

306. *STOP* (OS900.9) and *Forest and Bird NZ* (OS958.8)¹³ sought to make a number of changes to Policy 2.2.3.1. Amongst other amendments, they sought to amend the policy to refer to “or other legislative covenants” as well as ASCVs and QEII covenants.
307. *STOP* (OS900.9) and *Forest and Bird NZ* (OS958.8) were opposed by a number of further submitters¹⁴. Their concerns included that “protection of indigenous biodiversity will not be, and is not always necessary and appropriate. Resource consent is not always required or appropriate, nor should it be”, that the amendments are too restrictive and unhelpfully narrow down the definitions, and that they are unnecessary and overly complicate the Policy.
308. Dr Lloyd (ecologist called by DCC) (para 108) and the Reporting Officer supported the intent of the phrase “or other legislative covenants”, as there are other alternative legal conservation covenants besides QEII covenants that are available.
309. The Reporting Officer recommended an amendment to the policy to reflect this.
310. In evidence, Ms Yozin (planner for the *Department of Conservation*) promoted (para 6.11) an amendment to Policy 2.2.3.1 to include “and/or other legal covenants.”
311. In evidence, Dr Thorsen (ecologist) called by *Oceana Gold (New Zealand) Limited* commented (para 42) that there are other forms of covenanting.
312. The Reporting Officer, Michael Bathgate, responded in a memo entitled ‘Natural Environment S42A Section 5.2.2, Evidence of Michael Thorsen for Oceana Gold (New Zealand) Limited’ dated 22 March 2018, in which he commented that he considered the recommendation to add “and/or other legal covenants” at the start of the policy addressed the issue.

3.3.2.2.1 *Decision and Reasons*

313. We accept in part the submissions *STOP* (OS900.9) and *Forest and Bird NZ* (OS958.8) insofar as they sought the insertion of “and other legal covenants”, accepting the evidence of Dr Lloyd, Dr Thorsen and the Reporting Officer that other legal covenanting options are available. We prefer “and/or other legal covenants” as recommended by the Reporting Officer, in recognition of the fact that an area may be subject to more than one legal covenant, and we have added this to new Policy 2.2.3.X (discussed in section 3.3.1.3).

3.3.2.3 Requests to amend Policy 2.2.3.1 to change or clarify the number of criteria needing to be met

314. *STOP* (OS900.9) and *Forest and Bird NZ* (OS958.8)¹⁵ sought to amend the policy substituting “a number of” with “one or more”.

¹³ Other aspects of these submissions are discussed in sections 3.3.1.1, 3.3.1.3, 3.3.2.3, and 3.3.2.4.

¹⁴ *Geoff Scurr Contracting Limited* (FS2391.66, FS2391.96), *Federated Farmers of New Zealand* (FS2449.37, FS2449.38), *John Scott* (FS2140.21), *Ben Graham* (FS2279.21), *Mathew O’Connell* (FS2300.21), *Pigeon Flat Road Group* (FS2416.54).

¹⁵ Other aspects of these submissions are discussed in sections 3.3.1.1, 3.3.1.3, 3.3.2.2, and 3.3.2.4.

315. *STOP* (OS900.9) and *Forest and Bird NZ* (OS958.8) were opposed by a number of further submitters¹⁶, for the reasons outlined in the previous section 3.3.2.2.
316. Dr Lloyd (ecologist called by DCC) (para 108) and the Reporting Officer also supported the substitution of “a number of” with “one or more”. Dr Lloyd observed the notified wording would generally be interpreted as more than one. The Reporting Officer noted “one or more” is consistent with the wording used in Schedule 4 of the pORPS-dv, and that while the intention is that an area will be assessed against all of the criteria, there may be circumstances where an area that meets only one of the criteria is considered significant. For example, in his view, meeting criterion (a) would be sufficient in itself to make an area worthy of promotion for protection. In relation to *Oceana Gold’s* concerns, he commented that an assessment is made by an ecologist or similarly qualified person, and that meeting one criteria may be enough in some circumstances, but may not be in other circumstances. For example, meeting the size criterion alone may not always be sufficient.
317. Mr David Cooper appeared for *Federated Farmers of New Zealand* at the Hearing, speaking to a tabled statement. He said *Federated Farmers of New Zealand* opposed the amendment of the policy from “all or a number” to “one or more of the following”, because they considered the policy criteria was already very broad, and that it further reduced the clarity for farmers about what areas of their property they are able to farm.
318. In evidence, Ms Yozin (planner for the *Department of Conservation*) promoted an amendment to Policy 2.2.3.1 to “one or more” of criteria (para 6.11).
319. In evidence, Dr Thorsen (ecologist) called by *Oceana Gold (New Zealand) Limited* commented that the word “number” is unclear, and that it should be changed for an absolute value (e.g “two” or “three”) (para 42). He considered that the notified wording suggests at least two of the criteria should be satisfied. He noted this is a departure from the previous District Plan where the indigenous biodiversity of an area only had to meet one of a list of criteria to be considered significant.
320. The Reporting Officer, Michael Bathgate, responded in a memo entitled ‘Natural Environment S42A Section 5.2.2, Evidence of Michael Thorsen for *Oceana Gold (New Zealand) Limited*’ dated 22 March 2018, setting out his planning response where appropriate, and responses to any ecological questions provided by Dr Lloyd.
321. Mr Bathgate agreed that the term “number” in relation to the criteria in Policy 2.2.3.1 was unclear, and that it implies that at least two must be met, and noted the Section 42A recommendation to change this to “one or more”.

3.3.2.3.1 *Decision and Reasons*

322. We accept in part the submissions of *STOP* (OS900.9) and *Forest and Bird NZ* (OS958.8) insofar as they sought the substitution of “all or a number of” with “one or more”.
323. We note that there was agreement amongst submitters, experts and the Reporting Officer that “all or a number of” should be amended in the interests of clarity, with the matter of contention being what it should be substituted with.
324. While we accept the evidence of both Dr Lloyd and Dr Thorsen that “all or a number” would suggest two or more criteria, we note that the “one or more” sought by *STOP*

¹⁶ *Geoff Scurr Contracting Limited* (FS2391.66, FS2391.96), *Federated Farmers of New Zealand* (FS2449.37, FS2449.38), *John Scott* (FS2140.21), *Ben Graham* (FS2279.21), *Mathew O’Connell* (FS2300.21), *Pigeon Flat Road Group* (FS2416.54).

and *Forest and Bird NZ* (and supported by Ms Yozin in evidence) is consistent with the wording used in Schedule 4 of the pORPS-dv. We further note that as this part of the Schedule is not subject to appeal and is therefore effectively operative, it can be afforded considerable weight. We consider it more consistent with this higher order policy direction for the policy to refer to “one or more”, and have amended Policy 2.2.3.1 accordingly.

3.3.2.4 Requests to amend, add or delete criteria in Policy 2.2.3.1

325. *Oceana Gold (New Zealand) Limited* (OS1088.14) sought to amend Policy 2.2.3.1, as it was concerned the wording suggested that an area containing one or more of the areas (a)-(g) would be seen as justifying the area for inclusion as ASCVs or within a QEII covenant, which they did not consider appropriate.
326. Dr Lloyd (ecologist called by DCC) commented in his evidence that this would provide no guidance for how significant areas should be identified, and would result in only those within scheduled ASCVs and QEII covenants being protected. He noted that large areas of significant indigenous vegetation and the habitats of indigenous fauna occurring away from existing protected areas would therefore not be identified or protected. The Reporting Officer did not support the submitter’s suggested approach, noting that in their absence no guidance would be available as to areas that may be considered significant, and that their inclusion contributes to plan clarity and comprehension.
327. The *Department of Conservation* (OS949.22) sought to amend Policy 2.2.3.1 or insert a new Appendix setting out criteria to determine whether a site is an Area of Significant Conservation Value using criteria that are consistent with the pORPS criteria. *Forest and Bird NZ* (OS958.8) also sought to replace the criteria in Policy 2.2.3.1 with those in the pORPS, which they consider are those that have generally been accepted by the Environment Court. In addition, they provided a schedule of Important Bird Areas (IBAs) in Appendix Two of their submission, which the submitter considered should be directly referenced in Policy 2.2.3.1. This element of their submission is discussed in section 3.3.1.4.
328. In terms of the *Department of Conservation* and *Forest and Bird NZ* requests to ensure the criteria are consistent with the pORPS criteria, the Reporting Officer, Michael Bathgate, noted that the criteria in Schedule 4 of the pORPS-dv are under appeal. He referred to an evaluation of the criteria in Policy 2.2.3.1 against those in the pORPS-dv by Dr Lloyd, noting that Dr Lloyd’s assessment (paras 95-106) was as follows:
 - 2.2.3.1a - relates to existing protected areas and has no analogue in the proposed RPS
 - 2.2.3.1b - differs from corresponding pORPS-dv criterion 2A as it does not specify the scale of assessment and could be amended to specify national and ecological district scales. Dr Lloyd also stated that the criteria in both documents fail to address mobile fauna that use sites only briefly, and should be modified accordingly.
 - 2.2.3.1c – pORPS-dv criterion 2b is an improvement, as it specifies a percentage threshold rather than a qualitative label (acutely or chronically threatened are categories historically used to describe species threat, rather than indigenous vegetation or fauna habitat), and various scales of assessment. Dr Lloyd also considers that proposed RPS criterion 2c would also provide an improvement as it specifically references “originally rare ecosystems”.
 - Policy 2.2.3.1.d - pORPS-dv criteria 4 and 1 are more explicit than the references to distinctiveness and representativeness and would better capture areas of representative and distinctive indigenous vegetation and habitats.

- Policy 2.2.3.1.e - pORPS-dv criterion 5 refers to similar matters regarding ecological context, but is more appropriate in that it stresses that examples of fauna habitat may be used regularly or irregularly as part of a life cycle. In Dr Lloyd's view, the 2GP criterion should more comprehensively define sites that comprise important indigenous fauna habitats, as in some instances no other significance criterion would capture these.
 - Policy 2.2.3.1.f - pORPS-dv criterion 3 provides a more comprehensive definition of diversity and ensures that diversity is compared within the same type of vegetation and habitat.
 - Policy 2.2.3.1.g - has no analogue in the pORPS-dv but, as large examples of their type, and large sites that incorporate multiple types, are almost always significant, it should be retained.
329. *STOP* (OS900.9) submitted that the proposed criteria are incomplete and do not include all of the national priorities for areas to protect. They sought to amend the policy by adding the following criteria:
- “a. existing protected areas set aside by statute or covenant or listed in an operative Otago Regional Council Regional Plan as having significant indigenous biodiversity value;
b. indigenous vegetation associated with land environments, (defined by Land Environments of New Zealand at Level IV), that have 20 percent or less remaining in indigenous cover
~~b~~c. habitats for indigenous species that are nationally threatened, at risk, or uncommon;
 ed. indigenous vegetation and/or fauna habitat types that are rare, acutely or chronically threatened;
e. Indigenous vegetation associated with originally rare ecosystems, such as salt pans and dune lands
 d~~f~~. indigenous vegetation or indigenous fauna that is distinctive....”
330. In relation to the suggested insertion of “indigenous vegetation associated with land environments, (defined by Land Environments of New Zealand at Level IV), that have 20 percent or less remaining in indigenous cover” Dr Lloyd considered (paras 109-111) that this criterion was too blunt and has the potential to identify areas that are not significant. He expressed a preference for pORPS-dv criterion 2b, which captures areas of indigenous vegetation and habitat that have been reduced to less than 20% of their former extent, noting that it is more explicit and would focus only on those examples of habitat that were strongly reduced. The Reporting Officer supported this, noting that the addition has been recommended for inclusion in a new clause (c)(i) in response to the *DOC* submission.
331. In relation to the suggested criterion “Indigenous vegetation associated with originally rare ecosystems, such as salt pans and dune lands”, Dr Lloyd suggested that if pORPS-dv criterion 2c is adopted, this would address the same matter (para 112). The Reporting Officer noted that his recommendation was that this be added as a new clause (c)(ii) in response to the *DOC* submission.
332. *Federated Farmers of New Zealand* (OS919.8) sought to amend Policy 2.2.3.1 by removing (e), (f) and (g), because many of the areas which the policy seeks to protect occur on private land for primary production and, in these instances, it is necessary to balance the overall benefits of indigenous vegetation or indigenous fauna against the benefits provided by primary production activities. They believed that the provisions are so broad as to effectively enable Council to protect any areas of indigenous vegetation or indigenous fauna, particularly with reference to buffers, connections and habitat. They agreed with the overall intention to provide protection to indigenous vegetation or indigenous fauna, but considered policies (e), (f) and (g)

- expand the scope beyond what is necessary or reasonable, providing no certainty or scale.
333. *Forest and Bird NZ* (FS2482.10) opposed *Federated Farmers of New Zealand* (OS919.8) because they believed the proposed criteria are incomplete and differ from those that have generally been accepted by the Environment Court. *Forest and Bird* recommended adopting the criteria in the proposed Regional Policy Statement for Otago.
 334. In evidence at the hearing, Dr Lloyd commented that ecological context is a key criterion, that buffering is a well-recognised attribute, that habitat-diverse and/or species-rich sites are commonly recognised in significance criteria sets, and that large areas are almost always significant (para 85-90). He considered that removing these criteria would have a significant negative effect on the recognition of important habitats for indigenous fauna, and sites that are more likely to have strong ecological functioning.
 335. The Reporting Officer agreed with the evidence of Dr Lloyd that these criteria are appropriate in Policy 2.2.3.1, noting that criteria for ecological context and diversity are provided in Schedule 4 of the pORPS-dv (which provides criteria for the identification of areas of significant indigenous vegetation and habitat of indigenous fauna). He said, as such, the inclusion of clauses (e) and (f) has proper regard to the pORPS-dv. While criteria (g) is not directly listed in Schedule 4 of the pORPS-dv, he noted Dr Lloyd's evidence supporting its retention.
 336. Dr Lloyd recommended the retention of significance criteria to guide the identification of significant areas of indigenous vegetation and significant habitats of indigenous fauna, and a range of amendments discussed above (para 113). The Reporting Officer recommended these amendments to Policy 2.2.3.1 be adopted, considering that they clarify Policy 2.2.3.1 and make it more consistent with Schedule 4 of the pORPS-dv.
 337. In a statement at the hearing, Mr David Cooper on behalf of *Federated Farmers of New Zealand* said that *Federated Farmers* could understand why criteria (e), (f) and (g) should remain within the policy, given their purpose, while continuing to oppose the recommended amendment to "one or more" in the substantive clause.
 338. In evidence, Ms Yozin (planner for the *Department of Conservation*) noted that there are different criteria outlined in Policy 2.3.3.1 and Schedule A1.2, and that both Schedule A1.2 and Policy 2.3.3.1 will need to be amended.
 339. In evidence, Mr Rance (ecological expert for the *Department of Conservation*) expressed support for the majority of the proposed amendments, with two caveats (para 11.4 and 11.5):
 - In relation to Policy 2.2.3.1b, he sought assurance that Nationally Threatened and At Risk threat categories include Nationally Critical, Nationally Endangered and Nationally Vulnerable, Declining, Recovering, Relict and Naturally Uncommon, noting the inconsistency between the provision and the Threat categories included in the threatened plant and fauna appendices.
 - In relation to Policy 2.2.3.1.c.i, he considered the 20% threshold too low, and that it should instead be 30%, which correlated to At Risk in the LENZ threat assessment. He also noted that the provision was likely to be difficult to apply in practice, given the identification, classification and calculation process that would be needed in relation to each vegetation type.
 340. In his Revised Recommendations Summary, the Reporting Officer noted that 20% as a threshold is consistent with Schedule 4 of the pORPS-dv, and that there were no appeals against this aspect. He also conveyed Dr Lloyd's observation that 20% is consistent with National Priority 1 (Protecting Our Places, MfE, 2007).

341. In evidence, Dr Thorsen, ecologist called by *Oceana Gold (New Zealand) Limited* commented (para 42) on Policy 2.2.3.1 criteria as follows:
- The list of criteria would more appropriately be treated as a definition.
 - “Acutely” and “chronically” related to a classification system no longer in use, and suggested the sentence be amended to read “that are Threatened, At Risk or locally uncommon in the latest revision of the New Zealand Threat Classification System or Appendix 10A”.
 - The word “representative” should be defined consistent with other operative district plans, noting the implication in the Wildlands Ecological Significance Criteria Report that it is assessed on current vegetation patterns, as opposed to the operative Plan, which refers to vegetation patterns that “formerly covered Dunedin’s ecological districts”.
 - The word “distinctive” should be defined, and recommended the definition presented in the Wildlands’ Ecological Significance Report.
342. Dr Thorsen supported the relief sought by *Oceana Gold (New Zealand) Limited* in amending the wording of Policy 2.2.3.1 (para 56).
343. Dr Thorsen also commented on the Section 42A Report recommended amendments as follows (para 75):
- With reference to Policy 2.2.3.1(b), as the current New Zealand Threat Classification System evaluates species on a national level the word ‘nationally’ is not needed, and that, while a species can be considered uncommon within an Ecological District, it could also be considered larger scale assessments such as uncommon within Otago or within an Ecological Region should also be considered
 - With reference to Policy 2.2.3.1(b), the word ‘indigenous’ is superfluous as the New Zealand Threat Classification System does not ascribe these conservation statuses to exotic species.
 - The amended Policy 2.2.3.1(c)(i) is unworkable, as these assessments have only occurred at a national scale, and the information and mapping detail required to undertake these on “regionally or within a relevant land environment, ecological district” are not available. He recommended the clause end after “nationally”.
 - The amended Policy 2.2.3.1(c)(ii) should refer to the source document and should read “indigenous vegetation and habitats within originally rare ecosystems as defined in “New Zealand’s historically rare terrestrial ecosystems set in a physical and physiognomic framework” or subsequent revisions.”
 - In Policy 2.2.3.1(d), the meaning of “represent all that remains”, “typical or characteristic”, “natural diversity”, and “vegetation and habitat” is unclear.
 - For Policy 2.2.3.1(e) there will be many “species at their distributional limit within Otago”, particularly at the boundary between Central and coastal Otago climates
 - In amended Policy 2.2.3.1(e)(iii) “distinctive” is not adequately defined, and “restricted” requires some indication of area.
 - In Policy 2.2.3.1(g) the wording is such that any area used by any indigenous fauna would qualify for consideration as an ASCV.
 - Policy 2.2.3.1(f) has new wording which is clumsy, confusing and so unclear as to not be understandable.
344. In his Revised Recommendations Summary, the Reporting Officer queried the scope to make changes on the basis of Dr Thorsen’s evidence, given that the *Oceana Gold (New Zealand) Limited* submission only sought to delete all criteria listed in Policy 2.2.3.1.
345. During deliberations, we determined the matters raised were within the scope of the *Oceana Gold* submission and sought the view of staff and/or the DCC ecological expert on this aspect of Dr Thorsen’s evidence, to assist in our decision. The Reporting Officer, Michael Bathgate, responded in a memo entitled ‘Natural

Environment S42A Section 5.2.2, Evidence of Michael Thorsen for Oceana Gold (New Zealand) Limited' dated 22 March 2018, setting out his planning response where appropriate, and responses to any ecological questions provided by Dr Lloyd.

346. With respect to issues raised in paragraph 42 of Dr Thorsen's evidence:

- Mr Bathgate did not support Dr Thorsen's suggestion to move the criteria in Policy 2.2.3.1 to a definition of "significant". He noted the approach in Policy 2.2.3.1 is consistent with other strategic policies that list criteria for scheduled items (e.g. Policy 2.4.1.2 for significant trees) or overlay zones (e.g. Policy 2.4.5.2 for natural character of the coast). He also stated the term "significant" gets used in a number of different contexts in the 2GP and to define the term in the way suggested by Dr Thorsen would be confusing for plan users.
- Mr Bathgate noted that the "acutely" and "chronically" threatened classification system phrasing, which was in clause (c) of the Policy, has been replaced in the s42A recommendations as part of alignment with Schedule 4 to the proposed RPS.
- Mr Bathgate did not favour defining "representative" for the same reason he did not favour defining other common terms such as "significant". He considered clause (d) itself in Policy 2.2.3.1 serves the function of defining what is representative. He stated that Dr Lloyd's view is that it is the former vegetation patterns that are required to assess representativeness, on the assumption that these better represent the original composition and structure of vegetation and habitats. Mr Bathgate considered the amended wording of clause (d), which replicates the wording in the proposed RPS, makes it clearer that representativeness is based on former patterns.
- Mr Bathgate also did not favour defining "distinctive". He considered that the new clause (e) recommended in the Section 42A Report sets out what is meant by distinctiveness and noted that this clause, which replicates the proposed RPS wording, is an expanded version of the definition in the Wildlands report.

347. With respect to issues raised in paragraph 75 of Dr Thorsen's evidence:

- Mr Bathgate and Dr Lloyd agreed that the first instance of the word "nationally" is not required in 2.2.3.1.b, so long as the second instance is retained. Mr Bathgate recommended that clause (b) of Policy 2.2.3.1 is further amended as follows: "...b. habitats for indigenous species that are ~~nationally~~ {NatEnv 1088.14} threatened, at risk, or uncommon, nationally or within an ecological district;..." {NatEnv949.22, NatEnv958.8}.
- Mr Bathgate noted the phrasing of "nationally or within an ecological district" follows the same wording as the rarity clause in Schedule 4 to the proposed RPS, and he did not recommend any change to this clause.
- After consulting with Dr Lloyd, Mr Bathgate considered "indigenous" should remain in clause (b) as otherwise the rarity of exotic species may be captured within the scope of this policy.
- In relation to information and mapping detail required for amended clause (c) (i), Dr Lloyd responded that in some cases mapping will not be needed, because the vegetation or habitat type is clearly well below the 20% threshold at a regional or ecological district level, and that mapping is available in the Land Cover Data Base for some habitat types, and for others new mapping may be undertaken. On the basis of Dr Lloyd's comments, Mr Bathgate did not consider that clause (c)(i) should be amended as suggested by Dr Thorsen, noting that information on vegetation and habitat types is improving over time, and that the DCC has committed to improving its ecological mapping across the entire extent of Dunedin city in the near future.
- In relation to "originally rare ecosystems" in (c) (ii), Dr Lloyd responded that people generally understand the term, with this classification adopted by the Ministry for the Environment. Dr Lloyd notes that if a source needs to be cited, it

should be: Williams P.A., Wiser S., Clarkson B., and Stanley M.C. 2007: New Zealand's historically rare terrestrial ecosystems set in a physical and physiognomic framework, *New Zealand Journal of Ecology* 31: 119–128. Mr Bathgate did not support the amendment proposed by Dr Thorsen as he found the wording to be unwieldy and considered it would reduce the clarity of the policy. He noted that information on “originally rare ecosystems” is readily obtainable on various websites, including that of the Ministry for the Environment or Statistics New Zealand.

- Mr Bathgate noted that the amended clause (d) follows the wording in the representativeness criterion of Schedule 4 to the proposed RPS. He considered the terms in question to be common terms and did not recommend any further change to this clause.
 - Dr Lloyd stated that amended clause (e)(i) should probably refer to “Dunedin”, and noted that populations near species distribution limits are generally considered important (for example, these may be genetically distinct) and may also occur in unusual vegetation assemblages. Mr Bathgate noted that this clause follows Schedule 4 of the proposed RPS, but in response to Dr Thorsen and on the basis of Dr Lloyd’s comments, considered this should be amended to reflect distinctiveness at a local rather than regional scale. He recommended further amending clause (e)(i) to read “Indigenous species at their distributional limit within Dunedin {NatEnv 1088.14} ~~State or nationally~~”.
 - Mr Bathgate did not favour the definition of a common term such as “distinctive” in the 2GP, considering that the meaning of terms such as “distinctive” and “restricted” in this context will be determined by the ecologist or other person undertaking any assessment under Policy 2.2.3.1. He considered there will almost always be some level of judgement required in undertaking this assessment, requiring justification of what is distinctive or restricted, and he did not consider it practical to attempt to further define these terms.
 - Dr Lloyd pointed out the inclusion of the word “important” within clause (g), which acts as a limit on the inclusion of any area used by indigenous fauna. Mr Bathgate considered the wording could be amended slightly to emphasise that the word “important” refers to all the different situations described in the clause, and to align it more closely to the ecological context criterion of Schedule 4 to the proposed RPS. He recommended further amending clause (g), under the same scope as its recommended inclusion in the Section 42A Report, to read as follows: “g. areas that are important for indigenous fauna, on a regular or temporary basis, for breeding, refuge, feeding or resting;” {NatEnv 949.22 and 958.8}.
 - Mr Bathgate agreed with Dr Thorsen that the notified clause (f), which becomes clause (h) in the recommended amendments in the Section 42A Report, is not clear and may require amendment. He further noted the amended wording in this clause replicates the wording for the diversity criterion in Schedule 4 to the proposed RPS, which is one of the few parts of Schedule 4 under appeal, and recommended the Panel amend this to reflect the finalised wording in Schedule 4 to the RPS.
348. Dr Lloyd also commented that clause (f)¹⁷ doesn’t need to refer to the habitat of indigenous fauna, as this is captured in clause (g), and that buffering and connectivity should preferably be referred to as examples or, alternatively, the clause narrowed so that it only refers to “important” buffering and connectivity values.
349. Mr Bathgate noted that clause (f) and (g) correspond to the ecological context criterion set out in Schedule 4 to the proposed RPS, and that the RPS prefixes “connectivity” and “buffering” with the word “important” and provides more detail on

¹⁷ Clause references in this paragraph and the following paragraph refer to those in the recommended amendments in the Section 42A Report.

the meaning of these terms. He considered that clause (f) to Policy 2.2.3.1 should be amended similarly to provide better clarity and consistency with the RPS. He considered that such an amendment can come within the scope of the submissions to align the criteria in Policy 2.2.3.1 with Schedule 4 to the proposed RPS. He recommended amending clause (f) as follows: “f. areas important for their ecological context as an ecological buffer, connection or as a habitat for indigenous fauna, including areas that:

- i. have important connectivity value allowing dispersal of indigenous vegetation and fauna between different areas;
- ii. perform an important buffering function that helps to protect the values of an adjacent area or feature;
- iii. are important for indigenous fauna, on a regular or temporary basis, for breeding, refuge, feeding or resting.” {NatEnv 949.22 and 958.8}

350. Mr Bathgate also drew the Panel’s attention to his comment regarding the use of subheadings for the criteria in Schedule 4 of the proposed RPS (Section 42A Report, pp 56-57). He stated that while this style is not consistent with policy drafting in the 2GP, he considered that the use of these subheadings in the RPS aids with the clarity and understanding of the criteria.

3.3.2.4.1 *Decision and Reasons*

351. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
352. We accept in part the submission of *Oceana Gold (New Zealand) Limited* (OS1088.14).
353. As discussed earlier, the ASBVs listed in Appendix A1.2 represent only a subset of the areas of significant indigenous vegetation and the significant habitats of indigenous fauna in Dunedin, and to recognise and provide for their protection as required by s6(c) of the RMA, there is a need for both ongoing work to schedule these areas, and for Plan provisions that protect these areas where they are identified. We agree with the Reporting Officer’s assessment that deleting the criteria would have the effect of removing all guidance for the identification of these areas. We consider this would be detrimental to both Plan clarity and to meeting the requirements of higher order policy guidance. However, we note that we have accepted some minor wording amendments in response to the evidence of Dr Thorsen, noted below, which we consider constitute acceptance in part of the submission.
354. We reject the submission of *Federated Farmers of New Zealand* (OS919.8). We accept the evidence of Dr Lloyd notified criteria (e), (f) and (g) are appropriate to retain. However, we note that notified criteria (e) and (f) are subject to considerable amendment, which may go some way towards addressing the concerns of the submitter.
355. We accept in part the submissions of *Department of Conservation* (OS949.22), *Forest and Bird NZ* (OS958.8) and *STOP* (OS900.9). We accept the expert assessment and associated recommendations of Dr Lloyd where these were either supported or not challenged by other expert evidence. We concur with the Reporting Officer’s assessment that the recommended changes clarify Policy 2.2.3.1 and make it more consistent with Schedule 4 of the pORPS-dv.
356. Our decisions on issues raised by the evidence of Dr Thorsen and Mr Rance are as follows:

- We agree with Mr Bathgate's assessment of Dr Thorsen's suggestion to move the criteria in Policy 2.2.3.1 to a definition of "significant". We consider this would be inconsistent with the approach taken to similar lists of criteria in other strategic policies and would create confusion for plan users, and we do not support the approach.
- In relation to clause (b), we consider the proposed wording would encompass all Threatened and At Risk threat categories in the NZTCS, so do not consider there is a need to amend the clause to encompass the categories discussed in the evidence of Mr Rance. We prefer retention of the word "indigenous" for the avoidance of doubt that the clause does not relate to exotic species, in line with the evidence of Mr Lloyd and Mr Bathgate. We accept the evidence of Dr Thorsen, Dr Lloyd and the Reporting Officer that the first instance of the word "nationally" should be deleted from Policy 2.2.3.1.b for clarity, and otherwise support the recommended amendment to add "nationally or within an ecological district", for consistency with the pORPS-dv.
- In relation to recommended clause (c)(i), we prefer 20% as a threshold, given that it is consistent with Schedule 4 of the pORPS-dv, and there were no appeals against that aspect. We accept the evidence of Dr Lloyd and Mr Bathgate that there is information available to support assessment at more local scales than the national, and that there are plans to expand this information, and therefore do not support the further amendment of the clause as suggested by Dr Thorsen.
- In relation to recommended clause (c)(ii), we agree with Mr Bathgate's assessment that adding a reference within the policy to an external source would be unwieldy. In determining not to add this reference, we rely on Dr Lloyd's evidence that there is general understanding of the term "originally rare ecosystems".
- In relation to clause (d), we accept the evidence of Mr Bathgate that his suggested amendments follow the wording in the representativeness criterion of Schedule 4 to the pORPS-dv, and consider this appropriate.
- In relation to recommended (new) clause (e)(i), we accept the evidence of Dr Lloyd that that populations near species distribution limits are generally considered important, and (in response to the evidence of Dr Thorsen) accept it appropriate that the clause refer to Dunedin rather than Otago.
- In relation to recommended (new) clause (e)(ii), we accept Mr Bathgate's evidence that this will need to be determined by the ecologist or other person undertaking an assessment under the policy, and consider this appropriate, noting that no suggested definition for "distinctive" or "restricted" was provided in evidence.
- In relation to recommended clause (f) (notified clause e), we accept the evidence of Dr Lloyd this criterion is appropriate to retain, noting the context of Schedule 4 of the pORPS-dv. However, we agree the amendment recommended by the Reporting Officer in his 22 March 2018 memorandum provides greater clarity and consistency with the pORPS-dv, and have amended the clause accordingly.
- In relation to recommended (new) clause (g), we agree with the Reporting Officer's assessment that the word "important" acts as a limit on the inclusion of any area used by indigenous fauna, and we agree the amendment proposed in the 22 March 2018 memorandum helps clarify that this applies to all the different situations described in the clause. We also support recommended (new) clause (g) becoming a subclause of recommended clause (f) (notified clause e), to more closely align with Schedule 4 of the pORPS-dv.
- In relation to recommended clause (h) (notified clause f), we accept the evidence of Dr Lloyd a diversity criterion is appropriate to retain, noting the context of Schedule 4 of the pORPS-dv. We agree with the assessments of Dr Thorsen and Mr Bathgate that the wording of the diversity criterion in the pORPS-dv needs further refinement. In light of this evidence, we prefer the wording that has gone

to the Environment Court (as outlined in the draft Consent Memorandum) and is likely to become operative (which reads “*An area that supports a high diversity of indigenous ecosystem types, indigenous taxa or has changes in species composition reflecting the existence of diverse natural features or gradients*”), and have amended the clause accordingly.

357. We agree with the Reporting Officer’s assessment that the use of subheadings in Policy 2.2.3.1 would aid clarity while also being consistent with the RPS, and consider that these may be added these to the policy under clause 16. We note that this involves combining clauses (b) and (c) which both include “Rarity” criteria.
358. Finally, we accept the evidence of Ms Yozin, that the criteria described in the Introduction to Appendix A1.2 need to be updated to reflect the amended criteria in Policy 2.3.3.1. This amendment is consequential to the changes we have made to Policy 2.2.3.1 and is shown in Appendix 1 to this Decision.
359. In response to these submissions, we have therefore amended the criteria in Policy 2.2.3.1 as follows (noting that we have amended the introductory sentence to the policy, as set out in section 3.3.1.3 above):

“...the following criteria:

- a. Protected areas: {NatEnv cl.16} existing protected areas set aside by statute or covenant or listed in an operative Otago Regional Council Regional Plan as having significant indigenous biodiversity value;
- ~~b. habitats for indigenous species that are nationally threatened, at risk, or uncommon, nationally or within an ecological district;~~
- c. Rarity: {NatEnv cl.16} ~~indigenous vegetation and/or fauna habitat types that are rare, acutely or chronically threatened;~~ areas that support: {NatEnv 949.22 and 958.8}
 - i. ~~habitats {NatEnv 1088.14} for indigenous species that are nationally {NatEnv 949.22 and 958.8} threatened, at risk, or uncommon, nationally or within an ecological district {NatEnv 949.22 and 958.8};~~
 - ii. indigenous vegetation or habitat of indigenous fauna that has been reduced to less than 20% of its former extent nationally, regionally or within a relevant land environment, ecological district or freshwater environment including wetlands; or {NatEnv 949.22 and 958.8}
 - iii. indigenous vegetation and habitats within originally rare ecosystems; {NatEnv 949.22 and 958.8}
- d. Representativeness: {NatEnv cl.16} ~~indigenous vegetation or indigenous fauna that is distinctive or representative of the natural diversity of the ecological district areas that are examples of an indigenous vegetation type or habitat that is typical or characteristic of the natural diversity of the relevant ecological district, which may include degraded examples of their type or represent all that remains of indigenous vegetation and habitats of indigenous fauna in some areas; {NatEnv 949.22 and 958.8}~~
- e. Distinctiveness: {NatEnv cl.16} areas that support or provide habitat for: {NatEnv 949.22 and 958.8}
 - i. indigenous species at their distributional limit within Dunedin or nationally; {NatEnv 1088.14, 949.22 and 958.8}
 - ii. indigenous species that are endemic to the Otago region; or {NatEnv 949.22 and 958.8}
 - iii. indigenous vegetation or an association of indigenous species that is distinctive, of restricted occurrence, or has developed as a result of an unusual environmental factor or combinations of factors; {NatEnv 949.22 and 958.8}

- f. Ecological Context: {NatEnv cl.16} areas important for their ecological context as an ecological buffer, connection or as a habitat for indigenous fauna, including areas that: {NatEnv 949.22 and 958.8}
 - i. have important connectivity value allowing dispersal of indigenous vegetation and fauna between different areas: {NatEnv 949.22 and 958.8}
 - ii. perform an important buffering function that helps to protect the values of an adjacent area or feature; or {NatEnv 949.22 and 958.8}
 - iii. are important for indigenous fauna, on a regular or temporary basis, for breeding, refuge, feeding or resting; {NatEnv 949.22 and 958.8}
- g. Diversity: {NatEnv cl.16}-areas with a relatively high indigenous diversity and pattern areas that support a high diversity of indigenous ecosystem types, indigenous taxa or have changes in species composition reflecting the existence of diverse natural features or gradients {NatEnv 949.22 and 958.8}; or
- h. Size: {NatEnv cl.16} areas that are of a size to make them significant.

3.3.3 Policy 10.2.1.2

Background

- 360. Policy 10.2.1.2 states “Only allow land use and development activities in a Scheduled Area of Significant Conservation Value (ASCV) where these activities will have net positive effects on the protection and enhancement of the biodiversity values of the Scheduled ASCV”. The schedule of ASCVs is provided in Appendix A1.2, including a brief description and values statement for each ASCV.
- 361. This policy leads to the activity status rules for land use and development activities in ASCVs, with the exception of indigenous vegetation clearance, and as such applies to restricted discretionary, discretionary and non-complying activities.

3.3.3.1 Submissions in support

- 362. *Timothy George Morris* (OS951.4) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.4) sought to retain Policy 10.2.1.2, but to amend the mapping to ensure that the extent of Areas of Significant Conservation Value is accurate. They believed that the areas where the extent of what is referred to as an ASCV are inaccurately mapped and that the extent of ASCV areas have been developed without adequate, or any, ground truthing.

3.3.3.1.1 *Decision and Reasons*

- 363. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
- 364. We accept in part the submissions of *Timothy George Morris* (OS951.4) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.4). Our decision has retained Policy 10.2.1.2, with amendments as outlined in sections 3.3.3.2, 3.3.3.3 and 3.3.3.5. Where we have received submissions on the extent of ASBVs, we have considered these, with decisions outlined in section 3.3.5.

3.3.3.2 Submission to extend scope of biodiversity values considered by Policy 10.2.1.2

- 365. *Yellow-eyed Penguin Trust* (OS690.8) sought to amend Policy 10.2.1.2 so that the biodiversity values considered by the policy are not limited to those referred to in Schedule A1.2. They stated the ASCVs owned and managed by the Trust have their

values for yellow eyed penguins recognised in the schedules, but in the long term the Trust would like these reserves to also support wider biodiversity values (e.g. other seabirds, geckos, endangered vegetation etc.) and the policy should support this.

366. In the Section 42A Report, the Reporting Officer, Michael Bathgate, noted that the values statements for each ASCV provided in Schedule A1.2 vary in length but in many cases are brief. He considered that, while these may provide a starting guide for assessment, he agreed that any assessment forming part of a consent application in an ASCV should not be limited to these. He stated that more information on biodiversity values may come to light with any ecological assessment accompanying or associated with any consent application, or may be made available via other means.
367. He noted that the assessment rules associated with ASCVs (10.5.2.7-10.5.2.9, 10.6.2.6-10.6.2.7, 10.7.2.2-10.7.2.3) refer to the biodiversity values of ASCVs without limiting these to the values listed in Appendix A1.2. However, he considered that Policy 10.2.1.2 should be amended to clarify that.
368. He also noted that policies 10.2.1.10 and 10.2.1.11 (which apply to network utilities and energy generation in ASCVs) refer to the “identified biodiversity values” of the ASCV. He recommended that, as a consequential change, the word “identified” be removed from these policies and the same or similar amendment made as to Policy 10.2.1.2 to ensure consistency of approach. He considered there was scope for this change from the submissions of *STOP* (OS900.33, OS900.34) and *Forest and Bird NZ* (OS958.28, OS958.29), which sought to remove these two policies entirely (stating that it is not clear what “identified biodiversity values” are) (s42A Report, p.141 & p 144).

3.3.3.2.1 *Decision and Reasons*

369. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
370. We accept the submission of the *Yellow-eyed Penguin Trust* (OS690.8). We concur with the Reporting Officer’s assessment that, given the brevity of the descriptions of ASBV values in Appendix A1.2, and the broader reference from relevant assessment rules, it is not appropriate for Policy 10.2.1.2 to limit assessments of effects to those on the listed values. We consider the amendment recommended by the Reporting Officer to be more consistent with s6(c) of the RMA, with the pORPS-dv, and with Objective 10.2.1 of the 2GP.
371. In response to this submission, we have therefore amended the end of Policy 10.2.1.2 as follows: “Only allow... the biodiversity values of the ~~Scheduled ASCV~~ ASBV including, but not limited to, those biodiversity values listed in Appendix A1.2. {NatEnv 690.8}”
372. As outlined in section 3.6.6, we have deleted Policy 10.2.1.10, incorporating network utilities activities into Policy 10.2.1.2. In addition, as outlined in the Network Utilities Decision Report, we have deleted Policy 10.2.1.11 as a consequential change associated with a change in both definitions and activity status associated with the listed network utility activities. We therefore do not support the amendments to these policies recommended by the Reporting Officer.

3.3.3.3 Submissions to amend Policy 10.2.1.2 to refer to “avoid” activities

373. *STOP* (OS900.142) sought to remove Policy 10.2.1.2 and replace it with: “Avoid land use and development activities within a Scheduled Area of Significant Conservation

Value (ASCV), or a wetland, or where there are threatened plant species, or wildlife species or mature trees on the important native tree species list present, or within an area that meets the criteria in Policy 2.2.3.1 for significant natural areas.” *Forest and Bird NZ* (OS958.20) sought a similar change but with reference to new schedules for significant natural areas and important areas they wish to include in the Plan.¹⁸

374. In terms of their request to change the policy test from “Only allow” to “Avoid”, *STOP* stated that what constitutes “net positive effects” introduces uncertainty.
375. *Geoff Scurr Contracting Limited* (FS2391.118), *Waste Management (NZ) Limited* (FS2444.48) and *Federated Farmers of New Zealand* (FS2449.72) opposed *STOP* (OS900.142), and *Federated Farmers of New Zealand* (FS2449.73) opposed *Forest and Bird NZ* (OS958.20). *Waste Management (NZ)* considered that the normal tests under the RMA should apply in regards to effects, and that the word “avoid” should not be used as it results in a form of prohibition. *Federated Farmers of New Zealand* viewed the amendment as unnecessarily restrictive and believed that activities that have a positive effect should be allowed. *Geoff Scurr Contracting* was concerned about the implications of the term “avoid” in the context of the plan and suggested that definitions may be required.
376. The Reporting Officer, Michael Bathgate, did not consider the policy should be amended to “avoid” without the usual “unless” qualifier, as that would imply prohibition of any land use or development activity in an ASCV (or one of the other areas suggested in the policy). He noted that there are many activities proposed to be non-complying in ASCVs, as well as some that proposed to be restricted discretionary and discretionary. He noted the choice of using “only allow” (which is used for restricted discretionary and discretionary activities according to the drafting protocol) as opposed to “Avoid...unless” (which is used for NC activities under the drafting protocol, was to avoid policy repetition and create a ‘one-stop-shop’ policy covering both situations. However, he considered the policy includes a very high test of requiring “net positive effects” on the protection and enhancement of biodiversity values, so this level of test is more reflective of a non-complying activity, thus it has characteristics of both types of policy wording. He noted the policy applies to areas that have been assessed and scheduled specifically as ASCVs, and is clearly focused on protection.
377. Accordingly, he considered the wording to be appropriate and did not recommend the submissions be accepted (Section 42A Report, Section 5.4.4, pp. 143-144).

3.3.3.3.1 *Decision and Reasons*

378. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
379. The part of this submission that requests policies to manage activities in areas that meet the significance criteria but are not scheduled as ASBVs, is addressed in section 3.3.1.3. We note amendments include a new Policy 10.2.1.X.
380. We accept in part the submissions of *STOP* (OS900.142) and *Forest and Bird NZ* (OS958.20) insofar as it sought to amend Policy 10.2.1.2 to “avoid” activities.
381. While we accept the Reporting Officer’s evidence that the wording “Only allow” is appropriate for policies that relate to restricted discretionary and discretionary activities, we consider it inconsistent with the 2GP drafting protocol (discussed in the Plan Overview Decision Report) for a policy that relates also to non-complying activities to commence with “Only allow”. Noting that the 2GP protocol prescribes the

¹⁸ Other aspects of these submissions are discussed in sections 3.3.1.3 and 3.3.4.5.

format “Avoid...unless...” for policies associated with non-complying activities, to improve the clarity of provisions for Plan users, in response to these submissions, we have:

- Amended Policy 10.2.1.2 to list activities that are restricted discretionary or discretionary in ASBVs, as follows: “Only allow ~~land use and development activities~~ rural tourism – large scale, rural research – large scale, community and leisure – large scale, sport and recreation, restaurants and retail activities ancillary to sport and recreation, large buildings and structures, earthworks – large scale, shelterbelts and small woodlots, site development activities (except for outdoor storage, parking, loading and access, vegetation clearance, storage and use of hazardous substances), public amenities, network utility activities, transportation activities and natural hazard mitigation activities {NatEnv 900.142} in...”
- Added new Policy 10.2.1.Y as follows (noting that the addition of clauses a-c is attributed to the same submission points used in corresponding amendments to policies 10.2.1.X and 10.2.1.2):

“Avoid rural activities (except for rural ancillary retail, rural tourism and rural research), residential activities (except for working from home), early childhood education, commercial activities (except for restaurants or retail activities ancillary to sport and recreation, and stand-alone car parking), industrial activities, major facility activities and indigenous vegetation clearance – large scale in Areas of Significant Biodiversity Value (ASBVs) unless: {NatEnv 900.142}

 - a. there is no net loss and preferably a net gain {NatEnv 1088.32} in the biodiversity values of the ASBV including, but not limited to, those biodiversity values listed in Appendix A1.2 {NatEnv 690.8}; or
 - b. where there are no practicable alternative locations, any proposal for a biodiversity offset is in accordance with Policy 2.2.3.5; or {NatEnv 949.29}
 - c. where a biodiversity offset is not practicable, environmental compensation is proposed in accordance with Policy 2.2.3.6. {NatEnv 1088.15}”
- Made consequential amendments to assessment rules 10.5.2.7 and 10.6.2.7 to reflect amended Policy 10.2.1.2 as set out in Appendix 1 to this Decision.
- Made consequential amendments to assessment rule 10.7.2.1 to state:

j. With respect to Policy 10.2.1.X and Policy 10.2.1.Y, Council will generally only consider activities to have no practicable alternative locations where an assessment that meets the requirements set out in Rule 10.8.4 demonstrates that the proposed site, including any proposed mitigation measures, is the option that has the least impact on biodiversity values, while meeting the operational needs of the activity. {NatEnv 900.142 and others} (note that the reference to Policy 10.2.1.X in this rule is discussed in section 3.3.1.3, above)
- Added new Special Information Requirement Rule 10.8.4, to set out the information requirements for an assessment of alternative locations with respect to effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna {NatEnv 900.142 and others} (note that the addition of this rule is also discussed in section 3.7.5.2, because the rule also relates to assessments of alternative locations with respect to effects on the identified values of a landscape or coastal character overlay zone, and is referred to in provisions relating to overlays)

- Made consequential amendments to assessment rule 10.7.2.2 to reflect new Policy 10.2.1.Y as set out in Appendix 1 to this Decision.

3.3.3.4 Submission to “allow” activities in ASCVs where no significant adverse effects

382. *Federated Farmers of New Zealand (FFNZ)* (OS919.22) sought to amend Policy 10.2.1.2 to “Allow” land use and development activities in ASCVs where these will “not, either directly or cumulatively, result in significant adverse effects” on biodiversity values. The submitter believed it was unclear whether this policy relates solely to wetlands. They considered that, if the policy does relate to scheduled areas beyond wetlands, the policy sets a very high bar which at face value is likely to be unachievable. Further, that even if it relates specifically to wetlands the bar remains considerably high. The submitter considered the aim of this policy should be to define inappropriate activities, instead of only enabling certain activities, and the aim should be to maintain or enhance instead of focussing on net positive benefit. They stated it also conflicts with Policy 10.2.1.4, which allows for maintenance.
383. *HPPC* (FS2267.14) opposed *FFNZ* as they believed the requested amendment would significantly weaken protection of indigenous vegetation. *Forest and Bird NZ* (FS2482.19) opposed *FFNZ* as they believed the amendments sought are not consistent with the purpose of Part 2 of the RMA or the provisions of the 2GP, or the NZCPS.
384. In the Section 42A Report, the Reporting Officer, Michael Bathgate, noted that Policy 10.2.1.2 relates to all scheduled ASCVs, not just wetlands. He stated that these scheduled areas are those that meet the significance criteria set out in Policy 2.2.3.1 and are considered matters of national importance according to RMA section 6(c). He considered the high bar set by Policy 10.2.1.2 is appropriate given the level of significance of these areas and the fact that they have been individually assessed and their boundaries drawn accordingly. He did not support the suggested change to allow activities where adverse effects on the protection and enhancement of the biodiversity values of the Scheduled ASCV are tolerated, as long as the adverse effects are not significant. He considered that tolerating adverse effects on scheduled ASCVs would not be an appropriate means of achieving Objective 10.2.1.
385. Mr Bathgate noted the “only allow” policy wording is consistent with the 2GP drafting protocol and leads to the use of restricted discretionary and discretionary activity status, as addressed in the Plan Overview Hearing (s42A Report, Section 5.4.4, p. 142).

3.3.3.4.1 *Decision and Reasons*

386. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
387. We accept in part the submission of *Federated Farmers of New Zealand* (OS919.22).
388. We accept the Reporting Officer’s evidence that the suggested amendment would be inconsistent with Objective 10.2.1, as it is intended that ASBVs meet the significance criteria in Policy 2.2.3.1. We also note that allowing activities only if they have significant adverse effects on biodiversity values would be inconsistent with the higher order policy documents (including s6(c) of the RMA, and both the operative RPS and pORPS-dv), which direct that significant indigenous vegetation and significant habitats of indigenous fauna should be protected (or in the case of the operative RPS, “maintained and enhanced”).
389. In addition, we do not support substituting “Only allow” for “Allow” because of consistency with the 2GP drafting protocol. In short, under the 2GP drafting protocol (discussed in the Plan Overview Decision Report), the words “only allow” are used in policies associated with restricted discretionary and discretionary activities.

390. We do, however, agree with the submitter's assessment that the requirement for activities in ASBVs to have "net positive effects" on biodiversity values is a very high bar. In our view it is also out of line with this higher order policy direction, and potentially *ultra vires*. As discussed in section 3.3.3.5, we consider it appropriate to amend the effects test in the policy to refer to "no net loss and preferably a net gain" in biodiversity values, as we consider this more consistent with Objective 10.2.1 and higher order policy direction. We consider this amendment constitutes partial alternative relief for *Federated Farmers of New Zealand* (OS919.22).

3.3.3.5 Submission to "provide for" activities in ASCVs where these will not have negative effects on biodiversity values

391. *Oceana Gold (New Zealand) Limited* (OS1088.32) sought to amend Policy 10.2.1.2 to "provide for" activities in ASCVs where these will not have negative effects on biodiversity values. The submitter believed that the purpose of the RMA is enabling and the suggested rewording reflects this. *Oceana Gold* noted the proposed RPS promotes the enabling of resources unless there is a good reason to avoid or manage them, and considered the DCC should have regard to this and formulate its objectives and policies in this way.
392. In the Section 42A Report, the Reporting Officer, Michael Bathgate, did not recommend the change to "provide for" as he did not consider that the 2GP objectives and policies are intended to be encouraging of land use and development activities in ASCVs, with the exception of conservation activity. He considered "only allow" to be consistent with the approach to assessing restricted discretionary and discretionary activities in ASCVs, noting that a number of land use activities are proposed to be non-complying in ASCVs.
393. Mr Bathgate considered that this approach has regard to the pORPS-dv. He noted Policy 3.2.2 of the pORPS-dv seeks to "protect and enhance" areas of significant indigenous vegetation and significant habitats of indigenous fauna, and requires "Avoiding adverse effects on those values which contribute to the area or habitat being significant". He considered that this policy provides a basis to carefully and cautiously manage the land use and development activities that may occur in an ASCV (s42A Report, Section 5.4.4, pp. 142-143).
394. At the hearing, Dr Michael Thorsen (ecological expert called by *Oceana Gold*) commented (para 45 and para 75(d) of evidence) that to confine assessment to "net positive effects" on the Scheduled ASCV meant that mitigation and ecological compensation activities such as offsetting cannot be considered for activities at these sites. He also did not support establishing that there be an expectation of "net positive effects" rather than an acceptable neutral effect.
395. At the hearing, the Panel asked *Oceana Gold* to clarify how the suggested policies for biodiversity offsets and environmental compensation would fit with the 2GP policy framework.
396. In an email dated 26 June 2017, Mr Christensen (legal counsel for *Oceana Gold*) responded with a set of provisions that involved the deletion of a number of policies including Policy 10.2.1.2, and their replacement with two policies laying out the mitigation hierarchy (including biodiversity offsets and environmental compensation) for significant indigenous vegetation and habitats of indigenous fauna, and other indigenous vegetation and habitats, respectively.

3.3.3.5.1 *Decision and Reasons*

397. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
398. We accept in part the submission of *Oceana Gold (New Zealand) Limited* (OS1088.32).
399. We accept the Reporting Officer's evidence that the amendment sought to "provide for" activities would be inconsistent with Objective 10.2.1 and higher order policy documents (including s6(c) of the RMA, and both the operative RPS and pORPS-dv). Those direct that significant indigenous vegetation and significant habitats of indigenous fauna should be protected (or maintained and enhanced, in the case of the operative RPS). We concur with the Reporting Officer's assessment that this mandates a cautious approach to land use and development activities in ASBVs, and consider the words "Only allow" better reflect this approach.
400. In addition, we do not support the change for reasons of consistency with the 2GP drafting protocol. In short, under the 2GP drafting protocol (discussed in the Plan Overview Decision Report), the words "Only allow" are used in policies associated with restricted discretionary and discretionary activities. As discussed in section 3.3.3.3, our decision amends Policy 10.2.1.2 such that it only relates to activities that are restricted discretionary and discretionary in ASBVs.
401. We also do not support (nor do we consider there is scope for) the suggested deletion of Policy 10.2.1.2. Our decision does incorporate a framework for biodiversity offsets and environmental compensation into the 2GP, and acknowledges the need to reference biodiversity offsets from relevant Section 10 policies (new Policy 10.2.1.Y, discussed in sections 3.3.3.3 and 3.5.5, and from new Policy 10.2.1.X, discussed in sections 3.3.1.3 and 3.5.5) relating to non-complying activities, due to requirements of the 'gateway tests' of Section 104D of the RMA.
402. We do agree with the submitter's assessment that the requirement for any activities in ASBVs to have "net positive effects" on biodiversity values sets too high a bar. We consider it is out of line with higher order policy direction, and potentially *ultra vires*. We accept the evidence of Dr Thorsen that a more appropriate policy test would require a net neutral effect, and have amended Policy 10.2.1.2 to replace "these activities will have net positive effects on the protection and enhancement of" with "there is no net loss and preferably a net gain" in the biodiversity values of the ASBV. We consider this more consistent with Objective 10.2.1 and higher order policy direction. We note that new policies 10.2.1.Y and 10.2.1.X also employ this wording.
403. We have also made consequential amendments to assessment rules 10.5.2.7 and 10.6.2.7 to reflect amended Policy 10.2.1.2 as set out in Appendix 1 to this Decision.
404. We consider the change constitutes partial acceptance of the submission of *Oceana Gold (New Zealand) Limited* (OS1088.32).

3.3.4 **Activity status of land use, development, subdivision and network utilities activities in ASCVs**

3.3.4.1 Submissions relating to the activity status of farming, grazing and forestry in ASCVs

405. A number of land use activities are non-complying in ASCVs, including Farming, Forestry and Grazing. The rationale given in the Section 42A Report for not providing

for these activities in ASCVs is that they are considered to have significant potential to damage and displace indigenous vegetation and the habitats of indigenous fauna.

406. *Robert George & Sharron Margaret Morris* (OS355.7) sought to amend Rule 16.3.3 so that farming, grazing and forestry are permitted in all zones. The submitters stated that "farmers are capable of making their own decisions regarding best land use". Likewise, *Bruce Mark Norrish* (OS461.5) sought to amend Rule 16.3 "to allow normal farming/forestry operations to be carried out safely". The Reporting Officer made the assumption that the submitter would like forestry and farming to be permitted activities in all overlays as well as in the general rural zone. Mr Norrish's submission was opposed by *Harboursides and Peninsula Preservation Coalition* (FS2267.142) and *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (FS2456.108).
407. *Forest and Bird NZ* (OS958.101) supported all instances of non-complying activity status for land use activities in ASCVs in rural zones in Rule 16.3.3 as notified. *Forest and Bird NZ* considered that these activity statuses meet Part 2 of the RMA.
408. *Penguin Place Limited* (FS2339.5) in opposing *Forest and Bird*, sought that farming and grazing are permitted activities in ASCVs. *Penguin Place Limited's* further submission stated:

"Farming undertaken on our property is an important economic income, as well as an important tool for managing grass growth, weeds and fire risk in the penguin habitat areas... Over the years the ... farming operations have helped fund the planting of some 20,000 native trees in the penguin habitat areas... Under the proposed ASCV zoning farming would become a non-complying activity ... which would directly affect our ability to flexibly manage both parts of our business [ecotourism and farming] and consequently fund and undertake habitat restoration and wildlife enhancement activities...

We would like to see ... farming and grazing be a permitted activity in an ASCV accepting that there would be conditions to ensure that habitat is maintained and enhanced. We believe that ... farming and grazing has supported the enhancement of native flora and fauna values in our situation, which shows that making farming [and] grazing ... a non-complying activity is an unnecessary and inefficient RMA tool."
409. The Reporting Officer was not aware of any areas of land that are used for forestry that meet the criteria for scheduling as an ASCV, as set out in Policy 2.2.3.1. It was however noted that there are some pockets of land that are not being used for forestry, but are located within areas of forestry, that are classified as ASCVs. Given this, and the fact that it seemed very likely that new forestry activities in ASCVs would result in significant adverse effects on protected biodiversity values, the Reporting Officer considered that non-complying activity status for forestry in ASCVs is the most appropriate way to achieve Objective 10.2.1, and appropriately recognises that the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna is a matter of national importance under s6(c) of the RMA.
410. However, the Reporting Officer stated that farmed/grazed landscapes can sometimes have values that make them appropriate for ASCV status. Farmed habitat can in some instances be home to populations of at risk or threatened plants and animals, for example, penguins, skinks and threatened coastal turf plants.
411. The Reporting Officer considered that *Penguin Place Limited's* further submission raised an important question in relation to the activity status of farming and grazing in ASCVs: should farming and grazing be non-complying in ASCVs, to reflect the fact that new activities in ASCVs that are not currently farmed/grazed will often have significant adverse effects on protected biodiversity values (in particular, through the grazing and trampling of vegetation by livestock)? Or should these activities be

provided for, to reflect the fact that they are currently taking place in some ASCVs, and may in fact be compatible with the protected values of these areas?

412. The Reporting Officer noted that, under Rule 16.3.4.20 in the rural zones and Rule 20.3.4.19 in the recreation zones, indigenous vegetation clearance is restricted discretionary in ASCVs. The Reporting Officer considered it could be argued that, since this control is in place, it is unnecessary also to restrict farming and grazing in these areas – if the main adverse effect from these activities that the plan seeks to control is the destruction of vegetation by livestock. However, the Reporting Officer did not consider this control on its own sufficient to manage the potential effects of farming and grazing on ASCVs. The Reporting Officer stated that exotic vegetation may nevertheless provide important habitats for indigenous species, and that vegetation clearance resulting from the destruction of vegetation by livestock would be likely to be gradual and cumulative. As a result, it would be difficult to identify the point at which a consent requirement would be triggered under Rule 16.3.4.20 or Rule 20.3.4.19. The Reporting Officer considered it preferable to retain a consent requirement for farming and grazing because, although such a rule may still be overlooked and difficult to enforce, it is easier to identify the point at which farming or grazing is initiated in an ASCV than to identify the point at which vegetation clearance (as defined in the 2GP) occurs.
413. The Reporting Officer noted, with respect to existing farming and grazing activities in ASCVs, that existing use rights apply to these activities provided they are not discontinued for more than 12 months and remain at the same scale and intensity.
414. The Reporting Officer considered that there may be two alternative approaches to the activity status of farming and grazing in ASCVs:
1. Retain the notified non-complying activity status, so that new farming and grazing activities – which pose a serious risk to biodiversity values in these areas – are not provided for in ASCVs. Existing farming and grazing activities in ASCVs are catered for via existing use rights.
 2. Make farming and grazing permitted, where they are limited to grazing of existing pasture. Retain non-complying activity status for all other instances of farming and grazing.
415. The Reporting Officer considered that an advantage of retaining the non-complying approach is the clarity and simplicity of the rule. A disadvantage is that it is unnecessarily restrictive for grazing of existing pasture, if grazing is compatible with ASCV values, and that in these cases, it would result in unnecessary restrictions on productive rural land (in the case of loss of existing use rights if the activity is discontinued for a year or more), which is not consistent with Policy 2.3.1.2.a.
416. The Reporting Officer identified the main advantage of permitting grazing of existing pasture only, as providing appropriate activity status for both grazing of existing pasture, and all other farming and grazing – a targeted approach. In terms of disadvantages, there were drafting issues around use of the word “grazing”, since it is a separate activity from “farming” in the 2GP. Therefore, it is not possible to use the phrase “farming limited to grazing of existing pastures”, because this does not make sense in terms of the activity definitions in the 2GP. The Reporting Officer considered that it would be necessary to come up with a different term, which could cause confusion and undermine the effectiveness and efficiency of the rule.
417. At the hearing, Mr Timothy Morris (for *Robert George & Sharron Margaret Morris*) presented a statement which focused on concerns with the extent of ASCVs, and general restrictions on vegetation clearance, rather than the activity status of farming, grazing or forestry within ASCVs.

418. Ms Nicola McGrouther (for *Penguin Place Limited*) explained the nature of the operations at *Penguin Place Limited*, including the areas of grazed pasture within the mapped extent of the ASCV, and the role that those areas play in supporting conservation efforts on the site. She supported the option that would permit grazing of existing pastures within ASCVs. She expressed a concern about loss of existing use rights, if circumstances changed.
419. Mr David Cooper, appearing for *Federated Farmers New Zealand*, spoke to a tabled statement that expressed support for grazing of existing pastures to be permitted, with other farming and grazing in ASCVs being non-complying (para 56). He said this provides a reasonable balance, while addressing any potential effects from land use change. He noted that grazing of existing pastures can restrict the development and spread of some pest plants while providing income for the landowner, and likely having no or insignificant marginal adverse effects on the values within these areas.
420. Taking into account the evidence presented at the hearing, the Reporting Officer recommended that the 2GP be amended to permit farming and grazing on existing paddocks, while new farming and grazing remained non-complying. The Reporting Officer considered this the most effective and efficient way to protect ASCVs from new farming and grazing activities, while recognising that some ASCVs already include grazed paddocks, and that existing use rights may not suffice to allow this grazing to continue, given that in some circumstances the activity may cease for more than a year (Revised Recommendations Summary, pp.1-2).
421. The Reporting Officer considered that, while the submission of *Penguin Place Limited* did not provide scope to make the change, other submission points did (OS355.7 and OS461.5).

3.3.4.1.1 *Decision and Reasons*

422. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
423. We reject the submission of *Robert George & Sharron Margaret Morris* (OS355.7) insofar as it sought a permitted activity status for Forestry in ASBVs, as we agree with the Reporting Officer's assessment that a non-complying activity status for Forestry in ASBVs is the most appropriate way to meet Objective 10.2.1, given the potential adverse effects of Forestry on the values of ASBVs.
424. We also reject the submission of *Robert George & Sharron Margaret Morris* (OS355.7) insofar as it sought a permitted activity status for Farming and Grazing in ASBVs. We agree with the Reporting Officer's assessment that Farming and Grazing in ASBVs that are not currently farmed/grazed will often have significant adverse effects on protected biodiversity. We therefore consider retention of the non-complying activity status for these activities appropriate. We note that this is consistent with the decision, outlined in section 3.3.4.3, to amend the status of Indigenous Vegetation Clearance to non-complying in ASBVs, to recognise and provide for the protection of significant indigenous vegetation and the significant habitats of indigenous fauna.
425. While we acknowledge that, in some limited instances, some of these activities may be compatible with the values of an ASBV, and indeed may in some cases be necessary as a management tool to protect those values, we consider the simplest and most appropriate way to provide for these activities is by way of listing them in the relevant section of Appendix A1.2 as approved activities in the specific ASBV they are deemed appropriate in. This would enable activities to be provided for in site-specific instances where these activities are compatible with, or necessary to protect,

the values of the ASBV. We discuss this approach in relation to the ASBV discussed in the further submission of *Penguin Place Limited*, in section 3.3.5.6.

426. As discussed elsewhere, we recommend that the extent and values of scheduled ASBVs are reviewed as part of a future plan review. At this time, compatible activities that should be included in the schedule for existing ASBVs, could be considered. Further, we note that any assessments associated with new ASBVs should ensure that compatible activities are proactively identified at the time of the assessment and listed in the schedule, to avoid the need for future plan changes.

3.3.4.2 Request to amend activity statuses of mining, landfills and major facilities activities in ASCVs

427. A number of land use activities are non-complying in ASCVs, including Mining, Landfills and Major Facilities Activities. The rationale given in the Section 42A Report for not providing for these activities in ASCVs is that they are considered to have significant potential to damage and displace indigenous vegetation and the habitats of indigenous fauna.
428. As stated above, *Forest and Bird NZ* (OS958.101) supported all instances of non-complying activity status for land use activities in ASCVs in rural zones in Rule 16.3.3 as notified.
429. *HPPC* and *STOP* sought that landfills (OS447.75 and OS900.109) and mining (OS447.76 and OS900.110) be made prohibited activities in ASCVs. These submissions were opposed by *Waste Management (NZ) Limited* (FS2444.18) and *Oceana Gold (New Zealand) Limited* (FS2439.64 and FS2439.65) respectively. *HPPC* (OS447.77-79) and *STOP* (OS900.112-114) also sought that cemeteries, crematoriums and all other major facility activities be made prohibited activities in scheduled ASCVs.
430. *Waste Management (NZ) Limited* (OS796.6) sought that Rule 16.3.3.10 be amended so that if more than 10% of the landfill area falls within an ASCV, the activity status of the landfill is non-complying, but if 10% or less fall within an ASCV, activity status is discretionary. The submitter noted that landfills are listed as being discretionary if in the rural zone but non-complying if within an ASCV. They considered it unclear whether, if a small part of a landfill (whether a part of the refuse footprint or part of the wider operational area) fell within an ASCV, that would render the overall application to be non-complying even if the majority of the landfill operation was outside of the ASCV and would otherwise be a discretionary activity. The submitter considered this a very likely scenario, given that landfills cover large areas of land, and therefore it is foreseeable that part of the operation could encounter an ASCV.
431. The Reporting Officer considered the non-complying activity status is appropriate for mining, landfills and major facilities activities in ASCVs, as this provides a very high level of protection from the potential effects of these activities. The Reporting Officer stated that Policy 10.2.1.2 indicates that they are only allowed if they “have net positive effects on the protection and enhancement of the biodiversity values of the Scheduled ASCV”. The Reporting Officer did not consider it necessary to apply a prohibited activity status to achieve Objective 10.2.1.
432. With respect to landfills in ASCVs, the Reporting Officer did not consider that discretionary status, in the scenario outlined by *Waste Management Ltd*, would be sufficient to protect the values of ASCVs. The Reporting Officer considered that landfills should not be provided for in ASCVs, due to their potential to damage and displace indigenous vegetation and the habitats of indigenous fauna. The Reporting Officer noted that the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna is a matter of national importance under s6(c)

of the RMA, and considered that, in the scenario outlined by the submitter, the landfill operation should be undertaken in a way that avoids land scheduled as an ASCV, unless Policy 10.2.1.3 can be met¹⁹.

3.3.4.2.1 *Decision and Reasons*

433. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
434. We reject both the submissions of *HPPC* and *STOP* (OS447.75, OS900.109, OS447.76, OS900.110) and those of *Waste Management (NZ) Limited* (OS796.6).
435. We concur with the assessment of the Reporting Officer, that non-complying activity status is appropriate for mining, landfills and major facilities activities in ASBVs. We consider non-complying activity status provides an appropriately high level of protection for the values of these areas, and do not consider that it is necessary to apply a prohibited activity status to mining, landfills or major facilities either to achieve Objective 10.2.1, or to meet with the requirements of s6(c) of the RMA. We note that while (in decisions outlined elsewhere) the policy test has been amended from “net positive effects” to “no net loss and preferably a net gain” in the biodiversity values of the ASBV, we consider this still constitutes an appropriately high bar for these activities in ASBVs.
436. We also do not believe that a discretionary activity status for landfills is appropriate, considering the significance of these areas under s6(c) of the RMA and the potential impacts of these activities on the values of ASBVs. We agree with the assessment of the Reporting Officer, that landfill operations should be undertaken in a way that avoids ASBVs, unless the relevant policy can be met.
437. We do note that, as a result of amendments elsewhere, the relevant Policy 10.2.1.Y provides an alternative pathway for circumstances in which there are no practicable alternative locations for a given activity that cannot meet the “not net loss” policy test, involving biodiversity offsets or environmental compensation.

3.3.4.3 Request to change the activity status of Indigenous Vegetation Clearance in ASCVs

438. *Timothy George Morris* (OS951.46) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.46) sought that Rule 16.3.4.20.d (indigenous vegetation clearance) be removed. The Reporting Officer interpreted this submission to be seeking permitted activity status for this activity in ASCVs. The submitters noted that regrowth of indigenous vegetation (e.g. Kanuka) can be rapid and expressed concern that this can adversely affect farming and forestry activities and be considered as “reverse sensitivity”. The submitters were of the opinion that the “control of regrowth of indigenous vegetation is necessary as part of long term maintenance of rural land for productive rural activities.”
439. *Department of Conservation* (OS949.13) sought to amend Rule 10.3 so that any vegetation clearance within an ASCV is a non-complying activity. They considered the 2GP should not allow for the clearance of indigenous vegetation within ASCVs as a permitted activity, and should only allow for clearance within ASCVs in exceptional circumstances, suggesting that without this the 2GP does not provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as required by section 6(c) of the RMA. In the *Department of*

¹⁹ We consider the reference to Policy 10.2.1.3 may be an error, and that the Reporting Officer may have intended to refer to Policy 10.2.1.2, as this is the relevant policy for management of landfills in ASCVs.

Conservation's view, any proposed clearance should be subject to a high test ensuring any adverse effects are avoided.

440. *Oceana Gold (New Zealand) Limited* (FS2439.29) opposed *Department of Conservation* (OS949.13) because they believed the amendment would be "too restrictive for locationally constrained activities such as mining."
441. *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.107 and OS958.91) sought that Rule 16.3 and associated assessment rules be amended so that all development activities in ASCVs, other than those associated with weed and pest removal and conservation activities, become non-complying activities. The submitters requested non-complying status for these activities on the basis that they have the potential to adversely affect biodiversity values of ASCVs and undermine protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
442. *STOP's* submission was supported by *HPPC* (FS2267.61), which considered that the amendment proposed by *STOP* a logical adjunct to protecting ASCVs, and in line with Council's intent for ASCVs. It was opposed by *Geoff Scurr Contracting Limited* (FS2391.70) and by *Federated Farmers of New Zealand* (FS2449.306), who considered that the outcome sought goes considerably beyond the sustainable management principles and intent of the RMA, its associated case law and the remainder of the 2GP.
443. The Reporting Officer noted that indigenous vegetation clearance is a restricted discretionary in ASCVs, as well as being subject to the performance standards on vegetation clearance set out in Rule 10.3.2. Proposed indigenous vegetation clearance in ASCVs is assessed against Policy 10.2.1.4. Under this policy, the activity is only allowed where the biodiversity values of the area of indigenous vegetation are maintained or enhanced. Rule 10.5.2.7 also states that potential circumstances that may support a consent application include the following:
 - "iv. Development activities are associated with conservation.
 - v. Measures are proposed to protect or enhance the biodiversity values of the area of significant conservation."
444. The Reporting Officer considered the restricted discretionary activity status for indigenous vegetation clearance appropriate because it provides protection to areas with very high biodiversity value. The Reporting Officer did not recommend permitting indigenous vegetation clearance in ASCVs because the potential adverse effects on indigenous vegetation and the habitats of indigenous fauna are too great to manage under Rule 10.3.2 (vegetation performance clearance standards) and it was appropriate that a restricted discretionary resource consent be required.
445. In the Reporting Officer's view, these provisions provide sufficient protection for the biodiversity values of ASCVs from the potential effects of indigenous vegetation clearance. The Reporting Officer did not consider that non-complying activity status is appropriate in this case, because clearance of indigenous vegetation in one part of an ASCV may be consistent with the maintenance or enhancement of the biodiversity values of the ASCV as a whole, if either or both of the circumstances set out in Rule 10.5.2.7 apply. In addition, the area of vegetation clearance, the species of vegetation being cleared, and the presence of indigenous fauna in the affected area, will influence the magnitude of any adverse effect.
446. In evidence at the hearing, Ms Nardia Yozin, planner for the *Department of Conservation*, contended that non-complying activity status is necessary to afford appropriate protection to ASCV values, but that, in addition to permitting conservation activities, some maintenance activities should also be permitted (para 6.18). She referred to Section 9 of the evidence of Mr Brian Rance, Technical Advisor – Ecology for the *Department of Conservation*, who stated that there had been "huge loss" of

biodiversity in Dunedin, and that “land use intensification is resulting in ongoing loss and modification of indigenous ecosystems”.

447. Ms Yozin considered it was necessary for Council to take a “direct and strong approach to address this loss in order to achieve the purpose of the RMA and its functions under the RMA”, and that a non-complying activity status would achieve this (para 6.19-6.20). She considered (para 6.21-6.23) that non-complying activity status was more appropriate for activities where effects could be great, and explained that she considered an assessment against s104D of the RMA would assist in achieving the overall direction of the 2GP, and the objectives and policies of higher order policy documents.
448. While the evidence of Dr Michael Thorsen, ecologist, called by *Oceana Gold*, did not directly address the issue of the activity status of indigenous vegetation clearance in ASCVs, he did comment (para 13-16) that the recently consented Coronation North Project will result in the “loss of all ecological features within the project boundary”, including a range of ecological values that had been assessed as significant, and that “mining, but its very nature, makes it difficult to avoid an ecological feature where it overlays a targeted resource.”
449. Mr Mark Christensen, counsel for *Oceana Gold (New Zealand) Limited*, also did not address the matter of activity status directly, but did comment that “mineral resources are fixed in location”, with the result that “there can often be limited opportunities to avoid and minimise effects on vegetation, habitat and landscapes.” He submitted that the 2GP must be “sufficiently flexible, while being robust”, and that it must “provide clear direction on the reasonable application of the ‘mitigation hierarchy’ including the use where appropriate of biodiversity offsets and environmental compensation.”

3.3.4.3.1 *Decision and Reasons*

450. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
451. We accept in part the submissions of *Department of Conservation* (OS949.13), *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.107 and OS958.91) to amend the activity status of Indigenous Vegetation Clearance in ASBVs to non-complying.
452. As discussed elsewhere in this Decision Report, we note that the protection of areas of significant indigenous vegetation and the significant habitats of indigenous fauna should be recognised and provided for as a matter of national importance. We note also that both the operative RPS and pORPS-dv contain policies relating to significant indigenous vegetation and significant habitats of indigenous fauna, seeking to “maintain and enhance” and “identify”/“protect and enhance” these areas respectively. We accept that this higher order policy framework supports a management regime that protects significant indigenous vegetation and the significant habitats of indigenous fauna.
453. We also discussed in section 3.3.1.1 of this Decision Report our acceptance of the evidence of Mr Rance, that Dunedin is ecologically diverse and home to a number of species that meet significance criteria. We accept that there has been significant loss of indigenous vegetation in Dunedin, and that this resulted in rarity of many species. We note that Mr Rance’s assertion that land use intensification is resulting in ongoing loss, while not supported with data, was not challenged by any other expert evidence. In light of the evidence of historic loss of biodiversity, we consider that there is a strong case for protection of remaining values.

454. We accept, as submitted by *STOP* and *Forest and Bird NZ*, that Indigenous Vegetation Clearance has the potential to adversely affect biodiversity values of ASBVs and undermine protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. Given this, we do not consider it appropriate to permit indigenous vegetation clearance in ASBVs, as sought by *Timothy George Morris* (OS951.46) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.46) and therefore reject these submissions.
455. We note that, in decisions outlined elsewhere, some types of indigenous vegetation clearance activities are permitted in ASBVs, as Indigenous Vegetation Clearance – Small Scale (subject to certain performance standards):
- clearance that is part of conservation activity involving vegetation clearance and replacement with indigenous species;
 - clearance for the erection, maintenance or alteration of fences (including gates);
 - clearance for the maintenance (but not extension) of existing network utilities, irrigation infrastructure, tracks, drains, structures, roads or fire breaks;
 - clearance for the construction of tracks up to 2m in width (associated with permitted activities only);
 - clearance that is consistent with or provided for as part of a conservation management strategy, conservation management plan, reserve management plan or covenant established under the Conservation Act 1987 or any other Act specified in the First Schedule of the Conservation Act 1987;
 - clearance that is required to remove material infected by unwanted organisms as declared by Ministry for Primary Industries' Chief Technical Officer, or to respond to an emergency declared by the Minister for Primary Industries under the Biosecurity Act 1993;
 - clearance of a pest plant listed in Appendix 10B;
 - vegetation clearance incidental to existing forestry activity where the clearance involves an understorey of indigenous vegetation, or is for the maintenance of forestry access or firebreaks;
 - clearance that is necessary to maintain the flow of water free from obstruction or for natural hazard mitigation activities;
 - clearance that is incidental to the harvesting or maintenance of trees as part of forestry, provided that all vegetation that is felled within 10m of a water body must be felled away from the water body, and that the forestry is conducted in accordance with recognised industry environmental codes of practice; and
 - vegetation clearance of stands of matagouri dominant shrubland that contain no matagouri individuals greater than 1.5 m tall and that contain no more than one other non-matagouri indigenous shrub species.
456. We consider that the range of scenarios listed above constitute a fairly comprehensive list of situations in which clearance may occur without compromising the values of an ASBV. We were persuaded by the evidence of Mr Rance and Ms Yozin that, to protect the values of the ASBV and to give effect to higher order policy direction, any proposed clearance that does not meet the Indigenous Vegetation Clearance - Small Scale performance standard should not be anticipated by the 2GP, but rather should be subject to the rigour of the s104D test. We note this is also consistent with our decisions, outlined elsewhere, to add Policy 2.2.3.X and amend Objective 10.2.1 to reflect protection of areas of significant vegetation and the significant habitats of indigenous fauna.

457. In terms of concerns expressed by *Oceana Gold (New Zealand) Limited* about the impact of a non-complying activity status on activities such as mining, we consider these are addressed by our decision to introduce a clear framework for biodiversity offsets and environmental compensation (outlined in section 3.5), including an alternative policy test in Policy 10.2.1.Y (which relates to all non-complying activities in ASBVs, including Indigenous Vegetation Clearance). We consider this policy test provides a pathway for activities (like mining) that may be unable to meet the (amended) test of “no net loss and preferably a net gain” on the biodiversity values of the ASBV, because there are no practicable alternative locations.
458. We also note, as discussed elsewhere, that additional types of indigenous vegetation clearance are permitted as Indigenous Vegetation Clearance – Small Scale outside of ASBVs.
459. In response to the submissions of the *Department of Conservation* (OS949.13), *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.107 and OS958.91), we have therefore:
- amended the activity status of Indigenous Vegetation Clearance – Large Scale to non-complying in the Rural and Recreation activity status tables
 - included Indigenous Vegetation Clearance – Large Scale in Policy 10.2.1.Y
 - added Indigenous Vegetation Clearance – Large Scale in ASBVs to assessment rules 16.12.4 and 20.12.4, and removed it from Rule 16.10.5.5, Rule 20.10.5.7 and Rule 10.5.2.7 (including the reference to Policy 10.2.1.4).

3.3.4.4 Requests for additional land use activities to be non-complying in ASCVs

460. *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.103, OS958.93) sought that Rule 16.3 and associated assessment rules be amended so that all land use activities in ASCVs, other than those associated with weed and pest removal and conservation activities, become non-complying activities. The submitters requested non-complying status for these activities on the basis that they have the potential to adversely affect biodiversity values of ASCVs and undermine protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
461. The Reporting Officer noted that, if these submissions were accepted, all permitted or discretionary land use activities (with the exception of Conservation activities) would become non-complying in ASCVs, these being:
- Rural ancillary retail (permitted)
 - Rural tourism – small scale (permitted)
 - Rural research – small scale (permitted)
 - Working from home (permitted)
 - Community and leisure – small scale (permitted)
 - Stand-alone car parking (permitted)
 - Rural tourism - large scale (discretionary)
 - Rural research – large scale (discretionary)
 - Community and leisure – large scale (discretionary)
 - Sport and recreation (discretionary)
 - Restaurants or retail activities ancillary to sport and recreation (discretionary)
 - Ancillary licensed premises (this has the same activity status as the underlying activity, so would be discretionary if associated with one of the activities above).
462. *STOP*'s submission was supported by *HPPC* (FS2267.61), which considered that the amendment proposed by *STOP* is a logical adjunct to protecting ASCVs, and in line with Council's intent for ASCVs. It was opposed by *Geoff Scurr Contracting Limited* (FS2391.70) and by *Federated Farmers of New Zealand* (FS2449.306), who considered that the outcome sought goes considerably beyond the sustainable

management principles and intent of the RMA, its associated case law and the remainder of the 2GP.

463. *Forest and Bird NZ's* submissions were opposed by *Federated Farmers of New Zealand* (FS2449.242, FS2449.382), who did not consider that the change to non-complying had been adequately justified. They considered that the approach would be overly onerous and inconsistent with the sustainable management principles of the RMA, and that the activities in question can be undertaken without significant impact on the specified areas.
464. *Penguin Place Limited* (FS2339.3) sought that the submission by *Forest and Bird NZ* (OS958.103) be disallowed and also that Rural Tourism – Large Scale be permitted instead of discretionary in ASCVs. The Reporting Officer noted that this was beyond what a further submission should cover, in seeking a different outcome rather than submitting in support or opposition to the outcome sought by the original submission.
465. *Penguin Place Limited* noted that proposed ASCV C090 would cover the part of their property that is used for ecotourism operations. It considered that non-complying status for these activities would have unforeseen consequences for the on-going viability of the submitter's long-established farming and ecotourism operations, as they would also in other eco-tourism and farming areas on the Otago Peninsula.
466. The further submitter stated:
- "...the yellow eyed penguin tourism operation generates the funding necessary to undertake predator control, native planting and ecological restoration, and to run a penguin hospital where injured or malnourished birds are looked after... The ecotourism operation also plays a significant role in the wider branding of Dunedin City as a heritage and ecotourism destination that helps draw thousands of visitors to the City on an annual basis. As such the ecotourism operation has a far wider positive economic impact on the City that the income derived directly from the operation itself...*
- [The non-complying status for large scale rural tourism requested by Forest and Bird NZ] would directly affect our ability to operate our tourism business (could indeed stop it), flexibly manage both parts of our business (tourism and farming) and consequently fund and undertake habitat restoration and wildlife enhancement activities. Whilst we fully support the goal of enhancing penguin habitat and restoring penguin numbers, we consider that the imposition of these non-complying activities as an inappropriate method for achieving these goals, and indeed has the potential to work directly against these goals."*
467. In relation to the activities with permitted activity status, the Reporting Officer considered that the scale and intensity these activities is such that they are unlikely to lead to adverse effects on biodiversity values in ASCVs. In the Reporting Officer's view, some of these activities – rural research, rural tourism, community and leisure and working from home (e.g. visitor accommodation up to 5 guests) – may be associated with conservation activities that would benefit the ASCV. The Reporting Officer also noted that additional rules apply to any development activities (e.g. earthworks or vegetation clearance) that may be proposed in conjunction with these land use activities.
468. Overall, in the Reporting Officer's view, permitted activity status for these land use activities is the most appropriate way to achieve relevant 2GP objectives, in particular Objective 16.2.1 and Objective 10.2.1.
469. The Reporting Officer described the rationale for the discretionary activity status associated with some activities as being that they:
1. may need to establish in ASCVs for operational reasons, and

2. have the potential to give rise to adverse effects in ASCVs, but
 3. could be established in ASCVs with net positive effects, depending on factors such as the scale of the activity, their exact location within the ASCV, and any proposals for positive measures such as new plantings.
470. The Reporting Officer explained that assessment rules for each of the discretionary activities (i.e. rural research - large scale, rural tourism - large scale, community and leisure - large scale, sport and recreation, and restaurants or retail activities ancillary to sport and recreation) mean that they are only to be allowed where they "will have net positive effects on the protection and enhancement of the biodiversity values of the Scheduled ASCV". In the Reporting Officer's view this is a strong policy test, which provides appropriate protection to the biodiversity values of ASCVs from the potential adverse effects of these activities.
471. Again, the Reporting Officer noted that additional rules apply to any new buildings, structures, vegetation clearance, earthworks or other site development activities that may be associated with these land use activities in ASCVs. In addition, the Reporting Officer considered some of these discretionary activities – in particular rural research, rural tourism and community and leisure – may be associated with conservation activities that would benefit the biodiversity values of the ASCV.
472. Overall, the Reporting Officer did not consider it necessary to amend the status of any of these activities from discretionary to non-complying.
473. With regard to *Penguin Place Limited's* further submission requesting that rural tourism – large scale be made permitted (rather than non-complying as requested by *Forest and Bird NZ* and *STOP*), putting aside any issues with whether there was scope to consider this request as a further submission, the Reporting Officer did not consider that this would be appropriate.
474. The Reporting Officer noted that activities of this type can involve regular attendance at a site, with each visit introducing significant numbers of people to the site (noting that rural tourism – large scale consists of those activities that exceed the following attendance rate: "25 people or fewer per day, except for a maximum of 10 days per calendar year an attendance rate of 26 to 50 people per day with more than 25 people attending the site on more than 10 days per calendar year"). The Reporting Officer considered that the use of any site at this intensity has the potential to result in adverse effects on the biodiversity values contained within the ASCV (e.g. on a resident population of yellow-eyed penguins), and, therefore, that this activity should be managed via a consent process.
475. At the hearing, Ms Nicola McGrouther (for *Penguin Place Limited*) explained the nature of the operations at Penguin Place, including the tourism operations within the mapped extent of the ASCV, and the role that those operations perform in supporting conservation on the site. She requested discretionary rather than non-complying activity status for Rural Tourism – Large Scale in ASCVs and expressed a concern about loss of existing use rights, if circumstances changed. She noted that the QE2 covenant in place on their land allows tourism, and that the activities underway on the site would qualify as large scale, as the attendance rate easily exceeds 25 people per day.
476. Taking into account the evidence presented at the hearing, in the Revised Recommendations Summary the Reporting Officer did not consider that the submissions of *Penguin Place Limited* provided scope to amend the status of Rural Tourism – Large Scale in ASCVs. The Reporting Officer noted that their concern related to the possible amendment of the status of the activity to non-complying, in response to other submissions, and noted that the recommendation on that point was that discretionary status remain. The Reporting Officer noted that if *Penguin Place*

Limited did lose their existing use rights in the future, it was likely that a resource consent to reinstate the activity would be granted, although that decision would be made based on the circumstances at the time of the application.

3.3.4.4.1 *Decision and Reasons*

477. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
478. We reject the submissions of *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.103, OS958.93) insofar as they sought to amend the activity status of permitted and discretionary land use activities in ASBVs to non-complying.
479. As discussed elsewhere in this Decision Report, we accept that the 2GP should protect areas of significant indigenous vegetation and the significant habitats of indigenous fauna, and have made a number of amendments to the 2GP to better achieve this.
480. Notwithstanding this, taking into account the restrictions that apply to development activities in ASBVs (performance standards associated with Earthworks and Indigenous Vegetation Clearance), we agree with the Reporting Officer's assessment that the land use activities with a notified permitted activity status are not of a scale and intensity likely to cause adverse effects on the biodiversity values of ASBVs. We consider a permitted activity status for these land use activities to be an appropriate way of achieving the relevant 2GP objectives, particularly Objective 10.2.1, and note that at an appropriate scale, a number of these activities may be necessary in ASBVs as part of, or to support, Conservation activity.
481. In relation to discretionary land use activities in ASBVs, we agree with the Reporting Officer's assessment that these land use activities, at an appropriate scale and intensity, may be able to occur while still achieving Objective 10.2.1. We also accept the Reporting Officer's assessment that, at an appropriate scale and intensity, some of these activities may support Conservation activity, and note the example provided by *Penguin Place Limited* of Rural Tourism – Large Scale supporting Conservation in ASBV CO90.
482. We note, as outlined elsewhere, that we have amended the policy test associated with Policy 10.2.1.2 (from "net positive effects" to "no net loss and preferably a net gain"). We still, however, consider it provides a strong policy test, affording appropriate protection to the biodiversity values of ASBVs. Overall, we accept the evidence of the Reporting Officer, that with Policy 10.2.1.2 providing a strong policy test, (and the aforementioned restrictions on development activities in ASBVs), a discretionary activity status for these land use activities will achieve the relevant 2GP objectives, particularly Objective 10.2.1.
483. We also agree with the Reporting Officer's assessment that the further submission of *Penguin Place Limited* (FS2339.3) does not provide scope to amend the activity status of Rural Tourism – Large Scale to permitted, nor do we consider this amendment would afford appropriate protection to the values of ASBVs.

3.3.4.5 Requests for additional development activities to be non-complying in ASCVs

484. *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.107, OS958.91) sought that Rule 16.3 and associated assessment rules be amended so that all development activities in ASCVs, other than those associated with weed and pest removal and conservation activities, become non-complying activities.
485. The submitters requested non-complying status for these activities on the basis that they have the potential to adversely affect biodiversity values of ASCVs and

undermine protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

486. The Reporting Officer noted that, if these submissions were accepted, all other permitted or restricted discretionary development activities would become non-complying in ASCVs, these being:
- New buildings greater than 60m² on a landscape building platform (permitted)
 - New building or structure less than or equal to 60m², or additions and alterations that result in a building or structure that is less than or equal to 60m² (permitted)
 - Fences (permitted)
 - Earthworks - small scale (permitted)
 - Outdoor storage (permitted)
 - Parking, loading and access (permitted)
 - All other vegetation clearance (i.e. other than indigenous vegetation clearance) (permitted)
 - Storage and use of hazardous substances (permitted)
 - Tree planting (permitted)
 - All other site development activities (permitted)
 - New building or structure greater than 60m², or additions and alterations that result in a building or structure that is greater than 60m² (restricted discretionary)
 - All other buildings and structures activities (restricted discretionary)
 - Earthworks – large scale (restricted discretionary)
 - Indigenous vegetation clearance (restricted discretionary)
487. *STOP's* submission was supported by *HPPC* (FS2267.61), which considered that the amendment proposed by *STOP* a logical adjunct to protecting ASCVs, and in line with Council's intent for ASCVs. It was opposed by *Geoff Scurr Contracting Limited* (FS2391.70) and by *Federated Farmers of New Zealand* (FS2449.306), who considered that the outcome sought goes considerably beyond the sustainable management principles and intent of the RMA, its associated case law and the remainder of the 2GP.
488. *Forest and Bird NZ's* submissions were opposed by *Federated Farmers of New Zealand* (FS2449.236, FS2449.321), who did not consider that the change to non-complying had been adequately justified. They considered that the approach would be overly onerous and inconsistent with the sustainable management principles of the RMA, and that the activities in question can be undertaken without significant impact on the specified areas.
489. In terms of development activities, overall, the Reporting Officer considered that activity status should remain as notified, except that, for reasons discussed below, New buildings greater than 60m² on a landscape building platform and Tree planting should be made restricted discretionary rather than permitted in ASCVs. The Reporting Officer also noted a recommendation elsewhere that All other buildings and structures activities become permitted.
490. The Reporting Officer observed that, while notified status of New buildings greater than 60m² in ASCVs is permitted, under Rule 10.8.1, landscape building platforms are identified based on an assessment of landscape and natural character values. The process of identifying a landscape building platform will not, therefore, necessarily take into account potential effects on biodiversity values. Therefore, the Reporting Officer recommend that, in order to ensure protection of biodiversity values in ASCVs as sought by the submitter, the status of this activity should be amended to restricted discretionary. The Reporting Officer noted this would align it with the notified activity

status for other new buildings greater than 60m², discussed below. The Reporting Officer did not consider that non-complying status for buildings over 60m² in ASCVs is necessary to protect these areas, for reasons discussed below.

491. The Reporting Officer observed that the notified status of 'New building or structure less than or equal to 60m² or additions and alterations that result in a building or structure that is less than or equal to 60m²', 'Fences', and 'Earthworks – small scale' in ASCVs is permitted. The Reporting Officer considered that this activity status appropriately provides for the establishment of small scale structures and earthworks that are unlikely to result in adverse effects on biodiversity values.
492. The Reporting Officer noted that, in order to be treated as Earthworks – small scale in ASCVs, earthworks must comply with a particularly low set of scale thresholds (in comparison with other areas), as set out in Rule 16.6.1.1.a.5.
493. The Reporting Officer noted that the status of the activities outlined above in ASCVs is restricted discretionary, and that proposed activities of this kind are assessed against Policy 10.2.1.2. The Reporting Officer observed that, under this policy (incorporating changes recommended elsewhere in the Section 42A Report), the activities are only allowed if they "will have net positive effects on the protection and enhancement of the biodiversity values of the Scheduled ASCV including, but not limited to, those biodiversity values listed in Schedule A1.2". The Reporting Officer also noted that Rule 10.5.2.7 also states that potential circumstances that may support a consent application include the following:
- "iv. Development activities are associated with conservation.
 - v. Measures are proposed to protect or enhance the biodiversity values of the area of significant conservation."
494. In the view of the Reporting Officer, these provisions provide sufficient protection for the biodiversity values of ASCVs from the potential effects of larger buildings and structures and larger earthworks. The Reporting Officer did not consider non-complying activity status appropriate, because in these development activities will not necessarily result in significant adverse effects on areas of significant indigenous vegetation and/or significant habitats of indigenous fauna that are identified in ASCVs. The Reporting Officer considered the magnitude of any adverse effect could be influenced by a range of factors, including the circumstances set out in Rules 10.5.2.7.iv or v, and the size of the building/structure, and of the cut and/or fill involved in the earthworks, and the location of the activity in relation to vegetation and habitats.
495. For reasons discussed in section 5.11.1 of the Section 42A Report, the Reporting Officer recommended in response to submissions that the status of All other buildings and structures be changed to permitted. The Reporting Officer did not consider that non-complying activity status is appropriate in this case, because, where no vegetation clearance is involved, these development activities are unlikely to result in adverse effects on the areas of significant indigenous vegetation and/or significant habitats of indigenous fauna that are identified in ASCVs.
496. In the Reporting Officer's view, if Outdoor storage, Parking, loading and access, and Storage and use of hazardous substances do not involve earthworks or vegetation clearance (which are subject to separate 2GP provisions), it is unlikely that they will result in adverse effects on the areas of significant indigenous vegetation and/or significant habitats of indigenous fauna that are identified in ASCVs. Therefore, permitted activity status is appropriate for these activities.
497. In relation to All other vegetation clearance, the Reporting Officer noted that vegetation clearance other than indigenous vegetation clearance is permitted, subject to the performance standards set out in Rule 10.3.2. Most of the Rule 10.3.2

performance standards apply only to indigenous vegetation clearance, but Rule 10.3.2.3 is relevant to all vegetation clearance in ASCVs. This rule controls vegetation clearance:

- within 20m of scheduled wetlands, and
- within 5m of the mean high water springs or water bodies.

498. The Reporting Officer noted that vegetation clearance that does not affect “indigenous vegetation” (which is defined in the plan as vegetation that is at least 20 or 30% indigenous, depending on the circumstances – see submissions on this definition in section 5.8.1) and that is not controlled under Rule 10.3.2.3 might still affect the habitats of indigenous fauna and, therefore, could adversely affect the protected biodiversity values of ASCVs. The Reporting Officer deferred to input from Dr Kelvin Lloyd (ecologist called by DCC).
499. The Reporting Officer noted that Tree planting is permitted in ASCVs. This activity, including amendments recommended in the Rural Zones Section 42A Report, is defined as:
- “The planting of tree species in as a shelter belt or small woodlot (less than one hectare) a group or row {RU 853.6} for the purpose of shelter, screening, stability or erosion control, as a carbon sink {RU 853.6} or for timber use on the same property as which it is grown.
- This definition excludes activities defined as forestry or conservation...”
500. In addition to *STOP* and *Forest and Bird NZ*’s submissions that tree planting should be non-complying in ASCVs, the Reporting Officer observed that another submission point made by both *STOP* (OS900.144) and *Forest and Bird NZ* (OS958.24) sought that 2GP policies be amended to “avoid exotic tree planting into areas of indigenous vegetation”. They noted that exotic tree planting can adversely affect the water harvesting values of catchments, as well as indigenous biodiversity values, and that the proposed ORC Regional Policy Statement contains Policy 2.1.6(d) Protect important hydrological services, including the services provided by tussock grassland.
501. The Reporting Officer said that a number of provisions in the 2GP partially achieve the outcomes sought by the submitters, in relation to areas of indigenous vegetation that are within ASCVs. However, the Reporting Officer agreed with the submitters that a greater degree of control over tree planting in general in ASCVs is warranted. Given that this activity may include the planting of groups of trees up to one hectare in area, if carried out within ASCVs, it has the potential to adversely affect the biodiversity values of the area. The Reporting Officer offered, by way of example, if exotic species are planted, or if species are planted that are indigenous to New Zealand but are not characteristic of the particular ASCV concerned. Therefore, the Reporting Officer considered that tree planting should be restricted discretionary in ASCVs, and that Policy 10.2.1.2 and assessment Rule 10.5.2.7 should apply.
502. The Reporting Officer commented that, under Policy 10.2.1.2, tree planting in ASCVs would only be allowed if the activity “will have net positive effects on the protection and enhancement of the biodiversity values of the Scheduled ASCV including, but not limited to, those biodiversity values listed in Schedule A1.2.” Any planting of trees that was part of a conservation activity – for example, restoration planting – would not be subject to controls on the “tree planting” development activity.
503. The Reporting Officer did not agree with *Forest and Bird NZ* and *STOP* that tree planting should be non-complying in ASCVs, or that all planting of exotic trees should be non-complying in all areas of indigenous vegetation (including ASCVs), for the following reasons:

- Non-complying activity status is not justified for tree planting in ASCVs, since there may be circumstances in which this can occur as part of a wider activity that is consistent with Objective 10.2.1 (i.e. areas of indigenous vegetation/habitats of indigenous fauna are maintained or enhanced). This could be the case, for example, if the species planted provided a habitat for indigenous fauna, if the species to be planted was already established in the area, or if measures were proposed that would enhance the area in other ways.
 - The 2GP manages forestry and “tree planting” (i.e. shelterbelts and small woodlots up to one hectare) but does not manage the planting of individual trees. It would not be practical to seek to manage planting on this small scale, as it would be very difficult to enforce, as breaches of the rules would be unlikely to come to the Council’s attention. Rules of this type would also be unnecessarily onerous - they would impose a significant regulatory burden on landowners, but would not be an efficient means of protecting areas of indigenous vegetation, noting that areas of indigenous vegetation (ASCVs included) do not generally consist exclusively of indigenous species - indigenous species are “dominant” in these areas, either
 1. indigenous species comprise at least 30% coverage by area or 30% of the total number of specimens present, or
 2. indigenous species comprise at least 20% coverage and also make up the tallest stratum of vegetation or are visually conspicuous). He felt this makes it more difficult to justify preventing landowners from planting any additional exotic tree species (i.e. not just those species that are prone to wilding spread) in these areas.
504. The Reporting Officer commented that all site development activities other than those provided for in Rules 16.3.4.15 to 16.3.4.23 are permitted in ASCVs. However, Rules 16.3.4.15 to 16.3.4.23 cover all types of “site development” activity listed in the Development Activity category in 2GP Section 1.6 Nested Tables, i.e. earthworks, outdoor storage, parking, loading and access, storage and use of hazardous substances, tree planting and vegetation clearance. Rule 16.3.4.24, therefore, applies only to types of site development activity that have not been anticipated during the drafting of the 2GP. The Reporting Officer said if such an activity does not involve earthworks, vegetation clearance or hazardous substances (all of which are subject to separate 2GP provisions), it is unlikely that it will result in adverse effects on the areas of significant indigenous vegetation and/or significant habitats of indigenous fauna that are identified in ASCVs. Therefore, permitted activity status is considered appropriate in this case.

3.3.4.5.1 *Decision and Reasons*

505. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
506. We accept in part the submissions of *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.107, OS958.91) insofar as they sought that all development activities in ASBVs, other than those associated with weed and pest removal and conservation activities, become non-complying activities.
507. As discussed elsewhere in this Decision Report, we accept that the 2GP should protect of areas of significant indigenous vegetation and the significant habitats of indigenous fauna, and have made a number of amendments to the 2GP to better achieve this.
508. In terms of development activities, overall we consider that activity status should remain as notified, except that, for reasons discussed below, we consider that Tree planting (renamed Shelterbelts and Small Woodlots as set out in our Rural Decision Report), Large buildings and structures on a landscape building platform and All other

site development activities should be restricted discretionary rather than permitted in ASBVs.

509. In addition, we note that, in amendments discussed in section 3.3.4.3, Indigenous Vegetation Clearance has been amended to non-complying in ASBVs. We consider these constitutes acceptance in part of *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.107, OS958.91). As outlined in section 3.7.9.2, All other buildings and structures activities has been amended to permitted, for the reasons given in that section.
510. In relation to the activity status of Large buildings and structures on a landscape building platform, we accept the Reporting Officer's evidence that in order to ensure protection of biodiversity values in ASBVs as sought by the submitter, the status of this activity should be amended to restricted discretionary, to align with the activity status of other large buildings and structures activities in ASBVs, given that the process of identifying a landscape building platform will not necessarily take into account potential effects on biodiversity values.
511. On balance, we consider it appropriate that Small buildings and structures, Fences, and Earthworks – small scale remain permitted in ASBVs. In coming to this view, we note that requiring consent for these activities at small scales could inhibit Conservation activity in ASBVs. We note also the strict scale thresholds for Earthworks – Small Scale in ASBVs, and that if any of these activities involved vegetation clearance they would also be subject to Vegetation Clearance rules. Given this, we consider it unlikely that any activity with the potential for adverse effects on biodiversity values would have that result without first triggering consent for a development activity.
512. We note that Large buildings and structures, and Earthworks – large scale are defined in such a way that they are highly variable in scale, with potential for effects of varying magnitude. These activities may be appropriate in ASBVs, particularly at smaller scales, but they also have the potential for significant adverse effects on biodiversity values, especially at larger scales. Overall, we do not consider a non-complying activity status appropriate for these activities. In particular, given the low scale threshold delineating Earthworks – Small Scale from Earthworks – Large Scale in ASBVs, amending Earthworks – Large Scale to non-complying would risk setting a very high test for an activity that may prove quite appropriate (or indeed essential to support Conservation activities). We agree with the Reporting Officer's assessment that the magnitude of any adverse effect could be influenced by a range of factors.
513. We were persuaded by the evidence of the Reporting Officer that given Policy 10.2.1.2 provides a strong policy test (and we consider this is still the case, even with the amendment outlined in section 3.3.3.5), a restricted discretionary activity status (with effects on biodiversity as a matter of discretion) affords appropriate protection to the values of the ASBV. The assessment guidance cited by the Reporting Officer also provides a level of direction around potential circumstances that may support an application, and these relate to gains for biodiversity values. We note that vegetation clearance associated with these activities is subject to separate rules and controls. In considering the potential interactions of these provisions, it is of relevance that our decision outlined in section 3.3.4.3 amends the activity status of Indigenous Vegetation Clearance to non-complying in ASBVs.
514. We do not consider that removal for relocation, demolition or repairs and maintenance of buildings is likely to result in adverse effects on the biodiversity values of ASBVs, noting that if these activities involve earthworks or vegetation clearance these are subject to separate rules. As such, we do not support a non-complying activity status for All other buildings and structures activities in ASBVs. As discussed in section 3.7.9.2 of this Decision Report, we support a change to permitted activity status for

All other buildings and structures activities, in response to the submissions of *Dunedin City Council* (OS360.137, OS360.138).

515. We concur with the assessment of the Reporting Officer in relation to Outdoor storage and Parking, loading and access, in that if they do not involve earthworks or vegetation clearance (which are subject to separate 2GP provisions), it is unlikely that they will result in adverse effects on the biodiversity values of ASBVs. In this context, we consider a permitted activity status is appropriate, and do not consider it should be amended to non-complying.
516. In the case of Storage and use of hazardous substances, we note that the provisions are the same for ASBVs as they are for the underlying rural zones. Taking into account evidence we heard in the Public Health and Safety hearing, while we consider the appropriateness of these provisions may benefit from further examination as part of a future plan review (particularly for Class 9 – Ecotoxics) we do not consider that there is sufficient evidential basis to amend the activity status of this activity at this point.
517. With regard to the activity status of All other vegetation clearance, we note that the Reporting Officer did not make a recommendation on this point, and that we did not receive any expert evidence, nor was there any discussion at the hearing on this issue. As discussed in section 3.4, our decision has reformatted Vegetation Clearance provisions such that Indigenous Vegetation Clearance - Small Scale is permitted in ASBVs subject to a range of performance standards. As discussed in section 3.3.4.3, we have also amended the status of Indigenous Vegetation Clearance - Large Scale in ASBVs to non-complying. We further note that the definition of “indigenous vegetation” is vegetation that is at least 20 or 30% indigenous (depending on the circumstances - submissions on this point are discussed in section 3.4.2), and that our decisions have amended the definition of Vegetation Clearance to remove the outcome statements (discussed in section 3.4.3). Finally, we note that All other vegetation clearance is subject to the Protected Areas performance standard (Rule 10.3.2.3). Given all of the above, we observe that the most likely adverse effects of All other vegetation clearance on the values of ASBVs would be on the significant habitat of indigenous fauna (where this habitat is non-indigenous). We consider this could be addressed by requiring All other vegetation activities to also achieve the Protected Species performance standard (Rule 10.3.2.4). Given the lack of evidence on this topic, however, we consider any such change would be more appropriately progressed by way of a future plan change.
518. We accept that exotic tree planting has the potential to adversely affect biodiversity values of ASBVs, and that this risk applies to exotic plantings of less than one hectare (classified as Shelterbelts and Small Woodlots in the 2GP) as well as Forestry activity (which is non-complying under Rule 16.3.3.7). We agree with the Reporting Officer's assessment that Shelterbelts and Small Woodlots should be restricted discretionary in ASBVs, and that Policy 10.2.1.2 and assessment Rule 10.5.2.7 should apply. Given the high bar set by (amended) Policy 10.2.1.2 (“no net loss and preferably net gain” in the biodiversity values of the ASBV), and the plausibility that Shelterbelts and Small Woodlots are likely to meet that policy test and achieve Objective 10.2.1 in a range of situations, we consider a restricted discretionary activity status more appropriate than non-complying. We believe a non-complying activity status would be overly onerous. We agree with the Reporting Officer's assessment that that any planting of trees as part of Conservation activity would not be subject to Shelterbelt and Small Woodlot controls.
519. We accept that Rule 16.3.4.24 (All other site development activities) applies only to types of site development activity that have not been anticipated during the drafting of the 2GP. However, we do not accept that it is sufficient to rely on earthworks,

vegetation clearance and hazardous substances provisions given the lack of clarity about what these development activities may involve, and the values of the overlay zone in question. We consider that, as a precautionary measure, restricted discretionary activity status is appropriate in this case.

520. We note that the submissions of *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.107, OS958.91) sought only to amend the activity status of these activities in the rural zones. However, we consider it more consistent, and within the scope of the broader submissions of *STOP* (OS900.142) and *Forest and Bird NZ* (OS958.20) (which, as discussed in section 3.3.3.3, sought to replace Policy 10.2.1.2 with a policy stating “Avoid land use and development activities...” within a number of specified areas including ASBVs) to also amend the activity status of these activities in the Recreation Zone. Although the latter submission points do not constitute a direct request to change the rule, we consider the amendment unlikely to result in undue prejudice, because the Recreation Zone is primarily within the ownership of the DCC and the Department of Conservation. See also section 3.3.4.7, which discusses rules relating to ASBVs in rural residential zones.
521. In response to the submissions of *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.107, OS958.91), we have therefore:
- amended the activity status of Shelterbelts and Small Woodlots in Rule 16.3.4.23.d and Rule 20.3.4.23.c to restricted discretionary
 - added Shelterbelts and Small Woodlots to assessment rules 16.10.5.5, 20.10.5.7 and 10.5.2.7
 - amended the activity status of All other site development activities in Rule 16.3.4.24.d and Rule 20.3.3.24.c to restricted discretionary
 - added All other site development activities to assessment rules 16.10.5.5, 20.10.5.7 and 10.5.2.7
 - amended the activity status of ‘New buildings greater than 60m² on a landscape building platform’ in Rule 16.3.4.3.d to restricted discretionary
 - amended Policy 10.2.1.2 to incorporate the change to restricted discretionary activity status for these activities.

3.3.4.6 Requests for subdivision activities to be non-complying in ASCVs

522. *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.91, OS958.92) sought that Rule 16.3 and associated assessment rules be amended so that all subdivision activities in ASCVs, other than those associated with weed and pest removal and conservation activities, become non-complying activities. The Reporting Officer noted that, incorporating amendments recommended in the Rural Zones Section 42A Report, the following subdivision activities require consent as restricted discretionary or discretionary activities in ASCVs:
- General subdivision (restricted discretionary)
 - Cross lease, company lease and unit title subdivision (discretionary)
523. The submitters requested non-complying status for these activities on the basis that they have the potential to adversely affect biodiversity values of ASCVs and undermine protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
524. *STOP*’s submission was supported by *HPPC* (FS2267.61), which considered that the amendment proposed by *STOP* a logical adjunct to protecting ASCVs, and in line with Council’s intent for ASCVs. It was opposed by *Geoff Scurr Contracting Limited* (FS2391.70) and by *Federated Farmers of New Zealand* (FS2449.306), who considered that the outcome sought goes considerably beyond the sustainable

management principles and intent of the RMA, its associated case law and the remainder of the 2GP.

525. *Forest and Bird NZ's* submissions were opposed by *Federated Farmers of New Zealand* (FS2449.236, FS2449.237), who did not consider that the change to non-complying had been adequately justified. They considered that the approach would be overly onerous and inconsistent with the sustainable management principles of the RMA, and that the activities in question can be undertaken without significant impact on the specified areas.
526. The Reporting Officer, Michael Bathgate, did not agree with *STOP* and *Forest and Bird's* submissions that subdivision should be non-complying in ASCVs in order to protect biodiversity values. He considered that there will be circumstances where subdivision may be contemplated in these areas and be viewed as beneficial to the management and values of these areas. He noted an exemption (Rule 16.7.4.2.a) to the minimum site size standard for the creation of sites used solely for an ASCV or QEII covenant, and considered that making subdivision a non-complying activity would mean that this standard and associated exemption would not apply, making it more difficult to create smaller sites specifically for conservation purposes.
527. Mr Bathgate also considered the revised minimum site size standard for the rural zones, ranging from 25ha to 100ha, will make it more difficult to undertake a subdivision activity that would adversely affect smaller areas. Further, he noted assessment rule 10.5.2.2 (which requires assessment of the effects of all rural general subdivision activities on areas of indigenous vegetation and the habitat of indigenous fauna). He further noted there are also subdivision assessment rules relating to ASCVs, which require assessment of the effects of subdivision on biodiversity. He considered these assessment rules provide sufficient scope to manage any potential adverse effects of subdivision on these areas.

3.3.4.6.1 *Decision and Reasons*

528. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
529. We reject the submissions of *STOP* (OS900.136) and *Forest and Bird NZ* (OS958.91, OS958.92) insofar as they sought to amend the activity status of subdivision in ASBVs to non-complying.
530. As discussed elsewhere, we accept that the 2GP should protect areas of significant indigenous vegetation and the significant habitats of indigenous fauna, and have made a number of amendments to the 2GP to better achieve this.
531. However, having assessed the provisions managing subdivision activities in ASBVs, and the evidence presented on this matter at the Rural Hearing (discussed in the Rural Decision Report), we do not consider a non-complying activity status appropriate for either General subdivision or Cross lease, company lease and unit title subdivision in ASBVs.
532. We are persuaded by the evidence of the Reporting Officer, that given the larger minimum site sizes required for subdivision in rural zones, there may be situations in which subdivision of an ASBV is either necessary or beneficial for the protection of biodiversity values. We consider it would be counterproductive to make it more difficult to create smaller sites especially for conservation purposes.
533. We note that, as outlined in section 3.6.6 below, in response to submissions received on Policy 10.2.1.9, amendments have been made such that the policy now requires subdivision to be designed to ensure that any future land use or development

activities not only maintain or enhance biodiversity values, but protect areas of significant indigenous vegetation and the significant habitats of indigenous fauna, and also be in accordance with policies 10.2.1.X, 10.2.1.2, 10.2.1.Y and 10.2.1.5. We consider this provides a strong policy test, affording appropriate protection to the biodiversity values of ASBVs (and areas with biodiversity values outside of ASBVs). We note also that assessment guidance associated with the relevant rule provides a level of direction around potential circumstances that may support an application, and these relate to gains for biodiversity.

3.3.4.7 Clause 16 amendments

534. Areas of Significant Biodiversity Value (ASBVs) intersect with the rural residential zones. However, we note that the notified Plan omitted providing a link to the relevant rules that apply in these ASBVs where they exist in rural residential zones. The Rural Residential Section rules have been amended to clarify the rules that apply in ASBVs where these intersect with rural residential zones. This amendment is considered of minor consequence and made under Clause 16 of the RMA to clarify the provisions that apply in these circumstances.

3.3.5 Appendix A1.2 Schedule of Areas of Significant Conservation Value

535. A number of submitters sought to amend the Schedule of Areas of Significant Conservation Value in relation to the Introduction, and to add or remove particular areas from the schedule.

3.3.5.1 Submission to amend the Introduction to Areas of Significant Conservation Value

536. *Federated Farmers of New Zealand* (OS919.67) sought to amend the Introduction to Areas of Significant Conservation Value to acknowledge the historical context for vegetation loss, stating:

"New Zealand's forests were initially seen as a valuable timber resource and were an important component of the early export trade. At times during history there were even government incentives to clear bush to bring land into production. During the war years food security was an important issue, which meant that clearing land for food production was valued more than preserving native bush. Although we now understand that the remaining bush is important, it pays to remember that the decline of bush was not the fault of individual landowners but a result of overall attitudes and the prevailing government directions at the time."

537. The Reporting Officer stated that the Introduction acknowledges that the extent of indigenous vegetation is now "a fraction of what it was prior to the arrival of humans" and does not imply that any particular sector of society has been responsible for this, but rather, the arrival of humans to New Zealand led to the wholesale removal of vegetation cover. In the Reporting Officer's view, the Introduction acknowledges that this has now largely ceased, and this history is fairly well understood and documented widely elsewhere. As such, the Reporting Officer did not consider it necessary to provide more detailed information about the historical drivers for vegetation removal in the Schedule as requested.

3.3.5.1.1 *Decision and Reasons*

538. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
539. We reject the submission of *Federated Farmers of New Zealand* (OS919.67).

540. We agree with the assessment of the Reporting Officer, that the Introduction to Areas of Significant Biodiversity Value broadly acknowledges historic wholesale loss of indigenous vegetation, and the fact that the rate of loss is now more incremental. We do not consider that additional historic background adds either clarity or value to the section, as the function of Appendix A1.2 is primarily to provide information about the scheduled ASBVs themselves.

3.3.5.2 Submissions to add QEII Trust land at Doctors Point to ASCV

541. *Phil and Jillian Borrie* (OS129.1) considered it important that the QEII Trust land at the end of Doctors Point is recorded on maps, because it is an important reserve that everyone should be aware of. In addition, *Murray Johnston* (OS273.2) stated in his submission: "This land already has a QEII covenant and should be included within the District Plan. Beach Society members are continuing to enhance the plantings in the area with assistance from the DCC."
542. In evidence, Dr Lloyd (ecologist called by DCC) noted that the area appears to have been mapped as ASCV C087, noting that coastal forest on the site is almost certainly significant, that there is a wetland, and that it is possible some of the site provides significant habitat for indigenous fauna (para 115).
543. The Reporting Officer, Peter Rawson, noted that the 2GP includes ASCV C087, and a nearby estuary/mudflat ASCV C104. Given this, he considered no amendments were necessary and recommended that the submissions of *Phil and Jillian Borrie* (OS129.1) and *Murray Johnston* (OS273.2) be rejected.

3.3.5.2.1 *Decision and Reasons*

544. We reject the submissions of *Phil and Jillian Borrie* (OS129.1) and *Murray Johnston* (OS273.2). Given that the outcome sought by the submitters already appears to be provided for in the 2GP, we consider no amendment is necessary.

3.3.5.3 Submissions which request to remove C013 – Waikouaiti from A1.2

545. *Dunedin City Council* (OS360.193) sought to remove C013 from the Schedule because this area is already mapped and combined as part of Schedule C014 (Waikouaiti River Estuary Wetland and Ellison Saltmarsh and Merton Arm Wildlife Management Reserve).
546. The Reporting Officer, Peter Rawson, noted that the 2GP had scheduled (Schedule A1.2) ASCV C013 'Waikouaiti River' in error; ASCV C014 takes in the Waikouaiti River margins, the subject of the mis-scheduled ASCV C013. He therefore recommended accepting the submission of the *Dunedin City Council* (OS360.193) and removing ASCV C013 from Schedule A1.2.

3.3.5.3.1 *Decision and Reasons*

547. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
548. We accept the submission of the *Dunedin City Council* (OS360.193) to remove ASBV C013 from Schedule A1.2, accepting the evidence of the Reporting Officer that ASBV C013 is a duplicates parts of ASBV C014.
549. Our decision therefore deletes ASBV C013 from Schedule A1.2, and amends C014 as follows:

Waikouaiti River Estuary Wetland and Ellison Saltmarsh and Merton Arm Wildlife Management Reserve	96.3500	River margins adjacent to important river habitats. These riparian areas are important in maintaining the quality of the adjoining significant water habitat for whitebait and other species.	<u>DOC (I43 032):</u> {NatEnv 360.193} DOC (I43 034); DOC (I43 035); DOC (I43 037)

3.3.5.4 Submissions to add seven yellow-eyed Penguin breeding sites to ASCV Schedule

550. *Yellow-eyed Penguin Trust* (OS690.23) sought to add seven breeding sites for yellow-eyed penguins to the Schedule. It submitted photographs of the sites showing the approximate breeding sites. The Section 42A Report outlines that the Aramoana breeding site proposed by the Yellow-eyed Penguin Trust is owned by the Crown and Department of Conservation. All other sites are located on private land, which extends in all cases right to the beach.
551. *Forest and Bird NZ* (FS2482.2) supported this submission because it considered that the breeding sites of yellow-eyed penguins 'qualify as significant sites'. Five submissions were received in opposition, including *Elm Tourism Limited* (FS2188.2) who believed ASCV rules 'too restrictive' and that there should be wider consultation with stakeholders. *DRJ and HM McKay Family Trust* (FS2367.1) and *DJ McKay Family Trust* (FS2392.1) opposed OS690.23 because the restrictions imposed by the additional ASCVs would 'seriously affect' farming viability and access for ecotourism operators and as landowners and lessee of Little Papanui Beach and surrounding farmland, and the submission fails to recognise the years of hard work and dedication the McKays have undertaken in preserving the Penguin colony. *Alan Clearwater and Sandra Clearwater* (FS2442.2) also opposed OS690.23 because ASCV restrictions would affect the viability of wildlife tours and the submitter's farming operation at 35 Kaimata Road, Peninsula, through loss of access fees. (See separate submissions for full lists of reasons from each of the opposing further submitters.)
552. *Penguin Place* (FS2339.1) also opposed OS690.23 in part, specifically in relation to Pipikaretu Beach and Ryans Beach. The submitter also sought to remove ASCV CO90 from its own land, citing concerns about viability of farming and ecotourism operations under ASCV rules. This second part of the submission is considered in section 3.3.5.5.
553. Dr Kelvin Lloyd provided expert ecological evidence for the DCC on this *Yellow-eyed Penguin Trust* submission point (OS690.23) and stated (paras 116 and 117):
- "Submitter OS690.23 requests that a number of breeding sites for yellow-eyed penguin (Megadyptes antipodes), which have a threat classification of Threatened-Nationally Vulnerable, are included into the ASCV schedule. Breeding sites for nationally Threatened populations of indigenous fauna would qualify as being significant under both Proposed District Plan and Proposed RPS criteria, so ASCV status would be justified for these sites. The boundaries of the sites should be discussed with landholders, as other submissions indicate that the areas of breeding yellow-eyed penguin habitat mapped by the submitter are not fully accurate. Several submissions (FS2188.2, FS2339.1, FS2367.1, and FS2442.2) oppose submission OS690.23, largely because of perceived impacts that Proposed Plan policy would have for ecotourism and farming operations in these areas. This could be potentially resolved by identifying relevant areas as significant, but having policy that allowed sensitive ecotourism and farming use of the sites."*

554. The Reporting Officer, Peter Rawson, noted that the yellow-eyed penguin has recently had its threat status elevated to “Nationally Vulnerable” (Robertson *et al.* 2016, cited on DOC website) indicating the species is continuing to decline over its range.
555. Mr Rawson said that, in order to qualify as an ASCV under the current DCC regime, ecological assessments are required that apply criteria laid out in Strategic Policy 2.2.3.1, and that the DCC has adopted “a voluntary approach” to scheduling, relying on landowner’s willingness to have an ecological assessment carried out, and to have an area added to the Schedule. Therefore, even if the areas requested by the *Yellow-eyed Penguin Trust* were assessed as being significant in terms of the criteria in Policy 2.2.3.1, areas of private land can only be added to the ASCV schedule with the agreement of the landowner.
556. Mr Rawson acknowledged there has been opposition from some private landowners to scheduling a number of these sites, but that all submitters and further submitters support the protection of the Yellow-eyed Penguin breeding sites, and it is the mechanism of protection (and more specifically, whether protection under the 2GP is necessary) that is in dispute. Mr Rawson also noted that the ASCV rules in the 2GP control Indigenous Vegetation Clearance, Building and Structures and Earthworks – Large Scale, which are all restricted discretionary activities in the rural zones. Further, that recommended changes to vegetation clearance rules would, if adopted, include restrictions on the clearance of the habitat of indigenous fauna, including breeding habitat for the nationally vulnerable yellow-eyed penguin. He agreed with Dr Lloyd that it would be advantageous to discuss the boundaries of Yellow-eyed penguin breeding sites with private landowners, and if the landowners were amenable, to protect these breeding sites as ASCVs in the 2GP.
557. Mr Rawson noted that the *Department of Conservation* agreed with the submitter that the Aramoana Yellow-eyed Penguin breeding site (the coastal area beyond “Keyhole Rock” on Aramoana Beach, which includes some land above the beach) is significant and should be protected as an ASCV. He therefore recommended that this site be scheduled and mapped as a new yellow-eyed penguin habitat ASCV, and that the submission be accepted in part (OS690.23).
558. Mr Rawson also recommended that the other potential ASCVs identified by the *Yellow-eyed Penguin Trust* were not included as ASCVs at this stage. Given the heightened threat status recently afforded to yellow-eyed penguins, and the importance of this iconic species to Dunedin City, he encouraged landowner/*Yellow-eyed Penguin Trust* liaison to work towards achieving ASCV status for these sites (or a subset of them) in the near future.
559. The *Yellow-eyed Penguin Trust* was represented at the Hearing by Mr Murray Brass (Trustee) and Mr David McFarlane (Field Manager). In a tabled statement, they accepted the recommendations in the Section 42A Report. They expressed a preference for a voluntary approach to ASCVs, saying it is generally workable for penguin breeding sites. In their experience, farming and tourism can co-exist with penguins. They stated that many landowners actively assist the Trust’s work, and that Penguin Place plays a vital role in the rehabilitation of sick and injured penguins. They encouraged the Council to formally retain the information on penguin breeding sites, so that it is available should there be any future consents or plan changes affecting those sites.

3.3.5.4.1 *Decision and Reasons*

560. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.

561. We accept in part the submission of the *Yellow-eyed Penguin Trust* (OS690.23).
562. We accept the evidence of Dr Lloyd, that breeding sites for yellow-eyed penguins, as nationally Threatened indigenous fauna, qualify as significant under both 2GP and pORPS-dv criteria, so ASBV status would be justified for these sites.
563. We note the landowner affected by the proposed ASBV at Aramoana Beach (the Department of Conservation) is supportive of the coastal area beyond “Keyhole Rock”, including some land above the beach, being protected as an ASBV. We note that the majority of this area is already scheduled and mapped as C049. Therefore, rather than adding a new ASBV as recommended by the Reporting Officer, we consider that C049 should be amended to better reflect the values of the site and to cover the whole area discussed in the Section 42A Report.
564. In section 3.3.1 above, we discuss the question of voluntary as opposed to mandatory scheduling, and conclude that, for reasons of scope and natural justice, it is not possible to schedule (as requested by a number of submitters) areas known to meet ASBV criteria where these have not been notified as such in the 2GP. We conclude that any additional scheduling of ASBVs would need to be conducted by way of a separate plan change process, following liaison with landowners and appropriate commissioning of ecological assessments. We also state that a comprehensive and sustained Council-initiated work programme outside of the 2GP is essential if scheduling of areas of significant indigenous vegetation and the significant habitats of indigenous species is to be achieved. We consider this should comprise not only ecological assessments, but also expanded incentives and recognition for landowners who schedule and/or covenant, greater outreach to develop landowner understanding of the issues, rules and regulations, and appropriate monitoring, so that trends in biodiversity can be used to assess the appropriateness of protections in place.
565. In this context, we do not support scheduling as ASBVs the other yellow-eyed penguin breeding sites identified in the *Yellow-eyed Penguin Trust* (OS690.23) submission. While indicative maps of these areas have been supplied by the submitter, the evidence of Dr Lloyd indicates that these are not “fully accurate”. It is clear that further liaison with landowners is required to assess and accurately describe the extent of the significant habitat on the site. We note that at the Hearing the submitter expressed a preference for a voluntary approach to ASBVs, and recommend that liaison with the landowners with respect to these areas be drawn into the broader work programme described above.
566. In response to the submission of the *Yellow-eyed Penguin Trust* (OS690.23) we have therefore amended C049 as follows:

~~Heywood Heyward~~ {NatEnv cl. 16} Point Scenic Reserve <u>Aramoana Beach</u> <u>yellow-eyed penguin habitat</u> {NatEnv 690.23}	~~54.0900~~ <u>56.8157</u> {NatEnv 690.23}	Promontory and high steep cliffs running down to open sea. Important coastal native forest remnants and habitat values for bush birds, shags, redbilled and black billed gulls nesting, seals breeding. <u>Habitat for yellow-eyed penguin (Megadyptes antipodes), which have a threat classification of Threatened-Nationally Endangered.</u> {NatEnv 690.23}	DOC (144 241); DOC (144 242); <u>DOC (144 377)</u> {NatEnv 690.23}

567. In relation to the further submission of *Penguin Place Limited*, the part of the submission seeking to remove ASBV CO90 from its own land is considered in section 3.5.5.5.
568. The amended extent of C049 is shown in Figure 1 below.

Figure 1: ASBV C049 - Heyward Point Scenic Reserve/Aramoana Beach yellow-eyed penguin reserve



3.3.5.5 Submissions which request a review of ASCVs that occur on private land

569. *Federated Farmers of New Zealand* (OS919.68) submitted (pages 56 and 57 of their submission) that:

"Where Council has included private land within the schedule, Federated Farmers assumes this has been checked and ground-truthed with the landowner. Where this is not the case, or where the landowner is concerned around the accuracy of either the map or the description and values, we encourage Council to revisit these matters with the landowner."

570. This submission was opposed by *Forest and Bird NZ* (FS2482.35) who considered that "amendments to the schedule and map should only be to correct facts, not as required".
571. In response to a *Yellow-eyed Penguin Trust* (OS690.23) submission (discussed in section 3.3.5.4 above), *Penguin Place* (FS2339.1) sought to remove ASCV C090 from its own land, citing concerns about viability of farming and ecotourism operations under ASCV rules.
572. The Reporting Officer, Peter Rawson, noted the process undertaken to assess ASCVs. He explained that all sites that have the potential to be significant, upon agreement with landowners, are assessed by a suitably qualified ecologist against the assessment criteria for significance. He noted the ecological assessment could only be done by the ecologist visiting the site, and only the parts of the site which are deemed by the ecologist to be significant are considered as an ASCV. This process is only undertaken

in liaison with landowners. In Mr Rawson's view, the process of ecological assessments, as outlined above, provides robust 'checking and ground-truthing' and therefore no amendment to the current process is necessary. He therefore recommended that the *Federated Farmers of New Zealand* (OS919.68) submission be rejected.

573. With regards to the *Penguin Place* (FS2339.1) submission that seeks to remove ASCV C090 from 45 Pakihau Road, Mr Rawson noted that this particular ASCV does not apply to 45 Pakihau Road, and therefore recommended the submission point be rejected.
574. At the hearing, Ms Nicola McGrouther appeared for *Penguin Place*. She spoke about the operations at *Penguin Place* and outlined concerns about the restrictions that the ASCVs might place on their operations. She commented particularly on the activity status of Farming and Grazing, and Rural Tourism – Large Scale (discussed in sections 3.3.4.1 and 3.3.4.4 above). She tabled a map which showed the extent of the QEII covenant relative to ASCV C090, explaining that the ASCV extended well beyond the bounds of the QEII covenanted area.
575. In his Revised Recommendations Summary, the Reporting Officer related the essence of correspondence he had exchanged with Ms McGrouther and Dr Lloyd (ecologist called by DCC) in regards to 45 Pakihau Road and areas deemed 'significant' and so warranting protection as an ASCV. Dr Lloyd supported retention of the foreshore area within the ASCV, but Ms McGrouther confirmed *Penguin Place* "do not believe the penguin reserve should be included in the ASCV." Mr Lloyd understood this perspective, recognising that the ecotourism operation has had positive effects, and postulated alternative approaches.
576. Overall, the Reporting Officer recommended that the mapping of ASCV C090 be amended in accordance with the map circulated by Dr Lloyd (in email correspondence dated 22 June 2017), with the exception that it not apply to the penguin reserve, based on the understanding that 45 Pakihau Road is also protected by a QEII covenant and that a future Plan review will consider how all yellow-eyed penguin breeding sites should be protected. He considered there was scope to make this amendment through the submission of *Federated Farmers of New Zealand* (OS919.68).

3.3.5.5.1 *Decision and Reasons*

577. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
578. We accept in part the submission of *Federated Farmers of New Zealand* (OS919.68).
579. We consider the criteria outlined in Policy 2.2.3.1 will provide clear guidance for assessments of significance into the future. We do however note our recommendation, outlined in section 3.3.1.2, above, that a comprehensive and sustained Council-initiated work programme outside of the 2GP is essential if scheduling of areas of significant indigenous vegetation and the significant habitats of indigenous species is to be achieved. We observe that this work programme could review existing ASBVs for alignment against the new 2GP significance criteria, and any required amendments should be made by way of a future plan change.
580. We note that, where individual landowners raised concerns through original submissions about the extent of ASBVs affecting their land, expert advice was sought on the appropriateness of scheduling the areas in question, and this has been taken into account in coming to decisions on these submission points.

581. *Penguin Place Limited* (FS2339.1) sought to remove ASBV C090 from its own land and cited concerns about viability of farming and ecotourism operations under ASBV rules. As a further submission, we note that there is no scope from *Penguin Place Limited* (FS2339.1) to amend ASBV C090. However, we do consider that the submission of *Federated Farmers of New Zealand* (OS919.68) provides scope for amendment of Appendix A1.2 as it relates to ASBV C090.
582. We note that the landowner is requesting the removal of part of an existing ASBV from the schedule, while acknowledging that part of the area requested for removal is a breeding site for yellow-eyed penguins. Having accepted Dr Lloyd's evidence that this part of the ASBV qualifies as significant as a breeding site for populations of a nationally Threatened indigenous species, we consider it would be inconsistent with Objective 10.2.1 (as amended), and higher order policy direction including s6(c) of the RMA, to remove this area from the schedule.
583. We do not consider that the area's ASBV status unduly constrains use of the land - we note the ASBV has been carried over from the operative Plan, that the landowners' existing operations have existing use rights, and that changes to Vegetation Clearance rules, outlined in section 3.4 of this Decision Report, have the effect of permitting a range of vegetation clearance activities in ASBVs. We do, however, accept that the parts of the ASBV outside of the QEII covenant and yellow-eyed penguin habitat are not ecologically significant and can be removed from the schedule.
584. Further, as discussed elsewhere, we consider an appropriate way to provide for site-specific instances of activities normally subject to consent that are compatible with the values of a particular ASBV, is by listing those activities in the relevant part of Appendix A1.2.
585. We note deletion of this ASBV was sought by *Penguin Place Limited* (FS2339.1), and while full deletion is not supported for the reasons outlined above, in response to the submission of *Federated Farmers of New Zealand* (OS919.68) we have amended the planning maps so that ASBV C090 includes only part of the QEII covenant and the yellow-eyed penguin habitat. We have amended C090 in Appendix A1.2 to reflect this and to provide for the grazing of existing pastures as follows:

QEII Trust Covenant <u>(part)</u> {NatEnv 919.68}	~~29.2700~~ <u>20.7974</u> {NatEnv 919.68}	Forest remnant and wildlife habitat. <u>Grazing of existing pastures.</u> {NatEnv 919.68}	QEII Trust Covenant

586. The amended extent of C090 is shown in Figure 2 below.

Figure 2: ASBV C090 – Pipikaretu Beach



3.3.5.6 Submissions to add all areas that qualify as ASCVS to Schedule

587. The *Department of Conservation* (OS949.21) submitted that any land which qualifies through the criteria to be an ASCV should be included in the Plan. They stated that section 6(c) of the RMA does not differentiate between public and private land. *Forest and Bird* (FS2482.42) also considered that the schedule is incomplete. The substantive matters raised by this submission are canvassed in section 3.3.1.1 of this Decision Report.
588. While the Reporting Officer, Peter Rawson, did not recommend acceptance of the *Department of Conservation* (OS949.21) submission to schedule all areas that are known to qualify as significant, he noted that during consultation two additional sites were identified as potential ASCVs: Grassy Point and Alexanders Creek. He recommended *Department of Conservation* (OS949.21) be accepted in part by the inclusion of these two sites on the ASCV schedule.
589. Mr Rawson stated that, as part of the consultation process, landowners of 620, 640 & 648 Portobello Road, Portobello were contacted about a potential ASCV covering parts of these sites at Grassy Point. An ecological assessment was undertaken by Wildlands Limited in 2015 which identified parts of the area meeting criteria for inclusion as an ASCV. Landowners of these properties were given copies of this ecological assessment. Most of the 'significant' area is located on 640 Portobello Road (c. 0.75 ha is located on the adjacent 648 Portobello Road). Mr David Parker, the landowner of 640 Portobello Road, has confirmed in writing that he wishes to have the parts of his property which are identified as significant as an ASCV. No agreement has been reached with the other landowners about the listing of parts of their properties as ASCVs. Mr Rawson therefore recommended that a new ASCV is applied over the parts

of 640 Portobello Road identified as 'significant' in the Wildlands Limited 2015 ecological report for Grassy Point.

590. Mr Rawson said that Dr Kelvin Lloyd (DCC ecologist, also a trustee of Miro Trust) had indicated in email correspondence that the Miro Trust (landowner at 156 Manse Road), is happy to have the QEII covenants on the 156 Manse Road property scheduled as ASCV sites. Mr Rawson agreed with Dr Lloyd that the attributes that make this site significant for a QEII covenant also make it appropriate to be an ASCV. Mr Rawson therefore recommended that a new ASCV be applied over the parts of 156 Manse Road identified as QEII covenants.

3.3.5.6.1 *Decision and Reasons*

591. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
592. We accept in part the submission of the *Department of Conservation* (OS949.21) and have added two new areas to the ASBV schedule.
593. Noting that the area has been previously been assessed as significant by ecological consultants, that the landowner at 640 Portobello Road is supportive of the area in his ownership becoming an ASBV, we support the inclusion of new ASBV C164 Grassy Point in the 2GP, as recommended by the Reporting Officer.
594. Noting that the area is a QEII covenant (and therefore meets the criteria for scheduling as an ASBV), that the landowner is supportive of the area becoming an ASBV, we support the inclusion of new ASBV C007 Alexanders Creek in the 2GP, as recommended by the Reporting Officer.
595. In response to this submission, we have therefore added ASBV C163 Alexanders Creek and C164 Grassy Point to the planning maps and to Appendix A1.2 as follows:

<u>Alexanders Creek</u> {NatEnv 949.21}	<u>29.5887</u> {NatEnv 949.21}	<u>Podocarp/broadleaved forest in gullies. Alexanders Creek supports banded kokopu, longfin eel, koura, and the At Risk amphipod Austridotea benhami. Birds include kereru, tomtit, brown creeper, rifleman and other common forest birds.</u> {NatEnv 949.21}	<u>QEII Trust Covenants</u> {NatEnv 949.21}

<u>Grassy Point</u> {NatEnv 949.21}	<u>1.7076</u> {NatEnv 949.21}	<u>Contains significant coastal forest that provides habitat for one nationally at risk and seven locally important plant species and a representative assemblage of indigenous forest birds.</u> {NatEnv 949.21}	<u>None</u> {NatEnv 949.21}

596. The new ASBVs are shown in the following Figures 3 and 4.

Figure 3: ASBV C163 – Alexanders Creek

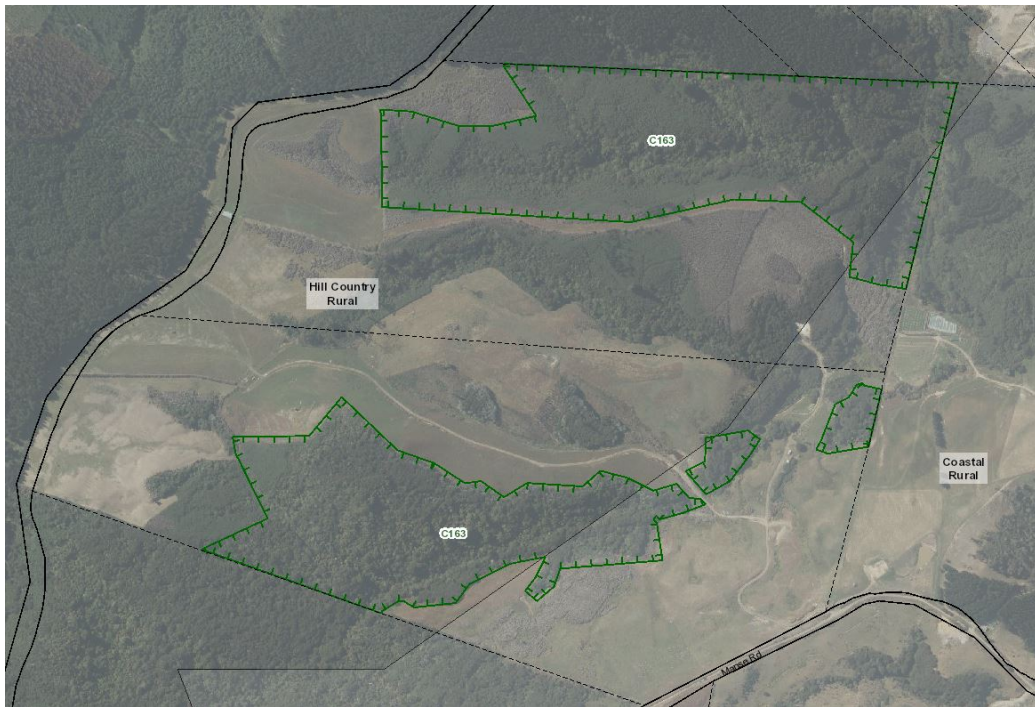


Figure 4: ASBV C164 – Grassy Point



3.3.5.7 Submissions which request amendment to C104 (Edge of Blueskin Bay) to include the area along the Doctor's Point Road foreshore to the Waitati Railway Bridge as per the Operative Plan

597. *Phil and Jillian Borrie* (OS129.2) questioned why the ASCV along the foreshore of Doctor's Point Road to the Waitati Railway bridge is no longer in place, and requested that it be reinstated for everyone to enjoy and appreciate. *Penelope Margaret Hutchins* (OS269.2) sought that the ASCV that existed along the foreshore between Orokonui Inlet and Doctors Point be reinstated, stating that Blueskin Bay is an area of high ecological importance and sensitivity and zoning of the surrounding land should recognise this. *KiwiRail Holdings Limited* (FS2162.18) supported this submission although stated that they wished to ensure the KiwiRail asset is not included within the ASCV, requesting that the area to be mapped "to' the railway bridge, not 'including' the railway bridge".
598. The Reporting Officer, Peter Rawson, noted that under the 2GP, ASCVs are not applied to areas zoned 'Township and Residential' or 'Large Lot Residential 2 Zone', to enable appropriate development of these zones. ASCVs are subject to activity restrictions, e.g. restrictions on vegetation clearance, that are anticipated activities in areas zoned 'Township and Residential' or 'Large Lot Residential 2 Zone', such as the built areas of Doctors Point. Mr Rawson recommended rejecting the submissions of *Phil and Jillian Borrie* (OS129.2) and *Penelope Margaret Hutchins* (OS269.2), and retaining the extent of ASCV C104 as notified.
599. In evidence, Dr Lloyd (ecologist called by DCC) commented (para 120) that in his opinion the areas of indigenous vegetation along this part of the coastline would be significant (despite weed issues and in some places structural modification), because they:
- "Comprise a reasonable intact coastal gradient from indigenous saltmarsh through indigenous shrubland to indigenous forest.
 - Contain distinctive coastal forest and shrubland that is now rare on the Dunedin coastline.
 - Provide habitat for *Carex littorosa* (At Risk-Declining), and *Ileostylis micranthus* (Locally Uncommon), both listed as 'threatened' species in Appendix 10A.1 of the proposed District Plan.
 - Provide habitat for four 'important native trees' listed in Appendix 10B.1 of the proposed District Plan, those being ngaio (*Myoporum laetum*), tōtara (*Podocarpus totara*), kōwhai (*Sophora microphylla*), and tūrepo (*Streblus heterophyllus*).
 - Help to buffer adjacent coastal habitat from disturbance to indigenous fauna utilising the coastal environment.
 - Provide roosting habitat for species, such as kingfisher (*Todiramphus sanctus vagans*), that feed in the coastal environment."
600. Dr Lloyd identified ecologically significant areas in Appendix 1 of his evidence.

3.3.5.7.1 Decision and Reasons

601. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
602. We accept in part the submissions of *Phil and Jillian Borrie* (OS129.2) and *Penelope Margaret Hutchins* (OS269.2).
603. We note the evidence of the Reporting Officer is that the ASBV (in the operative District Plan) was removed as a result of proposed zoning changes and not by way of any re-evaluation of the significance of the area. We accept the expert evidence of Dr

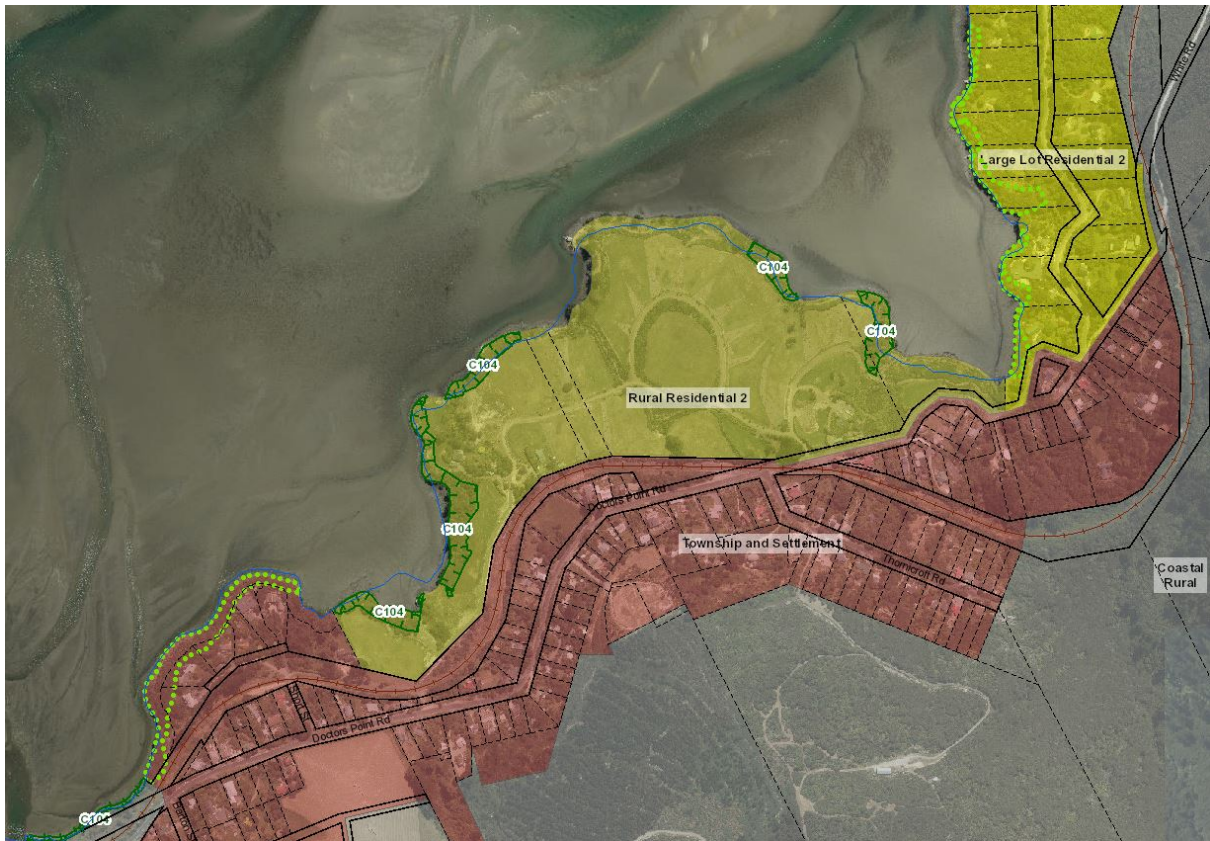
Lloyd that there are areas of ecological significance along this part of the coast. We also note that, in decisions outlined in the Urban Land Supply Decision Report, only part of the area in question is to have Township and Settlement zoning, while a substantial part becomes rural residential.

604. In response to these submissions, we have therefore amended the planning maps to include in C104 those areas of ecological significance identified in Appendix 1 of Dr Lloyd's evidence that coincide with areas of rural residential zoning. We have also amended C104 in Appendix A1.2 as follows:

Edge of Blueskin Bay	~~6.2000~~ <u>7.7019</u> {NatEnv 129.2}	Estuary - mudflat, salt rush and reed swamp, succulent herb swamp. Regional/Local Significance.	Wetland - WERI Database (Regional/Local Significance)

605. Section 6(c) of the RMA does not distinguish between urban and rural areas, and we therefore question the appropriateness of complete removal of an ASBV from the 2GP based on a change in zoning. As discussed elsewhere, it appears that UCMAs (now termed UBMA – see our decision in section 3.6.1.6) are intended to protect important habitat in urban environments, but do not serve the same function as ASBVs, nor provide the same protections for significant areas of indigenous vegetation or the significant habitats of indigenous fauna.
606. We note that as there is currently no framework in the Plan for ASBVs in areas of residential zoning, so as an interim measure, as a result of submissions we have created a new UBMA comprising the areas of ecological significance identified in Appendix 1 of Dr Lloyd's evidence, where they fall within residential zoned land.
607. Figure 5 below shows where we have reinstated ASBV C104 within the new Rural Residential 2 zoning at Doctors Point, along with the new Doctors Point UBMA as bounded by the dotted green line within the Township and Settlement and Large Lot Residential 2 zones.

Figure 5: ASBV C104 and UBMA at Doctors Point



608. As discussed in section 3.4.8.4, we also recommend that a future review of UBMA consider any areas that meet the significance criteria for inclusion in the 2GP as ASBVs, to afford them appropriate protection. We also recommend that any future review develops a set of values for this new UBMA, for inclusion in Appendix A10; and also confirms the extent of the boundaries of this UBMA, bearing in mind that it has been included based on Dr Lloyd's analysis of areas that may be considered ecologically significant – which is a more stringent approach than that used for other UBMA.

3.3.5.8 Submissions which request removal of ASCV C058 (Boulder Beach WWF Block) from 87 Seal Point Road

609. The *Dunedin City Council* (OS360.197) sought adjustment of the mapping for C058 by removing it from 87 Seal Point Road because of a mapping error. *Bruce Wayne Taylor* (OS664.5) and *LD & TJ Taylor* (OS835.1) also sought to remove C058 from 87 Seal Point Rd because of an apparent error. As part of the Taylors' submission there is a letter from Mr Craig Leach of the *Department of Conservation*, including maps which appears to confirm that there has been a mapping error. In this letter Mr Leach states: "I can confirm that there appears to have been a mapping error in regard to the land shown on Map A, attached, labelled C058. The Boulder Beach ASCV area is represented by the conservation areas Boulder Beach; High cliff block and WWF Block, which are shown on the attached map B, green polygons. There is a small area of

conservation land at the lower end of the area C058, on the coastal side of the formed road, which forms part of this area, as shown on Map B.”

610. The Reporting Officer, Peter Rawson, agreed that the part of ASCV C058 (Boulder Beach WWF Block) located on 87 Seal Point Road should be removed, noting the supporting letter from the *Department of Conservation*. He also noted that this site is privately owned and located some distance from the sea and so unlikely to have the description and values of ASCV C058 (Boulder Beach WWF Block) as described in Appendix A1.2.
611. Mr Rawson therefore recommended the submissions of *Dunedin City Council* (OS360.197), *Bruce Wayne Taylor* (OS664.5) and *LD & TJ Taylor* (OS835.1) be accepted, and that the area of ASCV C058 that occurs on 87 Seal Point Road be removed from 2GP planning maps.
612. In evidence, Dr Lloyd (ecologist called by DCC) stated that the ASCV C058 “comprises privately owned farmland away from the coast and has no apparent value for indigenous fauna” (para 122). He considered it would be appropriate to delete this parcel from the schedule.

3.3.5.8.1 *Decision and Reasons*

613. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
614. We accept the submissions of the *Dunedin City Council* (OS360.197), *Bruce Wayne Taylor* (OS664.5) and *LD & TJ Taylor* (OS835.1) to remove the part of ASBV C058 from 87 Seal Point Rd because of an apparent error. We accept the evidence of Dr Lloyd, which suggests the area is not ecologically significant, and note the support of the *Department of Conservation*, including maps, which appear to confirm that there has been a mapping error.
615. In response to these submissions, we have amended the planning maps and amended C058 in Appendix A1.2 as follows:

Boulder Beach WWF Block	~~62.2600~~ <u>39.6077</u> { <i>NatEnv</i> 360.197}	Coastal cliffs with rank pasture flax and hebe elliptica. Major yellow eyed penguin breeding area, small number of seals.	DOC (144 275)

616. Figure 6 below shows the new extent of ASBV C058.

Figure 6: ASBV C058 – Boulder Beach WWF Block



3.3.5.9 Submissions which request amendment of ASCV C057 (Sandfly Bay)

617. *Timothy George Morris* (OS951.5) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.5) sought to amend the mapping of the ASCV at Sandfly Bay (C057) as shown on the map accompanying the submission, because the submitters consider the proposed mapping inaccurate.
618. The Reporting Officer, Peter Rawson, liaised with the Department of Conservation with regards to the location of public conservation land. He noted that the Department of Conservation supplied a map confirming that the area of ASCV C057 (sought to be removed) is public conservation land.
619. Mr Rawson considered that there is little or no difference in the visible attributes of the part of ASCV C057 which the submitter requests to be removed compared with the remainder of the ASCV. He noted Google Earth imagery also suggests the area represents a single feature and this is reinforced by the evidence of Mr Mike Moore, landscape architect, in relation to the Sandfly Bay Outstanding Natural Feature, that takes in all of ASCV C057 (discussed in section 3.11.2.2 of this Decision Report). In addition, Mr Rawson considered that the description and values of ASCV C057 as described in the ASCV Appendix A1.2 equally applied to the areas the submitters requested be removed.

620. Because of this, Mr Rawson considered that the mapping of ASCV C057 (Sandfly Bay) is accurate, and that the submissions of *Timothy George Morris* (OS951.5) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.5) should be rejected, with the boundary of the ASCV C057 (Sandfly Bay) retained as notified.
621. In evidence, Dr Lloyd (ecologist called by DCC) commented that the mapping is consistent with public conservation land, but that the areas requested for removal by the submitter are being used as farmland. He commented that vegetation and habitats do not appear to be significant based on an inspection of aerial imagery, and if this is confirmed by the Department of Conservation, then ASCV status should be removed from these areas.
622. In an email dated 8 May, Mr Craig Leach (Ranger, Community, Department of Conservation) confirmed the Department of Conservation's position that the current ASCV boundaries at this location should be retained.
623. *Mr Timothy Morris* appeared via Skype at the Hearing, and spoke to a tabled statement. He reinforced concerns about the lack of consultation with landowners in setting ASCV boundaries, and the potential implications of the overlays for farm operations. He reiterated requests that the boundary of the ASCV be amended as sought in the submission.

3.3.5.9.1 *Decision and Reasons*

624. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
625. We reject the submissions of *Timothy George Morris* (OS951.5) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.5) seeking to amend the boundary of ASBV C057.
626. We consider it would be inconsistent with s6(c) of the RMA to remove this area from Appendix A1.2 without stronger justification. The ASBV has been carried over from the operative Plan and no on-ground ecological assessment has been provided confirming that the area does not meet the significance criteria.
627. In addition, we do not consider that the area's ASBV status unduly constrains use of the land, given that it is the preference of the Department of Conservation, as the landowner, for the area to remain within the ASBV. We observe that any existing operations on the area in question have existing use rights. We also note that changes to Vegetation Clearance rules (outlined in section 3.4) have the effect of permitting a range of vegetation clearance activities in ASBVs, and that (as discussed in section 3.3.4.1), a future Plan review could provide for site-specific instances of activities normally subject to consent that are compatible with the values of this particular ASBV, by listing those activities in the relevant part of Appendix A1.2.

3.4 Vegetation Clearance Provisions

3.4.1 Changes to the structure of provisions

628. Before we address submissions on vegetation clearance provisions, this section explains a number of changes that have been made, under RMA clause 16, to the structure and formatting of provisions. The key changes affect the following provisions:
- Rule 10.3.2 Vegetation Clearance and Rule 11.3.2 Maximum Area of Vegetation Clearance in the Hazard Overlay Zones
 - the definition of Indigenous Vegetation Clearance
 - activity status rules for vegetation clearance in Section 16 Rural Zones, Section 17 Rural Residential Zones and Section 20 Recreation Zone.
629. In deliberations on submissions relating to the Vegetation Clearance provisions, the Panel identified the following issues.
- The relationship between the vegetation clearance performance standards and definition of Indigenous Vegetation Clearance is not clear. In particular, it is unclear whether the vegetation clearance standards apply to activities in ASCVs (now termed ASBVs in light of our decision in section 3.6.1.6) or coastal character overlay zones that are listed as exclusions from the definition of Indigenous Vegetation Clearance in these areas.
 - The various vegetation clearance performance standards do not clearly state which zones they apply in.
630. Submitters also raised issues with the complexity and consistency of the provisions to do with Vegetation Clearance and Indigenous Vegetation Clearance, in submissions and in hearing evidence.
631. *Rebecca Jane Wilde* (OS471.2) sought to replace the entire Natural Environment Section with simpler and less complex provisions, as she considered the Plan excessively onerous and that it would impose unnecessary costs on individuals and ratepayers. In an explanation associated with a submission seeking that the Natural Environment Section be rewritten to ensure a 'one stop shop' for plan users, to reduce complexity and the need for cross-referencing between sections, *Federated Farmers* (OS919.19) stated that the Natural Environment Section is unwieldy and difficult to understand, and indicated that the provisions relating to Indigenous Vegetation Clearance were their biggest concern. These submissions are discussed in section 3.10.1.
632. At the hearing, Ms Lynette Wharfe for *Horticulture New Zealand* expressed reservations about the inconsistency between having some exemptions in the definition of Indigenous Vegetation Clearance and other exemptions in the relevant vegetation clearance performance standards. Ms Wharfe considered that exemptions should also be included in the definition of Vegetation Clearance for sake of consistency.
633. In response to Ms Wharfe, the Reporting Officer noted "The general preference in the 2GP is to include exemptions in rules, so that plan users can see what is excluded from rules without having to refer to definitions. However, indigenous vegetation clearance always has restricted discretionary activity status in ASCVs, NCCs, HNCCs and ONCCs, so resource consent is always required under the activity status rule, regardless of compliance with performance standards. In these circumstances, the clearest way to include exclusions to this rule in the plan is by an amendment to the

definition – this avoids reducing the clarity of the activity status table by adding significant amounts of text to the cell that describes the activity being managed. On the other hand, “all other vegetation clearance” is permitted throughout the city, and only requires consent if it does not comply with performance standards. Therefore, in this case it is possible to use the preferred 2GP approach of including the exemptions in rules. Although this does result in inconsistency between the approaches taken to exclusions for the two activities, I believe it adds to clarity for plan users.” (Revised Recommendations Summary p.16)

634. Having considered submissions and evidence on vegetation clearance provisions, and having reviewed the provisions closely in the process of seeking to amend them to give effect to decisions, we have found them complex and hard to follow. In addition to the issues caused by the inclusion of expected outcomes in the definition, we accept the evidence of Ms Wharfe that it is inconsistent and confusing to have some exemptions in the definition of Indigenous Vegetation Clearance, and others in the vegetation clearance performance standards. We acknowledge that in seeking to provide for additional types of Indigenous Vegetation Clearance as permitted activities (where this is sought by submitters and supported by evidence, as discussed in section 3.4.6), our decisions have to a degree added further complexity.
635. Dr Anna Johnson, the DCC’s City Development Manager, provided us with technical assistance during the Natural Environment hearings and deliberations. We sought advice from Dr Johnson regarding options to simplify and clarify the vegetation clearance provisions. She proposed that, under RMA clause 16, the provisions should be reformatted to separate Indigenous Vegetation Clearance into two activities: Indigenous Vegetation Clearance – Small Scale and Indigenous Vegetation Clearance – Large Scale. Under this approach, Indigenous Vegetation Clearance – Small Scale would be permitted in all areas, and Indigenous Vegetation Clearance – Large Scale would be restricted discretionary. The ‘Small Scale’ activity would consist of:
 - a) types of indigenous vegetation clearance that are exempt from control, including those covered by the exemptions to the notified definition of ‘indigenous vegetation clearance’ and
 - b) in areas not covered by ASBVs or coastal character overlays, all other types of indigenous vegetation clearance that do not exceed the maximum area thresholds in rural and rural residential zones (i.e. the area thresholds set out in notified Rule 10.3.2.2).
636. Dr Johnson also suggested minor changes to the drafting and formatting of the Protected areas, Maximum area of vegetation clearance (UBMA) and Maximum Area of Vegetation Clearance in the Hazard Overlay Zones performance standards (Rules 10.3.2.3, 10.3.2.1 and 11.3.2), to make the rules easier to understand – for example, by using a table to replace some of the text in Rule 10.3.2.3.
637. We agree that these changes, which are described in full below, should be made under clause 16. We note that, in response to submissions, we have amended the activity status of Indigenous Vegetation Clearance – Large Scale in ASBVs, ONCCs, HNCCs and ONFs (see sections 3.3.4.3 and 3.7.8.12), and we have also amended the types of indigenous vegetation clearance that are exempt from control (see section 3.4.6).
638. We consider that the clause 16 changes set out below also constitute partial relief for the submissions of *Rebecca Jane Wilde* (OS471.2) and *Federated Farmers* (OS919.19) as they:
 - clarify the activity status of indigenous vegetation clearance that is not covered by the exemptions to the notified definition

- set out all exemptions within the standards rather than having some in the definitions; and
 - clarify the meaning of performance standards.
639. However, we consider that the provisions, though clarified, remain complex, and that following Plan adoption, there will be a need for these provisions to be interpreted and presented in a way that helps the public understand what the rules are and how they can ensure they work within them.
640. The following changes have been made under clause 16.
- New Rule 10.3.2.A Indigenous vegetation clearance – small scale thresholds has been added to the Plan. This rule sets out the types of indigenous vegetation clearance that are always treated as ‘small scale’ (transferred from the exemptions to the notified definition of Indigenous Vegetation Clearance), and the scale thresholds that must be met by other types of indigenous vegetation clearance in order to be treated as ‘small scale’ (transferred from notified Rule 10.3.2.2). Therefore, Rule 10.3.2.2 has been deleted, and the definition of Indigenous Vegetation Clearance has been amended to delete the exemptions.
 - The development performance standards in management zones and major facility zones that link to the vegetation clearance standards in the Natural Environment section have been amended to reflect the deletion of Rule 10.3.2.2 and the addition of Rule 10.3.2.A.
 - New definitions of Indigenous Vegetation Clearance – small scale and Indigenous Vegetation Clearance – large scale have been added, and the Development Activities Category in the Nested Table has been amended to refer to these terms.
 - Activity status tables in Section 16 Rural Zones, Section 17 Rural Residential Zones and Section 20 Recreation Zone have been amended to split the rule for Indigenous Vegetation Clearance into two rows, for the small scale and large scale activities, with permitted activity status for small scale and restricted discretionary status for large scale (except where the activity status of ‘large scale’ has been amended in response to submissions).
 - Rules 10.3.2.1, 10.3.2.3 and 11.3.2 have been reformatted for clarity and consistency.
 - Consequential amendments have been made to policies 10.2.1.3, 10.2.1.Y, 10.2.3.2, 10.2.3.4 and 10.2.5.3, to refer to Indigenous Vegetation Clearance – Large Scale rather than Indigenous Vegetation Clearance.
 - Consequential amendments have been made to assessment rules, including Rules 16.9.4.17, 16.10.3.4, 16.10.5.4, 16.10.5.6, 17.9.4.15, 17.10.3.4, 17.10.5.4, 17.10.5.5, 20.10.5.6 and 20.10.5.10 in management zones and Rules 10.4.3.3, 10.5.2.C and 10.5.2.4 in Section 10, to provide for the assessment of Indigenous Vegetation Clearance – Large Scale and to remove references to contraventions of Rule 10.3.2.2.

3.4.2 Definition of Indigenous Vegetation

641. The Plan’s definition of Indigenous Vegetation is as follows:

A plant community in which species indigenous to that part of New Zealand are dominant, where dominance is measured as either:

- *indigenous species comprising at least 30% coverage by area or 30% of the total number of specimens present; or*
- *indigenous species comprising at least 20% coverage, in plant communities where indigenous species make up the tallest stratum or are visually conspicuous.*

Where dominance is unclear, the assessment of a suitable qualified ecologist will be

used to determine the status of an area.

642. A number of submissions were received requesting changes to this definition. The Reporting Officer, Mr Bathgate, sought comment from Dr Kelvin Lloyd (expert ecologist) on a number of these submission points, and his recommendations were informed by Dr Lloyd's evidence.
643. *Ben Graham* (OS361.4), *Mathew O'Connell* (OS364.4) and *John Scott* (OS1084.4) sought to amend the definition to "Means vegetation that is native to New Zealand", as they considered the notified definition to be unworkable, unclear and uncertain.
644. Dr Lloyd considered that this requested definition provided no guidance on the dominance threshold that distinguishes indigenous from exotic vegetation, and was therefore inadequate. Taking this evidence into account, Mr Bathgate recommended that the submission points be rejected (Section 42A Report, section 5.8.1).
645. *Dunedin Rural Development Inc* (OS853.4) sought that the 2GP definition be amended to align with the definition in the Regional Policy Statement, so that the public have a clear understanding of the areas that it applies to. Mr Bathgate did not recommend this submission was accepted, as neither the operative nor the proposed Regional Policy Statements had a definition for indigenous vegetation.
646. *STOP* (OS900.4) and *Forest and Bird NZ* (OS958.4) sought to amend the definition so that it clearly included both vascular plant species and non-vascular plant species (or 'bryophytes'), and also lichen species.
647. In response to these submissions, Dr Lloyd stated (Evidence, para. 22-23, quoted in Section 42A Report, section 5.8.1):
- Vascular plants and bryophytes (mosses and liverworts) are both groups of plants so amending the definition to specify them would not change its meaning. Specifically including lichens would widen coverage of the definition, as lichens are a composite organism comprising an alga and a fungus, and are not normally defined as plants.*
- Including lichens in the definition is most important in less productive habitats such as occur on the outwash plains of the inland South Island, because lichen cover can be significant in these habitats. In Dunedin City District, lichen cover can be significant in upland wetlands and in alpine areas, and is often significant on schist outcrops. As such, including lichens in the definition would be unlikely to affect typical rural land use practices, but would help to ensure that lichen-rich upland and alpine habitats would be addressed in any effects and/or significance assessments.*
648. Overall, Dr Lloyd considered that lichen, which has its own threat classification system, should be included in the definition of indigenous vegetation and that this would not create problems for rural land use practices, as major lichen fields tend to be located in areas unable to be easily developed, either on large tor formations or on volcanic boulder fields such as found at Mt Watkin/Hikaroroa (Section 42A Report, section 5.8.1).
649. Based on this evidence, Mr Bathgate recommended that the submissions be accepted in part. He recommended that the definition be amended to include lichen, but did not recommend that specific references to vascular plants or bryophytes be added.
650. Several submitters requested changes to the definition to increase the minimum proportion of indigenous species that needs to be present for vegetation to be treated as 'indigenous vegetation'.
651. Both *Waste Management (NZ) Limited* (OS796.10) and *FFNZ* (OS919.87) sought that the definition be amended to increase the minimum necessary 'coverage by area' of indigenous species to 50%. *FFNZ* also sought that the minimum proportion of 'total number of specimens present' be increased to 50%.

652. *Waste Management (NZ) Limited* noted that, under the notified definition, an area could be classified as 'indigenous vegetation', when in fact there may be up to 70-80% exotic species present as the dominant cover; that this would then make an applicant subject to rules in relation to vegetation removal that the submitter considered 'onerous'.
653. *Federated Farmers* considered that setting the notified definition a low bar that may mean that, for instance, an area of pasture that had not been grazed for some time would be treated as an area of 'indigenous vegetation'. This was of concern to the submitter particularly in respect to indigenous Matagouri (*Discaria toumatou*).
654. *Hummock Run Ltd* (OS1082.2) also requested that the coverage thresholds in the definition be reviewed, to allow farmers to be able to clear pastureland for farming. The submitter noted that the regeneration of native vegetation may have come about by default, for a variety of reasons.
655. In response to these submission points, Dr Lloyd noted (Evidence, para. 18-20, quoted in Section 42A Report, section 5.8.1):
- It is important to realise that plant cover is assessed looking vertically downward, and this should be borne in mind when assessing the cover thresholds. Human perception is generally to look across or through a stand of vegetation, thus perceived cover tends to be greater than actual cover. In tussock grassland vegetation, for example, 15% cover of tussocks will often appear dominant when looking across the grassland vegetation, and 'dense' tussock grassland may only have 70-80% cover, because litter and bare ground occurs between the tussocks.*
- ...The effect of [increasing each of the thresholds to 50%] would be to exclude more modified indigenous vegetation, such as coastal stands of scattered indigenous trees and lowland wetlands with scattered indigenous sedges. In my opinion, the proposed 30% and 20% cover thresholds in the definition of indigenous vegetation are necessary to capture these examples of modified but ecologically important areas of indigenous habitat.*
- While these necessarily conservative thresholds will also capture some less important indigenous vegetation, such as low stature matagouri shrubland over pasture, these instances are better dealt with through specific exemptions, as discussed for matagouri and regenerating indigenous vegetation later in my evidence.*
656. Based on this evidence, Mr Bathgate did not recommend any changes to the percentage thresholds in the definition. However, he noted that, to address submitters' concerns relating to regenerating indigenous vegetation (including matagouri), he had recommended amendments to the exemptions to indigenous vegetation clearance provisions. These recommendations are discussed in section 3.4.6.3, below.
657. Mr Bathgate noted that, in his evidence, Dr Lloyd had also raised concerns with the use of the terms 'specimens' in the definition of indigenous vegetation; Dr Lloyd considered that the term "species" should more properly replace "specimens". Mr Bathgate noted that these concerns were outside the scope of submissions (Section 42A Report, section 5.8.1).
658. At the hearing, in response to questions from the Panel, Dr Lloyd explained that recent technological developments made assessments of cover much easier, and that common sense would need to be employed in interpreting the definition.
659. Mr David Cooper appeared for *Federated Farmers of New Zealand*, and presented a statement. He agreed that concerns around cover percentages used in the definition (including potential capture of matagouri) may be better addressed through the exemptions to Rule 10.3.2.2 (maximum area of indigenous vegetation clearance).

660. The Panel questioned the last sentence in the definition of 'indigenous vegetation': "Where dominance is unclear, the assessment of a suitable qualified ecologist will be used to determine the status of an area". In particular, the Panel sought clarification as to who would undertake this assessment, and whether this sentence was necessary in the definition. The Reporting Officer responded that this sentence was intended to clarify that where there is uncertainty, or where the DCC and a landowner cannot agree on whether an area of vegetation qualifies as 'indigenous vegetation', an expert would be required to ascertain this.
661. In response to questions from the Panel, Dr Anna Johnson, the DCC's City Development Manager, confirmed that the intention was to develop plain English guidelines, to assist with interpretation of Plan provisions.

3.4.2.1.1 *Decision and Reasons*

662. We reject the submissions of *Ben Graham* (OS261.4), *Mathew O'Connell* (OS364.4) and *John Scott* (OS1084.4). We accept Dr Lloyd's expert evidence that most areas of vegetation include both indigenous and exotic species, and agree with the Reporting Officer's assessment that the amendment sought would provide inadequate guidance as to what constitutes indigenous vegetation. We consider the fuller definition in the 2GP is of more use to Plan users.
663. We also reject the submission of *Dunedin Rural Development Inc.* (OS853.4). Given that indigenous vegetation is not defined in either the operative or proposed Regional Policy Statement, alignment is not possible.
664. We accept in part the submissions of *STOP* (OS900.4) and *Forest and Bird NZ* (OS958.4). We do not consider it necessary to amend the definition to specifically refer to vascular and non-vascular plant species (bryophytes), accepting Dr Lloyd's evidence that these would fall within the definition as it stands. We do, however, in the light of Dr Lloyd's evidence, support an amendment to include lichen. We were persuaded that doing so would help manage effects on a type of vegetation that is both significant and dominant in certain parts of Dunedin, while not affecting typical rural land use practices.
665. We reject the submission of *Waste Management (NZ) Limited* (OS796.10). In relation to the appropriateness of notified definition with regard to the minimum proportion of indigenous species that needs to be present for vegetation to meet the definition, we accept Dr Lloyd's evidence that the amendments sought by submitters would exclude modified, but ecologically important, areas of indigenous habitat. We consider that, in order to appropriately respond to relevant higher order policy direction (including PORPS-dv Policy 3.1.9, which states "maintain or enhance areas of predominantly indigenous vegetation"), it is necessary for indigenous vegetation to be defined in such a way that these areas are captured.
666. We accept in part the submissions of *FFNZ* (OS919.87) and *Hummock Run Ltd* (OS1082.2). Our amendments to Rule 10.3.2, in response to submissions discussed in section 3.4.6.3, provide for additional types of clearance as a permitted in all zones. The types of clearance provided for include 'clearance of stands of matagouri-dominant shrubland that contain no matagouri individuals greater than 1.5 m tall and that contain no more than one other non-matagouri indigenous shrub species', and 'clearance of indigenous vegetation from areas that, within the last 10 years, have been cultivated or clear of such vegetation (outside ASBVs, ONFs, ONCCs, HNCCs and NCCs only), provided that the clearance is associated with a permitted land use or city-wide activity'. See further details in section 3.4.6.3.
667. We note that this approach was supported by *FFNZ* at the hearing, and consider it constitutes partial alternative relief for the submissions of *FFNZ* and *Hummock Run*

Ltd. We consider it a more appropriate way to provide for the continuation of farming on existing pastures where regeneration of indigenous vegetation is continual.

668. We recommend (and assume) that the rule will be implemented in a pragmatic way, where effects would be considered in understanding whether any given case of clearance of mixed vegetation is of concern. We reiterate, as outlined elsewhere, that increased non-regulatory support from Council will be required to assist landowners to fully understand those rules in the Natural Environment Section that affect them, and when they might be at risk of breaching them. We consider this guidance should also include matters of 2GP administration and processes.
669. We also consider that the last sentence in the notified definition should be deleted as a clause 16 amendment. It's our view that this is a Plan administration matter, and should not be included in the definition, but rather included in the aforementioned guidance.
670. Finally, we note Dr Lloyd's observation that the term "species" would be more appropriate than "specimens" in the definition. We agree with the Reporting Officer's assessment that there is no scope to amend the definition in this regard, but recommend that the amendment be considered as part of the next appropriate Plan review.
671. Our decision therefore amends the definition of Indigenous Vegetation as follows:
- A plant or lichen {NatEnv 900.4 and 958.4} community in which species indigenous to that part of New Zealand are dominant, where dominance is measured as either:
- indigenous species comprising at least 30% coverage by area or 30% of the total number of specimens present; or
 - indigenous species comprising at least 20% coverage, in plant or lichen {NatEnv 900.4 and 958.4} communities where indigenous species make up the tallest stratum or are visually conspicuous.
- ~~Where dominance is unclear, the assessment of a suitable qualified ecologist will be used to determine the status of an area. {NatEnv cl.16}~~

3.4.3 Definition of Vegetation Clearance

672. The Plan defines Vegetation Clearance as follows:
- The removal, over-planting, crushing, spraying, burning, or any other activity that destroys or results in extensive failure of an area of vegetation, which if destroyed could lead to:*
- *land instability*
 - *riverbank, coastal or soil erosion;*
 - *loss of habitat for indigenous species (including areas of vegetation that act as ecological corridors connecting habitats);*
 - *changes to the quality of the ecological habitat provided by a water body; or*
 - *increased flood risk.*
673. *Helen Skinner and Joseph O'Neill* (OS312.9) sought that the definition of Vegetation Clearance be amended to clarify that it allows the removal of vegetation that does not lead to the outcomes described in the definition. The submitters also sought an amendment to the definition to allow gorse, broom, hawthorn and other noxious weeds to be removed without limitation.
674. In response to this submission, the Reporting Officer, Mr Bathgate, noted that the definition of vegetation clearance has an outcomes focus, as it seeks to capture types of vegetation clearance activity that may lead to environmental outcomes that the

2GP is seeking to manage the effects of, such as land instability or loss of indigenous habitat. He observed that, in providing this outcomes focus, the definition is designed *not* to capture examples of vegetation clearance that will not lead to such outcomes – such as gardening or landscaping, clearance of pest plants, or small-scale clearance activities (e.g. felling of single or a few trees).

675. However, he noted that the definition prefaces these outcomes with the phrase “could lead to”, as there is not always a direct or immediate relationship between any clearance activity and these outcomes – rather the definition states probable and predicted outcomes. He considered that the word “could” is too uncertain within this definition and should therefore be replaced with the phrase “is likely to lead to”.
676. With regard to the ability to clear pest plant species such as gorse, broom and hawthorn, Mr Bathgate noted that the vegetation clearance rules under Rule 10.3.2 provide exemptions for the clearance of pest plant species, including those raised by the submitters which are listed in Appendix 10B. He considered it more appropriate that exemptions for pest species are provided within the rules that relate directly to vegetation clearance activities, rather than within the definition.
677. *STOP* (OS900.3) and *Forest and Bird NZ* (OS958.3) sought to expand the definition to include other component activities – namely “cutting, trimming, felling, or modification”, “cultivation, direct drilling” and spraying “with herbicide or other substance” – at the start of the definition, and to refer to ‘degradation’ and ‘change in ecological conditions’ as outcomes that may result as part of the definition. There were a large number of further submissions in opposition to these suggested amendments.
678. Mr Bathgate generally recommended that these requested amendments be rejected, for the following reasons.

“cutting, trimming, felling, or modification”

- Cutting or trimming are common activities in relation to the maintenance of vegetation and could lead to confusion if spelt out in the definition
- Felling has the same meaning as removal and, therefore, does not add anything and may lead to confusion in relation to forestry harvesting activity which is a separate activity to vegetation clearance
- Modification is covered by the “any other activity” part of the definition, as is any over-zealous cutting or trimming which leads to destruction or extensive failure of vegetation.

“cultivation, direct drilling, spraying with herbicide or other substance”

- Cultivation and direct drilling (machine drilling of seeds directly into soil) are common farming techniques which may cause confusion if added to this definition.
- The addition of “with herbicide or other substance” after spraying does not add anything to the definition and unduly lengthens it.

“or degradation of an area of vegetation, which-if destroyed could lead to”

- An area of vegetation may be degraded in a very minor way, whereas the definition seeks to encapsulate activities that result in destruction or failure of vegetation.

679. However, he recommended that the words “if destroyed” should be removed, as requested, as the preceding part of the definition refers to both destruction and extensive failure.

680. Further, he did not recommend that the outcome “change in ecological conditions, (including threat of competitive exclusion or disease)” be added to the definition, as he considered it unclear and open to interpretation. He agreed with the further submission of *Federated Farmers* that changes in ecological conditions may stem from a range of factors, such as weather, and this addition does not provide clarity. He considered that the outcomes of loss of habitat for indigenous species and changes to the quality of the ecological habitat provided by a water body may encapsulate what the submitters are seeking.
681. *Federated Farmers of New Zealand* (OS919.86) sought that the definition be amended so that the activity must “directly” result in “extensive failure of an area of vegetation...” and to add the qualifier “significant” in relation to the outcomes listed in the definition.
682. Mr Bathgate agreed that the word “directly” should be added; while this causal link may sometimes be difficult to prove, he considered it necessary that it was able to be made. He did not, however, favour the addition of the word “significant” prior to the list of the outcomes in the definition, as he did not consider the word provided any additional clarity, and would lead to the need for a value judgement which he did not consider appropriate for a definition.
683. *Oceana Gold* (OS1088.8) sought that the definition be amended to add reference to scale or significance, on the basis that, as presently worded, there is no guidance as to what constitutes “an area of vegetation” nor is there guidance on what is meant by “loss of habitat for indigenous species” and “changes of quality of the ecological habitat provided by a water body”.
684. Mr Bathgate recommended that this submission point be rejected. He did not consider it necessary to amend the definition of vegetation clearance to include any reference to scale, on the basis that areas of vegetation vary considerably in scale; therefore, it would not be practical or possible to define the scale of an area of vegetation, which will vary on a case-by-case basis. However, he noted that: the definition of indigenous vegetation refers to “a plant community” which implies more than an individual specimen; and that Rule 10.3.2.2, which sets maximum areas for indigenous vegetation clearance as a permitted activity, provides a scale threshold within a performance standard.
685. He considered that, similarly, the significance or severity of the outcomes specified in the definition will vary on a case-by-case basis. In his view:
- these outcomes provide a list of potential consequences which help to clarify when any activity that affects vegetation will be defined as vegetation clearance
 - the inclusion of these outcomes within the definition means that they are already relatively significant in nature
 - as with scale, the significance of these is further clarified by their associated performance standards or activity status rules (e.g. Rule 10.3.2.2 defines the size at which indigenous vegetation clearance is of concern in relation to loss of habitat for indigenous species), and
 - any indigenous vegetation clearance in ASCVs is considered significant, with activity status rules making this a restricted discretionary activity.
686. Overall, he did not recommend the definition be amended, as it would not be practical or possible to state the level of significance within the definition.
687. Finally, *Horticulture New Zealand* (OS1090.5) sought that the definition be amended to add an exemption for vegetation that needs to be cleared for biosecurity reasons.

688. Mr Bathgate agreed that vegetation clearance required for biosecurity purposes should not be subject to 2GP rules. He noted that he had instead recommended that Rules 10.3.2.1, 10.3.2.2, 10.3.2.3 and 10.3.2.4 be amended so that they do not apply to clearance of unwanted organisms as declared by MPI Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993 (see section 3.4.4.1).
689. At the hearing, *Oceana Gold (New Zealand) Limited* called Dr Mike Thorsen (ecological expert) who noted “area” is not quantified, and there is no reference to scale or significance, notes “extensive failure” is not in general ecological use and suggests change to “substantial damage” or “substantial change” (p18 of his evidence).
690. The Reporting Officer responded that in his view ‘extensive failure’ was clearer in intent and significance than the phrases suggested by Dr Thorsen.
691. *Horticulture New Zealand* called Ms Lynette Wharfe (planning expert) expressed reservations about the inconsistency between having some exemptions in the definition of Indigenous Vegetation Clearance and other exemptions in the relevant vegetation clearance performance standards. This aspect of her evidence is discussed in section 3.4.1, above, and is addressed by the clause 16 formatting amendments set out in that section. Ms Wharfe otherwise indicated broad support for the Section 42A recommendation on the definition.
692. *FFNZ* tabled a statement at the hearing that supported the Reporting Officer’s s42A Report recommendations relating to the definition of vegetation clearance.

3.4.3.1.1 *Decision and Reasons*

693. We accept in part the submission of *Oceana Gold* (OS1088.8), to the extent that we agree with the submitter that the definition as notified is unclear and likely to be difficult for plan users to interpret. However, rather than adding references to scale or significance to the definition, we consider that clarification of the definition (and associated provisions) would be better achieved by deleting the outcome statements from the definition altogether. This would mean that point at which vegetation clearance becomes subject to Plan provisions and consent requirements is determined by the performance standards alone (i.e. the scale and location requirements in Rules 10.3.2.A, 10.3.2.1, 10.3.2.3, 10.3.2.4 and 11.3.2, subject to the exemptions set out in those rules). We consider that this approach is considerably clearer than the notified approach, under which a plan user must determine both whether their activity meets the definition of Vegetation Clearance (which, as pointed out by the submitter, is a difficult task given the lack of specificity in many of the outcome statements) and whether it meets the relevant performance standards. In our view, this change provides partial relief to *Oceana Gold*’s submission (OS1088.8).
694. We also accept in part the submission of *Helen Skinner and Joseph O’Neill* (OS312.9); we agree that the definition of Vegetation Clearance is unclear as to how vegetation clearance that does not result in any of the listed outcomes is treated. We consider that the deletion of the outcome statements, discussed above, clarifies this matter; following this change, the consent requirements of vegetation clearance activities are determined by the vegetation clearance performance standards alone.
695. We consider that the amendments to these performance standards to more clearly set out, and to expand, the types of clearance activity that exempt from control (via amendments to Rules 10.3.2.A, 10.3.2.1, 10.3.2.3, 10.3.2.4 and 11.3.2, which are discussed in section 3.4.4, 3.4.6, 3.4.7 and 3.4.8 of this decision) are also relevant to, and constitute partial alternative relief for, the submissions of both *Helen Skinner and Joseph O’Neill* (OS312.9) and *Oceana Gold* (OS1088.8). In particular, we note that these amendments clarify that clearance of a pest plant species listed in Appendix 10B

is not subject to consent requirements. This is directly relevant to the request from *Helen Skinner and Joseph O'Neill* (OS312.9) that provisions be amended to allow gorse, broom, hawthorn and other noxious weeds to be removed.

696. The removal of the outcome statements from the definition also addresses an issue identified by the Panel while considering submissions. During deliberations, we noted that, although the definition of Vegetation Clearance indicates that it is a development activity that leads to adverse effects, “All Other Vegetation Clearance” (apart from Indigenous Vegetation Clearance), is a permitted activity in the 2GP. This resulted in the rather perverse outcome that an activity that, by definition, generates adverse effects is categorised as a permitted activity in most circumstances. The amendment to the definition to remove the outcome statements resolves this matter.
697. We accept in part the submissions of *STOP* (OS900.3) and *Forest and Bird NZ* (OS958.3). Given that the definition includes the phrase “any other activity”, we do not consider that the definition needs to include an exhaustive list of the activities through which destruction or extensive failure of an area of vegetation may be caused. We accept the Reporting Officer’s evidence that the addition of the words “or degradation” would reduce the clarity of the definition, which seeks to encapsulate activities that result in destruction or failure of vegetation. For the reasons discussed above, we do not consider that any outcomes should be included in the definition of Vegetation Clearance, and so do not support the addition of “change in ecological conditions, (including threat of competitive exclusion or disease)” in the list of outcomes, as sought by the submitters. However, given that our decision to delete the outcomes part of the definition also removes the words “if destroyed”, we consider this amendment constitutes acceptance in part of these submissions.
698. We accept in part the submission of *Federated Farmers of New Zealand* (OS919.86). We agree with the Reporting Officer’s assessment that, to be deemed Vegetation Clearance, a direct link between human activity and the destruction or extensive failure of the area of vegetation should be identified, even though this activity may sometimes work cumulatively with other factors to influence the viability of an area of vegetation. We accept the Reporting Officer’s evidence that the destruction or extensive failure of an area of vegetation is intrinsically a relatively significant outcome and that the addition of the word “significant” as suggested by the submitter would detract from clarity.
699. We accept in part the submission of *Horticulture New Zealand* (OS1090.5). We do not support the addition of the exemption to the definition of Vegetation Clearance as sought by the submitter, accepting the Reporting Officer’s evidence that the most appropriate location for exemptions is in rules. As discussed in section 3.4.4.1, below, we have added exemptions for performance standards for ‘clearance required to remove material infected by unwanted organisms as declared by Ministry for Primary Industries’ Chief Technical Officer, or to respond to an emergency declared by the Minister for Primary Industries under the Biosecurity Act 1993’. We consider that this amendment constitutes alternative relief for *Horticulture New Zealand* (OS1090.5).
700. Therefore, in response to submissions, our decision amends the definition of Vegetation Clearance as follows:

Vegetation Clearance

The removal, over-planting, crushing, spraying, burning, or any other activity that destroys or directly {NatEnv 919.86} results in extensive failure of an area of vegetation, ~~which if destroyed could lead to:~~ {NatEnv 1088.8 and 312.9}

- ~~land instability~~ {NatEnv 1088.8 and 312.9}
- ~~riverbank, coastal or soil erosion;~~ {NatEnv 1088.8 and 312.9}
- ~~loss of habitat for indigenous species (including areas of vegetation that act as ecological corridors connecting habitats);~~ {NatEnv 1088.8 and 312.9}

- ~~changes to the quality of the ecological habitat provided by a water body; or {NatEnv 1088.8 and 312.9}~~
- ~~increased flood risk. {NatEnv 1088.8 and 312.9}~~

See Appendix 1.

3.4.4 Rule 10.3.2 Vegetation Clearance

3.4.4.1 Submissions relating to all of Rule 10.3.2

701. Rule 10.3.2 as notified consists of the following performance standards:

- 10.3.2.1 Maximum area of vegetation clearance (UCMA)
- 10.3.2.2 Maximum area of indigenous vegetation clearance
- 10.3.2.3 Protected areas
- 10.3.2.4 Protected species (indigenous vegetation clearance)

702. *Burkhard and Marita Eisenlohr* (OS844.1) sought to retain Rule 10.3.2 because they believed the proposed rule was consistent with current environmental practice and would encourage re-vegetation with native species.

703. *Otago Fish and Game Council* (OS1016.2) also sought to retain Rule 10.3.2 (inferred not stated), in particular due to their support for the rules for vegetation clearance within 5 metres of any water body.

704. *Murray Soal* (OS291.5) sought to amend Rule 10.3.2 to be less prescriptive and inhibitive, because of concerns that prescriptive rules inhibit even heating of one's own home with resources off one's own property.

705. *Robert George & Sharron Margaret Morris* (OS355.20), *Timothy George Morris* (OS951.14) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust* (OS1054.14) sought that the rule be amended to allow for normal farming and activities, and that it be reviewed in relation to coastal areas, including by removing Rule 10.3.2.3.b.iv (indigenous vegetation clearance in Coastal Environment Mapped Area). The submitters believed that the obligations associated with these provisions were too complicated, overly onerous on landowners, incompatible with Policy 16.2.1.1 of the Plan, incompatible with a range of cultural and economic considerations and at odds with various miscellaneous normal and routine farming and related activities undertaken in rural areas. They felt that significant amendment was necessary, including to the extent of what DCC referred to as "coastal environment", which in their view had not been 'ground truthed' or based on consultation with landowners.

706. *Ben Graham* (OS361.7), *Mathew O'Connell* (OS364.6) and *John Scott* (OS1084.5) sought that rules 10.3.2.2 - 10.3.2.4 be amended to exempt areas that have been cultivated, oversown or burnt off in the last 15 years, because they believed the vegetation clearance provisions are unduly restrictive and uncertain and do not enable land owners to sustainably manage their property in accordance with the RMA.

707. In response to the submitters' requests that the rules should be amended to allow for normal farming activity, the Reporting Officer, Mr Bathgate, noted that he had recommended additional exemptions to Rule 10.3.2.2.b to provide for control of regenerating indigenous vegetation on areas that have previously been farmed, and to allow for activities such as the erection and maintenance of fences and the construction and maintenance of tracks (see discussion in section 3.4.6.3, below). He considered that these amendments gave some relief to the submissions.

708. In regard to the submissions to review Rule 10.3.2 in relation to coastal areas, he noted that the coastal environment was identified as part of a study that involved a range of experts including landscape experts, ecologists and geomorphologists. It is a requirement of the NZCPS Policy 11 to protect indigenous biological diversity in the coastal environment. He considered that Rule 10.3.2.3.b.iv was a necessary part of giving effect to this requirement, and did not recommend any change to Rule 10.3.2 in response to these submissions. He noted the range of exemptions provided by Rule 10.3.2.3.c in relation to vegetation clearance in coastal areas.
709. In response to the submitters' comments that the vegetation clearance provisions are incompatible with Policy 16.2.1.1, he noted that he had recommended that assessment guidance be added to the assessment of all rural zones development performance standard contraventions to consider the positive effects of an activity in terms of supporting farming or conservation activity (see discussion in section 3.10.4.4, below).
710. *Ben Graham* (OS361.6), *Mathew O'Connell* (OS364.5) and *John Scott* (OS1084.5) sought that Rule 10.3.2 be amended so that it only applies to a new overlay "Area of Significant Indigenous Vegetation", identified following a process to accurately identify and map areas of significance. The submitters believed that provisions failed to allow for clearance and removal of indigenous vegetation in areas or circumstances where this may be appropriate.
711. Mr Bathgate did not consider that the requested new overlay was necessary. He noted that the schedule of ASCVs provides for the mapping and scheduling of areas of significance, including both areas of indigenous vegetation and habitats. Outside of these scheduled significant areas, the Plan also seeks to sustainably manage indigenous fauna and habitats. Mr Bathgate acknowledged the submitters' view that indigenous vegetation clearance may be appropriate in some areas or circumstances, and drew their attention to his recommendations to expand the list of exemptions to Rule 10.3.2.2 (see discussion in section 3.4.6.3, below).
712. *Marrafin Trust* (OS581.4) sought that Rule 10.3.2 be reviewed because the track width was unrealistic; no further reasons were given, or suggested alternative width provided.
713. Mr Bathgate did not consider that the track widths provided in Rule 10.3.2 were unrealistic. He noted that the width had been determined in consultation with the DCC Parks and Recreation team. The width was set to provide for tracks for non-motorised use, although it is recognised that occasional use by small vehicles such as quad bikes may be required for purposes such as track maintenance. In the absence of any alternate proposed by the submitter, he recommend that this submission be rejected.
714. *Department of Conservation* (OS949.15) also sought that Rules 10.3.2.1.f, 10.3.2.2.b.iii, 10.3.2.3.c.vii, 10.3.2.4.b.iv be removed. These rules provide the exemption to vegetation clearance rules for clearance that is "provided for as part of a conservation management strategy, conservation management plan, reserve management plan or covenant established under the Conservation Act 1987 or any other Act specified in the First Schedule of the Conservation Act 1987". The submitter stated that "For land-use activities on land administered by the Department of Conservation, proposed Rules 10.3.2.1.f, 10.3.2.2.b.iii, 10.3.2.3.c.vii, 10.3.2.4.b.iv are not consistent with section 4(3) of the RMA, as they require the activity be "provided for" rather than that it be "consistent with" the relevant statutory documents."
715. Mr Bathgate noted that Section 4(3) of the RMA states that the act binds the Crown except that section 9(3), which sets out restrictions on the use of land, does not apply to any work or activity of the Crown that "is consistent with a conservation

management strategy, conservation management plan, or management plan established under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act”.

716. He accepted the point made by the submitter, but recommended that the exemption should be retained and the wording amended to reflect this submission. He considered that retention of the listed exemptions would provide more clarity and certainty to plan users.
717. He noted that the exemptions also cover work that may be taken out by other agencies than the Crown, as they also include reserve management plans and covenants. He considered that the addition of the wording “consistent with” would give relief to this submission.
718. Finally, *Horticulture New Zealand* (OS1090.27) sought that rules 10.3.2.1, 10.3.2.2, 10.3.2.3, 10.3.2.4 be amended by adding an exemption as follows “Removal of material infected by unwanted organisms as declared by MPI Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993”. The submitter sought an enabling response for biosecurity purposes where unwanted organisms are found.
719. Mr Bathgate agreed with *Horticulture New Zealand* that the requested changes should be made (with minor drafting amendments) to Rule 10.3.2.1 Maximum area of vegetation clearance (UCMA), Rule 10.3.2.2 Maximum area of indigenous vegetation clearance, Rule 10.3.2.3 Protected areas and Rule 10.3.2.4 Protected species, for the reasons given by the submitter, and recommend that these rules be amended as shown below. He noted that, because indigenous vegetation clearance was always a restricted discretionary activity (regardless of compliance with performance standards) in ASCVs, ONCCs, HNCCs and NCCs, in order to exempt removal of material infected by unwanted organisms from the provisions applying in these areas, it was also necessary to add an exemption to the definition of “indigenous vegetation clearance”.
720. At the hearing, *Horticulture New Zealand* called Ms Lynette Wharfe (planning expert). In her evidence, Ms Wharfe indicated support for the Section 42A recommendation, but with reservations about the inconsistency between having some exemptions in the definition of Indigenous Vegetation Clearance and other exemptions in the relevant vegetation clearance performance standards (see discussion of this point in section 3.4.1, above).
721. In legal submissions for the *Department of Conservation*, Ms Pene Williams (counsel) provided an explanation of s4 of the RMA, and its implications for application of the District Plan to land administered by the *Department*. She expressed support for the Reporting Officer’s recommended amendment to add “consistent with”, given the rules also apply to areas not administered by the *Department*.
722. *Mr Soal* appeared at the hearing and raised a number of points in relation to specific elements of Rule 10.3.2.2 and Rule 10.3.2.4, which are discussed in the relevant sections below.

3.4.4.1.1 *Decision and Reasons*

723. By way of background, we note that, as outlined in section 3.4.1, above, as a result of clause 16 reformatting, Indigenous Vegetation Clearance that was exempt from the notified definition of Indigenous Vegetation Clearance, or that was permitted under notified Rule 10.3.2.2 (Maximum area of indigenous vegetation clearance) is now provided for as Indigenous Vegetation Clearance – Small Scale, with Rule 10.3.2.A setting out the small-scale threshold standard. Rules 10.3.2.1, 10.3.2.3 and 10.3.2.4 are also subject to clause 16 changes re-formatting.

724. In relation to the submission of the *Department of Conservation* (OS949.15) we accept that rules 10.3.2.1.f, 10.3.2.2.b.iii, 10.3.2.3.c.vii, and 10.3.2.4.b.iv are inconsistent with s4(3) of the RMA. However, we also accept the evidence of the Reporting Officer that, given that these provisions relate to areas administered by agencies other than the Crown (which are not exempted by way of s4(3) of the RMA), they should be retained and amended as recommended by the Reporting Officer. Our decision therefore provides for "clearance that is consistent with or {*NatEnv 949.15*} provided for as part of a conservation management strategy, conservation management plan, reserve management plan or covenant established under the Conservation Act 1987 or any other Act specified in the First Schedule of the Conservation Act 1987" as Indigenous Vegetation Clearance – Small Scale (refer Rule 10.3.2.A), and makes the same amendment to exemptions in rules 10.3.2.1, 10.3.2.3, 10.3.2.4 and 11.3.2.4. We consider this constitutes alternative relief.
725. We accept the submission of *Horticulture New Zealand* (OS1090.27). We agree with the Reporting Officer's evidence that, given that consent is required for indigenous vegetation clearance in some overlay zones (and throughout the city at certain scales), an exemption of this nature is necessary to enable a timely response to biosecurity threats. Therefore, we have amended Rules 10.3.2.A, 10.3.2.3, 10.3.2.4 and 10.3.2.1 to permit vegetation clearance that is 'required to remove material infected by unwanted organisms as declared by Ministry for Primary Industries' Chief Technical Officer, or to respond to an emergency declared by the Minister for Primary Industries under the Biosecurity Act 1993'.
726. We note that this is consistent with our decision to provide for earthworks 'associated with burying material infected by unwanted organisms' as a permitted activity, by including it as a type of earthworks – small scale (see Earthworks Decision Report).
727. We reject the submissions of *Ben Graham* (OS361.6), *Mathew O'Connell* (OS364.5) and *John Scott* (OS1084.5) seeking an amendment to Rule 10.3.2 so that it only applies to a new overlay "Area of Significant Indigenous Vegetation". We note that, in addition to the s6 RMA matter relating to protection of significant indigenous vegetation and the significant habitats of indigenous species, under s31b(iii) of the RMA it is a function of Council to control land use for the purpose of the maintenance of indigenous biodiversity. We further note that other higher order policy direction (including pORPS-dv Policy 3.1.9 which states "Maintain or enhance ecosystem health and indigenous biological diversity", and "Maintain or enhance areas of predominantly indigenous vegetation") also mandate protection of indigenous vegetation not identified as significant. We consider that removing controls on indigenous vegetation clearance outside of areas identified as 'significant', would be inconsistent with this higher order policy direction.
728. We accept in part the submissions of *Ben Graham* (OS361.7), *Mathew O'Connell* (OS364.6) and *John Scott* (OS1084.5). We accept that clearance of regenerating vegetation from existing pastures is a regular requirement to support permitted land uses, such as farming, in some parts of the city. Dr Lloyd's evidence was that clearance of scattered regeneration of mānuka/kānuka and other indigenous vegetation less than 15 years old (including on land that has been cultivated within the last 15 years) would not significantly affect biodiversity values, and therefore can be provided for as a permitted activity. We accept this, but we consider that 10 years is a more straightforward timeframe to use for monitoring purposes.
729. Our decision therefore provides for 'clearance of indigenous vegetation from areas that, within the last 10 years, have been cultivated or clear of such vegetation (outside ASBVs, ONFs, ONCCs, HNCCs and NCCs), provided that the clearance is associated with a permitted land use or city wide activity', as a permitted activity, as part of Indigenous Vegetation Clearance – small scale (see Rule

10.3.2.A.a.xiv). We consider that this constitutes partial relief for the submissions of *Ben Graham* (OS361.7) and *Mathew O'Connell* (OS364.6) and *John Scott* (OS1084.5).

730. We accept in part the submissions of *Murray Soal* (OS291.5), *Robert George & Sharron Margaret Morris* (OS355.20), *Timothy George Morris* (OS951.14) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust* (OS1054.14)). As discussed in sections 3.4.6.3, 3.4.7.3, 3.4.7.4 and 3.4.8.2, below, our decision accepts the evidence of the Reporting Officer and Dr Lloyd, that there are a number of additional types of vegetation clearance that can be provided for as Indigenous Vegetation Clearance – small scale (Rule 10.3.2.A), and/or exempted from Rule 10.3.2.1 (Maximum area of vegetation clearance in UBMA's), Rule 10.3.2.3 (Protected areas), and/or Rule 10.3.2.4 (Protected species), while still allowing Objective 10.2.1 to be achieved. Taken together, we consider these amendments both make the rule less prohibitive, as sought by *Mr Soal*, and better provide for normal farming activities, including in coastal areas (as sought by the *Morris* submissions).
731. We accept in part the submission of *Marrafin Trust* (OS581.4). As discussed in section 3.4.6.3, 3.4.7.3 and 3.4.7.4, we have amended provisions so that vegetation clearance associated with the construction of tracks up to 3m in width is provided for as a permitted activity in less sensitive areas. We accept that this more reasonably balances the achievement of Objective 10.2.1 with the needs of farming operations.

3.4.5 Policy 10.2.1.3

732. Policy 10.2.1.3 reads as follows:

Limit indigenous vegetation clearance in the rural and rural residential zones to a size that avoids any adverse effects on the biodiversity values of the area of indigenous vegetation or, if avoidance is not possible, ensures that adverse effects are no more than minor.

733. This policy is linked to Rule 10.3.2.2 Maximum area of indigenous vegetation clearance, which sets thresholds for indigenous vegetation clearance beyond which resource consent is required as a restricted discretionary activity.
734. *Ben Graham* (OS361.2), *Mathew O'Connell* (OS364.2) and *John Scott* (OS1084.2) sought that Policy 10.2.1.3 be amended so that it related to adverse effects on the biodiversity values of indigenous vegetation on the site only, rather than on a wider area of indigenous vegetation. The submitters believed the vegetation clearance provisions to be unduly restrictive and uncertain.
735. The Reporting Officer, Mr Bathgate, noted that while Rule 10.3.2.2 manages indigenous vegetation clearance at a site-specific level, associated Policy 10.2.1.3 considers the adverse effects of vegetation clearance on the area of indigenous vegetation itself, which may or may not span site boundaries. He considered this to be the appropriate approach, as Objective 10.2.1 is concerned with outcomes for areas of indigenous vegetation and habitats rather than the sites that may contain these. He considered it important that cross-boundary effects on indigenous biodiversity are taken into account, and therefore did not recommend that the requested amendment be accepted.
736. *HPPC* (OS447.16) sought that Policy 10.2.1.3 be amended to add the wording “and not greater than 10% of the total indigenous vegetation area” to the end of the policy. The submitter believed that this would ensure reasonable “maintenance and enhancement” and consistency in consents decision-making on the vegetation clearance “bottom line” and that flexibility based on topography, etc. in nearly all situations would still dominate.

737. Mr Bathgate did not recommend that this amendment be made, on the basis that it would result in the policy not aligning with Rule 10.3.2.2, which specifies maximum thresholds for clearance over a three calendar year period. He noted that the submission did not specify any time period and therefore may allow cumulative clearances that total more than 10% of an area. Further, he considered that with no justification for the 10% threshold, the wrong signals may be sent to landowners. There may be situations where clearance of up to 10% has an adverse effect on an area of vegetation or habitat, for instance, where the part that is to be cleared involves species or habitat of relatively high biodiversity value. The 10% figure may also be viewed as out of line with the thresholds in Rule 10.3.2.2 – for instance, it suggests that the clearance of up to 1000m² of every hectare of indigenous vegetation may be acceptable.
738. *STOP* (OS900.28) and *Forest and Bird* (OS958.21) sought that Policy 10.2.1.3 be amended as follows:
- ~~Limit~~ Avoid any adverse effects of indigenous vegetation clearance on biodiversity in the rural and rural residential zones to a size that avoids any adverse effects on the biodiversity values of the area of indigenous vegetation or, if avoidance is not possible, ensures that adverse effects are no more than minor and the biodiversity values are maintained or enhanced.
739. The submitters believed that indigenous biodiversity conservation values should be maintained or enhanced. They believed that location and type of clearance should be considered as well as size, and that maintenance and enhancement of indigenous biodiversity requires the protection of the values of existing areas and habitats, and restoration and enhancement of degraded areas.
740. *Federated Farmers of New Zealand* (OS919.23) sought that the policy be amended as follows:
- ~~Limit~~ Avoid indigenous vegetation clearance in the rural and rural residential zones where it would result in the significant degradation of indigenous vegetation stock or values to a size that avoids any adverse effects on the biodiversity values of the area of indigenous vegetation or, if avoidance is not possible, ensures that adverse effects are no more than minor.
741. *Federated Farmers* believed that if indigenous vegetation was primarily protected through the appropriate schedules, there should be a focus on providing a permitted activity framework for land use which seeks to provide certainty for land users. This more permissive approach would recognise that areas outside of the defined and protected areas of indigenous vegetation are primarily used for rural activities.
742. Mr Bathgate did not support the submissions to change the wording of Policy 10.2.1.3 to begin with “avoid”. He noted that, according to the 2GP drafting protocol, the word “avoid” should be used in conjunction with non-complying activities. Policy 10.2.1.3 sets up a performance standard, hence the use of the word “limit”, although the word “require” is more commonly used in policies associated with performance standards that set some form of limit. Mr Bathgate therefore favoured the use of the word “require” in this policy, to be consistent with the 2GP drafting protocol. However, as the use of this term would imply a requirement to clear indigenous vegetation, he considered that the policy should start with the words “require any”.
743. He did not support the proposed wording by *Federated Farmers* that indigenous vegetation clearance should only be avoided where “it would result in the significant degradation of indigenous vegetation stock or values”. He considered that this wording would be too permissive and would not be appropriate to achieve Objective 10.2.1.

744. In relation to *STOP* and *Forest and Bird*'s requests that the policy should include the wording "biodiversity values are maintained or enhanced", Mr Bathgate agreed that the policy include reference to the outcome sought. However, he considered that this wording should replace the notified effects test (i.e. "...avoids any adverse effects on the biodiversity values of the area of indigenous vegetation or, if avoidance is not possible, ensures that adverse effects are no more than minor"). He considered that it was preferable for the policy to have a single outcome test, rather than having both an effects test and an outcome test, as requested by the submitters.
745. Mr Bathgate considered that this outcome-focused drafting would have the following advantages:
- consistency with other vegetation and indigenous vegetation clearance policies (10.2.1.4, 10.2.1.5, 10.2.2.3)
 - provision for the consideration of biodiversity offsetting as a potential circumstance or mitigation measure that may support a consent application
 - greater clarity that the notified effects-based wording, particularly due to the removal of the term 'area', which is undefined
 - provision for consideration of any positive effects on indigenous biodiversity that may be used in mitigation of an application to clear indigenous vegetation.
746. Finally, *Timothy Morris* (OS951.6) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust* (OS1054.6) sought that Policy 10.2.1.3 be amended to provide for the control of regrowth indigenous vegetation as part of long term maintenance of rural land for productive rural activities. The submitters considered that this maintenance of rural land for productive rural activities was encouraged elsewhere within the 2GP.
747. Mr Bathgate did not consider that Policy 10.2.1.3 should be amended in response to the *Morris*' submissions. He noted that the policy sets out how the activity of indigenous vegetation clearance will be managed in rural and rural residential zones, but does not go into the detail of how this will be specifically managed in relation to other activities such as farming or network utilities activities. He noted that he had recommended additional exemptions to the associated performance standard Rule 10.3.2.2; he considered that this change would give some relief to these submissions (see discussion in section 3.4.6.3).
748. The revised wording for Policy 10.2.1.3 recommended by Mr Bathgate in response to submissions was, therefore, as follows (s42A Report, section 5.8.6.1):
- ~~*Limit Require any indigenous vegetation clearance in the rural and rural residential zones to a size that avoids any adverse effects on the maintain or enhance biodiversity values of the area of indigenous vegetation or, if avoidance is not possible, ensures that adverse effects are no more than minor.*~~
749. At the hearing, Mr David Cooper tabled a statement and spoke on behalf of *FFNZ*. He supported the Section 42A recommendation for Policy 10.2.1.3.
750. The Panel queried the recommended substitution of "Limit" for "Require" at the start of the policy. The Reporting Officer responded that, in his view, both this policy and Policy 10.2.1.4 would read more smoothly if they began with the words "Require that..." (Revised Recommendations Summary p.55).

3.4.5.1.1 *Decision and Reasons*

751. We reject the submissions of *Ben Graham* (OS361.2), *Mathew O'Connell* (OS364.2) and *John Scott* (OS1084.2). We note that the Rule 10.3.2.A.c, which is linked to Policy 10.2.1.3, indicates that the maximum permitted area thresholds apply per site. We do not consider it necessary for the policy also to be explicit on this point.

752. We reject the submission of *HPPC* (OS447.16) requesting that indigenous vegetation clearance be limited to “not greater than 10% of the total indigenous vegetation area”. We agree with the Reporting Officer’s assessment that this would be inconsistent with the management approach outlined in Rule 10.3.2.2 (which outlines zone-specific maximum thresholds and time periods – now reformatted as Rule 10.3.2.A) and that the figure proposed in the amendment appears arbitrary, risking the potential clearance of vegetation with high biodiversity values.
753. In response to *Murray Soal* (whose submission OS291.5 sought similar amendment to Rule 10.3.2.2), the Reporting Officer commented (Revised Recommendations Summary, p.7) that applying a percentage-based approach may result in the loss of larger areas of vegetation on larger sites. We also accept this assessment. As discussed elsewhere, we consider that Rule 10.3.2.A gives effect to Objective 10.2.1, establishing permitted thresholds for indigenous vegetation clearance specific to each zone based on expert evidence. We consider the zone-based approach effectively responds to differences across the city and to current ecological conditions. We prefer this approach to that promoted by the submitter.
754. We accept in part the submissions of *STOP* (OS900.28), *Forest and Bird NZ* (OS958.21) and *Federated Farmers of New Zealand* (OS919.23).
755. We do not support amending the policy to begin with “Avoid” (as sought by all three submitters), for reasons of consistency with the 2GP drafting protocol and associated rationale outlined in the Plan Overview Decision Report. In short, under the 2GP drafting protocol, use of the word “avoid” in a policy without any qualifiers (as requested by *Federated Farmers*) suggests a prohibited activity status, and use of the word “avoid” with a qualifier (as requested by *STOP* and *Forest and Bird*) signifies a non-complying activity status. The activity status associated with contravention of the relevant performance standard is restricted discretionary, which we consider appropriate, as there may be occasions in which contraventions are acceptable because of low biodiversity or natural character values present on a site, or minor effects on such values (or for some other reason).
756. In this instance, we do however consider that a divergence from the 2GP drafting protocol is warranted. We note that Policy 10.2.1.3 applies where Indigenous Vegetation Clearance – small scale standards are contravened. We consider that, given the nature of the contravention, neither “Limit” nor “Require any” (as recommended by the Reporting Officer) provide a particularly clear or straightforward framework for assessment of the appropriateness of any contravention, despite being wording used in policies associated with performance standards under the 2GP drafting protocol. We consider the wording “Only allow”, in this instance, provides a clearer policy framework, and consistency with Policy 10.2.1.4 and Policy 10.2.1.5, which also commence with “Only allow”. We consider this change constitutes partial alternative relief for the submissions of *STOP* (OS900.28), *Forest and Bird NZ* (OS958.21) and *Federated Farmers of New Zealand* (OS919.23).
757. We agree with the Reporting Officer’s assessment that the wording “it would result in the significant degradation of indigenous vegetation stock or values” suggested by *Federated Farmers of New Zealand* (OS919.23) would set too high a bar and would not achieve Objective 10.2.1.
758. We do not consider that the words “and the biodiversity values are maintained or enhanced” should be added to the end of the policy, as sought by *STOP* (OS900.28) and *Forest and Bird NZ* (OS958.21). We agree with the Reporting Officer’s assessment that moving to an outcome-focussed “maintained or enhanced” policy test would be preferable, for reasons of consistency with other policies, and for easier integration with the new framework for biodiversity offsets and environmental compensation (discussed in section 3.5). However, we do not consider it is within the

scope of submissions to both include the outcome-focussed test and to remove the adverse effects test from the policy, so we have instead chosen to retain the notified “no more than minor” policy test.

759. In response to the *STOP* and *Forest and Bird* submissions, we have however made some minor amendments to the effects test to bring it in line with the 2GP drafting protocol. We have also removed the phrase “of the area of indigenous vegetation” from the policy, which will allow for a wider consideration of overall effects on biodiversity values, as sought by the submitters.
760. We reject the submissions of *Timothy Morris* (OS951.6) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.6) requesting that Policy 10.2.1.3 be amended to provide for the control of regrowth indigenous vegetation. We accept the Reporting Officer’s assessment that this amendment seeks to specify in the policy a degree of detail that is more appropriately canvassed in rules. We note that amendments to Rule 10.3.2.2 (reformatted as Rule 10.3.2.A), outlined in section 3.4.6.3, provide for additional exemptions to indigenous vegetation clearance, including the ‘clearance of indigenous vegetation from areas that, within the last 10 years, have been cultivated or clear of such vegetation (outside ASBVs, ONFs, ONCCs, HNCCs and NCCs only) provided that the clearance is associated with a permitted land use or city wide activity’. We consider these amendments may offer some relief to the submitter.
761. The amendments to provisions, including consequential amendments, required for this decision are as follows.
- Amend Policy 10.2.1.3 as follows
~~Limit Only allow {NatEnv 900.28} indigenous vegetation clearance - large scale {NatEnv cl.16} in the rural and rural residential zones to a size that avoids any where {NatEnv 900.28} adverse effects on the biodiversity values of the area of indigenous vegetation {NatEnv 900.28} are avoided or, if avoidance is not possible practicable {PO 908.3} , ensures that adverse effects are no more than minor. {NatEnv 900.28}~~
 - Amend the paraphrasing of Policy 10.2.1.3 in assessment Rule 10.5.2.C to reflect this change.
762. See Appendix 1 (changes attributed to NatEnv 900.28).
763. We note that, as shown above, Policy 10.2.1.3 has also been amended in response to submissions discussed in the Plan Overview Decision, to replace ‘possible’ with ‘practicable’.

3.4.6 Management of the maximum area of indigenous vegetation clearance

764. In section 3.4.6 of the report, we consider the following submissions.
- Section 3.4.6.1: submissions relating to Rule 10.3.2.2 Maximum area of indigenous vegetation clearance, as a whole.
 - Section 3.4.6.2: submissions relating specifically to the maximum area thresholds, and the time period in which they apply, in Rule 10.3.2.2.a.
 - Sections 3.4.6.3: submissions relating to exemptions to the maximum area thresholds in Rule 10.3.2.2, and to exemptions to the definition of Indigenous Vegetation Clearance
 - Sections 3.4.6.4 and 3.4.6.5: submissions relating to, respectively, the activity status of, and assessment rules for, indigenous vegetation clearance that contravenes Rule 10.3.2.2.

765. Note that, as discussed in section 3.4.1 above, the content of both Rule 10.3.2.2 and the exemptions from the definition of Indigenous Vegetation Clearance have been transferred to new Rule 10.3.2.A, and indigenous vegetation clearance that contravenes notified Rule 10.3.2.2 is now treated as 'indigenous vegetation clearance – large scale'.

3.4.6.1 Submissions seeking to remove or review all or part of Rule 10.3.2.2 Maximum area of indigenous vegetation clearance

766. Five submissions sought that Rule 10.3.2.2 as a whole be removed or reviewed.
767. *Lynnore Joan Templeton* (OS735.1) sought that Rule 10.3.2.2 be removed, or revised in order to adopt a more targeted approach, including by allowing clearance of Matagouri, and of land that has been previously developed. She considered that a more targeted approach, under which farmers could protect certain areas of indigenous species but develop other areas, would be far more sustainable. She noted that farmers need to be able to continue to develop their farms to ensure their financial sustainability, and pointed out that the more profitable a farm is, the more can be spent on protecting indigenous species.
768. *Bevan Thomas Wilson* (OS850.1) sought the deletion of Rule 10.3.2.2 on the basis that, in his view:
- the rule should exclude previously developed land
 - it was unclear what defines the 'area' in 30% of vegetation i.e. 30% of total farm area, per hectare etc (in relation to this aspect of Mr Wilson's submission, see section 3.4.2 of this decision)
 - matagouri is an invasive pest that can rapidly overtake other vegetation and subsequently degrade the landscape
 - the rule removed the rights of freeholding landowners
 - the rule does not permit sustainable farming, either financially or environmentally, and
 - geographically, the High Country ONL is very different from 'Dunedin City' and operates in a different way, therefore should be treated accordingly.
769. *Barry James Williams* (OS886.4) sought that Rule 10.3.2.2 be removed (inferred not stated) because most farmers need to increase production for income so he questions why these restrictions are needed.
770. *Strath Taieri Community Board* (OS905.3) questioned the restrictions on developing farms where there may be tussock or matagouri.
771. *Alistair Hope* (OS1018.1) sought that Rule 10.3.2.2 be removed (inferred not stated) as he believes that if landowners cannot develop land which they own and is protected for its environmental features, then DCC should purchase the land for the benefit of the community at large.
772. The Reporting Officer, Mr Bathgate, did not recommend removal of Rule 10.3.2.2. He noted that the 2GP has a mandate to protect indigenous biodiversity (as discussed in s42A Report, section 5.4.2, in relation to Objective 10.2.1); Rule 10.3.2.2 directly gives effect to Objective 10.2.1. In relation to submitters with concerns regarding matagouri and regenerating indigenous vegetation, he noted that he had discussed these matters in response to submissions on exemptions to Rule 10.3.2.2 (see section 3.4.6.3 of this decision).

3.4.6.1.1 *Decision and Reasons*

773. We reject the submissions of *Bevan Thomas Wilson* (OS850.1), *Barry James Williams* (OS886.4), *Strath Taieri Community Board* (OS905.3) and *Alistair Hope* (OS1018.1) seeking the removal of Rule 10.3.2.2. We consider that, in order to appropriately align with s31b(iii) of the RMA and other relevant higher order policy direction (including ORPS-dv Policy 3.1.9, which states “maintain or enhance areas of predominantly indigenous vegetation”), it is necessary for indigenous vegetation clearance to be managed. We consider that Rule 10.3.2.2 (reformatted as Rule 10.3.2.A), with amendments as discussed below, appropriately gives effect to Objective 10.2.1.
774. Our decisions rely on the expert evidence of Dr Lloyd. We consider that the provisions, as amended by our decisions, provide an efficient rule framework through the establishment of permitted thresholds for Indigenous Vegetation Clearance in various zones. We consider the zone-based approach effectively responds to differences across the city and to current ecological conditions.
775. We accept in part the submission of *Lynnore Joan Templeton* (OS735.1). We consider that the amendments outlined in section 3.4.4.1 above, and in sections 3.4.6.3, 3.4.7.3, 3.4.7.4 and 3.4.8.2 below, further refine Vegetation Clearance provisions such that the approach is more targeted, as sought by the submitter.

3.4.6.2 Submissions relating to the Indigenous Vegetation scale thresholds and/or time periods in Rule 10.3.2.2.a

776. Numerous submissions were received in relation to the maximum area thresholds in Rule 10.3.2.2.a, and the time period within which these thresholds apply. These submissions are set out in full in section 5.8.6.2 of the Section 42A Report (see the entries in the table at the start of section 5.8.6.2, under the headings ‘Submissions to retain all or part of Rule 10.3.2.2.a (maximum area of indigenous vegetation clearance)’, ‘Submissions to decrease thresholds and increase time period in Rule 10.3.2.2.a’ and ‘Submissions to review or increase maximum thresholds in Rule 10.3.2.2.a’).
777. Submissions variously sought: retention of certain aspects of provisions; amendments that would make provisions more restrictive; and amendments to make provisions more enabling. These submissions are set out below. We note that certain aspects of these submissions request additional exemptions for the clearance of regrowth vegetation or matagouri, or request the inclusion of the exemptions from Rules 10.3.2.3.c and 10.3.2.4.b in Rule 10.3.2.2; these are discussed in section 3.4.6.3, below.
778. *STOP* (OS900.148-149) and *Forest and Bird NZ* (OS958.50-53, 55, 62, 63) sought that certain aspects of Rule 10.3.2.2.a be retained, specifically the maximum area thresholds for indigenous vegetation clearance in the Coastal, Hill Country, Hill Slopes, Middlemarch Basin and Taieri Plains rural zones and in the rural residential zones. The submitters generally considered the area thresholds proposed for these zones to be appropriate to provide for Part II RMA and maintain existing biodiversity.
779. However, *STOP* (OS900.147) and *Forest and Bird NZ* (OS958.48, OS958.49, OS958.54) also sought that Rule 10.3.2.2.a be amended as follows:
- amend the rule so that all maximum area thresholds apply over a five year rather than a three year calendar period (no specific reason was given for this request)
 - amend the maximum area for tussock clearance in the High Country Rural Zone from 10000m² to 1000m², on the basis that 10000m² is too significant a

size for permitted activity status for clearance of tussock grasslands, given their important ecosystem services

- amend the maximum area for indigenous vegetation clearance in the Peninsula Coast Rural Zone from 250m² to 100m², because any remaining indigenous vegetation is likely to be significant and, as there is so little left, what is remaining needs to be protected in order to maintain the Peninsula's biodiversity.

780. *Hummock Run Ltd* (OS1082.1) believed that the proposed restriction of indigenous vegetation clearance thresholds (500m² over hill country zones) on any site over any three year calendar year period is severe and would have serious economic impacts, both short and long term for landowners affected, and by default the greater region. The submitter found it unrealistic to expect private landowners to take on a major responsibility both ecologically and financially for the protection of indigenous vegetation for the greater region.
781. *Robert & Sharron Morris* (OS355.11), *Timothy Morris* (OS951.68) and *RG and SM Morris Family Trust* (OS1054.68) sought that Rule 10.3.2.2 be amended to increase maximum indigenous vegetation clearance thresholds in all zones, including 1000m² in the Peninsula Coast Rural Zone, to include exemptions for removal of regrowth indigenous vegetation within areas used for farming or forestry, and to include the exemptions listed in Rules 10.3.2.3.c and 10.3.2.4.b. Their reason was that excessive regrowth contributes to reductions of effective farming and forestry areas.
782. *Otago Peninsula Community Board* (OS588.6) sought that Rule 10.3.2.2 be amended either to allow for a greater maximum for Otago Peninsula or to exempt clearance of regenerating native grassland species or kanuka (inferred not stated). In the submitter's view, the rules are problematic for farmers on the Otago Peninsula. The maximum area of 250m² does not take into account historical regeneration of species such as *Poa cita* and other grassland species after 19th and 20th century land clearances. This is particularly relevant to Peninsula farmers who have land on the eastern coastline of the Peninsula. Traditional use of these areas has included the planting of fodder crops for stock feed. Such areas that are left fallow often see native grassland species regenerate. Under the proposed rules these areas will no longer be available for production as technically peripheral areas of *Poa cita* would be ploughed. There is no definition of original indigenous vegetation or differentiation between regeneration of grassland or shrublands. Another example is that of kanuka regeneration in areas cleared in the 19th and early 20th century.
783. *Geoff Scurr Contracting Limited* (OS794.8) sought that Rule 10.3.2.2 be amended to replace 500m² in 10.3.2.2.a.i-iv with 2.5ha, and to exempt matagouri. The submitter took issue with the vegetation clearance thresholds specified and considered that there needs to be a distinction between tussock and non-tussock species when specifying areas for protection. This needs to apply to all rural zones and not just the High Country Rural Zone. It is likely to be guided by the rural subzone to which the vegetation clearance thresholds apply. For example, in many areas bush (such as broad leaf hardwoods or indigenous forest) may require more protection than tall tussock grassland or matagouri.
784. *Federated Farmers of New Zealand* (OS919.34) sought that Rule 10.3.2.2 be amended so that the maximum permitted area of indigenous vegetation clearance on any site over any three calendar year period is 500m². The submitter was alarmed at the limiting nature of Rule 10.3.2.2 and strongly recommended that the Council reconsider the proposed maximum areas, given the nature of the rural areas where these limits are being proposed is primarily intended for primary production and associated activities, as well as whether the proposed maximum clearance limits are the best mechanism for achieving the desired result of protection of indigenous

species, given the myriad other planning mechanisms available both within and outside of the proposed plan, including covenanted land.

785. *Donald & Heather Ramsay* (OS1002.1) sought that Rule 10.3.2.2 be amended so that the maximum permitted area of indigenous vegetation clearance on any site over any three calendar year period is 500m² and so that matagouri is exempt. The submitters did not consider that the proposed limits to be reasonable, particularly as they apply over a 3 year period. They believed that protection of indigenous grasslands vegetation on private freehold land should strike a balance between ensuring indigenous species are appropriately protected while providing for a reasonable and productive use of the land.
786. *Lindsay Carruthers* (OS860.5, OS860.4), *David Frew* (OS872.5, OS872.4), *John Carruthers* (OS879.5, OS879.4) and *Neil Grant* (OS883.5, OS883.4) sought amendments to Rule 10.3.2.2.a.ii and Rule 10.3.2.2.a.v to either exempt the clearance of matagouri, or to increase the 500m² for permitted indigenous vegetation clearance in the High Country and Middlemarch Basin rural zones. The submitters were concerned that there is no clearly defined parameter of what is a 'site', and that the limits for the Middlemarch Basin Rural Zone and High Country Rural Zone of 100msq and 500msq respectively, did not allow for land to be cleared for productive farming purposes. They requested that the clearance of matagouri be provided for, not in order to enable clear-felling of vegetation, but to ensure that productive rural activities e.g. pastoral farming, can take place on suitable land unimpeded. In their view, greater recognition should be given to the overall need and purpose for why vegetation is being cleared.
787. *David Graham* (OS926.1) sought that Rule 10.3.2.2.a.iii be amended to:
- exempt all sites under one hectare in the Hill Country Rural Zone from the standard
 - increase the maximum from 500m² to an allowance of 20 to 50 hectares per year, and
 - provide exemptions so that land can continue to be farmed economically, including an exemption for the harvesting of trees in their natural rotation.
788. The submitter considered these amendments necessary to allow for the control of non-indigenous species and the control of tussock, and to allow for the harvesting of forest.
789. *Michael Ovens* (OS740.5) sought that the maximum clearance threshold for rural residential zones be increased to 500m². The submitter believes that the combination of the Rural Residential 2 rules and requirements of this provision as it stands make doing anything on this property very difficult to do and that it's all too limiting and may not be the best method for achieving the outcomes.
790. The Reporting Officer, Mr Bathgate, referred these submissions to Dr Kelvin Lloyd, the DCC's expert ecologist.
791. Referring to the request for a shorter timeframe, Dr Lloyd noted that this change would make the rule more restrictive, and that the submitters had not given specific reasons for their request. He noted: "The rural zones where this greater level of restriction would be more justifiable are the zones where there is the least amount of indigenous vegetation remaining, i.e. the Taieri Plains Rural Zone, Middlemarch Basin Rural Zone, and Peninsula Coast Rural Zone" (quoted in s42A Report, section 5.8.6.2).
792. Based on this evidence, Mr Bathgate considered it justifiable to increase the time period specified in Rule 10.3.2.2.a to five years for the Taieri Plains Rural Zone,

Middlemarch Basin Rural Zone, and Peninsula Coast Rural Zone, and recommended an amendment to the rule to this effect.

793. Dr Lloyd's evidence also considered the maximum area thresholds across all rural and rural residential zones (Evidence, paragraphs 25-43, cited in s42A Report, section 5.8.6.2).
794. He did not recommend a decrease in the maximum threshold for the Peninsula Coast Rural Zone. In relation to the maximum threshold of 500m² for the Coastal Rural Zone, he stated that it seems "anomalously high for parts of the zone with little indigenous vegetation remaining, equal with the proposed maximum areas of permitted clearance for the High Country, Hill Country, and Hill Slopes Rural Zones. The Rural Coastal Zone has a much lower proportion of indigenous vegetation and habitat remaining than these other rural zones, and has a much greater area of Acutely Threatened and Chronically Threatened land environments, and a large proportion of the remaining indigenous vegetation occurs on these environments."
795. Dr Lloyd considered that "the maximum area of permitted clearance of indigenous vegetation in parts of the northern part of the Rural Coastal Zone should be no more than 250m² in any three year period, as the protection of the remaining indigenous vegetation in this zone is very important. The parts of the northern Rural Coastal Zone where this greater restriction could apply are the areas north of Blueskin Bay, and east of Purakaunui Creek."
796. However, Mr Bathgate noted that there were no submissions seeking a decrease in the maximum area threshold for the Coastal Rural Zone; therefore, he did not recommend an amendment to Rule 10.3.2.2.a.vi to decrease the threshold.
797. Dr Lloyd considered that the maximum area thresholds in the High Country, Hill Country, and Hill Slopes Rural Zone could be increased above 500m², as "there are substantial areas of indigenous vegetation remaining in these zones, including areas of indigenous vegetation in 'depleted grassland' and 'low producing grassland' cover types." Dr Lloyd considered that an increase to 1,000m² would not result in significant loss of indigenous vegetation and habitat within these zones. On the basis of this evidence, Mr Bathgate recommended amendments to Rule 10.3.2.2.a.ii, iii, iv to this effect.
798. In relation to the submissions requesting that the maximum area for tussock clearance in the High Country Rural Zone be amended to 1000m², Dr Lloyd considered that there was merit in this proposal in relation to the Taieri Ridge and Mare Burn catchment parts of the High Country Rural Zone. He stated that "This part of Dunedin City District lies within or adjacent to the Macraes Ecological District, which is noted for very high vascular plant species diversity, including many Threatened and At Risk plant species, and is also an important area for Threatened and At Risk lizard species. Many of these species occur in tussock grassland habitats, which are also important for frequent and safe dispersal of indigenous lizards. Thus the remaining less modified areas of indigenous tussock grassland on the Taieri Ridge and Mare Burn catchment warrant greater protection. In my opinion, permitted clearance of indigenous tussock grassland vegetation should not exceed 1,000m² in this part of the Rural High Country Zone."
799. On the basis of this evidence, Mr Bathgate recommended that Rule 10.3.2.2.a.ii be amended to limit clearance of tussock species to 1000m² in the area indicated by Dr Lloyd; he noted that a mapped area would need to be added to planning maps to delineate the Taieri Ridge and Mare Burn catchment, he included this as part of the recommendation.
800. In relation to the rural residential zones, Dr Lloyd considered the 250m² threshold to be justified, as "Rural Residential Zones tend to be in local areas that have had more

intensive land use and vegetation clearance than in the surrounding zone. In particular, they often contain indigenous vegetation in gullies, which can have important ecological functions.” Mr Bathgate agreed with the conclusion of Dr Lloyd that these zones are likely to have experienced pressure for vegetation clearance, and did not recommend that the amendment proposed by the submitter be accepted.

801. In relation to the point raised by David Graham that an exemption is required for the harvesting of forestry trees, Mr Bathgate noted the exemption in Rule 10.3.2.2.b.i which exempts “vegetation clearance as part of existing forestry activity where the clearance involves an understorey of indigenous vegetation, or is for the maintenance of forestry access or firebreaks”. He did not consider any other exemptions necessary.
802. At the hearing, Dr Lloyd responded to questions from the Panel in relation to his evidence. He indicated that, in his view, a regulatory approach was not sufficient to protect indigenous flora and fauna; engagement with landowners was also important.
803. At the hearing, Ms Lala Fraser appeared for *STOP* and tabled a statement, in which she expressed support for the Reporting Officer’s recommendations to amend Rule 10.3.2.2 to reduce certain maximum area of indigenous vegetation clearance thresholds.
804. In his tabled statement on behalf of *Federated Farmers of New Zealand*, Mr David Cooper did not dispute the evidence of Dr Lloyd; he stated that Federated Farmers “support what appears to be a ‘risk based’ or ‘rarity based’ rule approach’ (specific rules targeted to species and locations) as “the basis for a reasonable regulatory approach to the overall objective of maintaining and enhancing that state of indigenous biodiversity in Dunedin”.
805. However, Mr Cooper was concerned that Rule 10.3.2.2.a as amended still did not provide farmers with the ability to farm reasonably in some areas, and that “a regulatory approach is not sufficient”. In speaking to the statement, and in answer to questions from the Panel, Mr Cooper reiterated the view that the Council needed to invest in a non-regulatory approach informing farmers of on-farm values, providing support and recognition for preservation efforts, particularly where 2GP provisions were more constraining.
806. *Mr Timothy Morris* appeared at the hearing and spoke to his statement. He sought that the permitted clearance area for Peninsula Coast Rural Zone be doubled to 500m² (a compromise from the 1000m² requested in his submission), and that the rule apply per three year period rather than five year period. In addition, in relation to the Reporting Officer’s recommendation (discussed in section 3.4.6.3, below) that ‘vegetation which has grown naturally on land that has been clear of such vegetation less than 15 years prior’ and ‘clearance of areas that have been cultivated in the last 15 years’ be exempt from Rule 10.3.2.2.a, *Mr Morris* requested that the 15 year time periods be removed from these exemptions, in order to allow for management of vegetation on any land previously cultivated at any time.
807. *Mr Robert Van Turnhout* (whose submission OS388.2 requesting exemptions from Rule 10.3.2.2.a is discussed in section 3.4.6.3, below) appeared and tabled a statement at the hearing. *Mr Van Turnhout* held the view that the amount of permitted clearance should be related to the size of any site, e.g. 1000m² or 5% of a site up to a maximum of 2ha per 3 year period.
808. Mr Bathgate responded by stating “I have not had the chance to discuss this request further with Dr Lloyd, but note that the 250m² per 5 year period was based on his evidence (paras 25-43). I do not favour removing the 15 year time period from the exemptions as I consider it provides certainty to the rule and having a defined time period assists with monitoring of the rule. I note the 15 year time period is supported by Dr Lloyd (refer paras 55-59, 79).” (Revised Recommendations Summary, p.25)

809. At the hearing, *Mr Murray Soal* (whose submission OS291.5, discussed in section 3.4.4.1 above, requested amendment of Rule 10.3.2 as a whole, to make the provisions less prohibitive) questioned the use of Land Environments of New Zealand (LENZ) data in developing rules, and made the following comments in relation to Rule 10.3.2.2.a:
- 1000m² every 3 years seems arbitrary
 - provisions should be related to size of site.
810. The Reporting Officer responded that the time period and clearance thresholds are not arbitrary, but based on technical report and ecological evidence. In response to the request for permitted clearance to be related to the size of the site, the Reporting Officer responded that “The thresholds in Rule 10.3.2.2 are based on the different rural zones, how much indigenous vegetation remains within them, and the size of remaining fragments. It is a zone-based approach with the rule applied at a site-level basis. Allowing greater clearance on larger sites could result in adverse effects on more significant larger fragments of vegetation.” (Revised Recommendations Summary, p.7)

3.4.6.2.1 *Decision and Reasons*

811. We note that, as outlined in section 3.4.1, above, as a result of clause 16 reformatting, Indigenous Vegetation Clearance that was exempt from the notified definition of Indigenous Vegetation Clearance, or that was permitted under notified Rule 10.3.2.2 (Maximum area of indigenous vegetation clearance) is now provided for as Indigenous Vegetation Clearance – Small Scale (which is a permitted activity), with Rule 10.3.2.A setting out the small-scale threshold standard. The maximum area thresholds in Rule 10.3.2.2.a have been transferred to Rule 10.3.2.A.c.
812. In considering the submissions requesting amendments to Rule 10.3.2.2.a, we have relied primarily on the expert evidence of Dr Lloyd.
813. We note that a number of submitters raised concerns about the impact of Rule 10.3.2.2.a on farming operations, and submitted seeking an increase in permitted maximum clearance standards. Having considered these submissions alongside the evidence of Dr Lloyd, we generally consider it more appropriate to include provisions permitting specific types of clearance where evidence suggests that these types are especially important to farming, and that clearance can be accommodated without jeopardising achievement of Objective 10.2.1. We consider this particularly preferable having considered evidence relating to the absence of a comprehensive schedule of areas of significant indigenous vegetation and significant habitats of indigenous fauna (a matter discussed elsewhere in this decision; see section 3.3).
814. We consider this more targeted approach minimises the risk of clearance of significant indigenous vegetation and significant habitats of indigenous fauna, while also allowing for certain types of clearance that were raised by submitters as being particularly important to ongoing farming operations. We note that requests for specific exemptions are discussed in section 3.4.6.3, below, and consider that, taken as a whole, the amended provisions of Rule 10.3.2.A address the concerns raised by these submitters while giving effect to Objective 10.2.1 and the higher order policy direction it responds to.
815. Based on Dr Lloyd's evidence that the Taieri Plains Rural Zone, Middlemarch Basin Rural Zone, and Peninsula Coast Rural Zone have very little indigenous cover remaining, we agree that strict indigenous vegetation clearance rules are justified, and therefore accept in part the submissions of *STOP* (OS900.147) and *Forest and Bird NZ* (OS958.48) to amend the maximum clearance areas to apply over five year periods in these zones. With the proviso that our decision permits additional types of

clearance by way of including them in the Indigenous Vegetation Clearance – small scale standard (as discussed in section 3.4.6.3), we also accept in part the submissions of *STOP* (OS900.148) and *Forest and Bird NZ* (OS958.51, OS958.52) to retain the maximum area of indigenous vegetation clearance for these zones.

816. Given that it was not specifically supported by Dr Lloyd, we do not support additionally reducing the maximum permitted clearance area to 100m² in the Peninsula Coast Rural Zone, and therefore reject the submission of *Forest and Bird NZ* (OS958.54), and the submission of *STOP* (OS900.147) insofar as it sought this outcome.
817. Based on Dr Lloyd's evidence we reject the submission of the *Otago Peninsula Community Board* (OS588.6), and the submissions of *Lindsay Carruthers* (OS860.4), *David Frew* (OS872.4), *John Carruthers* (OS879.4) and *Neil Grant* (OS883.4) insofar as they sought to revise upwards the maximum permitted clearance in the Peninsula Coast Rural Zone and Middlemarch Basin Rural Zone respectively.
818. We note Dr Lloyd's evidence that the Coastal Rural Zone has a much lower proportion of indigenous vegetation and habitat remaining than other rural zones with similar maximum areas of permitted clearance (High Country, Hill Country, and Hill Slopes Rural Zones), and a much greater area of Acutely Threatened and Chronically Threatened land environments, with a large proportion of the remaining indigenous vegetation occurring in these environments. Dr Lloyd's assessment is that the maximum permitted clearance area in this zone is "anomalously high" although he appears to clarify this statement by recommending no more than 250m² of clearance in any three year period only north of Blueskin Bay and east of Purakaunui Creek. We agree with the Reporting Officer's assessment that there is no scope to amend the maximum area of permitted clearance as recommended, and therefore accept the submission of *Forest and Bird NZ* (OS958.62) to retain the maximum permitted area as notified.
819. We consider there is scope under the submissions of *STOP* (OS900.147) and *Forest and Bird NZ* (OS958.48) to amend the period within which the proposed maximum clearance area is permitted from three to five years in the Coastal Rural Zone, which may have a similar effect. However, we concluded that, in the absence of evidence suggesting the change was necessary across the whole zone, it would result in an unacceptably complex rule involving the consequential addition of a mapped area for part of the Coastal Rural Zone.
820. We accept Dr Lloyd's evidence that, given the substantial areas of indigenous vegetation remaining in the High Country, Hill Country, and Hill Slopes Rural Zone, an increase in the maximum permitted clearance area to 1000m² would not result in significant loss of indigenous vegetation and habitat. We support an amendment to this effect, and consider it constitutes partial acceptance of *Hummock Run Ltd* (OS1082.1), *Robert & Sharron Morris* (OS355.11), *Timothy Morris* (OS951.68), *RG and SM Morris Family Trust* (OS1054.68), *Geoff Scurr Contracting Limited* (OS794.8), *Lindsay Carruthers* (OS860.5), *David Frew* (OS872.5), *John Carruthers* (OS879.5), *Neil Grant* (OS883.5) and *David Graham* (OS926.1). We note that a number of these submission points also touched on matters relating to exemptions, which are discussed in section 3.4.6.3, below. We therefore reject the submissions of *STOP* (OS900.148) and *Forest and Bird NZ* (OS958.49, OS958.50, OS958.63) to retain the maximum area of indigenous vegetation clearance for these zones.
821. We also accept Dr Lloyd's evidence that clearance of remaining indigenous tussock grassland vegetation should be restricted to 1,000m² on the Taieri Ridge and in the Mare Burn catchment (Rural High Country Zone), due to high indigenous biodiversity values and extensive historic clearance and modification. We support an amendment to this effect, and consider this constitutes partial acceptance of the submission of

Forest and Bird NZ (OS958.49) and *STOP* (OS900.147). We note this also requires consequential inclusion of a Taieri Ridge and Mare Burn Mapped Area.

822. Further, we accept Dr Lloyd's evidence that a maximum permitted clearance area of 250m² is justified in Rural Residential Zones, given the likelihood that they have been subject to greater historical clearance than surrounding rural zones. We support retention of the 250m² maximum permitted clearance area, and therefore reject the submission of *Michael Ovens* (OS740.5) and accept the submissions of *STOP* (OS900.148) and *Forest and Bird NZ* (OS958.53).
823. We reject the submissions of *Federated Farmers of New Zealand* (OS919.34) and *Donald & Heather Ramsay* (OS1002.1) because we favour the more evidence-based, zone-specific notified approach (amended as outlined above) over a single city-wide rule. However, as discussed above, we consider the amendments we have made to provide for more types of clearance as Indigenous Vegetation Clearance – Small Scale (as discussed in section 3.4.6.3, below) may go some way to addressing the concerns raised by these submitters the rule's potential impacts on farming.
824. Finally, we do not support the percentage-based approach advocated by *Mr Van Turnhout* and *Mr Soal* at the hearing. We note that the time periods and clearance thresholds for Indigenous Vegetation Clearance were established drawing on expert evidence, and we have amended them based on submissions and additional expert evidence. We consider the zone-based approach to effectively respond to differences across the city and to current ecological conditions, and we accept the Reporting Officer's assessment that allowing greater clearance on larger sites could result in unacceptable adverse effects on larger, more significant areas of indigenous vegetation.
825. Overall, therefore, our decision amends Rule 10.3.2.A.c (which was notified as 10.3.2.2.a) as follows.
- Amend the time period within which the maximum area threshold applies from 3 years to 5 years in the Middlemarch Basin, Peninsula Coast and Taieri Plan rural zones (NatEnv 900.147).
 - Create a new Taieri Ridge and Mare Burn mapped area within the High Country Rural Zone; in this mapped area, amend the maximum area of clearance of tussock species from 10000m² (1ha) to 1000m² (NatEnv 900.147).
 - Amend the maximum area of clearance of non-tussock species in the High Country Rural Zone (both within and outside the Taieri Ridge and Mare Burn mapped area) from 500m² to 1000m² (NatEnv 860.5).
 - Amend the maximum area of clearance in the Hill Country Rural Zone from 500m² to 1000m² (NatEnv 1082.1).
 - Amend the maximum area of clearance in the Hill Slopes Rural Zone from 500m² to 1000m² (NatEnv 355.11).

826. See Appendix 1.

3.4.6.3 Submissions seeking amendment of exemptions to Indigenous Vegetation Clearance provisions

827. Submissions on this topic took the form of:
- requests to amend the exemptions of the definition of Indigenous Vegetation Clearance, and
 - requests to amend the exemptions to the limits on the maximum area of indigenous vegetation clearance, in Rule 10.3.2.2.b.

828. *Aurora Energy Limited* (OS457.216) supported the exemption within the Indigenous Vegetation Clearance definition, for maintenance of existing network utilities; in their view this supported providers of Regionally Significant Infrastructure who required the ability to maintain, replace and upgrade assets to ensure a safe and reliable electricity supply.
829. *Federated Farmers of New Zealand* (OS919.77) sought that the definition of Indigenous Vegetation Clearance be amended so that the exemptions cover all areas in the rural zones, not just coastal character overlay zones and ASCVs. The submitter also questioned why the exemptions to the definition did not apply in hazard overlay zones. This submission was opposed by *Forest and Bird NZ* (FS2482.5).
830. The Reporting Officer, Mr Bathgate, did not recommend that this submission point be accepted. He noted that indigenous vegetation clearance is a restricted discretionary activity in coastal character overlay zones and ASCVs; therefore, for these areas, it is necessary to include exemptions in the definition, to ensure that resource consent is not required. In the rural zones outside these areas, however, indigenous vegetation clearance is a permitted activity, subject to the vegetation clearance standards. Therefore, outside coastal character overlay zones and ASCVs, it is appropriate to include exemptions in the vegetation clearance performance standards under Rule 10.3.2. He noted that some of the exemptions for coastal character overlay zones and ASCVs set out in the definition were also already included in the performance standards; and that he was recommending, in response to submissions, that the other exemptions also be added to the performance standards.
831. In relation to hazard overlay zones, Mr Bathgate explained that the exemptions do not apply in these areas because hazard overlay zones are subject to their own vegetation clearance standard, set out in Rule 11.3.2 Maximum Area of Vegetation Clearance in the Hazard Overlay Zones. Exemptions to Rule 11.3.2 were less extensive than exemptions to other vegetation clearance provisions, particularly in relation to dune systems mapped areas, because of the sensitive nature of these areas in terms of exposure to risk (s42A Report, section 5.8.2).
832. *STOP* (OS900.2) and *Forest and Bird* (OS958.2) sought that the exemptions listed in the definition be amended to require eco-sourcing of replacement indigenous species, and to remove the exemption for clearance for the erection of fences and construction of tracks.
833. Mr Bathgate also recommended that these submission points be rejected; he considered that an eco-sourcing requirement would be too restrictive an imposition on landowners and others seeking to undertake restoration planting, that it would be difficult to monitor, and that it may have a negative impact on the willingness of people to undertake conservation activities. He did not support removing the exemption for the erection of fences and creation of tracks, as he considered that these activities could contribute positively to conservation, farming, tourism and other rural activities, and it was appropriate to allow (small) areas of indigenous vegetation clearance to be cleared for these activities (s42A Report, section 5.8.2).
834. In terms of submissions on Rule 10.3.2.2, a number of these related directly to exemptions to the rule (10.3.2.2.b), while others (which are also discussed in section 3.4.6.2, above) referred to exemptions as part of their requests to amend the area thresholds in Rule 10.3.2.2.a.
835. *Mr Robert Van Turnhout* (OS388.2) sought that Rule 10.3.2.2 be amended to allow for additional exemptions. The submitter stated that he gets significant seeding as a result of the native bush that he has kept, and that he felt the new Plan destroys his ability to keep the native bush in check, continue with planting forestry in suitable areas and maintain the basics of farm tracks, whilst his neighbours on two sides who

have turned their land into forestry blocks are completely exempt from these draconian provisions. *Mr Van Turnhout* considered that provisions should allow indigenous vegetation clearance on land that has been cultivated in the last 15 years, and to remove regrowth manuka and fern on areas of land used for stock grazing.

836. Mr Bathgate noted that a number of submitters who sought increases to the maximum thresholds (discussed in section 3.4.6.2, above) also sought exemptions for regenerating indigenous vegetation, as well as to include the exemptions listed in Rules 10.3.2.3.c and 10.3.2.4.c. These submitters included *Timothy Morris* (OS951.68) and *RG and SM Morris Family Trust* (OS1054.68) and *Otago Peninsula Community Board* (OS588.6). Also, submissions from Ben Graham (OS361.7), Mathew O'Connell (OS364.6) and John Scott (OS1084.5) (discussed in section 3.4.4.1, above), sought an exemption for areas that have been cultivated (including oversowing, top dressing, spraying or burning off), oversown or burnt off in the last 15 years.
837. Mr Bathgate referred this submission, and all others relating to requests to exempt particular types of indigenous vegetation clearance from Plan provisions, to Dr Lloyd (expert ecologist).
838. Dr Lloyd supported the requested amendment to provisions to allow clearance of indigenous vegetation that has regenerated on previously-cleared farmland. He stated (quoted in s42A Report, section 5.8.6.2):

Scattered regeneration of mānuka and kānuka on farmland does not have very high ecological value, and could be exempt from vegetation clearance rules....An exemption could be provided for previously-cleared land with indigenous tree regeneration that is less than 15 years old without significantly affecting indigenous vegetation and habitat....A similar exemption could be provided for land cultivated within the last 15 years, because cultivation generally destroys indigenous vegetation, and it is not likely that much indigenous regeneration would be present within 15 years of cultivation.
839. However, he did not support exemptions for land that had experienced topdressing, oversowing, spraying with herbicide or burning off in the last 15 years, stating that "These activities can be applied at relatively low cost over any kind of indigenous vegetation, thus potentially allowing any indigenous vegetation to be 'cleared'".
840. Mr Bathgate noted that Dr Lloyd had indicated he did not support the exemption, in notified provisions, for Manuka that is adversely affected by Manuka Blight caused by *Eriococcus orariensis*, stating that other scale insects which do not kill the host plant have replaced *Eriococcus orariensis*, which is now no longer common. Therefore, in Dr Lloyd's view, this exemption was likely to have little effect and should be removed. However, Mr Bathgate indicated that no submissions had requested this change; therefore, there was no clear scope to make it.
841. Dr Lloyd also reviewed the exemptions listed in two other vegetation rules 10.3.2.3.c and 10.3.2.4.b, and considered that it would be reasonable also to apply these exemptions to the general indigenous vegetation clearance rule 10.3.2.2.
842. On the basis of the evidence of Dr Lloyd, Mr Bathgate recommended that the exemptions in Rule 10.3.2.2.b should be expanded to include control of regenerating indigenous vegetation on areas that have previously been farmed, and to allow for activities such as the erection and maintenance of fences and the construction and maintenance of tracks (s42A Report, section 5.8.6.2).
843. *Otago Regional Council* (OS908.29) sought that Rule 10.3.2.2.b be amended to provide for unrestricted clearance of indigenous vegetation for pest control in accordance with the ORC Pest Management Plan for Otago 2009; and unrestricted

clearance of indigenous vegetation that poses a toxic threat to livestock with appropriate controls, which would give effect to pORPS-dv Policies 2.2.2(e), 4.3.1 and 4.5.5 (note that these are renumbered in the pORPS-dv). The submitter believed that proposed Rule 10.3.2.2 did not provide for the clearance of vegetation in locations where that vegetation restricts pest control of rabbits (exacerbating the pest problem) and/or is toxic to livestock - examples being matagouri (rabbit habitat) and tutu (a toxic species). Primary productivity may be lost if rabbits are not controlled, as well as having costs imposed on a neighbouring property where an affected land owner's rabbit control is insufficient. The inability to clear vegetation as part of a rabbit control program may also cause the land owner to be in breach of the ORC's Pest Management Plan for Otago 2009.

844. Again, this submission was referred to Dr Lloyd. In relation to the request to provide for unrestricted clearance of indigenous vegetation for pest control, he stated (quoted in s42A Report, section 5.8.6.2):

It is not clear why unrestricted clearance is being sought by the submitter. This could potentially allow a 'scorched earth' approach to indigenous vegetation, where indigenous vegetation providing habitat for pest animals is able to be cleared, so as to remove this habitat.

845. In relation to the request to allow unrestricted clearance of indigenous vegetation that poses a toxic threat to livestock, Dr Lloyd stated (quoted in s42A Report, section 5.8.6.2):

Toxicity to livestock is a property of plant species, not vegetation, and the species cited in the submission is tutu (Coriaria spp.). Coriaria sarmentosa, a shrubby species that dies back in winter, is the most common species of tutu in the Dunedin area, occurring in mostly upland areas, where its primary habitat is naturally-disturbed riparian sites. Similarly, Coriaria arborea, a small tree, primarily occurs in riparian sites in Dunedin City District. Other species that have toxic effects include ngaio (Myoporum laetum), kowhai (Sophora microphylla), and tree nettle (Urtica ferox) which are important native tree and shrub species of highly reduced coastal forest types. As such, clearance of indigenous vegetation containing these species would potentially generate other adverse effects, particularly on coastal, riparian and freshwater values, which may also be inconsistent with the proposed Otago RPS. Alternative strategies, such as fencing off areas of riparian and coastal vegetation containing these species, could potentially be used to prevent stock access to plants.

846. Further, Mr Bathgate noted that all species from the Pest Management Strategy for Otago 2009 were listed in Appendix 10B to the Natural Environment Strategy, which exempts clearance of these (exotic) species when undertaking vegetation clearance under rules 10.3.2.1 and 10.3.2.3. He also noted that the tutu species described in the evidence of Dr Lloyd was not listed in the Pest Management Strategy.

847. Based on these considerations, and on the evidence of Dr Lloyd, he did not recommend any changes to provisions in response to the ORC's submission point.

848. *Martin and Macy Cameron* (OS138.1), *FFNZ* (OS919.38) and *Jeremy David & Julie Maxine Cameron* (OS969.1) each sought to exempt the clearance of matagouri from Rule 10.3.2.2. *Martin and Macy Cameron* noted that pests thrive in matagouri; the plant poses Health and Safety concerns; it is unattractive when it becomes a thick, dense mass. The submitters believe that matagouri needs to be controlled, not eliminated, but it needs to be left to their discretion so they can continue to farm sustainably into the future.

849. *Federated Farmers of New Zealand* was concerned because matagouri is a drought tolerant plant which may become prevalent on pasture that has not been grazed for some time. If unchecked, it could house both pest plants and pest animals and can

cause problems for shearers and wool processing as it becomes attached to sheep wool.

850. *Jeremy David & Julie Maxine Cameron* also noted that matagouri provides significant rabbit habitat, and that rabbit population control becomes difficult and very expensive. Further, they noted that matagouri also provides habitat for wild pigs and Opossums which carry TB. Contamination of wool by matagouri is also ongoing.
851. Mr Bathgate noted that a number of submissions (discussed in section 3.4.6.2, above) who sought increases to the maximum thresholds also sought exemptions for matagouri. These include *Geoff Scurr Contracting Limited* (OS794.8), *Donald & Heather Ramsay* (OS1002.1), *Lindsay Carruthers* (OS860.5, OS860.4), *David Frew* (OS872.5, OS872.4) *John Carruthers* (OS879.5, OS879.4) and *Neil Grant* (OS883.5, OS883.4)
852. Dr Lloyd considered the question of whether matagouri clearance should be exempt from vegetation clearance provisions in paragraphs 45-54 of his evidence (cited in s42A Report, section 5.8.6.2). He noted:
- Matagouri is a shrub of inland South Island environments. It is able to thrive on non-cultivated land in the inland rural zones as it can re-sprout after fire, has thorns that deter grazing, and like many legumes (e.g. white clover - Trifolium repens, and gorse - Ulex europaeus), responds positively to application of superphosphate fertiliser. It is very likely to have increased significantly in extent in Central Otago following anthropogenic fires that destroyed the previous woody vegetation. Historically, matagouri most likely occupied sites that were either too cold, too disturbed, or had too thin soils to support taller indigenous woody vegetation. More natural stands of matagouri therefore occur on alluvial terraces and fans, and around rock outcrops.*
853. Dr Lloyd did not support a complete exemption for matagouri, stating:
- Within the inland zones of Dunedin City District, stands of matagouri beside streams, on alluvial terraces, and on alluvial fans are likely to best represent the historic distribution of matagouri. Matagouri on these landforms should not therefore be covered by an exemption. These stands of matagouri are generally taller, and could also be captured by a maximum height criterion. More diverse shrubland stands containing matagouri should not be exempt from clearance, because these are likely to represent less modified shrublands and have more important ecological functions, such as providing habitat for indigenous birds, lizards, and invertebrates.*
854. Dr Lloyd suggested that an exemption could apply to clearance of stands of matagouri-dominant shrubland that contain no matagouri individuals greater than 1.5 m tall and that contain no more than one additional indigenous shrub species.
855. Taking into account both the concerns of the submitters regarding the spread of matagouri and its impacts on farming operations, and the evidence of Dr Lloyd regarding the importance of the species in its more natural and pre-human setting and/or in conjunction with other shrubland species, Mr Bathgate recommended a moderated amendment to exempt 'vegetation clearance of stands of matagouri-dominant shrubland that contain no matagouri individuals greater than 1.5m tall and that contain no more than one other non-matagouri indigenous shrub species'.
856. Finally, *Shane Johnson and Sharee Watts* (OS1067.3) sought that Rule 10.3.2.2.b be amended to include an exemption for the establishment of a 1000m² building platform and 3.5m wide access way on sites where residential activity is a permitted activity, and an exemption for the ability to put in firebreaks.
857. In responding to this submission, Mr Bathgate noted that the recommended increase in thresholds to 1,000m² in the Hill Slopes, Hill Country and High Country zones (see section 3.4.6.2) would allow for a building platform of 1,000m² to be established in

these zones. This would not provide for additional clearance of indigenous vegetation for the establishment of access roads and fire breaks. However, this did not mean that it would take 9 years of clearing to establish these, but rather that resource consent would be required to clear more than the permitted amount, in order to assess the effects on biodiversity. The resource consent requirement gives the Council the ability to assess the effects on indigenous biodiversity, and allows input into the design and location of these development activities. Mr Bathgate considered this the appropriate approach to managing indigenous vegetation clearance associated with the establishment of residential activities. He also noted that, in many situations, resource consent would be required separately by the Plan's earthworks standards when establishing access roads or firebreaks. Therefore, he did not recommend that *Mr Johnson and Ms Watts'* submission be accepted.

858. At the hearing, Ms Lala Fraser, on behalf of *STOP*, spoke to a tabled statement, noting that *STOP* from its earliest plantings has used the concept of eco-sourcing. Plants used for revegetation are only plants that would have occurred naturally in that particular location, and the seed is preferably locally sourced. The alternative suggestion is that instead "Guides to Planting" offer guidance and be less prescriptive.
859. Mr David Cooper appeared and tabled a statement on behalf of *Federated Farmers of New Zealand*. The statement broadly supported the Section 42A recommendation in relation to the definition of Indigenous Vegetation Clearance. The *Federated Farmers of New Zealand* statement also expressed strong support for the additional exemptions proposed for 10.3.2.2.b, specifically mentioning provisions at iii, iv, and v, and stating that while the amendments do not address all farmers' concerns, they make the rules more workable. Mr Cooper also noted that Federated Farmers considered the exemption for construction or maintenance of tracks up to 2m in width to be insufficient. Given the increased use of side by sides, the submitter requested that this be revised to 3m.
860. At the hearing *Mr Van Turnhout* appeared and tabled a statement. *Mr Van Turnhout* was opposed to any removal of the Manuka blight exemption, and continued to seek exemptions for track construction or maintenance up to 4m width, as he considered the 2m exemption to be no practical use, given that the minimum blade width for bulldozers of 2.4m.
861. *Jeremy and Julie Cameron* appeared at the hearing and spoke. The submitters reiterated their request that the clearance of matagouri be exempt from Rule 10.3.2.2. The submitters stated that they do not want to eradicate matagouri from their property - it can be useful in providing shade and shelter for stock. However, dense areas of this species can create difficulties with the control of pests (e.g. rabbits, possums). There are also issues with fleece contamination, which also creates a health and safety risk for shearers. The submitters were pleased that their submission was recommended to be partially accepted.
862. *Mr Murray Soal* (whose submission OS291.5, discussed in section 3.4.4.1, requested amendment of Rule 10.3.2 as a whole to make the provisions less prohibitive) spoke at the Hearing, and queried whether clearance of regrowth of Manuka/Kanuka of 100mm or higher would be managed by the proposed provisions. He considered that the provisions should exempt the clearance of regeneration up to 20 years old.
863. In response to *Mr Soal*, Mr Bathgate commented that the clearance of Manuka/Kanuka at height of 100mm is unlikely to be controlled by proposed provisions if it is regrowth vegetation, as it will be less than 15 years old. He noted that the request for an exemption for 20 years regrowth vegetation was not supported by ecological evidence, and that it is likely that 15 years regrowth would be easier to verify than 20 years (Revised Recommendations Summary pp.8-9).

864. With regard to submitters' requests that exemptions for the construction or maintenance of tracks be extended to tracks up to 3 or 4m wide, rather than 2m wide, the Reporting Officer responded (Revised Recommendations Summary, p.7):

I consider the intention of this exemption is to provide for walking or biking tracks which will also provide for small motorised vehicles such as quad bikes. I consider wider farm tracks that provide for larger motorised vehicles are not intended to be captured by this rule...I note the submitter's comments in relation to the minimum blade width of 2.4m, and also questions at the hearing as to whether allowance was made for drainage channels and culverts. I note also comments from Federated Farmers in relation to safety and the increased use of side-by-sides rather than quad bikes. In relation to these submissions I consider that the exemption could be increased to a 3m width as requested by Federated Farmers, which I consider strikes a reasonable balance in terms of allowing suitable machinery to clear and use tracks, allowing for drainage within the specified width, and not causing the potentially larger loss of vegetation that a wider allowance such as 4m or more would entail. I consider this exemption should be altered consistently across all the vegetation clearance rules where it applies.

3.4.6.3.1 *Decision and Reasons*

865. By way of background, we note that, as outlined in section 3.4.1, as a result of clause 16 reformatting, Indigenous Vegetation Clearance that was exempt from the notified definition of Indigenous Vegetation Clearance, or that was permitted under notified Rule 10.3.2.2 (Maximum area of indigenous vegetation clearance) is now provided for as Indigenous Vegetation Clearance – Small Scale, with Rule 10.3.2.A setting out the small-scale threshold standard.
866. We also note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
867. We accept in part the submissions of *STOP* (OS900.2) and *Forest and Bird* (OS958.2).
868. With regards to “eco-sourcing”, while we consider that requiring the use of species that naturally occur in the area would be desirable in areas managed specifically for their biodiversity values or natural character values, to avoid being an overly onerous requirement on the landowner, we consider a clear, easily accessible list of appropriate species for each part of Dunedin would need to be available. Noting the evidence of the Reporting Officer (in the s42A Report) that species lists have not yet been completed, we do not consider it possible to implement the approach suggested by the submitter at this time, and instead recommend that the species lists are completed, and the approach is considered as part of a future Plan review.
869. In relation to the erection of fences and the construction of tracks, we agree with the Reporting Officer's assessment that fences and tracks contribute positively to conservation and farming as well as other activities anticipated in the rural zone, and it is appropriate that small areas of indigenous vegetation clearance can be cleared for this activity in ASBVs and coastal overlay zones. While we accept that some areas will have conservation management plans, other areas (particularly NCCs) will often not be subject to a conservation management plan, so we do not consider it appropriate to rely on that provision. We accept that new fences and tracks are sufficiently important to permitted land uses in these overlays, and undertaken on a sufficiently regular basis, to warrant permitting clearance for the erection of fences and the construction of some tracks. We note that any such clearance is also subject to Rule 10.3.2.4 (Protected species) which, as amended (see our decision in section 3.4.7.4), exempts clearance for the erection of fences only where:

- any fence posts are located outside of the dripline of mature indigenous trees listed in Appendix 10A; and
 - the erection of new fences does not damage specimens of threatened plant species listed in Appendix 10A.1, important breeding, refuge, feeding or resting sites for indigenous fauna listed in Appendix 10.A2, or mature indigenous trees listed in Appendix 10A.3.
870. Rule 10.3.2.4 also (as amended; again, see section 3.4.7.4) limits the exemption relating to clearance for the construction of tracks to situations in which track construction does damage specimens of threatened plant species listed in Appendix 10A.1, important breeding, refuge, feeding or resting sites for indigenous fauna listed in Appendix 10.A2, or mature indigenous trees listed in Appendix 10A.3.
871. However, we do consider that clearance for construction of tracks up to 2m in width should be permitted in ASBVs, ONFs²⁰ and coastal character areas only where the activity is associated with permitted land use or city-wide activities.
872. We consider that, taken together, these provisions appropriately balance the protection of the values of ASBVs and coastal character overlay zones, with the operational needs of permitted activities.
873. In response to these submissions, we have therefore amended Rule 10.3.2.A.a.iv so that clearance for the construction of tracks (associated with permitted land use or city-wide activities) up to 2m in width, in ASBVs, ONFs and coastal character areas, and up to 3m in width outside these areas, is treated as Indigenous Vegetation Clearance – Small Scale (i.e. as a permitted activity).
874. We accept in part the submission of *David Graham* (OS926.1) (discussed in section 3.4.6.2, above), insofar as he sought that exemptions be provided so that land can continue to be farmed economically. As described in response to the submissions discussed below, given that farming is a permitted in the zones affected by this standard, we consider a number of amendments are warranted so as to better provide for this activity, where they can be accommodated without compromising achievement of Objective 10.2.1. As explained in section 3.4.6.2, we consider the amendments described below also constitute acceptance in part of the submissions of *Robert George & Sharron Margaret Morris* (OS355.20), *Timothy George Morris* (OS951.14) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust* (OS1054.14) and *Murray Soal* (OS291.5). All amendments are listed in Appendix 1 and attributed to OS291.5.
875. In relation to submissions on Rule 10.3.2.2.b, we relied primarily on the expert evidence of Dr Lloyd.
876. We accept in part of the submissions of *Robert Van Turnhout* (OS388.2), *Timothy Morris* (OS951.68), *RG and SM Morris Family Trust* (OS1054.68) and *Otago Peninsula Community Board* (OS588.6) insofar as they sought that clearance of some form of regenerating indigenous vegetation be permitted. We do not support the 20 year exemption sought by *Mr Soal* at the hearing; we agree with the Reporting Officer's assessment that there is no evidence support this. As discussed in section 3.4.4.1, we note Dr Lloyd's evidence that clearance of scattered regeneration of mānuka/kānuka and other indigenous vegetation less than 15 years old (including on land that has been cultivated within the last 15 years) would not significantly affect biodiversity values. We accept this, but we consider that 10 years is a more straightforward timeframe to use for monitoring purposes. Our decision therefore provides for

²⁰ As discussed in section 3.7.8.6, in response to OS958.106 we have amended Rule 10.3.2.A so that ONFs are treated in the same way as ASBVs and coastal character overlay zones in terms of the types of clearance that are always treated as 'indigenous vegetation clearance – small scale'.

“clearance of indigenous vegetation from areas that, within the last 10 years, have been cultivated or clear of such vegetation (outside ASBVs, ONFs, ONCCs, HNCCs and NCCs only), provided that the clearance is associated with a permitted land use or city-wide activity” as part of Indigenous Vegetation Clearance – small scale (see Rule 10.3.2.A).

877. We accept Dr Lloyd's evidence that exemptions for land that has experienced topdressing, oversowing, spraying with herbicide or burning off should not be provided for, given the potential for these methods to be employed widely and at relatively low cost. We conclude that providing for these methods would risk extensive loss of indigenous vegetation.
878. In their presentations at the hearing, both *Mr Van Turnhout* and *Federated Farmers of New Zealand* requested provision for tracks wider than 2m to be exempted from Rule 10.3.2.2.a. While neither submitter canvassed this specific issue in their original submissions, we consider there is scope for this amendment from other submissions, specifically that of *Murray Soal* (OS291.5).
879. We accept the statements of *Federated Farmers of New Zealand* and *Mr Van Turnhout* that, especially in the light of the increased use of 'side-by-sides', tracks with greater width than 2m are required to support farming activities. As discussed above, while we do not accept that tracks of greater width should be permitted in areas managed for their biodiversity or natural character values, we have amended rules so that the construction of tracks up to 3m in width is permitted outside of ASBVs, ONFs and coastal character overlays, provided that the tracks are associated with permitted land use or city-wide activities. We consider that this is reasonable, given that farming is a permitted activity in these areas. Based on the evidence presented, we consider 3m sufficient to allow for passage of 'side-by-sides' plus an allowance for drainage works.
880. We accept in part the submission of *Martin and Macy Cameron* (OS138.1), *Federated Farmers of New Zealand* (OS919.38), *Jeremy David & Julie Maxine Cameron* (OS969.1), *Lindsay Carruthers* (OS860.4, OS860.5), *David Frew* (OS872.4, OS872.5), *John Carruthers* (OS879.4, OS879.5) and *Neil Grant* (OS883.4, OS883.4), *Geoff Scurr Contracting Limited* (OS794.8) and *Donald & Heather Ramsay* (OS1002.1) insofar as they sought that clearance of matagouri be permitted. We accept Dr Lloyd's evidence that matagouri has spread beyond its likely historic extent, and that providing for clearance of stands of matagouri beyond this historic extent as a permitted activity is acceptable from an ecological perspective (provided no more than one additional indigenous shrub species is present). We further accept that height can be used as a proxy for historic extent. We have therefore, as recommended by Mr Bathgate, provided for “vegetation clearance of stands of matagouri-dominant shrubland that contain no matagouri individuals greater than 1.5m tall and that contain no more than one other non-matagouri indigenous shrub species” as part of Indigenous Vegetation Clearance – small scale (refer Rule 10.3.2.A).
881. We accept the submissions of *Timothy Morris* (OS951.68) and *RG and SM Morris Family Trust* (OS1054.68), based on the evidence of Dr Lloyd that the exemptions listed for Rule 10.3.2.3.c and 10.3.2.4.b would be reasonable additions to the list of exemptions to Rule 10.3.2.2.b. We also accept in part the submissions of *Federated Farmers of New Zealand* (OS919.77), seeking that the exemptions listed in the definition of Indigenous Vegetation Clearance apply to all areas in the rural zones, not just coastal character overlay zones and ASBVs, noting that these are also listed in Rule 10.3.2.3.c. As outlined in section 3.4.1 above, as a result of clause 16 reformatting, Indigenous Vegetation Clearance that was exempt from the notified definition of Indigenous Vegetation Clearance, or that was permitted under notified Rule 10.3.2.2 (Maximum area of indigenous vegetation clearance) is now provided for

as Indigenous Vegetation Clearance – Small Scale, with Rule 10.3.2.A setting out the small-scale threshold standard.

882. In response to these submissions, we have therefore provided for the following as Indigenous Vegetation Clearance – small scale (refer Rule 10.3.2.A):

- clearance that is part of conservation activity involving vegetation clearance and replacement with indigenous species;
- clearance for the erection, maintenance or alteration of fences (including gates);
- clearance for the maintenance of existing network utilities, irrigation infrastructure, tracks, drains, structures, roads or fire breaks;
- clearance of a pest plant listed in Appendix 10B; and
- clearance necessary to maintain the flow of water free from obstruction or for natural hazard mitigation activities.

These amendments are attributed to NatEnv 291.5.

883. We have also provided for clearance for the construction of tracks as Indigenous Vegetation Clearance – Small Scale. As described above, Rule 10.3.2.A.a has been amended to provide for clearance for the construction of tracks (associated with permitted city-wide or land use activities only) up to:

- 2m in width in ASBVs, ONFs, ONCCs, HNCCs and NCCs; and
- 3m in width outside these areas.

This amendment is also attributed to NatEnv 291.5.

884. Finally, we have also provided for clearance that is incidental to the harvesting or maintenance of trees as part of Forestry, provided that all vegetation that is felled within 10m of a water body must be felled away from the water body, and that the Forestry is conducted in accordance with recognised industry environmental codes of practice. Again, this amendment is attributed to NatEnv 291.5.

885. We reject the submission of the *Otago Regional Council* (OS908.29). We were persuaded by Dr Lloyd's evidence in relation to the potential effects of unrestricted clearance for pest control, and where a species poses a threat to livestock due to its toxicity. We accept his evidence that providing for the former as a permitted activity risks providing for a "scorched earth" approach to indigenous vegetation clearance, and conclude that this would be inconsistent with Objective 10.2.1 and other higher order policy direction. With regards to the latter, we accept that a number of species that have toxic effects are important in forest types with now particularly limited extent. Given this, we do not consider it appropriate to provide for clearance of these species as a permitted activity. We note if there are particular species creating problems for stock, the ecological implications of exemptions for these could be considered through a future plan process.

886. We reject the submission of *Shane Johnson and Sharee Watts* (OS1067.3) seeking exemptions for establishment of a 1000m² building platform and a 3.5m² driveway on sites where residential activity is permitted, and to construct firebreaks. We note that, based on the evidence of Dr Lloyd about acceptable scale thresholds for Indigenous Vegetation Clearance (discussed in section 3.4.6.2), 1000m² of clearance is considered to be within the acceptable permitted range only in some parts of Dunedin. Given this, it is our assessment that if clearance associated with these activities is not able to be kept within the amended scale thresholds in Rule 10.3.2.A.c, then it is appropriate that an assessment of the effects of this clearance on biodiversity values be required. We accept Dr Lloyd's evidence that providing for clearance of indigenous vegetation for access roads of undefined size would risk loss of large areas of indigenous vegetation, and consider that the same applies to fire

breaks. We do however note that, as discussed below, that we have provided for clearance for the maintenance (but not extension) of firebreaks as part of Indigenous Vegetation Clearance – small scale, which may go some way to achieving the outcome sought by the submitter.

887. Finally, while we accept Dr Lloyd’s evidence that the current exemption for mānuka adversely affected by Mānuka Blight (*Eriococcus orariensis*) may not be necessary, we agree with the Reporting Officer’s assessment that there is no scope in submissions to remove this provision and instead recommend it is considered as part of a future plan change.

3.4.6.4 Submissions seeking discretionary activity status for Indigenous Vegetation Clearance above permitted standards in areas outside of ASCVs and UCMA

888. The *Department of Conservation* (OS949.14) sought that provisions be amended so that indigenous vegetation clearance that did not comply with relevant performance standards, and was located in an area that is not an ASCV or a UCMA, was a discretionary activity. The submitter did not give a specific reason for this request, but they generally oppose the indigenous vegetation rules, consider them overly complex, and seek more identification and scheduling of areas of indigenous vegetation deemed to be significant.
889. The Reporting Officer, Mr Bathgate, did not consider the activity status for a contravention of the vegetation clearance standards should be a discretionary activity. He noted that the matters of discretion for any contravention of these standards included an assessment of the effects on biodiversity and, where in coastal or riparian margins, effects on natural character values of riparian margins and the coast. He also noted his separate recommendation (see discussion in section 3.10.4.4 of this decision) that assessment guidance be added to the assessment of all rural zones development performance standard contraventions to consider the positive effects of an activity in terms of supporting farming or conservation activity. He considered that, with this change, there would be adequate scope to assess any application for vegetation clearance without the need to amend the activity status to discretionary (s42A Report, section 5.8.4).
890. At the hearing, the *Department of Conservation* called Ms Yozin (planning expert), who reiterated the submitter’s request that any indigenous vegetation clearance that does not comply with the standards in rules 10.3.2-10.3.4 be a discretionary activity. Ms Yozin considered that matters of discretion for restricted discretionary assessment were too broad and unclear, and provided little direction to applications.
891. In response, Mr Bathgate considered that amending the activity status to discretionary would not provide greater clarity to applicants, as there would be less guidance on assessment matters and no limitation on matters that could be assessed. He considered that it is clear from the assessment rules (including the policies that they reference) that they are concerned with the effects of activities on biodiversity values. He did not consider that in general the indigenous vegetation clearance assessment matters should be narrowed any further as this may be too limiting on the assessment of applications. However, he noted that assessment rules 10.4 and 10.5 specify “effects on biodiversity” as a matter of discretion, and considered that this would be better worded as “effects on indigenous biodiversity” which would provide more clarity on what was being assessed and give partial relief to this submission (Revised Recommendations Summary pp.5-6).

3.4.6.4.1 *Decision and Reasons*

892. We reject the submission of *Department of Conservation* (OS949.14). We do not consider that Indigenous Vegetation Clearance above the permitted standard (in an area that is not an ASCV or a UCMA) should be discretionary (rather than restricted discretionary). We accept the Reporting Officer's recommendations that amending the activity status to discretionary would not provide greater clarity to applicants, given that there would then be more limited guidance on assessment matters, and no limitation on matters that could be assessed.
893. We agree with the Reporting Officer's assessment that the assessment matters should not be further narrowed, but as discussed in section 3.6.1.6, we have amended assessment rules 10.4 and 10.5 to refer to "effects on biodiversity values", and provided a definition of "biodiversity values", so as to clarify that assessment is concerned with effects on the intrinsic values, and value to the community, of indigenous biota, and indigenous or mixed habitats and ecosystems that support indigenous biota (including effects on the health of the indigenous or mixed habitats and ecosystems that support indigenous biota, as well as effects on the indigenous biota themselves). We consider this provides greater clarity than amending the "effects on biodiversity" matter of discretion to "effects on indigenous biodiversity" as recommended by the Reporting Officer, and may go some way to achieving the outcome sought by the submitter.

3.4.6.5 Rule 10.4.3.3 Indigenous vegetation clearance (maximum area) assessment rule

894. *Federated Farmers of New Zealand* (OS919.157) sought to retain Rule 10.4.3.3 as proposed, but only if the submitter's proposed increase in maximum limits in Rule 10.3.2.2 and the proposed exemption to Rule 10.3.2.2 for matagouri, was adopted.
895. *Oceana Gold (New Zealand) Limited* (OS1088.50) supported Rule 10.4.3.3 in part, provided that based on the submitter's requested amendments to Objective 10.2.1 and Policy 10.2.1.4 were accepted. *Oceana Gold* sought to add a potential circumstance to support a consent application as follows: "The activity is unable to be undertaken anywhere else and unavoidably exceeds the maximum area allowed". The submitter stated that some mining operations are likely to unavoidably exceed the maximum area allowed, and therefore the inclusion of this as a potential circumstance to support a consent application should be allowed.
896. Mr Bathgate did not support the requested amendment to Rule 10.4.3.3 proposed by the submitter. He considered that the requested wording did not provide adequate guidance for assessment of a resource consent application, particularly in relation to the wording "unavoidably exceeds the maximum area allowed".
897. However, he noted that other amendments had been recommended to Rule 10.4.3.3 and Policy 10.2.1.8 (which considers restoration of indigenous vegetation after mining activity) as a result of submissions seeking improved recognition and support for biodiversity offsetting (see discussion in section 3.5 of this decision). He considered that these amendments provided more appropriate relief to address the submitter's concerns in part (s42A Report, section 5.8.5.3).
898. *STOP* (OS900.159) and *Forest and Bird* (OS958.81) sought that Rule 10.4.3.3 be amended to add reference to the following objectives and policies, as amended by their submissions: Objective 2.2.3 and policies 2.2.3.1, 2.2.3.2, 2.2.3.3, and 10.2.1.2. The submitters considered that effects on biodiversity should specifically mention potential areas of significant indigenous vegetation and significant habitats of indigenous fauna.

899. *Timothy George Morris* (OS951.18) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.18) sought that Rules 10.4.3.3, 10.4.3.4 and 10.4.3.5 be amended to include Policy 16.2.1.1 as a relevant policy.
900. Mr Bathgate did not support the *STOP* and *Forest and Bird* submissions to add strategic objectives and policies to Rule 10.4.3.3, as the objectives and policies did not have a direct relationship with the rule (s42A Report, section 5.8.5.3). However, he noted that he had made a separate recommendation to amend the rule to include consideration of whether the area affected meets the significance criteria set out in strategic Policy 2.2.3.1 (see Section 3.3.1.3 of this decision).
901. With regard to the request from *Mr Morris* to add Policy 16.2.1.1, he did not recommend this amendment as it was contrary to the Plan structure to include reference to a management zone policy in a city wide section. Policy 16.2.1.1 sets up the permitted activity status of farming, grazing and conservation activities in the rural zones as one way of achieving Objective 16.2.1 (which also clearly supports those activities). In order to address the concerns of the submitter, he did, however, recommend an amendment to add a row to Rule 16.9.4. In his view, this amendment would allow positive effects, and the attainment of Objective 16.2.1, to be considered when assessing any performance standard contravention in the rural zones.
902. At the hearing, the evidence of Dr Thorsen (ecological expert) for *Oceana Gold* supported the relief sought by *Oceana Gold* and suggested a new clause for Rule 10.4.3.3 to provide an option to adopt a mitigation and ecological compensation hierarchy. The Reporting Officer referred the submitter to the recommended amendment to the assessment rule to consider biodiversity offsetting guidance. (Revised Recommendations Summary p.14).
903. Mr David Cooper, representing *Federated Farmers of New Zealand*, indicated in his tabled statement that the submitter supported the Reporting Officer's recommended amendment to Rule 16.9.4.

3.4.6.5.1 *Decision and Reasons*

904. By way of background, we note that, as outlined in section 3.4.1, as a result of clause 16 reformatting, Indigenous Vegetation Clearance that was exempt from the notified definition of Indigenous Vegetation Clearance, or that was permitted under notified Rule 10.3.2.2 (Maximum area of indigenous vegetation clearance) is now provided for as Indigenous Vegetation Clearance – Small Scale, with Rule 10.3.2.A setting out the small-scale threshold standard. Breaches of this standard are assessed through new Rule 10.5.2.C.
905. We accept in part the submission of *Oceana Gold* (OS1088.50) seeking to include a clause relating to activities constrained with respect to location. As outlined in section 3.5, the 2GP has been amended to include a framework for biodiversity offsetting. Where Rule 10.3.2.A is unable to be met by an activity, any biodiversity offsets or environmental compensation offered up as part of an application will be taken into account as positive effects under section 104 of the RMA, and assessed against new policies 2.2.3.5 and 2.2.3.6. As discussed in section 3.3.1.3, Policy 10.2.1.X (which provides a pathway for activities to employ offsetting or environmental compensation where there are no practicable alternative locations) has been added to new assessment rule 10.5.2.C. In addition (as discussed in section 3.6.1.7), assessment guidance has been added to Rule 10.5.A.1 (All restricted discretionary activities) stating “With respect to Policy 10.2.1.X, the Council will generally only consider activities to have no practicable alternative locations where an assessment that meets the requirements set out in Rule 10.8.4 demonstrates that the proposed site, including any proposed mitigation measures, is the option that has the least impact on biodiversity values, while meeting the operational needs of the activity.” We

consider these changes constitute acceptance in part of the submission of *Oceana Gold* (OS1088.50).

906. We accept in part the submissions of *STOP* (OS900.159) and *Forest and Bird* (OS958.81), seeking to including references to Objective 2.2.3, policies 2.2.3.1, 2.2.3.2, 2.2.3.3 and 10.2.1.2. We accept the evidence of the Reporting Officer that these objectives and policies in the Strategic Directions section of the Plan do not have a direct and linear relationship with Rule 10.4.3.2, due to their role in setting up the methods used in the Plan. However, as discussed elsewhere, we have also amended Rule 10.5.2.C to link to new Policy 10.2.1.X and general assessment guidance has been added to Rule 10.5.A.1 (for all restricted discretionary activities) clarifying that, in assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1. We believe this goes some way to achieving the outcome sought by the submitter.
907. We accept in part the submission of *Timothy George Morris* (OS951.18) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.18). We agree with the Reporting Officer that, given that breaches of Rule 10.4.3.3, Rule 10.4.3.4 and Rule 10.4.3.5 are assessed as restricted discretionary activities, it is important that all relevant matters of discretion are noted. We accept that the extent to which the activity supports permitted activities in rural zones (farming, grazing and conservation) is a relevant consideration in assessing breaches of these rules. We concur with the Reporting Officer's assessment that the amendment suggested by the submitter is contrary to the Plan structure, but consider the amendment recommended by the Reporting Officer (amending Rule 16.9.4 (assessment of all development performance standard contraventions in rural zones) to allow for consideration of positive effects in terms of supporting farming or conservation activity) will achieve the general outcome sought by the submitter.
908. In response to these submissions, we have therefore amended Rule 16.9.4 as follows:

X. {NatEnv 951.18}	<u>All development performance standard contraventions</u> {NatEnv 951.18}	<u>a. Positive effects in terms of supporting farming or conservation activity</u> {NatEnv 951.18}	<u>Relevant objectives and policies:</u> {NatEnv 951.18} i. <u>Objective 16.2.1</u> {NatEnv 951.18}

3.4.7 Provisions for Protected Areas and Protected Species

3.4.7.1 Policy 10.2.1.4

909. Policy 10.2.1.4 states:

Only allow indigenous vegetation clearance in a Scheduled Area of Significant Conservation Value (ASCV), or a wetland, or where there are threatened plant species or mature trees on the important native tree species list present, where the biodiversity values of the area of indigenous vegetation are maintained or enhanced.

910. This policy provides the framework for the use of a restricted discretionary activity status for indigenous vegetation clearance in ASCVs, and for the Protected Areas and Protected Species performance standards (Rules 10.3.2.3 and 10.3.2.4). Submissions on this policy were discussed in section 5.8.7.1 of the s42A Report, with the exception of the submission from *Oceana Gold* (OS1088.34), which was discussed in section 1.0 of 'Addendum 2' to the s42A Report.

911. *Aurora Energy Limited* (OS457.28) sought that Policy 10.2.1.4 be amended so that it ends “where the biodiversity values of the area of indigenous vegetation are maintained or where appropriate enhanced”. The submitter noted that, while supportive of measures that seek to reduce the loss of biodiversity values particularly in locations identified as Areas of Significant Conservation Value (ASCV), there will be instances in which *Aurora* will be required to remove indigenous vegetation to ensure that operational efficiency of its network is maintained and to remove potential fire risks.
912. The Reporting Officer, Mr Bathgate, noted that *Aurora* had made a similar submission in relation to Policy 10.2.1.5. He did not recommend acceptance of this submission for the same reasons as given in relation to Policy 10.2.1.5 (see discussion in section 3.4.8.1, below). In addition, he noted the exemptions in place for vegetation clearance for the maintenance of existing network utilities – in the definition of Indigenous Vegetation Clearance (in relation to ASCVs), and in rules 10.3.2.3 and 10.3.2.4.
913. *STOP* (OS900.29) and *Forest and Bird* (OS958.22) sought to expand the policy to include wildlife species, to reference the significance criteria in Policy 2.2.3.1, and to protect or enhance, rather than maintain or enhance, biodiversity values.
914. The submitters indicated that, in their understanding, the purpose of this policy is to enable activities that support conservation. However, they believe that, as written, it is much broader than this and fails to meet RMA provisions. Section 6(c) requires provisions for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. They noted that not all these sites have been identified or included in the schedules. In their view, no new development activities should be allowed in areas of significant indigenous vegetation and significant habitats of indigenous fauna, unless there are no adverse effects – includes mining, subdivisions, wind generators etc.
915. The Reporting Officer, Mr Bathgate, recommended that the requested addition of a reference to “wildlife species” to Policy 10.2.1.4 be accepted, as he was also recommending an amendment to the Protected Species performance standard (Rule 10.3.2.4) so that it would protect threatened wildlife species as well as threatened plant species and mature examples of important indigenous trees (see discussion in section 3.4.7.4).
916. However, he did not recommend that the requested references to areas that meet “the criteria in Policy 2.2.3.1 for significant natural areas” or “the criteria in Schedule xx for significant natural areas, and Schedule xxx for Important Bird Areas” be added to the policy; he noted that these potentially significant areas were not directly controlled by the associated performance standards (rules 10.3.2.3 and 10.3.2.4). He did note, however, that he was recommending that assessment rules be amended to require any contravention of these and other vegetation clearance standards to be assessed as to whether the area affected meets one or more of the significance criteria (see Section 3.3.1.3).
917. Finally, Mr Bathgate did not support the submitters’ requested addition of a reference to “the enhancement of conservation values” to the policy. He noted that the policy seeks to “maintain or enhance” biodiversity values, whereas the requested phrase would impose a more onerous requirement. He also considered it would deter from plan clarity to refer to both conservation values and biodiversity values in the same policy, although they are obviously closely and directly related. He considered the outcome sought by the policy relates more closely to biodiversity values in contributing towards the achievement of Objective 10.2.1, with conservation relating more as an activity utilised to maintain or enhance biodiversity.

918. FFNZ (OS919.24) sought that Policy 10.2.1.4 be amended to remove references to threatened plant species and to mature trees on the important native tree species list. The submitter considered that the requirement for plan users to assess whether or not there are threatened plant species or mature trees on the important native tree species list present in an area prior to undertaking clearance was unnecessary and onerous, particularly if these species are protected through schedules. The submitter also found it unclear which rule was associated with this policy; Rule 10.3.2.3 does not require maintenance or enhancement when clearing, it simply requires a setback from wetlands, high tide and water bodies.
919. Mr Bathgate clarified that it is Rule 10.3.2.4 that relates to the threatened plant species or mature trees on the important native tree species list, rather than Rule 10.3.2.3. He explained that the reason for having this part of Policy 10.2.1.4 and Rule 10.3.2.4 is in recognition that not all areas that contain threatened plant species or larger specimens of important native trees are scheduled as ASCVs.
920. He did not consider this an unnecessary requirement, as he considered that the protection of these important species was necessary to give effect to objectives 10.2.1 and 2.2.3, and not all examples of these species will be currently protected in scheduled areas. Therefore, he did not recommend that the amendment requested by Federated Farmers be accepted.
921. However, he noted the view of *Federated Farmers* in terms of it being an onerous requirement to identify the species covered by Rule 10.3.2.4. He considered this a valid concern, which raises questions in terms of the relevant support that may be available to landowners – for example, information, education or liaison with DCC ecological staff. Although he did not make any recommendation in relation to the application of non-regulatory methods in the s42A Report, Mr Bathgate sought to draw this matter to the Panel's attention as a topic for wider consideration at the hearing.
922. The *Department of Conservation* (OS949.5) sought that Policy 10.2.1.4 be deleted. The submitter considered that Policy 10.2.1.4 duplicated Policy 10.2.1.2 – but also that it conflicted with the latter policy, because Policy 10.2.1.4 provides only for the maintenance of biodiversity values whereas Policy 10.2.1.2 provides for the *protection* of those values, as required by section 6(c) of the RMA.
923. Mr Bathgate did not consider that Policy 10.2.1.4 completely duplicated Policy 10.2.1.2. Policy 10.2.1.2 relates to all land use and development activities in ASCVs, whereas Policy 10.2.1.4 specifically relates to indigenous vegetation clearance in a range of 'protected' areas including but not limited to ASCVs. Therefore, he did not recommend that Policy 10.2.1.4 be removed.
924. However, he acknowledged a degree of duplication between the policies, given that they both manage indigenous vegetation clearance in ASCVs. He considered that indigenous vegetation clearance in ASCVs should be managed under Policy 10.2.1.2 for sake of consistency with other activities in ASCVs and to enhance plan clarity. Therefore, in response to DOC's submission, he recommended an amendment to Policy 10.2.1.4 to remove the reference to ASCVs. This would mean that Policy 10.2.1.4 related solely to the performance standards for protected areas and protected species in rules 10.3.2.3 and 10.3.2.4; therefore, he also recommended, in accordance with the 2GP policy drafting protocol, that the wording at the start of the policy be amended from 'only allow' to 'require'.
925. In addition, Mr Bathgate considered that the wording of the policy should be amended to provide for a wider consideration of the effects on biodiversity values when indigenous vegetation clearance is proposed. Such an amendment would allow for the use of offsetting in response to a clearance proposal. He considered that scope for this

was provided by the DOC submission (OS949.4) on Policy 10.2.1.3, which seeks introduction of a range of options for mitigation or offsetting to mitigate adverse effects of indigenous vegetation clearance in all areas that are not considered to be an ASCV (see discussion of this submission in section 3.5 of this decision).

926. Finally, *Oceana Gold* (OS1088.34) sought that Policy 10.2.1.4 be amended to remove the words “the area of” from the policy, so that it refers to the biodiversity values of indigenous vegetation in a more general sense. The submitter was concerned that Policy 10.2.1.4 as notified did not allow for off-site mitigation. The submitter stated that this was a concern for mining activities, which must take place where minerals are located. In the submitter’s view, vegetation clearance should be provided for in mining situations, where clearance may be justified despite resulting in adverse effects which are more than minor; flexibility was needed, to allow for mitigation, offsetting measures or compensation to occur to provide for these situations.
927. Mr Bathgate considered that his recommended amendment to Policy 10.2.1.4 in response to result of OS949.4, discussed above, would also provide partial relief to *Oceana Gold’s* submission on this matter; the amendment had been made to allow for a wider consideration of the effects on biodiversity values when indigenous vegetation clearance is proposed, and consideration of the use of offsetting in response to a clearance proposal.
928. At the hearing, *FFNZ* tabled a statement that supported the Section 42A recommendation. The submitter also highlighted the Reporting Officer’s discussion in relation to non-regulatory methods.
929. *Oceana Gold* called Dr Thorsen (ecological expert), who partly supported the Section 42A recommendation if there are sufficiently wide mitigation and ecological compensation options available if a project impacts on these values.
930. DOC called *Ms Yozin* (planning expert), whose evidence supported the Section 42A Report recommendation to remove duplication by removing ASCVs from the policy; she supported the proposed amendments to Policy 10.2.1.4.

3.4.7.1.1 *Decision and Reasons*

931. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
932. We reject the submission of *Aurora Energy Limited* (OS457.28). We agree with the assessment of the Reporting Officer, that the amendment to “are maintained or where appropriate enhanced” does not add clarity to, or change the meaning of, the policy. We consider the provisions in place for maintenance of existing network utilities under Rule 10.3.2 already recognise the needs of operators to clear vegetation. We therefore do not consider the amendment necessary.
933. We accept in part the submission of the *Department of Conservation* (OS949.5).
934. We do not consider that Policy 10.2.1.4 should be deleted. We note that the policy leads to vegetation clearance performance standards (Rules 10.3.2.3 and 10.3.2.4), and we accept the Reporting Officer’s assessment that the policy manages indigenous vegetation clearance in a range of protected areas, including wetlands that are scheduled as ASBVs.
935. We accept that it is only the reference to ASBVs that overlaps with Policy 10.2.1.2 and agree that, in the interests of clarity and consistency, reference to ASBVs should be removed from Policy 10.2.1.4 and indigenous vegetation clearance managed with other activities in ASBVs. We also note, however, that in decisions outlined in, respectively, section 3.3.4.3 and section 3.3.3.3, the activity status of Indigenous

Vegetation Clearance – Large Scale in ASBVs has been amended to non-complying, and new Policy 10.2.1.Y established to provide a policy for non-complying activities in ASBVs consistent with the 2GP drafting protocol. Our decision therefore includes Indigenous Vegetation Clearance – Large Scale in new Policy 10.2.1.Y to ensure it is managed consistently with other non-complying activities in ASBVs (rather than in 10.2.1.2, as recommended by the Reporting Officer).

936. We also consider that, given the importance of the areas and the significance of the species managed by Policy 10.2.1.4, aligning the Policy 10.2.1.4 effects test with that in Policy 10.2.1.2 would be appropriate (noting that Policy 10.2.1.2 is also subject to amendments discussed elsewhere). We consider this change will better achieve Objective 10.2.1 and the higher order policy direction it responds to, including s6 of the RMA, the pORPS-dv and the NZCPS.
937. We accept in part the submissions of *STOP* (OS900.29) and *Forest and Bird* (OS958.22).
938. We accept the submitters' contention that the policy inadequately provides for the protection of the significant habitats of indigenous fauna, and that amendment is necessary to respond to s6(c) of the RMA. We consider an expansion of the policy and associated rule framework to consider effects on threatened indigenous fauna will help achieve Objective 10.2.1, and the higher order policy direction it seeks to respond to. We note that a related decision, outlined in section 3.4.7.4, amends Rule 10.3.2.4 to reference to threatened indigenous fauna species (and inserts a new appendix listing these). In the interests of clarity, and alignment with these provisions, we consider the policy should reference "threatened plant or fauna species", rather than "wildlife species" as sought by the submitter.
939. We do not consider that the policy should be amended to reference areas that meet the significance criteria outlined in Policy 2.2.3.1, accepting the Reporting Officer's evidence that the performance standards linked to Policy 10.2.1.4 do not directly control areas that have been assessed as meeting the criteria. However, as discussed in section 3.3.1.3, the relevant assessment rule (Rule 10.4.3.4) has been amended to link to new Policy 10.2.1.X and general assessment guidance has been added clarifying that, in assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1. We believe this goes some way to achieving the outcome sought by the submitter.
940. In section 3.3.1.4 we discuss the suggested inclusion of a schedule of Important Bird Areas, and reject this approach. As such, we also reject the reference this schedule in Policy 10.2.1.4, for the reasons outlined in that decision.
941. We do not support inclusion of the phrase "for the enhancement of conservation values provided". We accept the Reporting Officer's evidence that the biodiversity values referenced in the policy have a more direct relationship with Objective 10.2.1.
942. We do not support amendment to the policy test from "maintained or enhanced" to "protected or enhanced". While we consider this terminology appropriate in relation to significant indigenous vegetation and the significant habitats of indigenous species at the objective level, generally speaking we prefer more specific language at the policy level. We do, however, consider that the amendments to the policy test made in response to the submission of *Department of Conservation* (OS949.5), described above, constitute partial alternative relief for these submissions.
943. We accept the submission of *Oceana Gold* (OS1088.34), to remove the words "the area of" from the policy so it refers to biodiversity values of indigenous vegetation in a more general sense. We accept the Reporting Officer's evidence that this allows for a wider consideration of the effects on biodiversity values when indigenous vegetation

clearance is proposed, and consideration of the use of offsetting in response to a clearance proposal. In relation to the mitigation and ecological compensation options sought by Dr Thorsen, as outlined in section 3.5, the 2GP has been amended to include a framework for biodiversity offsetting and environmental compensation. As discussed elsewhere, the addition of Policy 10.2.1.X and associated assessment guidance to Rule 10.4.3.4 provides a link to these policies. Biodiversity offsets or environmental compensation offered up as part of an application will be taken into account as positive effects under section 104 of the RMA, and assessed against new Policy 2.2.3.5 and Policy 2.2.3.6.

944. We reject the submission of *Federated Farmers of New Zealand* (OS919.24) to remove reference in the policy to threatened plant species or mature trees on the important native tree species list. We accept the Reporting Officer's evidence that this refers to the provisions outlined in Rule 10.3.2.4, and that these provisions are necessary to protect threatened plant species and mature specimens of important indigenous trees species (in line with s6(c) of the RMA), given the lack of a comprehensive schedule of ASBVs. We accept that it is not an overly onerous requirement in this context. However, we acknowledge the concerns of *Federated Farmers of New Zealand* regarding need for landowners to have support to understand these rules and, as discussed elsewhere, endorse the need for a comprehensive and sustained Council-initiated work programme outside of the 2GP comprising not only to help develop landowner understanding of the issues, rules and regulations, and on-farm biodiversity values.
945. In summary, our decisions on the submissions above have resulted in amendments to Policy 10.2.1.4 as follows:
- ~~"Only allow indigenous vegetation clearance in a Scheduled Area of Significant Conservation Value (ASCV), or {NatEnv 949.5} a wetland, or where there are threatened plant species or fauna species {NatEnv 900.29} or mature trees on the important native tree species list present, where there is no net loss and preferably a net gain in {NatEnv949.5} the biodiversity values of the area of indigenous vegetation {NatEnv1088.34} are maintained or enhanced. {NatEnv949.5}~~
946. We have also made consequential amendments to assessment rules 10.4.3.4 and 10.4.3.5 to reflect the amendments to Policy 10.2.1.4.

3.4.7.2 Policy 10.2.2.3

947. Policy 10.2.2.3 states:
- Require vegetation clearance to be set back an adequate distance from the coast and water bodies to minimise the risk of erosion and protect, or enable the enhancement of, biodiversity and natural character values.*
948. This policy leads to the Protected Areas performance standard (Rule 10.3.2.3), which manages vegetation clearance and indigenous vegetation clearance along the margins of the coast and water bodies.
949. Seven submissions sought amendments to the policy. *KiwiRail Holdings Limited* (OS322.32) and *Oceana Gold (New Zealand) Limited* (OS1088.39) sought that the policy be amended as follows: "Require vegetation clearance to be set back an adequate distance from the coast and water bodies where practicable to minimise the risk of erosion and protect, or enable the enhancement of, biodiversity and natural character values."
950. *KiwiRail Holdings* stated that there were sometimes practicalities around where vegetation clearance could occur, in light of the location of existing development, and considered that this should be recognised by the policy.

951. *Oceana Gold* believed that the setback requirement was not always possible for vegetation clearance associated with major mining earthworks, and therefore considered that the setback should only be a requirement in circumstances where it is practicable.
952. The Reporting Officer, Mr Bathgate, stated that, in his opinion, the policy and its related performance standard were appropriate. He noted that contravention of the performance standard only resulted in a restricted discretionary activity status.
953. In addition, he noted that there were a number of exemptions to the vegetation clearance standards, including for the maintenance of existing network utilities activities (including irrigation infrastructure), tracks, drains, roads, or fire breaks. He considered it inconsistent that the notified exemptions did not include vegetation clearance for the maintenance of the rail corridor. Therefore, he recommended, in response to *KiwiRail Holdings Limited* (OS322.32), that vegetation clearance provisions (Rule 10.3.2 and the definition of Indigenous Vegetation Clearance) be amended to exempt clearance for the maintenance of the rail corridor (s42A Report, section 5.8.7.2).
954. *STOP* (OS900.39) and *Forest and Bird NZ* (OS958.33) sought that Policy 10.2.2.3 be amended as follows: “Require vegetation clearance to be set back an adequate distance from the coast and water bodies to ~~minimise~~ avoid the risk of erosion and protect, or enable the enhancement of, biodiversity and natural character values, with particular regard to wildlife habitats and native fish spawning areas.” The submitters stated that sedimentation is a significant adverse threat to the life supporting capacity of water bodies and any receiving coastal waters and should be avoided.
955. Mr Bathgate noted that these submitters had proposed a similar amendment in relation to Policy 10.2.2.4, seeking to “avoid” the risk of sediment entering the sea or water bodies. In both cases, he did not consider it appropriate to replace the word “minimise” with “avoid”. In his opinion, requiring the setback of vegetation clearance to “avoid” the risk of any erosion would set an unrealistically high standard, in creating an expectation that there will be no risk at all.
956. In addition, he did not support the addition of the phrase “particular regard to wildlife habitats and native fish spawning areas” to the policy. In managing vegetation clearance, the policy contributes to an objective which seeks to maintain and enhance the biodiversity values and natural character of the coast and riparian margins. It was not clear to Mr Bathgate why particular aspects of this outcome should be prioritised over others (s42A Report, section 5.8.7.2).
957. *Timothy George Morris* (OS951.7) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.7) sought that the policy be amended to provide for control of regrowth indigenous vegetation as part of long term maintenance of rural land for productive rural activities. In the submitters’ view, the policy conflicts with Policy 16.2.1.1.
958. Mr Bathgate did not support this amendment, on the basis that he was not changes to Rule 10.3.2.3 in relation to the exemption of regrowth vegetation in riparian and coastal margins (see discussion in section 3.4.7.3, below).
959. The *Department of Conservation* (OS949.6) requested the addition of a new policy under Objective 10.2.2 as follows: “Manage the clearance of indigenous vegetation within 20 meters of water bodies, and ensure that such clearance does not create or contribute to erosion, or reduce natural character and indigenous biodiversity values of riparian corridors.” The submitter stated that the policy was required to ensure that the values of riparian margins of lakes, rivers and wetlands are recognised and their protection provided for.

960. In Mr Bathgate's view, the policy requested by the submitter was in effect a restatement of Policy 10.2.2.3. Therefore, he did not consider it necessary to add the requested new policy.
961. At the hearing, *Oceana Gold* called Dr Thorsen (ecological expert), whose evidence stated that "It is not always possible to set back vegetation clearance associated with mine activities from the riparian margin" (p.20).
962. At the hearing, *DOC* called Ms Yozin (planning expert), whose evidence supported the recommendation of the Reporting Officer in the Section 42A Report.
963. In the Reconvened Plan Overview Hearing Report – Policy Drafting Protocol and General Terminology Consistency Summary and Revised Recommendations, use of the word "minimise" in policies throughout the Plan was considered, in response to evidence from a submitter in the Network Utilities Hearing. Following further analysis in the light of this evidence, the Reporting Officer for the Plan Overview topic, Dr Anna Johnson, recommended amending all instances of "minimise" to "minimise, as far as practicable" (Reconvened Plan Overview Hearing Report, p.23)
964. In an appendix to Dr Johnson's report, Mr Bathgate commented that, having reviewed the wording of Policy 10.2.2.3 based on the further analysis provided in the Reconvened Plan Overview and Structure Report, as well as reconsidering the points raised in the submissions and evidence, his recommendation was that 'minimise' is appropriate for this policy, noting the general recommendation to add the phrase 'as far as practicable' (Reconvened Plan Overview Hearing Report, p.55, Appendix 4).

3.4.7.2.1 *Decision and Reasons*

965. We accept in part the submissions of *KiwiRail Holdings Limited* (OS322.32) and *Oceana Gold* (OS1088.39). We do not support the Reporting Officer's recommended amendments to provide for vegetation clearance for the maintenance of the rail corridor as a permitted activity. As discussed in the Transport Decision Report, we consider that railway activities are best provided for by way of designation. We do not consider it necessary, and consider it would detract from plan clarity, to amend the Plan to provide for these activities in other ways. In addition, we are not clear there is scope from submissions for the amendments suggested.
966. However, we do support amendment of Policy 10.2.2.3 to read "...to minimise, as far as practicable, the risk of erosion...". As discussed in the Plan Overview Decision Report, we accept the Reporting Officer's evidence that this amendment will avoid the possibility that the requirement to minimise an effect could be taken to an extreme where either the costs of mitigation or the significance of residual effects were ignored. We consider this amendment constitutes partial alternative relief for the submissions of *KiwiRail Holdings Limited* (OS322.32) and *Oceana Gold* (OS1088.39).
967. We accept in part the submissions of *STOP* (OS900.39) and *Forest and Bird NZ* (OS958.33). We do not support the amendment to "avoid" risk of erosion, for reasons of consistency with the 2GP drafting protocol and associated rationale outlined in the Plan Overview Decision Report. In short, under the 2GP drafting protocol, use of the word "avoid" in a policy without any qualifiers suggests a prohibited activity status. Policy 10.2.2.3 is linked to Rule 10.3.2.3 which sets out the performance standard for vegetation clearance and indigenous vegetation clearance along the margins of the coast and water bodies. Contraventions of this performance standard are restricted discretionary, which we consider appropriate, as there may be occasions in which contraventions are acceptable because of low biodiversity or natural character values on the site (or for some other reason).
968. We also note that, as outlined in section 3.3.1.3, assessment rule 10.4.3.4 has been amended to link to new Policy 10.2.1.X and to add general assessment guidance

clarifying that, in assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1. It is our assessment that this strengthens the rule framework insofar as it relates to the protection of areas of significant vegetation and the significant habitats of indigenous fauna, and the change may go some way to achieving the outcome sought by the submitter.

969. In relation to the request to add the words “with particular regard to wildlife habitats and native fish spawning areas” to the policy, we also do not support this, as we consider both matters to be examples of “biodiversity and natural character values”. However, we accept that spawning areas of indigenous fish are a type of biodiversity value particularly vulnerable to the effects of sedimentation, and that Policy 10.2.2.3 is of particular importance in protecting these areas from that effect.
970. In response to the submission, we have amended Rule 10.4.3.4.a, under ‘General assessment guidance’ in Rule 10.4.3.4.a assessment guidance as follows: “xii. In assessing effects on biodiversity values and natural character values of riparian margins and the coast, the Council will consider the effects on the spawning areas of indigenous fish species.”
971. We reject the submissions of *Timothy George Morris* (OS951.7) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.7) seeking to amend Policy 10.2.2.3 to provide for control of regrowth indigenous vegetation. As discussed in section 3.4.7.3, we accept the expert evidence of Dr Lloyd, that given the sensitivity of the areas linked Rule 10.3.2.3 relates to, even where vegetation adjacent to the areas has been disturbed in the past, it should not be cleared again.
972. We reject the submission of the *Department of Conservation* (OS949.6) seeking to add a new policy to manage clearance of indigenous vegetation within 20 metres of water bodies. We agree with the Reporting Officer’s assessment that while Policy 10.2.2.3 does not specify the setback, it does link to Rule 10.3.2.3.b, which specifies a 20m setback from waterways over a certain size, and that, taken together, these provisions achieve what is sought by the submitter. We note this was accepted by Ms Yozin at the hearing.
973. We do consider, however, that there is a gap in the policy framework, with no policy managing the activity of Indigenous Vegetation Clearance in the coastal environment mapped area. To rectify this, we have added a new Policy 10.2.2.X as follows: “Only allow indigenous vegetation clearance in the coastal environment mapped area where natural character values and biodiversity values of the coast are maintained or enhanced.” As a consequential amendment, we have added the policy to assessment rule 10.4.3.4. We consider that this policy can be added as a clause 16 amendment to clarify how a contravention of indigenous vegetation clearance Rule 10.3.2.3.b.i will be assessed, noting that we have adopted the policy test of natural character values and biodiversity values being “maintained or enhanced” to match the outcome sought by Objective 10.2.2.

3.4.7.3 Rule 10.3.2.3 Protected Areas

974. Rule 10.3.2.3 manages vegetation clearance near:
 - wetlands that are identified as ASCVs
 - the coast (mean high water springs) and
 - water bodies.
975. In addition, it controls indigenous vegetation clearance in the coastal environment mapped area and in any wetland (not only those identified as ASCVs).

976. A number of submissions sought to retain all or part of Rule 10.3.2.3, as follows:
- *Joel A Vanderburg* (OS189.6) supported rules 10.3.2.3.a.iii and 10.3.2.3.b.iii for the prevention of vegetation clearance of exotic vegetation (5m) and indigenous vegetation (20m) from along waterways of 3m or more in width.
 - *KiwiRail Holdings Limited* (OS322.89) sought to retain Rule 10.3.2.3 as the submitter supported that the maintenance of network utilities is exempt from compliance with the requirement for the setback of vegetation clearance from protected areas.
 - *Transpower New Zealand Limited* (OS806.47) supported Rule 10.3.2.3.c.iv, the provision to exempt existing network utilities activities from the vegetation clearance standard, provided that their request for the definition of Network Utilities Activities to include “transmission and distribution of electricity” was provided for (we note that this request has been given effect to, in the Network Utilities Decision).
 - *Lindsay Carruthers* (OS860.6), *David Frew* (OS872.6), *John Carruthers* (OS879.6) and *Neil Grant* (OS883.6) sought to retain Rule 10.3.2.3 as they believed that it was important to protect the riparian margins and ensure vegetation within these areas was protected.
 - *STOP* (OS900.150, OS900.151, and OS900.154) and *Forest and Bird NZ* (OS958.64, 65, 66, 70) sought to retain Rule 10.3.2.3.a, Rule 10.3.2.3.b and Rule 10.3.2.3.d, with no specific reasons given.
977. *Robert George & Sharron Margaret Morris* (OS355.12) opposed Rule 10.3.2.3 as they believed that excessive regrowth contributes to reductions of effective farming and forestry areas.
978. *Lynnore Joan Templeton* (OS735.2) sought that Rule 10.3.2.3 either be removed, or amended to allow for vegetation clearance along water bodies for the purpose of irrigation. She indicated that she made this request because the Strath Taieri Irrigation Group are currently looking at the feasibility of transferring winter water via mountain creeks to the Loganburn dam and releasing that water in summer months down the main stem of the Taieri River; Ms Templeton considered that this would have benefits not only to irrigators but also for the health and well-being of the river itself. She noted that earthworks and vegetative clearance alongside the creeks would be a necessary part of the project.
979. *Federated Farmers of New Zealand* (OS919.39) sought that Rule 10.3.2.3 be removed. The submitter questioned the primary purpose for this proposed rule; in their view, it was not protection of vegetation or indigenous vegetation, as these are dealt with in other areas. The protection of regionally significant wetlands is addressed by Otago Regional Council, and there is sufficient information around wetland management for wetlands that do not meet these criteria already available to landowners. The submitter therefore believed that this rule does not add anything to existing regulation and should be deleted.
980. *Michael Ovens* (OS740.23) sought that Rule 10.3.2.3.b.iii (indigenous vegetation clearance not within 20m of a water body) be removed. The submitter believed that the combination of the Rural Residential 2 rules and requirements of this provision as it stands make doing anything on a property referred to in his submission very difficult. He considered that provisions were, collectively, too restrictive – and that they may not be the best method for achieving intended outcomes.
981. Mr Bathgate did not agree with submissions requesting that Rule 10.3.2.3 be removed; he considered that the rule provides protection for areas of high importance for biodiversity and ecological values, namely the margins of the coast, wetlands, rivers and streams. Further, in his view, the rule contributes to the fulfilment of DCC’s functions in relation to biodiversity, management of vegetation clearance in these

areas also contributes to preservation of the natural character of the coastal environment, wetlands and rivers and their margins, thereby giving effect to RMA section 6 and the NZCPS and having regard to the requirements of the pORPS-dv (for example, Policy 3.1.2).

982. In relation to the statement by *Federated Farmers* that this rule does not add anything to existing regulation, Mr Bathgate considered that it provides for management of vegetation clearance in the coastal environment and the margins of water bodies which is not specifically addressed elsewhere in other rules. In the case of indigenous vegetation, clearance activity may be captured by Rule 10.3.2.2 (maximum area of indigenous vegetation clearance) but not always, as it may not be of a size that triggers the thresholds. In addition, Rule 10.3.2.2 does not apply to clearance of non-indigenous vegetation.
983. In relation to the request to allow an exemption for irrigation infrastructure, he noted that Rule 10.3.2.3.c.iv provides an exemption for “the maintenance (but not extension) of existing network utilities activities (including irrigation infrastructure)”. He considered it appropriate that any installation of new irrigation infrastructure involving vegetation clearance in riparian margins should be assessed as to its effects on biodiversity and natural character values (s42A report, section 5.8.7.3).
984. *STOP* (OS900.152) and *Forest and Bird* (OS958.67, OS958.68, OS958.69) sought that Rule 10.3.2.3.c be amended as follows:
- Amend the exemption for vegetation clearance associated with fencing (Rule 10.3.2.3.c.iii) to clarify that it does not extend to earthworks required for fencing, on the basis that earthworks could degrade wetlands and adjacent water bodies
 - Amend the exemption for vegetation clearance associated with track construction (Rule 10.3.2.3.c.v) to restrict it to tracks for non-vehicular recreation purposes only.
 - Amend the exemption for vegetation clearance associated with harvesting or maintenance of trees as part of an existing forestry activity (Rule 10.3.2.3.c.ix) to require that all vegetation that is felled within 20m (rather than 5m) of a water body must be felled away from the water body, on the basis that this would provide better protection when trees are higher than 5m
985. *Otago Regional Council* (OS908.30) sought that Rule 10.3.2.3.c be amended so that suitable controls are provided for in the exemptions to ensure adverse effects are avoided. Specifically, the submitter requested that Rule 10.3.2.3.c.ix be amended to require that all vegetation that is felled within at least 10m (rather than 5m) of a water body must be felled away from the water body.
986. In response to these submissions, Mr Bathgate made the following recommendations on the exemptions to the Protected Areas performance standard (Rule 10.3.2.3.c) (s42A report, section 5.8.7.3).
987. He did not recommend that the requested amendment to Rule 10.3.2.3.c.iii (the exemption for fencing) be accepted. He considered that this exemption applied to the vegetation clearance activity alone, with any earthworks associated with the erection or maintenance of fences subject to the earthworks standards for the relevant zone. This will be the case for all exemptions listed in the vegetation clearance standards, with earthworks standards applying separately.
988. He did not recommend that the requested amendment to Rule 10.3.2.3.c.v (the exemption for tracks) be accepted. He noted that it was anticipated that the upper limit of 2m in width would normally limit the use of tracks to walking and cycling. However, there may be occasional requirements for access by smaller motorised

vehicles such as quad bikes, for purposes such as track maintenance or associated with conservation, farming or other activities in the vicinity. He did not consider that the rule should be amended to prevent this.

989. He noted that Rule 10.3.2.3.c.v (the exemption for vegetation clearance associated with forestry) was a continuation of a rule in the operative Plan (Rule 6.5.3.vi.iii), which also exempts forestry felled within 5m of a water body as long it is felled away from a water body. This rule had been carried into the 2GP in anticipation that this and other forestry-related provisions may need to be updated when the National Environmental Standard for Plantation Forestry comes into force. The draft NES²¹ states that, in order to limit riparian disturbance during harvesting, trees should be felled away from the water body or riparian zone, except where unsafe or impractical to do so, and that no harvesting machinery must operate within 5m of perennial water bodies (with some exceptions listed).
990. Mr Bathgate agreed with the submitters that the 5m does not seem adequate given that trees will sometimes be much taller than 5m in height. He noted that this part of the rule was intended to capture vegetation or indigenous vegetation clearance incidental to forestry activity, with the harvesting of plantation trees being part of forestry activity and not directly covered by this rule. He further noted that the 2GP does not directly manage forestry activity in terms of setbacks from water bodies, leaving this to regional plan rules. Overall, he considered that the 5m figure in Rule 10.3.2.3.c.v should be increased, and in this case he took the lead from the ORC submission in relation to the impacts on water bodies and recommended that the figure be increased to 10m.
991. *Timothy George Morris* (OS951.69) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.69) sought that Rule 10.3.2.3 be amended to include exemptions for removal of regrowth indigenous vegetation. The submitters noted that regrowth of indigenous vegetation (e.g. Kanuka) could be rapid and could have a significant adverse effect on farming and forestry activities; therefore, they considered that control of regrowth was a necessary part of long term maintenance of rural land for productive rural activities.
992. These submissions were considered in the evidence of Dr Kelvin Lloyd (paragraphs 70-78) (cited in the s42A Report, section 5.8.7.3). Dr Lloyd stated that:
- The intent of 10.3.2.3 appears to be to avoid disturbances that clear vegetation adjacent to significant wetlands, water bodies, and the coast, which is a reasonable proposition given the sensitivity of these habitats to the kinds of disturbance that clear vegetation and cause erosion, sedimentation, and/or changes to wetland hydrology. If these areas have been disturbed in the past, and vegetation cover has regenerated, that vegetation should not be cleared again.*
993. Dr Lloyd did not support the additional exemptions sought by the submitters.
994. On the basis of this evidence, Mr Bathgate did not recommend that the submissions to amend Rule 10.3.2.3 to include exemptions for removal of regrowth indigenous vegetation be accepted.
995. At the hearing, *Mr Timothy Morris* sought that Rule 10.3.2.3.b.iv be amended so as not to interfere with existing farming and grazing activities. He tabled graphic supplements showing the extent of regeneration of an area of indigenous vegetation on his property.

²¹ Refer p72, <https://www.mpi.govt.nz/news-and-resources/consultations/proposed-national-environmental-standard-for-plantation-forestry/>

996. In response, the Reporting Officer noted “This relates to the requirement for resource consent as a restricted discretionary activity for any indigenous vegetation clearance in the Coastal Environment Mapped Area. Exemptions to this rule do not include regenerating vegetation or areas previously cultivated in the last 15 years. I note this matter was covered in the evidence of Dr Lloyd (paras 70-79) who did not support additional exemptions.” (Revised Recommendations Summary, p.25)

3.4.7.3.1 *Decision and Reasons*

997. We note that Rule 10.3.2.3 has been reformatted and reworded, for clarity, under RMA clause 16.
998. We also note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
999. We accept the submissions of *Joel A Vanderburg* (OS189.6), *STOP* (OS900.51) and *Forest and Bird NZ* (OS958.65), and accept in part the submissions of *KiwiRail Holdings Ltd* (OS322.89), *Transpower New Zealand Limited* (OS806.27), *Lindsay Carruthers* (OS860.6), *David Frew* (OS872.6), *John Carruthers* (OS879.6), *Neil Grant* (OS883.6), *STOP* (OS900.50, 900.54) and *Forest and Bird NZ* (OS958.64, OS958.66, OS958.70). Our decision retains Rule 10.3.2.3 with clause 16 amendments as described above, amendments as described below and in other sections of this Decision Report.
1000. In response to the submissions of *Robert George & Sharron Margaret Morris* (OS355.20), *Timothy George Morris* (OS951.14) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust* (OS1054.14) and *Murray Soal* (OS291.5), discussed in section 3.4.4.1, we have amended Rule 10.3.2.3 exempt the following types of vegetation clearance:
- clearance that is for the maintenance of existing structures (Rule 10.3.2.3.d.iii), and
 - clearance of non-indigenous plant species and replanting within 3 months with indigenous or non-indigenous plant species, not on the pest plant list in Appendix 10B, that will attain at least the same height and coverage as the plants that have been cleared (Rule 10.3.2.3.d.ix).
1001. We consider these types of vegetation clearance can be exempted from Rule 10.3.2.3 while still allowing Objective 10.2.1 to be achieved. They make the rule less prohibitive, as sought by *Mr Soal*, and better provide for normal farming activities, including in coastal areas (as sought by the *Morris* submissions). New Rule 10.3.2.3.d.ix has been added in particular to ensure that vegetation clearance with minor effects, e.g. associated with gardening, is not caught by rules. We note that this also provides partial relief to *Helen Skinner and Joseph O'Neill* (OS312.9) (see discussion in section 3.4.3). These amendments are shown in Appendix 1 and attributed to NatEnv 291.5.
1002. We reject the submissions of *Robert George and Sharron Margaret Morris* (OS355.12), *Lynnore Joan Templeton* (OS735.2), *Michael Ovens* (OS740.23), and *Federated Farmers of New Zealand* (OS919.39), seeking to remove all or part of Rule 10.3.2.3. We concur with the Reporting Officer's assessment that the rule provides protection for areas of importance for biodiversity and ecological values, in line with s6(a) and s31b(iii) of the RMA, the NZCPS, and both the operative and proposed RPS, including ORPS-dv Policy 3.1.2. We do not consider that it duplicates other rules within the 2GP, and in relation to wetlands in particular, we note that parts of the rule also relates to wetlands that are not identified as regionally significant.

1003. We accept in part the submissions of *STOP* (OS900.152) and *Forest and Bird* (OS958.67, OS958.68, and OS958.69), and accept the submission of *Otago Regional Council* (OS908.30).
1004. We agree with the Reporting Officer's assessment that, given earthworks are subject to their own provisions, it would not aid Plan clarity to include reference to earthworks exemptions within Rule 10.3.2.3. We note, as described in the Earthworks Decision Report, that a number of amendments have been made to ensure all earthworks provisions are clearly articulated in one section of the Plan. In relation to fences, see discussion of new Rule 8A.5.1.1.g, added in response to EW 388.4 and 911.1, in the Earthworks Decision. This rule permits earthworks for fencing, subject to certain size parameters.
1005. In addition, as discussed in section 3.6.9, our decision has amended Rule 8A.5.7 (Sediment control) to state that earthworks must be undertaken "using best practice sediment control management to in a way that prevents" sediment entering water bodies, stormwater networks, or the coastal marine area, or going across property boundaries, which may go some way to achieving the outcome sought by the submitter.
1006. We do not consider it either necessary or appropriate to restrict track construction to that for non-vehicular recreation purposes only. We agree with the Reporting Officer's assessment that the provision for tracks with a width of no greater than 2m is likely to restrict the use of these tracks by motorised vehicles. We consider 2m an appropriately restrictive width given the sensitivity of the areas in question to the removal of vegetation and/or indigenous vegetation. However, we accept that there may be some occasional need for motorised vehicles to use these tracks, and we do not consider there to be any evidential basis upon which to restrict use of these tracks by motorised vehicles where they can do so without contravening the exempted width. In relation to the ORC's stated concern that construction of tracks up to 2m in width may disturb "endangered and critical plant species and/or coastal dune stability", we note vegetation clearance is also subject to:
- Rule 10.3.2.4, which (including amendments discussed in section 3.4.7.4) exempts track construction only where it does not damage important breeding, refuge, feeding or resting sites for indigenous fauna listed in Appendix 10A.2, or damage mature indigenous trees listed in Appendix 10A.3, and
 - Rule 11.3.2, which manages vegetation clearance in dune system mapped areas, and does not exempt the construction of tracks.
1007. With regard to the request to amend the distance from water bodies in Rule 10.3.2.3.c.ix, we accept the Reporting Officer's evidence that the 5m provision seems inadequate for clearance incidental to forestry activity and, taking the lead from the ORC submission in relation to the impacts on water bodies, accept the Reporting Officer's recommendation that the figure be increased to 10m.
1008. In the absence of further clarification from the *Otago Regional Council* (OS908.30) on what amendments they considered are required to ensure adverse effects are avoided, we have not made any further amendments. Observing that the submission sought that effects of land based activities on water body values are considered, we do note that the control of land use for the maintenance and enhancement of water and ecosystems in water bodies and coastal water is a responsibility of regional councils under s30(c) of the RMA. At the Rural Hearing, ORC director of policy, planning and resource management Mr Fraser McRae indicated the ORC considered these responsibilities had been delegated to territorial local authorities under a triennial agreement, but could not produce formal confirmation of this delegation. We recommend clarification of this position between the two authorities as a matter of

relative urgency, to then enable the resource management issues listed under s30(c) to be considered and the appropriateness of any relevant management options formally assessed.

1009. We reject the submissions of *Timothy George Morris* (OS951.7) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.7) seeking to amend Policy 10.3.2.3 to provide for control of regrowth indigenous vegetation. We accept the expert evidence of Dr Lloyd that given the sensitivity of the areas involved, even where vegetation adjacent to the areas has been disturbed in the past, it should not be cleared again. We note that, outside of protected areas, ASBVs, ONFs and coastal character overlay zones, new Rule 10.3.2.A.a.xiv, discussed in section 3.4.4.1, provides for clearance of indigenous vegetation from areas that, within the last 10 years, have been cultivated or clear of such vegetation, provided that the clearance is associated with a permitted land use or city-wide activity.

3.4.7.4 Rule 10.3.2.4 Protected species

1010. Rule 10.3.2.4 manages indigenous vegetation clearance that affects the threatened plant species listed in Appendix 10A, or mature examples (greater than 15 years old) of the important native tree species listed in the same appendix.
1011. Submissions in support of all or part of Rule 10.3.2.4 were as follows:
- *KiwiRail Holdings Limited* (OS322.90) supported Rule 10.3.2.4 as the submitter supported the exemption of indigenous vegetation clearance associated with the maintenance of network utilities from the rule.
 - *Transpower New Zealand Limited* (OS806.48) also supported this exemption from the rule, provided that their request for the definition of Network Utilities Activities to include “transmission and distribution of electricity” was provided for (we note that this request has been given effect to in the Network Utilities Decision).
 - *Forest and Bird NZ* (OS958.73) supported the exemption to Rule 10.3.2.4 for indigenous vegetation clearance that was provided for as part of a conservation management strategy, conservation management plan, reserve management plan or covenant established under the Conservation Act 1987 or any other Act specified in the First Schedule of the Conservation Act 1987.
 - *Oceana Gold (New Zealand) Limited* (OS1088.48) was neutral in relation to this rule, provided the new Macraes Gold Project Overlay Zone was established. If this zone was not established, the submitter sought that an exemption for the Macraes Gold Project be included in the rule because, in their view, the ongoing development and operation of the mine would inevitably involve the clearance of vegetation, and the 2GP needed to make provision for this.
1012. In response to *Oceana Gold*, Mr Bathgate noted that the proposed new Macraes Gold Project Overlay Zone was discussed in the Cross-Plan Mining Activity section 42A report, with the planner’s recommendation that this be the subject of a future plan change to align with provisions under the Waitaki District Plan. Despite the recommendation that a new overlay zone was not created at this point, he did not recommend that Rule 10.3.2.4 should be amended to create a specific exemption for the Macraes Gold Project. He considered it appropriate that any extension or change to this activity should consider the effects on the plant or tree species covered under Rule 10.3.2.4 (s42A report, section 5.8.7.4).
1013. *STOP* (OS900.155) and *Forest and Bird* (OS958.56) sought that Rule 10.3.2.4 be amended to manage indigenous vegetation clearance that affects listed threatened wildlife species. In conjunction with this request, the submitters sought that a new appendix be added to the Plan listing the acutely and chronically threatened wildlife as per the NZ Threat Classification list. In related submission points, the same submitters also sought that a definition of threatened wildlife be added to the Plan

(OS900.5 and OS958.6). The submitters stated: “Instead of having a schedule of threatened wildlife, which is difficult to update it may be feasible to have a definition referencing the NZ Threat Classification lists. If this is not possible to refer to a document outside of the Plan then the lists of threatened wildlife, including birds, bats and reptiles should be added as a schedule.”

1014. *Otago Regional Council* (OS908.34) sought that the 2GP refer to the New Zealand Threat Classification System in policies and rules, because the protected indigenous species listed in Appendix 10A are taken from the classification system. The submitter was concerned that the appendix may in future not be consistent with the system, which is updated every 5 years.
1015. Mr Bathgate noted that, as a matter of national importance, section 6(c) of the RMA requires the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. He agreed with *STOP* and *Forest and Bird* that, in only addressing threatened plant species and not threatened fauna, Rule 10.3.2.4 appears to address only the first clause of section 6c, outside of those areas already scheduled as ASCVs. He noted that, in developing his response to these submissions, he had drawn on the advice of Dr Mandy Tocher, an ecologist and planner who was employed by the DCC at the time the s42A Report was written (s42A report, section 5.8.7.4).
1016. In terms of the objective and policy linked to this performance standard, Mr Bathgate noted that Objective 10.2.1 refers more broadly to both areas of indigenous vegetation and the habitats of indigenous fauna, while Policy 10.2.1.4 refers to the biodiversity value of an area of indigenous vegetation. He considered it appropriate that the rule for indigenous vegetation clearance that could affect threatened species should apply to fauna as well as plant species. Therefore, he recommended that threatened indigenous fauna are included in Rule 10.3.2.4, including the creation of a new appendix as suggested by the submitters. He acknowledged that Rule 10.3.2.4 applies only to indigenous vegetation clearance, so would not capture any exotic habitat utilised by threatened indigenous species.
1017. In relation to the submitters' request to include an appendix listing acutely and chronically threatened wildlife as per the “National Priority Statement”, he noted there is no National Priority Statement pertaining to threatened wildlife. He assumed that the submitters were referring to either of two non-statutory documents; the proposed National Policy Statement for Indigenous Biodiversity (*pNPS Biodiversity*, 2011) or the joint statement of intent from the Minister of Conservation and Minister for the Environment, which details national priorities for protecting rare and threatened biodiversity on private land (*Protecting our Places*, 2004).
1018. Mr Bathgate noted *Forest and Bird* and *STOP*'s suggestion that any definition of threatened wildlife should include “birds, bats and reptiles ranked as Nationally Critical, Nationally Endangered, Nationally Vulnerable or Declining in the New Zealand Threat Classification available on the Department of Conservation's website”. The NZ threatened species classification system (NZTCS)²² attempts to consistently apply a set of criteria to multiple fauna and flora taxa, to provide a national-level assessment of vulnerability to extinction. Under the scheme ‘Nationally critical’ species are the most vulnerable and ‘Not threatened’ the least; 23 fauna and flora taxonomic groups are included in the scheme (e.g. bats, birds, stick insects, marine mammals, NZ fleas, to name a few).
1019. “Acutely and chronically threatened” is a term used in earlier iterations of the NZTCS (2002) and is also used in *Protecting our Places* where National Priority 4 of this document is “*To protect habitats of acutely and chronically threatened indigenous species.*” Mr Bathgate noted that the *pNPS Biodiversity* uses a wider term

²² <http://www.doc.govt.nz/nature/conservation-status/>

“*threatened and at risk species*”, which includes all classes under “at risk” as follows: At Risk-Declining; At Risk-Recovering; At Risk-Relict and At Risk-Naturally uncommon; as well as the threatened classes Nationally Critical, Nationally Endangered and Nationally Vulnerable (i.e. 7 classifications).

1020. The pNPS approach differs (and promotes a larger list of classifications) from that requested from submitters (four classifications). Mr Bathgate noted that he sought advice from Rod Hitchmough from the Department of Conservation, who manages and administers the NZTCS, regarding the correct translation of “Acutely and chronically threatened” referred to by the submitters, and contained within *Protecting our Places* and used in the notified version of Policy 2.2.3.1c. Mr Hitchmough was of the opinion that “Acutely and chronically threatened” should be limited to the four classifications referred to by the submitters rather than the wider list contained within the *pNPS Biodiversity*. Mr Bathgate noted that this advice fits well with the submissions and as such, he recommended these submission points be accepted and that species classed as Nationally Critical, Nationally Endangered, Nationally Vulnerable and At Risk-Declining be included in a new appendix for threatened wildlife.
1021. Mr Bathgate noted that both submitters, in their submissions on a definition of threatened wildlife, wished to limit the schedule of threatened wildlife to include only birds, bats and reptiles. The submitters provided no reasons for the restriction and as noted above, the NZTCS includes 23 taxonomic groups that could, in theory be included in such a schedule. Indigenous birds and reptiles are all conspicuous elements of the indigenous fauna within DCC boundaries, many of which could be noticed by lay-persons or at least their presence noted if not through a formal identification. Also, both of these groups have good quality distributional data over the DCC making data on where they occur, and where they may occur, accessible to the public. Therefore, Mr Bathgate agreed with submitters and recommended the submission points be accepted and that protected and locally important reptiles and birds be included in a new appendix (“Appendix 10A.2 Threatened Fauna Species List”). While it could be argued that other groups such as invertebrates should be included, Mr Bathgate noted that species in these groups are generally not as conspicuous as birds and reptiles, harder to identify and rely on very specialist knowledge. He also noted that they have not been requested for inclusion by any submitters.
1022. Indigenous bats are cryptic animals that are hard to detect without specialist knowledge and equipment. According to Dr Colin O'Donnell, DOC bat expert, the distribution of indigenous bats (short tail and long tail bats) is reasonably well-known nationally and locally, with a study completed in 1995 (by Andie Barry, University of Otago) that showed they are not currently known within the DCC area. Mr Bathgate acknowledged that the lack of bat records over the DCC area did not mean they are extinct, but was of the view that determining the presence or definite absence of bats in relation to Rule 10.3.2.4 could impose overly onerous constraints on vegetation clearance that cannot be justified by the current knowledge-base that indicates the likely absence of a population of bats over the DCC area. Therefore, he recommended that bats were not included in new Appendix 10A.2.
1023. One other species, however, may more appropriately be included in such an appendix. New Zealand sea lion, *Phocarctos hookeri*, is classified as ‘Nationally Critical’ and in Mr Bathgate’s view warrants inclusion. This species is a conspicuous member of DCC fauna and at times can be found in vegetation well above MHWS. Therefore, he recommended that New Zealand sea lion was also included in the new Appendix 10A.2.
1024. With regard to the submitters’ suggestions that the 2GP definition of threatened wildlife or the policies and rules could refer to the DOC-led New Zealand threatened

species classification system (NZTCS) instead of including a schedule of threatened wildlife, Mr Bathgate noted that a performance standard must always refer to the version of an external document that was available at the time the standard became operative, and so will not legally include any subsequent updates to that document. In the case of the NZTCS, classifications are reviewed for any given group every 3-4 years, at which point a new set of classifications are published online for each group. Reference to the NZTCS, as requested, would result in the potential for the threat classifications for many species to be out of date over the duration of a given Plan, or for species to be absent from schedules that have been allocated a higher threat ranking (become more threatened) over the course of the Plan. The same problem exists for other plan schedules and appendices and, therefore, the DCC intends to undertake annual plan changes to the 2GP to include any required updates. This process would include updating of any threatened flora and fauna schedules to match current threat classifications and to exclude species that are no longer appropriate.

1025. Mr Bathgate did not think a definition of threatened wildlife was required, if his recommendation to create a new appendix of “protected and locally important indigenous fauna” were accepted. However, he agreed with submitters that the contents of a new appendix should include fauna species classified by the NZTCS as Nationally Critical, Nationally Endangered, Nationally Vulnerable and At Risk-Declining, as per the DOC NZTCS manual, 2008 as discussed above. In making this recommendation, he also recommended the submissions points relating to a new definition (OS900.5, OS958.6) be accepted in part.
1026. He noted that both the operative Plan and notified 2GP threatened plant species lists include “locally uncommon” and “at risk-naturally uncommon” plant species; therefore, these lists were broader in scope than the “acutely and chronically threatened” grouping requested for the new wildlife appendix. While “at risk-naturally uncommon” is a category from the NZTCS, “locally uncommon” is not part of the NZTCS but provides for inclusion of species that are naturally uncommon at a local level. While it may be considered consistent to include “locally uncommon” and “at risk-naturally uncommon” fauna species in the new appendix, Mr Bathgate considered that the submissions may not give scope for this (s42A report, section 5.8.7.4).
1027. *Federated Farmers of New Zealand* (OS919.40) seeks that Rule 10.3.2.4 be amended to clarify that the intention in relation to indigenous vegetation is to capture a plant community rather than isolated examples of the species. The submitter supported the proposed rule, if considered in addition to reasonable limits on indigenous vegetation clearance (i.e. an increase in the minimum standards proposed under Rule 10.3.2.2, as outlined Federated Farmers' submission on that rule), and specific protection of areas under other approaches. If it is the case that the definition of "Indigenous Vegetation" applies here, the submitter believed it would be useful, from a plan user's perspective, to include this definition within the rule.
1028. Mr Bathgate did not recommend this submission be accepted, as he did not consider it is the intent of Rule 10.3.2.4 to exempt isolated examples of the species. With respect to the important native tree species in Appendix 10A, the rule specifies in 10.3.2.4.a.ii that it applies to one or more mature examples. With respect to threatened plant species, the rule specifies in 10.3.2.4.a.i that it applies to one or more of the threatened plant species listed in Appendix A10A, without specifying whether the rule applies to an individual specimen or an entire community of the species. However, the rule applies to indigenous species that are considered threatened according to the New Zealand Threat Classification System, ranging from species considered locally uncommon through to species that are considered nationally endangered. Because of this, he considered that the rule does not need to specify a lower limit on the number of specimens. He noted, however, that the rule applies to ‘indigenous vegetation clearance’, the definition of which stems from the definition for ‘vegetation clearance’.

which refers to the destruction or extensive failure of “an area of vegetation” (s42A report, section 5.8.7.4).

1029. *Michael Ovens* (OS740.22) sought that Rule 10.3.2.4.a.ii (indigenous vegetation clearance of 15 year old important native trees) be removed, because he believed that the combination of the Rural Residential 2 rules and the requirements of this provision as it stands make doing anything on a property referred to in his submission very difficult. He considered that, taken together, provisions were too restrictive and may not be the best method for achieving intended outcomes.
1030. Mr Bathgate did not consider that Rule 10.3.2.4.a.ii should be removed. The rule provides protection for mature examples of indigenous trees that are considered important for their biodiversity values, for example, as a provider of habitat, providing shelter for other native species or as a seed source. He considered that the rule contributes to the fulfilment of DCC's functions in relation to biodiversity (s42A report, section 5.8.7.4).
1031. Similar to their submission on Rule 10.3.2.3 (discussed in section 3.4.7.3 of this decision, above) *Forest and Bird NZ* (OS958.72) and *STOP* (OS900.155) sought that Rule 10.3.2.4.b.i be amended to clarify that this exception does not include the earthworks involved in the erection, maintenance or alteration of fences, as the erection of fences can involve bulldozing or scrapping tracks which can degrade wetlands and adjacent water bodies. *Forest and Bird NZ* (OS958.71) and *STOP* (OS900.155) also sought that Rule 10.3.2.4.b.iii be amended so that the exception applies only to the maintenance of tracks up to 2m in width and not their construction, as construction of tracks can destroy populations of some threatened species.
1032. *Robert George & Sharron Margaret Morris* (OS355.13) sought that Rule 10.3.2.4 be amended to provide exemptions for removal of regrowth indigenous vegetation reasons, as excessive regrowth contributes to reduction of effective farming and forestry areas. *Timothy George Morris* (OS951.70) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust* (OS1054.70) also sought that Rule 10.3.2.4 be amended in this way. Their reasons were that regrowth of indigenous vegetation (e.g. Kanuka) can be rapid and have significance adverse effect on farming and forestry activities. The regrowth in such circumstances may be considered as reverse sensitivity and thus is at odds with other aspects of the 2GDP. The regrowth can be accelerated by fertiliser application. Control of regrowth indigenous vegetation is necessary as part of long term maintenance of rural land for productive rural activities and long term maintenance of rural land for productive rural activities is encouraged elsewhere within the 2DP.
1033. In relation to the *Forest and Bird* and *STOP* submissions to seek clarification that Rule 10.3.2.4.b.i does not exempt earthworks, Mr Bathgate did not recommend any amendment for the same reason as set out in section 3.4.7.3 of this decision, above.
1034. In relation to the *Forest and Bird* and *STOP* submissions to amend Rule 10.3.2.4.b.iii so that it only applies to maintenance and not construction of tracks up to 2m in width, he considered that the submitter raised a valid concern. Given that this rule is designed to protect threatened species or important native trees, he considered it appropriate that the construction of tracks avoid adverse effects on such species. Rather than not providing for track construction altogether, he recommended an amendment so that any construction is located so that it avoids or does not damage specimens listed in Appendix 10A. He considered that this amendment should also apply to Rule 10.3.2.4.b.i in regard to the erection of fences (s42A report, section 5.8.7.4).

1035. *The Morris* submissions to amend Rule 10.3.2.4 to provide exemptions for removal of regrowth indigenous vegetation were considered in the evidence of Kelvin Lloyd (paragraphs 70-78) (cited in Section 42A Report, section 5.8.7.4). Dr Lloyd stated, in relation to Rule 10.3.2.4.a, that he considered the restrictions justified, given that clearance in these instances could generate significant adverse effects on locally threatened or important species. Dr Lloyd did not favour the additional exemptions for regrowth vegetation as sought by the submitters.
1036. On the basis of this evidence, Mr Bathgate did not recommend that the submissions to amend Rule 10.3.2.4 to include exemptions for removal of regrowth indigenous vegetation are accepted (s42A report, section 5.8.7.4).
1037. At the hearing, *Mr Murray Soal* (whose submission OS291.5, discussed in section 3.4.4.1, sought that Rule 10.3.2 as a whole be amended to make provisions less prohibitive) raised the following questions and concerns specifically in relation to Rule 10.3.2.4:
- Does one mature tree over 15 years preclude all clearance on that site?
 - The rule as written states that no clearance in any part of zone should occur where mature tree present.
 - Should the word native read indigenous?
 - Exemption for tracks under (b)(iii) should be 4m wide to allow for gates/farm vehicles
 - Will grazing of indigenous grasses be captured?
1038. At the hearing, *Oceana Gold* called Dr Thorsen (ecological expert) whose evidence partially supported the recommended amendments subject to acceptance of other submission points on significance criteria, ASCVs and definitions.
1039. At the hearing, *DOC* called Ms Yozin (planning expert) whose evidence supported the inclusion of an Appendix but questioned why only certain types of fauna were included and why only certain threat categories were included. The Reporting Officer noted that the types of fauna and threat classifications included are within scope of what the submitters asked for, and are considered more easily observable for landowners. He also noted that while the submitters asked for inclusion of bat species, DCC ecologist Dr Tocher in discussion with a DOC bat expert determined a likely absence in DCC areas. Dr Tocher recommended inclusion of New Zealand sea lion as threatened mammal species. (Revised Recommendations Summary, p.6)
1040. In response to a query from the Panel in relation to scope of adding sea lion to the new schedule, the Reporting Officer agreed that this is outside scope as submissions asked for inclusion of birds, bats and reptile species in threatened wildlife appendix. He then revised his recommendation and deleted sea lion from the recommended Appendix 10A.2. (Revised Recommendations Summary, p.55)
1041. Mr Bathgate responded to *Mr Soal* as follows (Revised Recommendations Summary, p. 8).
- He recommended that Policy 2.2.3.2, Policy 10.2.1.4 and the title of Appendix 10A.2 be amended to replace “native” with “indigenous”
 - He recommended that Rule 10.3.2.4 be amended to clarify that the rule controls Indigenous Vegetation Clearance “on any site”.
 - He commented that grazing of indigenous grass species listed in Appendix 10A.3 are captured by Rule 10.3.2.4, where grazing results in the failure of an area of vegetation leading to those outcomes described in the definition of Vegetation Clearance. He also stated that Rule 10.3.2.2 may also capture indigenous grasses where grasses meet the definition of Indigenous Vegetation in terms of dominance and where grazing results in the failure of the area leading to those outcomes described in the definition of Vegetation Clearance.

- In relation to the width of tracks, he referred to his response to *Mr Van Turnhout* (see discussion in section 3.4.6.3 of this decision).

3.4.7.4.1 *Decision and Reasons*

1042. We note that a number of clarifying clause 16 amendments have been made to this rule, including the reordering of exemptions to match the order in Rule 10.3.2.A.
1043. We accept in part the submissions of *KiwiRail Holdings Limited* (OS322.90), *Transpower New Zealand Limited* (OS806.48), *Forest and Bird NZ* (OS958.73) and *STOP* (OS900.155, insofar as it sought retention of clause 10.3.2.4.b.iv). Our decision retains Rule 10.3.2.3 with clause 16 amendments as described above, amendments as described below and in other sections of this Decision Report.
1044. We reject the submission of *Oceana Gold (New Zealand) Limited* (OS1088.48). Our decision on the requested new Macraes Gold Project Overlay Zone is set out in the Mining Decision Report. In relation to the submitter's request that vegetation clearance associated with the Macraes Gold Project be exempt from Rule 10.3.2.4, we consider that, to be in accordance with section 6(c) of the RMA and other higher order policy direction (including the NZCPS Policy 11, and Policy 3.2.2 of the pORPS-dv), it is necessary that the 2GP manage indigenous vegetation clearance, particularly where it involves significant species. We consider that Rule 10.3.2.4, with amendments as discussed below, appropriately gives effect to Objective 10.2.1 and to this higher order policy direction. As outlined in section 3.5 of this decision, the 2GP has been amended to include a framework for biodiversity offsetting. Where Rule 10.3.2.4 is unable to be met by an activity, any biodiversity offsets or environmental compensation offered up as part of an application will be taken into account as positive effects under section 104 of the RMA, and assessed against new policies 2.2.3.5 and 2.2.3.6. This is reinforced by amendments to the relevant assessment rule (Rule 10.4.3.5), which add (as discussed in section 3.5.5) a link to Policy 10.2.1.X (providing a pathway for biodiversity offsets and environmental compensation where there are no practicable alternative locations), and associated assessment guidance.
1045. In response to the submissions of *Robert George & Sharron Margaret Morris* (OS355.20), *Timothy George Morris* (OS951.14) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust* (OS1054.14) and *Murray Soal* (OS291.5), discussed in section 3.4.4.1, we have amended Rule 10.3.2.4 as follows:
- we have exempted vegetation clearance associated with the maintenance of existing structures, via a change to Rule 10.3.2.4.b.ii
 - we have amended the exemption for vegetation clearance associated with the construction of tracks so that it applies to tracks up to 3m (rather than 2m) wide, via a change to Rule 10.3.2.4.b.iii (although we have also qualified this exemption to exclude any clearance that damages certain flora and fauna, as discussed below)
 - we have exempted vegetation clearance that is for the clearance of a pest plant listed in Appendix 10B (via the addition of Rule 10.3.2.4.b.vi).
1046. We consider these types of vegetation clearance can be exempted from Rule 10.3.2.3 while still allowing Objective 10.2.1 to be achieved. They make the rule less prohibitive, as sought by *Mr Soal*, and better provide for normal farming activities, including in coastal areas (as sought by the *Morris* submissions). In relation to track width, as discussed elsewhere and subject to the further amendments discussed below, we consider this constitutes a reasonable balance between the needs of permitted activities, and the maintenance and enhancement of indigenous vegetation. These amendments are shown in Appendix 1 and attributed to NatEnv 291.5.

1047. We also accept the point raised by *Mr Soal* in relation to the clarity of the area that Rule 10.3.2.4.a refers to, and consider that addition of the words “in the area to be cleared” will provide that clarity. We also accept another point raised by *Mr Soal* relating to use of the word “native”, and consider this can be addressed by replacing the word “native” with “indigenous” in Policy 2.2.3.2, in Policy 10.2.1.4, and the title of Appendix 10A.2 as recommended by the Reporting Officer. We consider these amendments are necessary for Plan clarity and consistency, and can be made under clause 16.
1048. We accept the submissions of *Forest and Bird* (OS958.56), and accept in part the submissions of *STOP* (OS900.5, OS900.155) and *Forest and Bird* (OS958.6) insofar as they sought to add “threatened wildlife species” to Rule 10.3.2.4, supported by a new appendix and definition, and accept in part the submission of the *Otago Regional Council* (OS908.34) to reference the New Zealand Threat Classification System (NZTCS) in policies and rules as required. We agree that amendment of Rule 10.3.2.4 is necessary to address s6(c) of the RMA, which requires the protection of not only significant indigenous vegetation but also the significant habitats of indigenous fauna. We concur with the Reporting Officer’s assessment that such an amendment recognises that Indigenous Vegetation Clearance can adversely affect the habitats of threatened fauna species, and that amending the rule to manage this would help achieve both Objective 10.2.1 and Policy 10.2.1.4.
1049. We accept the Reporting Officer’s recommendation that inclusion of fauna classed as Nationally Critical, Nationally Endangered, Nationally Vulnerable and At Risk – Declining in the NZTCS reflects the full extent of the scope of submissions (noting that this recommendation is based on advice from the administrator of the NZTCS, Mr Rod Hitchmough). We note that, given annual Plan changes to the 2GP can be expected, inclusion of the list by way of a new appendix should allow for regular updates of the relevant species, and we therefore prefer this approach to inclusion of a definition.
1050. We note the inconsistency with 2GP threatened plant species lists (which include “locally uncommon” and “at risk – naturally uncommon” species as well as those categories listed above), and recommend that the merits of aligning the criteria associated with these lists are considered as part of a future Plan change.
1051. We accept the Reporting Officer’s recommendation not to include bats (noting that this recommendation is based on the advice of national bat expert Dr Colin O’Donnell). We concur that requiring landowners to definitively determine the presence or absence of bat species when seeking to undertake indigenous vegetation clearance, could impose overly onerous constraints this activity.
1052. Having reassessed the original submissions, however, we do not consider that scope is limited to birds, bats and reptiles in these threat categories, as the submissions stated “Threatened wildlife includes birds, bats and reptiles”, but did not limit the request to these species. We therefore consider that the New Zealand sea lion can and should be included as originally recommended by the Reporting Officer, but we recommend the addition of other species are considered by way of future Plan changes.
1053. As such, we support inclusion of Appendix 10A.2 Threatened fauna species list, as set out in the first Addendum to the Natural Environment Section 42A Report and the addition of the recommended new clause iii in Rule 10.3.2.4.a. as follows:
- “iii. any threatened indigenous fauna species listed in Appendix 10A.2. {NatEnv 900.155}”
1054. We note that we have already amended the corresponding Policy 10.2.1.4 to add “threatened fauna species” in response to another *STOP* submission OS900.29, as set out in section 3.4.7.1 above.

1055. We reject the submission of *Federated Farmers of New Zealand* (OS919.40) seeking to amend Rule 10.3.2.4.a to clarify that it is intended to capture a plant community and not isolated examples. As noted by the Reporting Officer, Rule 10.3.2.4.a.ii specifically refers to “one or more mature examples” of the important native tree species in Appendix 10A, and that Rule 10.3.2.4.a.i refers to species with a broad range of threat classifications. We conclude that in the former case, it is not the intent of the rule to exempt isolated specimens, and in the latter case, it would be inappropriate to specify a lower limit on the number of specimens, given the potential importance of single specimens to Nationally Endangered species.
1056. We also reject the submission of *Michael Ovens* (OS740.22) seeking to remove Rule 10.3.2.4.a.ii. Particularly in the absence of a comprehensive schedule of areas of significant indigenous vegetation and the significant habitats of indigenous species (a matter discussed elsewhere), we consider this rule an important method to achieve Objective 10.2.1 and to ensure alignment with other relevant higher order policy direction (including the NZCPS and pORPS-dv Policy 3.2.2), given the biodiversity values associated with these specimens.
1057. In relation to submissions seeking amendment to Rule 10.3.2.4.b, we accept in part the submissions of *Forest and Bird NZ* (OS958.71, OS958.72) and *STOP* (OS900.155).
1058. As noted in section 3.4.7.3, above, we agree with the Reporting Officer’s assessment that, given earthworks are subject to their own provisions, it would not aid Plan clarity to include reference to earthworks exemptions within Rule 10.3.2.4. We note, as described in the Earthworks Decision Report, that a number of amendments have been made to ensure all earthworks provisions are clearly articulated in one section of the Plan.
1059. In relation to fences, see discussion of new Rule 8A.5.1.1.g, added in response to EW 388.4 and 911.1, in the Earthworks Decision. This rule permits earthworks for fencing, subject to certain size parameters.
1060. We note that, as amended, Rule 10.2.3.A provides for clearance for the erection, maintenance or alternation of fences (including gates) as Indigenous Vegetation Clearance – Small Scale. While we consider this necessary, given the importance of fences to permitted land use activities, including conservation and farming, we accept that taken together, these provisions permit an activity that may have unacceptable adverse effects on mature specimens of important native tree species, threatened plant species and/or on the habitats of threatened fauna species. We therefore support the amendment to Rule 10.3.2.4.b.i recommended by the Reporting Officer, requiring that fence posts are located outside of the dripline of mature nature trees listed in Appendix 10A.
1061. We note that the Reporting Officer also recommended amending the clause to require that the activity does not “damage specimens of the threatened species”. We observe that, in relation to fauna species, this is generally covered by the provisions of the Wildlife Act 1953, which prohibit “pursuing, disturbing, or molesting” wildlife, and that the RMA s6(c) seeks to protect the significant habitats of indigenous fauna, rather than the fauna themselves. We consider a requirement that the activity does not damage “important breeding, refuge, feeding or resting sites for threatened indigenous fauna” more appropriately emphasises protection of habitat, and aligns with the relevant provision in the amended Policy 2.2.3.1 (discussed in section 3.3.2).
1062. Our decision therefore amends Rule 10.3.2.4.b.i as follows:
- “b. This standard does not apply to indigenous vegetation clearance that is:
- i. for the erection, maintenance or alteration of fences (including gates),
provided:

1. any fence posts are located outside of the dripline of mature indigenous trees listed in Appendix 10A.3; and
 2. the erection of new fences does not damage:
 1. specimens of threatened plant species listed in Appendix 10A.1;
 2. important breeding, refuge, feeding or resting sites for indigenous fauna listed in Appendix 10.A2; or
 3. mature indigenous trees listed in Appendix 10A.3 {NatEnv 958.72};"
1063. We similarly agree that Rule 10.3.2.4.b.iii, by exempting indigenous vegetation clearance associated with construction of tracks up to 2m wide, permits an activity that may have adverse effects on mature specimens of important native tree species, threatened plant species and/or on the habitats of threatened fauna species. Again, while we consider it necessary to retain the clause given the importance of tracks to permitted activities, we consider the clause can be amended to address this issue as discussed above, for 10.3.2.4.b.i.
1064. Our decision therefore amends Rule 10.3.2.4.b.iii as follows:
- "iii. for the construction ~~or maintenance~~ {NatEnv cl.16} of tracks up to ~~2m~~ 3m {NatEnv 291.5} in width, provided track construction does not damage: {NatEnv 958.72}
1. specimens of threatened plant species listed in Appendix 10A.1;
 2. important breeding, refuge, feeding or resting sites for indigenous fauna listed in Appendix 10.A2; or
 3. mature indigenous trees listed in Appendix 10A.3 {NatEnv 958.72};"
1065. We reject the submissions of *Robert George & Sharron Margaret Morris* (OS355.13), *Timothy George Morris* (OS951.70) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.70). We accept the evidence of Dr Lloyd that clearance in these instances could generate significant adverse effects on locally threatened or important species. We consider it appropriate that Indigenous Vegetation Clearance that involves the species or specimens listed in the rule are subject to an assessment of effects on biodiversity values.
- ### 3.4.7.5 Requests to amend assessment Rule 10.4.3.4, and to remove assessment Rule 10.4.3.5
1066. Rules 10.4.3.4 and 10.4.3.5 are the assessment rules for activities that contravene Rules 10.3.2.3 Protected Areas and 10.3.2.4 Protected Species, respectively. Both types of activity are restricted discretionary.
1067. Rule 10.4.3.4 states that the matter of discretion for contraventions of Rule 10.3.2.3 is 'Effects on biodiversity and the natural character values of riparian margins and the coast'. It provides for the assessment of activities against Policies 10.2.1.4 and 10.2.2.3, discussed above. Rule 10.4.3.5 indicates that the matter of discretion for contraventions of Rule 10.3.2.4 is 'effects on biodiversity', and provides for the assessment of activities against Policy 10.2.1.4.
1068. *STOP* (OS900.161) and *Forest and Bird NZ* (OS958.82) sought that Rule 10.4.3.4 be amended by adding the following to the list of 'relevant objectives and policies': Objective 2.2.3 and policies 2.2.3.1, 2.2.3.2, 2.2.3.3, 2.2.3.4 and policies 10.2.1.1, 10.2.1.2 and 10.2.1.3 (as amended by their submissions).
1069. The same submitters also sought that Rule 10.4.3.5 be removed (OS900.162 and OS958.83) because, in their view, vegetation clearance in areas with threatened species should be non-complying rather than restricted discretionary.

1070. For reasons discussed in section 3.4.8.3 of this decision, below, in relation to the assessment rule for contraventions of Rule 10.3.2.1 Maximum area of vegetation clearance (UCMA), the Reporting Officer, Mr Bathgate, did not recommend the submissions of *Forest and Bird* and *STOP* to add strategic objectives and policies into the assessment rules, were accepted (Section 42A Report, section 5.8.7.5).
1071. In relation to the requests that Rule 10.4.3.5 be removed, Mr Bathgate did not recommend that vegetation clearance in areas containing a protected species should be a non-complying activity. He considered that a restricted discretionary status was more appropriate, as a non-complying status would indicate that any indigenous vegetation could only be cleared in exceptional circumstances. A restricted discretionary status allows for consideration of whether clearance of vegetation can be achieved without affecting that part of the area of indigenous vegetation containing the protected species.
1072. Mr Bathgate also noted that Policy 10.2.1.4 requires that indigenous vegetation clearance maintains or enhances the biodiversity values of the area of indigenous vegetation. In his view, these provisions provide sufficient protection for biodiversity values from the potential effects of indigenous vegetation clearance.

3.4.7.5.1 *Decision and Reasons*

1073. We accept in part the submissions of *STOP* (OS900.161, 162) and *Forest and Bird NZ* (OS958.82, 83).
1074. We do not support amending Rule 10.4.3.4 by including reference to Objective 2.2.3 and policies 2.2.3.1, 2.2.3.2, 2.2.3.3 and 2.2.3.4, and policies 10.2.1.1, 10.2.1.2 and 10.2.1.3. We accept the evidence of the Reporting Officer that the objectives and policies in the Strategic Directions section of the plan do not have a direct and linear relationship with Rule 10.4.3.4, due to their role in setting up the methods used in the Plan. We consider the reference to objectives 10.2.1 and 10.2.2 along with the relevant policies in those suites (Policy 10.2.1.4 and Policy 10.2.2.3) are adequate for the purposes of the restricted discretionary assessment.
1075. We also do not accept that contraventions of Rule 10.3.2.4 should be non-complying. We agree with the Reporting Officer's assessment that there are a range of potential circumstances in which indigenous vegetation clearance may be appropriate despite the listed species being present, including to support conservation activity. We consider the high bar set by amended Policy 10.2.1.4, in conjunction with a restricted discretionary activity status, will appropriately manage effects of Indigenous Vegetation Clearance on biodiversity values.
1076. However, as discussed in section 3.3.1.3, we have amended Rules 10.4.3.4 and 10.4.3.5 to link to new Policy 10.2.1.X. As part of this change, general assessment guidance has been added clarifying that, in assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1. We believe this goes some way to achieving the outcome sought by the submitter.

3.4.7.6 Appendix 10A 'Protected Indigenous Species' and 10B 'Pest Plant Species'

1077. Appendix 10A lists the threatened plant species and important native trees that are protected via Rule 10.3.2.4 Protected Species, discussed in section 3.4.7.4 above. Appendix 10B lists Pest Plant Species; clearance of these species is exempt from certain vegetation clearance provisions (specifically: the restricted discretionary activity status rules for indigenous vegetation clearance in more sensitive areas; Rule 10.3.2.1 Maximum area of vegetation clearance (UCMA); and Rule 10.3.2.3 Protected areas).

1078. *Department of Conservation* sought that Appendix 10A be amended (OS949.27) to make a number of minor corrections (Submission, p14), and Appendix 10B be amended (OS949.28) to correct the spelling of *Eragrostis curvula* and capitalisation of *Leycesteria formosa*.
1079. Mr Bathgate recommended that these submission points be accepted (Section 42A Report, sections 5.8.7.6 and 5.8.7.7).
1080. *Otago Peninsula Community Board* (OS588.5) sought that Appendix 10B be amended so that there is flexibility to add plants as required to reflect changing conditions. The submitter also requested that Aluminium Plant (*Lamium galeobdolon* 'Variegatum') be added to the Appendix.
1081. In response to this submission point, Mr Bathgate noted that the pest plant species listed in Appendix 10B were identified in consultation with the Department of Conservation and the DCC Parks and Recreation Group specific to a local context (Section 42A Report, section 5.8.7.7). While he agreed that it was important to be able to add species to the list should new plants be identified as being problematic in the Dunedin context, he considered that it would be necessary to add any new species as part of a plan change. He noted that, in exceptional circumstances, the Biosecurity Act also provides emergency powers to manage the spread of plants with potential to cause significant environmental or economic loss.
1082. Mr Bathgate noted that Aluminium plant (*Lamium galeobdolon* 'Variegatum') had a legal classification in New Zealand as an Unwanted Organism under the Biosecurity Act. He considered that it was appropriate that it was listed in the 2GP. Appendix 10B currently listed 'Artillery plant', which was another common name for Aluminium plant, under the scientific name *Galeobdolon luteum*. According to Landcare Research's NZflora database, *G. luteum* was the basionym (original scientific name) of *L. galeobdolon*. While the use of either name is valid, Mr Bathgate considered that it may reduce confusion to use both names with the name *L. galeobdolon* appearing first, consistent with the name used by a number of different organisations, including Biosecurity NZ, and Landcare Research. He also considered that Aluminium plant, which is a widely used term, should be included in the Appendix as a common name alongside Artillery plant so that it is made clear to plan users that it is the same plant (Section 42A Report, section 5.8.7.7).

3.4.7.6.1 *Decision and Reasons*

1083. We accept in part the submission of *Otago Peninsula Community Board* (OS588.5) and amend Appendix 10B to clarify that it includes Aluminium plant, as recommended by the Reporting Officer. We consider this approach will add clarity to the Plan.
1084. We accept the submissions of *Department of Conservation* (OS949.27, 28) seeking amendments to Appendix 10A and 10B as corrections to nomenclature, threat classification, spelling and classification, and consider they constitute clause 16 changes.

3.4.8 Urban Conservation Mapped Area provisions

3.4.8.1 Policy 10.2.1.5

1085. Policy 10.2.1.5 states:

Only allow vegetation clearance over the maximum area, and earthworks - large scale in an Urban Conservation Mapped Area (UCMA) where the conservation values of the UCMA are maintained or enhanced.

1086. This policy leads to Rule 10.3.2.1, which sets the maximum area of vegetation clearance in UCMA's, and also Rule 10.5.2.10, which provides for the assessment of earthworks – large scale in UCMA's.
1087. *Aurora Energy Limited* (OS457.29) sought that Policy 10.2.1.5 be amended by changing “maintained or enhanced” to “maintained or where appropriate enhanced”. While supportive of measures that seek to reduce the loss of biodiversity values, particularly in locations identified as Urban Conservation Management areas (UCMA), the submitter considered there will be instances where Aurora will be required to remove indigenous vegetation to ensure that operational efficiency of its network is maintained and to remove potential fire risks.
1088. The Reporting Officer, Mr Bathgate, did not support the recommended policy wording change; he did not consider that it adds anything to the policy, given that the “or” already provides a choice between maintenance and enhancement of conservation values.
1089. In relation to the submitter's concerns regarding the effects of indigenous vegetation on the operational efficiency of its network, he noted that there is an exemption to the vegetation clearance standard for clearance for the maintenance (but not extension) of existing network utilities activities, tracks, drains, or roads (Rule 10.3.2.1.d).
1090. *STOP* (OS900.30) and *Forest and Bird NZ* (OS958.23) sought that Policy 10.2.1.5 be amended as follows: “Only allow vegetation clearance ~~over the maximum area, and earthworks – large scale in~~ exceptional circumstances, or where undertaken to enhance the conservation values in an Urban Conservation Mapped Area (UCMA) where the conservation values of the UCMA are ~~maintained~~ protected or enhanced.” The reasons given relate to the submitters' request to add a schedule of UCMA's and their values, which is considered below, rather than the wording of the policy itself. The submitters state that the policy refers to conservation values of the UCMA, which do not appear to be listed in the Plan.
1091. Mr Bathgate did not recommend the proposed amendment be accepted. He considered that the suggested wording of “exceptional circumstances” would set a very high bar and would suggest a non-complying rather than restricted discretionary status. He considered this too stringent a test, noting also the relatively stringent clearance threshold of 20m² per three year period beyond which resource consent is required.
1092. Also, he did not recommend the change to “protect” conservation values. He noted that the drafting protocol used in the 2GP encourages the use of ‘outcome statements’ as policy tests. While there is little difference in the definitions of protect versus maintain, he considered that maintenance of values is more appropriate wording as maintenance means “preserving a condition or situation” – it is focused on the outcome, whereas “protect” means “aim to preserve” or “keep safe” and is more related to the action taken (legal instrument) to achieve maintenance.
1093. Finally, *STOP* (OS900.31) and *Forest and Bird NZ* (OS958.112) sought that an Urban Conservation Mapped Area (UCMA) schedule be added to the Plan, including the areas listed in the assessments undertaken by Ahika Consulting. The submitters considered that assessments undertaken by Ahika Consulting were not complete; they submitted that, for certainty, the areas needed to be included in a schedule with the values listed.
1094. Mr Bathgate acknowledged that some of the assessments by Ahika Consulting were more detailed than others with respect to description and values provided. However, he considered that an appendix setting out the values of the UCMA's should be added to the 2GP, with the opportunity to expand on this at a later date. He considered that listing the conservation values described by Ahika in an appendix would assist in the

assessment of any application to clear vegetation in UCMAs, as well as applications for earthworks – large scale, or subdivision (noting that subdivision in UCMAs is considered under Policy 10.2.1.9).

1095. Mr Bathgate indicated that an appendix had been drafted by Dr Mandy Tocher, an ecologist and planner employed by the DCC, and had been reviewed by Ahika Consulting. He recommended that this appendix be added to the 2GP as Appendix A10 Urban Conservation Mapped Area Values. He also recommended that: Policy 10.2.1.5 be amended to refer to the values listed in the new Appendix A10; and that assessment rules 10.4.3.2 and 10.5.2.10 be amended to allow for consideration of the values listed in the appendix when considering applications for vegetation clearance, earthworks – large scale and subdivision in UCMAs.
1096. Finally, he noted that the 2GP maps had inaccurate labelling of UCMAs, labelling them “ULCA1” etc. This reflected the title of Urban Landscape Conservation Areas (ULCAs) from the operative Plan. He considered that this should be amended under RMA clause 16. He also recommended that the UCMAs be renumbered in the 2GP maps to reflect the numbering in the proposed new Appendix A10, rather than the notified numbering, which was based on a numbering system employed for Urban Landscape Conservation Areas (ULCAs) in the operative Plan.
1097. *STOP* (OS900.31) and *Forest and Bird NZ* (OS958.112) also noted that “the assessments recommended additions to these areas that do not appear to have been included in the proposed plan”. In relation to this point, Mr Bathgate indicated that these additions were intended to be the subject of future plan change work, as there would need to be further assessment work conducted and liaison with landowners, which was not able to be completed prior to 2GP notification.
1098. At the hearing, the Panel noted, in relation to Policy 10.2.1.5, that there did not appear to be any criteria for the identification of UCMAs listed in any policies or elsewhere in the 2GP. The Reporting Officer agreed that this was the case, but considered there was no scope from submissions to amend this. He considered that this should be addressed in future plan change work (Revised Recommendations Summary p.54).
1099. The Panel also queried whether the following wording would improve the clarify of the policy: “Only allow vegetation clearance ~~over the maximum area that exceeds the specified threshold~~ and earthworks...”. The Reporting Officer again agreed, but did not consider there was scope provided for this by submissions, although considered it may be possible to do it as a clause 16 change, if the Panel considered the change to be of minor effect.

3.4.8.1.1 *Decision and Reasons*

1100. We note that Policy 10.2.1.5 has also been amended by decisions outlined elsewhere. See section 3.6.1.6 for discussion of the change from “Urban Conservation Mapped Area (UCMA)” to “Urban Biodiversity Mapped Area (UBMA)”, and from “conservation values” to “biodiversity values”. In addition, our decision provides for Subdivision in UBMA as part of Policy 10.2.1.5, rather than as notified Policy 10.2.1.9. This does not change the effect of provisions.
1101. We agree with the assessment of the Reporting Officer, that the amendment to “are maintained or where appropriate enhanced” does not add clarity or change the meaning of the policy. We consider the exemptions in place for maintenance of existing network utilities already recognise the needs of operators to clear vegetation. We do not consider the amendment necessary, and therefore reject the submission of *Aurora Energy Limited* (OS457.29).

1102. We accept the submissions of *STOP* (OS900.31) and *Forest and Bird NZ* (OS958.112). We consider that there is a need add both greater specificity and clarity to the 2GP with respect to the values of UBMA's. We accept the recommendation of the Reporting Officer to add a new Appendix A10 Urban Biodiversity Mapped Area Values (as recommended by the Reporting Officer, and as set out in Appendix One of the Section 42A Report, pp.691-717), noting the descriptions in the Appendix are based on expert biodiversity assessments (*Urban Landscape Conservation Area (ULCA) Assessments*, Ahika Consulting 2015).
1103. As a consequential change, our decision also amends Policy 10.2.1.5 to refer to Appendix A10 (by adding "including, but not limited to, those values listed in Appendix A10" to the end of the policy), and amends the paraphrasing of Policy 10.2.1.5 in Rules 10.4.3.2 and 10.5.2.10 accordingly.
1104. We reject the submissions of *STOP* (OS900.30) and *Forest and Bird NZ* (OS958.23). Given the mixed vegetation described in many of the UBMA's in new Appendix A10, we do not consider it appropriate to further restrict the clearance of vegetation in these areas to only allow clearance "in exceptional circumstances, or where undertaken to enhance conservation values". We do however consider that a clause 16 amendment can be made to clarify that the "maximum area" referred to in the policy is the "maximum permitted area" under Rule 10.3.2.1.
1105. We also do not support amending the policy so that conservation values are "~~maintained~~ protected or enhanced". As discussed elsewhere, we consider the terminology "maintained or enhanced" appropriate where it relates to biodiversity values, unless it relates to areas of significant indigenous vegetation and/or the significant habitats of indigenous fauna, in which case we consider "protected or enhanced" more appropriate. We note that UBMA's have not been assessed as meeting the significance criteria outlined in Policy 2.2.3.1.
1106. However, as discussed in section 3.3.1.3, we have amended Rule 10.4.3.2 and Rule 10.5.2.10 to link to new Policy 10.2.1.X and general assessment guidance has been added has been added to Rule 10.5.A.1 (for all restricted discretionary activities) clarifying that, in assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1. We believe this goes some way to achieving the outcome sought by the submitter.
1107. We recommend that a future Plan review conduct a more thorough assessment of both existing and potential UBMA's, and where UBMA's are assessed as meeting the significance criteria, that they are considered for inclusion in the 2GP as ASBVs. This will afford them (where appropriate) a greater degree of protection.

3.4.8.2 Request relating to Rule 10.3.2.1 Vegetation clearance in Urban Conservation Mapped Areas

1108. Rule 10.3.2.1 Maximum area of vegetation clearance (UCMA) manages vegetation clearance over 20m² in Urban Conservation Mapped Areas (UCMA's), with certain types of vegetation clearance exempt from this control.
1109. *Mercy Dunedin Hospital Limited* (OS241.54) supported Rule 10.3.2.1 and related provisions in relation to Mercy Hospital's site, as the submitter considered that the provisions relating to vegetation clearance in an UCMA were commensurate with the efficient operation of the land for a hospital.
1110. *KiwiRail Holdings Limited* (OS322.88) also supported Rule 10.3.2.1; the submitter supported the fact that vegetation clearance for the maintenance of network utilities was exempt from the rule.

1111. *STOP* (OS900.146) and *Forest and Bird NZ* (OS958.47) supported Rule 10.3.2.1, but considered that it should apply over a five year period. The Reporting Officer, Mr Bathgate, did not agree with this request; he considered that the 20m² limit on vegetation clearance over a three year period was already quite restrictive, and that the submitters had not justified the need for to increase the time period to five years.
1112. *Mr Christian Jordan* (OS927.5) sought that Rule 10.3.2.1 be amended so that the maximum vegetation clearance in a UCMA was 15% of the total site area, as measured between the dripline of vegetation, with a maximum distance between the dripline of any vegetation being 15m.
1113. In the submitter's view, the 20m² limit was absurdly restrictive, and most vegetation would have a dripline of at least 3m from the stem, therefore the allowance is effectively zero. Allowing 15% clearance will mean that 85% is protected and the use of land for gardening or other purposes would be allowed. The submitter states that wind-blown seeds of native plants get an outrageously high level of protection, imposing significant costs on the landowner and preventing full and free access to their own land, which will lead to neglect and invasion of weed species.
1114. Mr Bathgate did not agree that vegetation clearance of 15% of any site in a UCMA should be permitted; he considered that this would provide for too much clearance of urban vegetation and would not achieve Objective 10.2.1 to maintain and enhance vegetation and habitats. He noted that the operative Plan does not provide for any "removal of bush" in Urban Landscape Conservation Areas (from which UCMA's have been derived) as of right. The inclusion of a small amount of clearance in the 2GP recognised that there are private landowners that may wish to keep parts of their properties free from regenerating vegetation or undertake gardening or other activities in areas that are currently in bush. He noted that the clearance of pest plant species was provided for in the exemptions to Rule 10.3.2.1. He also drew the submitter's attention to the outcomes-focused definition of vegetation clearance.
1115. He considered that the measurement of the area defined by Rule 10.3.2.1 at ground level provided for easier measurement of any area that is to be cleared and its effects than the use of driplines, particularly where the rule may have to be applied retrospectively.
1116. Finally, *Ludgate Sharp Family Trust* (OS928.5) sought either that Rule 10.3.2 be replaced with Rule 13.8.2 of the operative Plan, or that the matters over which the Council has discretion be broadened in relation to amenity. The submitter was concerned that the focus on maintaining and enhancing the biodiversity of the UCMA, as opposed to amenity, natural character and landscape values of the locality and biodiversity values, increased the vulnerability of that part of the Mercy Hospital site. In a related point, *Ludgate Sharp Family Trust* (OS928.6) sought that Rule 10.4.3.2 be amended to expand the matters of discretion beyond biodiversity, to include any loss of residential amenity as a consequence of vegetation removal. The submitter considered that the amenity, natural character and landscape values of the UCMA surrounding the Mercy Hospital and its buffering effects on surrounding residential areas needed to be considered.
1117. Mr Bathgate noted that related submission points from *Ludgate Sharp Family Trust* on the issue of vegetation protection and amenity had been addressed at the Mercy Hospital Hearing; at that hearing, there had been an exchange of ideas between the parties and the planner to resolve this matter. Therefore, he deferred to that process in terms of any recommended amendments necessary to address any outstanding issues related to vegetation protection for amenity purposes.

3.4.8.2.1 *Decision and Reasons*

1118. We note that a number of clarifying clause 16 amendments have been made to this rule, including the reordering of exemptions to match the order in Rule 10.3.2.A.
1119. In response to the submission of *Murray Soal* (OS291.5), discussed in section 3.4.4.1, we have amended Rule 10.3.2.1 to exempt the following types of vegetation clearance:
- clearance that is for the maintenance of existing “structures”, “irrigation infrastructure” or “firebreaks” (Rule 10.3.2.1.b.ii), and
 - clearance of non-indigenous plant species and replanting within 3 months with indigenous or non-indigenous plant species, not on the pest plant list in Appendix 10B, that will attain at least the same height and coverage as the plants that have been cleared (Rule 10.3.2.1.b.vii).
1120. We consider these types of vegetation clearance can be exempted from Rule 10.3.2.1 while still allowing Objective 10.2.1 to be achieved. They make the rule less prohibitive, as sought by *Mr Soal*. New Rule 10.3.2.1.b.vii has been added in particular to ensure that vegetation clearance with minor effects, e.g. associated with gardening, is not caught by rules. We note that this also provides partial relief to *Helen Skinner and Joseph O'Neill* (OS312.9) (see discussion in section 3.4.3). These amendments are listed in Appendix 1 and attributed to NatEnv 291.5.
1121. We reject the submissions of *STOP* (OS900.146) and *Forest and Bird NZ* (OS958.47) seeking that the rule should apply over a five year period. Given the mixed nature of the vegetation described in new Appendix A10, we do not consider that there is an evidential basis on which to further restrict vegetation clearance in these areas. We note that, in addition to the provisions of Rule 10.3.2.1, the provisions of 10.3.2.3 apply within UBMA; this further restricts vegetation clearance in particularly sensitive areas. As explained in section 3.4.8.4, we consider a more appropriate way to protect areas with biodiversity values that meet the significance criteria outlined in Policy 2.2.3.1, would be to list those areas as ASBVs.
1122. We reject the submission of *Christian Jordan* (OS927.5) seeking that Rule 10.3.2.1 be amended to permit vegetation clearance across 15% of total site area, as measured between vegetation drip lines. In considering similar approaches promoted by submitters in relation to other vegetation clearance provisions, the Reporting Officer noted (Revised Recommendations Summary, p.7) that applying a percentage-based approach may result in the loss of larger areas of vegetation on larger sites, and that it may result in clearance of areas of high biodiversity value (Natural Environment Section 42A Report, Section 5.8.6.1, p 334). We accept this assessment, and consider similar issues would occur were the approach to be taken with UBMA. We accept the Reporting Officer’s assessment that the notified rule would be easier to administer, particularly where it needs to be applied retrospectively. We also note that there are a range of exemptions to the rule which have the effect of permitting a number of activities as of right (including the clearance of pest plant species), and that Rule 10.3.2.1 does not prohibit clearance of areas greater than 20m², but rather that a restricted discretionary assessment of effects on biodiversity applies. We consider this appropriate to give effect to (amended) Objective 10.2.1.
1123. We also reject the submission of *Ludgate Sharp Family Trust* (OS928.5). We consider it appropriate that discretion is restricted to effects on biodiversity values in cases of breaches of Rule 10.2.3.1. We note that UBMA are set up as a method in the 2GP to achieve Objective 2.2.3 (which relates to indigenous biodiversity) and to deliver on Policy 2.2.3.4, Objective 10.2.1, and Policy 10.2.1.5 (all of which set out to maintain and enhance biodiversity values). As noted by the Reporting Officer, issues of vegetation clearance and amenity in the Mercy Hospital Major Facilities Zone were

traversed at the relevant separate hearing; our decisions on these matters are set out in the Mercy Hospital Decision Report.

3.4.8.3 Rule 10.4.3.2 Assessment of Vegetation clearance in a UCMA

1124. Rule 10.4.3.2 provides for the assessment of contraventions of Rule 10.3.2.1 Maximum area of vegetation clearance in an Urban Conservation Mapped Area. It indicates that the Council's matter of discretion for these activities is 'effects on biodiversity', and provides for activities to be assessed against Policy 10.2.1.5.
1125. Submissions on Rule 10.4.3.2 were as follows:
- *STOP* (OS900.160) and *Forest and Bird* (OS958.80) sought that Rule 10.4.3.2 be amended to add Objective 2.2.3 and policies 2.2.3.1, 2.2.3.3 and 2.2.3.4 to the list of 'relevant objectives and policies'. No specific reason was given for this requested amendment.
 - *FFNZ* (OS919.43) Rule 10.4.3.2 that the rule be amended to add a potential circumstance to support a consent application as follows: "The adverse effects are no more than minor." The submitter stated that "the proposed rule, as written, appears to deal with vegetation clearance generally, not indigenous vegetation clearance specifically. Subsequently we consider an additional clause should be added to the potential circumstances or mitigation measures that may support a consent application."
1126. The Reporting Officer, Michael Bathgate, responded to *STOP* and *Forest and Bird* by stating that he did not consider Rule 10.4.3.2 should be amended as requested, as the objectives and policies did not have a direct relationship with the rule (Section 42A Report, section 5.8.5.3). He did, however, note that he had made a recommendation elsewhere to amend the rule to include consideration of whether the area affected meets the significance criteria set out in strategic Policy 2.2.3.1 (see discussion in section 3.3.1.3 of this decision).
1127. In response to *FFNZ*, Mr Bathgate agreed with the submitter that the proposed rule related to vegetation clearance in general, in recognition that exotic vegetation can play an important conservation role in urban areas, including as ecological corridors and provision of habitat for indigenous species. He considered that an amendment to the assessment rule, as proposed by the submitter, would be of value in guiding assessment at a site-specific level.
1128. At the hearing, the tabled statement of *FFNZ* indicated support for the Section 42A recommendation. The Panel queried what the adverse effects in the recommended amendment related to. The Reporting Officer responded that it is the adverse effects on indigenous biodiversity (as set out in the matter of discretion, noting that there is a revised recommendation in response to *Oceana Gold* to change these matters of discretion to effects on indigenous biodiversity), although he noted that Policy 10.2.1.5 referred to the conservation values of the UCMA. He considered that the Section 42 recommendation to add Rule 10.4.3.2.a.iv could be further amended within the scope of the submission to the following: "iv. The adverse effect of the clearance on indigenous biodiversity is no more than minor." {*NatEnv919.43*} (Revised Recommendations Summary pp.54-55).

3.4.8.3.1 Decision and Reasons

1129. We accept in part the submissions of *STOP* (OS900.160) and *Forest and Bird* (OS958.80), seeking to amend Rule 10.4.3.2 by including reference to Objective 2.2.3 and policies 2.2.3.1, 2.2.3.3 and 2.2.3.4. We accept the evidence of the Reporting Officer that these objectives and policies in the Strategic Directions section of the plan

do not have a direct and linear relationship with Rule 10.4.3.2, due to their role in setting up the methods used in the Plan. We consider the reference to Objective 10.2.1 adequate for the purposes of this restricted discretionary assessment. However, as discussed elsewhere, we have amended Rule 10.4.3.2 to link to new Policy 10.2.1.X and general assessment guidance has been added clarifying that, in assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1. We believe this goes some way to achieving the outcome sought by the submitter.

1130. We reject the submission of *Federated Farmers of New Zealand* (OS919.43). We consider the addition of the words requested will not clarify the assessment, but in fact confuse it. The policy test associated with Policy 10.2.1.5 is that the “biodiversity values of the UBMA are maintained or enhanced including, but not limited to, those values listed in Appendix A10”. This type of policy test is described under the 2GP drafting protocol as outcome-focused. The submitter’s suggested amendment would add into assessment guidance a second type of test, described in the 2GP drafting protocol as an effects test. We do not consider it clarifies assessment guidance to add a second effects test. We consider that, particularly where values are identified (as they are in the case of UBMA’s), it is entirely appropriate to rely on the outcome-focused test in Policy 10.2.1.5.

3.4.8.4 Mapping of Urban Conservation Mapped Areas

1131. A number of submissions were received either supporting or seeking amendment to the boundaries of Urban Conservation Mapped Areas (UCMA’s). The Reporting Officer, Mr Bathgate, sought advice on the appropriateness of requested changes to UCMA mapping from expert ecologist Richard Ewans (Section 42A Report, section 5.17.2).
1132. *Dunedin City Council* (OS360.186) sought to remove the Frasers Gully UCMA11 from 23 Sretlaw Place and 118 Brockville Road, Brockville, to correct a mapping error. Based on advice from Mr Ewans, Mr Bathgate recommended that this submission be accepted.
1133. *Dunedin City Council* (OS360.187) also sought to include a section of rail corridor between Kohi Place and Port Chalmers within UCMA4. Based on advice from Mr Ewans, Mr Bathgate recommended that this submission be accepted.
1134. *Otago Railway and Locomotive Society Inc.* (OS553.6) sought that the boundary of Ocean Grove UCMA17 at 3 John Wilson Ocean Drive be relocated to omit the buildings and the railway track. Based on advice from Mr Ewans, Mr Bathgate recommended that this submission be accepted.
1135. Three submissions related to the proposed UCMA at Caversham Valley (UCMA14). *David Randle* (OS707.2), supporting the proposed extended boundaries of the UCMA at Caversham Valley because it supports habitat for peripatus. *The Caversham Community Group* (OS1022.3, OS1022.4, OS1022.5) supported the retention of the UCMA over 132 Caversham Road, 6 Barnes Drive/Sidey Park and 41 Forfar Street (Caversham Station Reserve West), expressing hope that these are preserved as green zones. *Robert Fulcher* (OS762.1) sought that the Caversham Valley UCMA14 at 21 Lancefield Street and 8 MacCracken Street be removed or amended, to allow the land at 8 MacCracken Street to be used for housing.
1136. Based on advice from Mr Ewans, Mr Bathgate recommended that *Mr Fulcher’s* (OS762.1) submission be accepted in part and that UCMA 14 be amended to exclude certain land located at 21 Lancefield Street and 8 MacCracken Street – specifically, the *Eucalyptus* sp. plantation and an area to the south of the plantation (see Map 4, Appendix 1 of Mr Ewans’ evidence).

1137. *Christian Jordan* (OS927.4) sought to remove or reduce the Urban Conservation mapped area (Somerville Street UCMA20) from 1 Larnach Road, to allow for housing. He considered the native scrub to be of “low value”, and note that “much of the site is in weeds”. For reasons discussed in his evidence (cited in Section 42A Report, section 5.17.2), Mr Ewans considered the vegetation at 1 Larnach Road to be appropriate for inclusion in the UCMA. Based on this evidence, Mr Bathgate recommended that *Mr Jordan’s* submission be rejected.
1138. In addition to these specific mapping submissions, *Otago Regional Council* (OS908.88) made a more general submission, seeking to ensure the Urban Conservation Mapped Areas provided appropriate identification and protection for areas of indigenous and exotic vegetation.
1139. In response to this submission, Mr Richard Ewans stated (quoted in Section 42A Report, section 5.17.2):
- The submitters amendments are non-specific and appear to broadly describe the process that was followed in delineating the UCMA mapped area... The UCMA mapped areas were assessed for suitability against ecological criteria outlined in Site Assessment Reports and many extensions were recommended to existing ULCAs for inclusion in the UCMA mapped areas. In my opinion in the context of this submission (i.e. the absence of specific proposals) the boundaries of the UCMA mapped areas should be retained as proposed. I support further work to refine and define criteria for inclusion in UCMAs, to compile all available ecological information for each site, to further field survey sites where information gaps are identified, and to develop recommendations for management priorities at each site (and between sites). Such work should also place the UCMA network in context with the wider ecological values present in the district.*
1140. Mr Bathgate agreed in principle with Mr Ewans’ assessment, and further noted that the ORC had expressed concern not only with indigenous vegetation, but also with exotic vegetation, presumably acknowledging the benefit exotic vegetation can provide as habitat for indigenous fauna.
1141. Mr Bathgate indicated that he had also discussed the matter with Dr Mandy Tocher, an ecologist and planner employed by the DCC. She commented (quoted in Section 42A Report, section 5.17.2):
- Exotic vegetation-dominated areas are included within the UCMA areas as notified, with a particularly good example of this being the Caversham Vally UCMA14 that is dominated by sycamores whilst all the while containing nationally important populations of peripatus. Other examples include the Golf Course of UCMA16 that provides an important corridor linking vegetated areas of the city, and the turf communities on Lawyers Head that provide habitat for the “At Risk-Declining” species *Lepidium tenuicaule*, and although there is little indigenous vegetation present along the stretch of coastline within UCMA7, there is significant habitat for indigenous fauna, particularly gulls, oystercatchers and penguins. Lawyers Head is also habitat for the spotted shag (*Strictocarbo punctatus*), while the variable oystercatcher (*Haematopus unicolor*) and red-billed gulls (*Larus novaehollandia*) are present in the grassed playing fields (exotic vegetation dominated habitat).*
1142. Finally, Mr Bathgate noted that the ORC’s submission (OS908.88) had also requested ‘appropriate protection’ from values within UCMAs. He considered that Rule 10.3.2.1 (discussed in section 3.4.8.2 above) provides adequate protection for the conservation values (both indigenous and exotic) within UCMAs.
1143. At the hearing, *Mr David Randle* tabled a statement in which he indicated support for the Section 42A recommendations relating to UCMAs, but wished to draw the attention of the Panel to two issues that affect the biodiversity values of the

Caversham Valley UCMA 14; namely stormwater discharge from Blackford Road subdivision into Caversham Valley Forest Reserve and *Peripatus* habitat destruction relating to the Caversham Valley road safety project. The submitter noted that these matters are outside the scope of the 2GP but sought further action. The Reporting Officer noted that a possible course of action is a memorandum from the Hearings Panel to the relevant DCC departments in relation to these matters (Revised Recommendations Summary p.36).

1144. *Mr Jordan* appeared at the hearing and questioned the purpose of UCMA's and raised issues with the quality of vegetation at Larnach Road. He showed images and described the vegetation and pests and stated the site had 'no ecological specialness'. The main canopy is sycamores and hawthorn with broadleaf undergrowth. *Mr Jordan* raised RMA s76(4)(a) as regards tree rules and had the view that it was unreasonable to require resource consent to clear an area which he said is largely a collection of weeds/pests. *Mr Jordan* considered the land suitable for houses, although he did acknowledge that one part of UCMA has ecological value and could be retained.
1145. At the hearing, we requested a reassessment of the UCMA at 1 Larnach Road, involving a site visit by Mr Ewans. *Mr Jordan* agreed to this and Mr Ewans undertook a more detailed assessment. The additional evidence of Mr Ewans reiterated that the values present at the site warranted retention as a UCMA without modification. He concluded:
 - *The vegetation on the property is dominated by regenerating indigenous forest with remnant indigenous forest trees in an 'acutely threatened' land environment.*
 - *Coastal and lowland broadleaved forest types, such as those containing ngaio, on Otago Peninsula and elsewhere in coastal Otago within Dunedin City, are much reduced and highly fragmented compared to their original extent.*
 - *Although modified, the vegetation on the property is highly consistent with that included in other UCMA's currently proposed for 2GP.*
 - *The vegetation on the property provides a link for native birds between areas of indigenous habitat on Otago Peninsula and within the urban Dunedin area.*
 - *UCMA designation and restricted indigenous vegetation clearance is appropriate for this property, and further ecological assessment of any proposed development is an important safeguard to ensure significant indigenous vegetation is retained.*
 - *Introduced tree and shrub weeds are scattered throughout the property and there are no obvious areas to omit from the UCMA that would retain a rational boundary.*
1146. *Mr Jordan* provided a rebuttal statement in response to this additional evidence, and spoke to this rebuttal at the Final 2GP Hearing. He produced diagrams of the site illustrating areas of different types of vegetation, including areas that he felt should be removed from the UCMA. *Mr Jordan* considered that protection should not extend over gorse and broom areas, areas smothered by vines or areas that are predominantly exotic trees. *Mr Jordan* again highlighted the constraints of RMA s76(4)(a) over tree protection in an urban area. In response to questions, he explained he had ambitions to build two houses, and being wary of Council processes, wanted to avoid the need for a restricted discretionary resource consent.
1147. A Statement as tabled from Mr Ewans responded to *Mr Jordan's* rebuttal and reiterated his view that the site is dominated by indigenous vegetation in an 'acutely threatened' land environment and should be included in the UCMA. In response to the specific areas discussed in *Mr Jordan's* rebuttal statement, he stated:
 - *The entire southern 2130m² is likely to be significant indigenous vegetation and there is no question this should be included.*
 - *The 'smothering vine' that covers a range of native trees species over 1820m² is a native climber...that is an important host species for numerous native invertebrates. It is not a weed, and is thought to be the single most important*

host species for native invertebrates in New Zealand. Therefore, Mr Jordan's presumptions about this detracting from the ecological value of the site are incorrect and this area should be included.

- The gorse and broom area 850m² can be removed if the council is happy with a somewhat clunky UCMA boundary that is irrational given the weeds can be cleared at will anyway under UCMA. Likewise the northern 230m² area of hawthorn.
- The northern 3130m² is still dominated by native trees species including large remnant ngaio. Mr Jordan estimates at 70% native cover (i.e. 100% less his estimate of 30% hawthorn) as did I. Therefore, this area should be included.

3.4.8.4.1 *Decision and Reasons*

1148. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Urban Conservation Mapped Area (UCMA) to Urban Biodiversity Mapped Area (UBMA). We use the latter term below.
1149. Based on the expert evidence of Mr Ewans, we accept the following submissions to amend UBMA boundaries (noting that there has been a renumbering, to the effect that UBMA numbers may differ from notified UCMA numbers):
- *Dunedin City Council* (OS360.186) to remove the Frasers Gully UBMA05 from 23 Sretlaw Place and 118 Brockville Road, Brockville
 - *Dunedin City Council* (OS360.187) to include a section of rail corridor between Kohi Place and Port Chalmers as UBMA02.
 - *Otago Railway and Locomotive Society Inc.* (OS553.6) to exclude the buildings and the railway track at 3 John Wilson Ocean Drive from the Ocean Grove UBMA10 (as shown in Map 3, Appendix 1 of Mr Ewan's evidence)
 - *Robert Fulcher* (OS762.1) to exclude the *Eucalyptus* sp. plantation and area south of the plantation from UBMA08 (as shown on Map 4, Appendix 1 of Mr Ewan's evidence)
1150. The amended mapping of these UBMA's is shown below in Figures 7-10, at the end of this section. UBMA boundaries are depicted by the dotted green lines.
1151. We also accept the submissions in support of *David Randle* (OS707.2) and the *Caversham Community Group* (OS1022.3, OS1022.4, OS1022.5).
1152. We reject the submission of *Christian Jordan* (OS927.4) to remove or reduce the UBMA at 1 Larnach Road. While we can understand Mr Jordan's perceptions that the property at 1 Larnach Road may appear to be covered in low value vegetation, including some pest species such as gorse and broom, we accept the ecological evidence from Mr Ewans that this property does in fact contain a significant amount of indigenous vegetation that is worthy of retention and protection. We note in particular his evidence that the entire southern part of the site is likely to meet significance criteria, and the northern part is dominated by native tree species. We note that both Mr Ewans and Mr Jordan agreed that this portion has approximately 70% native cover. We accept that the native climber is recognised as an important host species for native invertebrates.
1153. We therefore consider the vegetation overall is of sufficient value to warrant the incorporation of 1 Larnach Road as a UBMA. We also consider that should Mr Jordan wish to develop the land for two or more dwellings, the resource consent process need not be seen as onerous or difficult. Such a proposal would be assessed as a restricted discretionary activity, and consideration of effects on vegetation to be removed and retained would be aided by the extent of work that has already taken place including the surveys and ecological assessment of the vegetation currently on this property that were presented to us in the course of this hearing.

1154. We also considered whether the UBMA boundaries might be modified to exclude an area of gorse and broom and other weeds, but noted that this would create an irregular shape to the UBMA, and in any event it is not necessary to modify the boundaries as we note the proposed rules will enable the weeds to be cleared without resource consent.
1155. In relation to the matters relating to s76(4) of the RMA raised by *Mr Jordan*, we note that this part of the Act states that a district plan rule may only prohibit or restrict the clearance of a tree or trees on urban allotments if the tree or trees are described in a schedule to the plan and the allotments are identified by street address or legal description. An urban allotment is defined as an allotment that is no greater than 4,000m²; connected to a reticulated water supply and sewage system; on which there is a building used for industrial or commercial purposes or as a residence; and is not a reserve or subject to a conservation management plan or strategy.
1156. We note that street addresses have been added where relevant to the UBMA descriptions set out in new Appendix A10, as a clause 16 clarification that these addresses may contain land that qualifies as an urban allotment as defined under s76(4C) of the Act. In terms of describing trees on these allotments, we note that the UBMA values listed in Appendix A10 describe vegetation and species types in a rather general sense. As stated below, we are recommending a future Plan review to conduct a more thorough assessment of existing and potential UBMA. One of the steps within this review should be a more comprehensive assessment and description of the biodiversity values within each UBMA. As part of this review, we recommend more work is undertaken to better describe trees and groups of trees within each UBMA.
1157. We accept in part the submission of *Otago Regional Council* (OS908.88).
1158. We accept the evidence of Mr Ewans that significant further work is desirable, both to further refine and define the 2GP framework for UBMA, and to ensure the network of UBMA themselves are appropriately identified and described. We note that the authors of the 2015 assessments (*Urban Landscape Conservation Area (ULCA) Assessments*, Ahika Consulting 2015) state they should not be considered full or complete, and that additional areas should be considered for inclusion. We recommend that a future Plan review should conduct a more thorough assessment of both existing and potential UBMA, guided by a new policy within the Strategic Directions section of the Plan clearly specifying criteria for UBMA. We further recommend that, as part of this future review, where UBMA are assessed as meeting the significance criteria in Policy 2.2.3.1, they are considered for inclusion in the 2GP as ASBVs, affording them (where appropriate) a greater degree of protection.
1159. We also consider that our amendments to Rule 10.4.3.2 and Rule 10.5.2.10 (outlined in section 3.3.1.3) to link to new Policy 10.2.1.X and to add general assessment guidance clarifying that, in assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1, goes some way to achieving the outcome sought by the submitter.

Figure 7: UBMA05 Boundaries at Sretlaw Place



Figure 8: UBMA02 Boundaries at Kohi Place



Figure 9: UBMA10 Boundaries at 3 John Wilson Ocean Drive



Figure 10: UBMA08 Boundaries at Lancefield Street



3.4.9 Rule 10.8 Special Information Requirements – vegetation clearance

1160. Rule 10.8 sets out any special information requirements for resource consents related to natural environment provisions. Under the notified Plan, the only special information requirements related to the establishment of landscape building platforms (as part of resource consent applications for subdivision within landscape or natural coastal character overlays zones in the rural or rural residential zones).
1161. *STOP* (OS900.163) and *Forest and Bird* (OS958.95) sought that Rule 10.8 be amended to include special information requirements for activities that involve vegetation clearance. *Forest and Bird's* submission included a requested wording for these information requirements (see details in Section 42A Report, section 5.8.8).
1162. The submitters' reasons for this request were as follows:
- Both *STOP* and *Forest and Bird* had encountered a number of situations where applications had failed to adequately assess the need for vegetation clearance, and as a consequence illegal clearance had occurred. *STOP* has had to put a lot of time into providing the information on which an informed decision can be made.
 - *Forest and Bird* noted that the Waitaki Council issued a Certificate of Compliance that was found by the Court to be illegal (*Forest and Bird v Waitaki District Council* CIV 2011- 476000350).
 - To avoid these situations, and to ensure that the Plan's objectives and policies can be met, both *STOP* and *Forest and Bird* considered there to be a need to prescribe information requirements for activities that involve vegetation clearance.
1163. These submissions were supported by *Oceana Gold (New Zealand) Limited* (FS2439.35), and opposed by *John Scott* (FS2140.15), *Ben Graham* (FS2279.15),

Mathew O'Connell (FS2300.15), *Geoff Scurr Contracting Limited* (FS2391.90) and *Alan Brown, Carrowmore Properties Limited, Robyn and Stephan Smith and Rick and Jill Clarke ("Pigeon Flat Road Group")* (FS2416.15), and *Federated Farmers* (FS2449.248), who considered that a requirement for applicants to obtain input from a qualified ecologist would be unreasonable and, in many cases, inappropriate and unnecessary.

1164. The Reporting Officer, Mr Bathgate, stated that he did not consider that it should be a mandatory requirement for any application for vegetation clearance to supply an ecological assessment by a qualified ecologist, noting that some applications may be relatively minor contraventions of Rule 10.3.2 (or the activity status rules for indigenous vegetation clearance in natural coastal character overlays and ASCVs) (Section 42A Report, section 5.8.8). He did, however, consider that Rule 10.8 should indicate that such an assessment may be requested, and he further recommended that supplying an ecological assessment should be included in the assessment rules as a potential circumstance that may support any consent application for vegetation clearance. He also considered that some guidance as to what such an assessment should include would be helpful to plan users; he drafted an amended version of the list of information provided by *Forest and Bird*, and recommended that Rule 10.8 and assessment rules 10.4.3.2-10.4.3.5, 10.5.2.3, 10.5.2.4 and 10.5.2.7 be amended accordingly.
1165. At the hearing, *Oceana Gold* called Dr Thorsen (ecological expert) whose evidence partially supported the Section 42A amendment if the word "indigenous" was removed, as in his view, some vegetation clearance policies did not differentiate between exotic and indigenous vegetation (pp.28-29 of his evidence). Dr Thorsen also suggested that clause (b) be amended to read "a description of the wildlife present ~~and~~ or known to use the site" as this would allow the use of previous knowledge such as that contained in electronic databases.
1166. The Reporting Officer supported the amendments suggested by Dr Thorsen. He considered that an ecologist's report should describe both exotic and indigenous vegetation, and noted that this would help in assessing vegetation clearance rules not limited to indigenous vegetation. He supported Dr Thorsen's suggested amendment to the drafting of clause (b), and also considered that clause (b) should not be limited to indigenous wildlife as exotic wildlife, particularly pest species, will be of relevance. (Revised Recommendations Summary, p.15)
1167. He also recommended an amendment to Rule 10.8.2 as set out below. As the *Oceana Gold* submission was a further submission, the Reporting Officer attributed the amendments to the original submission by *Forest and Bird*, as he considered these within the intent and scope of that submission.

Amend Rule 10.8.2 as follows:

- a. a description of the indigenous {NatEnv958.95} vegetation present, including a species list;
- b. a description of the indigenous {NatEnv958.95} wildlife present ~~and~~ or {NatEnv958.95} known to use the site;...

1168. At the hearing, the Panel questioned the use of the word "may" in Rule 10.8.2, which seemed inconsistent with 2GP drafting for rules. The Panel asked why Council would be requiring this, and whether this should be in a Plan note. The Reporting Officer responded that in general the use of the word "may" is discouraged in 2GP rules, which seek to provide certainty. However, he noted that the word is used in other Special Information Requirements rules (e.g. rules 9.8, 11.9), to indicate that these rules are only to be employed in certain circumstances. He considered it was more appropriate that these form part of a rule rather than a note to plan users, as the information required forms a mandatory requirement for applicants in these

circumstances. Without pre-judging these circumstances, as an example in the case of Rule 10.8.2, the Council may require this information with applications involving a large amount of clearance, or where it is thought that the vegetation to be cleared may meet the criteria for being significant indigenous vegetation or habitats. (Revised Recommendations Summary, p.55)

3.4.9.1.1 *Decision and Reasons*

1169. We accept the submissions of *Forest and Bird* (OS958.95) and *STOP* (OS900.163) and add new Rule 10.8.2 setting out information requirements for activities involving vegetation clearance. We consider that, while the information set out in this rule may not always be required, it is likely that in many circumstances an expert ecological assessment will be needed to appropriately assess an application – in particular, to assess whether or not an area achieves Policy 10.2.1.X (discussed in section 3.3.1.3). We consider the recommendations set out in the Section 42A Report, incorporating the modifications suggested in the Revised Recommendations Summary, meet this balance, enabling the Council to require the information where it is needed. We also consider, however, that the new rule should refer directly to the new policies relating to biodiversity offsets and environmental compensation, to ensure any advice provided on these matters is consistent with the relevant policies.

1170. Therefore, in response to the submissions of *Forest and Bird* (OS958.95) and *STOP* (OS900.163), we have amended Rule 10.8 to add new Rule 10.8.2 as follows:

10.8.2 Vegetation Clearance

1. Council may request a report by an ecologist or similarly qualified person for applications where resource consent is required for vegetation clearance. Where requested the report should include:

- a. a description of the indigenous vegetation present, including a species list;*
- b. a description of the indigenous wildlife present and known to use the site;*
- c. an ecological assessment of the site using the criteria in Policy 2.2.3.1;*
- d. a description of the proposed activities and an assessment of their impact on the biodiversity values of the site; and*
- e. a description of any mitigation or offsetting techniques to be utilised to maintain and enhance the biodiversity values of the site or compensate for any adverse effects that cannot be avoided, including an outline of how these will be designed and implemented to achieve Policy 2.2.3.5 or Policy 2.2.3.6.*

1171. We have also made consequential amendments to assessment rules, by adding Rules 10.4.3.2.v, 10.4.3.4.vi, 10.4.3.5.vi, 10.5.2.C.vii and 10.5.2.4.vii, to state that, for indigenous vegetation clearance, “an ecological assessment supporting the clearance is supplied with the application (see Rule 10.8.2 Special Information Requirements).”

1172. See Appendix 1 (all amendments attributed to NatEnv 958.95).

3.4.10 New Suggested Provisions – Vegetation clearance

1173. Three submissions were received requesting new provisions for vegetation clearance as follows:

- *David and Sandra Goodchild* (OS580.1) and *Leslie and Maureen Green* (OS869.1) sought that the Plan require the removal of pest species such as sycamores in residential zones.
- *FFNZ* (OS919.31) sought that the removal of pest plants be provided for as a permitted activity in rural areas.

1174. The Reporting Officer, Mr Bathgate, responded to *David and Sandra Goodchild* and *Leslie and Maureen Green* by noting that there was no restriction in the 2GP to landowners clearing sycamore or other pest plant species listed in Appendix 10B from their residential properties. However, there was also nothing in the 2GP that made this a mandatory requirement; he did not consider that requiring mandatory control of pest plant or animal species was a function of the 2GP. The management of pest species is undertaken under the Biosecurity Act 1993, with the Otago Regional Council being the lead agency through the preparation of a regional pest management strategy. Any regulatory requirement to control pest species in Dunedin is provided by the Pest Management Strategy for Otago 2009. Mr Bathgate considered that this was the appropriate instrument for requiring the control of pest species and suggested that, if the submitters consider species need to be added, that they contact the ORC to raise their concerns (Section 42A Report, section 5.8.9).
1175. In response to *FFNZ*, Mr Bathgate noted the clearance of pest plant species (listed in Appendix 10B) in the rural zone was largely exempt from the vegetation clearance rules. With regard to vegetation clearance in the hazard (land instability) overlay zones, Mr Bathgate noted that amendments to Rule 11.3.2 were recommended in the Natural Hazards Section 42A report, to exempt the removal of pest plant species provided that the area was replanted within 3 months with plants that contributed to stabilisation. He considered that these rules provided sufficient clarity that the clearance of pest plant species was a permitted activity in rural zones and, therefore, did not recommend that a new rule be added as requested.

3.4.10.1.1 *Decision and Reasons*

1176. We reject the submissions of *David and Sandra Goodchild* (OS580.1), *Leslie and Maureen Green* (OS869.1) and *Federated Farmers of New Zealand* (OS919.31). Removal of pest plant species is provided for as Indigenous Vegetation Clearance – small scale, meaning that it is a permitted activity in all zones and overlay zones, subject to compliance with rules 10.3.2.1, 10.3.2.3, 10.3.2.4 and 11.3.2. We consider these provisions appropriately balance the need to enable the removal of pest plant species with the achievement of Objective 10.2.1, and consideration of natural hazard mitigation.

3.5 Biodiversity Offsets

3.5.1 Background

1177. Biodiversity offsetting involves measuring unavoidable residual adverse effects of development on biodiversity, and seeking to counter-balance these by enhancing the state of biodiversity at a site other than the affected site. The goal is 'no net loss' or, preferably, a 'net gain' of biodiversity, which can be "reasonably demonstrated and then achieved on the ground" (New Zealand Government, 2014, p3).
1178. Biodiversity offsetting and more broadly, environmental compensation, are not provided for in the 2GP. However, biodiversity offsetting has been the subject of recent policy development in New Zealand.
1179. In 2014, the NZ Government released a non-statutory guidance document "Guidance on Good Practice Biodiversity Offsetting in New Zealand" (the 'Guidance'). This document provides a framework for biodiversity offsetting adapted from 10 principles developed by the international Business and Biodiversity Offsets Programme (BBOP), a multi-sector collaboration seeking to develop best practice in using the 'mitigation hierarchy'. The mitigation hierarchy requires that offsetting of any residual effects

only applies after avoidance of adverse effects and any on site rehabilitation (remediation) or mitigation has been undertaken.

1180. The Resource Legislation Amendment Act 2017 amended RMA section 104 (consideration of applications) to take into account "any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity". There are also a number of recent examples of district or regional plans containing biodiversity offsetting provisions, an operative example being the Manawatu-Wanganui Regional Council Horizons One Plan.
1181. The proposed Otago Regional Policy Statement – decisions version (pORPS-dv) includes a policy relating to biodiversity offsetting for indigenous biological diversity:
- "Policy 5.4.6 Offsetting for indigenous biological diversity
Consider the offsetting of indigenous biological diversity, when:
- a) Adverse effects of activities cannot be avoided, remedied or mitigated;
 - b) The offset achieves no net loss and preferably a net gain in indigenous biological diversity;
 - c) The offset ensures there is no loss of rare or vulnerable species;
 - d) The offset is undertaken close to the location of development, where this will result in the best ecological outcome;
 - e) The offset is applied so that the ecological values being achieved are the same or similar to those being lost;
 - f) The positive ecological outcomes of the offset last at least as long as the impact of the activity."
1182. Methods identified to implement this policy include regional plans and city and district plans.

3.5.2 Submissions

1183. *Department of Conservation* (OS949.1 and OS949.2) sought to include new definitions in the 2GP for 'biodiversity offsets' and 'no net loss', to provide consistency with the Guidance on Good Practice Biodiversity Offsetting in New Zealand (New Zealand Government, 2014).
1184. The *Department of Conservation's* submissions to add definitions were supported by *Forest and Bird NZ* (FS2482.36, FS2482.37) because the definitions would "add clarity to the plan". The definition of 'biodiversity offsets' was conditionally supported by *Oceana Gold (New Zealand) Limited* (FS2439.37) who stated that offsetting is an approach with potential, but the definition "needs to be approached with caution" because of "difficulties with the application of complete ("no net loss") offsetting as an exclusive means of addressing adverse effects..."
1185. Two submitters, the *Department of Conservation* and *Oceana Gold*, sought to replace or amend Policy 10.2.1.3, in effect seeking to introduce options for mitigation or offsetting to mitigate adverse effects of indigenous vegetation clearance.
1186. The *Department of Conservation* (OS949.4) sought to replace Policy 10.2.1.3 so that (amongst other outcomes) it allows for the use of offsetting. The submission was supported in part by *Oceana Gold (New Zealand) Limited* (FS2439.16), which agreed that there should be flexibility to allow for offsetting, mitigation or compensation. However, *Oceana Gold* did not agree with the concept that only vegetation not determined to be significant could be cleared because it may not be possible for locationally constrained activities such as mining to avoid impacts on significant indigenous vegetation "yet good biodiversity outcomes can still be achieved using offset and/or compensation methods". *Federated Farmers New Zealand* (FS2449.81) opposed *Department of Conservation's* submission because the submitter believed the

change was unnecessary and appropriately addressed and covered elsewhere in the 2GP.

- 1187. *Oceana Gold (New Zealand) Limited* (OS1088.33) sought to amend Policy 10.2.1.3 to allow for offsetting or compensation and to make consequential changes to assessment rules. *Oceana Gold* considered there to be a need for flexibility to provide for vegetation clearance in situations "where sometimes clearance is justified despite resulting in adverse effects which are more than minor".
- 1188. *Oceana Gold (New Zealand) Limited* (OS1088.15) also sought to amend Strategic Policy 2.2.3.2 to allow for remediation, mitigation and compensation, and to recognise that some appropriate activities unavoidably result in some loss of or change to indigenous biodiversity.
- 1189. The *Department of Conservation* (OS949.29) also sought to add a new appendix setting out a framework for biodiversity offsets. *Oceana Gold (New Zealand) Limited* (FS2439.39) opposed the inclusion in the Plan of the new appendix because it considered that guidance for biodiversity offsetting should come from the government's "Guidance on Good Practice Biodiversity Offsetting in NZ".

3.5.3 Section 42A Report

- 1190. The Reporting Officer, Katie James, considered that biodiversity offsetting may be a useful tool for helping to achieve Objective 2.2.3, which states "Dunedin's indigenous biodiversity is retained, enhanced and restored, with improved connections and resilience", and Policy 2.2.3.3, which relates to promoting conservation activity in all zones. She considered that it may provide alternative opportunities for maintaining or enhancing biodiversity where it is not possible to avoid more than minor adverse effects on indigenous biodiversity arising through vegetation clearance, or to carry out complete restoration on site. She also noted that providing for biodiversity offsetting in the 2GP would have regard to the pORPS-dv Policy 5.4.6 Offsetting for indigenous biological diversity as well as the New Zealand Government's 'Guidance on Good Practice Biodiversity Offsetting'.
- 1191. Dr James recommended adding a definition of biodiversity offsets to the 2GP to clarify its meaning. She considered that the wording suggested by the *Department of Conservation* and used in the BBOP definition could be simplified for the purposes of the 2GP. She suggested wording based on a review of the BBOP background material, to explain in layperson's terms what biodiversity offsetting is and how it is done.
- 1192. Dr James also recommended adding a definition of 'no net loss' as suggested by *Department of Conservation*, to add clarity by indicating that biodiversity type, amount and condition need to be assessed in measuring offsets. In response to *Oceana Gold (New Zealand) Limited's* concern with the use of 'no net loss', Dr James responded that she considered that the requirement of no net loss set an appropriate best practice/aspirational goal.
- 1193. Dr James recommended against amending Policy 10.2.1.3 as requested by *Department of Conservation* or *Oceana Gold* because in her view the wording suggested by *Department of Conservation* did not reflect the drafting protocol of the 2GP, was too complex and wordy, and it ultimately removed the preference for the avoidance of effects. It also referred to land use and development activities which are not the subject of this policy, which is linked to performance standards on vegetation clearance.
- 1194. Dr James instead recommended that biodiversity offsets be referred to under Rule 10.4.3.3, which assesses performance standard contraventions of the maximum vegetation clearance rule set up by Policy 10.2.1.3.

1195. With regard to adding environmental compensation as a consideration, as requested by *Oceana Gold* in its submissions on Policy 10.2.1.3 and Strategic Policy 2.2.3.2, Dr James noted that compensation is more broadly defined, ranging from partial offsetting to financial compensation. In relation to this matter, and in light of the new recommended provision for biodiversity offsetting, Dr James suggested that the Panel may wish to review the recommendation of the Mining Section 42A Report that the Council would consider the positive effects of any environmental compensation measure proposed as part of applications.
1196. Dr James recommended that rather than adding offsets to Policy 2.2.3.2 which relates to the rural environment, recognition for biodiversity offsetting could be achieved at a high level by adding a further policy to Strategic Objective 2.2.3 which could be referred to in assessment rules in the Natural Environment section. The Natural Environment Section 42A Addendum contained a first draft of recommended new Strategic Policy 2.2.3.5 to be discussed at the Hearing.
1197. Dr James also noted the change recommended as a result of other submissions on Policy 10.2.1.3 (see Section 5.8.6.1 of the Section 42A report) that would also provide better scope for offsetting to be considered as an assessment matter. In addition, a change was recommended to Policy 10.2.1.4, discussed in Section 5.8.7.1, to allow for the use of offsetting.
1198. With regard to *Department of Conservation's* submission to add an appendix to the Plan, Dr James recommended that rather than adding a separate appendix, a framework for biodiversity offsetting should be provided through the recommended new policy in the Strategic Directions section of the Plan. Further, that the 'Guidance' be referred to in assessment rules, specifically Rules 10.4.3.3, 10.6.2.3 and Rule 16.11.2.4 (relating to mining), as well as in the site restoration performance standard contravention assessment matters for mineral exploration and prospecting. She also recommended amending the general assessment rules for all discretionary activities (Rule 10.6.2.1) and non-complying activities (Rule 10.7.2.1) to refer to the offsetting guidance, and that Rule 10.5.2 be amended to include a new assessment for all restricted discretionary activities.

3.5.4 Hearing

1199. At the hearing, evidence on biodiversity offsets was presented by *Department of Conservation* and *Oceana Gold*. Both submitters supported the Section 42A Report recommendations to the extent that they provided for biodiversity offsets in the 2GP, but sought a number of amendments to the Reporting Officer's recommended provisions.
1200. In the view of Dr Barea, technical advisor for *Department of Conservation*, it was important that specific and explicit provision for offsets be provided in the Plan to ensure they are consistently applied. He felt that there were some amendments required to the recommended provisions "to provide clarity and a consistent framework".
1201. Mr Christensen, legal counsel for *Oceana Gold*, commented that *Oceana Gold's* overall request was that the 2GP should recognise the fact that minerals are fixed in location, and must provide clear direction on the reasonable application of the "mitigation hierarchy" including the use where appropriate of biodiversity offsets and environmental compensation (para 7 of submissions). He discussed evolution of the use of biodiversity offsets in New Zealand, explaining that while the RMA does not specifically require offsets, use has developed through case law, and numerous policy statements and plans around the country now include specific provisions relating to offsets. The submissions of Ms Williams, legal counsel for *Department of Conservation*, agreed with this latter point.

1202. Mr Christensen explained that he had evaluated the different plans for the “most appropriate set of provisions to include in the 2GP” and provided a set that were, in his view, “principled, simple and capable of practical application”. At the Hearing, the Panel asked *Oceana Gold* to clarify how the suggested policies for biodiversity offsets and environmental compensation would fit with the 2GP policy framework. Mr. Christensen responded in an email dated 26 June 2017, with a set of provisions that involved the amendment of some objectives and policies; the deletion of a number of policies, and their replacement with two policies laying out the mitigation hierarchy (including biodiversity offsets and environmental compensation) for significant indigenous vegetation and habitats of indigenous fauna, and other indigenous vegetation and habitats; along with suggested definitions of ‘biodiversity offset’ and ‘environment compensation’.
1203. In relation to the definition of ‘no net loss’, Dr Barea described it as the “essence” of biodiversity offsets. He expressed support for the ‘no net loss’ definition recommended in the Section 42A Report. Ms Yozin, planner for *Department of Conservation*, agreed with this.
1204. In contrast, Mr. Christensen expressed a view that ‘no net loss’ or ‘net gain’ is “almost impossible to achieve”, that the definition remains the subject of “considerable debate”, and that embedding it as a generic requirement may cause problems, particularly in cases where applicants employ a “package” of responses (biodiversity offsets, compensation and other approaches from across the mitigation hierarchy) in response to impacts on biodiversity. He expressed a concern that including a definition may lead to “suboptimal outcomes” and submitted that the meaning of ‘no net loss’ should be left to be determined in guidance documents and in the context of specific applications.
1205. In relation to the definition of ‘biodiversity offsets’, Dr Barea expressed a preference for the definition from the ‘Guidance’, rather than that recommended by the Reporting Officer. In his assessment, the definition recommended in the Section 42A Report did not clearly place offsetting in the context of the mitigation hierarchy, and was therefore inconsistent with the ‘Guidance’ as well as international best practice. In his opinion, application of the mitigation hierarchy is “a critical part of achieving no net loss”. Ms. Yozin agreed with his reasoning and supported insertion of the definition from the ‘Guidance’.
1206. Mr. Christensen did not comment specifically on the ‘biodiversity offsets’ definition recommended in the Section 42A Report, but included the definition in his suggested set of 2GP provisions more closely resembled that in the ‘Guidance’ than that recommended by the Reporting Officer. Mr Christensen did state that offset provisions should be provided for “only after all avenues to avoid, remedy or mitigate have been exhausted”. Dr Barea and Mr Christensen and Ms Williams were in agreement that offsets are not mitigation under the Resource Management Act, but rather should be viewed as positive environmental effects taken into account under sections 104(1)(a) and section 5(2).
1207. Dr Barea also requested that the 2GP include a definition for ‘environmental compensation’, as he felt there was a need to clearly distinguish the fundamental differences between biodiversity offsets and environmental compensation, as they lead to different outcomes. He stated that environmental compensation is “not designed to demonstrate, *a priori*, that no net loss or a net gain in biodiversity is achievable on the ground”. Ms Yozin expressed support for his reasoning and for inclusion of the new definition.
1208. The suggested set of provisions promoted by Mr Christensen also included a definition of ‘environmental compensation’.

1209. Ms Yozin agreed with the Reporting Officer's recommendation to retain Policy 10.2.1.3 with minor amendments rather than replacing the entire policy with the wording requested in *Department of Conservation's* submission, because her view was that it is appropriate for biodiversity offsetting to be addressed separately. She also agreed with the addition of the new policy for offsetting in the Strategic Direction section. Ms Yozin further stated that, if the recommended Policy 2.2.3.5 was to be inserted into the Plan, she did not consider it to be necessary to include biodiversity offsetting in a policy in Section 10.
1210. Dr Barea provided suggested wording for the recommended new policy, framed up around the mitigation hierarchy. The provisions promoted by Mr Christensen also sought to contextualise biodiversity offsets in the mitigation hierarchy, though the suggested policies sat with Section 10.
1211. Dr Barea expressed support for the Reporting Officer's recommendation to reference the recommended new policy and the 'Guidance' in assessment rules. He also reiterated *Department of Conservation's* request to include an appendix/schedule, based on the 'Guidance' providing a framework for biodiversity offsets.
1212. Mr Christensen expressed concern about referencing the 'Guidance' in the 2GP, suggesting practitioners found it "unnecessarily technical and restrictive". In his opinion, the 2GP should set out the overarching policy direction and "not confuse this policy by reference to the Guidance generally".
1213. Dr Thorsen (ecologist called by *Oceana Gold*) discussed the analysis and advice he provided *Oceana Gold* on their Coronation North Project resource consent process. He concluded that pursuing a biodiversity offset for the Project would be impracticable as it would be complicated, lengthy and would require good (expensive) data sets and considerable dialogue between the interested parties throughout the process. He stated that the compensatory package arrived at is a "good ecological outcome" that would not have been possible if the 'Guidance' had been applied strictly, and that *Department of Conservation* officers had accepted that applying an offset in accordance with the Guidance was not reasonably possible for the Coronation North Project. He considered the challenges faced by the Coronation North Project in meeting the 'Guidance' framework would likely apply to a range of activities across the city. He stated that from his perspective "there is no benefit in requiring the guidance to be applied when there is little chance that it can be" and he considered references to the 'Guidance' to be problematic.
1214. Mr Christensen expressed concern that a policy in the 2GP to "require offsets in accordance with the Guidance" would mean that "if an offset as defined in that document is not able to be provided then the project needs redesigned or declined" This, he suggested, would not be in line with the fact that the Resource Management Act does not 'require' offsets, and they must be offered up by the applicant.
1215. Both Ms Yozin and Dr Barea considered that biodiversity offsetting provisions should be provided for more widely in the 2GP. Dr Barea considered that biodiversity offsetting should "be triggered by the values affected...by a development rather than the type of activity" and Ms Yozin considered that biodiversity offsetting should reflect the loss of biodiversity values from the effects of activities, not the activities themselves taking place. She considered that drafting a policy to address biodiversity offsetting in terms of effects is difficult under the 2GP policy framework due to the focus on activities.
1216. Mr Christensen considered biodiversity offsets should apply to residual effects on all indigenous biodiversity, noting that both the Auckland Unitary Plan and the Christchurch Plan allow for biodiversity offsets in relation to any vegetation or habitats. In response to questions from the Panel, Mr Christensen commented that

offsets based on the forfeiting of a development right permitted under the Plan should not be provided for.

1217. Dr Barea stated that it was important that the Plan acknowledge limits to offsets, reflecting BBOP Principle 2, which recognises that "in cases where affected biodiversity is irreplaceable or vulnerable, residual effects may not be able to be fully addressed by an offset". Ms Williams cited case law in support of this position.
1218. Ms Williams, in her submissions, emphasised the need for the 2GP to give effect to the NZCPS, and the relatively directive "avoid" wording in a number of NZCPS policies. She noted that case law had established that Policies 13(a) and (b) provide something of a bottom line. When questioned, Mr Christensen acknowledged this, but pointed out that the NZCPS predated the relevant case law.
1219. In her revised recommendations, the Reporting Officer, Dr James, said she did not support the suggested amendment to the definition of biodiversity offsets and recommended retaining the definition recommended in the Section 42A Report. She stated that, in keeping with the way in which the 2GP was drafted, the aim of the recommended definition was to clearly outline what an offset is without including criteria or principles of an offset which, in her opinion, was better outlined through the recommended new policy.
1220. Dr James did not support the wording for Policy 2.2.3.5 suggested by Dr Barea because it did not align with the general drafting protocol used for the plan and she did not consider 'requiring' an offset to be appropriate. She also did not support the wording suggested by Mr Christensen, noting that it was very detailed. In her opinion, the wording should be kept at a high level and focused on key principles so that it aligns with the general drafting protocol for policies in the Strategic Directions section of the 2GP.
1221. In response to matters raised at the hearing, Dr James also recommended two changes to the wording of recommended new Policy 2.2.3.5 to better acknowledge the NZCPS, and to better reflect the limits to offsetting principles in the 'Guidance'. She noted that the 'Guidance' cites the New Zealand Threat Classification System and the Threatened Environment Classification to assist in assessing the degree of vulnerability /irreplaceability of biodiversity.
1222. Dr James reiterated her preference that the 'Guidance' be referred to in the assessment rules alongside the strategic policy. In her opinion, this would allow the Plan to have regard to evolving best practice, taking into account any updates.
1223. Dr James further suggested that, if the Panel was of a mind to add additional detail of how the method could be applied in practice, this could be added to assessment rules. In response to the concern from Mr Christensen, Dr James noted that the recommended changes to assessment rules would not 'require' Guidance to be applied, just that Council would consider it. She also drew attention to the note in the submission by *Department of Conservation* that the Guidance would also be relevant to partial offsets or other forms of compensation.
1224. With regard to the requests to add a new definition of environmental compensation, Dr James noted that this was outside the scope of the original submission and she did not consider that adding a definition was necessary to set out a framework for biodiversity offsetting.
1225. In response to the concerns from *Department of Conservation*, Dr James considered that referring to offsetting in assessment rules would provide for offsetting to be considered for other activities, not just mining and landfills.
1226. With regard to the other two policies suggested by Mr Christensen to set up the biodiversity offsetting provisions in the 2GP, Dr James recommended against

replacing deleted policies under Objective 10.2.1, as *Oceana Gold's* original submission did not request the deletion of any of the policies and she considered it to be more appropriate that the broad policy direction for offsetting be provided at the strategic level rather than by the policies under Objective 10.2.1.

3.5.5 Decision and Reasons

1227. We make no determination on whether biodiversity offsets in and of themselves may contribute positively towards achieving the 2GP's strategic directions as they relate to biodiversity (as suggested by the Reporting Officer), as insufficient evidence was presented to convince us that offsets are doing so elsewhere. However, we note that biodiversity offsets (and environmental compensation) can be offered up as part of resource consent applications under the 2GP, regardless of the presence or absence of a policy framework in the 2GP. In this context, we consider a policy framework will help to guide both development and assessment of biodiversity offsets and environmental compensation, and thus promote better outcomes for biodiversity where they are employed. Therefore, we accept the submissions of *Department of Conservation* (OS949.1, OS949.2, OS949.4, OS949.29), and *Oceana Gold (New Zealand) Limited* (OS1088.15, OS1088.33) insofar as they sought to introduce a policy framework for biodiversity offsets and/or environmental compensation into the 2GP.
1228. We accept that a definition of 'biodiversity offset' should be added to the Plan. In principle, we accept the Reporting Officer's evidence that the definition should follow the 2GP drafting protocol and that the wording options promoted by *Department of Conservation* and *Oceana Gold* do not align well with the 2GP drafting protocol. The 2GP uses policies to direct where any given method may be acceptable and appropriate, rather than embedding these directions in definitions themselves. While we agree that biodiversity offsets should only be applied following all the application of all practicable avoidance, remediation and mitigation measures, we feel this is more appropriately stated within a strategic directions policy, than in a definition. We believe the definition can signal this by referring to it as a method that can be applied to address 'residual loss'.
1229. We do consider that the definition promoted in the Section 42A Report risks confusing Plan users, as it conflates 'biodiversity offsets' and 'environmental compensation'. We accept the evidence of Dr Barea that there needs to be a clear distinction between 'biodiversity offsets' and 'environmental compensation' in the 2GP, and have removed reference to 'environmental compensation' from the definition of 'biodiversity offset' to achieve this. We do not, however, think it necessary to include a definition of 'environmental compensation' (as requested by *Department of Conservation* and *Oceana Gold*), as we consider it clear from the new policies (discussed below), that 'environmental compensation' is any compensation for residual loss in biodiversity values that does not meet the definition of biodiversity offset.
1230. Based on the evidence received, particularly that of Dr Barea, we were persuaded that 'no net loss' is fundamental to the distinction between biodiversity offsets and environmental compensation. As such, we favour the incorporation of 'no net loss' as a central tenet of the definition of 'biodiversity offset', and the incorporation of the stand-alone definition of 'no net loss'.
1231. We note that, as discussed in section 3.6.1.6, we have inserted a definition of biodiversity values into the Plan, and as such consider it provides greater clarity to refer to 'biodiversity values' in the definition of 'biodiversity offset' and 'no net loss', than just to 'biodiversity'. In addition, we do not consider the word 'indigenous' necessary in the definition of 'no net loss', as this is clarified in the definition of 'biodiversity values'.

1232. We consider this constitutes acceptance in part of the submissions of the *Department of Conservation* (OS949.1 and OS949.2), and have included the following definitions in the Plan:

Biodiversity Offset

A method that involves measuring biodiversity values and compensating for residual loss in biodiversity values on-site with an equivalent or greater gain ('no net loss') in biodiversity values elsewhere. {NatEnv 949.1}

No Net Loss

No overall reduction in biodiversity values, as measured by type, amount and condition. {NatEnv 949.2}

1233. Having considered the range of drafting options promoted by submitters and by the Reporting Officer, we accept the Reporting Officer's evidence that a policy relating to biodiversity offsets (new policy 2.2.3.5) sits most appropriately in the Strategic Directions section of the 2GP - the section in which the methods used in the Plan are set up. We note that this approach was supported at the hearing by the *Department of Conservation* planner and technical expert, and that legal counsel for *Oceana Gold* also suggested the substantive principles governing biodiversity offsets sit within a policy in the Strategic Directions section of the Plan.
1234. Accepting the evidence of Dr Thorsen that there may be instances in which achieving 'no net loss' is impracticable, our decision includes a second policy (new Policy 2.2.3.6) in the Strategic Directions section setting up environmental compensation as a separate method, to address the concerns of *Oceana Gold* that embedding 'no net loss' in the definition of 'biodiversity offset' may set too high a bar for biodiversity offsets. This ensures that, if measures proposed by an applicant for the purpose of ensuring positive effects do not achieve 'no net loss' (and are therefore not considered a biodiversity offset under the 2GP definition) there is still a policy framework to support their consideration when they are offered up through the consent process.
1235. In this context, we believe that the inclusion of a definition of 'no net loss' is more likely to result in better outcomes for biodiversity than "suboptimal" ones as suggested by *Oceana Gold*. It is neither anticipated nor required that all measures proposed by an applicant for the purpose of ensuring positive effects will achieve 'no net loss' as defined, but by expressing a preference for biodiversity offsets (clearly defined as meeting 'no net loss'), and requiring that environmental compensation adhere as closely as possible to the principles of biodiversity offsets, we consider that residual loss of biodiversity values is more likely to be thoroughly addressed in the context of any given application.
1236. We do not accept that it is necessary (nor do we consider there is scope) to delete a number of policies within the Objective 10.2.1 policy suite and replace them with two generic policies describing the mitigation hierarchy (as requested by *Oceana Gold*). We consider the mitigation hierarchy is adequately addressed by new policies 2.2.3.5 and 2.2.3.6 in the Strategic Directions section of the Plan. We consider the policies suggested for deletion provide a policy framework for assessment of various restricted discretionary, discretionary and non-complying activities, and we prefer the more tailored policy approach the Plan takes to managing these activities over the generic approach promoted by the submitter. We do accept, however, that there is a need for policies 2.2.3.5 and 2.2.3.6 to be referenced in relevant Section 10 policies that commence with the word "Avoid" and relate to non-complying activities, due to the requirements (including the 'gateway tests') of Section 104D of the RMA. We have amended a number of policies accordingly.
1237. In considering whether the 'Guidance' should be referenced directly by the 2GP, we took into account all identified options for embedding the principles described in the 'Guidance' into the Plan. These options included embedding principles in the

recommended policy in the Strategic Directions section of the Plan (suggested by the Reporting Officer and supported by *Oceana Gold*), appending them to the 2GP and referencing the appendix in the relevant policy (suggested by *Department of Conservation*), and including reference to the 'Guidance' itself in relevant assessment rules (recommended by the Reporting Officer, supported by *Department of Conservation* and opposed by *Oceana Gold*).

1238. We accept the submissions of *Oceana Gold*, that it is necessary to integrate the key principles of biodiversity offsets in policies in the Strategic Directions section of the Plan, given their centrality to biodiversity offsets as a method. We also consider that there should be detailed guidance provided in Section 10 Special Information Requirements to ensure that relevant principles are adhered to at time of application, and that the 'Guidance' should be directly referenced from the relevant assessment rules. Given the complexity of biodiversity offsets, and the fact that biodiversity offsets are a new method in the 2GP, we believe there is a strong argument to provide as much guidance for Plan users as possible. We note that the 'Guidance' is the most relevant Government guidance on biodiversity offsets, and that no alternatives were promoted by *Oceana Gold* in their criticism of elements of the 'Guidance'.
1239. *Oceana Gold* expressed particular concern about the suggestion in the 'Guidance' that, should 'no net loss' be unable to be met, then a proposal should be redesigned or declined. Notwithstanding that there are statements elsewhere in the document that suggest alternative pathways for proposals that don't achieve 'no net loss', we were persuaded by the Reporting Officer's assessment that the reference from assessment rules does not require the 'Guidance' to be applied. We agree that referencing the 'Guidance' from assessment rules simply clarifies that Council will consider the document in processing the application. In addition, any assessment of the appropriateness of biodiversity offsets or other environmental compensation would be limited by Policy 2.2.3.6, which clearly provides for a pathway for consideration of environmental compensation that does not meet the definition of biodiversity offsets.
1240. In terms of the extent to which reference to biodiversity offsets ought to be included in assessment rules, we are of the view that assessment guidance should be included in any assessment rules which list effects on biodiversity values or natural character values as a matter of discretion.
1241. We were convinced by the evidence of Dr Barea in relation to limits to biodiversity offsets. We agree that, if limits are not appropriately recognised, there is a risk that offsets will be inappropriately applied. We accept the Reporting Officer's evidence that Policy 2.2.3.5 is the most appropriate place to provide some guidance on this point.
1242. In considering how limits might be recognised by the 2GP as sought by the *Department of Conservation*, we had regard to the pRPS-dv Policy 5.4.6, which directs that an offset should "ensure no loss of rare or vulnerable species". In addition, we considered the 'Guidance', which specifies the need to recognise limits more broadly, in relation to 'irreplaceable and vulnerable biodiversity', and (as noted by the Reporting Officer) cites both the New Zealand Threat Classification System and the Threatened Environment Classification to assist with determining the extent to which biodiversity is irreplaceable and vulnerable. On balance, we considered it more appropriate for what constitutes irreplaceable and vulnerable biodiversity to be determined through the consent process. However, we do accept the submissions of *Department of Conservation* as they relate to the importance of the NZCPS, particularly Policy 11. We acknowledge that case law will continue to develop, but in considering limits to offsets, concluded that offsets should not be contrary to the relevant provisions of the NZCPS. Policy 2.2.3.5 has been drafted to reflect this, which we also consider gives partial relief to the submission of *Forest and Bird NZ*

(OS958.57) to add specific policies to give effect to the NZCPS, as discussed in section 3.2.5 above.

1243. We also agreed with Mr Christensen's assessment that providing for the forfeiting of rights to permitted or consented land use or development activities as an offset would not be appropriate. We consider this would be inconsistent with s6(c) of the RMA, and the Council's function under s31(1)(b)(iii) to control land use for the purpose of the maintenance of indigenous biodiversity. We note that there is a risk of such offsets being applied given the permitted activity status of Indigenous Vegetation Clearance – Small Scale, and the fact that the 'Guidance' references an example of an offset involving "the forfeiting of an economically viable and imminent development right". As such, we have drafted into Policy 2.2.3.5 a provision that precludes that possibility.
1244. We consider these decisions constitute acceptance in part of the submissions of *Oceana Gold (New Zealand) Limited* (OS1088.33, OS1088.15) and *Department of Conservation* (OS949.4, OS949.29), and have made the following amendments:
- Adding two new policies for biodiversity offsetting and environmental compensation in the Strategic Directions section:

Policy 2.2.3.5

Only consider a biodiversity offset, as a positive effect to be balanced against the adverse effects of an activity, where the offset:

- a. is proposed to address residual adverse effects after taking steps to first:
 - i. avoid adverse effects; then
 - ii. minimise adverse effects as far as practicable; by
 1. mitigating effects and then remedying effects that cannot be mitigated; and
 2. ensuring that any on-site rehabilitation or restoration measures will occur as soon as practicable;
- b. is close to the donor site, unless a more distant site will result in a significantly better ecological outcome;
- c. will result in no net loss and preferably a net gain in biodiversity value; where:
 - i. the biodiversity values gained will be the same or similar to those being lost;
 - ii. any gains in biodiversity values are demonstrably additional to those that may have occurred if the proposed activity had not gone ahead; and
 - iii. the positive effects of the offset last at least as long as the adverse effects of the proposed activity, and preferably in perpetuity;
- d. will not be used to offset irreplaceable and vulnerable biodiversity and is not contrary to Policy 11 of the New Zealand Coastal Policy Statement; and
- e. does not include forfeiting rights to permitted or consented land use or development activities. {NatEnv 949.29}

Policy 2.2.3.6

Only consider environmental compensation, as a positive effect to be balanced against the adverse effects of an activity, where:

- a. the compensation is proposed to address residual adverse effects after taking steps to first:
 - i. avoid adverse effects; then
 - ii. minimise adverse effects as far as practicable; by

1. mitigating effects and then remedying effects that cannot be mitigated; and
 2. ensuring that any on-site rehabilitation or restoration measures will occur as soon as practicable; then
 - iii. offset adverse effects in accordance with Policy 2.2.3.5;
 - b. the environmental compensation is as close as possible to meeting the criteria for a biodiversity offset as set out in Policy 2.2.3.5. {NatEnv 1088.15}
- Adding a new rule in the Natural Environment Special Information Requirements section setting out the methodology for assessing biodiversity offsets, as follows:

Rule 10.8.3 Biodiversity Offset

1. A resource consent application that includes a proposal for a biodiversity offset must include a biodiversity offset management plan prepared by an ecologist or similarly qualified person that:
 - a. outlines how the biodiversity offset will be designed and implemented to achieve Policy 2.2.3.5;
 - b. considers the role of the donor and recipient sites within a landscape and ecological context;
 - c. sets out baseline information on biodiversity values that are potentially impacted by the proposal at both the donor and recipient sites;
 - d. contains an explicit loss and gain calculation that assesses:
 - i. how any calculated gains will be achieved on the ground;
 - ii. how biodiversity values gained will be the same or similar to those being lost; and
 - iii. how gains in biodiversity values are additional to those that may have occurred if the proposed activity had not gone ahead;
 - e. addresses sources of uncertainty and the risk of failure by incorporating adaptive management responses;
 - f. addresses timing and duration of adverse effects in relation to timing and duration of positive offset effects; and
 - g. identifies the monitoring approach that will be used to demonstrate how the matters above will be addressed over an appropriate timeframe. {NatEnv 949.29}
- Amending the policy tests associated with Natural Environment Section policies relating to non-complying activities, to reference both biodiversity offsets (policy 2.2.3.5) and environmental compensation (policy 2.2.3.6) as follows (refer amendments attributed to submission points 949.29 and 1088.15):

Policy 10.2.1.X

Avoid adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna or, if avoidance is not practicable, ensure that: {NatEnv 900.142}

- a. there is no net loss and preferably a net gain in the biodiversity values of the area; or {NatEnv 900.142}
- b. where there are no practicable alternative locations, any proposal for a biodiversity offset is in accordance with Policy 2.2.3.5; or {NatEnv 949.29}
- c. where a biodiversity offsets is not practicable, environmental compensation is proposed in accordance with Policy 2.2.3.6. {NatEnv 1088.15}

Policy 10.2.1.Y

Avoid domestic animal boarding and breeding, intensive farming, farming, forestry, grazing, mineral exploration, mineral prospecting, mining, residential activities, early childhood education, office activities, visitor accommodation, service stations, commercial advertising, conference, meeting and function activities, entertainment and exhibition activities, restaurants, restaurants – drive through, retail activities, industrial activities, major facility activities and indigenous vegetation clearance in Scheduled Areas of Significant Biodiversity Value (ASBVs) unless: {NatEnv 900.142}

- a. there is no net loss and preferably a net gain {NatEnv 1088.32} in the biodiversity values of the ASBV including, but not limited to, those biodiversity values listed in Schedule A1.2 {NatEnv 690.8}; or
 - b. where there are no practicable alternative locations, any proposal for a biodiversity offset is in accordance with Policy 2.2.3.5; or {NatEnv 796.18}
 - c. where a biodiversity offset is not practicable, environmental compensation is proposed in accordance with Policy 2.2.3.6. {NatEnv 1088.15}
- Adding the following general assessment guidance to rules 10.4.3.2 – 10.4.3.5, Rule 10.5.A.1 (All restricted discretionary activities), Rule 10.6.2.1 (All discretionary activities) and Rule 10.7.2.1 (All non-complying activities):

In assessing the appropriateness of any proposed biodiversity offset or environmental compensation, in addition to Policy 2.2.3.5 or Policy 2.2.3.6, Council will consider the Guidance on Good Practice Biodiversity Offsetting in New Zealand (NZ Government, 2014). {NatEnv 949.29 and 1088.33}

3.6 Objectives and Policies drafting protocol and wording

3.6.1 10.2 Objectives and Policies

1245. There were a number of submissions on the Natural Environment Section 10 objectives and policies as an entire set, which are addressed in this part of the Decision.

3.6.1.1 Submissions in support

1246. *Chris Walker* (OS289.2) sought to retain the Natural Environment objectives and policies as they promote the purpose of sustainable management.

3.6.1.1.1 *Decision and Reasons*

1247. We accept in part the submission of *Chris Walker* (OS289.2), noting that, elsewhere in this Decision Report, we have amended a number of Natural Environment objectives and policies in response to submissions and evidence.

3.6.1.2 Request to add a new objective to give equal priority standing to current residents

1248. *HPPC* (OS447.15) sought to amend all Natural Environment objectives and policies to change the word “minor” to “insignificant” and to change the word “insignificant” to “very insignificant, meaning bordering on unidentifiable”. The submitter was concerned that the word “minor” could be confused with its use in case law in relation

to RMA s104D, and thought their amendments provided better clarity. This submission was opposed by both *Howard Saunders* (FS2373.12) who thought the amendments raised the bar too high and are too subjective to be workable in practice, and *Federated Farmers of New Zealand* (FS2449.58) who thought the language used is inconsistent with RMA terminology and was overly complex.

1249. The Reporting Officer, Michael Bathgate, did not recommend changing the word 'minor' to 'insignificant' as he believed this would conflict with the 2GP drafting protocol and would indicate a stricter test than is intended for certain policies. Additionally, he did not recommend replacing 'insignificant' with 'very insignificant, meaning 'bordering on unidentifiable' as he believed this created an unrealistically high bar for activities to achieve and does not represent an improvement in both meaning and clarity over the use of the word 'insignificant' (Section 42A Report Section 5.4.1, p. 124).

3.6.1.2.1 *Decision and Reasons*

1250. We reject the submission of *HPPC* (OS447.15). We agree with the Reporting Officer's assessment that the drafting amendments requested would indicate a stricter test than is intended for certain policies, and that the wording "very insignificant, bordering on unidentifiable" is neither consistent with the 2GP drafting protocol, nor an improvement in terms of clarity of provisions.

3.6.1.3 Request to amend objectives and policies to describe the importance of natural environment to tourism and the wider economy

1251. The *Otago Peninsula Community Board* (OS588.1) sought to amend the Natural Environment Objectives and Policies as they believed that there is no mention within Section 10 of the importance of the natural environment to the economy and in particular to the tourism sector. They stated that tourism, biodiversity, conservation and the natural environment are interlinked and now form a major part of the Peninsula and Dunedin economy. They considered it imperative that this is acknowledged both in the policies and objectives of Section 10 but also in its rules.
1252. The Reporting Officer, Michael Bathgate, stated that he considered objectives and policies include rural tourism with other rural activities, consistent with the drafting of these policies around management of effects. He stated that the outcome focus of the objectives is on natural environment outcomes rather than economic activities such as tourism which may in turn be beneficial to the natural environment. He did not consider that the objectives and policies need to be amended in response to the submission, but did recommend an amendment to the Natural Environment section to discuss the value of tourism. He proposed a different placement of a paragraph recommended as an insertion as part of the Rural Section 42A Report (Section 42A Report, p. 124).

3.6.1.4 Decision and Reasons

1253. We accept in part the submission of *Otago Peninsula Community Board* (OS588.1). We consider it appropriate that objectives and policies include rural tourism with other rural activities, and that the objectives focus on outcomes rather than certain activities. We therefore do not support any amendments to objectives and policies. We do accept the Reporting Officer's evidence that an amendment to the Natural Environment Introduction is warranted to better reflect the interrelatedness of the economy and the environment, but consider that the recommended wording acknowledges only the importance of the natural environment to tourism without acknowledging its importance to the wider economy, as sought by the submitter. In

addition, we consider the Rural Introduction should be amended to similarly reflect this point.

1254. We consider that, by way of alternative relief, the outcome sought by the submitter can be achieved by amending the Section 10 Introduction as follows:

- moving the last sentence of the second paragraph to sit at the start of the third paragraph, and reordering the wording to emphasise the close relationship between the natural environment and wellbeing, including economic wellbeing.
- clarifying that the sentence starting “Vegetation...” in the second paragraph constitutes an example of the natural environment providing services, and adding an additional sentence to explain the importance of services such as these to Dunedin's economic activity, particularly in the rural environment.
- adding two additional sentences acknowledging the particular importance of various aspects of the natural environment to tourism.

1255. Amendments to Section 10 Introduction are therefore as follows:

~~“The natural environment in Dunedin is also important for the social, cultural and economic wellbeing of people and communities in Dunedin, and the life supporting capacity of air, water, soil and ecosystems. Dunedin’s natural environment, and the life supporting capacity of Dunedin’s air, water, soil and ecosystems are important for the social, cultural and economic wellbeing of communities. {NatEnv 447.10} Vegetation, for example, {NatEnv cl.16} (including trees), performs a range of environmental functions such as releasing oxygen; absorbing carbon dioxide and retaining water; moderating micro-climates; giving shade and shelter from winds; providing land stability, particularly on gully and river banks; and providing habitat for wildlife, both native and exotic species. Ecosystem services and natural processes such as these underpin much of Dunedin’s economic activity, especially in the rural environment. Maintaining the quality of the environment is particularly important to the tourism sector. The city’s natural features and landscapes, natural character of the coast and other water bodies, and biodiversity values, all play an important role in contributing to the visitor experience. {RU 447.10 and 900.22, NatEnv 588.1}”~~

1256. We also consider various aspects of these amendments constitute partial alternative relief for the submissions of *STOP* (OS900.22, OS900.102) and *HPPC* (OS447.10, OS447.70) discussed in the Rural Decision Report.

1257. We also consider the following amendments should be made to the Rural Introduction as follows:

~~“Tourism is a key sector in the Dunedin economy.—{RU cl.16} The rural parts of Dunedin also play an important role in providing for tourism activities (another key sector of the Dunedin economy) {RU cl.16}, not least through ecotourism activities; which relies on maintaining the quality of the natural environment {RU cl.16}. The functions of the rural environment are interrelated, with much of Dunedin’s rural economic activity reliant on maintaining the quality of the natural environment. {NatEnv 588.1}”~~

3.6.1.5 Requests to remove or amend objectives 10.2.3, 10.2.4 and 10.2.5 and their associated policies

1258. *Robert George & Sharron Margaret Morris* (OS355.15, OS355.17, OS355.18), *Timothy George Morris* (OS951.9, OS951.11, OS951.12) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.9, OS1054.11, OS1054.12) sought to remove Objectives 10.2.3 and 10.2.5 and their associated policies, and to amend Objective 10.2.4 and all associated policies, including by deleting Policy 10.2.4.1 and Policy

10.2.4.3. *Geoff Scurr Contracting Ltd* (FS2391.18) supported *Timothy George Morris (on behalf of RG and SM Morris Family Trust)*. The submitters believed the provisions were too complicated and overly onerous on landowners; that they have been developed without an appropriate level of consultation; that they are at odds with various miscellaneous normal and routine farming and related activities undertaken in rural areas; and at odds with a number of cultural and economic considerations. They considered mapping of HNCC, ONL and ONF areas had not been based on appropriate consultation. *Geoff Scurr Contracting Limited* (FS2391.18) supported *Timothy George Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.12) because they believed that the requested amendment is appropriate.

1259. The Reporting Officer, Michael Bathgate noted the statutory and strategic context for managing the natural character of the coastal environment and public access to the natural environment was set out in the Natural Environment Section 32 Report (pp 15-24), and that the context for landscape protection was set out in the Landscape Section 32 Report (pp 11-14), as well as in section 3.0 of the Section 42A Report.
1260. In particular, Mr Bathgate noted that the preservation of the natural character of the coastal environment is a matter of national importance under section 6(a) of the RMA, the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers is a matter of national importance under section 6(d), and the protection of outstanding natural landscapes is a matter of national importance under section 6(b). He also noted that management of activities in relation to these matters is also a requirement under the New Zealand Coastal Policy Statement.
1261. Mr Bathgate did not consider the provisions an unreasonable imposition on existing rural activities. He stated that farming, grazing and conservation activities remain permitted in landscape and natural coastal character overlay zones, and that it is the effect of development activities that may be associated with these (particularly buildings and structures over a certain size and in certain locations, earthworks – large scale and indigenous vegetation clearance) which have been identified as requiring assessment to consider their effects on landscape and natural character values and public access.
1262. In relation to mapping and consultation, Mr Bathgate noted the consultation phases of the 2GP prior to notification included materials showing the extent of proposed overlay zones, which included proposed landscape and coastal landscape layers, although these were refined as further assessment was conducted closer to notification.
1263. Mr Bathgate did not support the removal of the provisions, as he considered them necessary to fulfil the DCC's obligations under the RMA, the New Zealand Coastal Policy Statement, and the Regional Policy Statement for Otago. While he recognised that the set of policies may be viewed by some plan users as complicated, he considered that the policy, in following the 2GP drafting protocol as discussed in the Plan Overview section 42A report, provides clarity and certainty as to the activities and associated level of effects that are anticipated in landscape and natural coastal character overlay zones. He also referred the submitters to the response to their submissions on Objective 10.2.1 in section 5.4.2 of the Section 42A Report, including recommended amendments to rural zones assessment rules, which he considered may grant some relief to these submissions (s42A Report, pp. 127-128).

3.6.1.5.1 *Decision and Reasons*

1264. We reject the submissions of *Robert George & Sharron Margaret Morris* (OS355.15, 17, 18), *Timothy George Morris* (OS951.9, 11, 12) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.9, 11, 12). We accept that Objectives 10.2.3, 10.2.4 and 10.2.5 and their associated policies are necessary to fulfil the

DCC's obligations under the RMA (particularly sections 6(a), (b) and (d)), the New Zealand Coastal Policy Statement (particularly Policy 13) and the pORPS-dv (particularly policies 3.2.3-3.2.6, 3.2.8-3.2.10, and 5.1.1). We accept the Reporting Officer's evidence that, in following the 2GP drafting protocol, these provisions provide clarity and certainty as to the activities and associated level of effects that can be anticipated in landscape and natural coastal character overlay zones.

1265. We consider it reasonable that some development activities associated with permitted farming, grazing and conservation activities (particularly buildings and structures over a certain size and in certain locations, earthworks – large scale and indigenous vegetation clearance) require assessment of effects on landscape, natural character values and public access.
1266. While we do not generally consider the provisions overly onerous, we have made some amendments to them which may go some way to addressing the concerns of the submitter, including:
 - deletion and amendment of some policies so the provisions more accurately reflect the 2GP drafting protocol, discussed in section 3.7.5
 - provision of an alternative “adequately mitigated” policy test where there are “no practicable alternative locations”, for some activities in some overlay zones (also discussed in section 3.7.5).

3.6.1.6 Request to add new policies to give effect to RPS Policy 2.1.6 and to avoid fragmentation, reduction in size and extent of indigenous ecosystems and habitats of indigenous species

1267. *Forest and Bird NZ* (OS958.60) sought to add new policies to give effect to the RPS Policy 2.1.6, including the following: “Maintain, protect or enhance areas of modified indigenous vegetation which contain indigenous biodiversity and habitats for indigenous species.” They believed that the proposed chapter should give effect to the policies of the proposed Otago Regional Policy statement relating to maintaining or enhancing areas of predominantly indigenous vegetation, buffer or link existing ecosystems and protect hydrological services including those provided by tussock grasslands etc.
1268. This submission was opposed by *Pigeon Flat Road Group* (FS2416.53), who considered it to be unnecessary and too restrictive on farming activity in all circumstances, and *Federated Farmers of New Zealand* (FS2449.152), who believed it unnecessary, that the indigenous vegetation provisions are adequately covered elsewhere in the Plan, and RMA plans are to be read and taken in their entirety.
1269. *Forest and Bird New Zealand* (OS958.59) also sought to add a new policy to implement Objective 10.2.1 as follows: “Avoid fragmentation, reduction in size and extent of indigenous ecosystems and habitats of indigenous species”, as the submitter believed that biodiversity is often lost through cumulative effects that result in fragmentation and reduced habitat areas.
1270. *Oceana Gold (New Zealand) Limited* (FS2439.14) opposed this submission because locationally constrained activities, such as mining, cannot always avoid fragmentation of reduction in size and extent of ecosystems and their habitats. *Federated Farmers of New Zealand* (FS2449.69) opposed the proposed new policy because it is unnecessary and adequately covered by other policies.
1271. In response to *Forest and Bird NZ* (OS958.60), the Reporting Officer, Michael Bathgate, noted changes from Policy 2.1.6 in the notified version of the pRPS, to (renumbered) Policy 3.1.9 in the pORPS-dv, which reads:

Policy 3.1.9 Ecosystems and indigenous biological diversity

Manage ecosystems and indigenous biological diversity in terrestrial, freshwater and marine environments to achieve all of the following:

- a) Maintain or enhance ecosystem health and indigenous biological diversity;
- b) Maintain or enhance biological diversity where the presence of exotic flora and fauna supports indigenous biological diversity;
- c) Maintain or enhance areas of predominantly indigenous vegetation;
- d) Recognise and provide for important hydrological services, including the services provided by tussock grassland;
- e) Recognise and provide for natural resources and processes that support indigenous biological diversity;
- f) Maintain or enhance habitats of indigenous species and the habitat of trout and salmon that are important for recreational, commercial, cultural or customary purposes;
- g) Control the adverse effects of pest species, prevent their introduction and reduce their spread

1272. Mr Bathgate considered that the 2GP had given effect to the RPS by using several methods including the scheduling of ASCVs and their associated rules; vegetation clearance and earthworks rules for coastal and riparian margins, wetlands and urban. He noted the *Forest and Bird* submission seeks an ecosystems approach, in particular by maintaining, protecting or enhancing areas of modified indigenous vegetation which contain indigenous biodiversity and habitats. He identified recommended changes to Policy 2.2.3.1 that he considered provided protection for these areas. He also noted that Rules 10.3.2.1 and 10.3.2.3, in managing vegetation clearance in UCMA, coastal, riparian margins and wetlands, will protect mixed areas of vegetation, and that Rules 10.3.2.2-10.3.2.4 also afford protection for areas of indigenous vegetation that may be relatively heavily modified (s42A Report, p. 126). Given this, he did not recommend the addition of any new policies as a result of the *Forest and Bird* submission.
1273. In response to *Forest and Bird New Zealand* (OS958.59), Mr Bathgate stated that Rule 10.3.2.2 (maximum thresholds for indigenous vegetation clearance) directly addresses concerns with regard to the cumulative effects of fragmentation and reduction in size and extent of indigenous ecosystems and habitats. He noted that these rules give effect to Objective 2.2.3 (Dunedin's indigenous biodiversity is retained, enhanced and restored, with improved connections and resilience) and Objective 10.2.1 (Areas of indigenous vegetation and the habitats of indigenous fauna are maintained or enhanced). Given this, he did not recommend the addition of the new policy suggested by the submitter (s42A Report, Section 5.4.2, p. 136).
1274. In evidence, Dr Thorsen (ecological expert called by *Oceana Gold*) commented that he suspected the words "biodiversity" and "biodiversity values", used throughout the 2GP, are not the right terms. He stated that biodiversity simply means the number of species in an area, including exotic species (unless qualified by "indigenous biodiversity") and does not automatically include other important considerations such as species' habitat, species' distributions, biogeographic patterns, ecological patterns, interconnections, ecotones, habitat corridors, ecosystems, ecosystem services, or the management and protection of species of conservation interest or other inherent characters such as public appreciation or landscape. He considered biodiversity is a value in of itself and therefore there are few biodiversity "values" except the relative qualifiers "high" or "low" biodiversity (neither of which automatically transcribe as important values – some areas with low biodiversity are very unique), "intact", or technical subgroups such as endemic, indigenous, exotic, adventitious.
1275. Dr Thorsen further commented that he suspected what is meant in many of the instances is "biota", or "biotic environment"/"natural environment" which are broader

terms incorporating fauna and flora (and their habitat), or “habitat(s)”, “ecosystems”. He suggested better consideration of the correct term where the words “biodiversity” or “biodiversity value” are used in the 2GP.

1276. Following the Natural Environment Hearing, we asked the reporting officers to undertake further assessment of options to manage effects on biodiversity outside areas specifically identified for protection, such as coastal character overlay zones and scheduled Areas of Significant Conservation Value (ASCVs). This was to assist us to consider our response to outcomes in this respect sought in submissions from *Forest and Bird* and *STOP* (including OS958.60).
1277. A memorandum from Michael Bathgate and Jane Macleod, reporting officers, was considered at the Final 2GP Hearing. The memorandum set out the mechanisms employed by the 2GP to manage effects on biodiversity values:
- management of activities in ASCVs (Policies 10.2.1.2, 10.2.1.10 and 10.2.1.11 and associated activity status rules)
 - management of activities in natural coastal character overlay zones (Policies 10.2.3.2, 10.2.3.3, 10.2.3.4 and 10.2.3.11 and associated activity status rules) – where effects on biodiversity are considered as part of effects on natural character
 - management of activities in coastal and riparian margins (with these margins being determined by a minimum setback from the coast and water bodies) (Policies 10.2.2.2, 10.2.2.4, Rule 10.3.3 and earthworks provisions)
 - management of vegetation clearance and earthworks (effects on conservation values) in Urban Conservation Mapped Areas (Policy 10.2.1.5, Rule 10.3.2.1 and earthworks provisions)
 - management of indigenous vegetation clearance in or near identified wetlands (Policy 10.2.1.4, Rule 10.3.2.3)
 - consideration of effects on indigenous biodiversity values for all non-complying activities in landscape overlays (via reference to Objective 2.2.3 in Rule 10.7.2.1) – with the assessment seeking contribution to indigenous biodiversity and natural character strategic directions (Rule 10.7.2.1.a)
 - management of indigenous vegetation clearance where threatened plant species or certain important mature tree species are present (Policy 10.2.1.4, Rule 10.3.2.4)
 - requirement to restore indigenous vegetation disturbed by mineral prospecting and mineral exploration activities (Policy 10.2.1.7, Rule 16.5.11)
 - management of effects from subdivision on the values of ASCVs, UCMAs and natural coastal character overlays, on coastal and riparian margins, and on other areas of indigenous vegetation/habitats of indigenous fauna (Policies 10.2.1.9, 10.2.2.5 and 10.2.3.7, Rule 10.3.1 and associated assessment rules)
 - management of the planting of wilding tree species where it may affect areas of indigenous vegetation (not only ASCVs) or natural coastal character overlay zones (Policies 10.2.1.6, 10.2.3.11, Rule 10.3.4)
 - management of indigenous vegetation clearance in rural and rural residential zones (Policy 10.2.1.3, Rule 10.3.2.2)
 - management of effects on biodiversity values arising from mining and landfills throughout the city (Policy 10.2.1.8)
 - consideration of effects on indigenous biodiversity values for hazard mitigation earthworks and structures (all zones), and for all discretionary activities in landscape overlays (via reference to Objective 2.2.3 in Rule 10.6.2.1) – with encouragement given to development that incorporates conservation activity that will have significant positive effects on biodiversity or natural character values (Rule 10.6.2.1.d)
 - management of effects on rural character values in rural zones arising from factory farming, rural tourism – large scale, rural industry, rural research – large

scale, rural contractor depots – large scale, mining, landfills, community and leisure – large scale, sport and recreation, early childhood education, service stations, visitor accommodation and subdivision (Policies 16.2.3.5, 16.2.3.6 and 16.2.3.8 and associated activity status and assessment rules). The reporting officers noted that in most rural zones (all except the Middelmeach Basin and Taieri Plains zones), the rural character values identified in the plan refer to various attributes that contribute towards biodiversity, such as unmodified vegetative cover, ecological corridors, indigenous vegetation, wildlife, habitats and remnant forest.

1278. The memorandum also set out recommended amendments that would extend measures to maintain and enhance biodiversity beyond areas specifically protected for their biodiversity values:

- management of indigenous vegetation clearance where threatened indigenous wildlife species are present (via changes to Policy 10.2.1.4 and Rule 10.3.2.4)
- management of effects on biodiversity values arising from rural industry and network utility structures – large scale in all zones (via expansion of Policy 10.2.1.8 and associated assessment rules)
- management of effects on biodiversity values arising from all restricted discretionary activities in all landscape and natural coastal character overlay zones – i.e. SNLs, ONLs, ONFs, NCCs, HNCCs and ONCCs (via addition of new Rule 10.5.2.1). This rule was added to allow for the biodiversity offsetting tool to be used for activities in these areas; hence, the guidance provided in the rule is limited to matters associated with offsetting, but this could be expanded.
- consideration of positive effects, in terms of supporting farming or conservation activities, when assessing consent applications for all contraventions of development performance standards in rural zones, all restricted discretionary development activities in rural zones, and all restricted discretionary activities in overlays, mapped areas and scheduled items within rural zones (via addition of new Rules 16.9.4.1, 16.10.3.1 and 16.10.5.1)
- amendments to assessment rules for applications that breach standards on: maximum area of vegetation clearance in UCMAs, maximum area of indigenous vegetation clearance; vegetation clearance in protected areas; or vegetation clearance affecting protected species. Under these amendments, in assessing the significance of the effects of these activities on biodiversity values, the Council will consider whether the area affected meets one or more of the 2GP criteria for being assessed as an Area of Significant Conservation Value and, if it does, assess the significance of effects as if it was a scheduled Area of Significant Conservation Value (via amendments to assessment Rules 10.4.3.2, 10.4.3.3, 10.4.3.4 and 10.4.3.5).

1279. The memorandum also noted other recommended changes relevant to the 2GP's management of effects on biodiversity:

- amendments to Natural Environment assessment rules so that, for all activities with restricted discretionary status, the Council's discretion is restricted to 'effects on indigenous biodiversity' rather than 'effects on biodiversity' (changes to Rules 10.4 and 10.5).
- provision for the use of biodiversity offsetting as a management tool for activities that affect biodiversity values.

1280. The reporting officers considered these mechanisms appropriately give effect to the aspects of pORPS-dv Policy 3.1.9 that fall within the functions of territorial authorities. They noted that the extent to which the plan may go any further in giving effect to the policy is limited by the scope of submissions, and the requirements of RMA section

32. They considered that because it did not request any specific changes to rules (and therefore did not provide an opportunity for affected parties to make further submissions), the submission of *Forest and Bird NZ* (OS958.60) did not provide sufficient scope to amend 2GP rules in a way that would “substantially affect what can or cannot be done” in terms of either additional consent requirements, or increases in the costs associated with the consents process.

1281. In response to a specific assessment requested by the Panel, the reporting officers accepted that there was an inconsistency between Objective 10.2.1 (which focuses on areas of indigenous vegetation and habitats of indigenous fauna), whereas certain associated policies refer to “biodiversity values” in a more general sense. The memorandum recommended amendment to Objective 10.2.1 as follows: “~~Areas of indigenous vegetation and the habitats of indigenous fauna~~ Indigenous biodiversity values {NatEnv900.35} are maintained and enhanced”.
1282. As a related matter, the memorandum noted there had been discussion at the hearing about the appropriate definition of “indigenous biodiversity values” and whether this should include “ecosystem services” as defined in the proposed RPS as well as the intrinsic values of biodiversity – which the Panel had raised as a potential way to partially achieve the outcome sought by *Forest and Bird* (OS958.60).
1283. The reporting officers did not consider there was scope to add “ecosystem services” to any definition of “biodiversity values” and also raised concerns in relation to the costs and DCC’s staff ability to assess effects on ecosystem services in consent processes.
1284. In response to a question from the Panel, at the Final 2GP hearing, Jane Macleod stated that broadening the assessment of effects on biodiversity to include effects on “ecosystem health” (as opposed to “ecosystem services”) would be an appropriate response to submissions and would be within scope, because:
 - *Forest and Bird’s* submission (OS958.60) requests amendments to the plan to give effect to PRPS Policy 3.1.9;
 - Policy 3.1.9 specifically includes “maintain or enhance ecosystem health and indigenous biological diversity”; and
 - ecosystem health is necessary to biodiversity.
1285. The reporting officers considered that including ecosystem health in a new definition of indigenous biodiversity would be a clarification rather than a significant change, and suggested the following as a possible wording for an ‘indigenous biodiversity values’ definition:

“The intrinsic values of indigenous biota, and indigenous or mixed ecosystems that support indigenous biota, with the significance of biodiversity assessed in terms of the criteria outlined in Policy 2.2.3.1.
For the sake of clarity, effects on indigenous biodiversity values include effects on the health of the indigenous or mixed ecosystems that support indigenous biota, as well as effects on the indigenous biota themselves.”

3.6.1.6.1 *Decision and Reasons*

1286. We accept in part the submissions of *Forest and Bird NZ* (OS958.60) and *Forest and Bird New Zealand* (OS958.59), insofar as we agree amendment of the policy framework is necessary to better reflect pORPS-dv Policy 3.1.9, and maintain or enhance habitats and ecosystems.
1287. We accept the reporting officers’ evidence that the 2GP includes a range of methods reflecting aspects of pORPS-dv Policy 3.1.9. In particular, we accept that indigenous vegetation clearance provisions (incorporating amendments outlined in section 3.4)

- seek to manage effects in line with Policy 3.1.9(c) (“Maintain or enhance areas of predominantly indigenous vegetation”).
1288. In relation to Policy 3.1.9(g) (“Control the adverse effects of pest species, prevent their introduction and reduce their spread”), we consider Policy 10.2.1.6 and associated wilding tree species rules (with amendments discussed in section 3.9) are an appropriate response to this direction.
 1289. In relation to Policy 3.1.9(d) (“Recognise and provide for important hydrological services, including the services provided by tussock grassland”) and (e) (“Recognise and provide for natural resources and processes that support indigenous biological diversity”), while Objective 10.2.2 and associated policies (discussed in sections 3.6.7-3.6.10, 3.4.7.2, 3.8.2 and 3.8.8) provide a policy framework to achieve elements of this, the control of land use for the maintenance and enhancement of water and ecosystems in water bodies and coastal water is a responsibility of regional councils under s30(c) of the RMA. At the Rural Hearing, ORC director of policy, planning and resource management Mr Fraser McRae indicated the ORC considered these responsibilities had been delegated to territorial local authorities under a triennial agreement, but could not produce formal confirmation of this delegation. We recommend clarification of this position between the two authorities as a matter of relative urgency, to then enable the resource management issues listed under s30(c) to be considered and the appropriateness of any relevant management options formally assessed.
 1290. In terms of the other elements of Policy 3.1.9, we agree with the reporting officers’ assessment that, given the general nature of the submissions, there is no scope to add provisions that would “substantially affect what can or cannot be done” in terms of resource consent requirements. We therefore do not support the addition of a new policy requested by *Forest and Bird NZ* (OS958.59), as under the 2GP drafting protocol (discussed in the Plan Overview Decision Report) a policy with wording of this nature would suggest a prohibited activity status (as it commences with the word “avoid”), and the inclusion of mapped areas of indigenous ecosystems and habitats of indigenous species.
 1291. However, we do consider the submissions provide scope to clarify provisions relating to existing resource consent requirements, and we agree that amendments to Section 10 provisions are required so that they more clearly reflect pORPS-dv Policy 3.1.9, particularly Policy 3.1.9(a) (which refers to ecosystem health as well as indigenous biological diversity), (b) (which refers to exotic flora and fauna that supports indigenous biological diversity) and (f) (which refers to the habitat of indigenous fauna (and trout and salmon) important for recreational, commercial, cultural or customary purposes).
 1292. We accept the evidence of Dr Thorsen insofar as he identifies an issue of clarity around the way the terms “biodiversity” and “biodiversity values” are used in the 2GP. In particular we agree that there is a lack of clarity about whether the objectives, policies and rules that refer to “biodiversity” and “biodiversity values” are concerned with exotic species, and the extent to which these provisions include considerations such as species’ habitat, ecosystems, ecosystem services, and other matters that are canvassed in Policy 3.1.9(a), (b), and (f).
 1293. In particular, we note there is both lack of consistency within the Objective 10.2.1/10.2.2 policy suites (which refer to “biodiversity”, “biodiversity values” and/or “conservation values”), and in associated assessment rules (which refer to either “effects on biodiversity” or “effects on areas of indigenous vegetation and the habitat of indigenous fauna”). We consider this is further confused by recommended amendments (discussed in section 3.4.6.4) to amend Rules 10.4 and 10.5 to restrict Council’s discretion to “effects on indigenous biodiversity” for all restricted

discretionary activities. We note that there is no direct reference to ecosystems from the objectives and policies within Section 10.

1294. We consider a range of amendments are required in order to have better regard to pORPS-dv Policy 3.1.9(a), (b) and (f), and to better align with other higher order policy direction outlined in Section 3.0 of the Section 42A Report (including the requirement to have particular regard to the intrinsic values of ecosystems under section 7(d) of the RMA, and to give effect Policy 11 of the NZCPS). We have made the following amendments:

- Included a new definition of 'Biodiversity Values' as follows:

"Biodiversity Values

The intrinsic values, and value to the community, of indigenous biota, and indigenous or mixed habitats and ecosystems that support indigenous biota. For the sake of clarity, effects on biodiversity values include effects on the health of the indigenous or mixed habitats and ecosystems that support indigenous biota, as well as effects on the indigenous biota themselves." {NatEnv 958.60}

- Amended Policy 10.2.1.2 to replace "Areas of Significant Conservation Value (ASCV)" with "Area of Significant Biodiversity Value (ASBVs)"
 - Consequentially amended all instances of "Area of Significant Conservation Value" or "ASCV" throughout the 2GP with "Area of Significant Biodiversity Value" or "ASBV"
 - Consequentially amended all assessment rules that link to Policy 10.2.1.2 to reflect the new wording
 - Amended Policy 10.2.1.5 to replace "conservation values" with "biodiversity values", and "urban conservation mapped areas (UCMA)" with "urban biodiversity mapped areas (UBMA)"
 - Consequentially amended all instances of "Urban Conservation Mapped Area" or "UCMA" throughout the 2GP with "Urban Biodiversity Mapped Area" or "UBMA"
 - Consequentially amended all assessment rules that link to Policy 10.2.1.5 to reflect the new wording
 - Amended all instances of "effects on biodiversity" in Rule 10.4 and 10.5 to "effects on biodiversity values"
 - Amended all instances of "effects on areas of indigenous vegetation and the habitat of indigenous fauna" in Rule 10.5 to "effects on biodiversity values"
 - Consequentially amended all assessment rules in management or major facility zones to reflect the change to "effects on biodiversity values".
1295. We consider that, taken together, these amendments clarify that Section 10 provisions relating to biodiversity and natural character are concerned with the intrinsic values, and value to the community, of indigenous biota, and of indigenous or mixed habitats and ecosystems that support indigenous biota, and that this represents partial alternative relief for the submissions of *Forest and Bird NZ* (OS958.60) and *Forest and Bird NZ* (OS958.59).

1296. In addition, we consider that alternative partial relief for the submissions of *Forest and Bird NZ* (OS958.60) and *Forest and Bird NZ* (OS958.59) is also provided by amendments we have made to policies 10.2.1.7 and 10.2.1.9 (outlined in sections 3.6.4 and 3.6.6), the addition of new policy 10.2.1.W (discussed in section 3.2.5), and the deletion of policies 10.2.1.8, 10.2.1.10 and 10.2.1.11 (outlined in section 3.6.5 and 3.6.6 and the Network Utilities Decision Report respectively).
1297. We consider the addition of a definition of 'Biodiversity Values' also constitutes acceptance in part of the submission of *Forest and Bird NZ* (OS958.57), discussed in section 3.2.5, which sought to add a specific objective and policies to give effect to the New Zealand Coastal Policy Statement (NZCPS), including Policy 11.
1298. In addition, we agree with the Reporting Officer's assessment that there is an inconsistency between Objective 10.2.1 (which focuses on areas of indigenous vegetation and habitats of indigenous fauna) and associated policies, most of which refer to "biodiversity values" in a more general sense. We consider it more in line with pORPS-dv 3.1.9 to amend Objective 10.2.1 to reflect maintenance and enhancement these broader values. In the context of the definition of 'Biodiversity Values' being added to the 2GP, and noting that Objective 10.2.1 is also subject to amendments elsewhere, our decision also:
- Amends Objective 10.2.1 so that it commences: "Biodiversity values are maintained or enhanced, including by {NatEnv958.60, NatEnv361.1} ..."
1299. As discussed in section 3.6.2.1, we consider that use of the words "maintained or enhanced" in this clause also constitutes acceptance in part the submissions of *Ben Graham* (OS361.1), *Mathew O'Connell* (OS364.1), *John Scott* (OS1084.1), and *Waste Management (NZ) Limited* (OS796.17).

3.6.1.7 Requests to add new policies to maintain or enhance indigenous biodiversity and avoid earthworks in areas of indigenous biodiversity

1300. *STOP* (OS900.35) and *Forest and Bird New Zealand* (OS958.58) sought to add a new policy under Objective 10.2.1 to maintain and enhance indigenous biodiversity when undertaking activities. No specific reason was given for this request.
1301. *Geoff Scurr Contracting Limited* (FS2391.82, FS2391.109) and *Oceana Gold (New Zealand) Limited* (FS2439.12, FS2439.13) and *FFNZ* (FS2449.65, FS2449.68) all opposed these submissions. *Geoff Scurr Contracting Limited* considered that wide community input is needed before these may be considered. *Oceana Gold (New Zealand) Limited* suggested an alternative wording: "When undertaking land management and development activities, manage impacts on significant indigenous biodiversity, with a preference (where practicable) that it is maintained and enhanced". *FFNZ* considered the new policy unnecessary and adequately covered by other policies. *John Scott* (FS2140.7), *Ben Graham* (FS2279.7), *Mathew O'Connell* (FS2300.7) opposed the submission of *Forest and Bird* (OS958.58) as they considered this to be unnecessary and too restricted on farming activity in all circumstances.
1302. *Forest and Bird* (OS958.111) sought to add a new policy to Section 16 Rural Zones requiring all activities to maintain indigenous biodiversity and protect significant areas of indigenous vegetation and habitats for indigenous fauna. The submitter stated that, although biodiversity is covered in the Natural Environment section, it should be referenced in a new policy in the Rural Section for certainty. This submission was opposed by *Oceana Gold* (FS2439.63) because the policy would unduly restrict locationally constrained activities such as mining, and by *Federated Farmers* (FS2449.305) who stated that the policy "goes considerably beyond the sustainable management principles and intent of the RMA, its associated case law and the remainder of the 2GP".

1303. *Forest and Bird NZ* (OS958.100) also sought that the earthworks objective in the Section 16 of the plan, Objective 16.2.5 (now incorporated into Earthworks Objective 8A.2.1) be amended to ensure earthworks do not occur in areas of indigenous vegetation or habitats. The reason provided by submitters was that “Earthworks also need to avoid, mitigate adverse effects on indigenous vegetation”.
1304. This submission was supported by the *Harboursides and Peninsula Preservation Coalition* (FS2267.59), who stated the amendment would highlight the important value of conservation; and *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (FS2456.77) who felt the amendment was consistent with Manawhenua aspirations to see an increase in indigenous biodiversity. The submission point was also conditionally supported by *Oceana Gold NZ* (FS2439.60) provided that the wording applied to 'significant' indigenous vegetation and habitats. *Federated Farmers of New Zealand* (FS2449.301) opposed the submission point stating that the issue was already adequately addressed in the Natural Environment Section, and the Plan provisions are to be read in their entirety.
1305. In the Natural Environment Section 42A Report, in response to submissions by *STOP* (OS900.35) and *Forest and Bird New Zealand* (OS958.58) the Reporting Officer, Michael Bathgate, did not recommend that the proposed policy be accepted as he considered it to be in effect a restatement of the objective. He considered that the outcome sought is described by Objective 10.2.1, and that policies underneath this objective manage the land use and development activities that may impact on this outcome, and specify the level of effects that will be tolerated. He considered the proposed policy would not add anything to this framework and would detract from Plan clarity (Section 42A Report, Section 5.4.2, p. 135).
1306. In the Rural Zones Section 42A Report, the Reporting Officer, Michael Bathgate, did not recommend accepting the new policy proposed by *Forest and Bird NZ* (OS958.111) in relation to indigenous biodiversity, significant areas of indigenous vegetation and habitats. He explained that these were matters that were widely traversed in Section 10 Natural Environment and he did not consider that a new policy was necessary in Section 16 Rural Zones, as this would confuse the structure of the Plan and lead to duplication and confusion for plan users. It was noted that there was a recommended amendment to 16.1 Introduction (in section 5.3.2 of the Rural Zones Section 42A Report) to clarify that there are provisions in Section 10 Natural Environment that apply widely in the rural zones. He considered this to be an appropriate response to granting relief to the submitter on this matter, rather than any duplication of policies in different sections of the 2GP.
1307. Mr Bathgate also recommended that the *Forest and Bird NZ* (OS958.100) submission be rejected and noted that provisions within Section 10: Natural Environment section address the issue raised by *Forest and Bird* (Rural s42A Report, p.33). The following objective and policy from Section 10 were deemed relevant:
- Objective 10.2.1: Areas of indigenous vegetation and the habitats of indigenous fauna are maintained and enhanced
 - Policy 10.2.1.2: Only allow land use and development activities in a Scheduled Area of Significant Conservation Value (ASCV) where these activities will have net positive effects on the protection and enhancement of the biodiversity values of the Scheduled ASCV.
1308. Following the Natural Environment Hearing (June 2017), we asked the Reporting Officers to undertake further assessment of options to manage effects on biodiversity outside areas specifically identified for protection, such as natural coastal character overlay zones and scheduled Areas of Significant Conservation Value (ASCVs). This was to assist us to consider our response to outcomes in this respect sought in submissions from *Forest and Bird* and *STOP* (including OS900.35, OS958.58).

1309. Evidence was provided in response to this request at the Final 2GP Hearing in December 2017. We note that this evidence also took into account evidence presented at the Reconvened Network Utilities Hearing in November 2017. Therefore, before we discuss the evidence presented at latter hearing we will explain the relevant submissions and evidence considered via the Network Utilities topic.
1310. The *Otago Regional Council* (OS908.96) requested that Plan provisions (specifically, Policy 2.2.2.3) be amended to recognise the importance of managing adverse effects of renewable energy activities. This submission was supported by *Robert Wyber* (FS2059.21), but opposed by *Trustpower Ltd* (FS2127.8). The *ORC* submission did not specifically mention effects on biodiversity; however, this type of effect is widely acknowledged (for example, in the preamble of the National Policy Statement for Renewable Electricity Generation) as a key issue that needs to be managed for energy generation.
1311. In addition, *Ms Elizabeth Kerr* lodged submission points requesting that the Plan (specifically, Policy 2.2.2.3 and rules in the Network Utilities section) be amended to remove all provision for wind turbines, in order to avoid potential adverse effects on biodiversity values, among others (OS743.17 and OS743.57).
1312. *Ms Kerr's* submission point OS743.17 was opposed by *Trustpower Ltd* (FS2127.28), and by *Blueskin Resilient Communities Trust* (FS2229.11). Her submission point OS743.57 was opposed by *Trustpower Ltd* (FS2127.7), but supported in part by *Ms Geraldine Tait*, who considered that proposed provisions for wind generators were too liberal, and management of potential adverse effects should be strengthened.
1313. In response to *Ms Kerr's* submissions, the Reporting Officer, *Ms Macleod*, stated that although she disagreed that provisions for wind energy generation should be removed from the 2GP, she considered that stronger protection of biodiversity values from the potential adverse effects of wind generators was warranted (Network Utilities Section 42A Report, section 6.2.5).
1314. *Ms Macleod* noted that, under notified provisions, the policy framework only provided specifically for the management of effects on biodiversity from wind generators within scheduled ASCVs. In her opinion, these impacts should also be considered outside scheduled areas, particularly given the potential effects on birdlife. Therefore, she recommended that a new policy (10.2.1.12) be added to Section 10 of the Plan, as follows:
- Only allow wind generators – community scale and wind generators – regional scale where adverse effects on biodiversity values are avoided or, if avoidance is not possible, are no more than minor.*
1315. *Ms Macleod* also recommended that additional assessment rules be added to the Network Utilities section, to link to this policy.
1316. At the Network Utilities Hearing in July 2016, *Ms Kerr* and *the ORC* did not present or table evidence. However, *Ms Kirsty O'Sullivan* (planning consultant) called by *Trustpower*, who opposed *Ms Kerr's* submissions on wind energy in their further submission, presented evidence opposing recommended new Policy 10.2.1.12, and sought its deletion. In particular, *Ms O'Sullivan* opposed the strictness of the effects test in this policy, on the basis that it applied to all biodiversity (not just indigenous) and in all areas (not just ASCVs/significant areas). In *Ms O'Sullivan's* view, the policy went beyond the scope of the RMA, operative RPS and 2GP strategic directions (2.2.3.2.b), and it was also inconsistent with NPSREG (Evidence, pp. 16-18, para. 6.37-6.47).
1317. In her revised recommendations, *Ms Macleod* acknowledged the points raised by *Ms O'Sullivan*. She noted that the new policy would sit beneath Objective 10.2.1 (i.e.

“Areas of indigenous vegetation and the habitats of indigenous fauna are maintained and enhanced”). Therefore, she considered that it would be appropriate to reword the policy to refer to ‘areas of indigenous vegetation and the habitats of indigenous fauna’ rather than to ‘biodiversity’ in general. In addition, on reflection, she agreed with Ms O’Sullivan that the requirement for ‘no more than minor’ effects was too strict, given that the policy applies in all areas of the city, and not just in areas that have been recognised as having significant biodiversity values. Overall, she revised her recommended wording for Policy 10.2.1.12 to the following:

Only allow wind generators – community scale and wind generators – regional scale where adverse effects on areas of indigenous vegetation and the habitats of indigenous fauna are avoided or, if avoidance is not possible, adequately mitigated.

1318. She did not agree that the policy should be deleted; she considered that it was necessary to provide for the protection of indigenous biodiversity, recognising that larger wind energy development may have adverse effects on these values outside ASCVs.
1319. At the close of the hearing, the Network Utilities Hearing Panel requested further information on whether biodiversity effects should be assessed for additional Network Utility Activities – i.e. not only for large wind generators but also for other large utility structures such as hydro schemes.
1320. The Reconvened Network Utilities Hearing was held in November 2017 to hear evidence on this and other matters. Ms Macleod prepared further evidence for the reconvened hearing, and revised recommendations, in the form of a memorandum to the Panel. She reported that evidence had been sought from Dr Kelvin Lloyd (ecologist called by DCC) regarding the potential biodiversity effects of different types of energy generation. Dr Lloyd’s evidence indicated that all types of large scale energy generation activities and associated distribution infrastructure may have significant adverse effects on biodiversity (Memorandum, section 4.3, pp. 11-12).
1321. Based on this evidence, Ms Macleod recommended that biodiversity effects be assessed for all Network Utility Structures – Large Scale; a category which included all large scale REG, plus all other large scale network utility structures. She also recommended that these effects be assessed for Rural Industry and Landfills (both of which are Discretionary or Non-Complying in all zones) because large scale biomass energy generation may be a part of these activities.
1322. She noted that her recommended changes were outside the scope of *Ms Kerr* and *the ORC’s* relevant submission points (OS743.17, OS743.57 and OS908.96), which requested amendments to provisions to manage effects from energy generation only. However, in her view, the necessary scope to make this change was provided by submissions from *Save the Otago Peninsula (STOP) Inc Soc* (OS900.35) and *Forest and Bird NZ* (OS958.58), which had been allocated to the Natural Environment topic and are discussed above.
1323. Ms Macleod recommended that, rather than adding a new policy (10.2.1.12) to Section 10 to manage the effects on biodiversity of energy generation activities, Network Utility Structures – Large Scale and Rural Industry should be added to Policy 10.2.1.8. This policy, incorporating amendments recommended in response to other submissions, provided for the assessment of effects on biodiversity values from Mining and Landfills.
1324. Ms Macleod also recommended that provisions for the assessment of the effects on biodiversity of network utility structures – large scale be amended to include the following matters as “potential circumstances that may support a consent application”:

- The activity and associated site development activities are located away from significant areas of indigenous vegetation, habitats of indigenous fauna, and bird migration routes.
 - In the case of solar panels – large scale, structures are designed to decrease the attractiveness of panels to polarotactic insects.
1325. No evidence was presented by submitters at the Reconvened Network Utilities Hearing in relation to these recommendations.
1326. To return to the Natural Environment Hearing stream, in response to the Panel's request for further assessment of options to manage effects on biodiversity outside areas specifically identified for protection, a memorandum from Michael Bathgate and Jane Macleod, reporting officers, was considered at the Final 2GP Hearing (December 2017).
1327. The memorandum set out the mechanisms employed by the 2GP to manage effects on biodiversity values, as well as recommended amendments that would extend measures to maintain and enhance biodiversity beyond areas specifically protected for their biodiversity values, and other recommended changes relevant the 2GP's management of effects on biodiversity. These are set out in section 3.6.1.6, above.
1328. In response to a specific assessment requested by the Panel, the reporting officers commented that, if the policy requested by *Forest and Bird* (OS958.58) and *STOP* (OS900.35) were added to the plan, it would be implemented via assessment of effects on indigenous biodiversity for the "land management and development activities" concerned. They considered it reasonable to interpret "development activities" fairly widely as meaning not only "development" as defined in the 2GP – i.e. buildings, structures, earthworks, vegetation clearance etc. – but also "development" in its plain English sense – i.e. including the use of land and buildings for various activities.
1329. The reporting officers noted the additional submission point from *Forest and Bird* (OS958.100) requesting that the earthworks objective in the rural zones be amended in refer to "avoiding, or adequately mitigating, any adverse effects on... indigenous vegetation and habitats of indigenous species".
1330. Because these submission points relate to the policy framework, and do not directly request any additional rules, the reporting officers did not consider they provided scope to add a consent requirement for any activity that was permitted, but that they may provide scope to consider effects on indigenous biodiversity for activities that would already require consent, particularly where discretion is not restricted under the notified activity status.
1331. They noted that the recommendation made at the Reconvened Network Utilities Hearing, discussed above, to add 'network utility structures – large scale' and 'rural industry' to Policy 10.2.1.8 and, therefore, assess effects on biodiversity for these activities, was made in response to submission points OS958.58 and OS900.35. Rural industry is a fully discretionary activity in the notified plan; network utility structures – large scale are restricted discretionary under notified rules, but because the recommendation to add assessment of biodiversity effects for this activity and to change the activity status to discretionary was circulated to all network utilities submitters as part of the reconvened hearing for that topic, and no submitters raised concerns about this change, the reporting officers did not consider that any affected party would be unduly prejudiced by it. (In relation to this point, we note that, as set out in the Network Utilities Decision Report, we have in fact amended the activity status of network utility structures – large scale from restricted to fully discretionary in response to a separate submission, OS764.1.)

1332. The reporting officers noted that addition of a requirement to assess effects on biodiversity could significantly increase the costs of a resource consent application; applicants may need to engage consultants to prepare effects assessments, in cases where the Council considers this necessary. Therefore, they considered that expansion of Policy 10.2.1.8 should be limited only to those activities that:
- a. very clearly have the potential for significant effects on biodiversity; and
 - b. are not likely to be undertaken on a frequent basis as a component part of many different types of development (this rules out earthworks – large scale).
1333. In their view, further expansion of the policy would unduly prejudice those people who may, in the future, seek to undertake the affected activities, and therefore should be considered only via a future plan review, which would allow relevant evidence to be evaluated, and for public input.
1334. In response to a Panel enquiry as to whether transportation activities should be managed via Policy 10.2.1.8, they considered 'new roads or additions or alterations to existing roads', which are fully discretionary in all zones, would meet the two criteria (a) and (b) they considered necessary for expanding Policy 10.2.1.8.
1335. Overall, they recommend that Policy 10.2.1.8 be expanded to include these activities, as follows: "Only allow mining, and landfills, new roads or additions or alterations to existing roads, rural industry and network utility structures – large scale {NatEnv 900.35} where there is certainty that indigenous vegetation will be restored on land where it existed before the activity commenced and has been cleared as part of the mining or landfill activity adverse effects on biodiversity values are avoided or, where avoidance is not possible, minimised as far as practicable."

3.6.1.7.1 *Decision and Reasons*

1336. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
1337. We note the aspect of the submission of *Forest and Bird NZ* (OS958.111) relating to the protection of areas of significant indigenous vegetation and the significant habitats of indigenous fauna, is discussed in section 3.3.1.3.
1338. We accept in part the submissions of *STOP* (OS900.35) and *Forest and Bird NZ* (OS958.58, OS958.111 and OS958.100).
1339. As outlined elsewhere, we accept that 2GP provisions should seek to maintain or enhance the intrinsic values, and value to the community, of indigenous biota, and indigenous or mixed habitats and ecosystems that support indigenous biota, in line with higher order policy direction (most notably Policy 3.1.9 of the pORPS-dv) and the mandate afforded by 31(1)(b)(iii) of the RMA.
1340. We accept the reporting officers' evidence that policies relating to the maintenance or enhancement of indigenous biodiversity are more appropriate within Section 10 Natural Environment, than within Section 16 Rural Zones. We agree that the amendment to the Section 16 Rural Zones Introduction (stating that there are provisions in Section 10 that apply widely in the rural zones) will assist to clarify the way the Plan works in this regard, and we accept that there are range of methods in Section 10 Natural Environment to manage effects on indigenous biodiversity.
1341. However, we do not agree with the reporting officers' assessment that the proposed policy would detract from Plan clarity, or cause duplication. We note that there is no existing policy within Section 10 providing a framework for the assessment of effects on indigenous biodiversity, for activities that are not either subject to specific

performance standards under Section 10 (e.g. indigenous vegetation clearance), or that are occurring in areas specifically managed for biodiversity or natural character values (ASBVs, coastal character overlay zones, and coastal and riparian margins). We do not consider it appropriate to rely on strategic directions objectives and policies and Objective 10.2.1 to provide the policy framework for the effects of biodiversity these activities, as we consider the absence of a Section 10 policy could be interpreted to mean that the 2GP is not concerned with the effects of other activities on indigenous biodiversity.

1342. We accept the reporting officers' evidence that expansion of Policy 10.2.1.8 to refer to a wider range of activities would help achieve the outcome sought by submitters. However, we do not consider it efficient to refer to specific activities within the policy because the sheer number of affected activities would make the policy very long and unwieldy. Rather, we consider that the relevant policy should refer to "land use, development and city-wide activities" generally, with assessment rules used to direct the situations in which the policy applies.
1343. In response to the submissions of *STOP* (OS900.35), *Forest and Bird New Zealand* (OS958.58), *Forest and Bird NZ* (OS958.111) we have therefore included new Policy 10.2.1.W as follows: "Only allow land use, development and city-wide activities where biodiversity values are maintained or enhanced".
1344. We have also amended strategic policy 2.2.3.2 by adding a new clause to reflect this method as follows: "f. require the assessment of effects on biodiversity values of discretionary and non-complying land use, development and citywide activities."
1345. We agree with the reporting officers' assessment that the general nature of the submissions of *STOP* (OS900.35), *Forest and Bird New Zealand* (OS958.58) and *Forest and Bird NZ* (OS958.111) provides scope only for effects to be considered for activities that would already require consent. Given effects on biodiversity can be taken into account for discretionary and non-complying activities, we consider it both appropriate and within the scope of the submissions for new Policy 10.2.1.W to be linked via discretionary and non-complying assessment rules in Section 10 (Natural Environment), Section 16 (Rural Zones), Section 17 (Rural Residential Zones) and Section 20 (Recreation Zones).
1346. In relation to the additions to assessment guidance recommended by Ms Macleod specifically in relation to the effects of network utility activities on biodiversity values, based on Dr Lloyd's evidence we agree that the assessment rule relating to the effects of solar panels on insect life should be added to the Plan (although with wording amended for clarity) as part of the response to OS900.35 and OS958.58. However, we consider that the guidance relating to the location of activities "away from significant areas of indigenous vegetation, habitats of indigenous fauna, and bird migration routes" would be superfluous, given the addition of assessment guidance discussed in section 3.3.1.3 as follows:

"With respect to Policy 10.2.1.X, the Council will generally only consider activities to have no practicable alternative locations where an assessment that meets the requirements set out in Rule 10.8.4 demonstrates that the proposed site, including any proposed mitigation measures, is the option that has the least impact on biodiversity values, while meeting the operational needs of the activity."
1347. In response to the submissions of *STOP* (OS900.35), *Forest and Bird New Zealand* (OS958.58), *Forest and Bird NZ* (OS958.111), we have therefore made the consequential change of adding Policy 10.2.1.W to assessment rules 10.6.2.1 and 10.7.2.1, which apply to all discretionary and non-complying activities that are linked to Section 10. We have also, as a consequential change, amended discretionary and non-complying assessment rules in the Rural Zones, Rural Residential Zones,

Recreation Zones, Network Utilities, Transportation and Natural Hazard Mitigation Activities Sections to specifically direct activities that may have effects on biodiversity values to rules 10.6.2.1 and 10.7.2.1.

1348. For restricted discretionary activities in other Section 16, Section 17 and Section 20, we accept the Reporting Officer's evidence that addition of an "Effects on biodiversity values" matter of discretion, with a link to new Policy 10.2.1.W, should be limited to activities that:
- a. very clearly have the potential for significant effects on biodiversity; and
 - b. are not likely to be undertaken on a frequent basis as a component part of many different types of development.
1349. We do not, however, agree that this rules out Earthworks – Large Scale. Given the large volumes of combined cut and fill involved in Earthworks – Large Scale, we consider this activity clearly has the potential for significant effects on indigenous biodiversity. Further, the scale thresholds outside of overlay zones are such that most earthworks activities are likely to occur as Earthworks – Small Scale, so we consider it very unlikely that Earthworks – Large Scale will be undertaken on a frequent basis as a component part of many different types of development. We therefore accept in part the submission of *Forest and Bird NZ* (OS958.100), and have added Earthworks assessment rule 8A.7.2.A to include a new assessment matter "Effects on biodiversity values", with assessment guidance including a link, via Rule 10.5.B, to Policy 10.2.1.W for Earthworks – Large Scale in rural zones. We consider this constitutes partial alternative relief for the submission of *Forest and Bird NZ* (OS958.100), as well as the submissions of *STOP* (OS900.35) and *Forest and Bird NZ* (OS958.58 and OS958.111).
1350. Taking into account the principles of natural justice (given the large number of people that such a change may affect), in the absence of any additional activity-specific submissions or evidence, we did not consider it appropriate to amend the Plan to add "Effects on biodiversity values" as a matter of discretion to other restricted discretionary activities in rural, rural residential and recreation zones. There may be merit in examining this issue as part of a future Plan review.
1351. We consider the addition of Policy 10.2.1.W and the amendments to assessment rules outlined in this section constitute acceptance in part of the submission of *Forest and Bird NZ* (OS958.57) (which sought to add a specific objective and policies to give effect to the NZCPS, including Policy 11). We also consider that this addition is acceptance in part of the submission of *Forest and Bird NZ* (OS958.60, OS958.59), which sought to add policies to give effect to RPS Policy 2.1.6 (since renumbered as Policy 3.1.9), and to avoid fragmentation, reduction in size and extent of indigenous ecosystems and habitats of indigenous species.
1352. We also consider some of the amendments constitute acceptance in part of the submissions of *STOP* (OS900.145), *Forest and Bird NZ* (OS958.26) and the *Department of Conservation* (OS949.9) (as discussed in 3.6.5), as well as partial alternative relief for the submissions of *Ms Elizabeth Kerr* (OS743.17 and OS743.57) and the *Otago Regional Council* (OS908.96), which were considered at the Network Utilities Hearings, as discussed above.
1353. We note that amendments to policies 10.2.1.7 and 10.2.1.9 (outlined in sections 3.6.4 and 3.6.6), and the deletion of policies 10.2.1.8, 10.2.1.10 and 10.2.1.11 (outlined in section 3.6.5 and 3.6.6 and the Network Utilities Decision Report respectively) also constitute alternative partial relief for the submissions of *STOP* (OS900.35), *Forest and Bird New Zealand* (OS958.58) and *Forest and Bird NZ* (OS958.111).

1354. The amendments made as a result of this decision, including consequential amendments, are as follows.
- Added new Policy 10.2.1.W: “Only allow land use, development and city-wide activities where biodiversity values are maintained or enhanced.”
 - Amended Policy 2.2.3.2 to add new clause ‘f’: “require the assessment of effects on biodiversity values of discretionary and non-complying land use, development and citywide activities.”
 - Amended assessment rules for discretionary and non-complying activities in Section 5 (Network Utilities), Section 10 (Natural Environment), Section 16 (Rural Zones), Section 17 (Rural Residential Zones), Section 20 (Recreation Zones), and assessment rules for discretionary activities in Section 8 (Natural Hazard Mitigation Activities), so that discretionary and non-complying activities that may have effects on biodiversity values are assessed against Policy 10.2.1.W.
 - Added new ‘general assessment guidance’ (Rule 10.6.2.1.m) relating to specific aspects of the design of solar panels that may influence their effects on insect life.
 - Add Earthworks assessment rule 8A.7.2.A to include a new assessment matter “Effects on biodiversity values”, with assessment guidance including a link, via new Rule 10.5.2.B, to Policy 10.2.1.W for Earthworks – Large Scale in rural zones.
1355. See Appendix 1 (amendments attributed to NatEnv 900.35, except for amendments in the final bullet point, which are attributed to NatEnv 958.100).

3.6.2 Objective 10.2.1

1356. Objective 10.2.1 states “Areas of indigenous vegetation and the habitats of indigenous fauna are maintained and enhanced”.
1357. This objective is given effect to through policies linked to rules on:
- activity status of conservation activity in all zones
 - activity status of land use, development, subdivision and city-wide activities in scheduled ASCVs
 - performance standards for vegetation clearance and indigenous vegetation clearance (rules 10.3.2.2 - 10.3.2.4)
 - the performance standard relating to wilding tree species (Rule 10.3.4)
 - the site restoration performance standard for mineral exploration and prospecting (Rule 16.5.11)
 - rules guiding the assessment of mining and landfill activities in relation to site restoration (Rules 16.11.2.4 and 10.6.2.3).
1358. Multiple submissions were received on Objective 10.2.1, as set out below.
- #### 3.6.2.1 Submissions to change “maintained and enhanced” to “maintained or enhanced” or “maintained and if possible enhanced”
1359. *Ben Graham* (OS361.1), *Mathew O’Connell* (OS364.1) and *John Scott* (OS1084.1) sought to amend Objective 10.2.1 to “maintained ~~and or~~ enhanced”. They considered the provision unduly restrictive and uncertain. *FFNZ* (FS2449.59, FS2449.61) supported these submissions because it did not consider that all indigenous vegetation needs to be maintained and enhanced. *Waste Management (NZ) Limited* (FS2444.13) opposed Mathew O’Connell (OS364.1) because they preferred the relief sought in their original submission.

1360. *Waste Management (NZ) Limited* (OS796.17) sought to amend Objective 10.2.1 because the submitter believed the objective should not require both maintenance and enhancement, and prefers, if possible, enhance.
1361. In response to submissions from *Ben Graham* (OS361.1), *Mathew O'Connell* (OS364.1) and *John Scott* (OS1084.1), the Reporting Officer, Michael Bathgate, stated that objectives are designed to be read as overall objectives for the city, reinforced by policies being written to provide guidance on what an acceptable outcome is on a case by case basis. He considered it appropriate at a city-wide level to set an objective for areas of indigenous vegetation being both maintained in some circumstances and enhanced in others. He therefore, recommended the submission be rejected as he believed "or" implies a city-wide outcome where there is no enhancement is acceptable (Section 42A Report, Section 5.4.2, p. 132).

3.6.2.1.1 *Decision and Reasons*

1362. We accept in part the submissions of *Ben Graham* (OS361.1), *Mathew O'Connell* (OS364.1), *John Scott* (OS1084.1), and *Waste Management (NZ) Limited* (OS796.17). While we accept the Reporting Officer's evidence that "maintained and enhanced" are the appropriate words as part of an overall city-wide objective, insofar as areas of indigenous vegetation are maintained in some circumstances and enhanced in others, we consider this wording is more appropriate for use in strategic directions objectives and policies. We note (as mentioned in Section 3.0 of the Section 42A Report) that Policy 3.1.9 of the pORPS-dv uses the wording "maintain or enhance". We therefore consider that the amendment described in section 3.6.1.6, to commence Objective 10.2.1 with the wording "Biodiversity values are maintained or enhanced..." constitutes alternative partial relief for these submissions.

3.6.2.2 Submissions seeking that areas of indigenous vegetation and the habitats of indigenous fauna are "identified, protected"

1363. *STOP* (OS900.141) and *Forest and Bird New Zealand* (OS958.18) sought to amend Objective 10.2.1 to read "Areas of indigenous vegetation and the habitats of indigenous fauna are identified, protected, maintained and enhanced", or have two separate objectives, as section 6(c) requires objectives to provide for the protection of areas of significant indigenous vegetation and the significant habitats of indigenous fauna. Objectives should clearly state that 'protection' of these areas is expected, and activities that will result in adverse effects on SNAs should not occur. Wider areas of indigenous biodiversity need to be protected and maintained by avoiding, remedying or mitigating adverse effects on these areas.
1364. *FFNZ* (FS2449.66, FS2449.67) opposed these submissions because they believed the amendments to be unnecessary and in this context "maintained or enhanced" are the more appropriate terms.
1365. The Reporting Officer, Michael Bathgate, referred to a similar submission that was made by *Forest and Bird New Zealand* regarding Objective 2.2.3. He noted this was not recommended to be accepted, as the objective was considered to be more wide-ranging than significant indigenous vegetation and habitats. He considered the strategic policies to be the level within the 2GP framework at which the methods of identification and protection (through scheduling or promoting as QEII covenants) of significant indigenous vegetation and habitats occurs. He considered that, at the level of Section 10 Objectives and policies, it is assumed these significant areas have already been identified and protected through scheduling, with the policies focussed on managing types of activities and their effects. The Reporting Officer therefore did not recommend the acceptance of these submissions (Section 42A Report, Section 5.4.2, p. 133).

3.6.2.2.1 *Decision and Reasons*

1366. We accept in part the submissions of *STOP* (OS900.141) and *Forest and Bird New Zealand* (OS958.18).
1367. We note that the policies under Objective 10.2.1 refer to significant indigenous vegetation and habitats as well as to biodiversity values more generally. As discussed elsewhere, we accept that the higher order policy framework (including s6(c) of the RMA, and the pORPS-dv) mandates protection of significant indigenous vegetation and habitats. We consider Objective 10.2.1 should reflect this insofar as it relates to significant indigenous vegetation and habitats.
1368. We also agree with the Reporting Officer that the word “identified” is not appropriate at the Section 10 objective level. We consider it better included in strategic directions policies level, as it is a method to achieve protection, rather than a desirable outcome in and of itself.
1369. Noting that Objective 10.2.1 is also subject to amendments described in section 3.6.1.6, in response to submissions OS900.141 and OS958.18 we have further amended Objective 10.2.1 as follows:

Biodiversity values are maintained or enhanced {NatEnv958.60, NatEnv361.1}, including by protecting {NatEnv900.141} Areas areas of significant {NatEnv900.141} indigenous vegetation and the significant {NatEnv900.141} habitats of indigenous fauna are maintained and enhanced {NatEnv900.141, NatEnv958.60, NatEnv361.1}.

3.6.2.3 Submission that impacts be “managed with a preference (where practicable) that they are maintained or enhanced”

1370. *Oceana Gold (New Zealand) Limited* (OS1088.30) sought to amend Objective 10.2.1 such that impacts on significant areas of indigenous vegetation and the habitats of indigenous fauna are “managed with a preference (where practicable) that they are maintained and enhanced”. The submitter believed their proposed wording of the objective more appropriate to achieve the purpose of the RMA.
1371. The Reporting Officer, Michael Bathgate, did not consider the objective should be amended so that areas of indigenous vegetation and habitats are “managed with a preference (where practicable) that they are maintained or enhanced”. He considered this active statement read more as a policy, whereas the objective seeks a desired end-state of the maintenance or enhancement of areas of indigenous vegetation and habitats. Furthermore, he considered the wording change dilutes and significantly reduces the aspiration of the objective in a way that he considered contrary to Part 2 of the RMA and the requirements of the pORPS-dv (Section 42A Report, Section 5.4.2, p. 134).
1372. At the hearing, Mr Mark Christensen, legal counsel for *Oceana Gold (New Zealand) Limited*, stated that the reference to areas of vegetation and habitats being ‘maintained and enhanced’ is too restrictive and is inconsistent with s6(c). He commented that significant vegetation is to be protected and other vegetation should be managed, giving the Auckland Unitary Plan as an example of a clear and simple approach.
1373. The Reporting Officer, Michael Bathgate, did not make a revised recommendation in response to Mr Christensen. In relation to *Oceana Gold’s* reference to non-significant vegetation should be managed, not protected, the Reporting Officer did not change his Section 42A recommendation (Revised Recommendations, p. 13).

3.6.2.3.1 *Decision and Reasons*

1374. We accept in part the submission of *Oceana Gold (New Zealand) Limited* (OS1088.30). We do not consider it appropriate to restrict Objective 10.2.1 to areas of significant indigenous vegetation and important habitats, given that higher order policy direction mandates maintenance or enhancement indigenous biodiversity beyond areas that are considered significant, through RMA s31(1)(b)(iii), and Policy 3.1.9 and Method 4.1.3 of the pORPS-dv. We also do not support amending the objective so that other areas of indigenous vegetation and habitats are “managed with a preference (where practicable)” that they are maintained and enhanced. We agree with the Reporting Officer’s assessment that the suggested wording is process-based rather than describing a desirable end state, as is intended for objectives under the 2GP drafting protocol. We also accept that the suggested wording would reduce the strength and aspiration of the objective in such a way that it would be contrary to higher order policy direction, specifically Policy 3.1.9 of the pORPS-dv.
1375. We do, however, consider that the amendment described in section 3.6.1.6, such that Objective 10.2.1 states that biodiversity values are “maintained or enhanced” rather than “maintained and enhanced”, constitutes acceptance in part of the submission of *Oceana Gold (New Zealand) Limited* (OS1088.30).

3.6.2.4 Submissions to amend Objective 10.2.1 so that not at odds with other provisions

1376. *Timothy George Morris* (OS951.1) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.1) supported the objective in principle, but sought to amend Objective 10.2.1 so that it was not at odds with other objectives, policies and rules of the Plan. Their reasons were there is potential for these provisions to be applied in a manner inconsistent with other Plan provisions, for example Policy 16.2.1.1. *Geoff Scurr Contracting Limited* (FS2391.22) supported this because he agreed that there are incompatibilities which need to be addressed.
1377. The Reporting Officer, Michael Bathgate, did not consider Objective 10.2.1 to be at odds with other 2GP provisions. He acknowledged there may be tensions at times between activities such as farming and the objective, however, he considered these tensions are addressed by ensuring the rules are efficient as well as effective and allowing for appropriate exemptions.
1378. Given this, and the absence of more specific examples of conflict or any proposed wording provided by the submitter, Mr Bathgate did not recommend these submissions were accepted. He did however note recommended amendments to rural zone assessment rules in response to submissions from the same submitters, which would introduce the assessment of positive effects in terms of supporting farming or conservation activity, and the consideration of Objective 16.2.1 in any consideration of consent applications for development performance standard contraventions, restricted discretionary and discretionary activities (s42A Report, Section 5.4.2, p. 134).

3.6.2.4.1 *Decision and Reasons*

1379. We accept in part the submissions of *Timothy George Morris* (OS951.1) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.1). We consider the amendments we have made to Objective 10.2.1, outlined in sections 3.6.1.6 and 3.6.2.2, improve its consistency with other aspects of Section 10.
1380. We agree with the Reporting Officer’s assessment that a rule framework that is efficient as well as effective (i.e. allowing for appropriate exemptions) can help manage tensions between objectives. We note that a number of changes have been

made to the rule framework (for example to vegetation clearance provisions, outlined in section 3.4), to improve it in this regard.

3.6.3 Policy 10.2.1.1

1381. Policy 10.2.1.1 states “Encourage conservation activity in all zones”. The policy is linked to the permitted activity status for conservation in all management and nearly all major facility zones.
1382. *STOP* (OS900.27) and *Forest and Bird NZ* (OS958.19) sought to expand Policy 10.2.1.1 to include retention and enhancement of vegetation and habitats. They supported the policy in part, but believed it needed to provide guidance as to how it will be achieved. *Federated Farmers of New Zealand* (FS2449.50, 71) opposed these submissions because they believed it unnecessary and that maintenance and enhancement are covered by other policies.
1383. The Reporting Officer, Michael Bathgate, did not support the submissions of *STOP* (OS900.27) and *Forest and Bird NZ* (OS958.19) as he believed it would make the policy misaligned with the rule framework and would cause overlap, creating confusion for Plan users. The purpose of Policy 10.2.1.1 was to set up the permitted activity status of conservation activity across all zones, while other policies (such as policies 10.2.1.3 and 10.2.1.4) relate to the indigenous vegetation clearance rule framework, which seeks the retention of indigenous vegetation and habitats (Section 42A Report, Section 5.4.3, p. 138).
1384. *Timothy George Morris* (OS951.2) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.2) sought to amend Policy 10.2.1.1 so it was not at odds with other Plan provisions. They considered there was potential for these provisions to be applied in a manner inconsistent with other plan provisions. *Geoff Scurr Contracting Limited* (FS2391.23) supported *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) because they agreed there were incompatibilities which needed to be addressed.
1385. The Reporting Officer, Michael Bathgate, did not believe that the policy was at odds with other 2GP provisions. He noted that Conservation is rare in being a permitted land use activity in all management zones, compared to most other land use activities such as farming or residential activity where the activity status varies across management zones. He considered it an activity that does not give rise to a great range or severity of effects and contribute positively to number of strategic, citywide and management zone objectives. Given this, he did not recommend any amendment in response to these submissions (s42A Report, Section 5.4.3, p. 138).

3.6.3.1 Decision and Reasons

1386. We reject the submissions of *STOP* (OS900.27) and *Forest and Bird NZ* (OS958.19). We agree with the Reporting Officer’s assessment that the policy specifically relates to the permitted activity status of Conservation activity in all zones, and that the amendment suggested by the submitters would not add to Plan clarity. We also consider that the activities described in the suggested amendment would meet with the definition of Conservation activity (which is already included in the policy), and therefore there is no need to expand the policy as suggested.
1387. We reject the submissions of *Timothy George Morris* (OS951.2) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.2). We agree with the Reporting Officer’s assessment that the policy is not at odds with other 2GP provisions.

3.6.4 Policy 10.2.1.7

1388. Policy 10.2.1.7 states “Require mineral exploration and mineral prospecting to restore indigenous vegetation where it existed before the activity commenced and has been cleared as part of the exploration or prospecting activity”, and is related to Rule 16.5.11 - a performance standard for mineral exploration and prospecting. Mineral exploration and prospecting is a permitted activity in rural zones.
1389. The site restoration performance standard requires that, where indigenous vegetation clearance has taken place, replanting or indigenous vegetation must be conducted on at least the same parts of the site as where indigenous vegetation existed prior to the activity commencing. Where this standard is contravened, the activity becomes restricted discretionary. The related assessment Rule 10.4.4.6, considers effects on biodiversity (and requires assessment against Objective 10.2.1 and Policy 10.2.1.7).
1390. In all other zones, and in ASCVs and ONFs, ONCCs and HNCCs in the rural and rural residential zones, mineral exploration and prospecting is a non-complying activity. In an ASCV, Rule 10.7 (assessment of non-complying activities) provides guidance as to the assessment of resource consents in relation to Objective 10.2.1 and effects related to biodiversity and links to Policy 10.2.1.2.
1391. *STOP* (OS900.143) and *Forest and Bird NZ* (OS958.25) sought to remove Policy 10.2.1.7 because they considered it to be an assessment matter. The Reporting Officer also noted that *STOP* sought the removal of Rule 16.5.11 because “*STOP* opposed mineral exploration if one did not then intent to grant a licence to mine...” The submitters state that mineral exploration and prospecting are subject to policies 10.2.1.1, 10.2.1.2, 10.2.1.3 and 10.2.1.4 and that “where consents are granted for mineral *exploration* or prospecting, restoration of any affected area of indigenous vegetation to re-establish the habitat that previously existed should be required” with the species being used “the same as those affected, and should aim to recreate the habitat”.
1392. The Reporting Officer, Michael Bathgate, was uncertain if both *STOP* (OS900.143) and *Forest and Bird New Zealand* (OS958.25) had a full appreciation of the primary role of this policy in terms of the performance standard on mineral exploration and prospecting where it is a permitted activity. However, Mr Bathgate did agree that the policy could be read to also apply to the assessment of mineral exploration and prospecting where it requires resource consent. Consequently, he suggested amending the policy so it is clear it only applies to the permitted activity performance standard.
1393. Mr Bathgate stated it was difficult to understand whether the submitters would have wanted Policy 10.2.1.7 removed if they had understood that it relates to a permitted activity performance standard. However, in his view Policy 10.2.1.7 and its related Rule 16.5.11 are appropriate to achieve the objective. He inferred that *STOP*’s submission to remove Rule 16.5.11 is linked to the related *STOP* submission to change the activity status of mining in landscape and coastal character overlay zones and ASCVs.
1394. In response to the request that species to be used in replanting would be the same as those removed, Mr Bathgate considered that this would be a desirable outcome, although he considered that the use of species that would support the creation of habitat that is common to the area would also be desirable (where this might be different), noting that some species are difficult to access from commercial nurseries. He recommended an amendment to Rule 16.5.11 Site Restoration to provide for the recreation of the pre-existing habitat (s42A Report, Section 5.4.5, p 147, 149).
1395. *Department of Conservation* (OS949.8) also sought the removal of this policy because they believed rather than requiring restoration of vegetation specific to these

activities, there should be an assessment of the effects of all activities on biodiversity values. The submitter further stated that this is provided for in Policy 10.2.1.3 “including amendments sought to that Policy” (which sought to replace the wording of Policy 10.2.1.3 with alternative wording including reference to biodiversity offsetting).

1396. In response to *DOC* (OS949.8) the Reporting Officer referred the submitter to the discussion on a framework for biodiversity offsetting under section 5.1.3 of the Section 42A Report. He did not see how biodiversity offsetting can be written into a performance standard in a way that is certain and objective. Mr Bathgate believed it should instead be considered in assessing consents that contravene the standard. He, therefore, recommended adding assessment guidance to Rule 10.4.4.6 stating: “Where it is not practicable to restore indigenous vegetation where it existed prior to mineral exploration and prospecting, enable the use of biodiversity offsetting where in accordance with the guidance in Policy 2.2.3.5.” (s42A Report, Section 5.4.5, p. 147, 150).
1397. *Oceana Gold (New Zealand) Limited* (OS1088.35) sought to amend Policy 10.2.1.7 because they considered that, as presently worded, the policy is too restrictive and it “does not recognise that in some instances it may be impractical to restore indigenous vegetation where it existed before exploration and prospecting took place.”
1398. The Reporting Officer, Michael Bathgate, believed that this policy and its related performance standard are appropriate, and noted that contravention of the standard only results in a restricted discretionary activity status. Where this is the case (and it is not practicable to carry out complete restoration of indigenous vegetation) he considered biodiversity offsetting may be appropriate, and he recommended amending Rule 10.4.4.6 to allow for biodiversity offsetting to be considered (s42A Report, Section 5.4.5, p. 148, 150).
1399. *STOP* (OS900.80) and *Forest and Bird NZ* (OS958.87) sought to add Objective 2.2.3 and policies 2.2.3.1, 2.2.3.2, 2.2.3.3 and Policy 10.2.1.1 to Rule 10.4.4.6. They also sought to delete clause (ii), which states “Mineral exploration and prospecting replace indigenous vegetation where it existed prior to the activity commencing and where it has been cleared as part of the exploration or prospecting activity (Policy 10.2.1.7)”. The submitters state that there “should be a general standard that applies in all situations where restoration is undertaken. Restoration should aim to re-establish the habitat that previously existed. The indigenous species used should be those that naturally occur or occurred in the area.”
1400. *Federated Farmers of New Zealand* (FS2449.207) opposed the *STOP* submission, stating that “the amendments proposed go significantly further than appropriate or required for performance standards in this area”. *Oceana Gold (New Zealand) Limited* (FS2439.33) opposed the *Forest and Bird* submission, as it does not support the additional objectives and policies or the removal of the reference to mineral exploration or prospecting.
1401. The Reporting Officer, Michael Bathgate, did not recommend that *STOP* (OS900.80) and *Forest and Bird New Zealand’s* (OS958.87) submission that Policy 10.2.1.7 should be removed from Rule 10.4.4.6 should be accepted, explaining that the 2GP is designed to have a direct and linear relationship between policies and rules in the Plan (an approach encouraged by the Environment Court). He considered Policy 10.2.1.7 correctly referenced as the policy that directly leads to the site restoration performance standard. He stated that Objective 2.2.3 and policies 2.2.3.1, 2.2.3.2, 2.2.3.3 and Policy 10.2.1.1 are not directly related to the site restoration standard and so did not recommend their addition. He stated that any indigenous vegetation clearance required as part of mineral exploration and prospecting will be subject to the vegetation clearance Rule 10.3.2, which will separately assess such objectives and

policies. However, he noted the amendments he was recommending to Rule 16.5.11 in response to *STOP* (OS900.143) and *Forest and Bird NZ* (OS958.25).

1402. At the hearing, *DOC* called Ms Nadia Yozin (planner) who circulated evidence indicating support for the Reporting Officer's recommended amendment to Policy 10.2.1.7 (Yozin evidence, Appendix NY2, p.7).
1403. At the hearing *Oceana Gold (New Zealand) Limited* called Dr Michael Thorsen (ecological expert) whose evidence stated that, in his view, it could be difficult for certain exploration activities such as drilling, tracks and trenching to 'restore' indigenous biodiversity and suggested that the policy be modified to "restore indigenous vegetation as far as practicable". Moreover, he did not support the recommended amendments to Policy 10.2.1.7 because: it would be difficult (and in some cases impossible) to restore vegetation where it existed before; that it may conflict with community aspirations; and planting 'all' species that existed before would not be possible. He partially supported the proposed amendment to Rule 10.4.4.6, however considered it needed to be expanded to include other compensatory activities such as mitigation or ecological compensation for the loss of vegetation.
1404. Mr Christensen, legal counsel for *Oceana Gold (New Zealand) Limited* also pre-circulated submissions stating (para 50) that this policy fails to recognise the reality of mining where it can be impossible to 'restore' vegetation where it existed prior to the activity. He considered the approach is also inconsistent with the adoption of the mitigation hierarchy, including the use of biodiversity offsets and compensation.
1405. In revised recommendations, Mr Bathgate stated that he did not agree that it would be appropriate to amend the policy as suggested by Dr Thorsen, because this policy sets up the site restoration performance standard and if the activity cannot restore vegetation then it becomes a restricted discretionary activity (performance standard contravention). He commented that the policy and performance standard do not refer to planting all species that existed prior to mining, and the policy actually relates to prospecting/exploration, not mining.

3.6.4.1 Decision and Reasons

1406. We accept in part the submissions of *STOP* (OS900.143), *Forest and Bird NZ* (OS958.25) and *Department of Conservation* (OS949.8).
1407. We do not consider that adding the word "permitted" (as suggested by the Reporting Officer) assists with Plan clarity, as it is when the activity contravenes the permitted performance standard that the policy applies.
1408. We agree that mineral exploration and mineral prospecting activities, where they contravene the site restoration performance standard, should be subject to an assessment of effects on biodiversity values (as requested by the *Department of Conservation*), and that this assessment should consider effects on biodiversity values other than indigenous vegetation, including habitat (as submitted by *STOP* and *Forest and Bird NZ*).
1409. As discussed elsewhere, we consider the 2GP should seek to maintain or enhance biodiversity values in line with higher order policy direction (most notably Policy 3.1.9 of the pORPS-dv), and the mandate afforded local authorities under section 31(1)(b)(iii) of the RMA, to control any actual or potential effects of the use, development, or protection of land, including for the purpose of the maintenance of indigenous biological diversity. Noting that Policy 10.2.1.7 applies where Rule 16.5.11 is contravened, we consider that, rather than deleting the policy, it should be amended to require that effects on biodiversity values are maintained or enhanced. While this was not directly requested by the submitters on Policy 10.2.1.7, we

consider it consistent with the outcomes sought by *STOP* (OS900.143), *Forest and Bird NZ* (OS958.25) and *Department of Conservation* (OS949.8), consistent with the amended Objective 10.2.1 (as outlined in section 3.6.1.6), and within the scope of the submission of *Forest and Bird NZ* (OS958.58).

1410. Therefore, in response to *STOP* (OS900.143), *Forest and Bird NZ* (OS958.25) and *Department of Conservation* (OS949.8), we have:

- amended Policy 10.2.1.7 to read “Require mineral exploration and mineral prospecting to restore indigenous vegetation and the habitats of indigenous fauna {NatEnv900.143} where ~~it existed before the activity commenced and has been cleared as part of the exploration or prospecting activity, or, where this is not practicable, to otherwise ensure that biodiversity values are maintained or enhanced {NatEnv949.8 and 958.58}~~”
- amended Rule 16.5.11 Site Restoration as follows: “Areas disturbed by mineral prospecting and mineral exploration must restore any areas disturbed ~~to a standard not less than that existing prior to the activity commencing {NatEnv900.143, NatEnv958.25, NatEnv949.8}~~ with respect to landform, biodiversity values, {NatEnv900.143, NatEnv958.25, NatEnv949.8} and productive potential. Restoration must be completed prior to the end of the lease, licence or consent, whichever is earliest. ~~Where indigenous vegetation clearance has been conducted as part of the activity, replanting of indigenous vegetation must be conducted on at least the same parts of the site as where indigenous vegetation existing prior to the activity commencing.~~” {NatEnv900.143, NatEnv958.25, NatEnv949.8}
- amended Rule 10.4.4.6(ii) to reflect the amendments to Policy 10.2.1.7.

1411. We consider these amendments also constitute alternative partial relief for the submissions of *STOP* (OS900.35) and *Forest and Bird NZ* (OS958.57-60, 111).

1412. We accept in part the submission of *Oceana Gold (New Zealand) Limited* (OS1088.35). We accept the evidence of Dr Thorsen that there may be instances in which it is not practicable to fully restore indigenous vegetation where it existed prior to mineral exploration or mineral prospecting activity.

1413. We agree with the Reporting Officer’s assessment that the appropriate mechanism to provide for those situations is by making provision for the consideration of biodiversity offsets. We consider that new policies 2.2.3.5 and 2.2.3.6 (discussed in section 3.5) set up a clear mitigation hierarchy, with a preference for avoidance, then mitigation, then remediation of effects on the site where the activity is taking place, but where this is not able to be achieved, providing a pathway for consideration of biodiversity offsets and environmental compensation. We believe this approach aligns with the evidence of Dr Thorsen and the submissions of Mr Christensen for *Oceana Gold (New Zealand) Limited*.

1414. We consider the addition of the framework for biodiversity offsets and environmental compensation, including Policy 2.2.3.5 and Policy 2.2.3.6, and the addition of assessment guidance on this framework to assessment rules, constitutes partial alternative relief for the submissions of *Oceana Gold (New Zealand) Limited* (OS1088.35), by providing an alternative pathway for activities that are unable to maintain or enhance biodiversity values on the site on which the activities occur.

1415. As discussed in section 3.5, we accept that there is a need for policies 2.2.3.5 and 2.2.3.6 to be referenced directly from the Section 10 policies that commence with the word “Avoid” and relate to non-complying activities, due to the requirements (the ‘gateway test’) of Section 104D of the RMA. However, we do not consider this necessary for policies that commence with “Require”, as this wording does not present

such a challenge for the gateway test. We consider that it is sufficient, in the case of “Require” policies, to reference biodiversity offsets from relevant assessment rules.

1416. We reject the submissions of *STOP* (OS900.80) and *Forest and Bird NZ* (OS958.87). We accept the Reporting Officer’s evidence that the strategic direction provisions the submitters sought to reference from Rule 10.4.4.6 are not specifically relevant to the rule.

3.6.5 Policy 10.2.1.8

1417. Policy 10.2.1.8 states “Only allow mining and landfills where there is certainty that indigenous vegetation will be restored on land where it existed before the activity commenced and has been cleared as part of the mining or landfill activity”. It is linked to Rule 10.6.2.3 Assessment of discretionary activities (mining and landfills). In addition, Rural section Rule 16.11.2.4 (assessment of mining and landfills) refers back to section 10.6 for guidance on the assessment of resource consents in relation to Objective 10.2.1 and effects related to biodiversity.
1418. *STOP* (OS900.145) and *Forest and Bird NZ* (OS958.26) sought to remove Policy 10.2.1.8 as they believed that it is an assessment matter and is not appropriate as policy. The submitters state that mining and landfills are subject to policies 10.2.1.1, 10.2.1.2, 10.2.1.3, 10.2.1.4, subject to amendments requested. Further, the submitters considered that the policy fails to provide for RMA Part 2 matters, or to maintain the district’s biodiversity, and that restoration of indigenous vegetation should aim to re-establish the habitat that previously existed with the species being used to be the same as those removed. The submitter also suggested the use of bonds.
1419. With regard to the submissions made by *STOP* and *Forest and Bird* that the policy should be deleted because it is an assessment matter, the Reporting Officer, Katie James, considered it necessary to have a policy that directly addresses requirements for mining and landfills as they are activities that are likely to involve substantial vegetation clearance. She noted the policy links directly to Rule 10.6.2 (Assessment of discretionary activities) for mining and landfills and the requirement for restoration of indigenous vegetation where it has been removed by the activity (s42A Report, Section 5.4.6, p. 154).
1420. Dr James did not agree that the policy fails to provide for Part 2 of the RMA to maintain the district’s biodiversity, as it is one of a suite of policies which include specific policies for areas of significant conservation value and urban conservation areas as well as for protected species. In relation to the submitters’ request that restoration should involve reestablishment of habitat, she noted her recommendation to amend Rule 16.5.11 (the site restoration rule) to state that areas cleared must be replanted with species that existed prior to the clearance. She did not consider it necessary to include an additional assessment rule within the assessment rule for Policy 10.2.1.8 (Rule 16.11.2.4) because there is already a clause in the recommended additions to the general assessment guidance around the rehabilitation of mining and landfill sites (outlined in the Mining Activities Section 42A Report) that required vegetation cover appropriate to the local character is established. In addition, she had proposed a new assessment rule to allow for biodiversity offsetting to be considered that refers to biodiversity offsetting guidance, which provides guidance around the requirement that offsets be ‘like for like’. With regard to the use of bonds, she noted this is already provided for under Rule 16.11.2.4.t as a condition that may be imposed.
1421. The *Department of Conservation (DOC)* (OS949.9) sought the removal of Policy 10.2.1.8, because the submitter suggested that, rather than requiring the restoration

of vegetation specific to these activities, there should be an assessment of the effects of all activities on biodiversity values.

1422. In relation to the submission of *DOC* (OS949.9), the Reporting Officer noted that she recommended against accepting a linked submission point seeking to amend Policy 10.2.1.3. However, he agreed with *DOC* that an assessment of effects of activities on biodiversity effects (outside of ASCVs and UCMAs) should be a requirement where they contravene the maximum indigenous vegetation clearance performance standards or for activities requiring consent other than mining and landfills. She noted it is already a requirement under Rule 10.6.2 to consider Objective 10.2.1 when assessing any discretionary activity as well as restricted discretionary activities such as subdivision and earthworks. She did not believe it was necessary to give specific reference to other activities within Policy 10.2.1.8 as mining and landfills are "special cases" in that they may be associated with substantial, non-permanent clearance of indigenous vegetation. She considered that other activities would be assessed on a case by case basis and any associated indigenous vegetation clearance above the maximum area allowed would be subject to an assessment as a restricted discretionary activity, which requires that effects on biodiversity are considered (Section 42A Report, Section 5.4.6, p. 154).
1423. *Waste Management (NZ) Limited* (OS796.18) sought to amend Policy 10.2.1.8 because the submitter believed the definition of indigenous vegetation to be "somewhat unclear and difficult to interpret" and the submitter did not consider it to be good landfill management practice to replant trees on a landfill after being capped and "normally only small shrubs or grasses are appropriate". *Waste Management (NZ) Limited* suggested 'mitigation planting' nearby as an alternative to restoration of indigenous vegetation on site.
1424. In response to the submission by *Waste Management New Zealand*, Dr James acknowledged that it may not be possible to restore indigenous vegetation in the short to medium term on exactly the same area of land as where it existed prior to the landfill. She recommended that Policy 10.2.1.8 should be amended to recognise this and that the use of biodiversity offsets may be considered as an alternative. However, in line with the guidance provided by *DOC* and the *BBOP*, as well as Policy 5.4.6 of the *pORPS-dv*, she recommended that the wording should make it clear that restoration should be given preference over offsetting. Consequential changes were also recommended for Rule 10.6.2.3 and Rural Rule 16.11.2.4 (Assessment of Mining and Landfills). The latter rule was already subject to a recommended amendment from the Mining Activities Section 42A Report, to allow for environmental compensation to be considered. Dr James recommended that Rule 16.11.2.4 be further amended to provide for biodiversity offsetting instead of environmental compensation because it would better provide for the maintenance and enhancement of Dunedin's indigenous biodiversity.
1425. *Oceana Gold (New Zealand) Limited* (OS1088.36) sought to remove Policy 10.2.1.8 because the submitter considered that this policy is impractical because "some mining features such as pits, water storage areas and tailings impoundments" will not be able to be restored with indigenous vegetation.
1426. With regard to *Oceana Gold (New Zealand) Limited's* (OS1088.36) submission, Dr James considered that the way Policy 10.2.1.8 is worded may not often be achievable in practice and would set a very high bar for mining and landfill activities to achieve. She acknowledged that in the case of some activities it may not be possible to restore indigenous vegetation. However, she did not consider it appropriate to delete the policy, and instead she preferred the amendment recommended to allow for biodiversity offsets as a potential management tool where it is not possible to restore vegetation (s42A Report, Section 5.4.6, p. 154).

1427. *Saddle Views Estate Limited* (OS458.10) sought to amend Policy 10.2.1.8 to refer to 'significant' indigenous vegetation and 'rehabilitation' of the quarry rather than restoration. *Harbourside and Peninsula Preservation Coalition* (FS2267.12) opposed this submission because they considered "protection of natural landscape and features as an overall objective should not be diluted by standard, uncompromised commercial interests."
1428. The Reporting Officer, Dr James, did not agree with the request by *Saddle Views Estate Limited* (OS458.10) to refer to 'significant' indigenous vegetation, because she considered that the 2GP has a wider mandate to protect indigenous biodiversity that is not just limited to areas of habitats scheduled and considered significant as per section 6(c). She also did not agree that the word "rehabilitation" should replace "restoration" in the policy, because although a change to "rehabilitation" was recommended in the Mining Section 42A Report in relation to mine sites, she considered "restoration" more appropriate terminology in relation to indigenous vegetation. She noted that "restoration planting" was a commonly understood term used on a widespread basis in resource management plans and guidance documents in New Zealand. She did, however, note that a change was recommended to Policy 10.2.1.8 to recognise that it may not always be practicable to restore indigenous vegetation on land where it previously existed (s42A Report, Section 5.4.6, pp. 152-153).
1429. *Blackhead Quarries Ltd* (OS874.12) and *Tussock Top Farm Ltd* (OS901.8) sought to remove Policy 10.2.1.8 as part of their full submissions, that the 2GP adequately recognise the importance of aggregate resources and provide for the development of new quarries and for appropriate protection for existing quarries.
1430. In relation to *Blackhead Quarries Ltd* (OS874.12) and *Tussock Top Farm Ltd's* (OS901.8) submission, the Reporting Officer noted the Mining Section 42A recommended amendments as a result of related submissions by the same submitters. In her view the 2GP recognises that mining activities may require more than minor/significant vegetation clearance while ensuring that these activities are subject to a requirement to restore indigenous vegetation where it has been removed. She did not recommend any further amendment (Section 42A Report, p. 154).
1431. In submissions at the hearing, legal counsel for *Oceana Gold (New Zealand) Limited*, Mr Christensen, stated (para. 50) that Policy 10.2.1.8 fails recognise the reality of mining that it can be impossible to 'restore' vegetation where it existed prior to the activity. He considered this approach also inconsistent with the adoption of the mitigation hierarchy including the use of biodiversity offsets and compensation.
1432. In evidence at the hearing, Dr Michael Thorsen (ecologist) called by *Oceana Gold (New Zealand) Limited* stated that there are few examples globally where mine restoration back to a pre-mining natural state has been demonstrably achieved, and in the case of the Macraes mine it is stated in consent conditions to remediate back to productive farmland, and that it would therefore be difficult, if not impossible, for the Macraes mine to comply with this Policy. He suggested substitution of "require" and "certainty" with less absolute terms.
1433. He partly supported the assessment guidance proposed by the Reporting Officer, but considered it needed to be expanded to include other compensatory activities as mitigation or ecological compensation for the loss of vegetation.
1434. Dr Laurence Barea (ecologist) appeared for *DOC* and in evidence to biodiversity offsetting said this "should be triggered by the values affected...by a development rather than the type of activity".
1435. In evidence at the hearing, Ms Nadia Yozin (planner) for the *Department of Conservation* stated that in her opinion the amendment proposed for Policy 10.2.1.8

is insufficient, in that it only links biodiversity offsetting in the policy framework of the Natural Environment Chapter to the specific activities of mining or landfills, and there are other large scale activities where biodiversity offsets may be appropriate.

1436. She agreed that it may not be appropriate to restore certain species over landfill capping, however considered that, when clearing vegetation for landfill activities, the area cleared is likely to also include access and operational areas as well a proposed waste deposit footprint, and on these areas she considered it entirely appropriate to require restoration of indigenous vegetation. She considered the recommended amendment results in the restoration requirement for non-waste deposit footprint areas within a landfill and mining activities being removed.
1437. She suggested the policy be retained as notified with a minor amendment (to refer to habitat of indigenous fauna as well as to indigenous vegetation), and that a separate biodiversity offsetting policy be included in the plan.
1438. In her Revised Recommendations, the Reporting Officer, Dr James, responded to the points raised by DOC (regarding biodiversity offsetting). She considered that specifically providing for offsetting in Policy 10.2.1.8 is appropriate because mining and landfills are likely to involve large scale removal of vegetation and specifically providing for offsetting acknowledges that, in some cases, adverse effects will not be able to be avoided or remediated. Additionally, she considered that referring to offsetting in assessment rules in Section 10 will provide for other activities and did not recommend any change.
1439. In response to the evidence of Dr Thorsen, the Reporting Officer referred to the discussion in the Section 42A Report and Addendum 2 to the Section 42A Report.
1440. At the Reconvened Plan Overview Hearing, in a memorandum entitled "Policy Drafting Protocol and General Terminology Consistency Summary and Revised Recommendations", the reporting officers stated that having reviewed the wording of Policy 10.2.1.8 in the light of the evidence in the report, as well as reconsidering the points raised in submissions and evidence, they had revised their recommendations and considered Policy 10.2.1.8 should be amended as follows: "Only allow mining, and landfills, rural industry and network utility structures - large scale {NatEnv900.35} where there is certainty that indigenous vegetation will be restored on land where it existed before the activity commenced and has been cleared as part of the mining or landfill activity adverse effects on biodiversity values are avoided or, where avoidance is not possible, adequately mitigated." (Note that the officers' recommendation in response to OS900.35 is discussed in section 3.6.1.7 above.)

3.6.5.1 Decision and Reasons

1441. We accept in part the submissions of *Waste Management (NZ) Limited* (OS796.18), *Saddle Views Estate Limited* (OS458.10), *Oceana Gold (New Zealand) Limited* (OS1088.36), *STOP* (OS900.145), *Forest and Bird NZ* (OS958.26), *Department of Conservation (DOC)* (OS949.9), *Blackhead Quarries Ltd* (OS874.12) and *Tussock Top Farm Ltd* (OS901.8).
1442. We do not support that part of the submission of *Saddle Views Estate Limited* (OS458.10) which specifically sought to restrict Policy 10.2.1.8 to consideration of "significant" indigenous vegetation. As discussed elsewhere, we consider managing the effects of activities on indigenous biodiversity that does not meet significance criteria is both in line with higher order policy direction (most notably Policy 3.1.9 of the pORPS-dv), and the mandate afforded local authorities under section 31(1)(b)(iii) of the RMA, to control any actual or potential effects of the use, development, or protection of land, including for the purpose of the maintenance of indigenous biological diversity.

1443. We agree that mining and landfills activities should be subject to an assessment of effects on biodiversity values (as requested by the *Department of Conservation*), and that this assessment should consider effects on biodiversity values other than indigenous vegetation, including habitat (as submitted by *STOP* and *Forest and Bird NZ*).
1444. We note that, with the addition (as outlined in section 3.2.5) of new Policy 10.2.1.W as a priority consideration under discretionary and non-complying assessment rules 10.6.2.1 and 10.7.2.1, mining and landfills activities are subject to an assessment against this policy, which states “Only allow land use, development and city-wide activities where biodiversity values are maintained or enhanced”.
1445. We consider new Policy 10.2.1.W is a more appropriate policy test than Policy 10.2.1.8, as it aligns with Objective 10.2.1 (as amended), and provides clear direction on outcomes rather than being excessively prescriptive about preferred methods to achieve this.
1446. In response to the submissions of *STOP* (OS900.145), *Forest and Bird NZ* (OS958.26) and the *Department of Conservation* (OS949.9), we have therefore:
- deleted Policy 10.2.1.8
 - as a consequence, deleted assessment rule 10.6.2.3
1447. We consider these amendments also constitute alternative partial relief for the submissions of *STOP* (OS900.35), *Forest and Bird New Zealand* (OS958.57-60, 111).
1448. We do, however, also accept the evidence of Dr Thorsen that restoration of biodiversity back to a pre-mining natural state may not be achievable in every instance, and (as submitted by *Waste Management (NZ) Limited*) that in particular this may also be difficult on land used for landfill activity.
1449. We agree with the reporting officers’ assessments that the appropriate mechanism to provide for situations in which on-site restoration is not possible, is by making provision for the consideration of biodiversity offsets. We consider that new policies 2.2.3.5 and 2.2.3.6 (discussed in section 3.5) set up a clear mitigation hierarchy, with a preference for avoidance, then mitigation, then remediation of effects on the site where the activity is taking place, but where this is not able to be achieved, providing a pathway for consideration of biodiversity offsets and environmental compensation. We believe this approach aligns with the evidence of Dr Thorsen, Dr Barea, Ms Yozin and the submissions of Mr Christensen for *Oceana Gold (New Zealand) Limited*.
1450. We consider the addition of the framework for biodiversity offsets and environmental compensation, including Policy 2.2.3.5 and Policy 2.2.3.6, and the addition of assessment guidance to relevant assessment rules, constitutes partial alternative relief for the submissions of *Waste Management (NZ) Limited* (OS796.18), *Saddle Views Estate Limited* (OS458.10), *Oceana Gold (New Zealand) Limited* (OS1088.36), *Blackhead Quarries Ltd* (OS874.12) and *Tussock Top Farm Ltd* (OS901.8). This change provides an alternative pathway for activities that are unable to maintain or enhance biodiversity values on the site on which they occur.
1451. As discussed in section 3.5, we accept that there is a need for policies 2.2.3.5 and 2.2.3.6 to be referenced directly from the Section 10 policies that commence with the word “Avoid” and relate to non-complying activities, due to the requirements (the ‘gateway test’) of Section 104D of the RMA. However, we do not consider this necessary for policies that commence with “Only allow”, as this wording does not present such a challenge for the gateway test. We consider that it is sufficient, in the case of “Only allow” policies, to reference biodiversity offsets from relevant assessment rules.

1452. We consider that the specific approaches to restoration proposed by *STOP* (OS900.145) and *Forest and Bird NZ* (OS958.26), including the habitat re-established, species used, and the use of bonds, we agree with the Reporting Officer's assessment that the appropriateness of such conditions are more appropriately considered in relation to individual consent applications, and consideration of these would be triggered by an assessment against Policy 10.2.1.W.

3.6.6 Policies 10.2.1.9, 10.2.1.10 and 10.2.1.11

1453. Policy 10.2.1.9 states: "Only allow subdivision activities where the subdivision is designed to ensure any future land use or development activities will:
- maintain or enhance the biodiversity and conservation values associated with any Scheduled Area of Significant Conservation Value (ASCV) or an Urban Conservation Mapped Area (UCMA); and
 - avoid or, if avoidance is not possible, adequately mitigate adverse effects on other important areas of indigenous vegetation or the habitat of indigenous fauna."
1454. Policy 10.2.1.10 states:
- "Only allow network utilities poles and masts - small scale, on-site energy generation devices, network utility structures - large scale, community scale solar panels and wind generators, and energy resource investigation devices where adverse effects on identified biodiversity values can be avoided or, where avoidance is not possible, would be insignificant."
1455. Policy 10.2.1.11 states:
- "Avoid wind generators - community scale, biomass generators - stand-alone and regional scale energy generation in a Scheduled Area of Significant Conservation Value (ASCV) unless there are no adverse effects on the identified biodiversity values of the Scheduled ASCV."
1456. As discussed in section 3.7.5.5, *Vodafone NZ Ltd (Vodafone)* (OS576.62), *Spark New Zealand Trading Limited (Spark)* (OS923.62) and *Chorus New Zealand Limited (Chorus)* (OS925.62) requested that all Section 10 objectives and policies be amended as necessary to make "more reasonable and practical provision for network utilities that are required to be located within or traverse natural areas due to functional and operational reasons."
1457. These submissions were considered in the Network Utilities s42A Report. The Reporting Officer, Ms Jane Macleod, agreed with the submitters that amendments to certain Chapter 10 policies were necessary to provide a framework within which decision makers can balance consideration of the benefits of, and the constraints facing, network utilities, with consideration of the need to protect natural values. Therefore, she recommended that Policy 10.2.1.10 be amended in two ways: firstly, to clarify that the reference to "identified biodiversity values" refers to values in ASCVs; and secondly to amend the effects test from "insignificant" to "no more than minor. In her view, the recommended change to the effects test would "provide scope for any measures proposed to mitigate or remedy adverse effects on the biodiversity values of ASCVs to be taken into account by decision makers" (Network Utilities Section 42A Report, section 5.1.8).
1458. At the Network Utilities Hearing, Mr Chris Horne (planning consultant), called by *Vodafone*, *Spark* and *Chorus*, indicated that the Reporting Officer's recommended changes to Policy 10.2.1.10 were acceptable to the submitters (Evidence, p. 12, para. 35).

1459. *STOP* (OS900.32, OS900.33 and OS900.34), *Forest and Bird NZ* (OS958.27, OS958.28 and OS958.29) sought to remove Policies 10.2.1.9, 10.2.1.10 and 10.2.1.11 because they believed these policies create confusion. In the submitters' view, the activities listed in these policies should be subject to policies 10.2.1.1, 10.2.1.2, 10.2.1.3, 10.2.1.4 and 10.2.1.5 as amended by their submissions. They considered all activities should be subject to the same policies to protect areas of significant indigenous vegetation and the significant habitats of indigenous fauna, and to maintain the district's indigenous biodiversity. The submitters also made the following specific points:
- The matters referred to in Policy 10.2.1.9 should be included as assessment matters in Rule 10.5.2.2.
 - It is not clear what "other important areas of indigenous vegetation and habitats" (Policy 10.2.1.9) refers to.
 - It is not clear what "identified biodiversity values" (Policy 10.2.1.10) are. If this policy is not deleted, the submitters request that the policy be amended to spell this out.
 - Why are the activities referred to in Policy 10.2.1.11 subject to a policy of avoidance when mining is not subject to a policy of this kind?
1460. *Department of Conservation (DOC)* (OS949.10, OS949.11, OS949.12) also sought to remove these policies because they believed addressing individual land use activities separately overcomplicates the 2GP with regard to indigenous vegetation clearance. *DOC* considered the provisions should focus on determining and addressing the effects of land use activities on biodiversity as a result of vegetation clearance.
1461. *Dianne Reid* (OS592.7) sought to amend Policy 10.2.1.9 to 'enable' subdivision activities to ensure it will "protect" important areas of indigenous vegetation, as she considers the current policies are restrictive rather than supportive. The submitter stated that "given the importance of retention, maintenance and enhancement of indigenous biodiversity (within section 31) it is appropriate to actually incentivise people to achieve this rather than simply restrict development". *David Hoim and Kerry Hoim* (FS2473.7) opposed this submission, in relation to the submitters' overall opposition to more intensive zoning and a higher intensity of use in the vicinity of their property at Saddle Hill Road.
1462. With regard to *STOP* (OS900.32-34), *Forest and Bird NZ* (OS958.27-29) and *DOC's* (OS949.10-12) submissions to remove the policies, the Reporting Officer, Jane Macleod, considered it necessary to retain these three policies in order to provide a policy framework for the activity statuses of subdivision and network utility activities in ASCVs. She did not consider policies 10.2.1.1 to 10.2.1.5 relevant to subdivision or network utilities activities, as they relate to the activity status of, and performance standards applying to, land use and development activities in ASCVs. She noted the relationship between the action words "Avoid" or "Only allow", and the activity status of the activities listed in these policies.
1463. Ms Macleod did, however, agree with *STOP* and *Forest and Bird New Zealand* that the meaning of "other important areas of indigenous vegetation and habitats" in Policy 10.2.1.9 is unclear. As a result, she recommended the word "important" be removed to clarify that any subdivision activity should achieve Objective 10.2.1 by considering the potential for adverse effects on indigenous vegetation or the habitat of indigenous fauna and how these might be mitigated (s42A Report, Section 5.4.7, p. 157).
1464. With respect to Policy 10.2.1.10, the Reporting Officer also agreed with *STOP* and *Forest and Bird New Zealand* that the phrase "identified biodiversity values" is unclear, and she noted that recommended changes in the Network Utilities Section 42A Report, and in this report in response to a submission from the *Yellow-eyed*

Penguin Trust on Policy 10.2.1.2, would clarify the meaning of the phrase. She considered that these changes also provided the clarification sought by *STOP* and *Forest and Bird New Zealand* and did not consider that any further amendment was necessary in response to their submissions (s42A Report, Section 5.4.7, p. 158).

1465. The Reporting Officer did not consider it appropriate to amend Policy 10.2.1.9 as requested by *Diane Reid* (OS592.7) to 'enable' subdivision, as this wording is used in the 2GP for permitted activities, and subdivision has a restricted discretionary status and the words "avoid or, if avoidance is not possible, adequate mitigate adverse effects..." reflect a medium level of strictness, recognising that subdivision has the potential to adversely affect indigenous vegetation or the habitat of indigenous fauna (s42A Report, Section 5.4.7, p. 158).
1466. At the hearing, Ms Nadia Yozin (planner) was called for *DOC*. Her evidence indicated general support for the Section 42A recommendations but requested removal of the word "Scheduled" from all three policies, on the basis that significant areas should be identified based on meeting the Otago RPS criteria, and afforded protection of an ASCV whether they are identified on the schedule or not.
1467. In Revised Recommendations, the Reporting Officer noted *DOC*'s support for the Section 42A recommendations but did not consider the word "Scheduled" should be removed, as it created uncertainty to have rules that apply to areas that are not yet scheduled or assessed as being significant, and is likely to be *ultra vires* (Revised Recommendations, p. 4).

3.6.6.1 Decision and Reasons

1468. We accept in part the submissions of *STOP* (OS900.32), *Forest and Bird NZ* (OS958.27) the *Department of Conservation* (OS949.10), *Vodafone* (OS576.62), *Spark* (OS923.62) and *Chorus* (OS925.62) and accept the submissions of *STOP* (OS900.33, OS900.34), *Forest and Bird NZ* (OS958.28, OS958.29), and the *Department of Conservation* (OS949.11, OS949.12).
1469. In relation to Policy 10.2.1.9, we accept the evidence of the Reporting Officer that it is necessary to retain this policy to provide a policy framework for the evaluation of subdivision activities, because the policy refers to the effects of future land use and development activities that may be enabled by the subdivision, rather than the subdivision activity alone. We do, however, accept the points made by *STOP* (OS900.32) and *Forest and Bird NZ* (OS958.27) that elements of the policy are unclear, and that the policy test in Policy 10.2.1.9 should be consistent with Objective 10.2.1 and its associated policy suite. In our view this is particularly the case for policies 10.2.1.2 and 10.2.1.5, and new policies 10.2.1.X and 10.2.1.Y (which relate to activities in one of ASBVs, UBMA's or areas of significant indigenous vegetation and the significant habitats of indigenous fauna). Also of relevance is that, as discussed in sections 3.6.1.6 and 3.6.2.2, Objective 10.2.1 has been amended to maintain or enhance biodiversity values, and to protect areas of significant indigenous vegetation and the significant habitats of indigenous fauna, in line with higher order policy direction.
1470. Therefore, in response to *STOP* (OS900.32), *Forest and Bird NZ* (OS958.27) and the *Department of Conservation* (OS949.10), to achieve better alignment with Objective 10.2.1 and the other policies that sit under Objective 10.2.1, we have amended Policy 10.2.1.9 as follows:

"Only allow subdivision activities where the subdivision is designed to ensure that any future land use or development activities will:

- ~~a. maintain or enhance the biodiversity and conservation values associated with any Scheduled Area of Significant Conservation Value (ASCV) or an Urban Conservation Mapped Area (UCMA); and~~
 - ~~b. avoid or, if avoidance is not possible, adequately mitigate adverse effects on other important areas of indigenous vegetation or the habitats of indigenous fauna {NatEnv958.60}~~
 - a. maintain or enhance, on an on-going basis, biodiversity values;
 - b. protect areas of significant indigenous vegetation and the significant habitats of indigenous fauna; and
 - c. be in accordance with Policies 10.2.1.X, 10.2.1.2, 10.2.1.Y and 10.2.1.5.”
{NatEnv958.60 and 958.27}
- We have also made consequential amendments to assessment rules 10.5.2.2, 10.5.2.9 and 10.5.2.10 to reflect the amendments to Policy 10.2.1.9.
1471. We consider this constitutes partial alternative relief for these submissions. We also consider parts of this amendment also provide partial alternative relief for the submissions of *Forest and Bird NZ* (OS958.59-60) discussed in section 3.6.1.6, and the submissions of *STOP* (OS900.35) and *Forest and Bird NZ* (OS958.58) discussed in section 3.6.1.7.
1472. In relation to Policy 10.2.1.10, we agree with the Reporting Officer's assessment that the phrase “identified biodiversity values” is unclear. We do not, however, consider it necessary to retain this policy to provide a policy framework for the evaluation of network utility activities. We accept the point made by *STOP* (OS900.33) and *Forest and Bird NZ* (OS958.28) that the policy tests in Policy 10.2.1.10 should be consistent with Objective 10.2.1 and the associated policy suite. Noting that Policy 10.2.1.10 is intended to provide a policy framework for restricted discretionary and discretionary network utility activities in ASCVs (now termed ASBVs via our decision in section 3.6.1.6), we consider it both more efficient and more consistent to include reference to these activities in Policy 10.2.1.2 (which, as amended, provides a policy test for other restricted discretionary and discretionary land use, development and city-wide activities).
1473. We have, therefore:
- deleted Policy 10.2.1.10
 - as a consequential amendment, deleted assessment rules 10.5.2.8 and 10.6.2.6
1474. We consider this constitutes acceptance of the submissions of *STOP* (OS900.33), *Forest and Bird NZ* (OS958.28), and the *Department of Conservation* (OS949.11). In addition, we consider that this decision constitutes partial acceptance of the submission of *Vodafone* (OS576.62), *Spark* (OS923.62) and *Chorus* (OS925.62), as the effect of the decision is to replace the notified “insignificant” effects test with the effects test in Policy 10.2.1.2 as amended by this decision, i.e. “there is no net loss and preferably a net gain in the biodiversity values of the ASBV”. This test provides a greater degree of flexibility for network utility activities that may seek to locate in ASBVs, given that there is a framework for biodiversity offsetting and environmental compensation in place should the activity be unable to meet the “no net loss” test on the site.
1475. As outlined in the Network Utilities Decision Report, we have deleted Policy 10.2.1.11 as a consequential change associated with a change in both definitions and activity status associated with the listed network utility activities. We therefore do not support the amendments to these policies recommended by the Reporting Officer. We

consider this also constitutes acceptance of the submissions of *STOP* (OS900.34), *Forest and Bird NZ* (OS958.29), and the *Department of Conservation* (OS949.12).

1476. We consider these amendments also constitute alternative partial relief for the submissions of *STOP* (OS900.35), *Forest and Bird New Zealand* (OS958.57-60, OS958.111).
1477. We reject the submission of *Diane Reid* (OS592.7). We accept the evidence of the Reporting Officer that the word 'enable' is used in the 2GP for permitted activities. We consider it appropriate that "Only allow" is used, as it reflects the restricted discretionary activity status of subdivision. We consider the amendments described above more *clearly* describe the outcome sought by the policy than the wording promoted by the submitter, in terms of maintenance or enhancement of biodiversity values, and protection of significant indigenous vegetation and the significant habitats of indigenous fauna.

3.6.7 Objective 10.2.2

1478. Objective 10.2.2 states "The biodiversity values and natural character of the coast and riparian margins are maintained and enhanced". This objective and its policies lead to rules that manage:
- the location of activities in relation to the coast and water bodies (Rule 10.3.3 Setback from Coast and Water Bodies)
 - vegetation clearance in coastal and riparian margins (Rule 10.3.2.3 Protected areas)
 - earthworks near the coast and water bodies (the earthworks sediment control rule in all zone sections)
 - the creation of esplanade reserves or strips when subdivision occurs adjacent to the coast and water bodies (Rule 10.3.1 Esplanade Reserves and Strips)
 - assessment of the effects of hazard mitigation earthworks and structures on the coast and water bodies (Rules 8.5.2.1 and 10.6.2.2).
1479. The *Yellow-eyed Penguin Trust* (OS690.9) and *Ravensdown Limited* (OS893.18) supported the provision.
1480. *STOP* (OS900.36) and *Forest and Bird NZ* (OS958.30) sought to amend Objective 10.2.2 to replace the word "maintained" with "preserved". The submitters believed the objective does not meet the requirements of Part 2 of the RMA or the NZCPS.
1481. *John Scott* (FS2140.25, FS2140.5), *Ben Graham* (FS2279.25, FS2279.5), *Mathew O'Connell* (FS2300.25, FS2300.5), *Geoff Scurr Contracting Limited* (FS2391.47, FS2391.80), *Alan Brown, Carrowmore Properties Limited Robyn and Stephan Smith and Rick and Jill Clarke ("Pigeon Flat Road Group")* (FS2416.25, FS2416.5), and *Federated Farmers of New Zealand* (FS2449.92, FS2449.94) opposed *STOP* and *Forest and Birds NZ's* submission as they believed the deletion of "maintain" and the use of "preserve" unduly prejudiced farming activities. *Geoff Scurr Contracting Limited* preferred the original wording. *FFNZ* believed the amendments unnecessary and that they go further than the RMA intended.
1482. *Timothy George Morris* (OS951.3) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.3) sought to amend Objective 10.2.2 so that it was not at odds with other objectives, policies and rules of the Plan. *Geoff Scurr Contracting Limited* (FS2391.24) supported this submission.
1483. *Oceana Gold (New Zealand) Limited* (OS1088.37) sought to amend Objective 10.2.2 as follows: "The significant biodiversity values and natural character of the coast and riparian margins are maintained and enhanced". The submitter believed the proposed amendment is more appropriate to achieve the purpose of the RMA.

1484. With regard to the submissions from *STOP* (OS900.36) and *Forest and Bird NZ* (OS958.30) the Reporting Officer, Michael Bathgate, considered “preserved” has a more absolute connotation than “maintained”, as it seems to imply locking something up or setting it in stone. He considered this more appropriate at a strategic level when considering natural character in an overall scale (e.g. Objective 2.4.5). However, he did not think was appropriate at this level or associated with the word “values”. He considered “maintained” and “enhanced” offer better terminology to allow for the variation in quality of natural character across different parts of the coast and riparian margins (in other words, that preservation may not be appropriate where natural character is poor). Further, he believed the word “preserved” may be problematic in respect of biodiversity values as these are prone to change.
1485. Mr Bathgate noted Policy 3.1.2 of the pORPS-dv specifies “maintain or enhance natural character” in relation to the maintenance of the beds of rivers, lakes, wetlands, their margins, and riparian vegetation. The pORPS-dv seeks to “preserve or enhance” natural character when it is considered in outstanding or high natural character areas of the coast (policies 3.2.9, 3.2.10). Given this, he did not recommend that the policy be changed (s42A Report Section 5.4.8, pages 160-162).
1486. Mr Bathgate did not consider that Objective 10.2.2 was at odds with other 2GP provisions as outlined in the submission from *Timothy George Morris* (OS951.3) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.3). He realised that there may sometimes be tension between activities such as farming, and the objective to maintain or enhance areas of biodiversity and natural character. However, he considered these tensions can be addressed by ensuring the rules associated with the objective and its policies allow for appropriate exemptions. In the absence of more specific examples of the conflict between Objective 10.2.2 and other provisions, he did not recommend this submission be accepted (s42A Report, p. 162).
1487. In response to *Oceana Gold’s* submission, the Reporting Officer pointed out that Objective 10.2.2 leads to policy and rules that controls all vegetation clearance, including indigenous vegetation clearance, in coastal and riparian margins. This policy and rule do not limit clearance to those areas deemed to contain “significant” biodiversity. Therefore, the objective as originally written better aligns with the existing rule framework. He considered the approach appropriate to give effect to the 2GP strategic Objective 2.2.3, and noted that the 2GP has a wider mandate to protect indigenous biodiversity not just limited to areas of habitats that are scheduled and considered significant as per RMA section 6(c), a mandate supported by Policy 3.1.9 of the pORPS-dv. He also noted Policy 3.1.2 of the pORPS-dv seeks to manage riparian vegetation to “maintain or enhance ecosystem health and indigenous biological diversity, without restricting this to significant biological diversity.
1488. Mr Bathgate further noted that coastal and riparian margins can provide critical areas for biodiversity, including the opportunity for enhanced biodiversity connections and improved resilience of ecosystems. The control of indigenous vegetation clearance in these margins also contributes to the preservation or enhancement of natural character. He did not recommend the objective be amended as requested.
1489. *Ravensdown Limited* called Chris Hansen (planner) who circulated a statement but did not appear at the hearing. *Ravensdown* accepted the Section 42A recommendation in relation to Objective 10.2.2.
1490. *Oceana Gold (New Zealand) Limited* called Dr Michael Thorsen (ecologist), whose evidence indicated that he did not support the recommended amendment to this objective as large-scale mining activities such as constructions of pits, tailings dams and waste rock stacks occur across usually many riparian margins which would conflict with the “maintained and enhanced” wording. He also stated: “I partially support the relief sought by *Oceana* in rewording this policy, but do not support their

inclusion of the word “significant” as I think riparian margins are important in their role as an ecosystem service provider and (if natural) as a reservoir for biodiversity and rare species and therefore could be considered significant” (Statement of Evidence, paragraph 64, 75 (g)(i)).

1491. Mr Bathgate did not provide a revised recommendation in response to Dr Thorsen's evidence, but noted that the *Oceana Gold (New Zealand) Limited* submission (OS1088.37) did not appear to be supported by Dr Thorsen.

3.6.7.1 Decision and Reasons

1492. We reject the submissions of *STOP* (OS900.36) and *Forest and Bird NZ* (OS958.30). We note that Objective 10.2.3 relates to areas of the coast where natural character has been assessed as medium-high or greater, and that, as outlined in section 3.7.6.3, we have amended Objective 10.2.3 to read “~~maintained~~ preserved {NatEnv958.37} or enhanced”, as being consistent with the pORPS-dv. Taking a cue from the pORPS-dv Policy 3.1.2, and accepting the Reporting Officer's evidence on the distinction between the word “preserve” and “maintain”, we consider “maintained or enhanced” more appropriate for the beds of rivers, lakes, wetlands, their margins, riparian vegetation, and other parts of the coast.
1493. We reject the submissions of *Timothy George Morris* (OS951.3) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.3). We agree with the Reporting Officer's assessment that the policy is not at odds with other 2GP provisions. We agree that the most appropriate approach to manage tensions between activities such as farming and the objective is to ensure that appropriate exemptions are provided for. Our decisions extend existing exemptions in Rule 10.3.3 Setback from Coast and Water Bodies (refer section 3.8.10), and Rule 10.3.2 Vegetation Clearance (refer section 3.4), and we have amended assessment rules 10.4.3.1.b and 10.4.3.10.b to insert ‘General assessment guidance’ referring to circumstances listed in the NZCPS or the Regional Policy Statement for Otago that may support restriction of public access (as discussed in section 3.8.4).
1494. We reject the submission of *Oceana Gold (New Zealand) Limited* (OS1088.37). As discussed elsewhere, we consider managing the effects of activities on biodiversity values that do not meet significance criteria to be in line with higher order policy direction (most notably Policy 3.1.9 of the pORPS-dv, but also Policy 3.1.2 in relation to riparian margins, and the NZCPS in relation to the coastal environment). We also consider it consistent with the mandate afforded local authorities under section 31(1)(b)(iii) of the RMA to control any actual or potential effects of the use, development, or protection of land, including for the purpose of the maintenance of indigenous biological diversity.

3.6.8 Policy 10.2.2.1

1495. Policy 10.2.2.1 states “Encourage conservation activity in coastal and riparian margins”. The policy is linked to the permitted activity status for conservation in all management and nearly all major facility zones.
1496. *STOP* (OS900.37) and *Forest and Bird NZ* (OS958.31) sought to amend Policy 10.2.2.1 as follows: “Encourage the retention and enhancement of indigenous vegetation and habitats including restoration to increase resilience, buffering and connectivity and provide for conservation activity in coastal and riparian margins”. The submitters stated that the policy needs to provide guidance as to how it will be achieved.
1497. This amendment was opposed by *Geoff Scurr Contracting Limited* (FS2391.53) and *Oceana Gold (New Zealand) Limited* (FS2439.17, FS2439.18), who both preferred the

notified version, and *Federated Farmers of New Zealand* (FS2449.97, FS2449.98), because they considered the amendment unnecessarily verbose and the meaning lost amongst the proposed wording.

1498. The Reporting Officer, Michael Bathgate, did not support the submissions of *STOP* and *Forest and Bird New Zealand* as he believed it would make the policy misaligned with the rule framework and overly complicated. He noted the purpose of the policy is to set up the permitted activity status of conservation activity across all zones, and that other policies in the Plan (like Policy 10.2.1.3 and 10.2.1.4) relate to indigenous vegetation clearance which seeks the retention of indigenous vegetation and habitats. He believed it important to keep the policy and rule framework aligned to avoid overlap that would create confusion for Plan users (s42A Report, Section 5.4.9, p. 164).

3.6.8.1 Decision and Reasons

1499. We reject the submissions of *STOP* (OS900.37) and *Forest and Bird NZ* (OS958.31). We accept the Reporting Officer's evidence that the policy specifically relates to the permitted activity status of Conservation activity in all zones, and that the amendment suggested by the submitters would not add to Plan clarity. We also consider that the activities described in the suggested amendment would meet with the definition of Conservation activity (which is already included in the policy), and therefore there is no need to expand the policy as suggested.

3.6.9 Policy 10.2.2.4

1500. Policy 10.2.2.4 states: "Require earthworks to minimise the risk of sediment entering the sea or water bodies by:
- a) being set back an adequate distance from the coast and water bodies; and
 - b) by using appropriate sediment control techniques to ensure sediment does not enter water bodies or the sea".
1501. *Ravensdown Limited* (OS893.20) supported Policy 10.2.2.4 because it "represents good resource management practice".
1502. *KiwiRail Holdings Limited* (OS322.33) sought to amend Policy 10.2.2.4 to add "where practicable" to the requirement to be set back from coast and water bodies to recognise that there are constraints in relation to earthworks setbacks. This submission was supported by *Ravensdown Limited* (FS2481.4) because the proposed amendment is "pragmatic and appropriate". *Oceana Gold (New Zealand) Limited* (OS1088.40) made the same request, on the basis that the setback required is "not always possible for major mining earthworks and should only be a requirement in circumstances where it is practicable to do so". *Oceana Gold* also sought to amend Policy 10.2.2.4.b to replace "ensure sediment does not enter water bodies or the sea" with "minimise the amount of sediment that enters water bodies or the sea", because "complete avoidance of sediment entering water or the sea is impractical."
1503. *STOP* (OS900.40) and *Forest and Bird NZ* (OS958.34) sought to amend Policy 10.2.2.4 from "minimise the risk" to "avoid the risk". Several submitters opposed these submissions.²³ The reasons for opposition included that the amendment would

²³ Opposing *Save the Otago Peninsula (STOP) Inc Soc: John Scott* (FS2140.30), *Ben Graham* (FS2279.30), *Mathew O'Connell* (FS2300.30), *Geoff Scurr Contracting Limited* (FS2391.56), *Alan Brown, Carrowmore Properties Limited, Robyn and Stephan Smith and Rick and Jill Clarke ("Pigeon Flat Road Group")* (FS2416.30), *Federated Farmers of New Zealand* (FS2461.30), *Ravensdown Limited* (FS2481.14). Opposing *Forest and Bird NZ: John Scott* (FS2449.107), *Clifton Trust* (FS2202.6), *Ben Graham* (FS2300.10), *Mathew O'Connell* (FS2300.10), *Geoff Scurr Contracting Limited* (FS2391.85), *Alan Brown, Carrowmore Properties Limited, Robyn and Stephan Smith and Rick and Jill Clarke ("Pigeon Flat Road Group")* (FS2416.10),

- be “prejudicial to farming activities”; that it was “unworkable for the provision to require all risks of erosion to be eliminated”; and that the policy already provides the appropriate level of management of risks associated with sediment entering water.
1504. *Federated Farmers of New Zealand (FFNZ)* (OS919.26) sought to amend Policy 10.2.2.4 so that it refers to large scale earthworks, as the submitter noted that the policy may capture small scale earthworks which would not be expected to have “significant adverse effects”. *John Scott* (FS2140.36), *Ben Graham* (FS2279), *Mathew O’Connell* (FS2300.36), *Alan Brown Carrowmore Properties Limited Robyn and Stephan Smith and Rick and Jill Clarke (“Pigeon Flat Road Group”)* (FS2416.40) supported the submission because they considered it “more realistic and cognisant of every day farming operations”. It was also supported by *Ravensdown Limited* (FS2481.19) who considered it “pragmatic” and “appropriate”. It was opposed by both *Harboursides and Peninsula Preservation Coalition* (FS2267.18) because “even activity smaller than ‘large’ can inflict damage” and *Forest and Bird NZ* (FS2482.23), because the amendments are “not consistent” with Part 2 of the RMA or the provisions of the 2GP or NZCPS.
 1505. *Otago Regional Council (ORC)* (OS908.27) sought greater clarity regarding how the 2GP manages erosion risk and sediment control, and also requested the inclusion of an advice note to raise awareness of related requirements in the Regional Plan: Water. *ORC* sought that relevant rules be amended to provide more certainty on when a consent application may be rejected due to erosion risk and/or insufficient sediment control. *ORC* were concerned that the rules in Section 10 are inconsistent with 12.C.O.3 of the *ORC Water Plan* which prohibits sediment discharges from disturbed land where no sediment control measure has been undertaken. *Oceana Gold (New Zealand) Limited* (FS2439.27) supported this submission because they considered it provides plan users with greater certainty.
 1506. With regard to *KiwiRail Holdings Limited* (OS322.33) and *Oceana Gold* (OS1088.40) the Reporting Officer, Jane Macleod, did not recommend that the policy should be amended as sought, but she did agree that “practicability” is a relevant consideration where “minimise” is used in policies, given that minimise means “reduce to the smallest extent possible”, and that what is possible might not always be practicable. She considered that determining what is “practicable” requires consideration of feasibility and costs as well as gains in terms of improved outcomes (including, for example, consideration of situations where compliance with performance standards may result in very high costs, but result in only negligible improvements in outcomes).
 1507. In her view, if the policy were amended as sought by the submitters, the focus would instead be on imposing a setback that is “practicable”, rather than on requiring a setback that is adequate to “minimise the risk of sediment entering the sea or water bodies”. Given this, Ms Macleod recommended that the policy instead be amended to “Require earthworks to minimise, as far as practicable, the risk of sediment entering the sea or water bodies by...”. She considered that this wording would reflect the fact that the provisions that implement the policy have been designed so that the setback does not apply in many cases where it may not be “practicable” to meet it.
 1508. Of relevance to the submission of *Oceana Gold (New Zealand) Limited*, Ms Macleod noted that earthworks associated with mining activities are excluded from the definition of earthworks and, therefore, are not subject to the setback requirements under Rule 10.3.3, instead being subject to the overall assessment of mining as discretionary activities (in rural zones). In addition, she noted the provisions of Rule 10.4.3.10 (where Rule 10.3.3 is contravened) allows for the consideration of technical that will ensure sediment remains on site and away from water. She considered that

this provides for the setback to be modified to take into account the individual circumstances of the earthworks activity (s42A Report Section 5.4.10, pp. 170-171).

1509. With regard to the request of *Oceana Gold (New Zealand) Limited* (OS1088.40) to Policy 10.2.2.4.b, the Reporting Officer noted amendments to Earthworks Policy 2, recommended in the Earthworks Section 42A Report by Reporting Officer Paul Freeland. She agreed with the point raised and considered that it would be most appropriate simply to delete the phrase “to ensure sediment does not enter water bodies or the sea”, given that the first line of the policy already includes the phrase “to minimise the risk of sediment entering the sea or water bodies.” Further, Ms Macleod recommended that, for the sake of consistency, the sediment control rule in all relevant sections of the 2GP should also be amended to reflect the emphasis of Policy 10.2.2.4 and Earthworks Policy 2 (including amendments) on managing earthworks to minimise sediment run-off, rather than on preventing sediment entering the water altogether. She also recommended that the rule refer to “best practice sediment control management, as set out in the “Sediment in Water” factsheet, available on the ORC website, and an additional note to Plan users to clarify that controls outside the District Plan also apply to sediment entering water bodies and stormwater networks, and going across property boundaries. She noted the submission of the *ORC* (OS908.27) requested the addition of a note of this kind (s42A Report, Section 5.4.10, pp.172-173).
1510. In response to *STOP* (OS900.40) and *Forest and Bird NZ* (OS958.34) the Reporting Officer did not consider it appropriate to replace the word “minimise” with “avoid” because requiring earthworks to avoid the risk of sedimentation entering water sets an unrealistically high standard in creating an expectation that there will be no risk at all. Ms Macleod considered that the setbacks and sediment control techniques required by the policy appropriately manage the risk of sedimentation associated with earthworks near water bodies and the sea (s42A Report Section 5.4.10, p. 171).
1511. The Reporting Officer, Jane Macleod noted in relation to *FFNZ’s* submission (OS919.26) that Rule 10.3.3, which implements the setback requirement in Policy 10.2.2.4.a, does not apply to Earthworks - Small Scale. However, Policy 10.2.2.4.b is implemented by a sediment control rule in all management zones and major facilities zones, applies to all earthworks, and reads “Earthworks must be undertaken in a way that prevents sediment entering water bodies, stormwater networks or going across property boundaries”. Consequently, she did not recommend that the whole policy should be amended to apply only to large scale earthworks, rather, the policy should be amended to clarify that only large scale earthworks are subject to the setback rule (s42A Report, Section 5.4.10, p. 172).
1512. In response to the submission of the *Otago Regional Council* (OS908.27), Ms Macleod believed that the amendments already recommended (in response to *Kiwirail*, *FFNZ* and *Oceana Gold*) will improve the clarity of the 2GP provisions on erosion risk and sediment control. She noted they include an advice note that the Regional Plan: Water for Otago rules also apply, and did not consider that the 2GP rules are inconsistent with those provisions (s42A Report, Section 5.4.10, p. 173).
1513. Ms Macleod also stated that “effects based” rules like the sediment control rule are not commonly used in the 2GP, as district plans tend to focus on rules that can be easily assessed when building consents are lodged to ensure compliance without a costly monitoring process. She stated that rules that are difficult to monitor and enforce are inherently both less effective and less efficient in terms of section 32 of the RMA. However, this rule was included in the plan as a reinforcement of other obligations that are in place under the Regional Plan: Water for Otago (Rule 12.C.2 requires consent for the discharge of sediment to water bodies, where standards set

out in Rule 12.C.1 are not met), and – in terms of effects on neighbours – under the common law principle of ‘natural servitude’ (s42A Report, Section 5.4.10, p170).

1514. With regard to erosion, she noted Policy 10.2.2.3 and Rule 10.3.2.3, which seek to minimise the risk of erosion by managing vegetation clearance and indigenous vegetation clearance along the margins of the coast and water bodies.
1515. With regard to the request to amend the rules of Section 10 in order to provide more certainty on when a consent application may be rejected due to erosion risk and/or insufficient sediment control, Ms Macleod noted that large scale earthworks within proximity to water bodies of MHWS are subject to restricted discretionary resource consents with matters of discretion being the effects on biodiversity and natural character of riparian margins and the coast as well as public access. She further noted that guidance is given on the assessment of resource consents, with Objective 10.2.2 listed as a relevant objective as well as Policy 10.2.2.2 that activities including buildings, structures, storage and earthworks – large scale are set back an adequate distance. However, she observed that although there is reference to Policy 10.2.2.4 in Rule 10.4.4.5 Assessment of performance standard contraventions for sediment control, the sediment control rule is not referred to in the restricted discretionary assessment rules for large scale earthworks. She considered it would be appropriate to also refer to Policy 10.2.2.4 in Rule 10.5.2.1 so that it is made clear that the sediment control rule also forms part of the restricted discretionary assessment for large scale earthworks. She considered this will provide an appropriate signal to resource consent applications that measures must be taken to minimise sediment runoff (s42A Report, Section 5.4.10, p. 173).
1516. Mr David Cooper appeared for *FFNZ* at the hearing. His tabled statement supported the Section 42A Report recommendation.
1517. *Oceana Gold* called Dr Michael Thorsen (ecological expert), whose evidence supported the Section 42A Report recommendation.
1518. *Ravensdown Limited* called Chris Hansen (planner) who circulated a statement but did not appear at the hearing. Ravensdown accepted the Section 42A recommendation in relation to Objective 10.2.2.4.
1519. In a memorandum entitled ‘Policy Drafting Protocol and General Terminology Consistency Summary and Revised Recommendations’ presented at the Reconvened Plan Overview Hearing, the Reporting Officer, Jane MacLeod, reconfirmed her recommendation that the Policy 10.2.2.4 should be amended to read “minimise, as far as practicable” (Appendix 4, page 56).

3.6.9.1 Decision and Reasons

1520. We accept in part the submissions of *KiwiRail Holdings Limited* (OS322.33) and *Oceana Gold (New Zealand) Limited* (OS1088.40).
1521. We note that the Reporting Officer’s recommendation reflects our decision, as set out in the Plan Overview Decision Report that, where “minimise” is used in a policy, it should be used in conjunction with the words “as far as practicable”, to avoid situations in which mitigation would be required for inconsequential effects and/or without consideration of the additional costs to achieve improvements in reduction of effects. We prefer the placement of the words recommended by the Reporting Officer, as we agree that the placement suggested by the submitters changes the emphasis of the policy. We consider that this change falls within the scope of the submissions discussed in the Plan Overview Decision Report (i.e. PO 906.34 and PO 308.497) more clearly than the submissions from *Kiwirail* and *Oceana Gold* discussed above.

1522. We accept the Reporting Officer's evidence that the words "to ensure sediment does not enter" sets a very high bar, and that may not be achievable. We do not, however, support the approach recommended by the Reporting Officer, as we do not consider that clauses (a) or (b) serve a useful purpose, as they simply restate the associated performance standards. Given that assessment against the policy is triggered when performance standards are contravened, we consider it would be more efficient to delete clauses (a) and (b), and rely on the associated performance standards to specify the detail of the methods by which the policy is to be achieved.
1523. In response to *KiwiRail Holdings Limited* (OS322.33) and *Oceana Gold (New Zealand) Limited* (OS1088.40) submissions, we have therefore:
- amended Policy 10.2.2.4 as follows:
 "Require earthworks to be located and undertaken in a way that {NatEnv 1088.40} minimises, as far as practicable, {PO 906.34 and 308.497} the risk of sediment entering the sea or water bodies by:
~~a. being set back an adequate distance from the coast and water bodies; and~~
~~b. by using appropriate sediment control techniques to ensure sediment does not enter water bodies or the sea.~~{NatEnv 1088.40}"
 - made a consequential amendment to assessment rules 10.4.3.10.a.iii and 10.4.4.5.a.ii
1524. We reject the submission of *STOP* (OS900.40) and *Forest and Bird NZ* (OS958.34). We agree with the Reporting Officer's assessment that use of the word "Avoid" in this instance would set an unrealistically high bar, and that it does not reflect the nature of the 2GP setback requirements and performance standards relating to earthworks.
1525. We reject the submission of *FFNZ* (OS919.26). We accept the Reporting Officer's evidence that the Policy 10.2.2.4 is implemented by way of a sediment control rule in management and major facility zones that applies to all earthworks, as well as Rule 10.3.3 (which specifies minimum setbacks for Earthworks - Large Scale). We therefore do not consider it would be appropriate to amend the policy to refer only to Earthworks – Large Scale as sought by the submitter.
1526. We accept in part the submission of the *Otago Regional Council* (OS908.27). We consider it appropriate to add an advice note referring to the Regional Plan: Water for Otago requirements, given the evidence of the Reporting Officer that this rule was included in the Plan as a reinforcement of obligations that are in place under the Regional Plan: Water for Otago. We accept the Reporting Officer's evidence that the policy is not contrary to the provisions of the Regional Plan: Water for Otago. We do agree that the sediment control rule in all management and major facility zone sections should be amended to specify that earthworks must be conducted "using best practice sediment control management". We consider this aligns better with the provisions of the Regional Plan: Water for Otago. We also consider that the Reporting Officer's recommended amendment of Rule 10.5.2.1 to refer to Policy 10.2.2.4 improves the clarity of 2GP provisions relating to sediment control, by making it clear that sediment control also forms part of the restricted discretionary assessment for large scale earthworks, and that resource consent applications for Earthworks – Large Scale must take measures to minimise sediment runoff.
1527. In response to the submission of the *Otago Regional Council* (OS908.27) we have therefore:
- Amended the sediment control rule (now 8A.5.7) as follows: "Earthworks must be undertaken using best practice sediment control management to ~~in a way that~~

prevents sediment entering water bodies, stormwater networks or going across property boundaries. {NatEnv908.27}”

- Added a note to plan users after the sediment control rule as follows:
“Note X.X – Other requirements outside the District Plan
1. Discharges of sediment, or of water containing sediment, may require resource consent under the Regional Plan: Water for Otago
2. Discharges of sediment that cross property boundaries may be contrary to the common law principle of natural servitude. {NatEnv908.27}”
- Amended Rule 10.5.2.1 (Assessment of restricted discretionary activities) to refer to Policy 10.2.2.4.

3.6.10 Policy 10.2.2.6

1528. Policy 10.2.2.6 states “Only allow hazard mitigation earthworks and hazard mitigation structures where there are no significant adverse effects on the biodiversity and natural character values of coastal and riparian margins”.
1529. *Save the Otago Peninsula (STOP) Inc Soc* (OS900.42) and *Forest and Bird NZ* (OS958.36) sought to retain the policy.
1530. *Timothy George Morris* (OS951.8) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.8) sought to amend Policy 10.2.2.6 as they believed that it is important that the hazard threshold is not too high.
1531. The Reporting Officer, Michael Bathgate, stated they were unsure of what outcome the submitters were seeking in this case, because Policy 10.2.2.6 does not contain a “hazard threshold”. He considered these points on the assumption that the submission meant: “it is important that the standard to which hazard mitigation works are held in coastal and riparian margins is not too high”.
1532. Mr Bathgate agreed that it is important to provide for hazard mitigation works in coastal and riparian margins. However, the biodiversity and natural character values of coastal and riparian margins must also be adequately protected, given that section 6(a) of the RMA and Policy 13 of the NZCPS seek the preservation of these values. He considered an appropriate balance is achieved by the notified discretionary activity status for hazard mitigation earthworks and hazard mitigation structures throughout the city, and did not believe any change needed to be made to the policy (s42A Report, Section 5.4.11, p. 176).
1533. In a memorandum entitled ‘Policy Drafting Protocol and General Terminology Consistency Summary and Revised Recommendations’ presented at the Reconvened Plan Overview Hearing, the Reporting Officer, Sarah Valk, stated that, having reviewed the wording in light of the evidence in the report, as well as reconsidering submissions, she recommended amending Policy 10.2.2.6 as follows: “Only allow hazard mitigation earthworks and hazard mitigation structures where ~~there are no~~ significant adverse effects on the biodiversity and natural character values of coastal and riparian margins are avoided or minimised as far as practicable {NatEnv951.8}”
1534. She noted that there are other policies on natural hazard mitigation in coastal character overlays, and recommended modifying the policy test to use the proposed phrasing in the revised drafting protocol, and to avoid the scenario of an absolute prohibition on significant adverse effects.

3.6.10.1 Decision and Reasons

1535. We accept in part the submissions of *Timothy George Morris* (OS951.8) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.8). As discussed in the

Plan Overview Decision Report, we accept that the “no significant effects” wording creates a relatively ‘hard line’ in terms of tolerance for significant effects. In relation to Policy 10.2.2.6, we accept the Reporting Officer’s evidence that an absolute prohibition on significant adverse effects would not be appropriate, given that, while the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development is a matter of national importance under section 6(a) of the RMA, so too is the management of significant risks from natural hazards, under section 6(h). We accept the Reporting Officer’s evidence that there are additional policies relating to natural hazard mitigation activities in coastal character overlays, which we note are the areas of the city that have been identified as having medium-high or greater natural character values.

1536. Given this, in response to the submissions of *Timothy George Morris* (OS951.8) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.8), we have:
- amended Policy 10.2.2.6 to read: “Only allow hazard mitigation earthworks and hazard mitigation structures where ~~there are no~~ {NatEnv951.8} significant adverse effects on the biodiversity and natural character values of coastal and riparian margins are avoided or minimised as far as practicable {NatEnv951.8}”
 - consequentially amended assessment rule 10.6.2.2

3.6.11 Objective 10.2.4

1537. Objective 10.2.4 states “Subdivision and development activities maintain and enhance access to coastlines, identified water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai”.
1538. *Ravensdown Limited* (OS893.21) sought to retain Objective 10.2.4 as they believed this supported good resource management practice and would promote the sustainable management of natural and physical resources, and the *Yellow-eyed Penguin Trust* (OS690.11) also sought to retain Objective 10.2.4.
1539. *Oceana Gold (New Zealand) Limited* (OS1088.41) sought to amend Objective 10.2.4 as they believed they cannot support the objective because “identified water bodies” are not defined or listed.
1540. The Reporting Officer, Michael Bathgate, considered that the inclusion of the word ‘identified’ detracts from the clarity of the objective. He noted that its inclusion relates to the fact that the esplanade strip and esplanade reserve requirements only pertain to the coast and those water bodies identified in Rue 10.3.1. However, he also observed that Objective 10.2.4 covers other more general policies, such as the requirement under Policy 10.2.4.1 for setbacks from the coast and all water bodies. He recommended Objective 10.2.4 be amended to remove the word ‘identified’ to improve its clarity.
1541. Mr Bathgate also noted that strategic Policy 2.2.3.4 contains two instances of the same phrase “identified water bodies”, one of which in clause (c) relates to the use of esplanade rules where water bodies are identified in Rule 10.3.1, and the other in clause (d) relates to setback Rule 10.3.3 for buildings, structures and earthworks which applies to water bodies in general. He recommended that, if we considered there is scope from this submission, that the word “identified” is also removed from clause (d) of Policy 2.2.3.4 (s42A Report, page 206).

1542. *Ravensdown Limited* called Chris Hansen (planner) who circulated a statement but did not appear at the hearing. Ravensdown accepted the Section 42A recommendation in relation to Objective 10.2.4.

3.6.11.1 Decision and Reasons

1543. We accept in part the submission of *Oceana Gold (New Zealand) Limited* (OS1088.41). We accept the Reporting Officer's evidence that there is an inconsistency between the policies under Objective 10.2.4, some of which relate only to listed water bodies and some of which relate to the coast and all water bodies. We agree that amending Objective 10.2.4 by deleting the word "identified" clarifies the objective.

- In response to the submission of *Oceana Gold (New Zealand) Limited* (OS1088.41), we have therefore amended Objective 10.2.4 as follows:

"Subdivision and development activities maintain and enhance access to coastlines, ~~identified~~ water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai." {*NatEnv1088.41*}

- We have also amended Policy 2.2.3.4 to remove the word "identified" from clause (d). This is a consequential amendment so that the strategic policy more appropriately signals that the setback rules apply to all water bodies.

3.6.12 Policy 10.2.4.3 #2

1544. Policy 10.2.4.3 (the second instance) states "Only allow hazard mitigation earthworks or structures where public access to the coast and riparian margins is maintained or enhanced".
1545. *Dunedin City Council* (OS360.156) sought to renumber the second instance of Policy 10.2.4.3 to Policy 10.2.4.4 because there is currently a double-up of numbering. *Dunedin City Council* (OS360.157) also sought to amend assessment Rule 10.6.2.2.b to end "...to the coast and riparian margins (Policy 10.2.4.34)" to reflect this numbering change.
1546. *KiwiRail Holdings Limited* (OS322.35) sought to amend Policy 10.2.4.3 by including the word "practicable" prior to public access. The submitter seeks that recognition be given to the purpose and function of the hazard mitigation structure and earthworks – in the event that these are to protect the rail corridor from natural hazards, public access will not be able to be provided for health and safety reasons.
1547. The Reporting Officer, Michael Bathgate, recommended the submissions from the *DCC* be accepted to aid in Plan clarity and also recommended acceptance of amendment to assessment Rule 10.6.2.2.b to reflect this policy renumbering.
1548. In relation to the amendment sought by *KiwiRail Holdings Limited* (OS322.35), Mr Bathgate noted that the policy supports the assessment of natural hazard mitigation earthworks and structures which are discretionary under Rule 8.5.2.1 and, in the case of public access, under Rule 10.6.2.2. He stated that in his view Plan clarity is improved if policies can solely focus on achieving the outcomes sought by the objective under which they sit, rather than introducing matters that relate to the achievement of other objectives. Further, the addition of the word "practicable" does not of itself, provide any clarity that it is the health and safety aspects of public access that are of concern. He did, however, acknowledge that health and safety should be a consideration where hazard mitigation activities and the provision of public access are proposed, and he proposed an amendment to Rule 10.6.2.2 as follows: "Potential circumstance that may support a consent application include: d.

Restricting access is necessary to protect public health and safety” {NatEnv322.35} (s42A Report, Section 5.4.21, pp. 207-208).

3.6.12.1 Decision and Reasons

1549. We consider the renumbering sought by *Dunedin City Council* (OS360.156) constitutes a clause 16 change.
1550. We accept in part the submission of *KiwiRail Holdings Limited* (OS322.35).
1551. We acknowledge that Policy 5.1.1 of the pORPS-dv and Policy 19 of the NZCPS provide for the restriction of public access under certain circumstances. These circumstances include where a restriction is necessary to protect public health or safety. However, we do not support the specific request to qualify the policy with “where practicable” on the basis that the NZCPS, the pORPS-dv and Objective 10.2.4 of the 2GP all go beyond requiring access only “where practicable” or “where appropriate”. Rather, they provide for restriction of access only “where necessary”, and seek to “maintain and enhance” access.
1552. We do consider that it would be appropriate for the relevant assessment rule (Rule 10.6.2.2), which guides assessment of effects of hazard mitigation earthworks and structures on the coast and water bodies, to include reference to the circumstances listed in the NZCPS and RPS under which restriction of public access may be necessary.
1553. Therefore, in response to the submission of *KiwiRail Holdings Limited* (OS322.35), we have amended Rule 10.6.2.2 to insert ‘General assessment guidance’ stating “In assessing effects on public access to the coast and riparian margins, Council will consider any relevant circumstances listed in the New Zealand Coastal Policy Statement 2010 or the Regional Policy Statement for Otago that may support restriction of public access.”

3.6.13 Policy 6.2.1.3

1554. Policy 6.2.1.3 in the Transportation section of the Plan reads as follows:

Only allow new roads or additions or alterations to existing roads where:

- a. *the road is designed to provide for the needs of all users as appropriate for the surrounding environment and road classification hierarchy mapped area; and*
 - b. *the location and design of the road:*
 - i. *minimises adverse effects on surrounding residential or other sensitive activities, including severance effects, changes to drainage patterns, and vibration, noise, glare and fumes from vehicle movements;*
 - ii. *maintains or enhances the safety and efficiency of the overall transport network; and*
 - iii. *minimises adverse effects on water bodies or the coast, areas of indigenous vegetation or other areas important for biodiversity, or identified landscape or natural character of the coast values.*
1555. We note that the effects test in Policy 6.2.1.3.b.iii – i.e. “minimise adverse effects on...” – does not align with the policies in Section 10 that manage effects on these natural environment values. These policies, as amended by our decisions in this report, are:
- Policy 10.2.1.W relating to effects on biodiversity values (see section 3.2.5)

- Policies 10.2.1.X and 10.2.1.Y relating to effects on significant areas of indigenous vegetation and significant habitats of indigenous fauna (see section 3.2.5)
 - Policy 10.2.2.Y relating to effects on water bodies and the coast (see section 3.8.8)
 - Policies 10.2.3.3, 10.2.3.Y, 10.2.5.Y, 10.2.5.Z and 10.2.5.7 relating to effects on identified landscape and natural character values in, respectively, ONCCs/HNCCs, NCCs, ONFs, ONLs and SNLs (see sections 3.7.5, 3.7.6 and 3.7.7).
1556. Therefore, in consequence to our decisions on submissions relating to these section 10 policies, which are set out in the decision sections listed above, we have amended Policy 6.2.1.3 as follows, to delete clause b.iii:
- Only allow new roads or additions or alterations to existing roads where:*
- a. *the road is designed to provide for the needs of all users as appropriate for the surrounding environment and road classification hierarchy mapped area; and*
 - b. *the location and design of the road:*
 - i. *minimises adverse effects on surrounding residential or other sensitive activities, including severance effects, changes to drainage patterns, and vibration, noise, glare and fumes from vehicle movements; and*
 - ii. *maintains or enhances the safety and efficiency of the overall transport network; ~~and~~*
 - iii. ~~*minimises adverse effects on water bodies or the coast, areas of indigenous vegetation or other areas important for biodiversity, or identified landscape or natural character of the coast values.*~~
1557. In consequence, we have also deleted the paraphrasing of 6.2.1.3.b.iii from Rule 6.11.3.2, which guides the assessment of new roads.
1558. See Appendix 1 (amendments attributed to NatEnv 900.142 and others).
1559. We note that, as part of our decision on Policy 10.2.2.Y, we have added guidance to assessment Rule 6.11.3.1 (which relates to all discretionary transportation activities, including new roads) to cross-reference to relevant guidance in section 10. There are also cross-references in this rule that link to the other relevant Section 10 policies set out above.

3.7 Coastal Character and landscape overlay zones

3.7.1 Background

1560. The Natural Environment Section 42A Report outlined the key resource management and broad 2GP approach relating to landscape and natural character of the coast. It stated that natural landscapes/features and the coastal environment have been identified, assessed and mapped as landscape (Significant Natural Landscape overlay zones, Outstanding Natural Landscape and Outstanding Natural Feature overlay zones) and coastal character overlay zones (Outstanding Natural Coastal Character overlay zones, High Natural Coastal Character overlay zones and Natural Coastal Character overlay zones) respectively. It noted the values of these areas are set out in Appendix A3 and A5 (Natural Environment Section 42A Report, Section 2.1.1 and 2.1.2, pp.7-8).
1561. The Landscape Section 32 Report explained that the boundaries and classification of each landscape overlay zone were determined through a review by Boffa Miskell (*Dunedin Landscape Management Areas Review 2007*) and a series of subsequent

reports by landscape architects Mr Michael Moore and Dr Marion Read further assessing and refining landscape areas (Landscape Section 32 Report, Section 5.3, pp. 14-18). The Natural Environment Section 32 Report explained that the boundaries and classification of the coastal character overlay zones were based on a report jointly commissioned by the ORC and the DCC (*Coastal Environment of Otago: Natural Character of Outstanding Natural Features and Landscapes Assessment – Dunedin City Section Report 2015*) (Natural Environment Section 32 Report, Section 5.3, pp. 23-24).

1562. Policy 2.4.4.2 describes ONFs and ONLs as having “exceptional values”, while SNLs are landscapes with “values of high significance.” The Section 42A Report describes ONCCs and HNCCs as having natural character values that are “outstanding” and “high” respectively. Policy 2.4.5.2 describes ONCCs as having “exceptional” natural character, and HNCCs as having natural character of “high significance” (Natural Environment Section 42A Report, Section 2.1.2, p. 7).
1563. Policy 2.4.5.2 describes NCCs as “areas where natural character is of less than high significance but restoration or enhancement of natural character will be promoted.” The Section 42A Report describes NCCs as having “at least medium levels of natural character” (Natural Environment Section 42A Report, Section 2.1.2, p. 7).
1564. In addition, the 2GP applies a coastal environment mapped area where areas of medium-high²⁴ natural character coincide with a landscape overlay zone, to limit the number of overlay zones applying in any one location, while indicating that controls on indigenous vegetation clearance provisions also apply (Natural Environment Section 42A Report, Section 2.1.1 and 2.1.2, pp.7-8).
1565. The Section 42A Report also outlined key statutory and strategic context, including relevant RMA provisions, the NZCPS, relevant operative RPS and pORPS-dv provisions (Natural Environment Section 42A Report, Section 3, pp. 12-25).
1566. During deliberations on the Natural Environment topic, the Panel requested information on the extent to which Dunedin is covered by landscape and coastal character overlay zones and the coastal environment mapped area.
1567. In a memo dated 16 November 2017 (entitled *Extent of landscape and coastal character overlays and coastal environment mapped area*), the Reporting Officer presented a table showing the land area contained within each overlay zone or mapped area, also giving this area as a percentage of the total Dunedin land area. He noted that percentages in the table total greater than 100 because of overlap between overlay zones and mapped areas.

Overlay / Mapped Area	Area (ha)	Area (%)
Outstanding Natural Feature	1,036	0.3
Outstanding Natural Landscape	86,823	26.5
Significant Natural Landscape	32,951	10.0
Outstanding Natural Coastal Character	199	0.1
High Natural Coastal Character	898	0.3
Natural Coastal Character	1,798	0.5
Coastal Environment Mapped Area	2,523	0.8
No overlay or coastal environment mapped area	205,357	62.6

²⁴ In response to questions from the Panel, the Reporting Officer clarified that the CEMA applies in areas of the coastal environment with medium-high natural character, not all areas with less than high natural character, as stated in the s42A Report.

3.7.2 Submissions on Objective 2.4.4 and related policies

3.7.2.1 Background

1568. Objective 2.4.4 states “Dunedin's outstanding and significant natural landscapes and natural features are protected”. The three associated policies set out the values used to identify and assess natural features and landscapes (Policy 2.4.4.1), the classification of these areas (Policy 2.4.4.2) and the rules that apply to them (Policy 2.4.4.3).

3.7.2.2 Submissions in support

1569. *Judith Ansbacher* (OS191.2) sought to retain Objective 2.4.4 because of concern surrounding consent for quarrying of Saddle Hill. *Southern Heritage Trust & City Rise Up* (OS293.70), *Rosemary & Malcolm McQueen* (OS299.114) and *John and Clare Pascoe* (OS444.38) also sought to retain Objective 2.4.4. The *University of Otago* (OS308.72) sought to retain Objective 2.4.4 and associated policies 2.4.4.1-2.4.4.3, as they supported the overall proposed approach in terms of protecting the wider environment.
1570. *Oceana Gold (New Zealand) Limited* (OS1088.19) requested retention of Policy 2.4.4.2 (classification and mapping of natural features and natural landscapes) because they believed it desirable to have clear differentiation between ONFs and ONLs on one hand and other valued landscapes. *Oceana Gold (New Zealand) Limited* (OS1088.20) also requested to retention of Policy 2.4.4.3, insofar as the classification of SNLs is used correctly and the level of management between ONLs and SNLs differs, with less management of activities in SNLs.

3.7.2.2.1 Decision and Reasons

1571. We accept the submissions of *Judith Ansbacher* (OS191.2), *Southern Heritage Trust & City Rise Up* (OS293.70), *Rosemary & Malcolm McQueen* (OS299.114), *John and Clare Pascoe* (OS444.38), and *Oceana Gold (New Zealand) Limited* (OS1088.19), and accept in part the submissions of the *University of Otago* (OS308.72), and *Oceana Gold (New Zealand) Limited* (OS1088.20). We have retained Objective 2.4.4 and associated policies as notified, with the exception of amendments to Policy 2.4.4.3, discussed in section 3.7.4.1, below.

3.7.2.3 Submissions seeking removal of Objective 2.4.4 and related policies, recognition of modification the landscapes, and/or a clearer distinction between management of ONLs and SNLs

1572. *Saddle Views Estate Limited* (OS458.19) sought to remove Objective 2.4.4 and associated policies or, as an alternative, apply the imperatives of ‘avoid, remedy or mitigate’ to SNLs and ONFs and insert a new policy that recognises that many of the District's landscapes are highly modified. They believe that the mapping and studies have not recognised the modified nature of the environment and that the approach is not balanced, and that identifying SNLs as having the same protection imperative as ONLs is not appropriate.
1573. *Blackhead Quarries Ltd* (OS874.9) and *Tussock Top Farm Ltd* (OS901.5) sought to remove Objective 2.4.4 and associated policies. They stated that the proposed District Plan does not provide adequate recognition of the importance of aggregate to the community and does not provide the appropriate level of protection for existing

quarries or make adequate provision for the development of new quarries. *HPPC* (FS2267.13) opposed *Blackhead Quarries Ltd* (OS874.9) because they considered protection of natural landscapes and features as an overall objective should not be diluted by standard, uncompromised commercial interests.

1574. *Blueskin Resilient Communities Trust* (OS1070.7, OS1070.8) sought to amend Policy 2.4.4.3 by removing any reference to 'SNLs'. They believe that SNLs are not a matter of national importance therefore protection of them creates an overly restrictive framework. If SNLs are to remain then the submitter sought that this policy make it clear that SNLs are not as special as ONFs or ONLs and due to this reduced "specialness" a lower level of protection is appropriate, including by way of a new policy under Objective 2.4.4.
1575. *Geraldine Tait* (FS2160.19, FS2160.20) and *Simon Ryan* (FS2438.1, FS2438.2) opposed *Blueskin Resilient Communities Trust* (OS1070.7, OS1070.8). *Geraldine Tait* considered the SNL reflects the value of landscape and local and city wide perspectives of the importance of landscape areas and features. The submitter believed that *Blueskin Resilient Communities Trust* has an individual business development motive which may be hindered by the landscape overlay, and that believed that most development should continue to be inappropriate within SNLs unless the effects can be mitigated. She considered this unlikely with regards to huge wind turbines. *Simon Ryan* stated that SNLs or comparable overlays are widespread in resource management plans throughout the country, and are an appropriate and effective tool for the recognition and protection of landscape values which should be retained in the 2GP. The submitter felt it inappropriate for *Blueskin Resilient Communities Trust* to be seeking such amendments at the policy level - which will have district-wide implications - for what is essentially a site-specific concern. He considered the hierarchy between ONFs, ONLs and SNLs clear from the present 2GP provisions, which are generally appropriate, and the new policy sought by BRCT is neither necessary nor appropriate.
1576. *Federated Farmers of New Zealand* (FS2449.45) also opposed the new policy promoted by *Blueskin Resilient Communities Trust* as they believed it unnecessary and too vague to be effective.
1577. The Reporting Officer concluded that Objective 2.4.4 and its associated policies should not be removed, as the protection of outstanding natural landscapes and features from inappropriate subdivision, use and development are matters of national importance under s6(b) of the RMA. The Reporting Officer agreed that SNLs are not a matter of national importance, but not that protection of them creates an overly restrictive framework. The Reporting Officer stated that provisions for Significant Natural Landscapes are a response to the requirement under s7(c) of the RMA to maintain and enhance amenity values, and that Objective 2.4.4 and its associated policies give effect to these requirements, by setting out the outcome sought and the methods that will be employed to achieve this outcome.
1578. The Reporting Officer also noted the requirement in Policy 3.2.5 of the pORPS-dv to identify highly valued natural features and landscapes, and in Policy 3.2.6 to protect or enhance these by avoiding significant adverse effects on those values which contribute to the high value of the natural feature or landscape. While noting the appeals to policies 3.2.5 and 3.2.6, he considered that SNLs are the appropriate 2GP response to give effect to the requirements set out by these policies (to identify landscapes that are not outstanding but of high value, and manage land use and development within these areas).
1579. In relation to the concerns about distinction between provisions for ONLs and those for SNLs, the Reporting Officer noted that Policy 2.4.4.2, in setting out the classification and mapping of landscapes and features, recognises that SNLs have

values of “high significance” while ONFs and ONLs have “exceptional” values. This provides differentiation at the strategic level in reference to the identification of the different types of landscape or feature. The Reporting Officer considered Policy 2.4.4.2 and the policies under Objective 10.2.5 clarify that ONLs and ONFs have a higher level of “specialness” than SNLs, and did not consider that Policy 2.4.4.3 needed to be amended as requested by *Blueskin Resilient Communities Trust*. He felt it was too broad a statement, and agreed with the further submitters who stated that it is not necessary or appropriate. He did not consider it appropriate to signal that land use and development is necessarily appropriate in an SNL.

1580. The Reporting Officer observed that the policies under Objective 10.2.5 are the relevant policies in terms of setting the different ‘tests’ applied to any resource consents required as a result of rules in the various overlays. He noted his recommended amendments to the policy tests associated with restricted discretionary and discretionary activities in both ONLs and SNLs (discussed in section 5.4.12 of the Section 42A Report). He stated that these are part of a package to provide a better and more consistent differentiation between the different types of overlay zones and the policy wording and effects-tests that should be applied.

1581. The Reporting Officer referred to the discussion of the imperatives of “avoid, remedy or mitigate” (promoted by *Saddle Views Estate Limited*) in the Plan Overview Section 42A Report, concurring with the assessment that the wording:

“does not provide any guidance in terms of a preference for effects being avoided, remedied, or mitigated, which equates to saying that any level of mitigation is acceptable. Any amendment should clearly state the outcome to be achieved, and provide guidance as to an acceptable level of mitigation (if the Panel decide that there should be no preference for avoidance of effects)... This wording is also contrary to the Court’s comments that for provisions to be useful they should not simply repeat the provisions of the RMA”.

1582. The Reporting Officer also did not consider a new policy was required to recognise that some landscapes are highly modified, which he noted was already taken into account through the process for assessing and describing landscapes. He noted the descriptions and values for each landscape listed in Appendix A3 acknowledge modification, citing the example of A3.1.14.2 (which identifies the Jaffray Hill quarry as the main modification to the natural landform of the Saddle Hill Outstanding Natural Feature) and noting that these descriptions and values statements are to be used in any resource consent that requires an assessment of effects on landscape values.

1583. In relation to the concerns about recognition of the importance of aggregate to the community, the Reporting Officer noted that the role of mining and quarrying in the rural economy was discussed in the Mining Activities Section 42A Report, and that amendments had been recommended to Policy 2.3.1.2, Policy 2.4.6.2 and 16.1 Introduction, to better recognise that mining activities are a productive part of the rural economy.

1584. *Mr Ryan* appeared at the hearing and reiterated his concerns about the broader implications and undesirable impact of removing SNLs from 2GP provisions. He did not consider there were any legitimate resource management reasons to remove SNLs, and that protection of landscape was important for a range of reasons, including their economic value.

3.7.2.3.1 *Decision and Reasons*

1585. We reject the submissions of *Saddle Views Estate Limited* (OS458.19), *Blackhead Quarries Ltd* (OS874.9) and *Tussock Top Farm Ltd* (OS901.5) insofar as they sought

removal of Objective 2.4.4 and associated policies. Objective 2.4.4 sets up Outstanding Natural Feature, Outstanding Natural Landscape and Significant Natural Landscape overlay zones methods, which are the Plan's response to higher order policy direction relating to landscape values.

1586. We accept the Reporting Officer's evidence that there is clear direction from the RMA and other higher order documents supporting the inclusion in the 2GP of Objective 2.4.4 and the methods outlined in the associated policies. "Protection of outstanding natural features and landscapes" is a matter of national importance under RMA s6(b), and Policy 3.2.3 and Policy 3.2.4 of the pORPS-dv (outlined in section 3.3 of the Section 42A Report) states that outstanding natural features, landscapes and seascapes should be identified, protected, enhanced and restored including by "Avoiding adverse effects on those values that contribute to the significance of the natural feature, landscape or seascape". Although the RMA does not explicitly refer to significant natural landscapes, we accept that SNLs represent an appropriate response to s7(c) and s7(f) of the RMA, concerning maintenance and enhancement of amenity values and the quality of the environment, and to pORPS-dv Policy 3.2.5 which states "Identify natural features, landscapes and seascapes, which are highly valued for their contribution to the amenity or quality of the environment, but which are not outstanding", and to pORPS-dv Policy 3.2.6, which seeks to protect or enhance these.
1587. For the reasons outlined above, we also reject *Blueskin Resilient Communities Trust* (OS1070.7, OS1070.8) insofar as it sought removal of the reference to SNLs from Policy 2.4.4.3. We do not agree that inclusion of SNLs in Policy 2.4.4.3 is overly restrictive, as it reflects the inclusion of the Significant Natural Landscapes method in the 2GP, which we consider an appropriate response to higher order policy direction.
1588. We note the Landscape Section 32 Report described the boundaries and classification of each landscape overlay zone as being based on a review by Boffa Miskell (*Dunedin Landscape Management Areas Review 2007*) and subsequent reports by landscape experts Mr Mike Moore and Dr Marion Read further assessing and refining the values, using the amended Pigeon Bay criteria. We consider this an established methodology and standard practice for the identification and classification of landscapes, and accept the Reporting Officer's assessment that the modified nature of the landscape are reflected in the descriptions and values outlined in Appendix A3. We therefore reject the submission of *Saddle Views Estate Limited* (OS458.19) to the extent that it sought a new policy recognising that many of the District's landscapes are highly modified.
1589. In relation to concerns specifically relating to quarrying and mining activities, we note that Mining was subject to a separate and specific hearing, and provisions for existing quarrying and mining activities are outlined in the Mining Activities Decision Report.
1590. *Blueskin Resilient Communities Trust* (OS1070.7, OS1070.8) and *Saddle Views Estate Limited* (OS458.19) both sought greater distinction between provisions relating to ONFs and ONLs, and those relating to SNLs. As noted above, we accept the Reporting Officer's evidence that SNLs represent a response to s7(c) and s7(f) of the RMA, while ONFs and ONLs respond to s6(b). We also accept the Reporting Officer's evidence that Policy 2.4.4.2 clearly articulates the difference in the two landscape overlay zone types at point of identification, describing ONFs and ONLs as having "exceptional" landscape values, and SNLs as landscapes with "values of high significance".
1591. In terms of making a distinction between the different management approaches applying in different overlays, we are persuaded by the evidence of the Reporting Officer, that this is most appropriately achieved through distinctions in the suite of policies associated with Objective 10.2.5 (which set out the level of effects tolerated for different landscape overlay zones). We consider that the amendments described in section 3.5.7.2, below, achieve greater distinction in management between ONFs, ONLs and SNLs, noting that these amendments also provide in some instances for an

alternative “adequately mitigated” policy test where there are “no practicable alternative locations” for certain activities.

1592. In addition, we agree with the Reporting Officer’s assessment that the new policy sought by the *Blueskin Resilient Communities Trust* (OS1070.7, OS1070.8), and the submission of *Saddle Views Estate Limited* (OS458.19) seeking the amendment of Objective 2.4.4 to refer to “avoid, remedy or mitigate”, would be inconsistent with the 2GP drafting protocol and associated rationale, outlined in the Plan Overview Decision Report. In short, we agree it does not provide any guidance in terms of a preference for effects being avoided, remedied, or mitigated, and consider policies should clearly state the outcome to be achieved, providing guidance as both preference and to an acceptable level of mitigation.
1593. We therefore reject the submission of the *Blueskin Resilient Communities Trust* (OS1070.7, OS1070.8) seeking the insertion of a new policy, and the submission of *Saddle Views Estate Limited* (OS458.19) seeking the amendment of Objective 2.4.4 to refer to “avoid, remedy or mitigate”.

3.7.3 Submissions on Objective 2.4.5 and related policies

3.7.3.1 Background

1594. Objective 2.4.5 states “The natural character of the coastal environment is maintained or enhanced”. Policy 2.4.5.1 sets out the criteria used to identify and assess areas that contribute to the natural character of the coastal environment, Policy 2.4.5.2 relates to the classification of these areas and Policy 2.4.5.3 to the rules that apply to them.

3.7.3.2 Submissions in support

1595. *Joel A Vanderburg* (OS189.5) sought to retain Objective 2.4.5 because he supports the attention to identifying areas of cultural, historic and environmental values in our coastal areas. *Rosemary & Malcolm McQueen* (OS299.115) also sought to retain Objective 2.4.5.
1596. The *University of Otago* (OS308.76) sought to retain Objective 2.4.5 and associated policies 2.4.5.1-2.4.5.3, as they support the overall proposed approach in terms of protecting the wider environment.
1597. *Forest and Bird NZ* (OS958.14) sought to retain Policy 2.4.5.2.

3.7.3.2.1 Decision and Reasons

1598. We accept the submission of *Joel A Vanderburg* (OS189.5), *Rosemary & Malcolm McQueen* (OS299.115) and *Forest and Bird NZ* (OS958.14), and accept in part the submission of the *University of Otago* (OS308.76). We have retained Objective 2.4.5 and associated policies as notified, with the exception of amendments to Policy 2.4.5.3, discussed in section 3.7.4.1, below.

3.7.3.3 Submissions to amend Objective 2.4.5 to “preserve” natural character

1599. *STOP* (OS900.21) and *Forest and Bird NZ* (OS958.12) sought to amend Objective 2.4.5 to read: “The natural character of the coastal environment is ~~maintained or enhanced~~ preserved.”, as they believed the objective does not meet the requirements of Part 2 of the RMA or the NZCPS. *Aurora Energy Limited* (FS2375.15), *Geoff Scurr Contracting Limited* (FS2391.72) and *Federated Farmers of New Zealand* (FS2449.49) opposed *STOP* (OS900.21). *Aurora Energy Limited* (FS2375.16) and *Federated*

Farmers of New Zealand (FS2449.50) opposed *Forest and Bird NZ* (OS958.12). *Aurora Energy Limited* believes the requirement to “preserve” the natural character of the coastal environment is overly restrictive, particularly where natural character has been modified or degraded by human use values. *Federated Farmers of New Zealand* and *Geoff Scurr Contracting Limited* believed the amendment goes further than the intent of the RMA and is unnecessarily restrictive.

1600. In assessing the submissions, the Reporting Officer reflected on Section 6(a) of the RMA and Objective 2 and Policy 13 of the NZCPS, which seek the preservation of the natural character of the coastal environment. The term “preserve” is used in a very general sense, for example, not limited solely to those areas that may be considered of high or outstanding natural character.
1601. The Reporting Officer noted that Policy 3.2.9 of the pORPS-dv begins “Preserve or enhance the outstanding natural character of the coastal environment...”, while Policy 3.2.10 of the pORPS-dv begins “Preserve or enhance the high natural character of the coastal environment...” He noted there is no corresponding policy for preserving natural character in the pORPS-dv for areas of the coastal environment that are not regarded as outstanding or high natural character areas.
1602. He further noted that the RMA does not define the word “preserve” and that in such cases the ordinary meaning of the word should be used. The Oxford English dictionary defines “preserve” as “Maintain (something) in its original or existing state”, with a synonym given as maintain. One of the synonyms of maintain (which is used more broadly) is “Keep (something) at the same level or rate”. While he considered the meanings similar, he felt the word “preserved” should be used instead of “maintained” in Objective 2.4.5, to more directly give effect to s6a of the RMA, and the NZCPS. In particular, he considered it the intent of the 2GP to preserve the natural character of areas that are considered outstanding or high in their natural character values, and recommended an amendment to Objective 2.4.5 as set out below.
1603. He did not consider that the word “enhanced” should be deleted, reflecting on Policy 14 of the NZCPS, which promotes the restoration or rehabilitation of the natural character of the coastal environment. He considered the word “enhanced” should remain in Objective 2.4.5 to allow for the promotion of restoration of natural character, stating that specifying preservation only in the objective would seem to preclude the possibility of restoration and enhancement.

3.7.3.3.1 *Decision and Reasons*

1604. We accept in part the submissions of *STOP* (OS900.21) and *Forest and Bird NZ* (OS958.12). We accept the evidence of the Reporting Officer that the word “preserved” more closely aligns with s6(a) of the RMA, and Objective 2 and Policy 13 of the NZCPS (all of which use “preserve” or “preservation”). We also note that “preserved or enhanced” aligns with the wording of pORPS-dv Policy 3.2.9 and Policy 3.2.10 (outlined in Section 3.3 of the Section 42A Report), which relate to protection of areas with outstanding and high natural character of the coastal environment respectively.
1605. We accept the Reporting Officer’s evidence that retention of the word “enhance” is important to give effect to Policy 14 of the NZCPS.
1606. In response to these submissions, we have therefore amended Objective 2.4.5 to read:

The natural character of the coastal environment is ~~maintained~~ preserved or enhanced.

1607. We have also made a consequential change to assessment Rule 10.7.2.1 to reflect the amendment to Objective 2.4.5.

3.7.3.4 Submissions to add new policy to differentiate ONCCs from HNCCs and NCCs

1608. *Blueskin Resilient Communities Trust* (OS1070.9) sought to insert a new policy under Objective 2.4.5 to recognise that the quality of coastal character varies and that development is likely to be less appropriate in outstanding coastal character overlay zones than in high or natural coastal character overlay zones.
1609. *Geraldine Tait* (FS2160.21), *HPPC* (FS2267.11), *Simon Ryan* (FS2438.3) and *Federated Farmers of New Zealand* (FS2449.46) opposed this submission. *Geraldine Tait* believed the rules already take account of the different values and that there is no need to soften the rules. *Simon Ryan* believed the new policy sought is inappropriate and unnecessary, and the hierarchy is clear from the present 2GP provisions, which are generally appropriate. *HPPC* disagreed that “since H/NCC areas are less sensitive than ONCC areas it obliges development in the H/NCC areas”. *Federated Farmers of New Zealand* believed the new policy unnecessary and too vague to be effective.
1610. The Reporting Officer noted that Policy 2.4.5.2, in setting out the classification and mapping of coastal areas, recognises that ONCCs have “exceptional” natural character, HNCCs have natural character of “high significance” while for NCCs the character is less than high significance, and stated that this provides differentiation at the strategic level, but in reference to the identification rather than the management of the different types of coastal area.
1611. He further stated that the policies under Objective 10.2.3 give effect to this differentiation in terms of managing activities, and that the approach in this policy set is proposed to be quite restrictive of activities in ONCCs and HNCCs. Further, for all types of coastal overlay zone the level of effects tolerated also provides differentiation in management. The Reporting Officer noted recommended amendments in these policies for the tests for restricted discretionary and discretionary activities in ONCCs, HNCCs and NCCs (discussed in section 5.4.12 of the Section 42A Report) and stated that these are part of a package to provide a better and more consistent differentiation between the different types of overlay zones and the policy wording and effects-tests that should be applied.
1612. He did not consider that a new policy should be added to specify that land use and development is “more appropriate” in HNCCs or NCCs, as he felt this statement to be too broad and not accurate. He agreed with the further submitters who stated it is not necessary or appropriate, and did not consider appropriate to signal that land use and development is necessarily appropriate in these areas, particularly in the case of HNCCs where natural character is assessed as being of high significance.

3.7.3.4.1 *Decision and Reasons*

1613. With respect to the *Blueskin Resilient Communities Trust* (OS1070.9) request for a new policy under Objective 2.4.5, we do not consider this the most appropriate way to differentiate the management of activities across the various coastal character overlay zones, and therefore reject the submission.
1614. We accept the Reporting Officer’s evidence that Policy 2.4.5.2 provides differentiation at the strategic level, in reference to the identification rather than the management of the different types of coastal area. Consistent with our decision on landscape overlay zones, we also accept the evidence that policies in the Natural Environment section of the Plan are the most appropriate place to differentiate between the management of

coastal character overlay zones. Our decisions relating to relevant policies under Objective 10.2.3 are outlined in section 3.7.5.2, and provide clear differentiation between the policy tests associated with activities in ONCCs/HNCCs, and those in NCCs.

1615. We acknowledge that there is limited differentiation in the policy framework between ONCCs and HNCCs. Appendix A5 (which describes and identifies the values for coastal character overlay zones, and which will be used to guide assessment of effects) provides the sole point of differentiation between the two types of overlay zone. While the NZCPS does not address high natural character (just areas of “outstanding natural character”, and “all other areas of the coastal environment”), the pORPS-dv does distinguish between ‘outstanding’ and ‘high’ natural character, with differentiated policies relating to each.
1616. We note that both ONCCs and HNCCs are very limited in their spatial extent, covering 0.1% and 0.3% of the city’s land area respectively. There were no submissions received seeking a change to activity status rules or the policy suite under Objective 10.2.3 that would have had the effect of distinguishing the management of ONCCs from that of HNCCs. While there may be merit distinguishing the management of these two overlay zones, we consider this would best be assessed through a future plan review.
1617. We also agree that the suggested policy is inconsistent with the 2GP drafting protocol and associated rationale, outlined in the Plan Overview Decision Report. Overall, we do not consider it necessary, given that the 2GP distinguishes the management of activities in other ways.

3.7.3.5 Submission to amend the criteria in Policy 2.4.5.1

1618. *Forest and Bird NZ* (OS958.13) sought to amend Policy 2.4.5.1 to add a new clause “i. Presence of indigenous vegetation and/or wildlife”, which they considered an element of natural character. *Federated Farmers of New Zealand* (FS2449.51) oppose the submission because they believe it is unnecessary and adequately covered elsewhere in the plan.
1619. The Section 42A Report reported that the criteria outlined in Policy 2.4.5.1 are taken directly from Policy 13 of the NZCPS (which sets out the matters that comprise natural character), and that the list is replicated in the pORPS-dv in Policy 3.2.8. The Reporting Officer considered that the criteria include biophysical and ecological aspects as set out in para (b), and that the assessment of these in the *Coastal Environment of Otago* study included an assessment of the degree to which vegetation cover is indigenous to the areas, and the degree to which wildlife is present and sustained. To include the new para (i) as suggested by the submitter would, in the Reporting Officer’s view, provide a duplication of these factors and as such he do not consider this a necessary amendment.

3.7.3.5.1 *Decision and Reasons*

1620. We reject the submission of *Forest and Bird NZ* (OS958.13) to add a new clause to Policy 2.4.5.1 stating “i. Presence of indigenous vegetation and/or wildlife”.
1621. We accept the Reporting Officer’s evidence that the list of criteria outlined in the policy are drawn directly from Policy 13 of the NZCPS (which sets out the matters that comprise natural character), and that the list is replicated in the pORPS-dv in Policy 3.2.8. We agree that the 2GP should align with this higher order policy direction.

3.7.3.6 Submission to replace clause (a) of Policy 2.4.5.3

1622. *Forest and Bird NZ* (OS958.15) sought to amend Policy 2.4.5.3 by deleting para (a) and replacing it with: “a. manage land use activities to; avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding or high natural coastal character and avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;” The submitter believed the policy does not meet the requirements of Part 2 of the RMA or the NZCPS. *Department of Conservation* (FS2379.2) supported the suggested amendment because they believe the changes to the policy will better give effect to the NZCPS. *Federated Farmers of New Zealand* (FS2449.54) opposes the suggested amendment because they believe the existing paragraph within the 2GP more appropriately covers the intent of the Policy.
1623. The Reporting Officer commented that the purpose of strategic directions policies, as discussed in the Plan Overview Hearing and in the 2GP users guide, is to introduce the methods used in the Plan to achieve the strategic objectives. As such, they are in a different format than policies in the other plan sections which do include a policy ‘test’ which discusses the level of effects that will be tolerated (for example “avoided or, if avoidance is not possible, no more than minor”) or the outcome to be achieved. In the Reporting Officer’s view, the amendments suggested sought to introduce this policy test inappropriately (in terms of the drafting protocol) at the strategic level, and for this reason he did not support the proposed amendment to paragraph (a).
1624. He noted that the policies under Objective 10.2.3 set out in a more specific manner the activities that are anticipated and the level of effects that will be tolerated (policy test) in respect to land use, development and subdivision activities. He also noted that the words proposed are a restatement of clauses 1(a) and 1(b) of NZCPS Policy 13, and he did not see the value in directly restating higher level policy documents.

3.7.3.6.1 *Decision and Reasons*

1625. We accept in part the submission of *Forest and Bird NZ* (OS958.15). As outlined in the Plan Overview Decision Report, we accept that strategic directions policies introduce the methods used in the Plan to achieve the strategic objectives and that policies relating to the level of effects tolerated for any given activity best sit in other parts of the Plan. We consider the inclusion of a policy test in this policy (as suggested by the submitter) inappropriate for that reason.
1626. However, we do note (as described in section 3.7.4.1) that Policy 2.4.5.3 as notified does not accurately describe the methods employed by the 2GP, and also that amendments have been made to methods (see discussion in section 3.7.8.2) to give better effect to the NZCPS. A number of amendments have been made to the policy (see section 3.7.4.1) to more accurately describe the 2GP rule framework as it relates to the management of natural character in the coastal character overlay zones. We consider some of these amendments constitute partial alternative relief for this submission.

3.7.4 Submissions relating to both Policy 2.4.4.3 and Policy 2.4.5.3

3.7.4.1 Submission to be more specific about compatible and incompatible activities

1627. *Federated Farmers of New Zealand* (OS919.12) sought to amend Policy 2.4.4.3 as follows:

“Protect the values in identified natural features and natural landscapes (ONFs, ONLs, SNLs) by listing these values in Appendix A3 and using rules that:...

b. manage land use activities that may be carried out in ONLs and SNLs, where these are incompatible;

c. ~~restrict the scale and~~ ensure the design of development in ONFs, ONLs and SNLs is appropriate;

d. restrict forestry activity in ONLs and SNLs.; and
e. Provide for activities which are otherwise compatible with these values.”

1628. *Federated Farmers of New Zealand* (OS919.13) also sought to amend Policy 2.4.5.3 as follows:

“Protect and enhance the natural character values in ONCCs, HNCCs and NCCs through listing natural character values in Appendix A5 and using rules that:

a. manage incompatible land use activities that may be carried out;

b. ~~restrict~~ manage the scale and design of incompatible development;

c. restrict large scale forestry activity; and

d. promote the maintenance or restoration of natural character.”

1629. In relation to Policy 2.4.4.3, the submitter stated the amendments were sought to ensure recognition that Dunedin's rural landscapes are largely inhabited by people and subject to human activity and change, and have never been static. *Federated Farmers of New Zealand* supports a 'tiered' approach to managing land use but are very keen to ensure that the rules associated with the lower tier landscapes, particularly SNLs, recognise the need for balance between use and protection.
1630. In relation to Policy 2.4.5.3, the submitter stated that while it is useful and necessary to provide a regulatory response to pressures in the coastal environment, it is also necessary to ensure that activities that are compatible with the coastal environment and the underlying values are not unnecessarily restricted, which can include agricultural activities.
1631. *HPPC* (FS2267.6, FS2267.6) opposed *Federated Farmers of New Zealand* as they considered 'restriction of the scale' should not be deleted, as scale of development is a primary component of landscape impact. *Forest and Bird NZ* (FS2482.14) opposed *Federated Farmers of New Zealand* as the terms “inappropriate or incompatible” have not been defined, so in their view would require a determination ahead of applying the other provisions as to what is appropriate. They consider the use of standards, rules and conditions and the resource consent process the appropriate way to determine this.
1632. The Reporting Officer supported the suggested amendment to specify that it is incompatible land use activities that the 2GP seeks to manage in ONLs and SNLs and coastal character overlay zones, as he considered it would enhance plan clarity and understanding, but that it could be even more direct by specifying that the 2GP contains rules requiring resource consent when land use activities may be incompatible in ONLs and SNLs.
1633. He did not consider that the reference to scale should be removed from Policy 2.4.4.3, as it is managed through a different activity status for buildings and structures over 60m² in landscape overlay zones (for example Rule 16.3.4.5), which is set by a threshold performance standard. While scale might be considered part of design, in the Reporting Officer's view it is clearer to specify it separately. He also considered the word “restrict” should be retained in relation to scale in both policies, but that specifying that rules seek to ensure design of development “is appropriate” provides better clarity and understanding than the current wording.

1634. The Reporting Officer was relatively neutral in regard to the new clause (e) suggested by the submitter for Policy 2.4.4.3. He noted it seemed to be providing the reverse of the previous clauses spelt out in the policy, so for reasons of brevity he did not recommend its acceptance. He considered that, were the Panel of a mind that it should be added, the word “otherwise” should be omitted.
1635. He did not support the addition of “large scale” into clause (c) of Policy 2.4.5.3 with respect to forestry. He stated there is no definition of “large scale” in relation to forestry in the 2GP, and that plantation forestry at even a relatively small scale should be managed in coastal overlay zones, as it has the potential to cause adverse effects on the natural character of these areas. He noted that small woodlots (less than one hectare) were recommended (through the Rural hearing) to fall within the definition of tree planting rather than forestry, that that tree planting is permitted in NCC overlay zones (but restricted discretionary in ONCC and HNCC overlay zones).
1636. The Reporting Officer also do not support the addition of the phrase “maintenance or” into clause (d) of Policy 2.4.5.3. He stated this clause is intended to specifically refer to the restoration of natural coastal character, in line with Policy 14 of the NZCPS which seeks to promote restoration or rehabilitation of the natural character of the coastal environment. He considered that maintenance of natural character is addressed through the clauses (a)-(c) of this policy, whereas clause (d) seeks to specifically promote restoration of natural character.

3.7.4.1.1 *Decision and Reasons*

1637. We accept in part of the submissions of *Federated Farmers of New Zealand* (OS919.12, OS919.13).
1638. As discussed in the Plan Overview Decision Report, we accept that under the 2GP drafting protocol strategic directions policies introduce the methods used in the Plan to achieve the strategic directions objectives. We note that Policy 2.4.4.3 and Policy 2.4.5.3 list the rules used in the Plan to protect the values of identified natural features and natural landscapes, and the natural character values of coastal character overlay zones, respectively.
1639. In relation to the new clause (e) suggested by the submitter in relation to Policy 2.4.4.3, we consider it would be unusual for a clause relating to permitted activities to sit with policies for landscape and coastal character overlay zones. Usually, policies for overlay zones relate to the additional restrictions that apply in overlay zones. We note that Policy 2.3.1.2 includes reference to “rules that enable productive rural activities”, and consider the amendments recommended above adequately clarify the controls that apply in overlay zones.
1640. In relation to the insertion of the words “large scale” into clause (c) of Policy 2.4.5.3, we do not support this, as it suggests the 2GP provisions differentiate between large and small scale Forestry, when they do not. As discussed in the Rural Decision Report, we have accepted an amendment to include woodlots and shelterbelts of less than 1ha within the definition of Tree Planting, with the effect of woodlots of this scale being permitted in NCC overlay zones, but restricted discretionary in ONCC and HNCC overlay zones.
1641. We also do not support the addition of the phrase “maintenance or” into clause (d) of Policy 2.4.5.3. We accept the evidence of the Reporting Officer, that this clause gives effect to Policy 14 of the NZCPS, which seeks to promote restoration or rehabilitation of the natural character of the coastal environment, and it is therefore not appropriate to include the suggested amendment.
1642. However, we consider the amendments recommended by the Reporting Officer in response to *Federated Farmers’* submission more accurately describe the relevant

rules than either the notified version of the policies or the wording suggested by the submitter. Therefore, we accept these submission points in part, and have made the changes shown below.

1643. We received technical advice from Dr Anna Johnson, the DCC City Development Manager, suggesting a number of clause 16 changes to ensure the policies clearly reflect the rules they relate to. We agree that these changes should be made.
1644. In addition, we note that, because the policies describe provisions detailed elsewhere in the 2GP, they have been subject to consequential amendments reflecting amendments to those provisions arising from submissions. This has resulted in the amendment of Policy 2.4.4.3.a and the insertion of a new clause at Policy 2.4.5.3.a, in response to OS447.75 and OS447.76; see discussion of these submissions in section 3.7.8.2 below.
1645. The amended policies, including changes in response to OS919.12 and OS919.13, clause 16 amendments, and consequential changes in response to OS447.75 and OS447.76, are as follows:

Policy 2.4.4.3

Protect the values in identified ~~natural features and natural landscapes (ONFs, ONLs, SNLs)~~ Outstanding Natural Feature (ONF), Outstanding Natural Landscape (ONL) and Significant Natural Landscape (SNL) overlay zones {NatEnv cl.16} by listing these values in Appendix A3 and using rules that:

- a. ~~limit land use activities that may be carried out on~~ prohibit certain activities in {NatEnv 447.75 and 447.76} ONFs;
- b. ~~manage land use activities that may be carried out in~~ require resource consent for activities in {NatEnv cl.16} ONFs, {NatEnv cl.16} ONLs and SNLs, where they may be incompatible with the values of the area {NatEnv 919.12}; and
- c. ~~restrict the scale of development {NatEnv cl.16} in ONFs, ONLs and SNLs {NatEnv cl.16} and ensure the {NatEnv 919.12} design of development in ONFs, ONLs and SNLs {NatEnv cl.16} is appropriate. {NatEnv 919.12}; and~~
- d. ~~restrict forestry activity in ONLs and SNLs. {NatEnv cl.16}~~

Policy 2.4.5.3

Protect and enhance the natural character values in Outstanding Natural Coastal Character (ONCC), High Natural Coastal Character (HNCC) and Natural Coastal Character (NCC) overlay zones {NatEnv cl.16} through listing natural character values in Appendix A5 and using rules that:

- a. ~~prohibit certain activities in ONCCs and HNCCs; {NatEnv 447.75 and 447.76}~~
- b. ~~manage land use activities that may be carried out~~ require resource consent for activities in ONCCs, HNCCs and NCCs {Nat Env cl.16}, where they may be incompatible with the values of the area; {NatEnv 919.13}
- c. ~~restrict the scale of development in ONCCs, HNCCs and NCCs {NatEnv cl.16} and ensure the {NatEnv 919.13} design of development is appropriate; and {NatEnv 919.13}~~
- d. ~~restrict forestry activity; and {Nat Env cl.16}~~
- e. promote restoration of natural character.

These amendments are also shown in Appendix 1.

3.7.4.2 Submission seeking to refer to subjective councillor discretion and objective and specific quantifiable rules

1646. *HPPC* (OS447.7, OS447.8) and *STOP* (OS900.18, OS900.19) sought to amend both Policy 2.4.4.3 and Policy 2.4.5.3 to add “in conjunction with subjective councillor discretion and also objective and specific quantifiable rules”. The submitters believed it a recommended statement of Council intent to have the 2GP reflect a balance of the methods that are outlined in the RMA and necessary to achieve the RMA objectives.
1647. *Howard Saunders* (FS2373.4, FS2373.42, FS2373.5, FS2373.43) opposed the submissions because the submitter believed that subjective councillor discretion contradicts a rule based process. *Federated Farmers of New Zealand* (FS2449.47, FS2449.48, FS2449.52, FS2449.53) also opposed these submissions stating the proposed amendment is inconsistent with the purpose and principles of the RMA, and because providing for councillor discretion in a provision is both uncertain for resource users and unfair over time as councillors change.
1648. In the Section 42A Report, the Reporting Officer did not support the suggested amendment. He considered “subjective councillor discretion” contrary to how plans work in line with the RMA (assessment of proposals against rules and the ability to apply for resource consents where activities are not permitted in accordance with those rules), and with resource consents considered by Hearings Panels (which generally include consideration against the Plan objectives and policies and assessment matters, other relevant documents and the RMA itself, rather than absolute discretion). Furthermore, while hearings panels usually include some councillors they may also include independent Hearings Commissioners.
1649. Mr David Cooper appeared for *Federated Farmers of New Zealand* at the hearing, speaking to a tabled statement in which support was expressed for the amendments recommended by the Reporting Officer to Policy 2.4.4.3 and 2.4.5.3. *Federated Farmers of New Zealand* considered the amendments clarified the intent of the policies.

3.7.4.2.1 *Decision and Reasons*

1650. We reject the submissions of *HPPC* (OS447.7, OS447.8) and *STOP* (OS900.18, OS900.19) seeking to add the words “in conjunction with subjective councillor discretion and also objective and specific quantifiable rules” to Policy 2.4.4.3 and Policy 2.4.5.3. We accept the evidence of the Reporting Officer that these words do not fully or accurately describe processes under the RMA. We also consider it an unnecessary addition, as all policies are subject to processes that are not described or explained as part of the policies themselves.

3.7.5 Submissions relating to both Objective 10.2.3 and Objective 10.2.5 and related policies

3.7.5.1 Background

1651. Objective 10.2.3 states: “Areas of outstanding natural coastal character (ONCC), high natural coastal character (HNCC), and natural coastal character (NCC) are protected from inappropriate use and development and their values, as identified in Appendix A5, are maintained or enhanced.”
1652. Policies sitting beneath Objective 10.2.3 manage the adverse effects on identified values of activities in ONCCs, HNCCs and NCCs, in order to achieve this objective.

1653. Objective 10.2.5 states: “Outstanding Natural Features (ONFs), Outstanding Natural Landscapes (ONLs) and Significant Natural Landscapes (SNLs) are protected from inappropriate development and their values, as identified in Appendix A3, are maintained or enhanced.”
1654. Policies sitting beneath Objective 10.2.5 manage the adverse effects on identified values of activities in ONFs, ONLs and SNLs, in order to achieve this objective.
1655. This section responds to submissions that relate to both objectives and their policies, including, in section 3.7.5.2 immediately below, submissions relating to the general drafting and structure of policies. Submissions relating specifically to Objective 10.2.3 and policies, or specifically to Objective 10.2.5 and policies, are then dealt with in, respectively, section 3.7.6 and section 3.7.7 below.

3.7.5.2 Submissions on effects tests for activities in landscape and natural coastal character overlay zones

1656. The *Otago Regional Council (ORC)* (OS908.17²⁵) noted the “inconsistent use” of phrases to describe the threshold of acceptable effects (e.g. “no material effects”, “insignificant”, “no more than minor”) (Submission, pp. 7-8). The submitter also sought the use of consistent references, in policies under Objective 10.2.3 and “elsewhere as appropriate”, to describe the threshold of acceptable effects. They asked that where there is a need to use different phrases, there should be a clear reason for doing so.
1657. More generally, the ORC (OS908.3) also requested the use of “consistent wording throughout the proposed district plan” (Submission, p.5).
1658. In addition, a number of submitters requested more specific changes to effects tests for certain activities in certain overlay zones. See details in sections 3.7.5.5, 3.7.6 and 3.7.7 below.
1659. In the Section 42A Report, the Reporting Officer identified the following issues with the drafting of the policy suites under Objectives 10.2.3 and 10.2.5:
- the 2GP drafting protocol had not always been followed. For example, Policy 10.2.5.2 is an “avoid” policy with no “unless” qualifier, implying prohibited activity status. Policy 10.2.3.1 and 10.2.5.1 are unclear, are not linked to assessment rules, and are inconsistent with other policies under their respective objectives.
 - the tests applied to effects-based policies appeared inconsistent both within these policies and in comparison to other policies across the 2GP – as an example, the most stringent tests of “no material” or “insignificant” effects are sometimes applied to restricted discretionary activities (e.g. policies 10.2.3.3, 10.2.5.6).
 - some policies (e.g. policies 10.2.3.5 and 10.2.5.5) contain multiple effects tests and consequently are difficult to understand.
 - there is duplication of, or unnecessary policies, for example it appeared that both policies 10.2.3.5 and 10.2.5.5 could be incorporated into other policies (Natural Environment Section 42A Report, Section 5.4.12, p.176).
1660. The Reporting Officer made recommendations as to how policies under both Objective 10.2.3 and Objective 10.2.5 could be redrafted to resolve these issues. The aim of these recommended changes, according to the Reporting Officer, was to provide for better and more consistent differentiation between:

²⁵ We note that the Section 42A Report mistakenly referred to OS908.14, meaning OS908.17.

- the different activity statuses, and the policy wording and effects-tests that should be applied; and
- the different types of overlay zones, and the policy wording and effects-tests that should be applied (Natural Environment Section 42A Report, Section 5.4.12, p.176-177).

1661. He recommended the following amendments be made to policies under Objective 10.2.3:

- revising Policy 10.2.3.1, to no longer apply to activities that require consent, as it is not linked to assessment rules, is inconsistent with Policy 10.2.3.2, is unclear (and he did not consider that there was scope to remove it).
- rewording Policy 10.2.3.2 to refer to “non-complying land use, development and network utilities activities” rather than specifically listing all activities, which he considered made the policy too lengthy
- changing the policy test in Policy 10.2.3.3 from “insignificant” to “avoided, or if avoidance is not possible, no more than minor”, as he considered the test to be very stringent, and too difficult a test for restricted discretionary/discretionary activity status, where activities may be anticipated to occur, subject to an assessment of scale, location and form.
- integration of the city-wide activities from Policy 10.2.3.5 into Policy 10.2.3.3
- changing the policy test in Policy 10.2.3.4 to differentiate from restricted discretionary and discretionary activities in ONCC/HNCC overlay zones, and to recognise that these activities may generate more than minor effects, but that adequate mitigation may be achievable.
- integration of the city-wide activities from Policy 10.2.3.5 into Policy 10.2.3.4.
- integration of the network utilities from Policy 10.2.3.10 into Policy 10.2.3.4.
- removal of Policy 10.2.3.5
- removal of Policy 10.2.3.10
- changing the effects test in Policy 10.2.3.11 from “no material effects” to “insignificant effects”, as he considered the allowance for “insignificant” effects to be slightly more lenient than “no material effects” (allowing for the possibility of some effects, albeit very small), and this change would differentiate between NCC overlay zones and ONCC/HNCC overlay zones.

1662. The Reporting Officer recommended the following amendments be made to policies under Objective 10.2.5:

- revising Policy 10.2.5.1 so that it no longer applies to activities that require consent, as he considered it is not linked to assessment rules, is inconsistent with Policy 10.2.5.2 and 10.2.5.4 and is unclear (and he did not consider that there was scope to remove it).
- combining Policy 10.2.5.2 and Policy 10.2.5.4 to provide a single policy for non-complying activities in ONFs, and to resolve the drafting of 10.2.5.2 which is an “avoid” policy with no “unless” qualifier.
- referring in this single policy to “non-complying land use, development and network utilities activities” rather than specifically listing all activities, which he considered made the policy too lengthy.
- changing the policy test in Policy 10.2.5.3 from “insignificant” to “avoided, or if avoidance is not possible, no more than minor”, as he considered the test to be very stringent, and too difficult a test for restricted discretionary/discretionary activity status, where activities may be anticipated to occur, subject to an assessment of scale, location and form.
- integration of the City-wide Activities from Policy 10.2.5.5 into Policy 10.2.5.3, and of the Network Utilities Activities from Policy 10.2.5.16, and removal of Policy 10.2.5.5.

- changing the policy test in Policy 10.2.5.6 to differentiate between restricted discretionary and discretionary activities in ONL overlay zones, and to recognise that these activities may generate minor effects.
 - adding to Policy 10.2.5.6 the alternative policy test “where there are no practicable alternative locations, are adequately mitigated” to recognise that some activities provided for may have more than minor adverse effects even where mitigation measures are undertaken, but may need to locate within ONLs for operational reasons.
 - integration of the Network Utilities Activities from Policy 10.2.5.7 (version recommended in the Network Utilities Section 42A Report) into Policy 10.2.5.6, and removing (recommended) Policy 10.2.5.7.
 - changing (notified) Policy 10.2.5.7 to differentiate from restricted discretionary and discretionary activities in ONL overlay zones, and to recognise that these activities may generate more than minor effects, but that adequate mitigation might be achievable.
 - integration of the City-wide Activities from Policy 10.2.5.5 into (notified) Policy 10.2.5.7.
 - integration of the Network Utilities Activities from Policy 10.2.5.9 (recommended in the Network Utilities Section 42A Report) into (notified) Policy 10.2.5.7.
 - removal of Policy 10.2.5.9 (version recommended in the Network Utilities s42A Report).
 - removal of Policy 10.2.5.10.
 - changing the effects test in (recommended) Policy 10.2.5.17 from “no material effects” to “insignificant effects”, as he considered the allowance for “insignificant” effects to be slightly more lenient than “no material effects” (allowing for the possibility of some effects, albeit very small), and this change would differentiate between ONF overlay zones and ONL overlay zones (which, being larger, may be better able to absorb effects).
1663. He considered that subsequent reordering of the policies would assist plan clarity, for example putting all policies for each overlay alongside each other where possible (Natural Environment Section 42A Report, Section 5.4.12, p.177).
1664. He considered that policies 10.2.3.7 and 10.2.5.11 differ from others as outcome-focused policies, separate to the other activity-based policies, and so he excluded them from the reworked approach (Natural Environment Section 42A Report, Section 5.4.12, p.177).
1665. The Reporting Officer also commented that some of the recommended amendments override earlier amendments described in the Network Utilities Section 42A Report. He noted the recommended approach in the Network Utilities Section 42A Report included an alternative “adequately mitigated” policy test for certain restricted discretionary and discretionary activities in NCCs, ONLs and SNLs where there were “no practicable alternative locations”. He commented that this would not be necessary for these activities in NCCs and SNLs if the Natural Environment Section 42A Report recommendations were adopted, as this would amend the policy test for all restricted discretionary and discretionary activities in NCCs and SNLs to “adequately mitigated”. With respect to ONLs, he recommended that the alternative policy test be applied to all restricted discretionary and discretionary activities in these overlay zones. He considered this would recognise that some of these activities cannot avoid effects that are “no more than minor” even where mitigation is applied, but may still need to locate in an ONL for operational reasons (e.g. large farm buildings, new roads, community-scale hydro) (Natural Environment Section 42A Report, Section 5.4.12, p.177).

1666. He considered that scope for the recommended changes is provided by a range of submissions on specific provisions (set out in sections 3.7.5.5, 3.7.6 and 3.7.7 below), and also by the *Otago Regional Council* submission (OS908.17).
1667. At the hearing, Mr David Cooper for *Federated Farmers of New Zealand* expressed general support for the amendments recommended in the Section 42A Report in relation to the policies associated with Objectives 10.2.3 and 10.2.5.

3.7.5.2.1 *Decision and Reasons*

1668. We accept the submission of the *ORC* (OS908.17) noting the “inconsistent use” of phrases to describe the threshold of acceptable effects, and seeking to ensure consistent references to describe the threshold of acceptable effects are used in policies under Objective 10.2.3 and “elsewhere as appropriate”. We also accept the more general submission (OS908.3) requesting that consistent wording be used throughout the Plan.
1669. We accept the evidence of the Reporting Officer that these issues are caused by:
- policies not following the 2GP drafting protocol,
 - some policies containing confusing effects tests,
 - some inconsistency in effects tests, and
 - some duplication of policies.
1670. We also accept the Reporting Officer’s evidence that:
- Policy 10.2.3.1 and Policy 10.2.5.1 are inconsistent with the 2GP drafting protocol as they are not linked to assessment rules, are inconsistent with Policy 10.2.3.2 and Policy 10.2.5.2/10.2.5.4 respectively, and are unclear,
 - Policy 10.2.5.2 is inconsistent with the 2GP drafting protocol as it is an “avoid” policy with no “unless” qualifier,
 - Policy 10.2.3.5 and Policy 10.2.5.5 contain multiple effects tests and consequently are difficult to understand,
 - there should be clear differentiation between the policy tests associated with different types of overlay zones (more stringent policy tests with the higher value overlay zones, and less stringent policy tests with the lower value overlay zones),
 - some activities associated with existing land uses may not be able avoid meet “insignificant” or “no more than minor” effects tests even where mitigation is applied, but may still need to locate in an overlay zones for operational reasons
 - there is some opportunity to combine policies where the same wording applies (either as notified or because of amendments made in response to submissions).
1671. We do not, however, accept that it is necessarily inappropriate for more stringent effects tests to be applied to restricted discretionary and discretionary activities, and/or to activities that may consider themselves constrained due to the location of resources. As discussed elsewhere, we accept that coastal character and landscape overlay zones are the 2GP’s response to higher order policy direction, including the need to recognise and provide for the matters of national importance outlined in s6(a) and s6(b) of the RMA, to give effect to the operative RPS and the NZCPS, and to have regard to the proposed pORPS-dv. We consider that, in order to align with this higher order policy direction, in some cases a strict policy test is warranted despite other considerations, particularly in higher value overlay zones.
1672. We also observe that the 2GP in some places defines activities in such a way that they are highly variable in scale and intensity, and therefore have potential for effects of widely varying magnitude. While a less strict policy test may be appropriate for an

activity at small scales and low intensities in a certain environment, it may be inappropriate for the same activities at much larger scale and intensity in that same environment. This is particularly the case in relation to restricted discretionary and discretionary activities in higher value overlay zones.

1673. We have amended the overall structure of the 10.2.3 and 10.2.5 policies in the following ways, in response to the general submission points from the *ORC* (OS908.17 and OS908.4), in response to other submissions that are relevant to effects tests for certain activities in certain overlays (discussed below), and, under RMA clause 16, in order to clarify provisions.

- a. The wording of policies across both Objective 10.2.3 and Objective 10.2.5 has been aligned, so that when different wording is used, there is a clear reason for doing so.
- b. We have reordered the suite of policies under Objectives 10.2.3 and 10.2.5 to assist with Plan clarity (cascading from those that relate to the most restrictive provisions in the highest value overlay zones, to those that relate to the least restrictive provisions in the lower value overlay zones).
- c. We have adopted a clear hierarchy of policy tests, with more stringent “insignificant” policy tests associated with the higher value overlay zones, and less stringent “no more than minor” policy tests with the lower value overlay zones”. The policies affected by this decision are:
 - i. Policy 10.2.3.2 – non-complying activities in ONCCs/HNCCs (effects test changes from “no material effects” to “effects are insignificant”)
 - ii. Policy 10.2.3.X.a – restricted discretionary or discretionary activities in ONCCs/HNCCs that are not locationally constrained (effects test is “effects are insignificant”)
 - iii. Policy 10.2.3.Y.a – restricted discretionary or discretionary activities in NCCs that are not locationally constrained (effects test is “no more than minor”)
 - iv. Policy 10.2.5.4 – non-complying activities in ONFs (effects test changes from “no material effects” to “effects are insignificant”)
 - v. Policy 10.2.5.Y - restricted discretionary or discretionary activities in ONFs that are not locationally constrained (effects test is “effects are insignificant”)
 - vi. Policy 10.2.5.Z - restricted discretionary or discretionary activities in ONLs that are not locationally constrained (effects test is “effects are insignificant”).

We note that the changes to Policies 10.2.3.2 and 10.2.5.4 align with the Plan Overview decision referred to below, to replace the “no material effects” test with “effects are insignificant” throughout the Plan.

- d. We have provided an alternative “adequately mitigated” policy test where there are “no practicable alternative locations” for some activities in overlay zones (in new policies 10.2.3.X, 10.2.3.Y, 10.2.5.Y and 10.2.5.Z, and by amending Policy 10.2.5.7). We have transferred certain activities to these policies so that the alternative test is available for restricted discretionary or discretionary activities where we considered this appropriate. In determining whether the alternative test should apply, we took into account:
 - i. any relevant higher order policy direction (for example, the NPS for Renewable Electricity Generation)
 - ii. evidence that activities concerned may need to locate in overlay zones for operational reasons, including to support an existing land use
 - iii. the likely importance to the community as a whole of establishing the activity at a particular location

- iv. whether the activity was mentioned in the relevant appendix, either as featuring in the overlay zone, or as a threat to the values of the overlay zone
 - v. the value of the overlay zone (we were more likely to favour providing the alternative test in lower value overlays)
 - vi. how spatially extensive the overlay zone is (i.e. how likely it was that restrictions would unreasonably constrain underlying land use).
- e. We have deleted unnecessary policies and combined their contents with other policies – for example, Policies 10.2.5.16 and 10.2.5.3 both manage restricted discretionary activities in ONFs; we have deleted 10.2.5.16 and transferred the activities that it managed to 10.2.5.3. See full details below.
- f. We have deleted three policies relating to non-complying activities in ONCCs/HNCCs or ONFs whose wording did not align with the Plan's policy drafting protocol (i.e. Policies 10.2.3.1, 10.2.5.1 and 10.2.5.2) and have amended Policies 10.2.3.2 and 10.2.5.4 so that they manage all non-complying activities within ONCCs/HNCCs and ONFs, respectively.
1674. We consider that these changes provide relief to the *ORC's* submission point relating to the 10.2.3 policies (OS908.17) and partial relief to the submitter's request for consistent use of wording throughout the Plan (OS908.3). In addition, we consider that elements of these changes provide full or partial relief to a number of other submissions, discussed in sections 3.7.5.5, 3.7.6 and 3.7.7 below. Further, we consider amendments to Objective 10.2.3 and the policy tests relating to activities in coastal character overlay zones give partial relief to the submission of *Forest and Bird NZ* (OS958.57) to add specific policies to give effect to the NZCPS, as discussed in section 3.2.5 above.
1675. Note that, in addition to these changes to the overall structures of policies, we have also made certain more specific changes to individual policies under Objectives 10.2.3 and 10.2.5, to address other aspects of submissions (see sections 3.7.6 and 3.7.7).
1676. Finally, we note that additional amendments have been made to the 10.2.3 and 10.2.5 policies in line with decisions outlined in the Plan Overview Decision, including:
- the replacement of instances of the “no material effects” policy test with the “insignificant” policy test (Policies 10.2.3.2, 10.2.5.4 and 10.2.5.15)
 - the addition of “as far as practicable” to policies with a “minimise adverse effects” test (Policies 10.2.3.6 and 10.2.5.8), and
 - the replacement of the term “possible” with “practicable” in policy tests (Policies 10.2.3.4, 10.2.3.8, 10.2.5.7 and 10.2.5.12).
1677. The amendments required for this decision, including consequential amendments, are as follows (set out in full in Appendix 1):

10.2.3 policies and assessment rules

- a. Delete Policy 10.2.3.1, relating to activities that are non-complying in ONFs, and add these activities to Policy 10.2.3.2 (as “rural activities (except for farming, grazing, rural ancillary retail, rural tourism, rural research – small scale)” (NatEnv 900.46).
- b. Amend the effects test in Policy 10.2.3.2 from “there are no material effects [on identified values]” to “effects are insignificant” (NatEnv 908.17).
- c. Delete Policy 10.2.3.5, relating to public amenities, natural hazard mitigation and transportation activities that are restricted discretionary or discretionary in NCCs, HNCCs and ONCCs, and:
 - i. add all three activities to new Policy 10.2.3.Y, which manages locationally constrained RD/D activities in NCCs (NatEnv 908.17)

- ii. add public amenities and transportation activities to Policy 10.2.3.3, which manages RD/D activities in ONCCs and HNCCs that are not locationally constrained (NatEnv 949.19)
 - iii. add natural hazard mitigation activities to new Policy 10.2.3.X, which manages locationally constrained RD/D activities in ONCCs and HNCCs (NatEnv 908.17).
- d. In new Policy 10.2.3.X, relating to natural hazard mitigation activities in ONCCs and HNCCs, use the effects test “adverse effects ... are insignificant, or where there are no practicable alternative locations, adequately mitigated” (NatEnv 908.17).
- e. Delete Policy 10.2.3.10, relating to network utility activities that are restricted discretionary or discretionary in NCCs, and add these activities to Policy 10.2.3.Y (NatEnv 576.62).
- f. In new Policy 10.2.3.Y, relating to public amenities, natural hazard mitigation activities, transportation activities and certain network utility activities that are RD/D in NCCs, use the effects test “adverse effects ... are avoided or, if avoidance is not practicable, no more than minor, or where there are no practicable alternative locations, adequately mitigated” (NatEnv 908.17 and 576.62).
- g. Consequential amendments to the paraphrasing of all policies mentioned above in assessment rules.
- h. Consequential amendments to assessment rules 10.5.2.5, 10.6.2.C and 10.6.2.D, that apply to activities assessed under Policies 10.2.3.X and 10.2.3.Y, to add guidance around situations in which activities will be considered to have “no practicable alternative locations”.
- i. Add new special information requirement Rule 10.8.4 ‘Assessment of alternative locations’, to be referred to in these assessment rules, to set out the information requirements for an assessment of alternative locations with respect to effects on identified values of coastal character overlay zones (note that the addition of this rule is also discussed in sections 3.3.1.3 and 3.3.3.3, because the rule also relates to assessments of alternative locations with respect to effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna, and is referred to in Policies 10.2.1.X and 10.2.1.Y) (NatEnv 900.142 and others).
- j. Consequential amendment to subdivision Policy 10.2.3.7 to amend the references to other 10.2.3 policies, and to assessment rules 10.5.2.3 and 10.5.2.6 to reflect these amendments to Policy 10.2.3.7.

10.2.5 policies and assessment rules

- a. Delete Policies 10.2.5.1 and 10.2.5.2, relating to activities that are non-complying in ONFs, and add these activities to Policy 10.2.5.4 (as “rural activities (except for farming, grazing, rural ancillary retail, rural tourism, rural research – small scale), residential activities, veterinary services, visitor accommodation, rural industry, cemeteries, crematoriums”) (NatEnv 874.14, 908.17 and 908.3).
- b. Amend the effects test in Policy 10.2.5.4 from “there are no material effects [on identified values]” to “effects are insignificant” (NatEnv 908.17 and 908.3).
- c. Delete Policy 10.2.5.5, relating to public amenities, natural hazard mitigation and transportation activities that are restricted discretionary or discretionary in ONFs, ONLs and SNLs, and:
 - i. add all three activities to Policy 10.2.5.7, which manages all RD/D activities in SNLs (NatEnv 908.17 and 908.3)

- ii. add all three activities to new Policy 10.2.5.Z, which manages locationally constrained RD/D activities in ONLs (NatEnv 908.17 and 908.3)
 - iii. add natural hazard mitigation activities, public amenities and transportation activities to new Policy 10.2.5.Y, which manages locationally constrained RD/D activities in ONFs (NatEnv 908.17 and 908.3).
 - d. Delete Policy 10.2.5.16, relating to network utility activities that are restricted discretionary or discretionary in ONFs, and add these activities to Policy 10.2.5.3. We have made this change under RMA clause 16, because there is no change to the effects test applying to these activities (it remains “effects are insignificant”).
 - e. In new Policy 10.2.5.Y, relating to natural hazard mitigation activities in ONFs, use the effects test “adverse effects ... are insignificant, or where there are no practicable alternative locations, adequately mitigated” (NatEnv 908.17 and 908.3).
 - f. Treat large buildings and structures, earthworks – large scale, and network utility activities as locationally constrained in ONLs, by deleting them from Policy 10.2.5.6 and adding them to new Policy 10.2.5.Z (NatEnv 464.10 for large buildings and structures, and earthworks – large scale; NatEnv 576.62 for network utility activities).
 - g. In new Policy 10.2.5.Z, relating to RD/D activities in ONLs that are locationally constrained, use the effects test “adverse effects ... are insignificant, or where there are no practicable alternative locations, adequately mitigated” (NatEnv 908.17, 908.3, 464.10 and 576.62).
 - h. Add an alternative policy test to Policy 10.2.5.7 (“or where there are no practicable alternative locations, adequately mitigated”) making it available to all RD/D activities in SNLs that are potentially locationally constrained (NatEnv 458.12).
 - k. Consequential amendments to the paraphrasing of all policies mentioned above in assessment rules.
 - l. Amendments to assessment rules 10.5.2.D, 10.5.2.E, 10.5.2.16, 10.6.2.A and 10.6.2.5, which apply to activities assessed under Policies 10.2.5.Y, 10.2.5.Z and 10.2.5.7, to add guidance around the situations in which activities will be considered to have “no practicable alternative locations”.
 - m. Add new special information requirement Rule 10.8.4 ‘Assessment of alternative locations’, to be referred to in these assessment rules, to set out the information requirements for an assessment of alternative locations with respect to effects on identified values of landscape overlay zones (note that the addition of this rule is also discussed in sections 3.3.1.3 and 3.3.3.3, because the rule also relates to assessments of alternative locations with respect to effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna, and is referred to in Policies 10.2.1.X and 10.2.1.Y) (NatEnv 900.142 and others).
 - n. Consequential amendment to subdivision Policy 10.2.5.11 to amend the references to other 10.2.5 policies, and to assessment Rule 10.5.2.13 to reflect these amendments to Policy 10.2.5.11.
1678. In addition, we note that we received technical advice from Dr Anna Johnson, the DCC City Development Manager, suggesting that assessment rules relating to activities assessed under the 10.2.3 and 10.2.5 policies should be amended, under clause 16, to clarify that the Plan’s design guidelines (notified as Appendix A3.4, renumbered Appendix A11 by this decision) are relevant to the assessment of effects on landscape values and on the natural character of the coast. We agree with these changes, which

affect assessment rules 10.4.3.6-10, 10.4.4.1, 10.5.A.1, 10.6.2.1 and 10.7.2.1, as shown in Appendix 1.

3.7.5.3 Submissions seeking application of Objective 10.2.3 and Objective 10.2.5 to the Hill Slopes Rural Zone and “highly visible rural zones” respectively

1679. *HPPC* (OS447.17, OS447.23) and *STOP* (OS900.44, OS900.55) sought that Objective 10.2.3 be amended to refer not only to coastal character overlay zones but also to the Hill Slopes Rural Zone, and that Objective 10.2.5 be amended to refer to “highly visible rural zones” in addition to the landscape overlay zones. The submitters stated that they believe the Hill Slope Rural Zone is the most visually prominent of the seven rural zones because it combines the higher visibility of a slope, with proximity to sizeable residential populations. The submitters stated that protection is warranted for rural slopes near urban and township areas.
1680. These suggested amendments were opposed by *Howard Saunders* (FS2372.13, FS2372.14), who considered the amendment in relation to 10.2.3 confuses zones with overlays and would have the effect of treating all rural land on the peninsula as being of highest landscape value and subject to maximum protection from development, and in relation to the amendment suggested for 10.2.5, that the objective was focussed on outstanding and significant landscapes. *Geoff Scurr Contracting Limited* (FS2391.1, FS2391.2, FS2391.62) also opposed the suggested change to Objective 10.2.3, considering it an inappropriate inclusion given that it relates to areas of outstanding and high natural character, and in relation to Objective 10.2.5, that the requested amendment is too broad and vague. *Federated Farmers of New Zealand* (FS2449.11, FS2449.139) expressed similar concerns in relation to Objective 10.2.3, and in relation to Objective 10.2.5, stated structures associated with everyday farming activities are to be expected and are appropriate in the rural zone. *Waste Management (NZ) Limited* (FS2444.43) opposed the suggested changes to Objective 10.2.5, considering that normal RMA tests should apply in relation to effects.
1681. The suggested amendments were also not supported by the Reporting Officer, who considered that the objectives should be confined to protection of:
- the parts of the coastal environment identified by coastal geomorphologists, ecologists and landscape architects using methodology informed by the NZCPS and policies 3.2.7 and 3.2.8 of the pORPS-dv (in the case of Objective 10.2.3), and
 - landscapes and features identified by a landscape architect according to a methodology and criteria “well-traversed in case law” (in the case of Objective 10.2.5).
1682. He did not consider it appropriate to include areas that had not been assessed as meeting the criteria under each respective objective. He did however note that large parts of the Hill Slopes Rural Zone are in landscape overlay zones, and that Objective 16.2.3 and its policies address the maintenance or enhancement of rural zone amenity and rural character values.
1683. In a statement tabled at the Hearing, Mr Craig Werner reiterated the view that the Hills Slopes Rural Zone should get specific mention in relation to Objective 10.2.5.

3.7.5.3.1 *Decision and Reasons*

1684. We reject the submissions of *HPPC* (OS447.17, OS447.23) and *STOP* (OS900.44, OS900.55). We accept the Reporting Officer's evidence that the extent of coastal character overlay zones is based on expert assessments using methodology derived from the NZCPS and the pORPS-dv, and as discussed in section 3.7.2.3, we consider

the methodology for identifying the extent of landscape overlay zones reflects an established methodology and standard practice for the identification and classification of landscapes. We received no expert evidence during the Hearings suggesting that blanket inclusion of the Hill Slopes Rural Zone (or any other rural zone) was warranted when considered against these criteria.

1685. We do note, however, that submissions seeking specific additions to coastal character or landscape overlay zones were assessed by landscape expert Mr Michael Moore, who in some cases recommended extensions of the overlay zones in some rural zones. Our decisions on these submission points are outlined in sections 3.11 and 3.12.
1686. In addition to Objective 16.2.3 and its policies, which address the maintenance or enhancement of rural zone amenity and rural character values, we have:
- amended the policy framework to provide protection for green breaks between settlements, in order to maintain visual amenity and the identity of individual settlements (as discussed in the Urban Land Supply Decision Report), and
 - introduced reflectivity performance standards for buildings in the Hill Slopes Rural Zone (see section 3.7.12, below).
1687. We consider these changes may provide some partial relief to the concerns raised by these submitters.

3.7.5.4 Submissions seeking exemption of Conservation activities from Objective 10.2.3 and Objective 10.2.5

1688. The *Yellow-eyed Penguin Trust* (OS690.10, OS690.12) sought to amend both Objective 10.2.3 and Objective 10.2.5 to clarify that they do not restrict conservation activities, and to make any consequential changes to other provisions. They believed that the protection of coastal character, natural features and landscapes is generally appropriate, but that there may be cases where conservation activities will have an effect on them, particularly in the short term (e.g. structures, earthworks, vegetation clearance), in which case the conservation values should have priority.
1689. This suggested amendment was not supported by the Reporting Officer, who considered there is no presumption of a hierarchy between conservation (indigenous vegetation and the habitats of indigenous fauna) and landscape protection in any of the higher order provisions that the Objective is seeking to give effect to (s6 and s7 of the RMA, relevant objectives in the pOPRS-dv, and strategic directions of the 2GP). He noted that conservation is a permitted activity in both coastal character and landscape overlay zones, and that the proposed vegetation clearance rules contain a number of exemptions relating to conservation activity. He did not consider that buildings, structures or earthworks associated with conservation should necessarily be exempt from consideration under the objectives or their linked policies and rules.
1690. At the hearing, *Yellow-eyed Penguin Trust* representatives Mr Murray Brass and Mr David McFarlane reiterated the concerns outlined in the submission and stated that, given the impacts of the *King Salmon* and *Davidson Family Trust* cases²⁶, it is likely that the provisions will have to be applied absolutely, without being balanced against the benefits of conservation activities. They stated that it is very likely that the *Yellow-eyed Penguin Trust* will have its work affected by the provisions at some stage and they maintained a strong objection to the proposed approach. They suggested revising the policies so they did not have absolute effect, or by including a new

²⁶ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38 and *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52

provision that specifically allows conservation activities to have adverse effects on “coastal character, natural features and natural landscapes”.

1691. In his right of reply, the Reporting Officer made no change to his Section 42A recommendation, stating that he did not consider the policies to be absolute, given that they are moderated by a policy test. He considered the broad definition of conservation meant that exempting this activity would create unreasonable risk to natural character, particularly in light of the strict approach advocated by the NZCPS. He noted the range of situations in the 2GP in which the positive effects of conservation may be considered when assessing consent applications. This includes all performance standard contraventions under Rule 10.4.2.1.c and discretionary activities under Rule 10.6.2.1.d (renumbered 10.6.2.1.g in decisions version). He also noted situations where association of an activity with conservation forms part of assessment guidance - restricted discretionary activities in ONCC, HNCC and NCC overlay zones. He noted he was recommending amendments to assessment rules 16.9.4, 16.10.3 and 16.10.5 which would allow for consideration of positive effects in terms of supporting conservation activity when assessing resource consent applications (all development performance standard contraventions in rural zones, all restricted discretionary development activities in rural zones, and all restricted discretionary activities in overlay zones, mapped areas and scheduled items). He also noted that all relevant objectives and policies must be considered, and given that there are policies that encourage and enable conservation activity, this provides a pathway for activities even when they are non-complying.

3.7.5.4.1 *Decision and Reasons*

1692. We accept in part the submissions of the *Yellow-eyed Penguin Trust* (OS690.10, OS690.12).
1693. We accept the Reporting Officer's evidence that there is no presumption of a hierarchy between protection of significant indigenous vegetation and the significant habitats of indigenous fauna and protection of landscape values or natural coastal character values, in any of the higher order provisions that the objectives are seeking to give effect to. We also accept that that providing for all development activities potentially involved in Conservation would create unreasonable risk to important values, particularly in the coastal character overlay zones (which are subject to the directive wording of the NZCPS). We therefore do not support the relief sought by the submitter.
1694. We accept the Reporting Officer's evidence that:
- amendments to assessment rules 16.9.4, 16.10.3 and 16.10.5 (discussed in section 3.10.4.4) will allow for consideration of positive effects in terms of supporting conservation activity when assessing resource consent applications associated with all development performance standard contraventions in rural zones, all restricted discretionary development activities in rural zones, and all restricted discretionary activities in overlay zones, mapped areas and associated with scheduled items
 - that assessment rule 10.4.2.1 (assessment of all performance standard contraventions) and assessment rule 10.6.2.1 (assessment of all discretionary activities) list “The development incorporates conservation activity that will have significant positive effects on biodiversity or natural character values” as a potential circumstance or mitigation measure that may support a consent application, and
 - that given that there are policies that encourage and enable Conservation activity, there is a pathway for Conservation activities to be considered even when they are non-complying.

1695. We note the latter point is further reinforced with amendments, discussed in section 3.6.1.7, to better provide policy support for the maintenance and enhancement of biodiversity values.
1696. We also note that, in amendments described elsewhere, provisions associated development activities like Earthworks and Indigenous Vegetation Clearance have been amended to provide for a number of small scale activities likely to be associated with Conservation activity, as permitted activities.
1697. We consider that, taken together, these provisions generally constitute appropriate provision and support for conservation activities in overlay zones.
1698. We do consider, however, that the assessment guidance associated with assessment rules 10.4.2.1 and 10.6.2.1 should also be provided via new Rule 10.5.2.A (assessment of positive effects on biodiversity values or the natural character of the coast, for all restricted discretionary activities) for consistency, and to provide some support for restricted discretionary activities associated with Conservation occurring in landscape overlays (noting that natural science values of significance are listed in Appendix A3 as occurring in a number of landscape overlay zones).
1699. In addition, we have replaced Rule 10.4.2.1.c with new Rules 10.4.3.A and 10.4.4.A, to include 'positive effects on biodiversity values or the natural character of the coast' as a matter of discretion for all performance standard contraventions listed in Rule 10.4. This ensures that decision-makers can take into account whether "The development incorporates conservation activity that will have significant positive effects on biodiversity or natural character values", as was the intention of notified provisions.
1700. We consider these changes constitute partial alternative relief for the submissions of the *Yellow-eyed Penguin Trust* (OS690.10, OS690.12).
1701. The amendments required for this decision are as follows.
- Add new Rule 10.5.2.A (assessment of positive effects on biodiversity values or the natural character of the coast, for all restricted discretionary activities).
 - Delete Rule 10.4.2.1.c and replace with new Rules 10.4.3.A and 10.4.4.A.
1702. See Appendix 1 (amendments attributed to NatEnv 690.10 and 690.12).

3.7.5.5 Submissions requesting amendments to Objectives 10.2.3 and 10.2.5, and policies, to recognise the technical and locational requirements of network utilities

1703. *Vodafone NZ Ltd (Vodafone)* (OS576.62), *Spark New Zealand Trading Limited (Spark)* (OS923.62) and *Chorus New Zealand Limited (Chorus)* (OS925.62) requested that the Section 10 objectives and policies be amended as necessary to make "more reasonable and practical provision for network utilities that are required to be located within or traverse natural areas due to functional and operational reasons."
1704. The submitters requested that the following principles be considered in redrafting the provisions.
- *Functional and operational need to be located within or traverse the natural environment.*
 - *The economic, social and cultural benefits of providing the infrastructure, and the adverse effects if not provided.*
 - *If it is reasonably practicable to avoid the natural environment area.*

- *The type, scale and extent of adverse effects on the identified values of the natural area.*
 - *Whether any adverse effects are minimised to the extent practicable.*
1705. Spark's submission point was supported by *Radio New Zealand Ltd* (FS2332.14) and *Waste Management NZ Ltd* (FS2444.50).
1706. *Aurora Energy Limited (Aurora)* requested amendments to Policy 10.2.3.2 (OS457.30) and Policy 10.2.5.4 (OS457.31) – which apply to non-complying activities, including network utility structures – large scale, in, respectively, ONCCs/HNCCs and ONFs – to add the following text at the end of these policies:
- Where network utility activities are required to be located in these areas, due to technical or locational constraints, then potential adverse effects shall be remedied or mitigated.*
1707. Aurora also requested similar amendments to Policy 10.2.5.6 (OS457.32) and Policy 10.2.5.14 (OS457.33). Policy 10.2.5.6 applies to network utility activities that are restricted discretionary or discretionary in ONLs, while Policy 10.2.5.14 applies to network utility structure – small scale in ONFs that are not co-located with existing buildings or network utility structures. The submitter requested that the following wording be added at the end of the policies:
- In cases where there are specific locational requirements that mean the activity must occur in the areas where natural/influences are dominant, then emphasis will be given to opportunities to remedy or mitigate adverse effects on natural character.*
1708. Submission points OS457.30 and OS457.31 were supported by *Radio New Zealand Ltd* (FS2332.16; FS2332.17). Submission points OS457.31 and OS457.33 were opposed by *Harboursides and Peninsula Preservation Coalition* (FS2267.33; FS2267.29).
1709. These submissions were considered in the Network Utilities s42A Report. The Reporting Officer, Ms Jane Macleod, agreed with the submitters that amendments to certain Chapter 10 policies were necessary to provide a framework within which decision makers can balance consideration of the benefits of, and the constraints facing, network utilities, with consideration of the need to protect natural values.
1710. She recommended changes to Policies 10.2.3.10, 10.2.5.6 and 10.2.5.7 (relating to restricted discretionary or discretionary network utility activities in NCCs, ONLs and SNLs, respectively) to make an alternative, more lenient, effects test available to these activities where *there* were “no practicable alternative locations”. The alternative effects test recommended was “adverse effects [*on identified landscape/natural character values*] ... are adequately mitigated”.
1711. She did not recommend that this alternative test be made available for network utility activities in ONFs, ONCCs or HNCCs, on the basis of the high value and relatively small spatial extent of these areas (Network Utilities Section 42A Report, section 5.1.8).
1712. At the Network Utilities Hearing, Mr Chris Horne (planning consultant), called by *Vodafone*, *Spark* and *Chorus*, was of the view that the Reporting Officer's recommendations – particularly in relation to the larger overlays (i.e. ONLs and SNLs) – would “provide more flexibility in the policy framework to allow a more balanced consideration of providing for network utilities and ... protecting the values of those natural environments”. *Therefore*, he indicated that the recommendations were acceptable to the submitters (Evidence, p. 12, para. 35).

1713. Ms Joanne Dowd (network policy manager), representing *Aurora*, supported the Reporting Officer's *recommendations*, on the basis that they would achieve a similar outcome to that sought by *Aurora* (Evidence, p. 8, para. 26).

3.7.5.5.1 *Decision and Reasons*

1714. We note that the recommendations provided by Ms Macleod at the Network Utilities Hearing (in July 2016) were superseded by later advice from the Reporting Officers for the Natural Environment Hearing, which is discussed in section 3.7.5.2 above.
1715. We accept in part the submissions of *Vodafone* (OS576.62), *Spark* (OS923.62), *Chorus* (OS925.62) and *Aurora* (OS457.30-33). We have amended the policies that relate to network utility activities in landscape and coastal character overlays as set out in section 3.7.5.2, for reasons set out in that section, which take into account the evidence from submitters and the Reporting Officer discussed above. We consider that these decisions give partial relief to the submissions.
1716. We note that our decisions on policies that manage network utility activities in ASBVs (i.e. deletion of Policy 10.2.1.10, and amendment of Policy 10.2.1.2) are also relevant to the submissions from *Vodafone* (OS576.62), *Spark* (OS923.62) and *Chorus* (OS925.62). We consider that our decisions on these policies, discussed in section 3.6.6, also give partial relief to these submissions.

3.7.6 Submissions on Objective 10.2.3 and related policies

3.7.6.1 Background

1717. Objective 10.2.3 states: "Areas of outstanding natural coastal character (ONCC), high natural coastal character (HNCC), and natural coastal character (NCC) are protected from inappropriate use and development and their values, as identified in Appendix A5, are maintained or enhanced."
1718. Policies sitting beneath Objective 10.2.3 manage the adverse effects on identified values of activities in ONCCs, HNCCs and NCCs, in order to achieve this objective.
1719. Sections 3.7.6.2 to 3.7.6.10, below, discuss submissions relating to specific aspects of Objective 10.2.3 and its policies. These sections should be read in conjunction with section 3.7.5.2, above, which addresses more general drafting and structural issues with the policies associated with both Objective 10.2.3 and Objective 10.2.5.

3.7.6.2 Submissions in support

1720. *Aurora Energy Limited* (OS457.55) sought that Policy 10.2.3.10 be retained, but noted that it is not always possible to locate regionally significant infrastructure in areas with least visibility.
1721. Although recommending that Policy 10.2.3.10 be removed, the Reporting Officer considered that his other recommendations were consistent with the point made by *Aurora Energy Limited* - amendment of Policy 10.2.3.4 to apply to all restricted discretionary and discretionary activities in NCC overlay zones, including the utilities activities previously included in Policy 10.2.3.10, and amendment of the policy test to "avoided or, if avoidance is not possible, adequately mitigated". He considered that the term "adequately" provides for consideration of the technical and operational requirements that influence the location of utilities (Section 42A Report, section 5.4.18).

3.7.6.2.1 *Decision and Reasons*

1722. We accept in part the submission of *Aurora Energy Limited* (OS457.55).

1723. As discussed in section 3.7.5.2, although we have deleted Policy 10.2.3.10, all affected network utility activities have been incorporated into new Policy 10.2.3.Y, which provides an alternative “adequately mitigated” policy test for situations in which there are “no practicable alternative locations”. We consider this constitutes acceptance in part of this submission.

3.7.6.3 Submissions seeking to replace “maintain” or “maintained” with “preserve” or “preserved” in Objective 10.2.3 and Policy 10.2.3.7

1724. *STOP* (OS900.44) and *Forest and Bird NZ* (OS958.37) sought replacement of “maintained” with “preserved” in Objective 10.2.3. *STOP* (OS900.50) and *Forest and Bird NZ* (OS958.43) sought replacement of “maintain and enhance” with “preserve and enhance” in Policy 10.2.3.7. They considered the provisions did not meet the requirements of the NZCPS or Part 2 of the RMA.
1725. *Geoff Scurr Contracting Limited* (FS2391.121, FS2391.122) opposed the submissions of *STOP* (OS900.44, OS900.50) because of concern about the implications of the term “preserve” in the context of the plan and the belief that definitions may be required. *Federated Farmers of New Zealand* (FS2449.113, FS2449.115) opposed the submissions of both *STOP* (OS900.44) and *Forest and Bird NZ* (OS958.37), and (FS2449.131, FS2449.132) the submissions of *STOP* (OS900.50) and *Forest and Bird NZ* (OS958.43) as they believed that biodiversity values are covered elsewhere and that maintenance is the more appropriate and accepted term under the RMA.
1726. The Reporting Officer did not support the suggested change from ‘maintain’/‘maintained’ to ‘preserve’/‘preserved’, either in relation to Objective 10.2.3 or Policy 10.2.3.7. He considered the more absolute connotations of ‘preserve’ more appropriate at the strategic level, but that elsewhere (especially in conjunction with ‘values’), ‘maintain’ allowed for variation in quality of natural character, in the sense that preservation may not be appropriate where natural character is poor. He also stated that it was problematic in respect of biodiversity values, which are prone to change. He did however note that Policy 3.2.9 and 3.2.10 of the pORPS-dv specifies “preserve or enhance” natural character in relation to outstanding or high natural character areas of the coast.

3.7.6.3.1 *Decision and Reasons*

1727. We accept the submissions of *STOP* (OS900.44, OS900.50) and *Forest and Bird NZ* (OS958.37, OS958.43). In addition to use of “preserve” in Policy 13 of the NZCPS, we note the Reporting Officer’s evidence that Policy 3.2.9 and 3.2.10 of the pORPS-dv specify “preserve or enhance” natural character in relation to outstanding or high natural character areas of the coast.
1728. In response to these submissions, to give effect to Policy 13 of the NZCPS and to have regard to the pORPS-dv, we have:
- amended Objective 10.2.3 to use the word “preserved” rather than “maintained”, and
 - amended Policy 10.2.3.7 to replace “maintain and enhance” with “preserve and enhance”.
1729. See Appendix 1.

3.7.6.4 Submissions seeking to amend Policy 10.2.3.1

1730. *HPPC* (OS447.18) and *STOP* (OS900.45) sought to amend Policy 10.2.3.1 by appending the following: “Buildings and structures too densely developed have the potential to have significant adverse effects on the value of coastal character.”

Therefore, in ONCC, HNCC and NCC, a greater than 10% contravention of density and minimum site size performance standards outlined in the 2GP Section 16 and 17 would be contrary to the Objectives and Policies of the District Plan and therefore, shall be avoided.” The submitters state the “protection of landscapes requires certain rules regarding buildings and structures which, if contravened, create a non-complying activity that is contrary in a defined manner. This will serve to secure the application of upper limits and insure that precautionary principles apply in Dunedin’s most important natural places, defined by landscape, coastal overlays etc.” *Federated Farmers of New Zealand* (FS2449.117, FS2449.118) opposed this amendment because they believed the provisions too specific and complex for a policy, and overall too restrictive to be workable. It was also opposed by *Geoff Scurr Contracting Limited* (FS2391.117) because of concern about the implications of the word “avoid” in the context of the Plan, and they believe definitions may be required.

1731. The Reporting Officer assumed the requested contravention of density and minimum site size standards related to residential activity, which is non-complying in ONCC and HNCC overlay zones. He noted the strict “no material effects” policy test associated with this, and stated that it was difficult to see how the requested relief could be granted unless the activity became prohibited. He noted that, whilst residential activity is permitted in NCC overlay zones, contravention of density and minimum site size provisions is non-complying, which he considered appropriate. As such, he did not recommend that the policy be amended as requested.
1732. In a statement provided at the hearing by *HPPC* representative Mr Werner, it was stated that conditions for non-complying activities should meet the Plan performance standards specified for activities with less stringent activity statuses. He further stated that there was a need to change from “subjective” wording to “objective” wording, given that the former “politicises the consent hearing process as councillors with differing views can choose to support outcomes that are far from ‘best practice’” and can allow applicants to “concoct specious arguments”. *HPPC* considered that the 2GP “represents mere suggestions that are open for inconsistent interpretation”, and explained that this was the rationale for seeking a range of amendments to wording, including the specification of non-complying activity status associated with contravention of certain standards.
1733. The *Otago Peninsula Community Board* (OS588.2) sought to amend Policy 10.2.3.1 to provide for structures associated with tourism, visitor accommodation and farming, concerned that the policy “may have limitations on the development of eco-tourism and accommodation operations”, and farming operations, and that “care needs to be taken that the rules do not limit suitable and sympathetic development”.
1734. *Federated Farmers of New Zealand* (OS919.27) sought to amend Policy 10.2.3.1 to read “Limit The potential adverse effects of rural and community activities in the on Outstanding Natural Coastal Character (ONCC) and High Natural Coastal Character (HNCC) overlay zones are appropriately managed to those which do not require buildings or involve a change to the landform.” The submitter believes that the policy was very onerous and that some rural buildings, or rural practices which require smaller scale buildings, may be compatible with these coastal environments. Where there is some risk to the natural character of these areas, *Federated Farmers of New Zealand* submitted the focus should be on effectively managing these risks rather than limiting land use altogether. This submission was opposed by *Forest and Bird NZ* (FS2482.24) stating that the amendments sought were not consistent with the purpose of Part 2 of the RMA or the provisions of the 2GP, or the NCPS.
1735. The Reporting Officer noted that farming and rural tourism – small scale are permitted activities in ONCC and HNCC overlay zones. However, he considered that it is expected that any associated buildings should be accommodated outside of

ONCC/HNCC overlay zones, given the small and typically pristine nature of these areas means that development would be inappropriate. He therefore did not support the amendments promoted by the *Otago Peninsula Community Board* or *Federated Farmers of New Zealand*, but noted he was recommending a change to Policy 10.2.3.1 to an “enable” policy so it no longer applies to activities that require consent, as it is not linked to assessment rules, is inconsistent with Policy 10.2.3.2, is unclear, and there is no scope to remove it (Section 42A Report, section 5.4.14).

1736. His recommended change to Policy 10.2.3.1 in response to OS919.27 was (Section 42A Report, section 5.4.12):

~~Limit rural and community activities in the Outstanding Natural Coastal Character (ONCC) and High Natural Coastal Character (HNCC) overlay zones to those which do not require buildings or involve a change to the landform. Enable rural and community activities in the Outstanding Natural Coastal Character (ONCC) and High Natural Coastal Character (HNCC) overlay zones that do not require buildings or involve a change to the landform.~~

3.7.6.4.1 *Decision and Reasons*

1737. We reject the submissions of *HPPC* (OS447.18) and *STOP* (OS900.45). As discussed elsewhere, we consider it is neither necessary nor appropriate to link non-complying activities with performance standards, as performance standards do not apply to non-complying activities. We accept the Reporting Officer's evidence that given buildings and structures in ONCCs are subject to non-complying activity status and a strict policy test, that any 'higher test' would be a prohibited activity status, which does not appear to be sought by the submitter. We consider non-complying activity status for contraventions of residential density and minimum site size provisions appropriate in NCC overlay zones, and consider that this (in conjunction with other performance standards) constitutes an appropriate level of protection for natural character values from the potential effects of residential development.
1738. We accept in part the submissions of *Otago Peninsula Community Board* (OS588.2) and *Federated Farmers of New Zealand* (OS919.27). Appendix A5 specifically lists Buildings and Structures as a principal threat to the values of all ONCCs/HNCCs, and we therefore consider it appropriate that these activities are non-complying and subject to a stringent policy test in these spatially restricted, high value overlay zones. We accept the Reporting Officer's evidence that buildings associated with permitted land use activities should be discouraged from locating in ONCCs/HNCCs, and that this does not seem unreasonable, given the typically small size of these overlay areas. Notwithstanding this, we note it is possible that consent for a Building or Structure may be granted in these overlay zones, and agree that the wording of Policy 10.2.3.1 creates uncertainty in this regard.
1739. As discussed in section 3.7.5.2, we also accept the Reporting Officer's evidence that Policy 10.2.3.1 is unclear, not linked to assessment rules, inconsistent with the 2GP drafting protocol, and inconsistent with Policy 10.2.3.2. Further, we note there is no equivalent policy relating to permitted activities in NCC overlay zones, and consider it unusual to include a policy relating to permitted activities with provisions for landscape and coastal character overlay zones (which usually lay out the additional restrictions that apply). We note there are provisions in both the Rural and Rural Residential sections of the 2GP that relate to permitted activities, which perform the function of introducing permitted activities.
1740. We do not consider that the amendments recommended by the Reporting Officer improve the clarity of the policy, as they suggest activities that do not involve Buildings and Structures or modification of the landform are permitted, when that is not the case (e.g. Forestry is non-complying). Further, some modification of the

landform is in fact permitted, with Earthworks – Small Scale permitted in these overlay zones subject to certain scale thresholds and performance standards.

1741. As discussed in section 3.7.5.2, we consider there is scope to delete Policy 10.2.3.1 as a consequential amendment associated with the inclusion of all non-complying activities in ONCCs/HNCCs in Policy 10.2.3.2, in response to the submissions of *STOP* (OS900.46) and *Forest and Bird NZ* (OS958.39). We consider the intended function of Policy 10.2.3.1 is achieved by the amended Policy 10.2.3.2, and that the consequential deletion of Policy 10.2.3.1 both removes inconsistency and improves the clarity of provisions. We consider deletion of the policy constitutes partial alternative relief for the submissions of *Otago Peninsula Community Board* (OS588.2) and *Federated Farmers of New Zealand* (OS919.27), as it clarifies the policy framework and ensures it is no more restrictive than the rules themselves.

3.7.6.5 Submission seeking to amend policy 10.2.3.2 to specify mitigation standards and require contraventions to be avoided

1742. *HPPC* (OS447.19) sought to amend Policy 10.2.3.2 by appending the following words:
- “Building and structures have the potential to have significant adverse effects on the value of coastal character. Therefore, building and structures in the ONCC and HNCC which contravene performance standards for building size and quantity, building structure and screening, landscape building platform, indigenous vegetation removal, or reflectivity would be contrary to the objectives and policies of the District Plan (10.2 and 16.2) and therefore shall be avoided.”
1743. The submitter was of the view that upper limit definitions are needed for vague terms such as “insignificant”, and that protection of landscapes requires certain rules regarding buildings and structures which, if contravened, create a non-complying activity that is contrary in a defined manner. This would, in their view, serve to secure the application of upper limits and ensure that precautionary principles apply in Dunedin’s most important natural places. *Federated Farmers of New Zealand* (FS2449.120) opposed this, stating that the amendment was unnecessary and an incoherent addition, and that some buildings will be required in coastal areas.
1744. In the Section 42A Report, the Reporting Officer explained that, as buildings and structures are non-complying activities in ONCC and HNCC overlay zones, the suggested amendment is unnecessary, because performance standards do not apply.
1745. In a statement provided at the hearing by *HPPC* representative Mr Werner, it was stated that conditions for non-complying activities should meet the Plan performance standards specified for activities with less stringent activity statuses. He further stated that there was a need to change from “subjective” wording to “objective” wording, given that the former “politicises the consent hearing process as councillors with differing views can choose to support outcomes that are far from ‘best practice’” and can allow applicants to “concoct specious arguments”. *HPPC* considered that the 2GP “represents mere suggestions that are open for inconsistent interpretation”, and explained that this was the rationale for seeking a range of amendments to wording, including the specification of non-complying activity status associated with contravention of certain standards. In relation to Policy 10.2.3.2, what was sought was a “‘higher test’ beyond either ‘non-complying’ activity status or s142 assessment.
1746. In his right of reply, the Reporting Officer reiterated that in his view the suggested amendment to 10.2.3.2 did not make sense, as performance standards do not apply where activities are non-complying. The ‘higher test’ sought by the submitter would be prohibited activity status, and he did not favour this as he believed there may be exceptional circumstances where small buildings or structures may be tolerated in ONCCs and HNCCs.

3.7.6.5.1 *Decision and Reasons*

1747. We reject the submission of *HPPC* (OS447.19). We accept the Reporting Officer's evidence that it is neither necessary nor appropriate to link non-complying activities with performance standards, as performance standards do not apply to non-complying activities. We accept the Reporting Officer's evidence that given buildings and structures in ONCCs/HNCCs are subject to non-complying activity status and a strict policy test, that any 'higher test' would be a prohibited activity status, which does not appear to be sought by the submitter in relation to buildings and structures activities in ONCCs/HNCCs.

3.7.6.6 Submissions seeking amendments to policies 10.2.3.2, 10.2.3.3, 10.2.3.4, and 10.2.3.5 give effect to NZCPS Policy 13

1748. The *Department of Conservation* (OS949.16, OS949.17, OS949.18, OS949.19) requested that Policies 10.2.3.2, 10.2.3.3, 10.2.3.4, and 10.2.3.5 be amended to give effect to the NZCPS Policy 13, to avoid adverse effects on areas of outstanding natural character and avoid significant adverse effects on natural character in all other areas of the coastal environment. *Forest and Bird NZ* (FS2482.38, FS2482.39, FS2482.40, FS2482.41) supported each of these submission points.

1749. With respect to these submissions, the Reporting Officer expressed a view that the suite of policies under Objective 10.2.3, taken together, give effect to Policy 13 of the NZCPS. He explained that they are directive in respect of the activities that are anticipated in the coastal character overlay zones, as well as specifying the level of effects that will be tolerated in the different coastal character overlay zones. Rather than merely restating the RMA or the NZCPS, he considered that this policy set provides clarity and certainty to Plan users as to what is expected in these overlay zones. In particular, he was of the view that "no material effects", used in Policy 10.2.3.2, corresponds with a very low tolerance of effects under the 2GP drafting protocol, which gives effect to NZCPS Policy 13 through stipulating the avoidance of adverse effects on natural character.

1750. In evidence at the hearing, Ms Nardia Yozin, called by the *Department of Conservation*, questioned whether the amendments to Policies 10.2.3.3 and 10.2.3.4 recommended by the Reporting Officer in his Section 42A Report were consistent with the NZCPS Policy 13 (including its requirement to consider effects on ecology as part of natural character) and Policy 11 (which seeks to avoid adverse effects on significant indigenous biodiversity). She stated that the NZCPS "clearly directs that the effects of activities, where they are significant on any values, or cause adverse effects on significant or outstanding values, are to be avoided". She recommended the wording of both policies be amended to avoid adverse effects on outstanding or high natural character values, avoid significant adverse effects on natural character values, and avoid, remedy or mitigate other adverse effects.

1751. In his right of reply, the Reporting Officer restated his view that the policies as amended were consistent with the 2GP drafting protocol for restricted discretionary and discretionary activities. He noted that the effects test "no more than minor" reflects the RMA s104D non-complying 'gateway' test, and that this relates to the values in Appendix A5 (which equate to outstanding or high natural character values). He reflected on the *King Salmon* case²⁷ and the associated interpretation of "avoid", noting it occurred after the adoption of the NZCPS. Whilst stating that he considered the "no more than minor" wording recommended for Policy 10.2.3.3 provided an adequately stringent test to meet the NZCPS requirement and that it was his preference, he accepted that even minor adverse effects may be unacceptable in an

²⁷ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38

ONCC or HNCC if they relate to significant or outstanding values, given the directive nature of the NZCPS. He stated that the Panel had the option of reverting to the notified wording, and also verbally presented a third option, that being an amendment to focus the policy on outcomes (“natural character values...are maintained or enhanced”).

3.7.6.6.1 *Decision and Reasons*

1752. We reject the submissions of the *Department of Conservation* (OS949.16, OS949.17 and OS949.18) and accept the submission of the *Department of Conservation* (OS949.19).
1753. We accept the evidence of Ms Yozin that the NZCPS is directive in relation to avoidance of effects where they are significant on any values, or cause adverse effects on significant or outstanding values. We accept that policies relating to coastal character overlay zones must give effect to the NZCPS, irrespective of the type of activity they relate to, or the activity status of that activity.
1754. We note (as discussed in Section 3.3 of the Section 42A Report) that the pORPS-dv is also directive in relation to avoidance of adverse effects on the values that contribute to the outstanding natural character of an area, and in relation to avoidance of significant adverse effects on the values that contribute to the high natural character of an area (Policy 3.2.9 and Policy 3.2.10). Both the NZCPS and the pORPS-dv state that other effects should be avoided, remedied or mitigated.
1755. As discussed in the Plan Overview Decision Report, we accept that under the 2GP drafting protocol, the ‘action word’ at the front end of the policy and the ‘policy test’ at the end of the policy perform different functions.
1756. We generally accept the Reporting Officer’s evidence regarding the “action word” at the beginning of the policies, and therefore reject the submissions of the *Department of Conservation* insofar as it sought amendment to these. The protocol draws a link between the action word and the activity status of the activities listed in the policy. “Avoid” is used where the policy relates to non-complying activities. “Only allow” is used in relation to discretionary or restricted discretionary activities, and policies that commence with “Avoid” and are not qualified with a policy test are associated with a prohibited activity status. We accept that all four policies are consistent with the 2GP drafting protocol insofar as the ‘action word’ is concerned. We accept that the policies take this approach in order to be directive in respect of the activities that are anticipated in the coastal character overlay zones. We consider that it is in the interests of Plan clarity for policy wording to adhere to the 2GP drafting protocol, so long as the overall policy framework fulfils the intent of the NZCPS.
1757. In relation to the ‘policy test’ part of the policies, we accept the Reporting Officer’s evidence that by being effects-based, these are intended to provide clarity and certainty to Plan users as to what is expected in these overlay zones. We do consider that reframing policy tests around outcomes would fail to provide the clear activity-specific direction that the 2GP drafting protocol seeks to achieve. We do however accept the *Department of Conservation*’s submission that the ‘policy test’ specifying the level of effects that will be tolerated is inconsistent with the NZCPS in the case of Policy 10.2.3.5. We now discuss each policy in turn.
1758. In relation to Policy 10.2.3.2 (which relates to non-complying activities in ONCCs and HNCCs), we accept the Reporting Officer’s evidence that the strict “no material effects” policy test corresponds with a very low tolerance of effects under the 2GP drafting protocol, and is therefore in line with the intent of the NZCPS. We consider this remains the case with the policy test amended to “insignificant” (as outlined in the Plan Overview Decision Report), as the tests hold equivalent status under the 2GP

drafting protocol. We therefore do not consider an amendment is necessary to achieve the outcome sought by the *Department of Conservation* (OS949.16), nor do we support the amendments promoted by Ms Yozin at the hearing, as they are not in line with the 2GP drafting protocol, and as stated above we consider it beneficial for policy wording to adhere to the 2GP drafting protocol, as long as the overall policy framework fulfils the intent of the NZCPS.

1759. In relation to Policy 10.2.3.3 (which relates to restricted discretionary and discretionary activities in ONCCs and HNCCs), we consider that higher order policy direction suggests a strict policy test should be applied to all activities in ONCCs and HNCCs (noting these areas have been identified as having outstanding or high coastal character following an assessment against criteria that substantially align with those specified in Policy 13 of the NZCPS, and Policy 3.2.8 of the pORPS-dv). We agree with Ms Yozin's assessment that the Reporting Officer's suggested amendments to Policy 10.2.3.3 are not in line with the NZCPS, and prefer the notified "insignificant" policy test over the "no more than minor" policy test recommended by the Reporting Officer. We do not consider that this is overly onerous, noting the very limited spatial extent of these overlay zones (0.1% and 0.3% of the city's land area) and their "outstanding" or "high" values. We therefore do not consider an amendment is necessary to achieve the outcome sought by the *Department of Conservation* (OS949.17).
1760. In relation to Policy 10.2.3.4, which relates to restricted discretionary and discretionary activities in NCCs, we note that these areas of the coastal environment have been assessed as having natural character values of at least medium, and that they are relatively restricted in spatial extent, covering just 0.5% of the city's land area. A number of the activities addressed by this policy (e.g. buildings and structures, earthworks, and indigenous vegetation clearance) are identified in Appendix A5 as principal threats to the values of the coastal character overlay zones. In this context, we accept Ms Yozin's evidence that the "adequately mitigated" policy test recommended by the Reporting Officer is insufficiently strong to protect the values of these areas in line with higher order policy direction, and prefer the notified "no more than minor" policy test. We consider this sufficient to give effect to the NZCPS, and therefore do not consider an amendment is necessary to achieve the outcome sought by the *Department of Conservation* (OS949.17). In addition, we note that, as a result of a decision outlined in the Plan Overview Decision Report, amendments have been made to bring the policy into line with the standard drafting protocol, amending "can" to "will", "possible" to "practicable", and deleting the word "be".
1761. In relation to Policy 10.2.3.5, in addition to the clarity issues discussed in section 3.7.5.2, we consider that, insofar as it relates to Transportation and Public Amenities activities in ONCCs and HNCCs, the policy test is insufficient to meet the provisions of the NZCPS. Given the areas' "outstanding" and "high" values, we consider these activities should be required to meet a strict "insignificant" policy test. Due to the areas' particularly restricted spatial extent, we do not consider this overly onerous. We do, however, accept that it is appropriate to provide an alternative "adequately mitigated" policy test in situations in which there are "no practicable alternative locations":
 - for Natural Hazard Mitigation activities in ONCCs/HNCCs (through new Policy 10.2.3.X, discussed in 3.7.5.2), and
 - for Public Amenities, Natural Hazard Mitigation and Transportation activities in NCCs (through new Policy 10.2.3.Y, discussed in 3.7.5.2).
1762. In the case of Natural Hazard Mitigation activities in coastal character overlay zones, this is because both "preservation of the natural character of the coastal environment"

and “management of significant risks from natural hazards” are afforded the same status as matters of national importance under s6 of the RMA (as noted in Section 3.3 of the Section 42A Report). In addition, we consider Natural Hazard Mitigation activities are highly likely to be constrained with respect to location.

1763. In the case of Public Amenities and Transportation activities in NCCs, we note Appendix A5 acknowledges the presence of significant roading infrastructure in some of the NCC overlay zones, most notably along the Brighton Coast. We also consider public amenities are likely to support public access requirements in parts of the NCC overlay zone (in line with s6(d) of the RMA). Given that this infrastructure serves specific geographic communities and/or supports public enjoyment of specific areas, it is likely that there will be constraints with respect to location that should be taken into account in any assessment of effects.
1764. In response to the submissions of *Department of Conservation* (OS949.19), we have therefore amended Policy 10.2.3.3 (which relates to restricted discretionary and discretionary activities in ONCCs/HNCCs) to include reference to Transportation and Public Amenities activities.

3.7.6.7 Submissions seeking to amend policies 10.2.3.2, 10.2.3.3, 10.2.3.4, 10.2.3.5, 10.2.3.10 and 10.2.3.11: to include “biodiversity values”; to “avoid” land use and development activities in ONCCs/HNCCs unless there are “no adverse effects”; and to “avoid” land use and development activities in NCCs unless there are “no material effects”

1765. Submissions of *Forest and Bird NZ* (OS958.39, OS958.40, OS958.41) and *STOP* (OS900.46, OS900.47, OS900.48) stated that policies 10.2.3.2, 10.2.3.3, 10.2.3.4, 10.2.3.5, 10.2.3.10 and 10.2.3.11 did not meet the requirements of the NZCPS or Part 2 of the RMA. Specifically, they sought the following amendments:
 - *STOP* (OS900.46) and *Forest and Bird NZ* (OS958.39) sought to amend Policy 10.2.3.2 to “Avoid land use and development including but not limited to: forestry, new or additions to buildings and structures...” unless there are “no ~~material effects on the~~ adverse effects on natural character and biodiversity values...”
 - *STOP* (OS900.47) and *Forest and Bird NZ* (OS958.40) sought to amend Policy 10.2.3.3 as follows: “~~Only allow~~ Avoid indigenous vegetation clearance, tree planting, ~~new network utilities or additions to network utilities,~~ and earthworks ~~—large scale~~ in the Outstanding Natural Coastal Character (ONCC) and High Natural Coastal Character (HNCC) overlay zones ~~where unless there are no~~ adverse effects on the biodiversity and natural character values identified in Appendix A5.~~are insignificant.~~”. This was supported by the *Department of Conservation* (FS2379.4), who stated it would better give effect to the NZCPS.
 - *STOP* (OS900.48) and *Forest and Bird NZ* (OS958.41) sought that policies 10.2.3.4, 10.2.3.10 and 10.2.3.11 be combined into one policy requiring that all land use and development activities to be avoided unless there are no material effects on either natural character or biodiversity values. If separate policies 10.2.3.4 and 10.2.3.10 are retained, the submitters sought that the wording of these policies be amended as follows: “only allow [the various activities in question] where adverse effects... can be avoided or, if avoidance is not possible, be no more than minor, and can be remedied or mitigated.”
1766. *STOP* and *Forest and Bird NZ* expressed concern about Policy 10.2.3.2 being limited to the activities specified. They stated it is not possible to anticipate all potential

activities that may have adverse effects in these zones, considering that all activities that involve modification of natural character values and clearance of indigenous vegetation should be avoided in ONCCs/HNCCs and that “needs to be clearer in this suite of policies” (Natural Environment Section 42A Report, Section 5.4.15, p191).

1767. They expressed concern that Policy 10.2.3.3 could conflict with Policy 10.2.3.2, as most of the activities were likely to require vegetation clearance. They considered that all activities in ONCCs and HNCCs should have the same test (Natural Environment Section 42A Report, Section 5.4.16, p194). They also stated it is not clear why there are different policy tests for different activities (Natural Environment Section 42A Report, Section 5.4.17, p199).
1768. The submissions of *STOP* and *Forest and Bird NZ* were variously opposed by *Geoff Scurr Contracting Limited* (FS2391.58, FS2391.59, FS2391.57), *Waste Management (NZ) Limited* (FS2444.41) and *Federated Farmers of New Zealand* (FS2449.121, FS449.122, FS449.123, FS449.124, FS449.126, FS449.127). *Geoff Scurr Contracting Limited* considered that encompassing all land uses and development was too broad. *Federated Farmers of New Zealand* generally considered the amendments inappropriate, and that it was against the purpose and principles of the RMA to avoid all land use in ONCCs and HNCCs unless there were no adverse effects (in the context of the *King Salmon* case²⁸ interpretation of ‘avoid’ as ‘prohibit’). They suggested that biodiversity values are covered elsewhere. The further submitters specifically raised concerns about the promotion of stronger policy tests in relation to Tree Planting, Vegetation Clearance and Earthworks – Small Scale.
1769. With respect to these submissions, the Reporting Officer noted that some land use and development activities, where they may be supportive of - or not detract from - natural character values, are permitted in ONCCs and HNCCs (e.g. grazing, farming, etc). He did not agree that the activities in Policy 10.2.3.2 would necessarily require vegetation clearance (as some are already grazed pasture). Notwithstanding the above, he suggested amendments to Policy 10.2.3.2 and 10.2.3.3 did provide some relief to these submitters, by incorporating some rural activities such as Forestry (implicitly covered by Policy 10.2.3.1) within Policy 10.2.3.2, thus ensuring that they were subject to a stringent policy test.
1770. He did not consider that the Policy 10.2.3.3 should be amended to an “Avoid” policy, as he felt the wording appropriately recognised the restricted discretionary and discretionary status of the activities listed, as per the 2GP drafting protocol. He did not support applying the single “Avoid...unless” policy test to all land use and development activities in NCC overlays, because under the 2GP drafting protocol it would imply that these activities are non-complying in NCC overlay zones (when they are variously permitted, restricted discretionary, discretionary or non-complying). He noted he was recommending the removal of Policy 10.2.3.10, with the activities it addresses combined into Policy 10.2.3.4. He considered that Policy 10.2.3.11 should remain as a separate policy as it addresses non-complying activities in NCC overlay zones. He also noted recommended changes to the policy tests in policies 10.2.3.4 and 10.2.3.11. He did not support the alternative phrasing as suggested by the submitters for policies 10.2.3.4 and 10.2.3.11 as, despite giving some preference for avoidance of effects, it does not give any preference between remediation and mitigation, and also does not give any guidance as to an acceptable level of mitigation.
1771. The Reporting Officer did not support the inclusion of ‘biodiversity values’ in the policy suite as he felt it would detract from Plan clarity, suggesting instead that ecological aspects are a component of natural character values and are listed in Appendix A5. He

²⁸ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38

noted that Policy 10.2.2.2 manages the effect of buildings, structures and network activities on the biodiversity and natural character values of coastal margins, regardless of whether they are in coastal character overlay zones.

1772. In evidence at the hearing, Ms Nardia Yozin, planner called by the *Department of Conservation*, questioned whether the amendments to Policies 10.2.3.3 and 10.2.3.4 recommended by the Reporting Officer in his Section 42A Report were consistent with the NZCPS Policy 13 (including its requirement to consider effects on ecology as part of natural character) and Policy 11 (which seeks to avoid adverse effects on significant indigenous biodiversity). She stated that the NZCPS “clearly directs that the effects of activities, where they are significant on any values, or cause adverse effects on significant or outstanding values, are to be avoided”. She recommended the wording of both policies be amended to avoid adverse effects on outstanding or high natural character values, avoid significant adverse effects on natural character values, and avoid, remedy or mitigate other adverse effects.
1773. *Federated Farmers of New Zealand*, represented at the hearing by Mr Cooper, supported the recommended wording in Policy 10.2.3.3.
1774. In his right of reply, the Reporting Officer restated his view that the policies as amended were consistent with the 2GP drafting protocol for restricted discretionary and discretionary activities. He noted that the effects test “no more than minor” reflects the RMA s104D non-complying ‘gateway’ test, and that this relates to the values in Appendix A5 (which equate to outstanding or high natural character values). He reflected on the *King Salmon* case²⁹ and the associated interpretation of “avoid”, noting it occurred after the adoption of the NZCPS. Whilst stating that he considered the “no more than minor” wording recommended for Policy 10.2.3.3 provided an adequately stringent test to meet the NZCPS requirement and that it was his preference, he accepted that even minor adverse effects may be unacceptable in an ONCC or HNCC if they relate to significant or outstanding values, given the directive nature of the NZCPS. He stated that the Panel had the option of reverting to the notified wording, and also verbally presented a third option, that being an amendment to focus the policy on outcomes (“natural character values...are maintained or enhanced”).

3.7.6.7.1 *Decision and Reasons*

1775. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
1776. We accept in part the submissions of *STOP* (OS900.46, OS900.47, OS900.48) and *Forest and Bird NZ* (OS958.39, OS958.40, OS958.41) insofar as they sought addition of the words “biodiversity values” to policies 10.2.3.2, 10.2.3.3, 10.2.3.4, 10.2.3.10 and 10.2.3.11.
1777. We accept the Reporting Officer’s evidence that natural character values incorporate biophysical and ecological aspects, and note that Appendix A5 lists ecological aspects associated with coastal character overlay zones. However, we do not consider this gives sufficient effect to the detailed and specific requirements of NZCPS Policy 11, which is directive in relation to the avoidance of effects on specified significant indigenous biodiversity in the coastal environment, and states that significant adverse effects on other specified aspects of indigenous biodiversity should be avoided, and other effects on those values avoided, remedied or mitigated.

²⁹ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38

1778. Our assessment is that Policy 10.2.2.2 does not achieve the outcome sought by the submitter, as it is implemented by way of a performance standard requiring specified activities to be set back 20m from mean high water springs, and is limited not only to the five activities that it manages, but also in its spatial extent (it does not apply throughout the coastal environment). We note that other policies under Objective 10.2.2 also seek to manage the effects of activities on biodiversity values and natural character values (for example the effects of vegetation clearance through Policy 10.2.2.3, and subdivision through Policy 10.2.2.5), but these are also limited in their application.
1779. However, we do not support adding “biodiversity values” into policies under Objective 10.2.3, as promoted by the submitters. As Objective 10.2.3 relates to “natural character values” only, we consider it would detract from the clarity of the plan for policies under Objective 10.2.3 to refer also to “biodiversity values”. In addition, coastal character overlay zones have been identified and assessed based on their overall natural character values, not necessarily because the biodiversity values of any given overlay zone are significant.
1780. We do agree, however, that there is a need for more specific consideration of effects on biodiversity associated with activities in coastal character overlay zones, and note that a range of amendments, documented elsewhere in this decision, help achieve this:
- As discussed in section 3.6.1.7, we have added new Policy 10.2.1.W, which refers to “land use, development and city wide activities” and to provides for them only where “biodiversity values are maintained or enhanced”, and amends a number of assessment rules to refer to this policy, including: assessment rules for discretionary and non-complying activities in Section 5 (Network Utilities), Section 10 (Natural Environment), Section 16 (Rural Zones), Section 17 (Rural Residential Zones), Section 20 (Recreation Zones); assessment rules for discretionary activities in Section 8 (Natural Hazard Mitigation Activities); and new Rule 10.5.2.B, relating to the assessment of Earthworks – Large Scale in the Rural Zones.
 - As outlined in section 3.3.1.3, we have introduced new Policy 10.2.1.X (relating to effects on biodiversity values in areas of significant indigenous vegetation and significant habitats of indigenous fauna outside of ASBVs), amended assessment rules 10.4.3.1, 10.4.3.2, 10.4.3.4, 10.4.3.5, 10.4.3.10, 10.4.3.11, 10.4.4.6, 10.5.2.1, 10.5.2.B, 10.5.2.C, 10.5.2.3, 10.5.2.4, 10.5.2.5, 10.5.2.10, 10.6.2.1 and 10.7.2.1 to refer to this new policy, and added assessment guidance to clarify that, in assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one of more of the criteria set out in Policy 2.2.3.1. As set out in section 3.3.1.3, we have also added assessment guidance to Rule 10.5.A.1 (which applies to all restricted discretionary activities) to state that: ‘For those activities for which effects on the natural character of the coast is a matter of discretion, Council will consider the natural character values that have been identified in Appendix A5, which include biodiversity values among others. These values may not be comprehensive, as they are not based on site-specific assessments. Therefore, a more detailed assessment may be required, under Policy 10.2.1.X, to determine the effects of activities on areas of significant indigenous vegetation and significant habitats of indigenous fauna.’
1781. Taken together these amendments mean that activities in coastal character overlay zones that have the potential to result in adverse effects on biodiversity values will be subject to an assessment of those effects, including whether the values of the area affected meet significance criteria. We also consider they provide a policy framework to maintain and enhance biodiversity values, and to protect areas of significant

indigenous vegetation and significant habitats of indigenous fauna, consistent with Policy 11 of the NZCPS. We note that the significance criteria outlined in Policy 2.2.3.1 (discussed elsewhere in this Decision Report) largely encompass the elements of indigenous biodiversity outlined in NZCPS Policy 11(a). We therefore consider these amendments constitute partial alternative relief to the submissions of *STOP* (OS900.46, OS900.47, OS900.48) and *Forest and Bird NZ* (OS958.39, OS958.40, OS958.41) insofar as they sought addition of the words “biodiversity values” to policies 10.2.3.2, 10.2.3.3, 10.2.3.4, 10.2.3.10 and 10.2.3.11.

1782. We did not accept parts of the submissions of *STOP* (OS900.46, OS900.47) and *Forest and Bird NZ* (OS958.39, OS958.40) insofar as they sought an “avoid...unless no adverse effects” policy wording for policies 10.2.3.2 and 10.2.3.3, for reasons outlined in section 3.7.6.6 in response to the submissions of the *Department of Conservation* (OS949.16, OS949.17 and OS949.18, OS949.19). We accept the Reporting Officer’s evidence that as long as policies overall are giving effect to the NZCPS, in the interests of Plan clarity it is preferable to adhere to this protocol, rather than to restate the NZCPS. We accept the Reporting Officer’s evidence that a strict policy test corresponds with a very low tolerance of effects under the 2GP drafting protocol, and is therefore in line with the intent of the NZCPS. We note that, as a result of decisions outlined in the Plan Overview Decision Report, “insignificant” is the strictest policy test under the 2GP drafting protocol. An unqualified “Avoid” policy wording is inappropriate as it would suggest prohibited activity status (when policies 10.2.3.2 and 10.2.3.3 relate to activities that are restricted discretionary, discretionary and non-complying).
1783. In section 3.7.8.2, however, we outline a change to the activity status of Landfills and Mining in ONCC and HNCCs to prohibited, with consequential amendments including the removal of Landfills and Mining from Policy 10.2.3.2, and inclusion of new Policy 10.2.3.W (an “Avoid” policy without an associated policy test, consistent with the 2GP drafting protocol). We consider this constitutes partial alternative relief for the submissions of *Forest and Bird NZ* (OS958.39) and *STOP* (OS900.46).
1784. We also accept parts of the submissions of *STOP* (OS900.46) and *Forest and Bird NZ* (OS958.39) insofar as they sought to expand the list of activities listed in Policy 10.2.3.2. While acknowledging the Reporting Officer’s concern that listing all the relevant activities results in a lengthy policy, we consider it important for Plan clarity that all non-complying activities in ONCCs/HNCCs are explicitly listed in Policy 10.2.3.2 (rather than implicitly in Policy 10.2.3.1 as notified, or by referring to “non-complying land use, development and network utilities activities” as recommended by the Reporting Officer). We do not consider it appropriate to amend the policy to refer to all land use and development activities, as sought by the submitters, because that would suggest that all activities are non-complying in ONCCs/HNCCs, when they are not. We also note that other decisions outlined in section 3.7.5.2 (incorporating Public Amenities and Transport activities into Policy 10.2.3.3) may provide some alternative relief to this submission, as this amendment means the strict “insignificant” policy test will apply to these activities in ONCCs/HNCCs.
1785. In response to those submissions we have therefore amended Policy 10.2.3.2 to list all activities that are non-complying in ONCCs/HNCCs. As discussed in 3.7.5.2, we consider there is scope to delete Policy 10.2.3.1 as a consequential change, as it is inconsistent with Policy 10.2.3.2, and with the inclusion of all non-complying activities in ONCCs/HNCCs into Policy 10.2.3.2, serves no function.
1786. We reject the submissions of *STOP* (OS900.47) and *Forest and Bird NZ* (OS958.40) insofar as they sought the deletion of the words “large scale” associated with earthworks in Policy 10.2.3.3. This would suggest that earthworks – small scale is managed in coastal character overlay zones as a restricted discretionary or discretionary activities, when in fact it is a permitted activity.

1787. We accept in part the submissions of *STOP* (OS900.48) and *Forest and Bird NZ* (OS958.41) insofar as they sought to combine policies 10.2.3.4, 10.2.3.10 and 10.2.3.11. We note that, as a result of decisions outlined in section 3.7.5.2 above in relation to Policy 10.2.3.10, and in the Network Utilities Decision Report in relation to Policy 10.2.3.11, these two policies have been deleted and the affected activities (albeit redefined) incorporated into new Policy 10.2.3.Y (which relates to restricted discretionary and discretionary activities in NCC overlay zones for which an alternative “adequately mitigated” policy test is appropriate, in situations where there are “no practicable alternative locations”).
1788. We reject the submissions of *STOP* (OS900.48) and *Forest and Bird NZ* (OS958.41), however, insofar as they sought to amend the policy to require “all land use and development activities to be avoided unless there are no material effects”. We accept the Reporting Officer’s evidence that applying an “Avoid...unless” policy test to all land use and development activities in NCC overlays, would, under the 2GP drafting protocol, imply that these activities are non-complying in NCC overlay zones when they are variously permitted, restricted discretionary and discretionary. We also consider the “no material effects” policy test promoted by the submitters is too strict for activities in NCC overlay zones (which have only medium-high natural character). We also accept the Reporting Officer’s assessment of the alternative phrasing as suggested by the submitters. As discussed in section 3.7.5.2, we prefer the as notified “no more than minor” policy test for restricted discretionary and discretionary activities in these areas, and consider it sets a sufficiently high bar to give effect to the NZCPS.

3.7.6.8 Submissions seeking to amend Policy 10.2.3.4 to avoid, remedy or mitigate “significant” adverse effects

1789. *Saddle Views Estate Limited* (OS458.11) sought to amend Policy 10.2.3.4 to read: “~~Only~~ allow mining, landfills, large buildings and structures, forestry, earthworks – large scale, and indigenous vegetation clearance in the Natural Coastal Character Overlay Zone (NCC) where significant adverse effects on the natural character values identified in Appendix A5 can be avoided ~~or if avoidance is not possible, be no more than minor. Remedied or mitigated.~~” The submitter stated that the imperatives of the policy do not create a balance in considering the positive effects associated with mining, and that the approach undermines the opportunity for communities to source sustainable supplied of aggregates.
1790. *Blackhead Quarries Ltd* (OS874.13) and *Tussock Top Farm Ltd* (OS901.9) sought to make the same amendment, without the deletion of the word “Only”. The submitters stated that the 2GP did not provide adequate recognition of the importance of aggregate to the community, as it did not provide the appropriate level of protection for existing quarries or provision for the development of new quarries.
1791. The Reporting Officer did not support deletion of the word “only” from Policy 10.2.3.4, citing consistency with the 2GP drafting protocol and associated rationale (as outlined in the Plan Overview Section 42A Report). He also did not support the change to avoiding only “significant” adverse effects, citing the provisions of Policy 13 of the NZCPS, which he considered provided a mandate to consider and manage effects deemed less than significant, when seeking to preserve natural character. He did not support amending the policy wording to “avoid, remedy or mitigate”, referring to a discussion in the Plan Overview Section 42A Report, concurring with the assessment that the wording:

“does not provide any guidance in terms of a preference for effects being avoided, remedied, or mitigated, which equates to saying that any level of mitigation is acceptable. Any amendment should clearly state the outcome to be achieved, and

provide guidance as to an acceptable level of mitigation (if the Panel decide that there should be no preference for avoidance of effects)... This wording is also contrary to the Court's comments that for provisions to be useful they should not simply repeat the provisions of the RMA".

3.7.6.8.1 *Decision and Reasons*

- 1792. We reject the submissions of *Saddle Views Estate Limited* (OS458.11), *Blackhead Quarries Ltd* (OS874.13) and *Tussock Top Farm Ltd* (OS901.9).
- 1793. We agree with the Reporting Officer's assessment that the "Only allow" wording in Policy 10.2.3.4 is consistent with the 2GP drafting protocol (used in policies relating to restricted discretionary or discretionary activities), and we consider it desirable in the interests of Plan clarity, to adhere to the protocol where possible.
- 1794. We also do not support the suggested reference to only "significant" adverse effects, or the application of the imperatives "avoid, remedy or mitigate". We accept the Reporting Officer's evidence that the provisions of the NZCPS provide a mandate to consider and manage effects deemed less than significant, when seeking to preserve natural character in the coastal environment, and as outlined in the Plan Overview Decision Report, accept that policies should provide guidance in terms of a preference for effects being avoided, remedied or mitigated, and the acceptable level of mitigation.
- 1795. We note that Policy 10.2.3.4 provides a "no more than minor" policy test for Mining activities. We consider a preference for avoidance appropriate in the context of higher order policy direction (s6(a) of the RMA, and Policy 13 of the NZCPS), and given that NCC overlay zones are areas of the coastal environment where natural character values have been assessed as medium or medium-high.
- 1796. We did consider whether mining activities should be incorporated into new Policy 10.2.3.Y (with an alternative "adequately mitigated" policy test for situations in which there are "no practicable alternative locations"), in recognition that Mining activities can be constrained by the location of resources or by operational needs. However, accepting the evidence that NCCs cover just 0.5% Dunedin's land area, and in the context of higher order policy direction, we considered the "no more than minor" policy test sets an appropriately high bar for Mining activities in this spatially limited area.
- 1797. We also note that Mining was subject to a separate and specific hearing, and provisions for existing mining and quarrying activities are outlined in the Mining Activities Decision Report.

3.7.6.9 Submissions seeking to amend Policy 10.2.3.5 to limit hazard mitigation and transportation activities to public activities

- 1798. *STOP* (OS900.49) and *Forest and Bird NZ* (OS958.42) sought to amend Policy 10.2.3.5 so that it related only to natural hazard mitigation activities and transportation activities for public purposes. They expressed a view that private actions to prevent coastal erosion are often inappropriate, and that new roads should only be considered in ONCC/HNCC overlay zones if they are for the public transportation network. These submission points were opposed by *Geoff Scurr Contracting Limited* (FS2391.60) (who believed that "private land should have the same rights") and *Federated Farmers of New Zealand* (FS2449.128, FS2449.129) (who stated that the suggested changes are unnecessary, and the wording of 'public purposes' is inconsistent with RMA language and terminology).

1799. The Reporting Officer considered the effects on natural character that need to be assessed would be the same regardless of the private or public nature of the works. He further noted that most new Natural Hazard Mitigation Activities are discretionary activities, with assessment guidance requiring consideration of (amongst other things) amenity and character of the surrounding area, and the effects on biodiversity and natural character of the coast.

3.7.6.9.1 *Decision and Reasons*

1800. We reject the submissions of *STOP* (OS900.49) and *Forest and Bird NZ* (OS958.42). We accept the evidence of the Reporting Officer that from an effects perspective ownership status is irrelevant, and we do not support the promoted amendment. However, we do note that only three Transportation activities are subject to Policy 10.2.3.5 – Heliports, Public Transportation Hubs and New Roads or Additions or Alterations to Existing Roads. Road is defined as “Any public road or street as defined by the provisions of the Local Government Act 1974 (formed or unformed)”, meaning private roads are not in fact subject to this policy.

3.7.6.10 Submissions seeking to add new policies

1801. *HPPC* (OS447.22) and *STOP* (OS900.54) sought to add a new policy stating “In ONCC and HNCC areas only allow plantation forestry, landfills and mining activities if the effects on the environment are very insignificant, meaning bordering on unidentifiable.” The submitters believed that high visual impact activities should not be permitted in areas of outstanding or high natural character. These submission points were opposed by *Geoff Scurr Contracting Limited* (FS2391.98, FS2391.111) (who considered it unnecessary), *Oceana Gold (New Zealand) Limited* (FS2439.22, FS2349.23) (who opposed to the specific reference to mining activities and believed that activities constrained with respect to location, like mining, should not be captured), *Waste Management (NZ) Limited* (FS2444.14, FS2444.42) (who considered the normal tests under the RMA should apply in regards to effects) and *Federated Farmers of New Zealand* (FS2449.112, FS2449.114) (who considered it unnecessary and covered by other policies).
1802. The Reporting Officer considered that all three activities (non-complying in ONCCs and HNCCs) are directly covered in Policy 10.2.3.1, but noted that this policy is not specified in the non-complying assessment Rule 10.7.2.4 (whereas Policy 10.2.3.2, which covers other activities that are always non-complying, is). He further noted that the use of the word “limit” in conjunction with non-complying activities (as in Policy 10.2.3.1) is unusual, and whilst it had been employed to avoid a wordy approach to drafting, he considered the approach (which separates the activities in Policy 10.2.3.1 from their policy test in Policy 10.2.3.2) confusing for Plan users. He suggested (as discussed in Section 1.1.1.2 above) amending Policy 10.2.3.2 to refer to “all non-complying land use, development and network utilities activities”, which would have the impact of incorporating all three activities mentioned by the submitters, into a Policy with the strictest “no material” effects test. He considered this an appropriate approach for these activities, and did not recommend a new policy be added as requested.
1803. In a statement for *HPPC* provided by representative Mr Werner at the hearing, it was reiterated that that objective standards and stricter activity status controls are sought for “very large scale, potentially disruptive activities” like Landfills, Mining, and Forestry, and that the 2GP is considered too weak in this regard.
1804. The *Pigeon Flat Road Group* (OS717.10) sought to add a new policy under Objective 10.2.3 (“Recognise that rural activities often require buildings of a large scale in order to function efficiently. Buildings of this nature are anticipated within the Rural Zone”).

and therefore measures to manage these effects may be employed, but will not prevent the establishment of such buildings.”) The reasons offered for this related to their land’s location largely within an SNL, and the lack of distinction between the objectives for areas possessing outstanding character and those with only significant character.

1805. The Reporting Officer accepted the view of the submitters that large buildings are to be expected in the rural environment, and will be required for rural activities to function efficiently. He did not consider the intention of the 2GP to prevent the establishment of such buildings in the rural zones, however noted that ONCCs/HNCCs have been assessed as areas of outstanding or high natural coastal character, partly due to the absence of buildings and structures in these areas, while NCCs are areas where some management of buildings or structures over a certain scale is considered appropriate to manage effects on natural character.
1806. He did not consider there is a need for a new policy he did not consider that all buildings and structures should always be permitted in a natural coastal character overlays, which the suggested policy seems to imply.
1807. During deliberations, in addition to the information requested on the extent to which Dunedin is covered by landscape and coastal character overlay zones and the coastal environment mapped area (discussed in section 3.7.1), we sought information about the extent to which rural properties might be affected by these overlays.
1808. Michael Bathgate, Reporting Officer responded in a memorandum ('Extent of landscape and coastal character overlays and coastal environment mapped area') dated 16 November 2017 with information about the proportions of rural and residential properties over 15ha that are affected by landscape and coastal character overlay zones.
1809. The Panel requested that information provided in Tables 3 and 4 of the 16 November 2018 memorandum be further broken down by overlay zone type for the ONL, SNL and NCC overlay zones. Michael Bathgate, Reporting Officer responded in a memorandum ('Extent of ONL, SNL and NCC overlays') dated 17 May 2018, setting out in tables the number and proportions of rural and residential properties over 15ha that affected by ONL, SNL and NCC overlay zones.

3.7.6.10.1 *Decision and Reasons*

1810. We reject the submission of the *Pigeon Flat Road Group* (OS717.10).
1811. We note that Appendix A5 specifically lists Buildings and Structures as a principal threat to the values of all ONCC/HNCC overlay zones. Given this, and in the context of higher order policy direction (as discussed in section 3.7.3.3), we accept the Reporting Officer’s evidence that it is appropriate buildings and structures activities are non-complying and subject to a strict policy test in ONCCs/HNCCs, as high value overlay zones. We also do not consider it unreasonable that buildings associated with permitted land use activities should be discouraged from locating in ONCC/HNCC overlay zones, given the effects they may have on the values of those areas, and also noting their limited spatial extent (0.1% and 0.3% of the city’s land area respectively).
1812. With regard to NCC overlay zones, we note that large buildings and structures are restricted discretionary in these areas, and subject to a “no more than minor” policy test. As discussed in section 3.7.5.2, we consider this level of policy test appropriate in the context of higher order policy direction (s6(a) of the RMA, and Policy 13 of the NZCPS), and given that NCC overlay zones are areas of the coastal environment where natural character values have been assessed as medium or medium-high. Noting also that buildings and structures are acknowledged as principal threats to

values in many NCC overlay zones, we accept the Reporting Officer's evidence that the suggested policy seems to imply all buildings and structures are always appropriate, and do not support the suggested new policy for that reason.

1813. We did, however, consider whether buildings and structures activities should be incorporated into the new Policy 10.2.3.Y (with an alternative “adequately mitigated” policy test for situations in which there are “no practicable alternative locations”) in recognition of the fact that, if properties involved in land use with an operational need for large buildings are substantially covered by the NCC overlay zone, the policy framework may pose some challenges. We also note some of the NCC overlay zone descriptions in Appendix A5 include the presence of residential development. However, based on the figures in the Reporting Officer's 17 May 2018 memorandum, we did not consider that there was evidence that the NCC overlay zone affects a significant number of properties in this way, and thus we did not consider the amendment justified.
1814. Given that the reasons offered for the concerns of the *Pigeon Flat Road Group* refer to SNLs, it appears that this submission point may have been intended to relate to only to Objective 10.2.5. It has also been considered in that context, in section 3.7.5.2, where our decision has amended Policy 10.2.5.7, to apply an alternative “adequately mitigated” policy test available to all restricted discretionary and discretionary activities in SNLs in situations in which there are “no practicable alternative locations”. We also note that amendments to assessment rule 16.10.5 (discussed in 3.10.4.4) will allow for consideration of positive effects in terms of supporting farming activity when assessing resource consent applications associated with all restricted discretionary activities in overlay zones (including large buildings and structures in the NCC overlay zone).
1815. We accept in part the submissions of *HPPC* (OS447.22) and *STOP* (OS900.54). As discussed in section 3.7.5.2, we consider Policy 10.2.3.1 lacks clarity, including in relation to Forestry, Landfills and Mining, and our decision amends Policy 10.2.3.2 to list all non-complying activities in ONCCs/HNCCs, and deletes Policy 10.2.3.1. As a result of decisions outlined in the Plan Overview Decision Report, the policy test associated with this policy has been amended to “insignificant”. We consider this clarifies the policy framework for Forestry, and that the amendments amount to partial alternative relief for these submissions. As a result of decisions outlined in section 3.7.8.2, our decision amends the activity status of Mining and Landfills in ONCCs/HNCCs to prohibited, and adds new Policy 10.2.3.W (without an associated policy test, consistent with the 2GP drafting protocol, discussed in the Plan Overview Decision Report).

3.7.7 Submissions on Objective 10.2.5 and related policies

3.7.7.1 Background

1816. Objective 10.2.5 states: “Outstanding Natural Features (ONFs), Outstanding Natural Landscapes (ONLs) and Significant Natural Landscapes (SNLs) are protected from inappropriate development and their values, as identified in Appendix A3, are maintained or enhanced.”
1817. Policies sitting beneath Objective 10.2.5 manage the adverse effects on identified values of activities in ONFs, ONLs and SNLs, in order to achieve this objective.
1818. Sections 3.7.7.2 to 3.7.7.16, below, discuss submissions relating to specific aspects of Objective 10.2.5 and its policies. These sections should be read in conjunction with

section 3.7.5.2, above, which addresses more general drafting and structural issues with the policies associated with both Objective 10.2.3 and Objective 10.2.5.

3.7.7.2 Submissions in support

1819. *KiwiRail Holdings Limited* (OS322.87) sought to retain Policy 10.2.5.5 because they support that the practicality element is already included in relation to certain activities, consistent with the approach sought through their submissions on other policies. This support was noted by the Reporting Officer, along with the fact that he was recommending integration of the policy with Policy 10.2.5.3.

3.7.7.2.1 *Decision and Reasons*

1820. We accept in part the submission of *KiwiRail Holdings Limited* (OS322.87). We note that, while our decision (discussed in section 3.7.5.2) deletes Policy 10.2.5.5, the affected activities have generally been integrated into policies that provide an alternative “adequately mitigated” policy test for situations in which there are “no practicable alternative locations (policies 10.2.5.Y, 10.2.5.Z and 10.2.5.7). We consider this constitutes acceptance in part of this submission.

3.7.7.3 Submissions seeking to amend Objective 10.2.5 to exclude development constrained with respect to location

1821. *Oceana Gold (New Zealand) Limited* (OS1088.43) submitted that Objective 10.2.5 should be amended to allow for development constrained with respect to location, stating that important and desirable activities such as mining (which are constrained to locations where minerals are present) are not inappropriate development activities, and that the policy framework needs to allow for these types of land uses.
1822. While acknowledging that some Mining activities are constrained by the location of minerals or aggregate, the Reporting Officer did not support the amendments suggested to Objective 10.2.5. The Reporting Officer considered that as a discretionary activity in certain overlay zones, any application would be subject to a wide range of assessment matters, which may also include the contribution of the proposed activity to the economic and social wellbeing of people and communities under Part 2 of the RMA. He was of the view that this allowed for consideration and weighing up of a wide range of both positive and negative effects and mitigation measures. He also noted his recommendation to change the activity status of mining in ONLs to non-complying in section 5.12.3 of the Section 42A Report.

3.7.7.3.1 *Decision and Reasons*

1823. We accept in part the submissions of *Oceana Gold (New Zealand) Limited* (OS1088.43).
1824. As discussed in section 3.7.5.2, we consider the policy framework associated with Objective 10.2.5 should be amended to reflect the fact that some activities associated with existing land uses may not be able meet “insignificant” or “no more than minor” effects tests, even where mitigation is applied, but may still need to locate in an overlay zone for operational reasons, and we consider these changes constitute partial alternative relief for this submission. However, we do not consider it necessary or appropriate for Objective 10.2.5 (as the objective associated with all landscape overlay zones) to be amended as suggested. We accept, as discussed in section 3.7.2.3, that landscape overlay zones are the 2GP’s response to higher order policy direction, including the need to recognise and provide for the matters of national importance outlined in s6(b) of the RMA, giving effect to the operative RPS, and having regard to the proposed pORPS-dv. We consider that, in order to align with this

higher order policy direction, in some cases a strict policy test is warranted despite constraints associated with the location of resources and other considerations, particularly in higher value overlay zones.

3.7.7.4 Submission seeking to remove SNLs from Objective 10.2.5, and to amend Policy 10.2.5.7 to apply to ONFs and ONLs

1825. *Federated Farmers of New Zealand* (OS919.28) supported by *John Scott* (FS2140.37), *Ben Graham* (FS2279.37), *Mathew O'Connell* (FS2300.37) and the *Pigeon Flat Road Group* (FS2416.41) sought to remove reference to SNLs from Objective 10.2.5, suggesting that many of the landscapes appear on farmland, where farming should be expected and supported. *Federated Farmers of New Zealand* stated that inappropriate development should be defined and addressed, however it was important to make a distinction between ONLs and lower tier SNLs, which are working areas subject to constant change that underpins, rather than adversely impacts, the landscape character and visual amenity values. This suggested amendment was opposed by *Forest and Bird NZ* (FS2482.25), who suggested it was not consistent with Part 2 of the RMA, or the provisions of the 2GP, or the NZCPS³⁰.
1826. With reference to removing SNLs from Objective 10.2.5, the Reporting Officer did not support this approach. He considered that distinction was made between ONLs and SNLs in the level of effects tolerated for different landscape overlay zones, and the policies that sit under Objective 10.2.5. He reflected that the identification and management of effects of activities in SNLs is a response to s7(c) and (f) of the RMA, concerning maintenance and enhancement of amenity values and the quality of the environment, and to the PORPS-dv, which states "Identify natural features, landscapes and seascapes, which are highly valued for their contribution to the amenity or quality of the environment, but which are not outstanding" (Policy 3.2.5), and seeks to protect or enhance these (Policy 3.2.6). He noted that farming and grazing are permitted activities in SNLs, with forestry being the only land use activity with a more restrictive activity status. In terms of development activities in an SNL, a restricted discretionary activity status is proposed for buildings and structures over 60m², and a more restrictive earthworks standard than in the underlying rural zones.
1827. In a similar vein, the *Pigeon Flat Road Group* (OS171.8) sought to amend Policy 10.2.5.7 to apply to ONFs and ONLs only, as they believed the policy did not adequately balance the demands of rural land uses on the submitters' land. *Federated Farmers of New Zealand* (FS2449.147) supported the submission, stating they felt it inappropriate and inconsistent with the sustainable management purpose and principles of the RMA to afford SNLs and ONLs the same level of protection.
1828. The Reporting Officer also did not support amending Policy 10.2.5.7 to apply to ONFs and ONLs, noting that policies 10.2.5.1 to 10.2.5.6 apply to land use and development activities in these overlay zones. He did not consider that Policy 10.2.5.7 should not apply to SNLs, noting the need for management of activities and effects in SNLs was discussed in Section 5.2.11 of the Section 42A Report. He did not agree that SNLs have the same level of protection as ONFs and ONLs, noting the difference in approach was discussed in Section 5.2.9 of the Section 42A Report.

3.7.7.4.1 Decision and Reasons

1829. We reject the submissions of *Federated Farmers of New Zealand* (OS919.28) to remove the reference to SNLs from Objective 10.2.5. As discussed in section 3.7.2.3, we consider that SNL overlay zones are an appropriate response to s7(c) and (f) of

³⁰ Many of the *Forest and Bird NZ* submissions referenced the NCPS. For clarity, we have amended this reference to NZCPS throughout our decision.

the RMA, concerning maintenance and enhancement of amenity values and the quality of the environment, and to Policy 3.2.5 and Policy 3.2.6 of the pORPS-dv. We agree that there should be clear differentiation between the management of activities in higher value ONLs, and that of activities in SNLs, and were persuaded by the evidence of the Reporting Officer, that this is most appropriately achieved through distinctions in the effects tests in the policies associated with Objective 10.2.5.

1830. We consider amendments described in section 3.7.5.2 achieve greater distinction in management between ONFs, ONLs and SNLs. Whilst acknowledging that ONLs and SNLs overlay working farms, and that the operational needs of these farms may result in some activities being constrained with respect to location, we consider locational constraints to be only one of a number of relevant matters that warrant consideration in assessing the appropriateness of the policy framework. This issue is discussed further in section 3.7.5.2, with amendments providing an alternative “adequately mitigated” policy test where there are “no practicable alternative locations” for some activities.
1831. We reject the submission of *Pigeon Flat Road Group* (OS171.8) for the same reasons. In addition, we accept the Reporting Officer’s evidence that Policy 10.2.5.7 should not apply to ONFs and ONLs, as management of activities in these overlays is covered by other policies.

3.7.7.5 Submission seeking to amend Policy 10.2.5.1

1832. *Federated Farmers of New Zealand* (OS919.30) sought to amend Policy 10.2.5.1, considering that some rural buildings, or rural practices that require smaller scale buildings, may be compatible with ONFs³¹, and that while there are some risks to the natural character of these areas, there should be a focus on managing risks rather than limiting land use altogether. Their suggested amendment was as follows: “~~Limit The potential adverse effects of~~ rural and community activities in the Outstanding Natural Feature Overlay Zone (ONF) are appropriately managed to those which do not require buildings or involve a change to the landform.” This submission point was supported by *John Scott* (FS2140.39), *Ben Graham* (FS2279.39), *Mathew O’Connell* (FS2300.39) and the *Pigeon Flat Road Group* (FS2416.43), citing the ongoing need for farming activities across a variety of landscape areas. It was opposed by *HPPC* (FS2267.9) as they considered the suggested wording to be vague, and by *Forest and Bird NZ* (FS2482.27), who stated that the amendments sought are not consistent with the purpose of Part 2 of the RMA or the provisions of the 2GP, or the NZCPS.
1833. The Reporting Officer noted that activities such as Farming, Grazing, Conservation and Community and Leisure – Small Scale (which do not involve buildings and structures and changes to landform) are permitted in ONFs, notwithstanding the “exceptional values” of this overlay zone. He noted the protection of ONFs from inappropriate use and development is a matter of national importance under RMA s6(b). He considered these relatively small landscape features to be particularly sensitive to development involving buildings and structures or changes to landform, and that ONFs are notable for their absence. He stated that any associated buildings fall under the ambit of Policy 10.2.5.4, and it is the intention of the policy to signal that Rural and Community activities that can be conducted without the need for buildings or changes to landform are acceptable on ONFs. It is expected that any associated buildings would not be located on the ONF, given their typically small size. He agreed to extent with that *HPPC*, that the submitter’s suggested amendment was relatively vague and unclear (Section 42A Report, section 5.4.24).

³¹ Written submission stated ONLs - assumed by the Reporting Officer to be a typographical error

1834. He recommended that the wording of Policy 10.2.5.1 be amended in response to OS919.30 as follows (Section 42A Report, section 5.4.22).

~~*Limit rural and community activities in the Outstanding Natural Feature Overlay Zone (ONF) to those which do not require buildings or involve a change to the landform. Enable rural and community activities in the Outstanding Natural Feature Overlay Zone (ONF) that do not require buildings or involve a change to the landform.*~~

1835. In his hearing evidence, Mr Cooper (representing Federated Farmers of New Zealand) expressed support for the recommended changes, which he considered “addresses a suite of potential issues in relation to rural activities which are compatible with, or which do not adversely impact, ONF areas”.

3.7.7.5.1 *Decision and Reasons*

1836. We accept in part the submission of *Federated Farmers of New Zealand* (OS919.30). We accept the Reporting Officer's evidence that protection of ONFs from inappropriate use and development in a matter of national importance under s6(b) of the RMA, and that they are particularly sensitive to development involving buildings and structures or changes in landform. We therefore consider it appropriate that activities in ONFs, including Buildings and Structures activities, are non-complying and subject to a stringent policy test. Given the typically small size of ONFs, we do not consider this overly onerous. Notwithstanding this, we note it is possible that consent for a Building or Structure may be granted in these overlay zones, and agree that the wording of Policy 10.2.5.1 creates uncertainty in this regard.
1837. As discussed in section 3.7.5.2, we also accept the Reporting Officer's evidence that Policy 10.2.5.1 is unclear, not linked to assessment rules, inconsistent with the 2GP drafting protocol, and inconsistent with policies 10.2.5.2 and 10.2.5.4. Further, we note there is no equivalent policy relating to permitted activities in ONL or SNL overlay zones, and consider it unusual to include a policy relating to permitted activities with provisions for landscape overlay zones (which usually lay out the additional restrictions that apply). We note there are provisions in both the Rural and Rural Residential sections of the 2GP that relate to permitted activities.
1838. We do not consider that the amendments recommended by the Reporting Officer improve the clarity of the policy, as they suggest activities that do not involve Buildings and Structures or modification of the landform are permitted, when that is not the case (e.g. Forestry is non-complying). Further, some modification of the landform is in fact permitted, with Earthworks – Small Scale permitted in these overlay zones subject to certain scale thresholds and performance standards.
1839. As discussed in section 3.7.5.2, we consider there is scope to delete Policy 10.2.5.1 as a consequential amendment associated with the deletion of Policy 10.2.5.2 and its merger with 10.2.5.4, in response to the submissions of *Blackhead Quarries Ltd* (OS874.14). We consider the intended function of Policy 10.2.5.1 is achieved by the amended Policy 10.2.5.4, and that the consequential deletion of Policy 10.2.5.1 both removes inconsistency and improves the clarity of provisions. We consider deletion of the policy constitutes partial alternative relief for the submissions of *Federated Farmers of New Zealand* (OS919.30), as it clarifies the policy framework and ensures it no more restrictive than the rules themselves.

3.7.7.6 Submission seeking to remove Policy 10.2.5.2

1840. *Blackhead Quarries Ltd* (OS874.14) sought to remove Policy 10.2.5.2 because they believed that aggregate resources are critical for people and communities to provide for their social, economic and cultural wellbeing and for their health and safety, and they considered the suggested change would go some way to recognising and

protecting this. The submission in relation to Policy 10.2.5.2 was opposed by *HPPC* (FS2267.9) who believed ONFs are rare and because of that, merit greater priority than standard uncompromised commercial interests.

1841. The Reporting Officer considered ONFs to be particularly sensitive to built development. He stated that Policy 10.2.5.2 seeks to avoid those land use activities that are accompanied by buildings and structures, site development and intensification of use that are more associated with an urban or built environment setting. However, he did note that Policy 10.2.5.2 has no “unless” qualifier, and that under the 2GP drafting protocol, this would suggest a prohibited rather than non-complying activity status. While Policy 10.2.5.1 strongly discourages these types of land use activities, he did not consider that prohibited activity status was warranted, noting rare instance of these activities on ONFs (e.g. residential activity on Quarantine Island and Saddle Hill, commercial activity on Tairaroa Head). He noted a prohibited activity status would severely restrict these existing activities, and that there may be exceptional circumstances in which one of these land use activities could be newly located on an ONF, particularly when associated built and site development is minimal or non-existent.
1842. He noted that Policy 10.2.5.4 also deals with non-complying activities in ONFs and considered that its “no material effects” policy test was appropriate for all non-complying activities in an ONF and noted that he had recommended (in section 5.4.22 of the Section 42A Report) that the policy be modified to encompass the activities in 10.2.5.2.

3.7.7.6.1 *Decision and Reasons*

1843. We accept the submission of *Blackhead Quarries Ltd* (OS874.14).
1844. We accept the Reporting Officer’s evidence that protection of ONFs from inappropriate use and development in a matter of national importance under s6(b) of the RMA, and that they are particularly sensitive to development involving buildings and structures or changes in landform. We consider it appropriate that activities in these overlays are subject to a strict policy test, and given the typically small size of ONFs, we do not consider this overly onerous.
1845. Notwithstanding this, we accept the Reporting Officer’s evidence that without an “unless” qualifier, Policy 10.2.5.2 suggests prohibited rather than non-complying activity status for residential, commercial, industrial and major facility activities in ONFs. We agree with the Reporting Officer’s assessment that there may be exceptional circumstances in which one of these land use activities could be newly located on an ONF, and consider that Policy 10.2.5.2 creates uncertainty in this regard.
1846. We consider it important for Plan clarity that all non-complying activities in ONFs are explicitly listed in a single policy (rather than implicitly in Policy 10.2.3.1 and split across Policy 10.2.5.2 and 10.2.5.4, or by referring to “non-complying land use, development and network utilities activities” as recommended by the Reporting Officer).
1847. In response to the submission of *Blackhead Quarries Ltd* (OS874.14), we have therefore deleted Policy 10.2.5.2 and listed all non-complying activities in ONFs, in Policy 10.2.5.4. As discussed in section 3.7.5.2, we consider there is scope to delete Policy 10.2.5.1 as a consequential change, as it is inconsistent with policies 10.2.5.2 and 10.2.5.4, and with the inclusion of all non-complying activities in ONFs into Policy 10.2.5.4 serves no function.

3.7.7.7 Submissions seeking to qualify Policy 10.2.5.3 and Policy 10.2.5.6 effects tests with “essentially unidentifiable”

1848. *STOP* (OS900.56) sought to amend Policy 10.2.5.3 to append “essentially unidentifiable”, as they believed insignificance needs a better definition and that these activities are inappropriate in ONFs. This was opposed by *Howard Saunders* (FS2373.49) (who considered the policy to be adequately worded), *Geoff Scurr Contracting Limited* (FS2391.63) (who considered the amendment too pedantic and too precise to be workable in dealing with the natural environment), and *Federated Farmers of New Zealand* (FS2449.143) (who felt the suggested amendment inappropriate and unnecessary).
1849. *STOP* sought a similar amendment in relation to Policy 10.2.5.6 (OS900.57), who stated that “Upper limit definitions are needed for vague terms such as ‘insignificant’.” This submission was opposed by *Waste Management (NZ) Limited* (FS2444.15), *Howard Saunders* (FS2373.50), *Geoff Scurr Contracting Limited* (FS2391.64), *Oceana Gold (New Zealand) Limited* (FS2439.26) and *Federated Farmers of New Zealand* (FS2449.146).
1850. *STOP* (OS900.62) also requested that the effects test in Policy 10.2.5.16, which applies to restricted discretionary network utility activities in ONFs, be amended to add the phrase “essentially unidentifiable”. With this amendment, the policy would read: “Only allow [the activities] where any adverse effects [on identified landscape values] would be insignificant, essentially unidentifiable.” *STOP*’s submission point was opposed by *Howard Saunders* (FS2372.53).
1851. This submission point was considered in the Network Utilities Section 42A Report. The Reporting Officer, Ms Macleod, recommended that it be rejected. She did not give reasons for this recommendation.
1852. The Reporting Officer did not support appending “essentially unidentifiable” to either policy, citing the 2GP drafting wording, and suggesting the it would not add clarity, and would risk changing the meaning of the policy. He considered, for example, that an environmental effect could be both identifiable and insignificant at the same time. He noted that (as a result of recommendations made elsewhere in the Section 42A Report) he was recommending that Mining and Landfills be removed from Policy 10.2.5.6, which he considered formed partial acceptance of the submission, but did not recommend acceptance of other parts of the *STOP* (OS900.57) and *HPPC* (OS447.24) submissions, noting his other recommended amendments to the Policy 10.2.5.6, outlined in section 5.4.22 of the Section 42A Report.

3.7.7.7.1 Decision and Reasons

1853. We reject the submissions of *STOP* (OS900.56, OS900.57 and OS900.62) insofar as they sought to append “essentially unidentifiable” to Policy 10.2.5.3, Policy 10.2.5.6 and Policy 10.2.5.16. The wording is not aligned with the 2GP drafting protocol (as discussed in the Plan Overview Decision Report) and we agree with the Reporting Officer’s assessment that it risks changing the meaning of the policy.

3.7.7.8 Submissions seeking to amend Policy 10.2.5.4 to exclude development constrained with respect to location

1854. *Oceana Gold (New Zealand) Limited* (OS1088.44) sought to amend Policy 10.2.5.4 as they believe that avoidance is not always possible and the policy needs to allow for these types of land uses where they are associated with desirable and appropriate development that is locationally constrained, such as mining which must located at the source of the resource. Their submission was opposed by *HPPC* (FS2267.32), who felt that protection of ONFs is more important than commercial interests.

1855. The Reporting Officer stated that he considered ONFs to be particularly sensitive to development, and that for this reason, Policy 10.2.5.4 seeks to avoid such development, while allowing that there may be rare circumstances in where these development activities can be accommodated with no material effects on landscape values. He considered this strikes an appropriate balance in protecting these ONFs from inappropriate development, and did not recommend that the amendment be accepted. However, he did note that he was recommending the policy be integrated with Policy 10.2.5.2, as set out in section 5.4.22 of the Section 42A Report.

3.7.7.8.1 *Decision and Reasons*

1856. We reject the submissions of *Oceana Gold (New Zealand) Limited* (OS1088.44).
1857. While acknowledging that some activities can be constrained by the location of resources or by operational needs, as discussed in section 3.7.5.2, we consider this to be only one of a number of relevant matters that warrant consideration in assessing the appropriateness of the policy framework. The potential scale and intensity of an activity, the sensitivity of the environment and higher order policy direction are also of relevance. As discussed in section 3.7.2.3, we accept that the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development is a s6 matter under the RMA. We accept that ONFs, as noted in section 3.7.1, have “exceptional” landscape values, and are spatially limited, covering just 0.3% of the city’s land area. Policy 3.2.4 of the pORPS-dv (as noted in Section 3.0 of the Section 42A Report), states that outstanding natural features should be protected, enhanced and restored including by “Avoiding adverse effects on those values that contribute to the significance of the natural feature, landscape or seascape”.
1858. We therefore agree with the Reporting Officer’s assessment that Policy 10.2.5.4 strikes an appropriate balance by seeking to avoid non-complying activities in ONFs, while allowing that there may be rare circumstances in where these activities can be accommodated if they meet a strict policy test. We consider this remains the case with the amendment of the policy test to “insignificant”, as a result of decisions outlined in the Plan Overview Decision Report.
1859. Specifically, in relation to mining, elsewhere in this Decision Report we note that mining is broadly defined in the 2GP (so that it may occur at significant scales and intensities) and refer to our decision to amend the activity status of mining to prohibited in ONFs, to appropriately recognise and provide for the protection of these spatially constrained, high value overlays in line with higher order policy direction. As a consequential change, new Policy 10.2.5.X has been included in the 2GP, and mining included in this policy.
1860. We also note that Mining was subject to a separate and specific Hearing, and provisions for existing mining and quarrying activities are outlined in the Mining Activities Decision Report.

3.7.7.9 Submissions seeking to amend Policy 10.2.5.6 to remove reference to “large buildings and structures”

1861. *Ben Graham* (OS361.10) and *Mathew O’Connell* (OS364.7) sought to amend Policy 10.2.5.6 by removing the reference to large buildings and structures, as the submitters’ land largely falls within an ONL, and believed the policy does not adequately balance the demands of rural land uses on the submitters’ land. This submission point was supported by *Federated Farmers of New Zealand* (FS2449.144, FS2449.145), who believed these activities are a necessary and appropriate part of farming.

1862. The Reporting Officer accepted that buildings and structures are anticipated in the rural environment, even in ONLs, and considered that restricted discretionary activity status signals this. He also noted his recommended changes to the effects test that applies to Policy 10.2.5.6, as discussed in section 5.4.22.
1863. During deliberations, in addition to the information requested on the extent to which Dunedin is covered by landscape and coastal character overlay zones and the coastal environment mapped area (discussed in section 3.7.1), we sought information about the extent to which rural properties might be affected by these overlays.
1864. Michael Bathgate, Reporting Officer, responded in a memorandum ('Extent of landscape and coastal character overlays and coastal environment mapped area') dated 16 November 2017, with information about the proportions of rural and residential properties over 15ha that are affected by landscape and coastal character overlay zones.
1865. The Panel requested that information provided in Tables 3 and 4 of the 16 November 2018 memorandum be further broken down by overlay zone type for the ONL, SNL and NCC overlay zones. Michael Bathgate, Reporting Officer responded in a memorandum ('Extent of ONL, SNL and NCC overlays') dated 17 May 2018, setting out in tables the number and proportions of rural and residential properties over 15ha that affected by ONL, SNL and NCC overlay zones.

3.7.7.9.1 *Decision and Reasons*

1866. We accept in part the submissions of *Ben Graham* (OS361.10) and *Mathew O'Connell* (OS364.7).
1867. We accept the Reporting Officer's evidence that buildings and structures are anticipated in the rural environment, and acknowledge the submitters' concerns that the policy framework does not adequately provide for these activities on existing farming operations in ONLs. Based on the figures in the Reporting Officer's 17 May memorandum, we also accept that there are a significant number of rural and rural residential properties 15ha or larger that are substantially or wholly covered by ONL overlay zones. We also accept that the notified policy framework may pose challenges for large buildings and structures in these areas.
1868. As discussed in section 3.7.5.2, we do not support the amendment to Policy 10.2.5.6 recommended by the Reporting Officer, as we consider the "insignificant" policy test should be retained in recognition of the high values of these zones, and the higher order policy direction the ONL method seeks to give effect to. We note, for example (as outlined in Section 3.0 of the Section 42A Report) that pORPS-dv Policy 3.2.4 directs avoiding adverse effects on those values which contribute to the significance of outstanding natural landscape. We also note that Appendix A3 lists buildings and structures activities as a principle threat to values in all ONLs. Notwithstanding this, we agree that some amendment to the policy framework is required to provide a pathway for large buildings and structures activities, given that they are required to support existing land use in the spatially extensive ONLs.
1869. In response to these submissions, as discussed in section 3.7.5.2, our decision:
- deletes large buildings and structures from Policy 10.2.5.6,
 - includes large buildings and structures in new Policy 10.2.5.Z (which retains a preference for adverse effects being "insignificant", but also provides an alternative policy test allowing for activities to be "adequately mitigated" where there are "no practicable alternative locations"),
 - adds new Rule 10.8.4, which sets out the information that should be included in an assessment of alternative locations (i.e.: statements of the operational needs and locational constraints of the activity, and of the alternative locations

considered; and assessments of the proposed site and the alternative locations in terms of the operational needs of the activity, and in terms of adverse effects on protected values), and

- adds general assessment guidance to the relevant assessment rule for restricted discretionary activities in ONLs (Rule 10.5.2.E) indicating that the Council “will generally only consider activities to have no practicable alternative locations where an assessment that meets the requirements set out in Rule 10.8.4 demonstrates that the proposed site, including any proposed mitigation measures, is the option that has the least impact on the values of the overlay, while meeting the operational needs of the activity”.

1870. We consider these amendments constitute partial alternative relief for the submissions of Ben Graham (OS361.10) and Mathew O’Connell (OS364.7).

3.7.7.10 Submissions seeking to amend Policy 10.2.5.6 to exclude residential buildings and associated earthworks, and change “insignificant” to “minimised”

1871. *Christopher Dean Valentine* (OS464.10) sought to amend Policy 10.2.5.6 to exclude residential buildings and associated earthworks, and to change the word “insignificant” to “minimised”. The submitter believed that the scale of residential buildings was adequately covered by height and reflectivity restrictions.

1872. The Reporting Officer noted that the scale thresholds for Earthworks – Large Scale, were considered at the Earthworks Hearing, but that he did not consider that Earthworks associated with Residential activity should be excluded from the definition of Earthworks – Large Scale.

1873. He also considered that residential buildings should not be excluded, noting that while there are some performance standards that apply to all restricted discretionary buildings in an ONL (including height, setbacks and reflectivity), there are other potential effects on landscape values that he considered should form part of an assessment (including siting, scale or design). He also noted the recommended changes to the effects test that applies to Policy 10.2.5.6, outlined in section 5.4.22 of the Section 42A Report.

1874. At the hearing, *Mr Valentine* reiterated his concerns about the “insignificant” test, stating that the rules don’t sufficiently consider safety and reasonable use of land. In his view, the Section 32 Report didn’t adequately demonstrate there was justification for such significant change. The Reporting Officer responded in his right of reply by drawing the submitter’s attention to the recommended change in the effects test, from “insignificant” to “no more than minor”, outlined in section 5.4.22 of the Section 42A Report.

3.7.7.10.1 *Decision and Reasons*

1875. We accept in part the submission of *Christopher Dean Valentine* (OS464.10).

1876. We do not consider that earthworks – large scale and residential buildings should be excluded from Policy 10.2.5.6 as it would suggest they are not managed in ONL overlay zones, when they are managed as restricted discretionary activities. We agree with the Reporting Officer’s assessment that while there are some performance standards that apply to all restricted discretionary buildings in an ONL, there are other potential effects on landscape values that that should form part of an assessment (including siting, scale or design).

1877. As discussed in section 3.7.5.2, we do not support the amendment to Policy 10.2.5.6 recommended by the Reporting Officer, as we consider the “insignificant” policy test

should be retained in recognition of the high values of these zones, and the higher order policy direction the ONL method seeks to give effect to. We note, for example (as outlined in Section 3.0 of the Section 42A Report) that pORPS-dv Policy 3.2.4 directs avoiding adverse effects on those values which contribute to the significance of outstanding natural landscape. However, given the extensive coverage of ONLs and the number and proportion of properties >15ha wholly or substantially covered by an ONL overlay zones, and the nature of the existing land uses within these areas, we accept there may be an operational need for large scale buildings and structures with greater than insignificant adverse effects to situate within an ONL. We consider the same applies to earthworks – large scale in these areas.

1878. Therefore, our decision, as discussed in section 3.7.5.2:

- deletes large buildings and structures and earthworks – large scale from Policy 10.2.5.6
- includes large buildings and structures and earthworks – large scale in a new Policy 10.2.5.Z (which retains a preference for adverse effects being “insignificant”, but also provides an alternative policy test allowing for activities to be “adequately mitigated” where there are “no practicable alternative locations”), and
- adds special information requirements Rule 10.8.4 and amends assessment Rule 10.5.2.E as described in section 3.7.7.9 above.

1879. We consider these amendments constitute partial alternative relief for the submissions of *Christopher Dean Valentine* (OS464.10).

3.7.7.11 Submissions seeking to amend policies 10.2.5.6 to avoid, remedy or mitigate “significant” adverse effects

1880. *Blackhead Quarries Ltd* (OS874.15) and *Tussock Top Farm* (OS901.10) sought to restrict Policy 10.2.5.6 to “significant adverse effects” and to allow for these to be “avoided, remedied or mitigated”. The submitters stated that aggregate resources are critical for people and communities to provide for their social, economic and cultural wellbeing and for their health and safety. They considered that the proposed amendments will go some way to ensuring the appropriate level of recognition and protection is put in place.

1881. The Reporting Officer did not recommend acceptance of this amendment, but referred the submitters to the recommended amendment to the policy outlined in section 5.4.22 of the Section 42A Report. He also did not recommend the policy wording should be amended to “avoid, remedy or mitigate” adverse effects for the same reason as given in section 5.2.9 of the Section 42A Report. He noted the recommended amendment to the activity status of mining, as set out in Section 5.12.3 of the Section 42A Report.

3.7.7.11.1 *Decision and Reasons*

1882. We accept in part the submissions of *Blackhead Quarries Ltd* (OS874.15) and *Tussock Top Farm* (OS901.10).

1883. As discussed in section 3.7.2.3, under section 6(b) of the RMA protection of these areas from inappropriate use and development is a matter of national importance, and Policy 3.2.4 of the pORPS-dv states that outstanding natural landscapes should be protected, enhanced and restored including by “Avoiding adverse effects on those values that contribute to the significance of the natural feature, landscape or seascape”. We note that quarries and mining are identified as principal threats to values for all ONLs listed in Appendix A3. We consider this higher order policy direction mandates management of effects on ONLs that are less than significant, and

suggests a preference for avoidance of effects. We consider the “insignificant” policy test in Policy 10.2.5.6 appropriate in the context of the higher order policy direction.

1884. We do, however, note that that in decisions outlined in section 3.7.5.2 above, a number of activities have been deleted from Policy 10.2.5.6 and incorporated into new Policy 10.2.5.Z, which provides an alternative “adequately mitigated” policy test, for activities where there are “no practicable alternative locations”. We consider this constitutes acceptance in part of the submission of *Blackhead Quarries Ltd* (OS874.15) and *Tussock Top Farm* (OS901.10).
1885. As discussed in section 3.7.8.2, our decisions amend the activity status of mining to non-complying in ONLs, with the consequential change of removing mining from Policy 10.2.3.6 and including it in Policy 10.2.5.15 (which relates to non-complying activities in ONLs). We consider this higher bar appropriate given the high value of ONL overlay zones, and given that mining can be particularly disruptive to landform.
1886. We note that mining was subject to a separate and specific Hearing, and provisions for existing mining and quarrying activities are outlined in the Mining Activities Decision Report.

3.7.7.12 Submissions seeking to amend Policy 10.2.5.6 to exclude development constrained with respect to location

1887. *Oceana Gold (New Zealand) Limited* (OS1088.45) sought to amend Policy 10.2.5.6 as they believe that modifications to the policy are necessary to recognise that desirable activities that are locationally constrained, such as mining, are exempt from the policy.
1888. The Reporting Officer did not recommend acceptance of this submission, instead referring the submitter to the recommended amendment to the activity status of mining in ONLs, in section 5.12.3 of the Section 42A Report.

3.7.7.12.1 Decision and Reasons

1889. We accept in part the submissions of *Oceana Gold (New Zealand) Limited* (OS1088.45).
1890. As discussed in section 3.7.8.2, our decisions amend the activity status of mining to non-complying in ONLs, with the consequential change of removing mining from Policy 10.2.5.6 and including it in Policy 10.2.5.15 (which relates to non-complying activities in ONLs). We consider this higher bar appropriate given the high value of ONL overlay zones, and given that mining can be particularly disruptive to landform. Policy 2.4.4.2 describes ONLs, as having “exceptional values”, protection these areas from inappropriate use and development is a matter of national importance under section 6(b), and Policy 3.2.4 of the pORPS-dv states that outstanding natural features should be protected, enhanced and restored including by “Avoiding adverse effects on those values that contribute to the significance of the natural feature, landscape or seascape”. Quarries and Mining are identified as principal threats to values for all ONLs listed in Appendix A3.
1891. In relation to the concerns of *Oceana Gold (New Zealand) Limited*, we note that there are no ONL overlay zones overlapping with the area of *Oceana Gold (New Zealand) Limited* permits. We note that mining was subject to a separate and specific hearing, and provisions for existing mining and quarrying activities are outlined in the Mining Activities Decision Report.
1892. We do note, however, that in decisions outlined in section 3.7.5.2, a number of activities have been deleted from Policy 10.2.5.6 and incorporated into new Policy 10.2.5.Z, which provides an alternative “adequately mitigated” policy test, for

activities where there are “no practicable alternative locations”. We consider this constitutes acceptance in part of the submission of *Oceana Gold (New Zealand) Limited* (OS1088.45).

3.7.7.13 Submissions seeking to change wording of Policy 10.2.5.6 in relation to tolerance of effects

1893. *HPPC* (OS447.24) sought to amend Policy 10.2.5.6, as follows: “Only allow [*specified activities*] in the Outstanding Natural Landscape Overlay Zone (ONL) where any adverse effects on the landscape values of the ONL will be avoided or if avoidance is not possible the adverse effects on the landscape, as identified in Appendix A3, would be insignificant”.
1894. *STOP* (OS900.57) sought to amend Policy 10.2.5.6 as follows: “Only allow [*specified activities*] in the Outstanding Natural Landscape Overlay Zone (ONL) will be avoided or if avoidance is not possible, where any adverse effects on the landscape values of the ONL as identified in Appendix A3, would be insignificant, essentially unidentifiable....”.
1895. The submitters stated that “Upper limit definitions are needed for vague terms such as ‘insignificant’.”
1896. *Waste Management (NZ) Limited* (FS2444.15) opposed *HPPC* (OS447.24) and *STOP* (OS900.57). *Howard Saunders* (FS2373.50), *Geoff Scurr Contracting Limited* (FS2391.64), *Oceana Gold (New Zealand) Limited* (FS2439.26) and *Federated Farmers of New Zealand* (FS2449.146) opposed *STOP* (OS900.57).
1897. The Reporting Officer noted that he did not favour “essentially unidentifiable” wording as he did not consider it adds to clarity. He noted that mining and landfills are recommended to be removed from this policy as part of the change to their activity status to non-complying, which he considered constituted acceptance in part of this submission. He did not recommend acceptance of other parts of the submissions, referring the submitter to the recommended amendments outlined in section 5.4.22 of the Section 42A Report. In this section, he recommended that the effects test in Policy 10.2.5.6 be amended to:
- “Only allow [*activities in ONLs*] where any adverse effects on the landscape values of the ONL, as identified in Appendix A3, ~~would be insignificant~~ will be
- a. avoided or, if avoidance is not possible, no more than minor; or
- b. where there are no practicable alternative locations, adequately mitigated.”
1898. At the hearing, Mr Craig Werner, representing *HPPC*, tabled a statement in which he discussed the recommended change to Policy 10.2.5.6 (Statement, p.4). He requested that the term ‘minor’ be amended to ‘insignificant’, and that clause b be deleted in relation to forestry as “when more holistic forestry practices are employed, ‘location’ ceases to become an issue”. He considered that these requested changes to the policy could lead to plantation ‘crop row’ forestry being discouraged in overlays.

3.7.7.13.1 Decision and Reasons

1899. We reject the submissions of *HPPC* (OS447.24) and *STOP* (OS900.57). We note that none of the suggested amendments align with the 2GP drafting protocol, which we consider should be adhered to where possible in the interests of Plan clarity. We do not support appending the words “essentially unidentifiable” to the policy for the reasons outlined in response to a similar submission in section 3.7.7.7. We also do not consider it necessary to specify a preference for avoidance of effects in policies with an “effects are insignificant” test. Although this is appropriate for less restrictive

effects tests (e.g. “effects are avoided or, if avoidance is not practicable, adequately mitigated”), in our view it is unnecessary in this case, because the “effects are insignificant” test is already appropriately restrictive, without the need to add the preference for avoidance.

3.7.7.14 Submissions seeking to amend Policy 10.2.5.7 to exclude development constrained with respect to location

1900. *Oceana Gold (New Zealand) Limited* (OS1088.46) sought to amend Policy 10.2.5.7, stating that modifications to the policy are necessary to recognise that desirable activities that are locationally constrained, such as mining, are exempt from the policy.
1901. The Reporting Officer did not recommend acceptance of this submission, for the reasons outlined in response to a similar submission from *Oceana Gold (New Zealand) Limited* (OS1088.43).
1902. During deliberations, in addition to the information requested on the extent to which Dunedin is covered by landscape and coastal character overlay zones and the coastal environment mapped area (discussed in section 3.7.1), we sought information about the extent to which rural properties might be affected by these overlays.
1903. Michael Bathgate, Reporting Officer responded in a memorandum (‘Extent of landscape and coastal character overlays and coastal environment mapped area’) dated 16 November 2017, with information about the proportions of rural and residential properties over 15ha that are affected by landscape and coastal character overlay zones.
1904. The Panel requested that information provided in Tables 3 and 4 of the 16 November 2018 memorandum be further broken down by overlay zone type for the ONL, SNL and NCC overlay zones. Michael Bathgate, Reporting Officer responded in a memorandum (‘Extent of ONL, SNL and NCC overlays’) dated 17 May 2018, setting out in tables the number and proportions of rural and residential properties over 15ha that affected by ONL, SNL and NCC overlay zones.

3.7.7.14.1 *Decision and Reasons*

1905. We accept in part the submissions of *Oceana Gold (New Zealand) Limited* (OS1088.46).
1906. Noting that Policy 10.2.5.7 relates to discretionary and restricted discretionary activities in SNLs, we agree with the Reporting Officer’s assessment that mining activity would be subject to a wide range of assessment matters, which may also include the contribution of the proposed activity to the economic and social wellbeing of people and communities under Part 2 of the RMA. We note that, as discussed in the Mining Decision, we have added new Policy 2.3.1.8 in the Strategic Directions section, and as a consequence amended relevant assessment rules, to recognise the need for mining activities to locate where resources are available, and the transport benefit of having mines close to where the product of mines is required.
1907. However, in SNLs, given that they respond to s7 of the RMA rather than s6, and noting that they cover 10% of the city’s land area, we agree with the submitters that there ought to be some recognition of locational constraints in the policy framework when considering applications for restricted discretionary and discretionary activities (including mining) in SNLs. Based on the figures in the Reporting Officer’s 17 May memorandum, we also accept that there are a significant number of rural and residential properties 15ha or larger that are substantially or wholly covered by SNL overlay zones.

1908. We have therefore amended Policy 10.2.5.7 to provide an alternative “adequately mitigated” policy test for activities where there are “no practicable alternative locations”. We consider this preferable to the amendment recommended by the Reporting Officer, as it retains a clear preference for activities to have “no more than minor” effects on landscape values, while providing a pathway for activities that are unable to meet that policy test but must locate within an SNL for operational reasons.
1909. We also note that Mining was subject to a separate and specific Hearing, and provisions for existing mining and quarrying activities are outlined in the Mining Activities Decision Report.

3.7.7.15 Submissions seeking to amend Policy 10.2.5.7 to “enable” activities and “avoid, remedy or mitigate” adverse effects

1910. *Saddle Views Estate Limited* (OS458.12), *Blackhead Quarries Ltd* (OS874.16) and *Tussock Top Farm Ltd* (OS901.11) sought to amend Policy 10.2.5.7 to amend the policy test to require that adverse effects will be “avoided, remedied or mitigated”, and to replace “Only allow” with “Enable”. The submitters believe the approach of the district plan is not balanced, and the identification of SNLs as having the same protection imperative as ONLs is not considered appropriate. These are working environments with significant levels of modification through farming, forestry and mining activities.
1911. The *Otago Regional Council* opposed *Blackhead Quarries Ltd* (OS874.16) and *Tussock Top Farm Ltd* (OS901.11), because they believed the amendment inconsistent with the pORPS, including Policy 2.2.4³².
1912. The Reporting Officer did not recommend that the wording be changed to “enable”, noting that the policy leads to a restricted discretionary or discretionary activity status for relevant activities, and the “only allow” wording is consistent with this under the 2GP drafting protocol, while “enable” implies a permitted activity. He also did not consider that the policy should be removed, as it assists with the restricted discretionary or discretionary assessment of any application for these activities.

3.7.7.15.1 *Decision and Reasons*

1913. We accept in part the submissions of *Saddle Views Estate Limited* (OS458.12), *Blackhead Quarries Ltd* (OS874.16) and *Tussock Top Farm Ltd* (OS901.11).
1914. We do not support the change from “Only allow” to “enable”, or the change in the policy test to “avoid, remedy or mitigate” for reasons of alignment with the 2GP drafting protocol, outlined in the Plan Overview Decision Report. We consider the drafting protocol should be adhered to wherever possible, in the interests of plan clarity. In short, we note that, under the 2GP drafting protocol “Only allow” is associated with restricted discretionary and discretionary activities, while “enable” is associated with permitted activities. We further accept that policies should provide guidance in terms of a preference for effects being avoided, remedied, or mitigated, clearly stating the outcome to be achieved, and that “avoid, remedy or mitigate” does not achieve this.
1915. As explained in section 3.7.5.2, we agree that there should be clear differentiation in the policy framework between provisions for SNLs and those for ONLs. Activities in ONLs are either subject to an “insignificant” policy test, or (as a result of decisions outlined in section 3.7.5.2) an “insignificant” policy test with an alternative “adequately mitigated” policy test available for some activities where there are “no practicable alternative locations”. We note that activities in SNLs are subject to a “no

³² Policy 3.2.4 in the pORPS-dv

more than minor” policy test, and are therefore already distinguished from those in ONLs.

1916. As discussed in section 3.7.2.3, we accept that SNLs represent a response to s7(c) and (f) of the RMA, that their classification takes into account their degree of modification, and that Appendix A3 acknowledges degrees of modification. We note Policy 3.2.4 of the pORPS-dv, highlighted by the *Otago Regional Council*, applies to outstanding natural features, landscapes and seascapes, and we do not consider it relevant. However, pORPS-dv Policy 3.2.6 (outlined in Section 3 of the Section 42A Report), seeks to protect or enhance highly valued natural landscapes including by “avoiding significant adverse effects on those values which contribute to the high value” of the landscape. Policy 2.4.4.2 of the 2GP describes SNLs as landscapes with “values of high significance.”
1917. We do not support the Reporting Officer’s recommended amendment to Policy 10.2.5.7, as we do not consider “adequately mitigated” sets a high enough bar for activities in these areas. However, as discussed in section 3.7.5.2, we consider there ought to be some recognition of locational constraints in the policy framework when considering applications for restricted discretionary and discretionary activities in SNLs.
1918. Our decision therefore, as set out in section 3.7.5.2:
- amends Policy 10.2.5.7 to provide an alternative “adequately mitigated” policy test for activities when there are “no practicable alternative locations”, and makes consequential changes to the assessment rules that paraphrase this policy
 - adds new Rule 10.8.4, which sets out the information that should be included in an assessment of alternative locations, and
 - adds general assessment guidance to the assessment rules for restricted discretionary and discretionary activities in SNLs (Rules 10.5.2.16 and 10.6.2.5) indicating that the Council “will generally only consider activities to have no practicable alternative locations where an assessment that meets the requirements set out in Rule 10.8.4 demonstrates that the proposed site, including any proposed mitigation measures, is the option that has the least impact on the values of the overlay, while meeting the operational needs of the activity”.
1919. We consider these amendments constitute partial alternative relief for the submissions of *Saddle Views Estate Limited* (OS458.12), *Blackhead Quarries Ltd* (OS874.16) and *Tussock Top Farm Ltd* (OS901.11).

3.7.7.16 Submissions seeking to add new policies

1920. *HPPC* (OS447.28) and *STOP* (OS900.64) sought to add a new policy (“In ONF, ONL, and SNL areas only allow plantation forestry, landfills and mining activities if the effects on the environment are insignificant”), suggesting that high visual impact activities should not be permitted in areas of outstanding or high natural character. This submission was opposed by *Geoff Scurr Contracting Limited* (FS2391.100, FS2391.113) (who considered the policy unnecessary and that wide community input was needed before this may be considered), *Oceana Gold (New Zealand) Limited* (FS2439.24, FS2439.25) (who opposed the mining reference due to the locational constraints of the activity), *Waste Management (NZ) Limited* (FS2444.17, FS2444.46) (who considered that normal RMA effects test should apply) and *Federated Farmers of New Zealand* (FS2449.137, FS2449.141) (who considered it inappropriate and unnecessary to afford “highly visible” rural zones the same level of protection as ONLs).

1921. The Reporting Officer noted the activities listed by *HPPC* and *STOP* are not permitted in ONFs, ONLs or SNLs, with Forestry being restricted discretionary and Mining and Landfills discretionary in ONLs and SNLs (except Rural Residential Zones, where Mining and Landfills are non-complying). He did acknowledge, however, his recommendation (discussed elsewhere in the Section 42A Report) to make Mining and Landfills non-complying in ONLs. All three activities are non-complying in ONFs.
1922. In relation to ONFs, he noted Policy 10.2.5.1 limits rural activities to those that do not require buildings or involve a change to the landform. However, this does not appear to capture non-complying activities well, and he noted that it is not specified in non-complying assessment rule 10.7.2.5. He stated use of the word “limit” in conjunction with non-complying activities is unusual in the 2GP, and seems an alternative to specifically listing the fairly large number of non-complying activities in conjunction with an “avoid” policy, or having a more general “avoid rural and community activities” policy which may be too restrictive of certain activities.
1923. He noted the changes he was proposing to Policy 10.2.5.1, 10.2.5.2 and 10.2.5.4, to provide an appropriately strict policy test for non-complying activities in ONFs, and acknowledged also the changes he was proposing to 10.2.5.6 and 10.2.5.7 (discussed in section 5.4.22 of the Section 42A Report). Overall, he did not recommend the addition of the new policy, as he considered that the activities were already covered by existing policies under Objective 10.2.5.
1924. *Ben Graham* (OS361.12) and *Mathew O’Connell* (OS364.8), supported by *Federated Farmers of New Zealand* (FS2449.134, FS2449.135), sought to add two new policies under Objective 10.2.5 as follows: “Recognise that rural activities often require buildings of a large scale in order to function efficiently. Buildings of this nature are anticipated within the Rural Zone and therefore measures to manage these effects may be employed, but will not prevent the establishment of such buildings” and “Manage the effects of buildings and structures associated with rural activities within the Outstanding Natural landscape Overlay Zone by considering scale, location and materials used”. The submitters believed that the demands of rural land uses on the submitters’ land were not adequately balanced by seeking to control the establishment of buildings to avoid effects or ensure they were insignificant.
1925. The Reporting Officer accepted the views of *Ben Graham* (OS361.12) and *Mathew O’Connell* (OS364.8) that large buildings are to be expected in the rural environment, and will be required for rural activities to function efficiently. He did not consider it was the intention of the 2GP to prevent the establishment of such buildings, but rather, that restricted discretionary activity status anticipates that they will occur but requires an assessment of their effects against the relevant landscape values. He considered this approach (set out in policies 10.2.5.6 and 10.2.5.7) to be appropriate to achieve Objective 10.2.5, in recognition that the buildings can have adverse effects. He noted his recommended amendments to policies 10.2.5.6 and 10.2.5.7 outlined in section 5.4.22 of the Section 42A Report. He did not, however, recommend acceptance of the additional policies suggested by *Ben Graham* (OS361.12) and *Mathew O’Connell* (OS364.8).
1926. *Federated Farmers of New Zealand* (OS919.29) sought to add an additional policy under Objective 10.2.5 as follows: “Recognise that large parts of the District’s Outstanding Natural Landscapes include working farms and accept that viable farming involves activities which may modify the landscape, providing the quality and character of the Outstanding Natural Landscape is not adversely affected.” They stated that these areas are subject to constant change, and that it was important the Plan recognise this working reality while protecting natural landscape values, particularly where they involved private land where farming is expected and beneficial. This submission point was supported by *John Scott* (FS2140.38), *Ben*

Graham (FS2279.38), *Mathew O'Connell* (FS2300.38) and the *Pigeon Flat Road Group* (FS2416.42) as they considered it appropriately supportive of farming activity in these landscapes, and opposed by *Forest and Bird NZ* (FS2482.26) who considered the amendments sought inconsistent with Part 2 of the RMA and the provisions of the 2GP, and the NZCPS.

1927. The Reporting Officer noted that farming is a permitted activity in ONLs, and that it is only certain development activities such as buildings and structures over 60m² and large scale earthworks that may trigger the requirement for a resource consent (covered by Policy 10.2.5.6). In this context, he also did not consider that the new policy promoted by *Federated Farmers of New Zealand* (OS919.29) was necessary or would contribute to the achievement of Objective 10.2.5, but he noted other submissions on these matters are dealt with under sections 5.4.29, 5.11.1 and 5.12 of the Section 42A Report.
1928. The *Pigeon Flat Road Group* (OS717.9) sought that the following new policy be added: "Manage the effects of rural activities within the Significant Natural Landscape Overlay Zone by considering scale, location and materials used." This group considered a lack of distinction between the objectives for areas identified as possessing outstanding character, and those possessing only significant character, as being inconsistent with Part 2 of the RMA.
1929. The Reporting Officer commented this should be considered in conjunction with their submission to remove SNLs from Policy 10.2.5.7, and took it to mean that all buildings and structures should be permitted in SNLs and managed by performance standards associated with scale, location and materials. In addition to the fact he considered that distinction between ONLs and SNLs was made through the effects test, he also considered that buildings and structures over 60m² should retain restricted discretionary activity status in SNLs (or controlled activity status, if on a landscape building platform), noting this already manages scale, location and materials and is an appropriate means of achieving Objective 10.2.5. He did not believe that all buildings and structures should be permitted, with the reasons for this canvassed in section 5.11.1 of the Section 42A Report.
1930. *HPPC* (OS447.29) and *STOP* (OS900.65) sought to add another new policy ("Buildings and structures too densely developed have the potential to have significant adverse effects on landscape values. Therefore, in ONLs, ONFs and SNLs, a greater than 10% contravention of density and minimum site size performance standards outlined in 2GP Section 16 and 17 would be contrary to the Objectives and Policies of the District Plan and, therefore, shall be avoided.") The submitters believe that the protection of landscapes requires certain rules regarding buildings and structures which, if contravened, create a non-complying activity status that is contrary in a defined manner. This will serve to secure the application of upper limits and insure that precautionary principles apply in Dunedin's most important natural places defined by landscape, coastal overlays etc.
1931. These submission points were opposed by *Howard Saunders* (FS2373.16, FS2373.54) (who considered the amendment places undue restrictions on buildings and structures, and that adequate control already exists under landscape overlays), *Geoff Scurr Contracting Limited* (FS2391.99, FS2391.112) (who considered the policy unnecessary and that wide community input was needed before this may be considered), and *Federated Farmers of New Zealand* (FS2449.136, FS2449.140) (who considered it inappropriate and unnecessary to afford "highly visible" rural zones the same level of protection as ONLs).
1932. The Reporting Officer observed that the request is already met in the rural and rural residential zones, although Rule 17.7.5.2 established an averaging approach to subdivision in the rural residential zones as a discretionary activity. When residential

density and subdivision are non-complying in rural and rural-residential zones, they are assessed under Rules 16.12.6.1, 16.12.6.6, 17.12.6.1 and 17.12.6.5. None of these refer directly to effects on landscape values, although as non-complying activities there is no limitation on considering these. He also noted that policies dealing with effects on rural and rural residential character and amenity are specifically referenced by these assessment rules. He noted that, within landscape overlay zones, Policy 10.2.5.11 considers the effect of subdivision on landscape overlay zones, and stated that he prefers this wording in considering the effects of subdivision, as he considered the 10% contravention suggested by submitters to be arbitrary and not justified, and other aspects contrary to the 2GP drafting protocol.

1933. *HPPC* (OS447.27) and *STOP* (OS900.63) sought to add a new policy ("Require new buildings and structures in a landscape and coastal overlay zone, ONFs and Hill Slope Rural Zones to incorporate mitigating measures for building and structure size and quantity, building and structure screening, landscape building platform or indigenous vegetation removal. Buildings and structures have the potential to have significant adverse effects on the value of these areas. Therefore, activity development and subdivisions in these areas which contravene performance standards for buildings size and quantity, building and structure screening, landscape building platform, indigenous vegetation removal or reflectivity would be contrary to the objectives and policies of the District Plan (10.2 and 16.2) and therefore shall be avoided.") The submitters stated that protection of landscapes requires certain rules regarding buildings and structures which, if contravened, create a non-complying activity that is contrary in a defined manner. They suggested this would serve to secure the application of upper limits and ensure that precautionary principles apply in Dunedin's most important natural places defined by landscape, coastal overlays etc.
1934. These submission points were opposed by *Howard Saunders* (FS2373.16, FS2373.55) (who considered the new policy unnecessary, as zoning rules exist to cover performance standards and density, and these are fair and equitable), *Geoff Scurr Contracting Limited* (FS2391.99, FS2391.114) (who considered the policy unnecessary and that wide community input was needed before this may be considered), and *Federated Farmers of New Zealand* (FS2449.136, FS2449.142) (who considered it inappropriate and unnecessary to afford "highly visible" rural zones the same level of protection as ONLs).
1935. The Reporting Officer did not support the suggested new policy, stating that, as an unqualified 'avoid' policy, it would suggest prohibited activity status for any activity that contravenes a performance standard in the zones and overlay zones listed. This approach he considered too onerous. He did note, however, that new buildings or structures already have a non-complying status in ONFs, ONCCs and HNCCs, which are considered the most sensitive to development. The Reporting Officer observed that the suggested policy also seeks mitigating measures for any new building or structure, regardless of whether these mitigating measures are appropriate or not in any particular instance. He noted the link with the submitters' requests to add new performance standards (considered elsewhere in the Section 42A), and noted that he was not recommending the addition of these new performance standards either.
1936. In a tabled statement for *HPPC* at the hearing, Mr Werner reiterated the perspective that objective standards and stricter activity status controls are sought for very large scale, potentially disruptive activities like Landfills, Mining, and Forestry, and that the 2GP is considered too weak in this regard. Specifically, the statement requested that Policy 10.2.5.6 be amended, for Forestry, to replace "minor" (as recommended in the Section 42A Report) with "insignificant" (as notified), commenting that "this would hopefully lead to plantation 'crop row' forestry in our natural and coastal overlays being discouraged. Hopefully landscape forestry diversity will result from the high standard of 'insignificant'." Mr Werner also requested that, for forestry, the alternative

test “where there are no practicable alternative locations, adequately mitigated” be deleted “as when more holistic forestry practices are employed, ‘location’ ceases to become an issue.”

1937. *HPPC* considered it made sense that conditions for non-complying activities should meet the Plan performance standards specified for activities with less stringent activity statuses. He further stated that there was a need to change from ‘subjective’ wording to ‘objective’ wording, given that the former “politicises the consent hearing process as councillors with differing views can choose to support outcomes that are far from ‘best practice’” and can allow applicants to “concoct specious arguments”. *HPPC* considers that the 2GP “represents mere suggestions that are open for inconsistent interpretation”, and explained that this was the rationale for seeking a range of amendments to wording, including the specification of non-complying activity status associated with contravention of certain standards.
1938. In response to *HPPC*’s evidence at the hearing on Objective 10.2.5 and related policies, the Reporting Officer recommended no change to his Section 42A Report recommendation, with the exception being in relation to Policy 10.2.5.6. The Reporting Officer commented that, regarding the replacement of “minor” with “insignificant”, this change was not supported. However, regarding the deletion of the alternative test for Forestry, he acknowledged that the test was included in the policy with other activities in mind, specifically:
- Large Buildings and Structures, and Earthworks – Large Scale, because a farm or other productive rural activity may be located entirely within an ONL, and the building/structure/earthworks may be necessary to the continuing function of the farm.
 - The various Network Utilities and Energy Generation Activities provided for in the policy may need to be sited at a specific location within an ONL either to provide a service or to access a resource.
 - Similarly, Natural Hazard Mitigation and Transportation activities may need to be sited at a specific location within an ONL to fulfil their function (e.g. a road servicing an existing group of houses).
1939. Nevertheless, he did not recommend deleting the alternative test for Forestry, as he considered there may be unanticipated situations in which a Forestry activity may need to be sited at a particular location, for example for land instability mitigation, or as a minor encroachment into an ONL of an existing forest. He further stated that, depending on the degree of adverse effect, this will not necessarily mean the consent should be granted. He considered that, to clarify the situation in which it is anticipated that the alternative policy test may be applied, additional content should be added to the assessment rule that applies to the activities included in this policy, as follows:
- Potential circumstances that may support a consent application include:
- iv. The practicable alternative locations of the proposed activity are constrained, for example in the following situations:
1. A large building or structure, or earthworks – large scale, is necessary to the operation of an existing rural activity
 2. An activity associated with energy generation needs to locate at a certain site in order to access an energy resource
 3. A network utilities activity, transportation activity or natural hazard mitigation activity needs to locate at a certain site to fulfil a specific function or provide a specific service.

3.7.7.16.1 *Decision and Reasons*

1940. We accept in part the submissions of *HPPC* (OS447.28) and *STOP* (OS900.64).

1941. We do not consider there is a need for a new policy, as existing policies within the Objective 10.2.5 policy suite already provide a policy test for these activities.
1942. In relation to ONFs, as outlined in section 3.7.5.2, we accept the Reporting Officer's evidence that Policy 10.2.5.1 is unclear, not linked to assessment rules, inconsistent with the 2GP drafting protocol, and inconsistent with policies 10.2.5.2 and 10.2.5.4, and that all non-complying activities in ONFs should be listed together in one policy. Our decision deletes Policy 10.2.5.1 and lists all non-complying activities (including Forestry) in Policy 10.2.5.4. We note that a decision in the Plan Overview Decision Report also amends the policy test associated with Policy 10.2.5.4 to "insignificant".
1943. Decisions outlined in section 3.7.8.2 amend the activity status of mining and landfills to prohibited in ONFs, with the consequential inclusion of these activities in new Policy 10.2.5.X, which has no associated policy test. We consider this more appropriate than use of an "insignificant" policy test, as it reflects prohibited activity status under the 2GP drafting protocol.
1944. In relation to ONLs, as outlined in section 3.7.8.2, our decision amends the activity status of mining and landfills to non-complying, with the consequential change of including them in Policy 10.2.5.15 in ONLs, which has an "insignificant" policy test. Forestry remains discretionary in ONLs, and subject to the "insignificant" policy test in Policy 10.2.5.6. Given the extent of the ONL overlay zone, and the fact that it covers a number of working farms either substantially or completely, we consider provision of an alternative "adequately mitigated" policy test where there are "no practicable alternative locations" appropriate for development activities likely to be required to support the operation of farming activities in this overlay zone. We note, however, that not only is Forestry identified as a key threat to values in the case of all three ONL overlay zones, there is also little existing forestry within ONLs, and no submissions were received specifically requesting an amendment to the policy test associated with forestry in this overlay zone. In this context, we consider it appropriate to retain the notified "insignificant" policy test for forestry in ONLs.
1945. In relation to SNLs, we note that Policy 10.2.5.7 relates to all discretionary and restricted discretionary activities in SNLs, including forestry, mining and landfills, and we do not support amending this policy test to "insignificant". As discussed in section 3.7.5.2, we agree that there should be clear differentiation in the policy framework between provisions for SNLs and those for ONLs. Activities in ONLs are either subject to an "insignificant" policy test, or (as a result of decisions outlined in section 3.7.5.2) an "insignificant" policy test with an alternative "adequately mitigated" policy test available for some activities where there are "no practicable alternative locations". SNLs are subject to a "no more than minor" policy test, and (again, as outlined in decisions in section 3.7.5.2) an alternative "adequately mitigated" policy test for situations in which there are "no practicable alternative locations", to recognise that SNL overlay zones have lower values than ONL overlay zones, and include tracts of existing forestry and mining activities.
1946. Taken together, we consider our decisions constitute partial alternative relief for the submissions of *HPPC* (OS447.28) and *STOP* (OS900.64).
1947. We accept in part the submissions of *Ben Graham* (OS361.12) and *Mathew O'Connell* (OS364.8).
1948. As discussed in section 3.7.9.1, we consider it appropriate that buildings and structures activities are non-complying activity status and subject to a strict policy test in ONFs, given that they are not only high value but also spatially restricted (covering just 0.3% of the city's land area). We consider that any buildings associated with permitted land use activities should be discouraged from locating on the ONF, and that this does not seem unreasonable, given the typically small size of ONFs.

1949. We accept the evidence of the Reporting Officer that it is not the intention of the 2GP to prevent the establishment of large buildings in ONLs and SNLs, and, as discussed in section 3.7.9.2, consider that a restricted discretionary activity status for large buildings and structures in ONL and SNL overlay zones appropriately manages the potential adverse effects of buildings and structures in these overlay zones. As explained in section 3.7.5.2, our decision:
- deletes large buildings and structures from Policy 10.2.5.6
 - adds large buildings and structures to new Policy 10.2.5.Z (which retains a preference for adverse effects being “insignificant”, but also provides an alternative policy test allowing for activities to be “adequately mitigated” where there are “no practicable alternative locations”),
 - amends 10.2.5.7 to provide an alternative “adequately mitigated” policy test for activities that are unable to meet the “no more than minor” policy test, but for which there are “no practicable alternative locations”,
 - adds new Rule 10.8.4, which sets out the information that should be included in an assessment of alternative locations,
 - adds general assessment guidance to the relevant assessment rules for restricted discretionary and discretionary activities in ONLs and SNLs indicating that the Council “will generally only consider activities to have no practicable alternative locations where an assessment that meets the requirements set out in Rule 10.8.4 demonstrates that the proposed site, including any proposed mitigation measures, is the option that has the least impact on the values of the overlay, while meeting the operational needs of the activity”
1950. We consider these amended policies appropriate to achieve Objective 10.2.5 and to align with higher order policy direction, while also providing a pathway for large buildings and structures associated with farming activities in ONL and SNL overlay zones. We do not consider it necessary or appropriate to add the new policies sought by *Ben Graham* (OS361.12) and *Mathew O’Connell* (OS364.8), but we consider these amendments constitute partial alternative relief for these submissions.
1951. We accept in part the submission of *Federated Farmers of New Zealand* (OS919.29).
1952. We accept the evidence of the Reporting Officer that Farming is a permitted activity in ONLs and that it is only certain development activities that may trigger the requirement for resource consent. It’s our assessment that the 2GP provides clear direction that Farming is anticipated in landscape overlay zones. Farming (and Grazing) are permitted activities in ONFs, ONLs and SNLs, and we consider the deletion of Policy 10.2.5.1 (described in section 3.7.5.2) removes any suggestion these activities are subject to additional controls in ONFs.
1953. As discussed in section 3.7.9.2, we consider that a restricted discretionary activity status for large buildings and structures and earthworks – large scale is appropriate in ONL overlay zones given the potential adverse effects of these activities on the high values of these overlay zones. However, our decision:
- deletes large buildings and structures and earthworks – large scale from Policy 10.2.5.6
 - adds large buildings and structures and earthworks – large scale to new Policy 10.2.5.Z (which retains a preference for adverse effects being “insignificant”, but also provides an alternative policy test allowing for activities to be “adequately mitigated” where there are “no practicable alternative locations”), and
 - adds new Rule 10.8.4 and amends assessment rules as set out in section 3.7.5.2.

1954. We consider these amended policies appropriate to achieve Objective 10.2.5 and to align with higher order policy direction, while also providing a pathway for large buildings and structures and earthworks – large scale associated with farming activities in ONL overlay zones. We do not consider it necessary or appropriate to add the new policy sought by *Federated Farmers of New Zealand* (OS919.29), but we consider these amendments constitute partial alternative relief for this submission.
1955. We reject the submission of the *Pigeon Flat Road Group* (OS717.9).
1956. As explained in section 3.7.5.2, we agree that there should be clear differentiation in the policy framework between provisions for SNLs and those for ONLs. Activities in ONLs are either subject to an “insignificant” policy test, or (as a result of decisions outlined in section 3.7.5.2) an “insignificant” policy test with an alternative “adequately mitigated” policy test available for some activities where there are “no practicable alternative locations”. We note that activities in SNLs are subject to a “no more than minor” policy test, and are therefore already distinguished from those in ONLs.
1957. As discussed in section 3.7.2.3, we accept that SNLs represent a response to s7(c) and (f) of the RMA, that their classification takes into account their degree of modification, and that Appendix A3 acknowledges degrees of modification. pORPS-dv Policy 3.2.6 (outlined in Section 3 of the Section 42A Report), seeks to protect or enhance highly valued natural landscapes including by “avoiding significant adverse effects on those values which contribute to the high value” of the landscape.
1958. In line with this higher order policy direction, we accept the Reporting Officer's evidence that managing large buildings and structures activities in SNLs by way of restricted discretionary activity status is an appropriate means of managing the potential effects associated with these activities, and of achieving Objective 10.2.5. We also accept that this approach already manages scale location and materials used, and that the suggested new policy is therefore unnecessary.
1959. We do note however (as described in section 3.7.5.2) that our decision recognises potential locational constraints associated with restricted discretionary and discretionary activities in SNLs by:
- amending Policy 10.2.5.7 to provide an alternative “adequately mitigated” policy test for activities when there are “no practicable alternative locations”, and
 - adding new Rule 10.8.4 and amending assessment rules as set out in section 3.7.5.2.
1960. We reject the submissions of *HPPC* (OS447.29) and *STOP* (OS900.63) seeking a new policy relating to buildings and structures in landscape overlay zones that contravene density or minimum site size standards by over 10%. We accept the Reporting Officer's evidence that the provisions sought are already substantially in place in the underlying rural zones. With respect to the rural residential zones, we consider that the benefits likely to be afforded by Rule 17.7.5.2 for rural character and amenity are likely to outweigh any potential benefits of making breaches non-complying. Our decision in relation to this is discussed in the Rural Residential Decision Report.
1961. We note that all subdivision activities in landscape overlay zones, including those that contravene the minimum site size, are subject to Policy 10.2.5.11. We accept that Policy 10.2.5.11 considers the effect of subdivision on landscape overlay zones, and concur with the Reporting Officer's view that this is preferable to the wording suggested by the submitters, noting that we were not presented with any evidential basis for the suggested 10% contravention threshold, and that use of the word “avoid” without a policy test is contrary to the 2GP drafting protocol (discussed in the Plan Overview Decision Report).

1962. We accept in part the submissions of *HPPC* (OS447.27) and *STOP* (OS900.63) seeking a new policy relating to buildings and structures in landscape or coastal overlay zones that contravene certain performance standards, including standards relating to “buildings size and quantity, building and structure screening, landscape building platform, indigenous vegetation removal or reflectivity”. We note that these submissions link with the submitters’ requests to add new performance standards (see discussion in sections 3.7.14.1-3 of this decision). As discussed in these sections, we generally do not support adding the requested performance standards as we accept the evidence that these measures will not be appropriate in every circumstance; however, we have added a reflectivity standard in the Hill Slopes Rural Zone, and associated new Policy 16.2.3.10, in response to the submitters’ requests.
1963. We accept the Reporting Officer’s evidence that the non-complying activity status associated with large buildings and structures activities in ONFs (including Buildings and Structures activities, which are non-complying in these overlay zones) appropriately recognises the high values of these overlay zones. We also accept the Reporting Officer’s evidence that a prohibited activity status for performance standard contraventions would be too onerous.
1964. We consider this constitutes acceptance in part of the submissions of *HPPC* (OS447.27) and *STOP* (OS900.63).

3.7.8 Activity Status

3.7.8.1 Activity status of Forestry in landscape and natural coastal character overlays

1965. The *JWB Bradley Family Trust* (OS185.4, OS185.5) sought that Forestry be a permitted activity in the Flagstaff-Mt Cargill SNL Overlay Zone, so that they could harvest and replant forestry on their Cowan Road sites. *Christopher Kilpatrick* (OS505.3) also sought permitted activity status for Forestry on his property in the Flagstaff-Mt Cargill SNL.
1966. Both submissions were opposed by *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (FS2456.81, 108) as permitted activity status would not allow consideration of the impact on Kāi Tahu values where Forestry is identified as a threat to the values of wāhi tūpuna. The *JWB Bradley Family Trust* submission was opposed by *HPPC* (FS2267.142), who considered that unnatural plantation forestry is incompatible with a ‘natural landscape’.
1967. *Denise von Hardenbroek* (OS858.1) sought to plant native trees and other species to selectively harvest on a sustainable rotation basis in the Maungatua SNL, and requested permitted activity status for this activity to avoid uncertainty and delays.
1968. *David Graham* (OS926.2) sought permitted activity status for harvesting of trees at his property in the High Country ONL.
1969. *Timothy George Morris* (OS951.42) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.42) sought permitted activity status for Forestry in all landscape and coastal character overlay zones.
1970. The *Construction Industry and Developers Association (CIDA)* (OS997.90) requested the non-complying activity status for Forestry in ONFs and HNCCs be changed to discretionary, as the 2GP does not provide enough flexibility for activities and development to proceed in a financially viable way. This submission was supported by *Federated Farmers* (FS2449.361) who considered discretionary activity status would be more appropriate and workable for the zones specified, and would be a more effects-based approach. The submission was opposed by *HPPC* (FS2267.132), who considered that non-complying activity status should be retained, in order to allow for a full assessment of potential effects.

1971. *STOP* (OS900.57, OS900.5) requested that Forestry be removed from Policies 10.2.5.6 and 10.2.5.7, which list activities that are restricted discretionary or discretionary in ONLs and SNLs. These submission points were interpreted by the Reporting Officer to mean that *STOP* sought non-complying activity status for Forestry in ONLs and SNLs. There were a number of further submissions in opposition to these submission points.
1972. The Reporting Officer recommended that all of these submission points were rejected, noting that all lawfully established existing Forestry activities in overlay zones have existing use rights under section 10 of the RMA, meaning that, provided the character, intensity or scale of the Forestry activity does not change, no resource consent would be required to harvest existing forest or to replant forest that has been harvested (s42A Report, section 5.12.2).
1973. The Reporting Officer considered it appropriate to require resource consent for new or expanded Forestry activities in landscape and coastal character overlay zones, but noted that woodlots of up to one hectare are excluded from the definition of forestry. This means these smaller woodlots are permitted in SNLs, ONLs and NCCs and would only require consent in ONCCs, HNCCs and ONFs, which tend to be limited in spatial extent and of particularly high value.
1974. In addition, *Chris Walker* (OS289.9) sought that activity status rules for the rural residential zones be amended to permit farming, grazing, fences and 'all other vegetation clearance' (i.e. vegetation clearance that is not indigenous vegetation clearance) in ONFs. The Reporting Officer noted that these activities were in fact already permitted in these areas, and that, therefore, no change was required to give relief to this submission. It is likely that use of the 'em-dash' in the activity status tables has led to confusion regarding the activity status that applies in these cases. The Reporting Officer noted that recommendations had been made in the Plan Overview Section 42A Report to clarify activity status tables throughout the plan by amending the use of em-dashes.
1975. In a statement for *HPPC* provided by representative Mr Craig Werner at the Hearing, it was reiterated that that objective standards and stricter activity status controls are sought for "very large scale, potentially disruptive activities" like Landfills, Mining, and Forestry, and that the 2GP is considered too weak in this regard.

3.7.8.1.1 *Decision and Reasons*

1976. We reject the submissions of *Timothy George Morris* (OS951.42) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.42), seeking permitted activity status for Forestry in all landscape and coastal character overlay zones. We also reject the submission of the *Construction Industry and Developers Association (CIDA)* (OS997.90) requesting discretionary activity status for Forestry in ONFs and HNCCs, and the submission of *STOP* (OS900.57, OS900.5) insofar as it sought non-complying activity status for Forestry in ONLs and SNLs.
1977. We note that Forestry is listed in Appendix A3 as one of the principal threats to values for all ONLs, and most SNLs, with threats are not listed in relation to ONFs. In relation to coastal character overlay zones, Appendix A5 identifies Forestry as a threat to most NCCs, and effects of sedimentation on water quality is noted as a threat across most coastal character overlay zones. In this light, we consider it in line with the higher order policy direction in the RMA and pORPS-dv, to require consideration of effects on landscape and natural coastal character values respectively in these overlay zones. We consider the difference in activity status between the restricted discretionary activity status for Forestry in ONLs, SNLs and NCCs, and non-complying activity status in ONFs, ONCCs and HNCCs, as appropriately recognising the significance of the higher value overlay zones, which we note (as explained in section 3.7.1) are very

spatially limited. We do not consider a discretionary activity status would appropriately protect the values of ONFs and HNCCs.

1978. We accept the Reporting Officer's evidence that the Forestry provisions of the 2GP relate only to new Forestry activities, and that woodlots and shelterbelts smaller than 1ha are permitted in all but the highest value overlay zones, and that these activities will therefore be relatively unaffected by 2GP provisions. We also note that, in decisions outlined in section 3.7.5.2, the relevant policy has been amended to provide an alternative "adequately mitigated" policy test for Forestry activity in SNLs where there are no practicable alternative locations, which seeks to provide a pathway for Forestry activities in SNLs where Forestry is a more established land use.
1979. We reject the submissions of *JWB Bradley Family Trust* (OS185.4, OS185.5) and *Christopher Kilpatrick* (OS505.3), seeking permitted activity status for Forestry in the Flagstaff-Mt Cargill SNL Overlay Zone. We note that Forestry is listed in Appendix A3 as one of the principal threats to values for the Flagstaff-Mt Cargill SNL Overlay Zone. In this context, we consider it particularly appropriate that the potential effects on landscape values of any proposed Forestry activity be considered through a restricted discretionary resource consent process. We agree with the assessment of *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (FS2456.81, 108) that permitted activity status would not allow consideration of the impact on Kāi Tahu values where Forestry is identified as a threat to the values of wāhi tūpuna.
1980. We reject the submission of *Denise von Hardenbroek* (OS858.1) insofar as it sought permitted activity status for Forestry specifically in the Maungatua SNL. We note that Forestry is listed in Appendix A3 as one of the principal threats to values for the Maungatua SNL Overlay Zone. In this context, we consider it appropriate that the potential effects on landscape values of any proposed Forestry activity be considered through a restricted discretionary resource consent process.
1981. We reject the submission of *David Graham* (OS926.2) seeking permitted activity status for harvesting of trees at his property in the High Country ONL. We note that the restricted discretionary activity status of Forestry in ONLs relates only to new Forestry activities, and that under section 10 of the RMA existing use rights would apply to existing lawfully established Forestry activities, provided that the effects of the activity remain the same or similar in character, intensity and scale. We do not consider any amendment is necessary to achieve the outcome sought by the submitter.
1982. We accept the submission of *Chris Walker* (OS289.9) that farming, grazing, fences and 'all other vegetation clearance' (i.e. vegetation clearance that is not indigenous vegetation clearance) be permitted in ONFs; as noted by the Reporting Officer, rules already provide for these activities to be permitted in ONFs, but the use of the em-dash in the relevant activity status table does not make this clear. We have amended the Plan so that em-dashes are no longer used in activity status tables; see discussion in the Plan Overview Decision.

3.7.8.2 Activity status of Mining and Landfills in landscape and natural coastal character overlays

1983. *HPPC* (OS447.75, 76, 101) and *STOP* (OS900.109, 110) sought that Landfills and Mining be made a non-complying activity within ONL, SNL and NCC overlay zones, and a prohibited activity within ONF, ONCC and HNCC overlay zones (rules 16.3.3.10 and 16.3.3.13). These submissions were opposed by *Oceana Gold (New Zealand) Limited* (FS2439.64, 65, 68), who preferred the activity status for Mining as notified, subject to the addition of a new rural activity as requested in their original

- submission. *Waste Management (NZ) Ltd* (FS244.18, 19) and *Federated Farmers* (FS2449.312, 313) opposed the submissions to change the activity status of Landfills.
1984. *Saddle Views Estate Limited* (OS458.26) sought that Mining be made a discretionary activity in any landscape or NCC overlay zone, as the 2GP rule framework does not reflect the existing activity or consent for the Saddle Hill quarry. This submission was opposed by *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (FS2456.82) on the basis that Mining potentially has significant adverse impacts on Kāi Tahu values in wāhi tūpuna.
 1985. The Reporting Officer recommended retaining non-complying status for Mining in ONFs, ONCCs and HNCCs because of their high importance to the city, relatively small size, and limited capacity for any use and development (s42A Report, section 5.12.3).
 1986. In response to the requests by *HPPC* and *STOP* to make Landfills and Mining prohibited in ONF, ONCC and HNCC overlay zones, the Reporting Officer noted that prohibited activity status was considered for Mining and Landfills on ONFs because of the potentially significant impacts on landform; however non-complying activity status was considered more appropriate because it allowed for exceptional circumstances, while still signalling that Mining and Landfills are not anticipated activities in these areas (s42A Report, p.534).
 1987. In response to the requests by *HPPC* and *STOP* to make Landfills and Mining non-complying in ONL, SNL and NCC overlay zones, the Reporting Officer considered the current discretionary activity status appropriate in the SNL and NCC overlay zones. However, the Reporting Officer agreed that it may be appropriate to change the activity status for Mining and Landfills in ONLs to non-complying to send a signal that Mining and Landfills are not anticipated in an ONL except in exceptional circumstances.
 1988. Mr Craig Werner, representing *HPPC*, tabled a statement at the Hearing which, in response to the Reporting Officer disagreeing with prohibited status in ONF, ONCC and HNCC overlays, stated that if some 'exceptional' circumstance eventuates, then a Plan Change would be the appropriate vehicle to address the circumstance (p.4). Mr Werner reiterated that *HPPC* sought stricter activity status controls for "very large scale, potentially disruptive activities" like Landfills and Mining and that *HPPC* considered the 2GP too weak in this regard.
 1989. In response to the *HPPC* statement, the Reporting Officer did not support a prohibited status for Mining and Landfills in ONF, ONCC and HNCC overlays; a non-complying activity status anticipates that consent for these activities will only be granted in exceptional circumstances. Prohibited activity status means that resource consent cannot even be applied for, without an opportunity to assess any positive effects or mitigation measures. She did not consider it appropriate to require a plan change in such a circumstance, as in her opinion the resource consent process for a non-complying activity will provide a robust assessment and a more efficient and effective way of managing these activities. (Revised Recommendations Summary, p.42).
 1990. In evidence at the hearing, Ms Debbie Clarke (Senior Environmental Advisor for *Oceana Gold (New Zealand) Limited* at the Macraes Gold Project) stated that an active programme to identify and define further gold resources is underway, and that areas within the Dunedin City boundary are "extremely prospective". She attached a map to her evidence showing the location of the Macraes Mining Zone and the area covered by *Oceana Gold (New Zealand) Limited* permits (Evidence, Attachment A).
 1991. In submissions at the hearing, Mr Mark Christensen, counsel for *Oceana Gold* stated that "mineral resources are fixed in location which means if a resource is to be developed, there can often be limited opportunities to avoid and minimise effects on...landscapes." Similar themes were emphasised in the evidence of Ms Clarke.

3.7.8.2.1 *Decision and Reasons*

1992. We reject the submission of *Saddle Views Estate Limited* (OS458.26) seeking discretionary activity status for Mining in ONCCs, HNCCs and ONFs, and accept in part the submissions *HPPC* (OS447.75, 76, 101) and *STOP* (OS900.109, 110) insofar as they sought prohibited activity status for Mining and Landfills in these overlay zones.
1993. As discussed elsewhere, we accept that ONCC/HNCCs and ONFs are particularly high value overlay zones. The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development is matter of national importance under s6(b) of the RMA, as is the preservation of the natural character of the coastal environment under s6(a). ONFs are described by Policy 2.4.4.2 as having “exceptional” landscape values, with ONCCs/HNCCs having “exceptional” natural character and natural character of “high significance” respectively (according to Policy 2.4.5.2). As noted in Section 3 of the Section 42A Report, Policy 3.2.4 of the pORPS-dv states that outstanding natural features, landscapes and seascapes should be protected, enhanced and restored including by “Avoiding adverse effects on those values that contribute to the significance of the natural feature, landscape or seascape”. Policy 3.2.9 or the pORPS-dv contains a similar provision for those areas of the coastal environment with outstanding values, with Policy 3.2.10 stating “avoiding significant adverse effects on those values which contribute to the high natural character of an area”.
1994. We accept the assessment of *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (FS2456.82) that Mining has the potential for significant adverse impacts on Kāi Tahu values in wāhi tūpuna, noting Appendix A4 lists a number of wāhi tūpuna mapped areas that coincide with ONCC/HNCC and ONF overlay zones.
1995. We also note these overlay zones are particularly spatially restricted, with ONCCs covering 0.1%, and HNCCs and ONFs both 0.3% of Dunedin’s land area respectively. In our assessment the non-complying policy framework does not appropriately recognise and provide for the protection of ONCCs, HNCCs and ONFs from the potential effects of Mining activity, and that a discretionary activity status would be even less appropriate given the higher order policy direction. We were persuaded by the submissions of *HPPC* that a prohibited activity status for these activities is warranted in these particularly high value areas, noting the Reporting Officer’s assessment that Mining and Landfills can be particularly disruptive to landform. We do not consider this approach overly onerous given the particularly restricted spatial footprint of the areas in question.
1996. In relation to concerns about the impacts of these changes on existing activity or consent for the Saddle Hill quarry, we note that Mining was subject to a separate and specific Hearing, and provisions for existing mining and quarrying activities are outlined in the Mining Activities Decision Report. We also note that there are no ONF, ONCC or HNCC overlay zones overlapping with the area of *Oceana Gold (New Zealand) Limited* permits, and no evidence was raised by other submitters regarding overlays affecting other permitted prospecting areas.
1997. We also accept in part the submissions of *HPPC* (OS447.75, 76, 101) and *STOP* (OS900.109, 110) insofar as they sought to amend the activity status of Mining and Landfills in the ONL overlay zone to non-complying. As noted elsewhere, Policy 2.4.4.2 describes ONLs, like ONFs, as having “exceptional values”, and the Reporting Officer notes that protection of both of these areas is a matter of national importance under section 6(b). Policy 3.2.4 of the pORPS-dv applies equally to outstanding natural features and outstanding natural landscapes. Quarries and Mining are identified as principal threats to values for all ONLs listed in Appendix A3. Furthermore, we agree with submissions discussed in section 3.7.5.2 that there should be greater differentiation between the management of ONLs, and the

management of SNLs. Accepting the evidence of the Reporting Officer that the change to non-complying would signal that Mining and Landfills are not anticipated in an ONL except in exceptional circumstances, we consider this amendment assists with that differentiation. We consider this higher bar appropriate given the high value of ONL overlay zones.

1998. In relation to the concerns of *Oceana Gold (New Zealand) Limited*, we note that there are no ONL overlay zones in the Macraes Mining Zone or in the area of *Oceana Gold (New Zealand) Limited* permits.
1999. We have decided to retain the discretionary activity status for Mining and Landfill activities in SNL overlay zones. We consider this appropriate given that, as discussed elsewhere, they respond to matters in s7 of the RMA rather than matters of national importance under s6 (as ONFs and ONLs do), and as discussed in section 3.7.5.2 we support differentiation in management approach between ONLs and SNLs. We note that, as a result of amendments discussed in section 3.7.5.2, Policy 10.2.5.7 states “Only allow” activities in SNLs where adverse effects on landscape values of the SNL are “no more than minor”, with an alternative “adequately mitigated” policy test applying where there are “no practicable alternative locations” for the activity. We consider this framework will encourage Mining and Landfills to establish elsewhere unless there is a locational constraint that genuinely requires them to establish within an SNL.
2000. We consider discretionary activity status also appropriate in NCCs. This is because, as noted in section 3.7.1, NCCs have been assessed as having less than high (but greater than medium) natural character, rather than the outstanding or high natural character of ONCCs and HNCCs, and we consider it appropriate that the management approach is differentiated across this hierarchy of overlay zones. We also note that, in decisions outlined in section 3.7.5.2, the policy framework takes a different approach to the management of Mining and Landfills activities in NCCs from that taken in SNLs. We consider that discretionary status in conjunction with the “no more than minor” policy test associated with Policy 10.2.3.4, appropriately responds to higher order policy direction.
2001. The amendments required for this decision, including consequential amendments, are:
 - Amend activity status rules 16.3.3.10, 16.3.3.Y, 16.3.3.13, 17.3.3.A and 17.3.3.B to change the activity status of mining, mineral exploration that involves blasting, and landfills from discretionary to non-complying in ONLs and from non-complying to prohibited in ONFs.
 - Amend the following Section 10 policies to reflect these changes: add new Policies 10.2.3.W and 10.2.5.X, and delete mining and landfills from Policy 10.2.5.6.
 - Amend the following assessment rules to reflect these changes: amend Rule 10.6.2.5 (discretionary activities) so that it applies to mining and landfills in SNLs only – i.e. no longer in ONLs; add new Rule 16.12.3.Y (non-complying activities) for mining and landfills in ONLs; and delete references to landfills and ‘mining not in a GRITZ’ from Rule 16.12.3.7 (non-complying activities in ONFs, ONCCs and HNCCs).
 - Amend Strategic Direction Policies 2.4.4.3 and 2.4.5.3 to refer to prohibited activities in ONCCs, HNCCs and ONFs.
2002. Changes are shown in Appendix 1 and are attributed to NatEnv 447.75 (in relation to landfills) and 447.76 (in relation to mining).

3.7.8.3 Activity status of other rural land use activities in landscape and natural coastal character overlays

2003. *CIDA* sought the activity status of a range of rural activities taking place within ONF, HNCC and ONCC overlay zones be amended as follows:
- Amend activity status of Domestic Animal Boarding and Breeding *not including dogs* from non-complying to restricted discretionary in rural zones, and from non-complying to discretionary in rural residential zones (OS997.80 and OS997.91).
 - Amend activity status of Domestic Animal Boarding and Breeding *including dogs* from non-complying to restricted discretionary in rural zones (OS997.81).
 - Amend activity status of Factory Farming from non-complying to restricted discretionary in rural zones (OS997.82).
 - Amend activity status of Rural Research – Large Scale from non-complying to discretionary in rural zones (OS997.84).
2004. *CIDA* considered that the 2GP as notified does not provide enough flexibility for activities and development to take place in a financially viable way. Each of the *CIDA* submissions was opposed by *HPPC* on the basis that non-complying activity status is necessary to provide adequate protection from adverse effects. *Federated Farmers* supported the *CIDA* submission on Domestic Animal Boarding and Breeding *not including dogs* in rural residential zones, on the basis that the outcome sought by *CIDA* is more effects-based and would be more appropriate and workable for the zones specified.
2005. The Reporting Officer recommended the *CIDA* submissions were rejected and noted that, as well as containing high or outstanding landscape or coastal character values, ONF, HNCC and ONCC overlays cover very little land within Dunedin and the demand to establish new Domestic Animal Boarding and Breeding, Factory Farming and Rural Research – Large Scale activities in these areas, is likely to be low. The Reporting Officer considered that non-complying activity status appropriately recognised and protected the high values of these areas, and was the most appropriate way of achieving Objectives 10.2.3 and 10.2.5 and recognising the relevant section 6 matters (Section 42A Report, section 5.12.4).

3.7.8.3.1 *Decision and Reasons*

2006. We reject the *CIDA* submissions (OS997.80, OS997.91, OS997.81, OS997.82, OS997.84) seeking to amend the activity status of Domestic Animal Boarding and Breeding, Factory Farming and Rural Research – Large Scale in the ONF, ONCC and HNCC overlay zones. We accept the evidence of the Reporting Officer that demand to establish these activities in overlay zones with such restricted spatial extent is likely to be low, and that the most appropriate way to protect or preserve the high values of these overlay zones (in line with objectives 10.2.3 and 10.2.5, and higher order policy direction, including s6(a) and s6(b) of the RMA) is through non-complying activity status for these activities.

3.7.8.4 Activity status of residential, commercial and industrial activities in landscape and natural coastal character overlays

2007. *Timothy George Morris* (OS951.44) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.44) sought that Standard Residential activity is permitted in all landscape and coastal overlay zones. This was opposed by *HPPC* (FS2267.67) who stated that the "underlying tenet" of the landscape and coastal zones is that development is "subject to rules and Council review".

2008. *CIDA* (OS997.83, 85, 86-88, 92-94) requested less strict activity status for Standard Residential, Supported Living Facilities, Veterinary Services - *large animal practice*, Visitor Accommodation and Rural Industry in the ONF, HNCC and ONCC overlay zones. All the *CIDA* submissions were opposed by *HPPC*, on the basis that non-complying activity status is necessary to provide adequate protection from adverse effects. The *CIDA* submissions in relation to Standard Residential, Visitor Accommodation and Veterinary Services were supported by *Federated Farmers*, who considered the outcomes sought more effects-based, appropriate and workable for these zones.
2009. The Reporting Officer recommended submissions to amend the activity status of Standard Residential, Supported Living Facilities, Veterinary Services - *large animal practice*, Visitor Accommodation and Rural Industry be rejected and reiterated that the 2GP differentiates between different levels of overlay in terms of their tolerance of effects. ONF, ONCCs and HNCCs have exceptional values or highly significant character, and are highly sensitive to development, and the non-complying status sends a signal that these activities are not anticipated or provided for within these overlays except in exceptional circumstances (Section 42A Report, section 5.12.5).

3.7.8.4.1 *Decision and Reasons*

2010. We reject the submissions of *Timothy George Morris* (OS951.44), *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.44) and *CIDA* (OS997.83, 85, 86-88, 92-94) requesting changes to the activity status of residential, commercial and industrial activities in the ONF, ONCC and HNCC overlay zones.
2011. We accept the evidence of the Reporting Officer that a non-complying activity status for these activities in these overlays signals that these activities are not anticipated in these overlays. We consider this appropriate, given that (as discussed in section 3.7.1) ONFs, ONCCs and HNCCs are high value overlay zones, described as having “exceptional” landscape values, and “exceptional” natural character or natural character of “high significance” respectively. We do not consider this an onerous restriction given their very limited spatial extent (0.3%, 0.1% and 0.3% of the city’s land area respectively).

3.7.8.5 Activity status of major facilities activities in landscape and natural coastal character overlays

2012. *HPPC* (OS447.77-79) and *STOP* (OS900.112-114) sought that Cemeteries, Crematoriums and all other major facility activities be made prohibited activities in all landscape and coastal character overlay zones in the rural zones. The submitters consider that these changes are necessary to assist in maintaining a natural appearance within the rural areas that have landscape protections.
2013. The Reporting Officer did not agree that it was necessary to change the activity status to prohibited in order to maintain a natural appearance in the affected areas and to achieve Objectives 10.2.3 and 10.2.5. She noted the strict policy tests for these non-complying major facility activities in ONF, ONCC and HNCC overlay zones. In the ONL, SNL and NCC overlay zones, she noted that Cemeteries and Crematoriums have the same activity status as in the rural zones and noted the policy test for any large buildings and structures associated with these activities. Overall, she considered that the notified provisions provide a high level of protection for landscape and coastal character overlay zones, that:
- recognise the differing values and sensitivities of each type of protected area;
 - provide a particularly high level of protection in the areas with the highest values (i.e. ONF, HNCC and ONCC overlay zones); and

- provide a greater degree of flexibility in those landscape and natural coastal character overlay zones that are more extensive and already contain some development (i.e. ONL, SNL and NCC overlay zones).

(Section 42A Report, section 5.12.6)

3.7.8.5.1 *Decision and Reasons*

2014. We accept in part the submissions of (OS447.77-79) and *STOP* (OS900.112-114) to change the activity status for major facilities activities to prohibited in all landscape and coastal character overlay zones. We have strengthened the management of protected values for these activities, but not to the extent sought by the submitters. We concur with the Reporting Officer's assessment that it is not necessary to amend the activity status to prohibited to achieve objectives 10.2.3 and 10.2.5.
2015. We consider that non-complying activity status is appropriate for all major facilities activities in ONFs, ONCCs and HNCCs, and for all major facilities activities except cemeteries and crematoriums in ONLs, SNLs and NCCs. We consider this appropriately signals that these activities are not anticipated in these areas, and the policy tests (which have been amended to "effects are insignificant" in decisions outlined in section 3.7.5.2) set an appropriately high bar. Taken together, we consider these provisions protect the values of the overlay zones in line with higher order policy direction, although note that we have amended associated assessment rules as discussed below.
2016. We consider it appropriate that Cemeteries and Crematoriums have a restricted discretionary activity status in ONLs, SNLs and NCCs, as notified. That is because these activities are less likely to result in significant adverse effects, and more likely to seek to establish in these areas, than other major facility activities such as hospitals and prisons. We note the Reporting Officer's evidence that the establishment of associated buildings and structures, and other development activities, are subject to additional provisions. We agree that these set a sufficiently high bar to protect the values of these overlay zones. We consider that this policy framework will encourage activities involving large buildings and structures to establish elsewhere unless there is a genuine operational need to establish within an overlay zone.
2017. However, we note that in the notified provisions the Council's discretion for these activities does not extend to effects on landscape values. We consider that this approach is suitable for cemeteries, because they are unlikely to have effects on landscape values beyond those associated with development activities, which are subject to other provisions. However, as a precautionary measure (not having heard landscape evidence in relation to this specific matter) we have added effects on landscape values as a matter of discretion for crematoriums.
2018. Therefore, we have added crematoriums to Policy 10.2.5.Y and Policy 10.2.5.7, which apply to restricted discretionary activities in ONLs and SNLs, and to Policy 10.2.3.4, which applies to restricted discretionary activities in NCCs. As discussed in section 3.7.5.2, the under Policies 10.2.5.Y and 10.2.5.7 effects of activities are to be "adequately mitigated" (rather than having to meet a more restrictive effects test, i.e. "effects are insignificant" or "effects are no more than minor") if it can be demonstrated that there are "no practicable alternative location" for the activity. Policy 10.2.3.4 does not have this alternative test (effects must be "no more than minor" in all cases). We consider that this is appropriate given that ONLs and SNLs cover 26% and 10% of the city's land area respectively; therefore, there may be an operational need for crematoriums to establish within these overlays. We do not consider that the spatial extent of NCCs (at 0.5% of the city's land area) can be considered extensive; therefore, in this case we consider it appropriate that a stricter test is applied. We note that crematoriums may conceivably be able to meet the

relevant policy test of a “no more than minor” adverse effect on natural character values in these areas.

2019. Finally, we note that, under the notified provisions, in the assessment rules for major facility activities other than cemeteries and crematoriums (which are non-complying activities in all landscape and coastal overlays), there is no link to Natural Environment assessment rules. We consider that – although these activities are unlikely to seek to establish in these areas – as a precautionary measure, this link should be made.
2020. The amendments required for this decision, including consequential amendments, are as follows.
- Amend Policy 10.2.5.Y, Policy 10.2.5.7 and Policy 10.2.3.4 to add “crematoriums”.
 - Amend assessment rules 16.10.5.2, 16.5.10.4, 10.5.2.4, 10.5.2.E and 10.5.2.16 to add “effects on landscape values” as a matter of discretion for crematoriums (i.e. by adding crematoriums to the activities listed in these rules).
 - Amend activity status symbol for crematoriums in ONLs, SNLs and NCCs (i.e. Rule 16.3.3.41.b) from RD to RD+, to indicate that additional provisions apply.
 - Amend assessment rules for major facility activities other than cemeteries and crematoriums in all landscape and coastal character overlay zones to link to Section 10 guidance on the assessment of effects on protected values, by:
 - o Replacing the references to cemeteries and crematoriums in Rule 16.12.3.7 (ONFs, ONCCs and HNCCs) with a reference to “Major facility activities”
 - o Adding a reference to “Major facility activities (other than cemeteries and crematoriums)” to Rule 16.12.3.Y (ONLs).
 - o Adding new rule 16.12.3.Z relating to “Major facility activities (other than cemeteries and crematoriums)” in NCCs and SNLs, and stating “See Section 10.7 for guidance on the assessment of resource consents in relation to Objective 10.2.3 and 10.2.5 and the effects related to natural character of the coast and landscape values.”
 - Amend activity status symbol for “all other activities in the major facility activities category” in ONLs, SNLs and NCCs and in ONFs, ONCCs and HNCCs (i.e. Rules 16.3.3.42.b and c) from NC to NC+, to indicate that additional provisions apply.
2021. The changes are set out in full in Appendix 1 (amendments attributed to NatEnv 447.77 in relation to crematoriums, and NatEnv 447.79 in relation to major facility activities other than cemeteries and crematoriums).

3.7.8.6 Activity status of Indigenous Vegetation Clearance in landscape and natural coastal character overlays

2022. *Timothy George Morris* (OS951.46) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.46) sought to permit Indigenous Vegetation Clearance in all rural zone landscape and coastal character overlays, noting that regrowth of indigenous vegetation can be rapid and can adversely affect farming and forestry activities.

2023. *Forest and Bird NZ* (OS958.106) sought that Indigenous Vegetation Clearance be made non-complying in ONF, ONCC and HNCC overlays, based on the view that this would better meet the objectives of the 2GP and Part II of the RMA. This submission was supported by *HPPC* (FS2267.68), on the basis that indigenous vegetation is an especially important component of landscape protection areas. It was opposed by six further submitters, who considered it unduly onerous and restricted and does not recognise that some vegetation clearance will be necessary or could even benefit the landscape.
2024. The Reporting Officer recommended all submissions were rejected and that no change be made to the activity status for Indigenous Vegetation Clearance. The Officer considered that the restricted discretionary activity status for Indigenous Vegetation Clearance in the NCC, ONCC, HNCC overlays provided additional protection to areas where vegetation clearance might have the greatest adverse effects, including in areas adjoining the coast, giving effect to RMA s6(a) and the NZCPS. (Section 42A Report, section 5.12.7)
2025. With respect to concern raised that regrowth of indigenous vegetation can adversely affect farming, the Reporting Officer noted that clearance is a permitted activity in all landscape overlays in the rural zones. She did not recommend permitting Indigenous Vegetation Clearance in the NCC, ONCC, HNCC overlays because the potential adverse effects on indigenous vegetation and the habitats of indigenous fauna were too great to manage under Rule 10.3.2 (vegetation performance clearance standards) and she considered it appropriate that restricted discretionary resource consent was required. She also did not support a non-complying status in coastal character overlays, which would mean that indigenous vegetation could only be cleared in exceptional circumstances. She noted the other indigenous vegetation clearance rules that may also be applicable.
2026. At the hearing, *Mr Timothy Morris* tabled graphic supplements showing the extent of regeneration of an area of indigenous vegetation on his property and reiterated concerns about the potential implications of the overlays for farm operations.

3.7.8.6.1 *Decision and Reasons*

2027. We accept in part the submissions of *Timothy George Morris* (OS951.46) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.46) seeking to amend the activity status of Indigenous Vegetation Clearance in the landscape and coastal character overlay zones to permitted.
2028. By way of background, as discussed in section 3.4.1, vegetation clearance provisions have been reformatted. Indigenous vegetation clearance - small scale does not require consent provided that relevant performance standards are complied with. Indigenous vegetation clearance that does not meet the small scale performance standard (Rule 10.3.2.A) is considered Indigenous Vegetation Clearance - large scale, and requires consent.
2029. We note that the majority of coastal character overlay zones identify, in Appendix A3, indigenous vegetation as a value and/or vegetation clearance as a threat. We consider that Indigenous Vegetation Clearance – large scale has the potential to adversely affect the natural character values of coastal character overlays, and accept the Reporting Officer's evidence that the risk is too great to manage using performance standards alone. We therefore do not support a change to permitted activity status for Indigenous Vegetation Clearance – large scale in these overlay zones.
2030. However, we note that, under our decisions outlined in section 3.4 above, we have provided for additional types of clearance as Indigenous Vegetation Clearance - small scale (i.e. as permitted activities). We consider that this provides partial relief to

Timothy George Morris (OS951.46) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.46); see details in sections 3.4.4.1 and 3.4.6.3.

2031. We accept in part the submission of *Forest and Bird NZ* (OS958.106). We amend the activity status of Indigenous Vegetation Clearance – large scale from restricted discretionary to non-complying in the ONCC and HNCC overlay zones. In ONFs, we have retained restricted discretionary activity status of Indigenous Vegetation Clearance – large scale, but have provided alternative relief to the submission point by:
- adding to the policy/assessment rule framework so that the effects of Indigenous Vegetation Clearance – large scale on the identified values of ONFs are managed, and
 - amending the relevant performance standard (Rule 10.3.2.A) to make the dividing line between ‘small scale’ and ‘large scale’ indigenous vegetation clearance in ONFs more restrictive, thereby providing for a greater degree of control of potential adverse effects.
2032. As discussed in section 3.7.1, we accept ONCC/HNCCs and ONFs are particularly high value overlay zones. The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development is matter of national importance under s6(b) of the RMA, as is the preservation of the natural character of the coastal environment under s6(a). Policies 2.4.4.2 and 2.4.5.2 describe ONFs as having “exceptional” landscape values, and ONCCs/HNCCs having “exceptional” natural character or natural character of “high significance” respectively. Policy 3.2.4 of the pORPS-dv states that outstanding natural features, landscapes and seascapes should be protected, enhanced and restored including by “Avoiding adverse effects on those values that contribute to the significance of the natural feature, landscape or seascape”. Policy 3.2.9 or the pORPS-dv contains a similar provision for those areas of the coastal environment with outstanding values, with Policy 3.2.10 stating “avoiding significant adverse effects on those values which contribute to the high natural character of an area”.
2033. Appendix A5 includes indigenous vegetation as a value and/or vegetation clearance as a threat, in the majority of ONCC and HNCC overlay zones. Appendix A3 does not list threats for ONF overlay zones, but the presence of indigenous vegetation is noted as a natural science value in the majority of ONF overlay zones. Further, we note that the area of the city covered by these high value overlay zones is very small, with ONCC, HNCC and ONF overlay zones covering 0.1%, 0.3% and 0.3% respectively. This suggests to us that managing indigenous vegetation clearance is both important to maintain the values of these overlay zones, and that any additional measures required to do so would not be overly onerous given the very limited spatial extent of these areas.
2034. As a result of decisions outlined elsewhere, Indigenous Vegetation Clearance – small scale is permitted in all overlays, subject to compliance with performance standards relating to: setback from wetlands, water bodies and the coast (Rule 10.3.2.3); protection of specified threatened plant species, mature examples of important indigenous tree species and threatened indigenous fauna species (Rule 10.3.2.4); maximum area in Urban Biodiversity Mapped Areas (Rule 10.3.2.1); and maximum area in hazard overlay zones (Rule 11.3.2).
2035. We consider that the types of clearance that are always treated as Indigenous Vegetation Clearance – small scale (referred to above, but see Rule 10.3.2.A.a for full details) constitute a comprehensive list of situations in which clearance may occur without compromising the values of ONCC/HNCCs. We consider that to protect the values of ONCCs/HNCCs and to give effect to higher order policy direction, including

s6(a) of the RMA and the NZCPS, any proposed clearance over and above this should not be anticipated by the 2GP, but rather should be subject to the scrutiny of the s104D test. We therefore support a non-complying activity status for Indigenous Vegetation Clearance – large scale in ONCCs and HNCCs.

2036. We accept the Reporting Officer's evidence that a non-complying activity status for Indigenous Vegetation Clearance – large scale is unnecessary in ONF overlay zones, given that they are scheduled for reasons of protection of landscape rather than natural character values. However, as indigenous vegetation is identified as a value of the majority of ONFs, we consider that any indigenous vegetation clearance that is not of a type listed as 'always considered indigenous vegetation clearance – small scale' in Rule 10.3.2.A.a, should be managed as a restricted discretionary activity (regardless of its area) to enable consideration of the effect of its removal on landscape values. Therefore, we have amended Rule 10.3.2.A so that indigenous vegetation clearance in ONFs is treated similarly to that in ASBVs and coastal overlays, except that the activity status of Indigenous Vegetation Clearance – large scale is restricted discretionary rather than non-complying.
2037. The amendments required for this decision, including consequential amendments, are as follows.

ONCCs and HNCCs

- Amend activity status rules 16.3.4.20A (rural zones) and 17.3.4.18A (rural residential zones) to change the activity status of Indigenous Vegetation Clearance – Large Scale from restricted discretionary to non-complying in ONCCs and HNCCs.
- Amend Policy 10.2.3.2 (for non-complying activities in ONCCs and HNCCs) to add 'indigenous vegetation clearance – large scale', and amend Policy 10.2.3.3 (for restricted discretionary and discretionary activities in ONCCs and HNCCs) to delete 'indigenous vegetation clearance'.
- Amend Rules 10.5.2.3, 16.10.5.3 and 17.10.5.3 (applying to restricted discretionary activities in ONCCs and HNCCs) to delete 'indigenous vegetation clearance'.
- Amend Rules 16.12.4.2 and 17.12.4.2 (applying to non-complying activities in ONCCs and HNCCs) to add 'indigenous vegetation clearance – large scale'

ONFs

- Amend Rules 10.3.2.A.a.v, xii and xiv so that ONFs are treated in the same way as ASBVs and coastal character overlay zones in terms of the types of clearance that are always treated as 'indigenous vegetation clearance – small scale'.
- Amend Rule 10.3.2.A.b so that (as in ASBVs and coastal character overlay zones) indigenous vegetation clearance is treated as 'large scale' if it is not of the types listed in Rule 10.3.2.A.a, regardless of whether it meets the area thresholds set out in Rule 10.3.2.A.c.
- Amend Policy 10.2.5.3 (for restricted discretionary activities in ONFs) to add 'indigenous vegetation clearance – large scale', so that the effects of this activity on the identified values of ONFs are managed.
- Consequentially amend activity status rules 16.3.4.20A.c and 17.3.4.18A.b to change 'RD' to 'RD+', to indicate that additional policies/assessment matters apply to 'indigenous vegetation clearance – large scale' in ONFs (i.e. in addition to the policies/assessment matters that apply in areas of rural zones not covered by these overlays).
- Consequentially amend Rules 10.5.2.11, 16.10.5.1 and 17.10.5.1 (applying to restricted discretionary activities in ONFs) to add 'indigenous vegetation clearance – large scale'.

2038. See Appendix 1 (amendments attributed to NatEnv 958.106).

3.7.8.7 Activity status of Subdivision, Earthworks and Tree Planting in landscape and natural coastal character overlays

2039. *Forest and Bird* (OS958.108) sought to make Subdivision non-complying in the ONF, ONCC and HNCC overlay zones, with reasons given relating to a similar submission about Subdivision in ASCVs. This submission was opposed by six further submitters, including *Federated Farmers* who contended that “some subdivision...could even benefit the landscape such as a new lot that could be gifted as a conservation property”.
2040. The Reporting Officer did not agree that Subdivision should be non-complying in ONF, ONCC and HNCC overlay zones, stating that there will be circumstances where Subdivision may be contemplated in these areas and be viewed as beneficial to the management and values of these areas. The Reporting Officer considered the revised minimum site size standard for the rural zones would make it more difficult to undertake a Subdivision activity that would adversely affect smaller areas, which ONF, ONCC, and HNCC overlay zones tend to be. The Reporting Officer also considered that the subdivision assessment rules provide sufficient scope to manage any potential adverse effects of Subdivision on these areas (Section 42A Report, section 5.12.8).
2041. *Forest and Bird NZ* (OS958.105) also sought to make Earthworks – Large Scale and Tree Planting non-complying in the ONF, ONCC and HNCC overlay zones, as they considered these activities have the potential to adversely affect the natural character values in these overlays. This submission was opposed by six further submitters, who thought the outcome sought would be prejudicial to farming activities and unnecessarily restrictive. *Federated Farmers* considered that restricted discretionary status still means that applications will be assessed and matters can be limited to adverse effects on the specific landscape.
2042. The Reporting Officer noted that *STOP* had also in effect requested a more restrictive activity status for Earthworks – Large Scale in ONLs and SNLs, through its submissions (OS900.57, 58) on policies 10.2.5.6 and 10.2.5.7.
2043. In response to these submissions, the Reporting Officer referred to the policy tests which she considered provide appropriate levels of protection for the special values of ONFs, ONCCs, HNCCs, ONLs and SNLs. She did not consider a more restrictive activity status was necessary for Earthworks – Large Scale or Tree Planting in these areas, especially given the potential variation in size, and degree of effect of these activities, and considered restricted discretionary a suitable activity status.
2044. *Nigel Harwood* (OS96.6) sought that provisions be amended to permit earthworks in Significant Natural Landscape and Natural Coastal Character overlay zones, where these intersect with a Rural Residential Zone. The submitter stated that *'the proposed rules would require the gaining of a resource consent - which would not have added to the aesthetic value of the landscape. It would have only added anxiety and cost to me.'*
2045. *Timothy Morris* (OS951.56) and *Timothy George Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.56) sought that provisions be amended to exempt earthworks in overlay zones that are for the construction of offal pits, silage pits and farm landfills from the ‘maximum change in ground level’ standard, which is 1m in ONLs, ONFs, ONCCs and HNCCs and 1.5m in SNLs and NCCs. In the submitters’ view, this was necessary to enable farming activities in these areas. The latter submission was supported by *Geoff Scurr Contracting Limited* (FS2391.30).

2046. *Christopher Dean Valentine* (OS464.5) sought an amendment to earthworks - small scale thresholds in Outstanding Natural Landscape Overlay Zones in the Rural Zones (Rule 16.6.1.1) to allow greater depths and volumes. The submitter sought that the maximum permitted depth be increased from 1.0m to 1.5m, and that the maximum volume of combined cut and fill be increased from 20m³ to either 80m³ annually, or 200m³ in any five year period. The submitter's reasoning was that given the known steep topography on the Otago Peninsula, the permitted small scale earthworks thresholds do not align with the preference to position buildings of less than 60m², a permitted activity, in the best location to achieve the ONL design guidelines.
2047. The submission points from *Nigel Harwood* (OS96.6), *Timothy Morris* (OS951.56), *Timothy George Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.56) and *Christopher Dean Valentine* (OS464.5) were considered in the Earthworks Section 42A Report.
2048. The Reporting Officer, Mr Paul Freeland, recommended that the submission points from *Mr Harwood* and *Mr Valentine* be rejected on the basis that the Plan seeks to protect important values in parts of the city identified as natural landscape or character areas from inappropriate development (s42A Report, pp. 70-71). He referred to evidence from Mr Barry Knox, DCC Landscape Architect, who supported this view (Mr Knox Statement of Evidence, p. 3).
2049. In response to *Timothy Morris* and *Timothy George Morris (on behalf of RG and SM Morris Family Trust)* Mr Freeland noted that, while it was appropriate to exclude earthworks as part of a farming activity, allowing earthworks in overlay zones or mapped areas may result in significant adverse effects such as the exacerbation of hazards or adverse effects on landscape values (s42A Report, p. 76).
2050. *Christopher Dean Valentine* (OS464.5) appeared at the Earthworks Hearing and tabled evidence on the earthworks – small scale thresholds within ONLs. He was of the opinion that the earthworks thresholds were highly restrictive and have been reduced from those in the operative District Plan without an evidential justification, and would restrict normal farming activities within ONLs. He also considered that appropriate rules would involve minimum batter slopes, setbacks and replanting requirements to allow small scale earthworks to remain at the current levels (Statement of Evidence, p. 2).
2051. Mr Valentine also pointed out that to create a building platform for a 60m² building where the total cut and fill was limited to 20m³ was only possible where the slope of the ground was less than approximately 2°. He then noted via a LIDAR map of the Otago Peninsula (attached to his submission), that the majority of the land covered by the ONL is steeper than 2°, which may restrict the placement of these buildings to ridgelines to allow compliance with the earthworks provisions (Statement of Evidence, p. 3).
2052. Mr Robert Morris also attended the Earthworks Hearing and tabled evidence on behalf of *Timothy George Morris* (OS951.56) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.56). He described that earthworks associated with normal and routine farming activities include:
- track maintenance
 - drain maintenance
 - fence line construction
 - minor cutting and filling activities associated with farm development (Tabled statement, p. 1).

2053. Mr Morris considered that the requirements for earthworks (e.g. for track construction, track maintenance and the like) were exactly the same for farmers outside and within overlay zones. He considered that having stricter earthworks provisions within overlays was unreasonable, and would have significant adverse effects for business in these areas (Tabled statement, p. 2).
2054. In his tabled statement, Mr Morris also requested significant increases in the scale thresholds at which earthworks would be treated as 'earthworks - small scale' (i.e. permitted) in rural zones. This included, for farming activities, an increase in the maximum change in ground level to 3m and an increase in the maximum volume of cut and fill to between 60m³ and 100m³ per 100m² of site (depending on slope) (Tabled Statement, pp. 3-4).
2055. In his revised recommendations, Mr Freeland made no change to his s42A Report recommendations and stated, in regard to the submission from Mr Morris, that:
- “As many of the elements that the submitter wants provided for in the Rural environment have been recommended, I do not consider applying revised earthworks limits regardless of whether in an overlay zone or not, are necessary or appropriate” (Revised Recommendations, p. 5).
2056. *Save The Otago Peninsula (STOP) Inc Soc* (OS900.85) requested that the reference to earthworks – large scale be removed from Rule 10.5.2.3, which is an assessment rule for activities that are restricted discretionary in ONCC and HNCC overlay zones. We are treating this submission point as a request for a more restrictive activity status for earthworks – large scale in these areas, although this is not directly stated in the submission, and the reasons for the submission point relate to network utilities rather than earthworks. We note that OS900.85 also requests that network utility structures - small scale and network utility poles and masts - small scale be removed from Rule 10.5.2.3; this aspect of the submission point is considered in the Network Utilities Decision.
2057. *STOP's* submission was opposed by *Geoff Scurr Contracting Limited* (FS2391.69), who stated that the amendment would not provide for the activity, and by *Federated Farmers of New Zealand* (FS2449.228) who stated that, along with other changes suggested by the submitter for Rule 10.5, the amendment would make the rule impractical, unworkable and inconsistent with the policies it relates to.
2058. Because it related mainly to network utility activities, *STOP's* submission was considered in the Network Utilities Section 42A Report. The Reporting Officer, Ms Jane Macleod, did not agree that the requested amendment to Rule 10.5.2.3 was necessary, on the basis that earthworks – large scale, network utility structures - small scale and network utility poles and masts - small scale are restricted discretionary activities in ONCCs and HNCCs and, therefore, it is appropriate to include them in Rule 10.5.2.3. Ms Macleod did not comment on the appropriateness of the activity status.

3.7.8.7.1 *Decision and Reasons*

2059. We reject the submission of *Forest and Bird* (OS958.108) seeking to make subdivision activities non-complying in the ONF, ONCC and HNCC overlay zones. Having assessed the provisions managing subdivision activities in ONFs, ONCCs and HNCCs, and the evidence presented on this matter at the Rural Hearing (discussed in the Rural Decision Report), we do not consider a non-complying activity status appropriate for either General subdivision or Cross lease, company lease and unit title subdivision in these overlay zones, where they coincide with rural zoning. We note that the change from non-complying to discretionary activity status for Cross lease, company lease

and unit title subdivision applies in rural zones, but not in other zones where this activity has non-complying status, i.e. rural residential and recreation.

2060. We accept the evidence of the Reporting Officer, that given the larger minimum site sizes required for subdivision in rural zones, and the generally small size of the overlay zones themselves, there may be situations in which subdivision of an ONF, ONCC or HNCC is either necessary or beneficial for the protection of natural character values. We agree with the Reporting Officer's assessment that subdivision assessment rules provide sufficient scope to manage any potential adverse effects of subdivision on these areas. We note that, in response to submissions discussed in section 3.7.13, we have amended relevant assessment rules and Rule 10.8.1 (special information requirements for landscape building platforms) to indicate that landscape building platforms must be identified for subdivision activities that create new residential development potential in a landscape or natural coastal character overlay zone.
2061. We concur with the Reporting Officer's assessment that a more restrictive activity status is unnecessary for Tree Planting (renamed Shelterbelts and Small Woodlots in the Rural Decision Report) in ONFs and ONCCs/HNCCs, and therefore reject the submission of *Forest and Bird NZ* (OS958.105). The policy test for Shelterbelts and Small Woodlots in ONFs, ONCCs and HNCCs (in policies 10.2.3.3 and 10.2.5.3) is that adverse effects on relevant values are "insignificant". We accept the Reporting Officer's evidence that restricted discretionary activity status in ONF, ONCC and HNCC overlay zones, coupled with this policy framework, provides for smaller developments with negligible effects while giving the Council the ability to decline consent for larger developments.
2062. In relation to Earthworks – Large Scale, we consider this activity is highly variable in scale and intensity, and therefore has potential for effects of widely varying magnitude. For example, Earthworks – Large Scale is a restricted discretionary activity in ONFs, ONCCs and HNCCs irrespective of whether they only just exceed the scale threshold (10m³ volume) or exceed it by a large margin.
2063. Given this, we accept the Reporting Officer's assessment that non-complying activity status would be overly onerous for Earthworks – Large Scale in ONFs, ONCCs/HNCCs, ONLs and SNLs - it would represent a very strict approach to activities that might marginally breach the scale threshold. With amendments described elsewhere, we consider that the policy framework appropriately manages the potential adverse effects of Earthworks – Large Scale on these overlay zones. The amended policy test for Earthworks – Large Scale in ONFs, ONCCs, HNCCs and ONLs is that adverse effects on relevant values are "insignificant". In ONLs an alternative policy test also applies, providing for that adverse effects to be "adequately mitigated" where there are no alternative practicable locations. In SNLs, the amended policy test states "Only allow" activities where adverse effects on relevant values are "no more than minor", or if there are no alternative practicable locations, that adverse effects are "adequately mitigated". We consider this policy framework will encourage Earthworks – Large Scale activities to locate outside of these overlay zones, unless there is a particular operational need for them to locate within the overlay zone.
2064. We reject the submission from *Save The Otago Peninsula (STOP) Inc Soc* (OS900.85) as it relates to earthworks – large scale, for the reasons given by the further submitters and by the Reporting Officer for the Network Utilities Hearing. In addition, we consider that restricted discretionary activity status is appropriate for earthworks – large scale in ONCC and HNCC overlay zones, for the reasons described above.
2065. We reject the submissions of *Nigel Harwood* (OS96.6), *Timothy George Morris* (OS951.56), and *Timothy George Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.56) for the reasons given by the Reporting Officer for the Earthworks Hearing, supported by Mr Knox. We also reject the submission of *Christopher Dean*

Valentine (OS464.5) as we accept the expert evidence of Mr Knox that an increase in earthworks limits may compromise the values of ONLs. We note that earthworks – large scale is restricted discretionary in ONLs. In response to another *Christopher Dean Valentine* submission (OS464.1), our decision includes earthworks – large scale in ONLs in new Policy 10.2.5.Z, which provides an alternative “adequately mitigated” policy test for situations in which there are “no practicable alternative locations”, in recognition of the fact that they may be to support existing land use. We consider this amendment provides a pathway for earthworks – large scale in ONLs whilst recognising the effect that this activity can have on the values of ONLs, and that amendment of the earthworks – small scale threshold is therefore neither necessary nor appropriate.

2066. However, we consider that our decisions, set out the Earthworks Decision, to exempt additional types of earthworks from consent requirements (by always treating them as ‘earthworks – small scale), provide partial alternative relief to these submitters.

3.7.8.8 Activity status of Public Amenities in landscape and natural coastal character overlays

2067. *HPPC* (OS447.58) and *STOP* (OS900.92) sought to make Public Artworks – Large Scale non-complying in landscape overlay zones, stating that “Large scale public artworks are not required to fulfil either Council civic functions or land habitation. Also, they are not a natural ‘landscape’ feature and would present a difficult reflectivity conundrum.”
2068. The Reporting Officer recommended these submissions be rejected, and noted that, while large scale public artworks are not essential in the sense that network utilities are, their location may be practically tied to a location. The restricted discretionary status recognises that where adverse effects are insignificant or minor, such artworks may be appropriate in a landscape overlay. (Section 42A Report, p.556)
2069. *HPPC* (OS447.83) and *STOP* (OS900.118) sought that outdoor art “located more than 3m away from the primary residence and within any dimension exceeding one metre” be made non-complying in all landscape and coastal character overlays zones and in ASCVs, in order to protect landscapes.
2070. The Reporting Officer noted that outdoor art is not a defined activity in the 2GP, and considered that the proposed amendment would be highly restrictive of the way that people could use their properties. The Reporting Officer noted that the submitters have not provided any examples of artworks that have caused any issues in landscape overlays and recommended the submissions be rejected as unnecessary and therefore inefficient. Any art on a private property that attracts significant public attention would fall within the definition of public artworks and be managed under this activity (Section 42A Report, section 5.12.9)

3.7.8.8.1 *Decision and Reasons*

2071. We reject the submissions of *HPPC* (OS447.58) and *STOP* (OS900.92) seeking non-complying activity status for Public Artworks – Large Scale in landscape overlay zones. We accept the Reporting Officer’s evidence that Public Artworks – Large Scale may enhance the public’s appreciation for the values of an area, and that they may be constrained with respect to location. We also accept the Reporting Officer’s evidence that a large scale artwork in a landscape overlay zone would be subject to an assessment of effects on landscape values, and consider that this provision constitutes appropriate management of potential effects on the values of landscape overlay zones, given the amendments to policy tests outlined in section 3.7.5.2. We note the amended policy test for these activities in ONFs is that adverse effects on

relevant values are “insignificant”, and in ONLs that adverse effects are on relevant values are insignificant unless there are no alternative practicable locations, in which case the policy test is that adverse effects are “adequately mitigated”. In SNLs, the amended policy test states “Only allow” activities where adverse effects on relevant values are “no more than minor”, or if there are no alternative practicable locations, that adverse effects are “adequately mitigated”.

2072. We reject the submissions of *HPPC* (OS447.83) and *STOP* (OS900.118) seeking to make outdoor art “located more than 3m away from the primary residence and within any dimension exceeding one metre” non-complying in all landscape and coastal character overlays zones. We accept the Reporting Officer’s evidence that the proposed amendment would be highly restrictive of the way that people could use their properties. We also accept the evidence that art on a private property that is not located or designed to be visible from a public place would fall within the definition of a structure or building and be managed accordingly. We consider this an appropriate approach, given the difficulties of defining “outdoor art”.

3.7.9 Activity Status of Buildings and Structures

3.7.9.1 Non-complying activity status in ONF, ONCC and HNCC overlay zones

2073. The *Construction Industry and Developers Association* (CIDA) (OS997.8, OS997.97-99) sought that the following activities be made discretionary rather than non-complying in ONF, HNCC and ONCC overlay zones in the rural and rural residential zones:
- new buildings >60m² within landscape building platforms (rules 16.3.4.3.c, 17.3.4.3.b)
 - new buildings and structures ≤60m², and additions/alterations that result in buildings or structures ≤60m² (rules 16.3.4.4.c, 17.3.4.4.b)
 - new buildings or structures greater than 60m², and additions and alterations that result in a building or structure that is greater than 60m² (rules 16.3.4.5.c, 17.3.4.5.b)
2074. *CIDA* had the view that the 2GP does not provide flexibility for activities and development to take place in a financially viable way. *CIDA*’s submissions in relation to the rural residential zones were supported by *FFNZ* on the basis that the outcomes sought were more appropriate and workable for the zones specified, and more effects-based. The same submissions were opposed by *HPPC*, who considered that non-complying activity status was necessary to allow for full scrutiny of potential effects.
2075. *Chris Walker* (OS289.8) sought that ‘structures ≤60m²’ be made restricted discretionary activities rather than non-complying activities in ONF and HNCC overlay zones that site over rural residential zones. He considered that this change would clarify what would fall into the catch-all category ‘all other buildings and structures’, and would promote the purpose of sustainable management.
2076. The Reporting Officer, Jane Macleod, recommended rejecting both of these submissions (Section 5.11.1, s42A Report, p.443). She drew on the evidence of Mr Moore’s (pp. 5-6 of evidence) that ONCCs and HNCCs are “highly natural and any new built elements have the potential to adversely affect natural character values”, and ONFs are “similarly sensitive to the effects of structures”. She also noted in relation to the narrower request of *Mr Walker*, the key difference between buildings and structures was that buildings included “a roof that is, or could be, fully or partially enclosed with walls”, and a building must be permanently fixed to the land, whereas structures are only subject to 2GP rules if they are “stored or placed undisturbed on a

site for more than 12 months". In her view, neither of these differences was sufficient to justify a distinction in the activity statuses between buildings and structures ≤60m² in ONFs or HNCCs, and she considered it appropriate that moveable structures ≤60m² that are stored or placed undisturbed on a site for more than 12 months have a non-complying activity status in these overlays.

3.7.9.1.1 *Decision and Reasons*

2077. We reject the submissions of *CIDA* (OS997.8, OS997.97-99) and *Chris Walker* (OS289.8).
2078. We consider retention of a non-complying activity status for the buildings and structures activities under rules 16.3.4.3.c, 16.3.4.4.c, 16.3.4.5.c, 17.3.4.3.c, 17.3.4.4.c, 17.3.4.5.c the most appropriate approach to achieve objectives 10.2.3 and 10.2.5, and to align with the higher order policy directives these objectives are seeking to address.
2079. As discussed in section 3.7.1, ONCCs and HNCCs are high value, spatially limited areas, covering 0.1% and 0.3% of Dunedin's land area respectively. They have been identified based on independent assessments against criteria that are substantially aligned with Policy 13 of the NZCPS and Policy 3.2.8 of the pORPS-dv, as a response to s6(a) of the RMA. Policy 2.4.5.2 describes ONCCs as having "exceptional" natural character, and HNCCs as having natural character of "high significance". We accept the evidence of Mr Moore, that ONCCs and HNCCs are highly sensitive to built elements, noting that Appendix A5 specifically lists Buildings and Structures as a principal threat to the values of many of the coastal character overlay zones. As explained in section 3.7.3.3, the NZCPS requires that significant effects on natural character values be avoided and all other effects on natural character values avoided, remedied or mitigated, in other parts of the coastal environment.
2080. As discussed in section 3.7.1, ONFs (0.3% of the city's land area) are described by Policy 2.4.4.2 as having "exceptional" landscape values, and are a response to s6b of the RMA. The boundaries and classification of each landscape overlay zone were determined by the recommendations of a review by Boffa Miskell (*Dunedin Landscape Management Areas Review 2007*) and subsequent assessments against the amended Pigeon Bay criteria by landscape architects Mr Michael Moore and Dr Marion Read. Although Appendix A3 does not identify principal threats to values in relation to ONFs (a matter which we recommend be addressed as part of a future Plan review process), we accept the evidence of Mr Moore that these areas are similarly sensitive to built elements.
2081. We accept the evidence of the Reporting Officer that, given the limited distinction in the 2GP between Buildings and Structures, it seems likely that they have similar potential for adverse effects. We note that no expert evidence was supplied supporting a contrary view.
2082. Overall, we consider it appropriate that Buildings and Structures activities in these very spatially restricted overlay zones are subject to a non-complying activity status, given their high value, and the potential adverse effects of built elements on those values. We consider that any such structures should be discouraged from locating within these overlays, and conclude that this does not seem unreasonable given the typically small size of these overlay zones.

3.7.9.2 Restricted discretionary activity status and requests to amend the 60m² threshold

2083. New buildings or structures >60m², or additions and alterations that result in a building or structure that is >60m², are restricted discretionary activities in ONLs, SNLs and NCCs (rules 16.3.4.5.b, 17.3.4.5.c).
2084. Multiple submitters³³ sought that building/structures and additions and alterations >60m² be made permitted activities in ONL, SNL and NCC overlay zones. A number of other submitters sought a controlled activity status³⁴.
2085. Some of the key arguments were that it is an unreasonable restriction of development rights; restricted discretionary activity status creates unnecessary administration and uncertainty; 60m² is too small a threshold to allow for farm buildings; and the extra costs of complying with these regulations and rules will cause people to build several small buildings instead of building/extending one large one.
2086. *Christopher Dean Valentine* (OS464.4) sought that Rule 16.3.4.5 be amended so that additions and alterations to buildings and structures existing prior to 2015, and with a floor area of greater than 60m², are permitted in ONLs. In his view, the notified approach is too restrictive on residential activity and social wellbeing, and may result in additional small buildings being established, rather than a more sympathetic solution. He believed that 60m² additions would be more likely to have less impact on the landscape than a 60m² building built close to an existing building. He considered that if larger additions were permitted, it would encourage landowners to repaint existing buildings in a colour that complies with reflectivity standards.
2087. A number of submitters also requested changes to the 60m² threshold (rules 16.3.4.3, 16.3.4.4 and 16.3.4.5) be increased to either:
- 300m²³⁵
 - 350m²³⁶
 - 300m² in the North West Peninsula SNL³⁷
2088. The submitters raised issues of administrative inefficiency and noted that large buildings are expected in rural areas, and are in fact necessary to the efficient operation of farming activities. These submissions were supported by *Federated Farmers* who considered that 350m² would be a more realistic size limit as it more accurately accounts for the range of activities required within the zone.
2089. The Reporting Officer, Ms Macleod, did not recommend any changes to the 2GP provisions (Section 5.11.1, s42A Report, pp. 446-453). She noted that the 60m² figure was identified in consultation with the Council's landscape architect Barry Knox, as an indicator of the point at which the size of a building had the potential to adversely affect landscape and natural character values. An upper threshold of 60m² for permitted buildings allowed for smaller farm buildings, for example 2-bay farm sheds with a depth of up to 6m and a bay width of up to 5m.
2090. Mr Mike Moore considered and supported the threshold from a landscape perspective (p.11 of evidence), stating:

³³ *David Holdsworth* (OS73.3), *Shane Johnson and Sharee Watts* (OS1067.2), *Christopher Kilpatrick* (OS505.1), *Bruce Wayne Taylor* (OS664.2), *Nigel Harwood* (OS96.3).

³⁴ *Ben Graham* (OS361.23), *Mathew O'Connell* (OS364.12), *John Scott* (OS1084.17), *Dianne Reid* (OS592.21), *Pigeon Flat Road Group* (OS717.20)

³⁵ *Dianne Reid* (OS592.21), *Pigeon Flat Road Group* (OS717.20)

³⁶ *Ben Graham* (OS361.19), *Mathew O'Connell* (OS364.10) and *John Scott* (OS1084.16)

³⁷ *Clifton Trust* OS720.9

...I believe that 60m² is an appropriately conservative threshold in these areas which are recognized for their natural character, landscape and amenity values. I agree [with submitters] that for the most part in NCC's ONL's and SNL's, rural buildings are part of the landscape. However, whilst in many cases these can integrate well, if insensitively sited or designed they can have significant adverse effects. The threshold does not prohibit larger buildings but provides for a site and project specific assessment of their effects via the resource consent process. Assuming the constancy of the other variables impacting building impact i.e. maximum height (5m), reflectivity (30%) and potential minimum viewing distance controlled by Rural and Rural Residential zone setbacks (20m and 12m respectively), I would not recommend a maximum building size greater than 60m².

2091. The Reporting Officer acknowledged that, as pointed out by many submitters, imposing a resource consent requirement on buildings and structures over 60m², which are routinely required in association with farming or other rural activities, places restrictions on the use of productive rural land. Although consents are likely to be granted if buildings and structures can be located and designed in a way that appropriately manages effects, the consent requirement adds costs and uncertainty for landowners seeking to establish buildings and structures (such as larger farm sheds). She noted that the average resource consent fee for building in a landscape area was \$1,067 in the 2014-2015 year.
2092. She further noted that SNLs, ONLs and NCCs cover extensive areas of rural Dunedin; as well as having landscape and natural character values, this land is also economically important, and, in her view, 2GP rules should also take into account the need protect this aspect of the land, as is provided for by Objective 2.3.1 and Policy 2.3.1.2 in the Plan's Strategic Directions.
2093. She considered that, based on Mr Moore's recommendation (quoted above) to retain the 60m² limit as an "appropriately conservative threshold", the risk of adverse effects that would be associated with permitting buildings up to the thresholds requested by submitters (300-350m²), would be "unacceptably high" (Section 42A Report, section 5.11.1).
2094. She noted that, whereas provisions relating to buildings in NCCs and ONLs were intended to recognise and provide for matters of national importance under sections 6(a) and (b) of the RMA (i.e. the preservation of the natural character of the coastal environment, and the protection of outstanding natural features and landscape), provisions relating to SNLs had been drafted to have particular regard to the maintenance and enhancement of amenity values, as is required under section 7(c). Maintaining and enhancing the productivity of rural land is also a key goal of the 2GP, and also falls within the scope of RMA section 7(b), which requires the Council to have particular regard to "the efficient use and development of natural and physical resources". Taking this into account, she suggested that the Panel consider raising the permitted area threshold to 85m² in SNLs. This would provide for buildings on the scale of the larger 2-bay farm shed cited in *Mr Taylor's* submission (a 2-bay, 9m deep implement shed has a total area of 81m², based on a 4.5m width for each bay).
2095. Ms Macleod also raised the possibility of discounted Council processing fees or even no fees for resource consents for farm buildings that require consent in landscape and natural coastal character overlay zones. She noted that this was beyond the scope of 2GP hearings, but could be recommended to Council by the Panel.
2096. In response to *Mr Valentine's* submission relating to additions and alterations, Ms Macleod stated "I acknowledge that, in the rules as notified, there is a lack of equity in the way new small buildings and new small additions are managed" (Section 5.11.1, s42A Report, pp. 450-451).

2097. Under notified rules, a new building/structure of up to 60m² would be permitted (provided other performance standards were met), but an addition/alteration that added 60m² of extra floor space to an existing building would not. Consent is required for additions that “result in a building or structure that is greater than 60m²”. Under this wording, any addition to an existing >60m² building, no matter how small, would trigger a consent requirement. For example, a 30m² addition to an existing 120m² building would result in “a building or structure that is greater than 60m²”, and would, therefore, be restricted discretionary in SNLs, ONLs and NCCs. On the other hand, a new building of 60m² established close to an existing larger building would be permitted under notified rules. This disparity does not make sense from the point of view of managing effects, since – if other relevant factors such as design are held constant – a large building closely co-located with a 60m² building, and the same large building plus 60m² extension are likely to have very similar visual and landscape effects. It could be argued that a new 60m² building in the rural environment is more likely to be a farm shed or similar building, which is an anticipated part of the rural landscape, whereas a 60m² addition is more likely to be an extension to a dwelling, which would be more likely to detract from landscape values – but this will not always be the case. A new 60m² building could equally be a sleepout or family flat, and a 60m² addition could be required to a farm building; also, the design and location of a building, not just its purpose, influences its effects on landscape values.
2098. *Mr Valentine's* submission was referred to Mr Mike Moore for comment. Mr Moore's advice (p11) was that “additions are likely to have less landscape/visual impact than similarly scaled new buildings” and “additions up to 60m² in area should be provided for”.
2099. However, Ms Macleod noted that resolving the issue identified by Mr Valentine requires careful consideration. Allowing additions of up to 60m² as a permitted activity (i.e. revising rules so that the same approach applies to the creation of up to 60m² of new floor space, regardless of whether it is a standalone building or an addition) would create two problems:
- Firstly, it would create a loophole in the rules, whereby a 60m² building could be established as a permitted activity, and then one or more 60m² extension added (perhaps in quick succession), to create a large building with no consent requirement. Clearly it is not efficient, and is likely to be significantly more costly, to build a large farm building or dwelling in increments in this way, but it is a possibility – and there could be a strong incentive to do this, on sites where large buildings are unlikely to be consented due to the visual prominence or other sensitivity of the site.
 - Secondly, this approach would allow a building of over 60m² to be established, via additions, without the need for resource consent (e.g. if a 60m² addition was added to an existing 30m² building). Once a building over 60m² had been established, it would then become possible, under Rule 10.3.5 (incorporating amendments recommended in response to submissions in section 5.11.2.1 below), to erect three small buildings (≤60m²) within a 30m radius around that building (all without the need for resource consent).
2100. In order to avoid both of these potential problems, Ms Macleod considered it necessary to retain stricter controls for additions/alterations than for new small buildings. However, in her view, rules on additions could be made somewhat more equitable with rules on new small buildings without resulting in either of the above outcomes if the following types of addition were provided for as permitted activities:
- As in the notified rule, additions/alterations that result in a building or structure that is 60m² or less, **and**

- Additions/alterations that add up to 60m² of new floor space to the original footprint of an existing building that is over 60m² in area.

2101. This approach would mean that:

- only a single addition of up to 60m² would be permitted (because of the reference to “original footprint”), and
- it would not be possible to use this rule to add floor area to an existing building of less than 60m², taking the total floor area of the building to over 60m², and thereby allowing the establishment of additional small buildings within a 30m radius as a permitted activity.

2102. There would, nevertheless, still be certain drawbacks to the above approach, compared with the notified rules on additions and alterations:

- It would be more complex to administer, because consents staff would need to establish what the “original footprint” of the building was, which could be time-consuming, particularly for older buildings.
- It would mean that, in processing consents for new buildings >60m², the Council would need to take into account the fact that, once established, the building would be able to be extended 60m² by right (in addition to the fact that, under Rule 10.3.5, it would become a permitted activity to establish three further buildings of up to 60m² around it). This could have the unintended effect of making it more difficult for buildings >60m² to be granted consent.

2103. Taking into account the factors outlined above, Ms Macleod did not recommend any change to the notified rules in the Section 42A Report, suggested that the Panel should consider the option of amending rules so that additions/alterations that add up to 60m² of new floor space to the original footprint of an existing building or structure that is over 60m² in area were a permitted activity in SNLs, ONLs and NCCs.

2104. In relation to submissions seeking a controlled activity status for breaches of the area threshold, the Reporting Officer considered that the restricted discretionary activity status and the relevant assessment rules that applied to buildings and structures that exceed the area threshold, as well as the “key design elements” in Appendices A3 and A5 and the design guidance provided in A3.4, indicate that larger buildings and structures are anticipated in these areas, and are likely to be granted consent if their location, size and design is sympathetic to the area. However, the Reporting Officer also considered that it was necessary for the Council to retain the ability to decline consent for larger buildings and structures that would not align with protected values.

2105. *Mr Nigel Harwood* appeared at the hearing and tabled a statement that indicated his continued opposition to Rule 17.3.4, and in particular that resource consent was required to build buildings greater than 60m². Mr Harwood, at page 10 of his statement, provided reasons for his view, stating “we are surrounded by buildings on all but one site. They are all greater than 60m².... We do not want to have the uncertainty of not being able to develop our property as we wish”.

3.7.9.2.1 *Decision and Reasons*

2106. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.

2107. We reject the submissions of *David Holdsworth* (OS73.3), *Shane Johnson and Sharee Watts* (OS1067.2), *Christopher Kilpatrick* (OS505.1), *Bruce Wayne Taylor* (OS664.2), *Nigel Harwood* (OS96.3).

2108. We reject the submissions of *Ben Graham* (OS361.23), *Mathew O'Connell* (OS364.12), *John Scott* (OS1084.17), *Dianne Reid* (OS592.21), *Pigeon Flat Road Group* (OS717.20).
2109. As discussed elsewhere, we accept that provisions for ONLs respond to higher order policy direction, including the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development (under s6 of the RMA), and Policy 3.2.4 of the pORPS-dv. We note that Appendix A3 identifies Buildings and Structures as a principal threat to values of all ONLs.
2110. SNLs are a response to s7(c) and (f) of the RMA, concerning maintenance and enhancement of amenity values and the quality of the environment. Policy 3.2.6 of the pORPS-dv seeks to protect or enhance landscapes which are "highly valued for their contribution to the amenity or quality of the environment, but which are not outstanding". We note that Appendix A3 identifies Buildings and Structures as a principal threat to values of most SNLs.
2111. The NCC overlay zone is a response to RMA s6(a), and as discussed elsewhere, the NZCPS requires that significant effects on natural character values be avoided and all other effects on natural character values avoided, remedied or mitigated, in other parts of the coastal environment. We note that the NCC overlay zone does not reflect the full extent of the coastal environment. Rather, the NCC overlay zone has been applied only where natural character values have been assessed as being medium or greater – a distinction that we consider the provisions associated with activities in this overlay zone should reflect. Appendix A5 specifically lists Buildings and Structures as a principal threat to the values of many of the coastal character overlay zones.
2112. In this context, we consider it appropriate that new buildings and structures $>60\text{m}^2$, and additions and alterations that result in a building or structure $>60\text{m}^2$, are retained as restricted discretionary activities in these overlay zones. While the performance standards that are in place for Buildings and Structures activities will control some effects, we agree with the Reporting Officer that there are a range of other potential considerations that are more appropriately assessed through a restricted discretionary consent process, including design and siting. The evidence of Mr Moore suggests that the extent to which these other matters are considered will have a notable impact on effects of the activities in these areas. As Buildings and Structures are identified as principal threats to values for a large number of the relevant overlay zones, we consider it important that the Council retains the ability to decline consent for buildings and structures that have an unacceptable impact on the values of the overlay zones. It is important to note that a restricted discretionary consent activity status sends a signal that Buildings and Structures over 60m^2 are expected to occur in these areas, but that an assessment of their effects against the relevant landscape values is appropriate.
2113. We reject the submissions of *Dianne Reid* (OS592.21), *Pigeon Flat Road Group* (OS717.20), *Ben Graham* (OS361.19), *Mathew O'Connell* (OS364.10) and *John Scott* (OS1084.16) and *Clifton Trust* OS720.9 – (changes to the threshold).
2114. We note that the 60m^2 threshold was originally identified as appropriate in consultation with the Council's landscape architect Mr Barry Knox, and that it is supported by a second landscape expert, Mr Mike Moore, as an "appropriately conservative threshold". No expert evidence was presented at the Hearing in support of raising the threshold to 300-350 m^2 (as sought in submissions), nor indeed for the 85 m^2 option presented by the Reporting Officer. No further evidence was forthcoming regarding the frequency with which buildings consents are likely to be required for buildings of this size in the overlay zones, or whether raising the threshold from 60m^2 to 85 m^2 would in any material way help achieve "the efficient use and development of natural and physical resources" (RMA s7b). In the absence of additional evidence

suggesting new buildings of this nature would need to be established with significant frequency to support existing land use in the areas affected, we accept the evidence of Mr Moore, that 60m² represents an appropriate scale threshold above which the effects on landscape should be considered through a restricted discretionary consent process.

2115. We further note that, in response to submissions and expert evidence, the extent of the SNL overlay zone has been significantly reduced in some locations (as explained elsewhere), including in areas of concern to submitters on these submission points. Therefore the area over which this rule applies is reduced somewhat.
2116. In relation to the submission points of *Dianne Reid* (OS592.21) and *Pigeon Flat Road Group* (OS717.20), we note that these submitters also sought that the permitted threshold for buildings and structures in ASBVs be amended from 60m² to 300m², and that the activity status of contraventions of the threshold be controlled rather than restricted discretionary. We also reject these aspects of the submission points. As discussed in section 3.3, the higher order policy framework (including s6(c) of the RMA, and the pORPS-dv) mandates protection of significant indigenous vegetation and habitats. The requested changes would entail a considerably more enabling approach to buildings and structures in ASBVs (i.e. areas that have been identified as areas of significant indigenous vegetation and/or as significant habitats of indigenous fauna) than the notified rules; as such we do not consider that they are consistent with the higher order policy framework. We note, however, that we have not been presented with any planning or ecologist evidence in relation either to the submitters' requested changes or to the notified rule as it relates to ASBVs.
2117. We accept in part the submission of *Christopher Dean Valentine* (OS464.4).
2118. We accept the submitter's point that under the notified provisions an additional 60m² dwelling will be permitted however consent will be required for an extension of the same size to an existing dwelling, and that this may result in perverse outcomes from a landscape perspective. We note this analysis is supported by the evidence of Mr Moore.
2119. However, we consider that in ONLs, provisions are already relatively liberal for a high value landscape overlay zone, with (in a decision outlined in section 3.7.10) an additional three buildings of up to 60m² provided for within 30m of any existing building over 60m². It is not clear to us that Mr Moore considered the potential cumulative effect of amendments to the provision, in assessing its acceptability. Having considered the drafting options suggested by the Reporting Officer, we conclude that any further loosening of the rules around additions and alterations would not only add substantial administrative complexity, but may also result in unacceptable cumulative effects on landscape values. We consider this matter should be considered holistically as part of a future plan review, and have recommended as much.
2120. Therefore, rather than amending the activity status rule, we consider that a more appropriate alternative response to the issue raised by *Mr Valentine* would be to amend the assessment rules that apply to additions and alterations resulting in large buildings or structures in overlays, to clarify that, where development involves an addition to a building or structure that would have the same effect as, or a lesser effect than, a new building or structure provided for under Rule 16.3.4.4 (rural zones), this is a potential circumstance that may support a consent application.
2121. As discussed in section 3.7.5.2, we have sought to recognise the operational needs of existing land use activities within ONLs, by introducing an alternative "adequately mitigated" policy test for some land use activities (including large buildings and structures) to be applied to situations in where "no practicable alternative locations"

exist, along with assessment guidance indicating when this test might be applied. The extent of the ONL has also been reduced in the vicinity of Centre Road, which provides some alternative relief to *Mr Valentine*.

2122. The amendments required for this decision are:

- Amend assessment rules 10.5.2.4 (NCCs), 10.5.2.E (ONLs) and 10.5.2.16 (SNLs) to add a “Potential circumstance that may support a consent application” stating:
The development involves an addition to a building or structure that would have the same effect as, or a lesser effect than, a new building or structure provided for under Rule 16.3.4.4 (rural zones).

See Appendix 1 (amendments attributed to NatEnv 464.4).

3.7.9.3 Activity status of “all other buildings and structures activities”

2123. “All other buildings and structures activities” (which consist of demolition, removal for relocation, and repairs and maintenance) are restricted discretionary activities in all landscape and coastal character overlay zones where they intersect with rural and rural residential zones (rules 16.3.4.7.b-d, 17.3.4.7.b-c).
2124. *Dunedin City Council* (OS360.137 and OS360.138) sought that “all other buildings and structures activities” be permitted activities in the rural and rural residential zones. This change would correct a typographical error made during the drafting of the 2GP.
2125. The *DCC*’s submission in relation to rural zones (OS360.137) was supported by *FFNZ*, who considered that the proposed amendment was pragmatic and appropriate.
2126. The *DCC*’s submission in relation to rural residential zones (OS360.138) was supported in part by *HPPC*, who considered that, while demolition, removal and repair should be permitted, there may be further activities that are unknown and may be novel (such as a piece of noisy stationary equipment that straddles the line between a piece of machinery and a structure) for which retaining restricted discretionary status would allow for proper consideration of the new activity.
2127. *Forest and Bird NZ* (OS958.104) sought retention of Rule 16.3.4.7.c, under which “all other buildings and structures activities” are restricted discretionary within ONF, ONCC and HNCC overlay zones in rural zones.
2128. The Reporting Officer agreed with the *DCC* submissions to amend these rules, and in doing so noted that the activities that fall into this category, i.e. removal for relocation, demolition and repairs and maintenance, are only managed in the plan in relation to effects on the heritage values of scheduled heritage buildings and structures (Section 5.11.1, s42A Report, p.453). Therefore, logically, these activities should not be subject to additional controls in areas that are included in overlay zones or schedules because of special values that do not relate to heritage. She considered that the categories of buildings and structures activity that are provided for in Rules 16.3.4 and 17.3.4 are comprehensive; they cover all buildings and structures of all sizes, as well as all sizes of additions and alterations to existing buildings/structures.

3.7.9.3.1 *Decision and Reasons*

2129. We accept the submissions of *Dunedin City Council* (OS360.137-138) to amend the activity status for Rules 16.3.4.7.b-d (all other buildings and structures activities – rural zones) and Rules 17.3.4.7.b-c (all other building and structures activities – rural residential zones) from restricted discretionary to permitted.
2130. We do not consider that removal for relocation, demolition or repairs and maintenance of buildings is likely to result in adverse effects on landscape values or natural coastal

character values, noting that if these activities involve earthworks or vegetation clearance, these development activities are subject to separate rules.

2131. The amendments required for this decision, including consequential amendments, are:
- amend the activity status of 'all other buildings and structures activities' from restricted discretionary to permitted in rural zones (Rule 16.3.4.7.b-d) and in rural residential zones (Rule 17.3.4.7.b-c), and
 - delete references to 'all other buildings and structures activities' in assessment rules for restricted discretionary activities in Sections 16 and 17 (Rules 16.10.5.1-5 and Rules 17.10.5.1-4), to reflect this change in activity status.

See Appendix 1 (amendments attributed to NatEnv 360.137 and NatEnv 360.138).

3.7.10 Number and location of permitted buildings

3.7.10.1 Background

2132. Policy 10.2.3.8 states: Provide for small buildings (no larger than 60m²) in the Natural Coastal Character Overlay Zone (NCC) but limit the number of these clustered together with each other or existing large buildings to a level that avoids or, if avoidance is not possible, ensures cumulative visual effects are no more than minor.
2133. Policy 10.2.5.12 states: Provide for small buildings (no larger than 60m²) in landscape overlay zones but limit the number of these clustered together with each other or existing large buildings to a level that avoids or, if avoidance is not possible, ensures cumulative visual effects are no more than minor.
2134. Both are implemented by Rule 10.3.5 Minimum Building Separation, which states:
- "1. In any landscape overlay zone or in a Natural Coastal Character Overlay Zone (NCC), a maximum of two permitted buildings (e.g. buildings less than or equal to 60m²) may be erected within 30m of one or more buildings greater than 60m² on the same site over any five year period; all other permitted buildings must be located at least 200m from any other building on the same site.
 2. For the purposes of this rule, distance will be measured as the distance between the closest walls of the two buildings."
2135. The intention of the rule (s42A, p455) is to limit the cumulative effects on landscape of natural coastal character values created by multiple buildings on one site, by mitigating the effects of a new building via co-location, or so that the new building and existing building/group of buildings are perceived separately, rather than a 'sprawl' of buildings across the landscape. The Reporting Officer explained that the rule also limits the total number of buildings that may be established on a site, and that the rule was developed in consultation with the Council's landscape architect Mr Barry Knox.

3.7.10.2 Submissions

3.7.10.2.1 *Submission in support*

2136. *Federated Farmers of New Zealand* (OS919.116 and OS919.17) sought to retain Policy 10.2.3.8 and 10.2.5.12, based on the view that it is important to provide for smaller buildings in NCCs, ONLs and SNLs.

3.7.10.2.2 *Submissions seeking to remove minimum building separation provisions, or to amend the provisions to exempt certain activities*

2137. *Otago Peninsula Community Board* (OS588.3) sought to amend Policy 10.2.5.12 as they were concerned that this policy and associated rules may have limitations on the development of eco-tourism and accommodation as well as farming operations in these zones and care needs to be taken that the rules do not limit suitable and sympathetic development in these areas.
2138. *Robert George & Sharron Margaret Morris* (OS355.4), *Timothy George Morris* (OS951.63) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.63) sought to remove Rule 10.3.5 because the submitters believed it is overly onerous. *Scroggs Hill Farm Limited* (OS1052.5) sought to amend Rule 10.3.5 because the submitter considers that minimum building separation is impractical in certain situations, such as where buildings need to be adjoining for stock handling purposes. *Federated Farmers of New Zealand* (FS2449.194) supported this submission because "it is important that the Plan allows for normal, appropriate farming practices to continue without unnecessary restriction."
2139. The Reporting Officer explained the rationale for the rule as being to limit the cumulative effects on landscape or natural coastal character values created by multiple buildings on one site (Section 5.11.2.1, s42A Report, p.456).
2140. Mr Moore advised (p.17 of his evidence) that, while appropriate separation distances will vary from site to site, he supported the 30m separation provision as a "reasonable standard", as it encourages clustering of built form (which he considered reduces adverse effects on natural character, landscape and amenity values) while providing generously for vehicular turning. He did not support the 200m clause, because he considered it could encourage perverse outcomes, although he noted there was no scope in submissions to address this.
2141. The Reporting Officer did not consider that the provisions were overly onerous, or that exemptions should be made for certain activities. In her view, these provisions provided appropriately for both the maintenance and enhancement of areas with identified landscape and natural character values (Objectives 10.2.3 and 10.2.5), and the maintenance and enhancement of the productivity of farming and other activities that support the rural economy (Policy 2.3.1.2).

3.7.10.2.3 *Submissions seeking to remove allowance for each five year period*

2142. *HPPC* (OS447.35) and *STOP* (OS900.68) sought to delete the reference to "over any five year period". *HPPC* were concerned about potential accumulation of buildings, and consider that "a collection of buildings constructed around a main rural home will contribute to the perceived 'bulk' of development", while *STOP* were concerned that it would allow a "gradual creep in size". *Geoff Scurr Contracting Limited* (FS2391.49) supported the submissions because they consider that it is sensible to remove the five year period.
2143. Mr Moore supported removal of the reference to a five year period, because the proposed two building within a five year period appeared to be "a recipe for cumulative effects" and the rule could provide for a "nearly doubling in the built area over a ten year period" (pp. 17-18 of evidence). He considered that mitigation measures imposed on the original building could be undermined by an increase in scale of this nature.
2144. Based on Mr Moore's advice, the Reporting Officer recommended that Rule 10.3.5 be amended to remove the reference to the five year period, stating that while this would increase restrictions on rural activity in SNLs, ONLs and NCCs, she considered it

justified from an effects perspective. She also recommended some cl.16 amendments (inclusion of a diagram, substitution of "e.g." with "i.e.", and "erected" with "located").

3.7.10.2.4 *Submissions seeking to increase the number of permitted buildings and the 30m maximum separation distance, and to decrease the 200m maximum separation distance*

2145. *Christopher Dean Valentine* (OS464.1) sought that Rule 10.3.5 be amended so that up to three permitted buildings are allowed and the maximum separation distance is increased from 30m to 50m. The submitter considered that for properties that do not have space to provide a separation distance greater than 200m, restriction to two buildings "can hinder productivity and opportunities". The submitter also stated that he found the definition of distance unclear "specifically, is the distance to be measured a perpendicular offset between the walls of both buildings, or the true length between corners on both buildings, if they are offset?" In a related submission point, *Christopher Dean Valentine* (OS464.9) also sought that Design Guideline A3.4.1.d be amended to allow for the separation of residential buildings from farm buildings even on small lots, where the 200m minimum separation distance could not be met.
2146. Mr Moore did not consider 50m would result in sufficient clustering, and he indicated his preference for 30m to ensure that "adverse effects of built form are adequately mitigated". However, Mr Moore did consider that up to three buildings of up to 60m² could be provided for as opposed to two, because it could encourage clustering, discourage establishment of built form elsewhere and would be "unlikely to give rise to significantly greater effects of built form, if they are required to be within the 30m separation distance."
2147. Based on the evidence of Mr Moore, the Reporting Officer recommended allowing for three new buildings within 30m of an existing large building. She also recommended clarifying in the rule that it related to the distance between the two closest points (measured as the true length between walls or corners on both buildings).
2148. With respect to *Mr Valentine's* requested change to Design Guideline A3.4.1.d, the Reporting Officer did not consider this necessary. She considered that the notified assessment rules already provided for site size to be taken into account when considering applications for activities that breach Rule 10.3.5.
2149. *Christopher Dean Valentine* appeared at the hearing and noted his safety concerns about the need to located permitted buildings within 30m of larger buildings. *Mr Valentine* considered that the forced clustering of buildings risked creating unsafe environments, may lead to buildings housing animals being located too close to residential buildings, may encourage the use of less viable land, and is inflexible in terms of sympathetic locations for buildings.
2150. *Mr Valentine* also asked why the rule only permitted buildings within 30m of larger buildings on the same site, where a small building located close to a neighbour's larger building would be no different from the same building located close to a larger building on the same property. *Mr Valentine* was opposed to the removal of '5 year period' as this would strictly limit building options, and it would not be clear to new landowners how many buildings they may establish.
2151. In response, the Reporting Officer recommended a change to wording so that the three permitted buildings may be located within 30m of each >60m² building on the same site (Revised Recommendations Summary pp.26-27). In recommending the change, she consulted with Mike Moore who advised that, although the change would make the rule more permissive, he did not consider it likely to result in significant adverse effects on values.

2152. The Reporting Officer also recommended adding a note to plan users to clarify the application of the rule as follows:

Note 10.3E – Other relevant District Plan provisions

1. Plan users should be aware that, due to the definition of “buildings” in this plan, this rule **does not** apply to any building with an area of 10m² or less. In addition, it does not apply to “structures”, as defined in this plan. Finally, the minimum 200m distance does not apply from any building with an area of 10m² or less. {Nat Env CI16}

2153. With regard to the submitter’s request that small buildings should be permitted within 30m of a larger building on neighbouring sites, the Reporting Officer did not recommend that the change be made. This was based on Mr Moore’s advice that buildings on neighbouring sites are less likely to be perceived as being part of the same cluster as the smaller building, due to the vegetation and landscaping around the property.

3.7.10.3 Decision and decision reasons

2154. We accept in part the submissions of *Federated Farmers of New Zealand* (OS919.116 and OS919.17). Our decision retains Policy 10.2.3.8 and 10.2.5.12, subject to the amendments discussed below.
2155. We accept in part the submissions of *Robert George & Sharron Margaret Morris* (OS355.4), *Timothy George Morris* (OS951.63) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.63).
2156. As discussed earlier in this decision, higher order policy direction supports the identification of landscape and natural coastal character overlay zones, and a management regime that appropriately protects the values of these areas. Buildings and Structures are listed in Appendix A3 and A5 as principal threats to the values of many of these overlay zones. The evidence of Mr Moore supports the clustering of built form as a way to mitigate the effects of buildings on the values of these areas. Clustering is supported by the 30m maximum separation element of rule. Given this, we do not support removal of Rule 10.3.5, as we consider that doing so has the potential to significantly adversely affect the values of the overlay zones. However, we do consider that an amendment is required to clarify what is meant by the phrase “one or more” large buildings. We consider amending this clause to allow that the total permitted number of small buildings can be erected within 30m of “any” large building on the site could be interpreted as a minor liberalisation of the rule rather than a clause 16 amendment, and as such, consider it constitutes partial alternative relief for these submissions.
2157. We agree with the Reporting Officer’s assessment that the *Morris*’ submission does not provide scope to remove this element of the rule alone. However, we recommend this element of the rule is reconsidered as part of a future plan review, because we accept Mr Moore’s evidence that the 200m minimum separation distance may have perverse outcomes for landscape and natural coastal character values.
2158. We reject the submissions of both the *Otago Peninsula Community Board* (OS588.3) and *Scroggs Hill Farm Limited* (OS1052.5). We do not consider it appropriate to exempt certain activities from the rule. We note that contravention of the rule does not prohibit the establishment of buildings or structures >60m², but rather, triggers a restricted discretionary assessment of effects on the values of the relevant overlay zone. We do not consider these provisions overly onerous, and agree with the Reporting Officer’s assessment that they provide for the outcomes sought by objectives 10.2.3 and 10.2.5, while balancing maintenance and enhancement of the

productivity of farming and other activities that support the rural economy (Policy 2.3.1.2).

2159. We accept the submissions of *HPPC* (OS447.35) and *STOP* (OS900.68) and the further submission of *Geoff Scurr Contracting Limited* (FS2391.49) to remove the reference to a five year period from the rule. We found Mr Moore's evidence on this point particularly compelling - that this could lead to a near doubling in the built form over a ten year period, potentially undermining the efficacy of any mitigation measures imposed on the original building. We observe that the inclusion of a five year time period essentially embeds the potential for cumulative visual effects, rather than supporting the reduction of cumulative visual effects as intended by Policy 10.2.3.8 and Policy 10.2.5.12. In removing the five year period from the rule, however, we note that there is a need to clarify which buildings will be counted towards total permitted number, and consider the rule should be amended to clarify that only buildings erected following the date of release of the decision (i.e. after the rule has taken effect) will be counted.
2160. We accept in part the submission of *Christopher Dean Valentine* (OS464.1).
2161. We do not support his request for an amendment to the maximum separation distance, based on the expert evidence of Mr Moore that 30m is more appropriate in terms of promoting clustering and mitigating the adverse effects of built form, and that it provides "generous" room for vehicular movements between buildings. We do accept that greater clarity is required around how this distance will be measured, and accept the amendment promoted by the Reporting Officer to this end (although we do not consider a diagram necessary). With regard to the submitter's request that small buildings should be permitted within 30m of a larger building on neighbouring sites, we accept Mr Moore's evidence that buildings on neighbouring sites are less likely to be perceived as being part of the same cluster as the smaller building. In addition, we considered this approach would add undue complexity to the rule and may prove difficult to administer, so do not support the suggested change.
2162. We also accept amendment of the rule to provide for up to three buildings of $>60m^2$, noting that this change was supported by Mr Moore from an effects perspective, because it could encourage clustering. We accept that clustering can reduce effects, and consider that is not unusual for dwellings to have up to three smaller buildings associated with them.
2163. With respect to the submission of *Christopher Dean Valentine* (OS464.9) seeking to amend Design Guideline A3.4.1.d, we agree with the Reporting Officer that it is not necessary, given that the assessment rules already provided for site size to be taken into account when considering applications for activities that breach Rule 10.3.5.
2164. The amendments to Rule 10.3.5 required for this decision are to:
- increase the number of buildings that may be erected within 30m of a large building from two to three (NatEnv 464.1)
 - allow the total permitted number of small buildings to be erected within 30m of any large building on the site (NatEnv 951.63)
 - remove the ability to erect the total permitted number of small buildings 'over any five year period' (i.e. three buildings over five years, six buildings over ten years, nine buildings over 15 years etc.), and instead clarify that only buildings erected following the date of release of the decision (i.e. after the rule has taken effect) will be counted towards the total permitted number (NatEnv 447.35), and
 - clarify that, for the purposes of the rule, the distances between buildings will be measured as the distance between the "closest points" of the two buildings, rather than the "closest walls" (NatEnv 464.1).

2165. We have also made a number of changes to the rule, under RMA clause 16, for clarification. These include:

- a change to the title of the rule, to “Number and Location of Permitted Buildings”, to better reflect its content
- clarification that the rule applies in ONLs, SNLs and NCCs, and not in other landscape or coastal character overlays (given that all new buildings are non-complying in the other overlays)
- clarification of the exemption for buildings that are located 200m or more from other buildings on the same site, and
- clarification, via a note to plan users, that the rule applies only to buildings that are at least 10m² in area, and does not apply to structures.

See Appendix 1.

3.7.11 Maximum Height

3.7.11.1 Background

2166. Rules 16.6.6 and 17.6.6 Maximum Height are the height performance standards for the landscape and natural coastal character overlay zones. These rules specify a maximum height of 5m for buildings and structures (other than roadside produce stalls) in landscape and coastal character overlay zones, compared to 10m in other parts of the rural and rural residential zones.

3.7.11.2 Requests to increase maximum height in overlay zones

2167. Multiple submitters³⁸ sought a 10m height rule for landscape and natural character overlays. The reasons for this request included allowing buildings of more than a single story, the need for taller farm buildings, that 5m does not take into account sloped land and the need to undertake earthworks, and that 10m is too restrictive.

2168. *HPPC* (FS2267.97, FS2267.143) opposed two of the submissions as height is a key element of bulk, which should be limited in overlay zones. *FFNZ* (FS2449.333, FS2449.334, FS2449.336) supported three of the submissions (relating to the High Country ONL) as 10m would enable “necessary and appropriate buildings” particularly those necessary to house large farm machinery on large scale farm properties. *Howard Saunders* (FS2372.2) also sought that if the SNL overlay zones were not to be removed from the Rural Residential Zone, that the maximum building height in SNL overlays in this zone be amended to 8m, to allow for a house to be built on a sloping site.

2169. The Reporting Officer referred these submissions to Mr Mike Moore, who advised (pp. 14-15 of evidence) that a 5m height limit represented a “reasonable maximum” in that it provides a standard that is “both relatively practical and protective against the impact of built form”. He considered 10m too high to provide for the appropriate level of protection required. He believed appropriate that larger buildings be subject to the resource consent process.

2170. In relation to sloping sites, Mr Moore stated: “As a matter of principle I believe it is appropriate that the 2GP provisions discourage designs that require significant earthworks on sloping sites, and believe that if the 5m standard in concert with earthworks standards, encourages building design sensitive to site character and

³⁸ *Nigel Harwood* (OS96.4), *Ben Graham* (OS361.22), *Mathew O’Connell* (OS364.11) *Pigeon Flat Road Group* (OS717.23), *Hannah Macgregor-Wolken* (OS387.1), *Ben Grundy* (OS684.1), *Christopher Kilpatrick* (OS505.4), *Julie Broadbent* (OS995.2), *Clifton Trust* (OS720.12), *Timothy George Morris* (OS951.73) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.73).

discourages the use of 'one size fits all designs' for flat sites, then it will be doing its job." (pp.14-15 of his evidence)

2171. Based on Mr Moore's advice, the Reporting Officer considered that a maximum height of 5m should be retained for buildings and structures in the landscape overlay and natural coastal character overlay zones, to allow for appropriate management of potential effects on natural character and landscape values (Section 5.11.4.1, s42A Report, pp.478-479).
2172. *Mr Nigel Harwood* tabled a statement and spoke at the Hearing reiterating his request that the maximum height be 10m rather than 5m, in order to allow for a two storey house.

3.7.11.2.1 *Decision and Reasons*

2173. We reject the submissions of *Nigel Harwood* (OS96.4), *Ben Graham* (OS361.22), *Mathew O'Connell* (OS364.11) *Pigeon Flat Road Group* (OS717.23), *Hannah Macgregor-Wolken* (OS387.1), *Ben Grundy* (OS684.1), *Christopher Kilpatrick* (OS505.4), *Julie Broadbent* (OS995.2), *Clifton Trust* (OS720.12), *Timothy George Morris* (OS951.73) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.73).
2174. As discussed earlier in this decision, higher order policy direction supports the identification of landscape and natural coastal character overlay zones, and a management regime that appropriately protects the values of these areas. Buildings and Structures are identified in Appendix A3 and A5 as principal threats to the values of many of the overlay zones.
2175. We accept the evidence of Mr Moore, that 5m represents a relatively practical threshold over which it is appropriate for buildings in landscape and coastal character overlay zones to be subject to an assessment of their impact on the values of the relevant overlay zone. We note that contravention of the rule does not prohibit the establishment of buildings or structures with a height greater than 5m, but rather, triggers a restricted discretionary assessment of effects on the values of the relevant overlay zone. We accept the advice of Mr Moore that 10m is too high to appropriately protect the values of the overlay zones, noting that no expert advice was presented in support of raising the height threshold.
2176. We do note that, in response to submissions and expert evidence, we have significantly reduced the extent of the SNL overlay zone in some locations (as explained elsewhere), including areas of concern to submitters on this submission point, which will reduce the extent of the areas affected by this rule.

3.7.11.3 Request to amend assessment Rule 10.4.4.1 Maximum height in the NCC Overlay Zone

2177. *HPPC* (OS447.43) and *STOP* (OS900.78) sought to amend assessment Rule 10.4.4.1 by deleting part ii and replacing it with:

"General assessment guidelines. Allow contravention of this performance standard only if height exceeds the standard by under 10%."

2178. The submitters considered that 10% is an "acceptable compromise to make as there may be the rare case where some building element exceeds that height standard". These submissions were opposed by *FFNZ* (FS2449.198, FS2449.205), because the "the proposed amendments go significantly further than appropriate or required for performance standards in this area", and also opposed by *Howard Saunders* (FS2372.61) and *Geoff Scurr Contracting Limited* (FS2391.67).

2179. The Reporting Officer recommended the submissions of *HPPC* and *STOP* be rejected, stating “The addition of the changes requested by the submitter to Rule 10.4.4.1 would reduce flexibility provided by the rule. Rather than restricting any contravention of the performance standard to a less than 10% exceeding of the height standard, in my view the current wording of the rule is appropriate to allow for the individual circumstances of each site and proposed activity.” (s42A Report, p.481)
2180. *HPPC* tabled a statement at the hearing, as follows: “Here again we seek some rule contravention upper limits not for the general Rural Zone, but for those few valued natural overlays...In the case of many, many past resource consent applications, clever applicant consultants cite the ‘preservation’ of a wide range of features...We’ve seen that applications are rife with this lawyer/consultant ‘bargaining chip’ strategy. It is one of the reasons we favour upper limits to the level of contravention to highly important rules.” (p.2 of statement)
2181. The Reporting Officer noted that there was an error in the final sentence of the section 42A Report comment on this submission as follows: “For any proposed development, the positive effects of an activity ~~are~~ may be considered to outweigh the adverse effects that may arise from the contravention of the standard.” The Reporting Officer also stated that “the key reason for not accepting the submission was that the proposed change would not allow for any consideration of the individual circumstances of both the proposed building and the site. In particular, depending on the layout and topography of the site and other factors such as the scale of existing buildings, it may be possible for buildings that exceed the maximum height threshold by more than 10% to, nevertheless, incorporate the key design elements set out in Appendix A3 or A5 (as relevant).” (Revised Recommendations Summary, pp.39-40)

3.7.11.3.1 *Decision and Reasons*

2182. We reject the submissions of *HPPC* (OS447.43) and *STOP* (OS900.78). We do not agree with the amendment requested to Rule 10.4.4.1; we consider that it is overly prescriptive and would not allow for a holistic site-specific assessment of the potential effects of any given building or structure. We agree with the assessment of the Reporting Officer, that it may be possible for buildings that exceed the maximum height threshold by more than 10% to still be acceptable in terms of effects, due to other factors, like location or design.
2183. However, we note that, as a clause 16 change, discussed in section 3.8.5.3 of this decision, assessment rules relating to activities assessed under the 10.2.3 and 10.2.5 policies have been amended to clarify that the Plan’s design guidelines (notified as Appendix A3.4, renumbered Appendix A10 by this decision) are relevant to the assessment of effects on landscape values and on the natural character of the coast.
2184. We consider that this clarification enhances the assessment of the effects of buildings and structures that contravene the maximum height standard on the protected values of NCCs, ONLs and SNLs.
2185. The specific amendments that are relevant to these activities are:
- Addition of the following general assessment guidance to Rules 10.4.4.1 and 10.4.4.2:
 - o “In assessing effects on [*landscape/natural character*] values, the Council will consider the extent to which the development follows the design guidelines in Appendix A3.4.1.

See Appendix 1 (amendments attributed to NatEnv cl.16).

3.7.12 Reflectivity Provisions

3.7.12.1 Policy 10.2.3.6

2186. Policy 10.2.3.6 states: “Require buildings, structures, additions and alterations, and wind generators - on-site energy generation in a Natural Coastal Character Overlay Zone (NCC) to have exterior colours and materials that avoid or, if avoidance is not possible, minimise adverse visual effects caused by reflectivity.”
2187. *STOP* (OS900.164) sought to amend Policy 10.2.3.6 as follows: “Require...to have exterior colours and materials that avoid ~~or, if avoidance is not possible, minimise~~ adverse visual effects caused by reflectivity.”
2188. *Geoff Scurr Contracting Limited* (FS2392.61) opposed this submission as they believed avoidance may not be possible in all instances. *FFNZ* (FS2449.130) also opposed this submission because they were concerned that as a result of the NZ King Salmon case, ‘avoid’ is taken as ‘prohibit’ and that it is inappropriate to prohibit buildings and structures that create any adverse visual effect caused by reflectivity.
2189. The Reporting Officer recommended the submission of *STOP* be rejected, because the removal of the clause would imply a prohibited activity status for any of the activities listed in the policy that result in any degree of adverse visual effect from reflectivity (Section 5.11.3.1, s42A Report, p.462).
2190. In the Reconvened Plan Overview Hearing Report – Policy Drafting Protocol and General Terminology Consistency Summary and Revised Recommendations, use of the word “minimise” in policies throughout the Plan was considered, in response to concerns raised by a submitter in the Network Utilities Hearing. The Reporting Officer recommended amending all instances of “minimise” to “minimise, as far as practicable”, including (p.57, Appendix 4) the drafting of the policy test in Policy 10.2.3.6.

3.7.12.1.1 Decision and Reasons

2191. We reject the submission of *STOP* (OS900.164) requesting an amendment to Policy 10.2.3.6, for reasons of consistency with the 2GP drafting protocol and associated rationale outlined in the Plan Overview Decision Report. In short, under the 2GP drafting protocol, use of the word “avoid” in a policy without any qualifiers suggests a prohibited activity status. The activity status associated with contravention of the reflectivity performance standard associated is restricted discretionary, which we consider appropriate, as there may be occasions in which contraventions are acceptable due to site specific factors or design. We agree with *Federated Farmers of New Zealand* (FS2449.130) that adopting the suggested wording would suggest otherwise.
2192. We note that we have amended the effects test in this policy to “minimise, as far as practicable, adverse visual effects caused by reflectivity” in response to submissions discussed in the Plan Overview decision.

3.7.12.2 Policy 10.2.5.8

2193. Policy 10.2.5.8 states “Require new buildings and structures, additions and alterations, and wind generators - on-site energy generation in Outstanding Natural Landscape (ONL) and Significant Natural Landscape (SNL) overlay zones to have exterior colours and materials that avoid or, if avoidance is not possible, minimise adverse visual effects caused by reflectivity”.
2194. *STOP* (OS900.59) sought to amend Policy 10.2.5.8 to remove “caused by reflectivity”, as they believe that building, structure size and visibility need to be controlled by

more than reflectivity. *Howard Saunders* (FS2372.51), *Geoff Scurr Contracting Limited* (FS2391.65) and *FFNZ* (FS2449.148) opposed this submission point.

2195. The Reporting Officer recommended accepting the submission of *STOP* in part, but did not agree with *STOP* that the policy should be broadened, as other policies and rules cover off other issues (Section 5.11.3.2, s42A Report, pp.463-464). She did, however, agree with *STOP* to remove the word 'new' as the standard practice in the 2GP is to list the activity as "buildings and structures" without a preceding "new", or "additions and alterations" following the activity type. "Buildings and structures" encompasses both new or relocated buildings and structures, and additions and alterations to existing buildings and structures.
2196. In the Reconvened Plan Overview Hearing Report – Policy Drafting Protocol and General Terminology Consistency Summary and Revised Recommendations, use of the word "minimise" in policies throughout the Plan was considered, in response to concerns raised by a submitter in the Network Utilities Hearing. The Reporting Officer recommended amending all instances of "minimise" to "minimise, as far as practicable", including (p.58, Appendix 4) the drafting of the policy test in Policy 10.2.5.8.

3.7.12.2.1 *Decision and Reasons*

2197. We accept in part the submission of *STOP* (OS900.59).
2198. We do not support deletion of the words "caused by reflectivity" in Policy 10.2.5.8 because, as noted by the Reporting Officer, given that this policy relates directly to contraventions of the reflectivity performance standard (and that other policies and associated rules respond to other aspects of building and structure size and visibility), it is appropriate that the policy refers directly to reflectivity.
2199. We do support deletion of the word "new", and "additions or alterations", as we accept the Reporting Officer's evidence that "Buildings and Structures" encompasses both new or relocated Buildings and Structures, and Additions and Alterations to existing Buildings or Structures. Regarding the concerns of *Howard Saunders* (FS2372.51) and *Geoff Scurr Contracting Limited* (FS2391.65), an assessment against the policy is only triggered by a contravention of the performance standard by a new or relocated Building or Structure, or by Additions and Alterations to an existing Building or Structure, not by existing Buildings or Structures that are lawfully established and have existing use rights.
2200. The amendment required for this decision is:
- amend the wording at the start of Policy 10.2.5.8 from "Require new buildings and structures, additions and alterations..." to "Require buildings and structures..." (NatEnv 900.59).

See Appendix 1.

2201. In addition, we note that we have amended the effects test in this policy to "minimise, as far as practicable, adverse visual effects caused by reflectivity" in response to submissions discussed in the Plan Overview decision.

3.7.12.3 Rule 10.3.6 Reflectivity performance standard

3.7.12.3.1 *Background*

2202. Rule 10.3.6, incorporating amendments recommended in the Network Utilities and Energy Generation Section 42A Report, is as follows:

~~In any landscape or natural coastal character overlay zone, new buildings and structures (except fences), additions and alterations, and wind generators on-site energy generation must use exterior paint or other surface finish with a light reflectance value of 30% or less. Exterior paint or other surface finish with a light reflectance value of 30% or less must be used for:~~

- ~~1. New buildings and structures (except fences), additions and alterations in any landscape or natural coastal character overlay zone~~
- ~~2. Wind generators - on-site energy generation in all zones. {NU 394.69 and others}~~

2203. The effect of the recommended amendment is to apply the reflectivity standard to wind generators – on-site energy generation in all zones, rather than only in landscape and natural coastal character overlay zones. It does not change the standard as it applies to other activities.
2204. Background information regarding the development of the reflectivity standard, which assessed provisions in other plans and drew on the advice of Council's landscape architect Mr Barry Knox, is provided on pages 465-466 of the Section 42A Report.

3.7.12.3.2 *Request to remove rule*

2205. *Nigel Harwood* (OS96.1) considered that Rule 10.3.6 was unnecessarily restrictive, and requested that it be removed. He considered that golden autumn grass and daffodil colours will breach this requirement despite not being structures, and is concerned that use of materials such as stainless steel edging will be prevented.
2206. All submissions on the reflectivity topic were referred to Mr Mike Moore for comment. Mr Moore considered that “requiring buildings to be finished in colours that do not greatly contrast with the dominant colours of their landscape context is a very effective mitigation method, where integration is desired” (p.20 of his evidence). Based on this advice, the Reporting Officer did not agree that Rule 10.3.6 should be removed (s42A Report, Section 5.11.3.3).
2207. At the hearing *Mr Nigel Harwood* presented a statement in which he reiterated his request to delete the rule, on the basis that they it is unnecessarily restrictive, and the maximum LRV would be breached both by naturally occurring colours (flowers, grass) and by laundry, and vehicles, as examples.

3.7.12.3.3 *Request to expand rule to cover roofing materials and glass, and to apply to activities in the Hill Slopes Rural Zone*

2208. *HPPC* (OS447.36) and *STOP* (OS900.69) requested that Rule 10.3.6 be expanded firstly to cover roofing materials and glass as well as paint/surface finish, and secondly to include activities in the Hill Slopes Rural Zone, as well as in landscape and coastal character overlay zones. The submitters believed that reflectivity is a source of high visual negative impact beyond just the landscape and coastal overlays, and considered it acceptable that consent applicants pay a reasonable amount more for materials that avoid reflectivity. *HPPC* (OS447.90) also requested that the title of the rule be amended from “Reflectivity” to “Reflectivity and Colour”, because this would align with the submitter’s recommended amendment to the content of Rule 10.3.6.
2209. The Reporting Officer noted, with regard to the parts of building exteriors to which the standard is applied, that the notified rule refers to “exterior paint or other surface finish” (Section 5.11.3.3, s42A Report, pp.467-468). In her view, and as highlighted by *HPPC* and *STOP*’s submission, it is not completely clear whether this phrase includes roofs and glazing.
2210. Mr Moore agreed (p.21 of his evidence) that the rule should apply to roofs, but recommended that glazing be excluded from the rule, on the basis that “LRV’s are not a useful measure as regards the visual effects of glazing” and “Glazing does not

usually create more than temporary significant adverse reflectance effects.” He considered that, where consent is required, potential glare effects associated with glazing can be assessed, and if required, mitigation or avoidance measures required.

2211. Although Mr Moore advised that roofs in general should be subject to the rule, he recommended (p.22) that soffits and flues should be excluded, because they are unlikely to result in significant visual effects. The Reporting Officer recommended the submissions of *HPPC* and *STOP* be accepted and Rule 10.3.6 amended to clarify that it applies to all exterior surfaces of a building (including roofs), but with the exception of glazing, soffits and flues.
2212. With regard to whether the standard should also apply in the Hill Slopes Rural Zone, Mr Moore agreed the request had merit given that the Hill Slope Rural Zone has relatively high levels of visibility from built up areas of the city. This could be seen as making the Hill Slope zone a de-facto landscape overlay to an extent, but he believed it could be justified on the basis of the higher than average visibility of this zone and because reflectivity mitigation is particularly effective and (in his opinion) not particularly onerous.
2213. In related evidence, he recommended requiring all buildings in rural residential zones with higher visibility, and all buildings in the High Country, Hill Slopes, Coastal and Peninsula Coast Rural zones, to comply with the reflectivity rule applicable in coastal and landscape overlays.
2214. The Reporting Officer, after considering Mr Moore’s advice, did not recommend that the rule be amended to also apply to the Hill Slopes Rural Zone. She noted that in the case of rural development, zinc/aluminium alloy coated steel (such as Zinalume) is commonly used for the roofing of farm buildings; this type of roofing is significantly cheaper than painted steel (such as ColorSteel), but has an LRV of more than 30%. Moreover, she noted that additional controls to protect amenity values in all rural and rural residential zones have been requested in submissions considered at those hearings. She considered it may be that amendments are made to reflectivity provisions in response to these submissions, for example, to apply them to large buildings throughout these zones.
2215. The Reporting Officer also did not agree with *HPPC* that it was necessary to change the name of Rule 10.3.6 to “Reflectivity and Colour”. The rule controls the light reflectance value of finished exteriors – i.e. their reflectivity, not their hue or degree of greyness/brightness.
2216. At the hearing, Mr Craig Werner appeared and tabled a statement for *HPPC* that addressed the issue of reflectivity and windows. It stated (pages 1-2) “We disagree that windows are ‘opaque’ and whether it is reflectivity or ‘glare’ that creates the disturbing negative impact, in our opinion, these must be reasonably mitigated. Although the reflectivity/glare may be a temporary phenomenon based on sun angle, its effect is so dazzling as to convince a home owner or observer that their view of the landscape is not natural, and each and every glazed structure makes its piercing, shiny presence at some time of day.”
2217. The Reporting Officer noted that any building that was over 60m², such as a dwelling, would need resource consent anyway, regardless of compliance with the reflectivity rule. The potential visual effects of glass could, therefore, be considered as part of the assessment of effects undertaken via the consent process, and managed either by declining the consent or imposing appropriate conditions. (Revised Recommendations Summary, p.39)

3.7.12.3.4 *Request to increase maximum LRV, and exclude certain cladding and building types*

2218. *Christopher Dean Valentine* (OS464.6) requested that Rule 10.3.6 be amended:

- to change the maximum light reflectance value from 30% to 45%;
 - to specify that the standard only applies to painted finishes and excludes glass and natural finishes such as timber and stone; and
 - to exempt glasshouses, hothouses and tunnel houses used for the purpose of agriculture.
2219. The Reporting Officer noted Mr Moore's advice (page 20) that "30% is an appropriate upper threshold...In my assessment 45% is too permissive to provide adequately for mitigation". In response to *Mr Valentine's* concern that some building cladding product warranty requirements do not align with a 30% reflectivity limit, Mr Moore stated (pp.20-21) that despite any product warranty issues, he did not believe that the LRV standard should be relaxed, and that metal claddings are predominant for rural buildings and he was not aware that there was any product warranty issues in finishing this in darker tones. Based on this advice, the Reporting Officer did not recommend that this part of *Mr Valentine's* submission be accepted (Section 5.11.3.3, s42A Report, pp.469-470).
2220. In relation to *Mr Valentine's* request to exclude glass and glass-clad buildings from the reflectivity rule, the Reporting Officer noted that hothouses and tunnel houses may also be clad in clear plastic that is similar to glass in terms of reflectivity and that, it would be appropriate to exclude clear plastic from the rule. The Reporting Officer did not recommend that this exclusion applied to plastic with any degree of opacity or whiteness, because buildings clad in this type of plastic can be highly visible.
2221. With regard to *Mr Valentine's* request to exclude natural finishes such as timber and stone from the standard, Mr Moore advised (p.21) that where LRV's are stated for various paint or material products, administration of this rule is likely to be relatively straightforward. Greater difficulty arises where naturally finished cladding for structures is proposed e.g. naturally finished timber, stone or brick. In these cases, where consent is required, it was his recommendation that the approach taken is to assess the product proposed for its ability to produce an effect similar (when weathered) to achieving a LRV of 30%.
2222. The Reporting Officer agreed with Mr Moore that implementation of the maximum LRV rule is likely to be more difficult for naturally finished cladding. In her view, problems of administration of the rule as it applies to natural finishes would arise mainly where the rule applied to otherwise permitted buildings. In these cases, the decision as to whether the proposed cladding complies with the reflectivity rule would be made by the planner checking the building consent application to determine whether resource consent is required.
2223. On page 22 of his evidence, Mr Moore advised that "naturally finished timber" should be excluded from the rule, on the basis that "This material is a likely candidate for use on permitted buildings (i.e. 60m² or less) and natural wood is unlikely to have significant adverse effects." With respect to other types of natural finish, Mr Moore considered that stone and brick were unlikely to be in great demand as cladding for permitted buildings (60m² or less) and that the appropriateness of these materials, naturally finished, can be assessed via the resource consent process. On the basis of Mr Moore's advice and his assessment above regarding the administration of the rule, the Reporting Officer recommended that naturally finished timber be excluded from Rule 10.3.6, but that other types of natural finish not be excluded.
2224. At the hearing, *Mr Valentine* made a power point presentation in which he noted that the 50 year product warranty for certain products (e.g. plastic and pre-cast cement cladding) requires a finish with a reflectivity of at least 40%. With lesser reflectivity, these products overheat and break down prematurely. *Mr Valentine* also noted that other Councils contain rules that provide for higher maximum reflectivity than 30%, thus allowing for a more varied range of colours.

2225. The Reporting Officer noted “While I acknowledge that the rule may increase the costs of building in SNLs, ONLs and NCCs and place some restrictions on the types of material that may be used, this needs to be considered alongside the benefits of the rule, as supported by the evidence of Mike Moore, and discussed in the s42A report...I note that the reviewed QLDC plan sets a maximum LRV of 30% for building exteriors (except roofs) and of 20% for roofs.” (Revised Recommendation Summary, pp.27-28)

3.7.12.3.5 *Request to clarify rule and make it more reasonable*

2226. *Timothy George Morris* (OS951.64) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.64) requested that Rule 10.3.6 be amended so that it is not unreasonable, clear and can be assessed. In their view, it is not clear what the “light reflectance value of 30% or less” means.
2227. The Reporting Officer agreed that changes to the rule are appropriate, to clarify the rule, and to make it more straightforward to assess whether or not activities comply with it (Section 5.11.3.3, s42A Report, pp.470-471). She stated that the amendments recommended in response to *HPPC*, *STOP* and *Mr Valentine*, will help to achieve this. In addition, to clarify the rule as it applies to surfaces whose LRV changes with weathering (e.g. stone), she recommended that the wording be amended to indicate that the 30% maximum LRV applies to exterior surface finishes in their weathered state. She did not agree with *Mr Morris* that the rule is unreasonable given Mr Moore’s advice that controls on reflectivity are a “very effective mitigation method” where the integration of buildings into their landscape context is desired.

3.7.12.3.6 *Decision and Reasons*

2228. We reject the submission of *Nigel Harwood* (OS96.1).
2229. As discussed earlier in this decision, higher order policy direction supports the identification of landscape and natural coastal character overlay zones, and a management regime that appropriately protects the values of these areas. Buildings and Structures are identified in Appendix A3 and A5 as principal threats to the values of many of the overlay zones.
2230. We accept the evidence of Mr Moore, that requiring buildings to be finished in colours that do not greatly contrast with the dominant colours of their landscape context constitutes very effective mitigation, noting that it is a method employed in other plans in support of similar outcomes. In this context, we consider a reflectivity performance standard appropriate in overlay zones, and consider Rule 10.3.6 should be retained.
2231. We accept in part the submissions of *HPPC* (OS447.36) and *STOP* (OS900.69). We agree the rule requires further clarification as to whether it includes roofs and glazing. Based on the expert evidence of Mr Moore, we consider Rule 10.3.6 should be amended to clarify that it applies to all exterior surfaces of a building (including roofs), but with the exception of glazing, soffits and flues. We accept Mr Moore’s evidence that soffits and flues are unlikely to have significant visual effects, and that LRV’s are not a useful measure as regards the visual effects of glazing. We are persuaded by the evidence that glare is the greater concern in relation to glazing, and that, as all Buildings and Structures >60m² in landscape overlay zones are to be subject to an assessment of effects on landscape, the potential effects of glare from glazing can be considered at that point.
2232. However, we note that as notified there is no mention of glare in Appendix A3.4.1 Design Guidelines, or in Rule 10.8.1, which describes the assessment matters relevant to landscape building platforms. Therefore, we have amended Appendix A3.4.1 design

guidelines (now renumbered Appendix A11) to add guidance relating to the design of glazing, based on Mr Moore's evidence.

2233. In addition, we note that, as a clause 16 change, discussed in section 3.7.5.2 of this decision, assessment rules have been amended to clarify that the Design Guidelines are relevant to the assessment of effects on landscape values and on the natural character of the coast. This will ensure that activities/landscape building platforms are assessed against the Design Guidelines.
2234. We further note that, as documented in the Plan Overview Decision Report, clarification of the meaning of Additions and Alterations has been achieved through an amendment of the definition. For the performance standard that manages reflectivity in landscape and coastal character overlay zones, the definition includes any change to the light reflectance value of exterior surfaces, including roofs.
2235. With regard to whether the standard should also apply in the Hill Slopes Rural Zone, we accept Mr Moore's evidence that the Hill Slopes Rural Zone has on average higher levels of visibility from built up areas of Dunedin than other rural zones, and that controls on reflectivity are a particularly effective and not particularly onerous measure that may mitigate the visual effects of any development in these areas. We understand the Reporting Officer's desire to avoid treating the Hill Slopes Rural Zone as a de facto landscape overlay zone. However, based on Mr Moore's recommendation that this approach should be applied to all high visibility rural and rural residential zones, we conclude the evidence supports application of the method more widely, in support of objectives relating to rural character and amenity. On this basis, we consider it appropriate to extend the application of Rule 10.3.6 to buildings and structures over 300m² in the Hill Slopes Rural Zone (the only areas in which we have scope to apply it), along with a recommendation that the merits of application of this rule to smaller buildings, and more widely across the rural and residential zones, be explored as part of a future Plan review. We chose 300m² as the threshold for the application of the reflectivity standard to buildings in the Hill Slopes Rural Zone on the basis that this figure is used elsewhere in the Plan (in provisions for Residential Zones) as a trigger for the application of additional controls on amenity and character.
2236. We agree with the Reporting Officer's assessment that it is unnecessary to change the name of Rule 10.3.6 as sought by the submitter. Given that the rule controls the light reflectance value of finished exteriors, we consider it would be misrepresenting the rule to expand it to include reference to colour.
2237. We accept in part the submissions of *Christopher Dean Valentine* (OS464.6). Based on the expert advice of Mr Moore that 45% would not adequately mitigate effects, and that 30% is an appropriate threshold, we do not support a change in the maximum LRV sought by the submitter. On balance, we concur with the assessment of the Reporting Officer, that while the rule may place some restrictions on the types of material that may be used, based on the evidence of Mr Moore we consider the benefits of the rule are likely to be significant in terms of upholding landscape and coastal character values. We note that no expert evidence was presented supporting an increase to the maximum LRV.
2238. We do however accept *Mr Valentine's* suggested amendment to exclude glass from the reflectivity rule, and - on the basis of Mr Moore's expert advice - clear plastic and natural wood finishes. We consider this provides a range of options for permitted buildings (including glasshouses, tunnel houses and hot houses) while retaining an assessment for other finishes such as stone and brick, which are less likely to be in demand for smaller buildings.
2239. We also accept in part the submissions of *Timothy George Morris* (OS951.64) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.64). We

consider the insofar as they clarify and refine Rule 10.3.6 and associated assessment guidance, the aforementioned amendments help to achieve the outcome sought by the submitter. In addition, we consider that the rule should be amended to clarify that, for exterior surface materials whose LRV changes due to weathering (e.g. stone), the LRV will be measured based on an 'as weathered' condition (NatEnv 951.64).

2240. The amendments required for this decision, including consequential amendments, are as follows:

- Amend Rule 10.3.6 to: clarify that the standard applies to roofs, although not to soffits (NatEnv 447.36); exempt natural wood finishes, glass, clear plastic and flues (NatEnv 464.6); and clarify that, for exterior surface materials whose LRV changes due to weathering (e.g. stone), the LRV will be measured based on an 'as weathered' condition (NatEnv 951.64).
- Amend A11 Design Guidelines to add the following text:
"Glazing should be designed (placement and glazing type) to minimise the potential for glare effects." (NatEnv 447.36)
- Amend Rule 10.8.1 Special Information Requirements for Landscape Building Platforms to add the following text:
"[The landscape assessment must consider...] the extent to which the location of the building platforms follows the relevant design guidelines in Appendix A11 (NatEnv 900.70)"
- Apply the Reflectivity standard to buildings and structures over 300m² in Hill Slopes Rural Zone (via the addition of new Policy 16.2.3.10, amendment of the reflectivity performance standard in the Rural Zones, i.e. Rule 16.6.10, and addition of new assessment Rule 16.9.4.Y) (NatEnv 447.36).

See Appendix 1.

3.7.12.4 Reflectivity Assessment Rules

2241. Rules 10.4.3.8 and 10.4.3.9 provide for the assessment of activities that breach Rule 10.3.6 in the NCC overlay zone and the ONL and SNL overlay zones respectively.
2242. *HPPC* (OS447.41-42) and *STOP* (OS900.74-75) sought that the rules be amended so that activities that breach the reflectivity standard must have 90% of their surface areas obscured from all surrounding areas from which the development is visible. They held the view that consideration should only be given to design elements which directly eliminate the contravention of the standard.
2243. *Howard Saunders* (FS2372.21, FS2372.22 and FS2372.60) opposed these submissions because he believed the conditions already described in the appendices are adequate and this would be too pedantic. *FFNZ* (FS2449.196, FS2449.197, FS2449.201 and FS2449.202) also opposed these submissions, as the amendments proposed go significantly further than appropriate or required for performance standards in this topic area.
2244. The Reporting Officer agreed with the further submitters that the proposed changes would be overly onerous, and did not recommend that the rules be amended as requested (Section 5.11.3.4, s42A Report, p.474). She did, however, recommend that broad "general assessment guidance" relating to visibility should be added to these rules.
2245. At the hearing, Mr Werner appeared and tabled a statement for *HPPC* that stated "We disagree that the proposed amendment is overly onerous. Our hope is that six Panel members form their own consensus view on the small sacrifices that fortunate Dunedinites should make for the opportunity to reside in our city's natural areas."

2246. The Reporting Officer, in response to *HPPC*, noted “In my view, the changes requested...are unnecessarily onerous, given that:

- The proposed amendment does not take into account the degree of the contravention (i.e. would apply equally to a building finished in colours that were only slightly too reflective, and to a building finished in colours that were very highly reflective)
- Surface areas include roofs
- There is no guarantee that the vegetation or structures used to obscure the buildings would have lesser visual effects/integrate into the landscape better than the buildings themselves
- Vegetation would take time to grow, therefore would need to be planted well before the building was erected, in order to meet the proposed rule.” (Revised Recommendations Summary, p.39)

3.7.12.4.1 *Decision and Reasons*

2247. We accept in part the submissions of *HPPC* (OS447.41-42) and *STOP* (OS900.74-75). While we do not support the submitters’ proposed amendments to Rules 10.4.3.8 and 10.4.3.9, we do support the addition of the general assessment guidance recommended by the Reporting Officer.

2248. We concur with the assessment of the Reporting Officer that the amendment promoted by the submitter is overly onerous, particularly as it is not sensitive to the degree of contravention, or the relative importance of the views from surrounding areas. We do, however, agree that the degree of visibility of the Building or Structure from public places should be considered as part of any assessment, and consider the amendment recommended by the Reporting Officer achieves this.

2249. The amendments required for this decision are as follows:

- Add general assessment guidance to assessment rules for contraventions of the reflectivity standard in NCCs, SNLs and ONLs (Rules 10.4.3.8 and 10.4.3.9) to indicate that: “In assessing the adverse visual effects, Council will consider the level of visibility of the building or structure from public places.”

See Appendix 1 (amendments attributed to NatEnv 447.41).

3.7.13 Landscape Building Platforms

3.7.13.1 Background

2250. In the 2GP, where a landscape building platform has been identified at the subdivision stage, construction of a new building greater than 60m² within the platform is a controlled activity in SNL, ONL and NCC overlay zones in the rural and rural residential zones – whereas if a landscape building platform has not been identified, the activity status is restricted discretionary within these overlays (rules 16.3.4.5.b, 17.3.4.5.c).

2251. Rule 10.8.1 sets out information requirements for the identification of landscape building platforms, including the requirement for a landscape assessment to be carried out by “a landscape architect or similarly qualified person”.

2252. Rule 10.3A provides assessment matters for the establishment of new buildings on a landscape, with matters of control being the size, design and appearance of buildings.

3.7.13.2 New standard requiring identification of landscape building platforms

2253. *HPPC* (OS447.135) and *STOP* (OS900.101) requested the introduction of a new performance standard requiring the mandatory identification of building platforms, which would apply to all development and subdivision activities within landscape and coastal character overlay zones and the Hill Slopes Rural Zone. They requested that contravention of this standard should result in a non-complying activity status and mandatory public notification.
2254. The submitters considered that it would provide stronger protections for landscape values, because in their view the position of buildings on a site (and the extent to which they are grouped or spread) is critical. They considered unscreened large facades to have more visual impact than height and reflectivity, which are subject to performance standards in the 2GP.
2255. The changes requested by *HPPC* and *STOP* were opposed by a number of submitters³⁹, as they considered the requested changes go significantly beyond the sustainable management principles and overall intent of the RMA; the changes are excessive, inappropriate and overly onerous; flexibility is needed for the number and size of buildings that are able to be constructed on individual properties; non-complying activity status for a breach of the proposed standard is inappropriate and not effects-based and could result in delays associated with network utilities, including regionally significant infrastructure.
2256. *Clifton Trust* (OS720.8) sought that a new rule be inserted under Rule 16.3.4 (activity status - development activities) that authorised the creation of landscape building platforms independent of the subdivision consent process. *Clifton Trust* would like an alternative means of authorising creation of such a platform.
2257. The Reporting Officer did not recommend that the new provisions requested by *STOP* and *HPPC* should be added to the 2GP (Section 5.11.5, s42A Report, pp.489-490). She addressed relevant parts of the submissions as follows:
- In relation to the Hill Slopes Rural Zone, expert landscape architect input was obtained during the identification of the boundaries of the proposed landscape and coastal character overlay zones. This input focused on identifying areas of the city with significant, high or outstanding values that warranted special protection. Additional rules would not be justified in areas of the Hill Slopes Rural Zone that do not fall within these overlays.
 - In relation to the development activities, the Reporting Officer did not see the value in introducing a requirement to identify building platforms for new development activities (i.e. buildings and structures activities, and site development activities) in overlay zones. Development activities have already been allocated activity statuses in overlay zones based on their potential degree of adverse effect on landscape and coastal character values.
 - In relation to subdivision activities, she considered that the controlled activity status where landscape building platforms are identified, along with the potential savings of engaging a landscape architect to advise on subdivision of land and identification of building platforms at the same time, to provide sufficient incentive to identify landscape building platforms at the time of subdivision. Further, some types of subdivision are for purposes that do not involve new buildings.

³⁹ *Clifton Trust* (FS2202.26), *FFNZ* (FS2449.373, FS2449.252, FS2449.257), *Vodafone* (FS2076.33 and FS2076.36), *Chorus* (FS2079.18, FS2079.21), *Spark* (FS2146.18 and FS2146.21), *PowerNet* (FS2264.32), *Aurora* (FS2375.28) and *Howard Saunders* (FS2372.74, FS2372.63).

2258. In response to the *Clifton Trust*, the Reporting Officer did not recommend that the requested new rule was added to the Plan (Section 5.11.5, s42A Report, p.490). She considered that the creation of landscape building platforms outside a subdivision consent process would need to have at least restricted discretionary status in order to allow for appropriate assessment of the proposed location of the platform and its potential effects on landscape values, so did not see the value in such a rule.
2259. *HPPC* tabled a statement at the hearing and commented "...platform activity status should be changed from 'Controlled' to 'RD'. The reason these amendments are sought relate to our assessment that the 2GP and 42A Report fail to adequately acknowledge the great complexity of, and the very probably unknowns related to, building platform rules. Controlled status is inadequate because several factors in addition to size, design and appearance perhaps structure orientation?? may be significant...It is our opinion that 'activity status' alone is not broad enough to insure appropriate development outcomes." (p.2 of statement)
2260. In response, the Reporting Officer noted: "I remain of the view that controlled activity status is appropriate, for reasons given in the section 42A report. I consider that "structure orientation" falls within the scope of "design and appearance". If there were unknown aspects of the building that needed to be managed, the RD status requested by the submitter would not be appropriate, given that when RD status is used the plan must specify which matters the Council's discretion is restricted to. However, I consider that "size, design and appearance of buildings", which are the matters of control under the notified 2GP rule, offer sufficient scope to consider all relevant matters." (Revised Recommendations Summary, p. 40)

3.7.13.2.1 *Decision and Reasons*

2261. We accept in part the submissions of *HPPC* (OS447.135) and *STOP* (OS900.101).
2262. As discussed earlier in this decision, higher order policy direction supports the identification of landscape and natural coastal character overlay zones, and a management regime that appropriately protects the values of these areas. Buildings and Structures are identified in Appendix A3 and A5 as principal threats to the values of many of the overlay zones.
2263. In this context, we are persuaded by the submissions of *HPPC* and *STOP* that where a subdivision occurring in a landscape or coastal character overlay creates future residential development potential, identification of landscape building platforms should be mandatory at time of subdivision consent. It is the effect of the subdivision to create this potential, and so we consider it appropriate that the potential effect on landscape or natural coastal character values is assessed at that point. To ensure that landscape building platforms are identified at the time that subdivision for residential purposes occurs, we have amended Rule 10.8.1 Special Information Requirements and relevant assessment rules as indicated below. We consider this approach preferable to the addition of a performance standard, as it is more straightforward from a technical point of view.
2264. However, we do not consider this appropriate in areas of the Hill Slopes Rural Zone that have not been identified as meeting the criteria for inclusion in a landscape or coastal character overlay zone. While we accept that the Hill Slopes Rural Zone has on average higher levels of visibility from built up areas of Dunedin than other rural zones, we did not receive any evidence on the merits of requiring identification of landscape building platform outside of overlay zones. Outside of landscape and coastal character overlays, buildings >60m² are a permitted activity subject to compliance with certain performance standards, which we consider appropriate, including in the Hill Slopes Rural Zone.

2265. We accept that mandatory identification of landscape building platforms where a subdivision creates future residential potential may result in additional costs for landowners at time of subdivision consent. However, we also consider that failing to assess the potential effects of any additional residential development potential on overlay zone values at time of subdivision may result in expectations of residential development potential that may not in every case be met without unacceptable effects on overlay values, and that this too would have environmental and amenity costs associated with it. We also consider that under the notified provisions and as suggested by the Reporting Officer, many landowners would choose to undertake the landscape assessment at the time of subdivision, so the change is unlikely to result in substantially increased costs overall. On balance, we consider the change necessary to allow the potential effect on overlay zone values to be assessed at the time the potential is created.
2266. We reject the submission of *Clifton Trust* (OS720.8). We agree with the assessment of the Reporting Officer, that in order to appropriately assess the effects of the creation of a landscape building platform on the values of the relevant overlay zone, and to retain the ability for Council to decline the application should the effects be too significant, the activity would need to be restricted discretionary.
2267. This decision amends the special information requirements for landscape building platforms (Rule 10.8.1) to indicate that landscape building platforms must be identified for subdivision activities that create new residential development potential in a landscape or natural coastal character overlay zone. It consequentially amends the relevant assessment rules in Section 10 (Rules 10.5.2.3, 10.5.2.6 and 10.5.2.13), to indicate that the assessment will consider the appropriateness of identified building platforms as required by Rule 10.8.1. See Appendix 1 (amendment attributed to NatEnv 447.135).

3.7.13.3 Activity status on landscape building platforms

2268. *HPPC* (OS447.80) and *STOP* (OS900.115) sought to amend Rule 16.3.4.3 so that buildings over 60m² within landscape building platforms in the SNL, ONL and NCC overlay zones are a restricted discretionary activity. *HPPC* considered that identification of 'landscape building platforms' is not a sufficient or acceptable reason to assign a controlled activity status. *HPPC* (OS447.47) and *STOP* (OS900.83) also sought that new assessment rules be added to the Natural Environment section to provide guidance to assess proposals for landscape building platforms as a restricted discretionary activity.
2269. The submissions of *HPPC* and *STOP* were opposed by a number of submitters⁴⁰ who considered that where a landscape building platform had been identified, it was appropriate that a building is constructed upon it; that insufficient justification has been provided for increasing the activity status in the way proposed; and that the requested changes to activity status were unnecessary and onerous.
2270. The Reporting Officer recommended rejection of the *HPPC* and *STOP* submissions, as she considered it was appropriate to apply a controlled activity status with matters of control limited to size, design and appearance of buildings, provided that an appropriate assessment of the effects of the building has been carried out at subdivision consent stage. She noted that Council's staff and other professionals engaged by the Council would also carry out an assessment (not just the applicant's experts). She also noted that she had recommended amendments to Rule 10.8.1 to ensure the process followed when identifying appropriate building platforms includes a

⁴⁰ *Clifton Trust* (FS2202.13, FS2202.23), *FFNZ* (FS2279.33, FS2249.317), *John Scott* (FS2140.33), *Ben Graham* (FS2279.33), *Mathew O'Connell* (FS2300.33), *Pigeon Flat Road Group* (FS2416.33).

full assessment of all protected values of those areas (Section 5.11.1, s42A Report, p.442).

2271. *HPPC* tabled a statement at the Hearing, and were sceptical of the qualifier in the Reporting Officer discussion that, provided that location is properly assessed at the time of subdivision, controlled activity status is sufficient. *HPPC* were also concerned about developments being undertaken under a new District Plan and Spatial Plan and their 'new themes of emphasis' in subdivisions which had occurred under the existing plan. *HPPC* reiterated their opinion that the consideration of height, design and appearance was not sufficient to ensure landscape amenity and visual effects were avoided or mitigated.
2272. The Reporting Officer stated that, in her view, the 2GP rules that provide for the identification of landscape building platforms at the time of subdivision (in particular Rule 10.8.1) "ensure that an appropriate assessment of the potential effects of the location of the building platform on landscape and natural coastal character values will be carried out". In addition, the Reporting Officer noted that City Planning were not aware of any problems or complaints that had arisen in the past as a result of buildings being constructed as controlled activities within landscape building platforms (which can also be done under operative rules). (Revised Recommendations Summary, p.38)
2273. In relation to the submitter's comments about standards on height, reflectivity etc. being inadequate to control landscape, amenity and visual effects, the Reporting Officer noted that under 2GP provisions (incorporating amendments recommended in the Section 42A Report) all buildings over 60m² would require consent (regardless of their compliance with these standards), with consent only being granted if effects on landscape values were appropriately managed. We note that this advice was not accurate as it related to the ability to withhold consent, given that for controlled activities consent may not be declined, although the Council may impose conditions on the consent.

3.7.13.3.1 *Decision and Reasons*

2274. As discussed above, we are persuaded by the submissions of *HPPC* (OS447.135) and *STOP* (OS900.101) that, where a subdivision activity takes place within a landscape or coastal character overlay and creates residential development potential, identification of landscape building platforms should be mandatory at time of subdivision consent. We consider that this will ensure effects of buildings on those landscape building platforms are appropriately assessed at time of subdivision, when the potential for increased residential capacity is being created.
2275. In this context, we support retention of a controlled activity status for new buildings over 60m² within landscape building platforms in the SNL, ONL and NCC overlay zones, and therefore reject the submissions of *HPPC* (OS447.80, OS447.47) and *STOP* (OS900.115, OS900.83). We consider a restricted discretionary activity status for buildings >60m² on a landscape building platform would essentially be duplicating an assessment already made at time of subdivision, as described above, under Rule 10.8.1.5 (which specifies that the assessment of effects on landscape or natural character must consider the effects of buildings constructed to the maximum building envelope provided for by the performance standards). We note that, should a building proposed for a landscape building platform contravene these performance standards, it will be processed as a restricted discretionary activity.
2276. Also of relevance to this submission, are the amendments made to Rule 10.8.1 to ensure that the values of the applicable overlay zone are considered by the assessment, as well as other additions discussed in section 3.7.13.4, below. We consider that this delivers a stronger and more appropriately aligned assessment of

the effects of additional residential development potential (and the associated landscape building platforms) at time of subdivision.

3.7.13.4 Assessment Rule 10.3A

2277. *Judith Ansbacher* (OS191.1) believed that Rule 10.3A should be amended so that there was more discussion about what is acceptable in buildings. The submitter stated that “making ugly houses grey or brown does not help them to ‘blend in’”.
2278. *STOP* (OS900.70) and *Forest and Bird NZ* (OS958.77) believed that Rule 10.3A should be amended so that the matters of control include the location of buildings, and assessments on indigenous biodiversity, with references to objectives and policies relating to indigenous biodiversity. The submitters noted that location can impact on natural character, and that the lighting of buildings can also impact on seabirds when located on the coast in the vicinity of breeding colonies. *Howard Saunders* (FS2372.57) opposed *STOP* because he believes the rule is adequate as it stands.
2279. *Timothy George Morris* (OS951.17) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust* (OS1054.17) sought to amend Rule 10.3A as they believed the obligations of Rule 10.3A are too complicated and onerous.
2280. The Reporting Officer agreed with *Judith Ansbacher* that it would aid plan clarity and usability to reference Appendix A3.4.1 Design Guidelines within the assessment guidance of Rule 10.3A (Section 5.11.5, s42A Report, p.486).
2281. The Reporting Officer did not consider it appropriate to amend Rule 10.3A as requested by *STOP* and *Forest and Bird NZ*, because:
- the location of buildings cannot be meaningfully controlled where a landscape building platform is already identified, except to a very limited extent within the platform itself, and
 - it may not be possible to control potential effects on indigenous biodiversity where a landscape building platform is already identified – although vegetation clearance and earthworks rules will apply (Section 5.11.5, s42A Report. p.486).
2282. The Reporting Officer acknowledged the concern raised by *STOP*, *Forest and Bird* and *HPPC*, in terms of the scope of the matters to be considered in the landscape assessment, as guided by Rule 10.8.1. In her view, in order to allow for a full assessment of effects on relevant values, Rule 10.8.1 should refer back to the values stated in the appendices. She considered that, rather than either changing the activity status within landscape building platforms or amending the content of Rule 10.3A, the outcome sought (i.e. greater control over buildings within landscape platforms) should be achieved in an alternative way. She recommended that Rule 10.8.1 should be revised to ensure that the process followed when identifying appropriate building platforms within landscape and natural coastal character overlays includes a full assessment of all protected values of those areas, through reference back to the appendices which describe these values.
2283. The Reporting Officer considered that if this change was made, controlled activity status with matters of control limited to the size, design and appearance of buildings, was appropriate for buildings within the platform. In addition, she considered that the objectives and policies referred to in the “Guidance of the assessment of resource consents” section of Rule 10.3A.2, are appropriate since they provide scope to consider effects from the size, design and appearance on all of the natural character values of NCCs, and landscape values of ONLs/SNLs. Since these values may include indigenous biodiversity, she did not consider that it is necessary to add references to additional objectives and policies as requested by *STOP* (OS900.70) and *Forest and Bird NZ* (OS958.77).

2284. The Reporting Officer did not agree with the *Morris* submissions and noted that it is necessary that the size, design and appearance of a building are carefully managed as these could result in adverse effects on landscape and natural character values (Section 5.11.5, s42A Report, p.488). She did not consider that controlled activity status is onerous as a means of managing these potential effects, and the content of Rule 10.3A is clear and concise.

3.7.13.4.1 *Decision and Reasons*

2285. We reject the submissions of *Timothy George Morris* (OS951.17) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust* (OS1054.17)).
2286. As discussed earlier in this decision, higher order policy direction supports a management regime that appropriately protects the values of identified landscape and coastal character overlay zones. Buildings and Structures are identified in Appendix A3 and A5 as principal threats to the values of many of the overlay zones.
2287. In this context, we agree with the Reporting Officer's assessment that the managing the size, design and appearance of buildings within identified landscape building platforms will help mitigate potential adverse effects on landscape and natural character values. As outlined in section 3.7.13.3, we support retention of a controlled activity status for new buildings over 60m² within landscape building platforms in the SNL, ONL and NCC overlay zones, to this end. We do not consider this management approach overly onerous.
2288. We accept in part the submission of *Judith Ansbacher* (OS191.1). We agree that, in the interests of Plan clarity, there should be a stronger link to design guidance from Rule 10.3A. We note that both Appendix A3 (landscape overlay zones) and Appendix A5 (coastal character overlay zones) refer to the design guidelines for Buildings and Structures outlined in Appendix A3.4.1. We support the amendment proposed by the Reporting Officer to add some general assessment guidance to Rules 10.3A.2.1.a and 10.3A.2.2.a, linking to this (noting that we have renamed it Appendix A11, as discussed in section 3.7.5.2).
2289. In addition, as explained in response to the submissions of *HPPC* (OS447.36) and *STOP* (OS900.69) in section 3.7.12.3, and below in response to the submissions of *STOP* (OS900.70) and *Forest and Bird NZ* (OS958.77), we consider it appropriate to expand Appendix A3.4.1 (now Appendix A11) to provide additional guidance relating to the effects of glazing and lighting, which we consider constitutes partial alternative relief for this submission.
2290. We accept in part the submissions of *STOP* (OS900.70) and *Forest and Bird NZ* (OS958.77). We agree with the Reporting Officer's assessment that the proposed amendments to Rule 10.3A are not workable, because where a landscape building platform has already been identified there is little flexibility in building location, and it may not be possible to control potential effects on indigenous biodiversity. However, we also accept the Reporting Officer's evidence that amending Rule 10.8.1 to refer back to the values in the appendices will help achieve the outcome sought by the submitters, by ensuring effects on these values are assessed by appropriate experts and considered when landscape building platforms are identified. We note that, as outlined in section 3.7.13.2, we have also amended Rule 10.8.1 and relevant assessment rules to require that landscape building platforms are identified at the time that subdivision occurs, where the subdivision creates additional residential capacity.
2291. In addition, while consideration of effects associated with lighting is implicit in Rule 10.8.1.5(b), we consider that, in the interests of clarity, Appendix A3.4.1 (now Appendix A11) should be clarified to directly reference the effect of lighting. We

accept that lighting can impact on the values of coastal character overlay zones, and consider that design guidelines are the appropriate place for discussion of these issues.

2292. We accept that there may not be significant scope to control effects on indigenous biodiversity once a landscape building platform has been identified. However, the decision to reference design guidelines from Rule 10.3A (in response to the submission of *Judith Ansbacher* (OS191.1)) will go some way to achieving the outcomes sought by the submitters.
2293. We concur with the Reporting Officer's assessment that with these changes, controlled activity status with matters of control limited to the size, design and appearance of buildings, is appropriate for buildings within a landscape building platform.
2294. We do not consider that additional objectives and policies need to be referenced from these assessment rules.
2295. The amendments required for this decision are as follows.
- Amend assessment rules for the establishment of large buildings on landscape building platforms in NCCs, SNLs and ONLs (Rule 10.3A.1.1 and Rule 10.3A.1.2) to add general assessment guidance indicating that in assessing effects on protected values, the Council "will consider the extent to which the development follows the design guidelines in Appendix A11" (NatEnv 191.1).
 - Amend A11 Design Guidelines to include new clause A11.2.11: "Lighting should be kept to a minimum and designed to minimise effects on landscape and natural character values, including impacts on indigenous fauna." (NatEnv 900.70)
 - Amend special information requirements for landscape building platforms (Rule 10.8.1) to ensure that the assessment that supports identification of the LBPs considers natural coastal character values as well as landscape values, with separate parts of the rule relating to LBPs in landscape overlays and in natural coastal character overlays. This involves a range of amendments to Rules 10.8.1.3 to 10.8.1.6 (NatEnv 900.70).

See Appendix 1.

3.7.14 New Performance Standards Requested

3.7.14.1 Size and number of permitted buildings/structures

2296. *HPPC* and *STOP* sought that new provisions were added to the plan as follows:

- Performance standards to limit the size and number of buildings and structures for different land use activities that may be established within landscape and coastal overlay zones and within the Hill Slope Rural Zone (OS447.133, OS900.165). The specific standards sought by *HPPC* and *STOP* are set out in a table on page 30 of *HPPC*'s submission, also provided in the Section 42A Report (Section 5.11.6, p.495), where the table incorporates changes requested by *HPPC* in a clarification of their submission.
- Buildings and structures that contravene these new standards should be non-complying, and resource consents for these contraventions should be publicly notified (OS447.133, OS900.165).
- Associated assessment rules to guide the assessment of applications that breach these proposed performance standards (OS447.45, OS900.81).
- As a consequence of adding the submitters' proposed standards on the size and number of buildings and structures and landscape building platforms, amendment to Policies 10.2.5.6 and 10.2.5.7 to remove reference to large

buildings and structures, and therefore also remove Rule 10.4.4.2(iii), which is a reference to Policy 10.2.5.7 as it would apply to buildings and structures (OS447.44).

2297. *HPPC* and *STOP* requested these new provisions because they considered that the predominance of rural natural features over human-made features (Objective 16.2.3.a) is especially important in landscape and coastal character overlay zones. Under the proposed performance standards, areas considered significant, special, outstanding or highly visible on slopes would be protected from the bulk of significantly oversized buildings and structures.
2298. The submissions were opposed by a number of submitters⁴¹ who considered that provisions sought went significantly beyond the sustainable management principles and the overall intent and provisions within the RMA; the outcomes sought could be achieved through the notified provisions; and because of opposition to blanket non-complying status.
2299. As a consequence of their requests firstly to add a new performance standard on the size and number of permitted buildings/structures discussed above, and secondly to add a new performance standard on landscape building platforms, *HPPC* (OS447.21, OS447.26) and *STOP* (OS900.51, OS900.61) also sought to remove Policy 10.2.3.8 and Policy 10.2.5.12, on the basis that these policies would become unnecessary if the requested new performance standards were added to the plan. *Geoff Scurr Contracting Limited* opposed *HPPC* (OS447.21) and requested that Policy 10.2.3.8 be retained as notified. *Howard Saunders* opposed *HPPC* (OS447.26) and *STOP* (OS900.61) because he believed there will be legitimate reasons when small additional buildings may be needed.
2300. The submissions requesting new performance standards were referred to Mike Moore for comment. Mr Moore referred to his earlier discussion of this proposed rule in his evidence to the Rural Hearing, and reiterated his advice that the proposed rule was too prescriptive (p.25 of his evidence). He suggested that it may be more appropriate to adopt a more general maximum gross built coverage approach based on a percentage of the area of the property.
2301. Mr Moore suggested that a maximum built site coverage figure such as 2% would be generally appropriate for most rural properties - both in terms of providing an amenity and rural character protection bottom line, and in terms of not generally needing to be exceeded. Mr Moore also suggested that a similar rule providing for a maximum gross built coverage would also be appropriate in the rural residential zones, to ensure that an acceptable degree of openness and rural character is retained. In this instance, he considered that a figure of 700m² would be more appropriate, which would provide for a large house (e.g. 350m²) and a similar area for sheds. Alternatively, a maximum could be expressed as a percentage of the total area of a property. His suggestion in this regard was 3.5% (700m² is 3.5% of 2ha, the minimum site size for the RR zones).
2302. Mr Moore had the view that the suggested rule would only have relevance in terms of the underlying zones, as the only permitted buildings are those less than or equal to 60m² in area within ONL's, SNL's and NCC's. The Reporting Officer concurred with Mr Moore's view that the requested standard would be more permissive in the overlays than the notified rules and, therefore, would not provide appropriate protection to "the predominance of rural natural features over human-made features" in these areas, as sought by the submitters.

⁴¹ *FFNZ* (FS2449.371, FS2449.374, FS2449.250, FS2449.255), *Vodafone* (FS2076.17, FS2076.23), *Chorus* (FS2079.2, FS2079.8), *Spark* (FS2146.2.2, FS2146.8), *PowerNet* (FS2264.25), *Aurora* (FS2375.17), *Howard Saunders* (FS2372.19, FS2372.58), *Clifton Trust* (FS2202.14)

2303. The Reporting Officer, Ms Jane Macleod, agreed with Mr Moore that the submissions were better considered in the context of the Rural zone provisions, and she did not support amending the notified rules on the activity status or performance standards applying to buildings and structures within overlays (Section 5.11.6, s42A Report, pp.496-497). As a result, she recommended retention of Policy 10.2.3.8 and Policy 10.2.5.12.
2304. At the hearing, *HPPC* noted that the Rural Section 42A Report recommended a “percentage of the total area of property” amendment, but the Natural Environment Section 42A Report recommended no such amendment and that “this turnabout seems to hinge on the new comments by Mr. Moore. These comments miss the point. The point is to place upper limits on critically important rules and factors. Mr. Moore notes that since ‘consent’ is required, greater protection than our amendment is afforded. This would clearly not be the case, as ‘consent’ is subjective and not subject to any firm standard.” (p.3 of statement)
2305. The Reporting Officer noted in response that, for sites under 200ha, the performance standard would allow for five buildings with a total area of over 1170m² to be established as a permitted activity (Revised Recommendation Summary p.40). For sites over 200ha, her reading of the proposed rule was that seven buildings with a total area of over 2470m² would be able to be established as a permitted activity. In her view, the notified provisions provide considerably more protection for landscape and coastal character values than the rules proposed by the submitter. If the submitter’s requested rule was added to the plan, then applicants for consent for buildings over 60m² in ONLs, SNLs and NCCs could, with justification, cite their compliance with this performance standard as a reason that they should be granted consent. In her view, this would make it difficult to decline consent or impose appropriate conditions on applications for potentially very large buildings.
2306. At the hearing, Mr Moore was asked by the Hearing Panel to comment on the Tasman Resource Management Plan approach to maximum building site coverage in rural and rural residential areas, which provide both a maximum square meterage for total building coverage and/or percentage site coverage for buildings, depending on the zone and size of the site. Mr Moore commented that the specific percentage values were not in themselves relevant, given the differing minimum lot sizes between Tasman District and Dunedin City. However, he did consider the maximum square metre values as of some relevance as a benchmark. (Revised Recommendations Summary, pp.63-64)
2307. Mr Moore considered that his earlier recommendations for having a control based solely on percentage site coverage could be unduly restrictive, due to the large number of small rural and rural residential sites. He also considered that having only a maximum square meterage rule could be problematic, as there are some very large rural properties with need for a significant area of buildings overall. Mr Moore recommended the following rules to manage the area of buildings (we note that Mr Moore’s recommendation does not include structures, which we take to be an error of omission):
- Rural zones: *The total area of all buildings on the site does not exceed whichever is the greater of 2 percent of the site area or 700m².*
- Rural residential zones: *The total area of all buildings on the site does not exceed whichever is the greater of 3.5 percent of the site area or 700m².*

3.7.14.1.1 *Decision and Reasons*

2308. We reject the submissions of *HPPC* (OS447.44, OS447.21, OS447.26, OS447.133) and *STOP* (OS900.51, OS900.61, OS900.165). We accept in part the submissions of

HPPC (OS447.45) and *STOP* (OS900.81) as these appear to be seeking outcomes that are relatively well aligned with the notified approach.

2309. We accept the evidence of the Reporting Officer that adoption of the new provisions proposed by *HPPC* and *STOP* would result in a more permissive regime for Buildings and Structures activities in landscape and coastal character overlay zones, when compared to the notified provisions. For example, the provisions promoted by *HPPC* and *STOP* provide for a number of buildings >60m² as permitted activities.
2310. For the reasons discussed in section 3.7.9.2, we do not consider this appropriate. Higher order policy direction supports the identification of landscape and natural coastal character overlay zones, and a management regime that appropriately protects the values of these areas. Buildings and Structures are identified in Appendix A3 and A5 as principal threats to the values of many of the overlay zones. As outlined in sections 3.7.9.2 and 3.7.13.3, we consider the most appropriate management approach to involve a restricted discretionary activity status for buildings >60m² in ONLs, SNLs and NCCs (or controlled, if on a landscape building platform). This approach enables site-specific assessments of the potential effects of the proposal on the values of the relevant overlay zone, taking into account adherence to design guidelines, to inform decision-making about the acceptability of any given proposal.
2311. We accept the expert evidence of Mr Moore, that a more general maximum gross built coverage approach would better achieve the outcome sought by the submitters, that being a predominance of natural over built elements. However, given that the adoption of the provisions proposed by *HPPC* and *STOP* would result in a more permissive regime than notified, we do not consider that there is scope from submissions to make these amendments, and instead recommend this approach is considered through a future Plan review.
2312. We do note that, as discussed in section 3.7.5.2, as a clause 16 amendment assessment rules relating to activities assessed under the 10.2.3 and 10.2.5 policies have been amended to clarify that the Plan's design guidelines (notified as Appendix A3.4, renumbered Appendix A11 by this decision) are relevant to the assessment of effects on landscape values and on the natural character of the coast.
2313. In addition, as outlined in section 3.7.12.3, in response to submissions and evidence we have extended reflectivity controls to also apply to buildings over 300m² in the Hill Slopes Rural Zone.
2314. We consider that, taken together, these amendments will help manage effects associated with Buildings and Structures, and maintain the values of landscape/coastal overlay zones and the Hill Slopes Rural Zone.

3.7.14.2 Building/structure screening

2315. *HPPC* and *STOP* sought that new provisions be added to the plan as follows:
- A performance standard requiring screening by vegetation of buildings and structures established in landscape and coastal overlay zones and in the Hill Slope Rural Zone (OS447.134, OS900.125). Buildings and structures that contravene this rule should be non-complying, and resource consents for these activities should be publicly notified.
 - Associated assessment rules to guide the assessment of applications that would breach this proposed performance standard (OS447.46, OS900.82).
2316. *STOP* considered that the 2GP did not contain adequate mechanisms for integrating buildings and structures into the landscape because only colour, reflectivity and choice of a landscape building platform are cited. In *HPPC* and *STOP*'s view, houses that

have been consented and built in the last 15+ years, even in Outstanding Landscape Management Areas, are visually obtrusive and do not look any different from other houses built anywhere in Dunedin (i.e. do not respect the environment they are located in).

- 2317. These submissions were opposed by a number of submitters⁴² who considered that provisions sought went significantly beyond the sustainable management principles and the overall intent of the RMA; the standard is unnecessary and not the best option to avoid, remedy or mitigate adverse effects on amenity; and because of opposition to blanket non-complying status.
- 2318. Mr Mike Moore (pp. 27-28 of evidence), noting that resource consent was required for most buildings within overlays anyway, stated that he considered the proposed mandatory approach to screening “unnecessary and unhelpful”. In his view, well-sited and appropriately designed buildings can be a positive addition to landscape values, and are in some cases part of the existing character of overlay zones. In addition, screen planting can serve to increase the impact of structures, screening can introduce an element of artificiality, and the proposed rule may be very difficult to achieve. Overall, he agreed with those submitters who considered it overly onerous.
- 2319. The Reporting Officer stated that the consenting process allows for mitigation conditions to be imposed, which may include the requirement for screen planting, and allowed a case-by-case assessment. She did not recommend a change (s42A Report, Section 5.11.7, pp.501-502).
- 2320. At the hearing, *HPPC* tabled a statement that commented that the proposed new performance standard was a compromise solution to the landscape amenity problem that resulted from the too few and too weak mitigation tools that have been used in the past. They considered that extensive screening planting has never been included in the past as a consent condition, continuing lifestyle living trends would lead to dominance of ‘man-made’ clutter over natural elements, vegetation screening is less artificial than structures, and screening of building facades seems to be a minor landowner contribution to public amenity (pp.3-4 of statement).

3.7.14.2.1 *Decision and Reasons*

- 2321. We accept in part the submissions of *HPPC* (OS447.134, OS447.46) and *STOP* (OS900.125, OS900.82).
- 2322. We accept the evidence of Mr Moore that while screening new Buildings or Structures with vegetation may in some cases assist to mitigate any adverse effects on the values of overlay zones, in some cases this may not be necessary, and in other cases it may indeed have an adverse effect in and of itself.
- 2323. We further accept that the restricted discretionary activity status for buildings and structures >60m² in ONL, SNL and NCC overlay zones enables a range of mitigation measures to be considered at time of consent, and conditions applied (including appropriate screening or planting, where appropriate) if consent is granted. Given this, we do not support introducing a new performance standard relating to the screening of permitted buildings and structures, and associated assessment rules.
- 2324. We do however note that the Design Guidelines in Appendix A3.4 (now renumbered Appendix A11) do not canvas the possibility of screening new built elements with vegetation. We consider that amendments to this effect may encourage consideration of screening where appropriate, without introducing additional onerous and potentially

⁴² *FFNZ* (FS2449.372, FS2449.342, FS2449.251, FS2449.256), *Vodafone* (FS2076.32, FS2076.35), *Chorus* (FS2079.17, FS2079.20), *Spark* (FS2146.17, FS2146.20), *PowerNet* (FS2264.31), *Aurora* (FS2375.27), *Howard Saunders* (FS2373.70, FS2373.72), *Clifton Trust* (FS2202.24, FS2202.25)

inappropriate provisions into the Plan. We have amended these provisions accordingly, as described below.

2325. We note that amendments to Design Guidelines will not have any mandatory effect on buildings in the Hill Slopes Rural Zone. However, we do not consider the Hill Slopes Rural Zone should be treated as a de facto landscape overlay zone. As discussed in section 3.7.12.3, we have extended reflectivity controls to apply in the Hill Slopes Rural Zone, on the basis that there is evidence to suggest this control would be supported across all rural zones, if there was scope for such a change.
2326. The amendments required for this decision, including consequential amendments, are as follows.
- Amend A11 Design Guidelines to include the following text:
Consider planting new vegetation to integrate new buildings and structures with their landscape setting.

See Appendix 1 (amendments attributed to NatEnv 447.134).

3.7.14.3 Patterning of forestry in overlay zones

2327. Under Rule 16.3.3.7, forestry in the rural zones (outside the General Residential 1 Transition Overlay Zone) is a restricted discretionary activity in ONL, SNL and NCC overlay zones, and a non-complying activity in ONF, ONCC and HNCC overlay zones and in scheduled ASCVs.
2328. *HPPC* (OS447.74) and *STOP* (OS900.108) sought to add a new performance standard for forestry that would require it to be planted in random patterns within landscape and coastal character overlays zones and scheduled ASCVs. This outcome is sought to assist in maintaining a natural appearance in rural areas with landscape protection.
2329. The Reporting Officer, Michael Bathgate, considered the restricted discretionary activity status for forestry in the 2GP a more efficient and effective approach than the proposed imposition of a specific performance standard on plantation patterning, which would apply in every case regardless of whether compliance with that standard was necessary or appropriate to address adverse effects. He did, however, recommend that Rules 10.5.2.4, 10.5.2.15 and 10.5.2.16 be amended to make explicit reference to Appendix A3.4 Design Guidelines, which contain general principles to be followed for the establishment of forestry blocks (s42A Report, p.430). Mr Bathgate considered that this would aid in the assessment of consent applications for forestry and provide better guidance to plan users in relation to outcomes sought for forestry planting in overlay zones, and would form partial acceptance of these submissions.

3.7.14.3.1 *Decision and Reasons*

2330. We accept in part the submissions of *HPPC* (OS447.74) and *STOP* (OS900.108). We do not support the addition of the new performance standard for forestry, agreeing with the evidence that a restricted discretionary activity status is a more efficient and effective approach. However, we agree with the Reporting Officer's recommended amendments to Rules 10.5.2.4, 10.5.2.15 and 10.5.2.16 to make explicit reference to the Design Guidelines (now renamed Appendix A11). We have added the following "General assessment guidance" to these assessment rules:
- For forestry, in assessing effects on natural character values, the Council will consider the extent to which the activity follows the design guidelines in Appendix A11.3.

- For forestry, in assessing effects on landscape values, the Council will consider the extent to which the activity follows the design guidelines in Appendix A11.3.

2331. We agree with the Reporting Officer's assessment that this with Plan clarity and usability.

3.7.15 Assessment rules relating to overlay zones

3.7.15.1 10.5.2.3-10.5.2.6 Assessment of restricted discretionary activities in ONCC, HNCC, NCC overlay zones (5.13.6)

2332. Rule 10.5.2.3 to 10.5.2.6 assess restricted discretionary activities in ONCC, HNCC and NCC overlay zones.

2333. *KiwiRail Holdings Limited* (OS322.92) sought to retain Rule 10.5.2.3, which assesses activities in the ONCC or HNCC overlay zones, supporting that consideration is able to be given to the functional need for the network utility to locate where proposed. This submission is supported by *Powernet Limited*, who also supported the inclusion of assessment criteria regarding the locational and operational constraints associated with network utilities.

2334. *HPPC* (OS447.49) sought to amend Rule 10.5.2.3 by including Policy 10.2.3.2 and Policy 10.2.5.6 as relevant policies. This was opposed by *FFNZ*, as the changes are not effects based or necessary and will make the rules impractical, unworkable and inconsistent with relevant policies.

2335. *HPPC* (OS447.51) and *STOP* (OS900.87) sought to amend Rule 10.5.2.5 to insert a new assessment clause for the solar panels, concerned about the reflectivity of these. *FFNZ* opposed these submissions for the same reasons as its opposition to OS447.49.

2336. In response to *HPPC* (OS447.49), the Reporting Officer, Michael Bathgate, did not consider the policies requested were relevant to the assessment of restricted discretionary activities in the ONCC and HNCC overlay zones (s42A Report, pp.573-574). Policy 10.2.3.2 related to non-complying activities in ONCC and HNCC overlay zones and was used in assessment Rule 10.7.2.4. Policy 10.2.5.6 related to restricted discretionary and discretionary activities in the ONL overlay zone and he did not consider this directly relevant to ONCC and HNCC areas.

2337. In response to the *HPPC* and *STOP* submissions on solar panels, Mr Bathgate agreed that the assessment rule should be amended to provide additional guidance on the mitigation of this effect. He considered that it would be clearer to refer to design and materials that "minimise reflectivity and glare as far as practicable" than the requested phrase, as he believed this wording recognised the fact that some degree of reflectivity and glare from solar panels may be unavoidable.

3.7.15.1.1 *Decision and Reasons*

2338. We reject the submission of *HPPC* (OS447.49) to add two policies to Rule 10.5.2.3. We agree with the Reporting Officer's assessment that these relate to other activities, or to other overlay zones, and we do not consider them directly relevant to assessment of restricted discretionary activities in ONCC and HNCC overlay zones.

2339. We accept in part the submissions of *HPPC* (OS447.49) and *STOP* (OS900.87) and have amended Rule 10.5.2.5 to include 'Potential circumstances that may support a consent application' as follows: "4. Solar panels and other structures use a design and/or materials that minimise reflectivity and glare as far as practicable {NatEnv447.49}". We consider this additional guidance will help achieve Objective

10.2.3, and that the amendment recommended by the Reporting Officer better will provide clearer guidance for Plan users than that suggested by the submitter.

3.7.15.2 10.5.2.11-10.5.2.16 Assessment of restricted discretionary activities in ONF, ONL, SNL overlay zones (5.13.7)

2340. Rules 10.5.2.11-10.5.2.16 provide assessment guidance for restricted discretionary activities in ONF, ONL and SNL overlay zones.
2341. *KiwiRail Holdings Limited* (OS322.93-95) sought to retain rules 10.5.2.12, 10.5.2.15 and 10.5.2.16, supporting that consideration is able to be given to the functional need for the network utility to locate where proposed. These submissions were supported by *Powernet Limited*, who also supported the inclusion of assessment criteria regarding the locational and operational constraints associated with network utilities.
2342. *HPPC* (OS447.57) and *STOP* (OS900.91) sought to amend Rule 10.2.5.13 (assessment of general subdivision in landscape overlay zones) to clarify that the landscape building platform in clause (iv) has been “considered and approved as part of a resource consent assessment”. The submitters stated that “Council may wish to require a landscape building platform, but the platform/landscape assessment, per 10.8.1 does not require it to meet with Council approval”. *FFNZ* opposed these submissions, as the changes are not effects based or necessary and will make the rules impractical, unworkable and inconsistent with relevant policies.
2343. The Reporting Officer, Mr Bathgate, recommended the amendment sought by *HPPC* and *STOP* was not accepted, as clause (iv) referred to a condition that may be imposed as part of a decision on a resource consent application for subdivision. The clause sought by the submitters is, therefore, redundant and he considered that adding it would detract from plan clarity (s 42A Report, p.576).

3.7.15.2.1 Decision and Reasons

2344. We accept in part the submissions of *HPPC* (OS447.57) and *STOP* (OS900.91). We note that, as a result of submissions by the same submitters as outlined in section 3.7.13, we have amended special information requirements Rule 10.8.1 so that where a subdivision activity takes place within a landscape or coastal character overlay and creates residential development potential, identification of landscape building platforms are mandatory at time of subdivision consent. As a consequential amendment to this, we have amended assessment Rule 10.5.2.13 to reflect this requirement. We consider that these amendments also constitute acceptance in part of *HPPC* (OS447.57) and *STOP* (OS900.91).

3.7.16 Appendix A3 Landscape Values

2345. Appendix A3 lists the values found in the landscape overlay zones, including the Outstanding Natural Feature (ONF), Outstanding Natural Landscape (ONL) and Significant Natural Landscape (SNL) overlay zones.
2346. The *Institution of Professional Engineers NZ* (OS103.6) sought to retain A3.1.17 Taiaroa Head Outstanding Natural Feature.
2347. *Chris Walker* (OS289.3) sought to amend A3.1.20 (Tunnel Beach ONF) to acknowledge human impacts at Tunnel Beach. This submission was opposed by *HPPC*, who considers that the presence of exotic plants is less relevant than the lack of “permanent settlement elements”.
2348. *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (OS1071. 120) sought to amend A3.1.2.2 (Blackhead Organ Pipes ONF) to remove reference to ‘Makereatu’ because it may be inaccurate and the Maori name of Blackhead is unknown. *Kati*

Huirapa Runaka ki Puketeraki and Te Runanga o Otakou (OS1071.118) also sought to amend A3.3.4 (Maungatua SNL) to correct the spelling of Maungatua.

2349. *Christopher Dean Valentine* (OS464.11) sought to amend A3.2.3.4 (Peninsula Coast ONL) to clarify the methods for protecting shelter belts and requested that they were self-managed by landowners.
2350. *DCC* (OS360.6) sought to amend A3.3.8 (Silver Peaks SNL) to correct the key design elements for quarries and mining, which mistakenly repeats the principal threats to values.
2351. In response to *Chris Walker*, the Reporting Officer, Katie James, did not support this amendment, as she considered the proposed wording does not improve on the descriptions (s42A Report, p.604).
2352. In response to *Christopher Dean Valentine*, Ms James considered that the guidance in Appendix A3.2.3.4 did not limit landowners being able to manage their own shelter belts, but provides design guidance that development activities should consider the preservation of historic shelter belts as part of the design of any development. She did not recommend amending Appendix A3.2.3.4 (s42A Report, p.607).
2353. The Reporting Officer recommended accepting the submissions of *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (OS1071.118, 120) and *DCC* (OS360.6) as these were essentially drafting corrections.

3.7.16.1 Decision and Reasons

2354. We accept the submission of *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (OS1071.120), acknowledging the submitters' view that the use of "Makereatu" may be incorrect. We have amended Appendix A3.1.2.2.b.i as follows: "Blackhead is known as Makereatu, and {NatEnv1071.120} was an important stone gathering site."
2355. We accept the submission of *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (OS1071.118) and have amended Appendix A3.3.4.2.a.i to correct a drafting error as follows: "Prominent natural landform: the interior Maungatua Range..." {NatEnv 1071.118}
2356. We accept the submission of *Dunedin City Council* (OS360.6) and have amended Appendix A3.3.8.4 to correct a drafting error as follows:
- "A3.3.8.4: Quarries and mining activity
- a. ~~Removal of significant landform features by quarrying and mining activity. Inappropriate siting and scale of quarries and other excavations such that they become visually dominant focal points. Any quarries and mining activity should be designed with an awareness of the visual quality of the setting.~~ {NatEnv 360.6}
- b. Wherever possible activities should be sited away from prominent viewing points {NatEnv 360.6}
- c. Visible quarry surface activity should be reduced as much as possible and the visual prominence of sites should be mitigated on an ongoing basis with appropriate planting and restorative earthworks. {NatEnv 360.6}"
2357. We reject the submission of *Chris Walker* (OS289.3). We accept the evidence of the Reporting Officer that the suggested amendments do more accurately describe the site.
2358. We reject the submission of *Christopher Dean Valentine* (OS464.11). We accept the Reporting Officer's evidence that Appendix A3.2.3.4 represents design guidance only, and does not unduly constrain landowners' ability to develop their land.

3.7.17 Appendix A5 Natural Character of the Coast Values

2359. Appendix A5 lists the values found in the coastal character overlay zones, including the Outstanding Natural Coastal Character (ONCC), High Natural Coastal Character (HNCC) and Natural Coastal Character (NCC) overlay zones.
2360. *Chris Walker* (OS289.4) sought to amend A5.2.5 (Tunnel Beach) to acknowledge human impact. This was opposed by *HPPC*, who thought the reflection of human impact is adequate.
2361. *Hilary Newby* (OS220.3) and nine other submitters⁴³ sought to amend A5.3.3.2 (Blueskin Bay) to recognise the following values: cockle harvesting; seabirds other than wading birds; nationally significant nursery ground for flatfish; significant habitat for shellfish (including cockles); tidal flats of international significance; natural coastal character and recreational amenity. The submitters considered that the current list of values is factually insufficient to provide a context for assessment of impacts from proposed developments.
2362. The Reporting Officer, Katie James, recommended the submission of *Chris Walker* be rejected as Appendix A5.2.5 already provided adequate information to acknowledge human impacts (s42A Report, p.654).
2363. In response to *Hilary Newby* (and others), the Reporting Officer recommended the submissions be accepted in part, agreeing that Blueskin Bay contains “important tidal flats, habitat for seabirds and shellfish, nursery areas for flatfish, and provides for recreation”. Ms James recommended a number of amendments to A5.3.3.2 to reflect these values (s42A Report, p.659).

3.7.17.1 Decision and Reasons

2364. We reject the submission of *Chris Walker* (OS289.4). We accept the Reporting Officer’s evidence that Appendix A5.2.5 acknowledges human impact on the site.
2365. We accept the submissions of *Hilary Newby* (OS220.3, and others). We accept the Reporting Officer’s evidence that the values described by the submitters accurately represent those of Blueskin Bay, and that Appendix A5.3.3.2 can be amended (as recommended by the Reporting Officer) to better reflect these as follows:
- a. “Tidal estuary with conspicuous flood-tide sand delta and tidal flats. {*NatEnv 220.3 and others*}
 - b. Isolated patches of salt marsh.
 - c. Important feeding area for seabirds, {*NatEnv 220.3 and others*} wading birds, including trans-equatorial migrants. Commercial cockle harvesting and recreational amenity. {*NatEnv 220.3 and others*}
 - d. Important nursery ground for flatfish, and habitat for shellfish (including cockles). {*NatEnv 220.3 and others*}”

3.8 Esplanade Provisions and Setbacks from Coast and Water Bodies

3.8.1 Corrections to drafting errors

2366. *DCC* sought a number of amendments to the drafting of esplanade reserves and strips provisions, to improve plan clarity, e.g. making all instances of the phrase “esplanade

⁴³ *Gerald Fraser* (OS233.3), *Stephanie McConnon* (OS415.8), *Benedict Stewart* (OS678.9), *Diana Struthers* (OS745.7), *Philip Borrie* (OS781.2), *Louise Borrie* (OS787.1), *Jeanette Trotman* (OS963.4), *Clive Trotman* (OS970.4), *Catherine Fitzgerald* (OS983.3)

reserves or esplanade strips” singular rather than plural (OS360.147-149) and changing the word “strip” to “esplanade strip” (OS360.152-153).

2367. The Reporting Officer, Michael Bathgate, recommended that the submissions were accepted and would improve plan clarity by removing ambiguity around the need to create one or many reserves or strips during subdivision (s42A Report, pp.246-247).

3.8.1.1 Decision and Reasons

2368. We accept the *DCC* submissions (OS360.147-149 and OS360.152-153). We agree with the Reporting Officer’s assessment that hyperlinking to relevant definitions will add clarity, and use of the singular rather than plural will reduce ambiguity around the intention of the policies and rules.
2369. We have made this change to policies 10.2.2.5 and 10.2.4.3, with consequential amendment to assessment rule 10.4.3.1, and to performance standard 10.3.1.

3.8.2 Policy 10.2.2.5

2370. Policy 10.2.2.5 states “Only allow subdivision activities adjacent to water bodies and the coast where the following biodiversity values and natural character values are maintained or enhanced, including through provision of esplanade reserves or esplanade strips in identified locations:
- a. biodiversity values of riparian margins and the coast;
 - b. the water quality and aquatic habitats of the water body or coast; and
 - c. the natural functioning of the adjacent sea or water body.”
2371. Along with Policy 10.2.4.3.a, Policy 10.2.2.5 sets out the requirement for the taking of esplanade reserves or strips where subdivision occurs adjacent to the coast or water bodies.
2372. *STOP* (OS900.41) and *Forest and Bird NZ* (OS958.35) sought to amend Policy 10.2.2.5 to begin “Only allow subdivision activities adjacent to the riparian margins of water bodies and the coast where the following biodiversity values and natural character values are preserved ~~maintained~~ or enhanced...” The submitters stated the policy as notified does not meet the requirements of Part II RMA or the NZ Coastal Policy Statement.
2373. The *STOP* submission was opposed by *Geoff Scurr Contracting Limited* (FS2391.120) due to concern around the implications and restrictions of the term “preserved” and the belief that definitions may be needed to improve clarity. *Federated Farmers* (FS2449.109-110) opposed both the *STOP* and *Forest and Bird* submissions, as they believe “preserve” goes further than the RMA and the Regional Policy Statement and is unnecessarily restrictive.
2374. The Reporting Officer, Michael Bathgate, did not support the addition of “to the riparian margins of” as this would suggest that subdivision activities relating to land within the riparian margin are excluded from the policy, which is not the intent (s42A Report, p.249). He also did not support the change from “maintained” to “preserved”, referring to the discussion in relation to Objective 10.2.2 in section 5.4.8 of the s42A Report.

3.8.2.1 Decision and Reasons

2375. We reject the submissions of *STOP* (OS900.41) and *Forest and Bird NZ* (OS958.35) seeking to amend to Policy 10.2.2.5. We accept the evidence of the Reporting Officer that the amendment sought misrepresents the intent of the policy, which is to manage subdivision activities both within and adjacent to riparian margins. We also

do not support the suggested change from “maintained” to “preserved”, for the reasons outlined in section 3.6.7.

3.8.3 Policy 10.2.4.3 #1

2376. Policy 10.2.4.3 (the first instance) states “Require subdivision of land to enhance public access to the natural environment through:
- a. requiring esplanade reserves or esplanade strips of an appropriate width and location adjacent to identified water bodies and the coast; and
 - b. where practicable, providing opportunities for access in other areas where this will enhance recreational opportunities, particularly through connecting to and expanding the existing tracks network or utilising adjacent unformed legal roads.”
2377. Along with Policy 10.2.2.5, Policy 10.2.4.3 sets out the requirement for the taking of esplanade reserves or strips where subdivision occurs adjacent to the coast or water bodies. The policy also promotes the use of other means for enhancing public access to the natural environment. There were two instances of Policy 10.2.4.3 mistakenly notified in the 2GP, but this instance of the policy will retain this numbering.
2378. *Dianne Reid* (OS592.8) sought to amend Policy 10.2.4.3 to begin “Enable ~~Require~~ subdivision of land that enhances public access...” This submission was opposed by *David and Kerry Hiom* (FS2473.8), with no specific reason given.
2379. The Reporting Officer, Michael Bathgate, agreed with the intent of the submission, in terms of encouraging public access, but he did not support the amendment as an “Enable” policy implies a permitted activity under the 2GP drafting protocol, whereas this policy is used both to set up a performance standard and as part of restricted discretionary assessment of subdivision (s42A Report, p.250).

3.8.3.1 Decision and Reasons

2380. We reject the submission of *Dianne Reid* (OS592.8). We accept the Reporting Officer's evidence that this would not be in line with the 2GP Drafting Protocol, and would suggest a permitted activity status rather than a performance standard. We consider it important for Plan clarity that the Protocol is adhered to wherever possible.

3.8.4 Rule 10.3.1 Esplanade reserves and strips performance standard

2381. Rule 10.3.1 and associated provisions apply to subdivision activities as follows:
- Rule 10.3.1.1 requires the provision of esplanade reserves with a minimum width of 20m along the mark of mean high water springs of the sea and along the bank or the margin of certain larger creeks and rivers;
 - Rule 10.3.1.2 requires the provision of esplanade strips with a minimum width of 5m along the bank or the margin of certain smaller creeks;
 - Appendix 10C sets out the Water Body Values of all creeks and rivers listed in Rule 10.3.1, including both “conservation values” and “public recreation and access values”; and
 - Rule 10.4.3.1 assesses subdivision activities that contravene Rule 10.3.1
2382. Multiple submissions were received on Rule 10.3.1 as follows:
- *HPPC* (OS447.31) and *Otago Fish and Game Council* (OS1016.1) sought to retain Rule 10.3.1, with no specific reason given.
 - *Jody Heaps* (OS302.2) sought to retain Rule 10.3.1.1.a for public access reasons.

- *STOP* (OS900.67) and *Forest and Bird NZ* (OS958.46) sought to amend Rule 10.3.1.1 so that subdivision activities provide “esplanade reserves sufficient to ensure practicable public access on an ongoing basis with a minimum width of 20m”, with the submitters strongly supporting provision of esplanade reserves provided public access is practicable and takes account of sea level rising. These submissions were opposed by *Federated Farmers* (FS2449.152-153), who believed the amendment unnecessary and adding little to the “workability” of the rule.
 - *Otago Regional Council* (OS908.12) sought to amend Rule 10.3.1.2 to increase the required minimum width of 5m, with guidance notes provided as to when strips will be required. The *Otago Regional Council* also requested (OS908.13) that the text of the rule be amended to clarify what was expected in terms of esplanade reserves and strips, should subdivision occur in the vicinity of unlisted water bodies (i.e. those not identified in Rule 10.3).
 - *Yellow-eyed Penguin Trust* (OS690.24) sought to add a new policy under Objective 10.2.4 that does not require public access where it would conflict with biodiversity values, stating that enhanced public access can sometimes create adverse effects on biodiversity such as yellow-eyed penguins.
 - *Warren Wilson* (OS535.5) sought that Rule 10.3.1.2 be amended to refer to “riparian strip” rather than “esplanade strip”, particularly with respect to Abernathy’s Creek. *Mr Wilson* considered that “esplanade” would be read as a public walkway and would encourage public access which would exacerbate farming issues with people walking dogs through stock. *Brian W Wilson* (FS2384.2) supported this submission.
 - *Otago Peninsula Community Board* (OS588.4) sought to amend Rule 10.3.1.2 to include Stewarts Creek and Battery Creek, commenting that the rules need to consider the waterways of Otago Peninsula are ephemeral or spring fed and their natural flow is highly variable.
 - *Lancaster Trust* (OS898.2) sought that Three O’clock Stream be removed from the rule, stating that there are a number of significant issues with opening up public access in a rural working environment.
 - *Liz McLennan* (OS680.3) sought that Sawyers Bay Stream be removed from Rule 10.3.1.2, being concerned about the potential for trespass, issues of responsibility for maintenance of these areas, public safety risks, and the loss of land where the strip is not adjacent to the road.
2383. In response to *STOP* (OS900.67) and *Forest and Bird NZ* (OS958.46), the Reporting Officer, Ms Jane Macleod, recommended the submissions be rejected. She considered that the proposed amendment only covered part of the purpose of esplanade reserves and strips, namely public access, and would be *ultra vires* in introducing subjective terms to the rule (s42A Report, p. 253).
2384. In response to the *Otago Regional Council* (OS908.12), the Reporting Officer agreed that the required minimum width of esplanade strips should be increased from 5m to 20m, in line with the width in the operative Plan. She stated that the 5m figure in the notified plan was a drafting error. She did not see the need for additional guidance on different widths of esplanade strips, stating that the assessment Rule 10.4.3.1 already provides appropriate guidance.
2385. Ms Macleod did not support the *Otago Regional Council* submission (OS908.13), to provide guidance on subdivision in the vicinity of unlisted water bodies. In her view, it was implicit in the drafting of Rule 10.3.1 and the two relevant policies that the rule only applies to the water bodies identified in the rule.
2386. In response to *Yellow-eyed Penguin Trust* (OS690.24), instead of adding a new policy, the Reporting Officer recommended that the submission be accepted in part, by amending assessment rules 10.4.3.1.b and 10.4.3.10.b to recognise that there may be circumstances where restricting access was required to protect biodiversity and natural character values of riparian margins and the coast.

2387. The submissions of *Warren Wilson*, *Otago Peninsula Community Board*, *Liz McLennan* and *Lancaster Trust* sought amendments relating to specific water bodies, and the Reporting Officer discussed these submissions with staff from DCC Parks and Recreation and the Department of Conservation (DOC).
2388. Ms Macleod did not support *Warren Wilson's* request that Rule 10.3.1.2 be amended to refer to "riparian strip" rather than "esplanade strip", as she considered the 2GP should use the same terminology in relation to esplanade reserves and strips as the RMA. However, she noted that Appendix 10C does not list any public recreation or access values for Abernathys Creek, and that DCC Parks and Recreation Group have advised that a requirement for public access would not be sought in the event of any subdivision around the creek (s42A Report, p.260).
2389. After receiving advice from DCC Parks and Recreation and DOC on the values of Stewarts Creek and Battery Creek, Ms Macleod recommended acceptance of the *Otago Peninsula Community Board* submission (OS588.4) to include Stewarts Creek and Battery Creek as identified water bodies in Rule 10.3.1.2. This amendment also requires consequential amendments to Appendix 10C to include the values of the two creeks, and to the Esplanade Reserves and Strips mapped area.
2390. After receiving advice from DCC Parks and Recreation and DOC on the values of Three O'clock Stream and Sawyers Bay Stream, Ms Macleod did not support either the *Lancaster Trust* submission (OS898.2) that Three O'clock Stream be removed from Rule 10.3.1.2, or the *Liz McLennan* submission (OS680.3) that Sawyers Bay Stream be removed from Rule 10.3.1.2. Ms Macleod noted that the advice from DCC Parks and Recreation and DOC provided an improved evaluation of the values of these water bodies, and recommended a minor amendment to their values as listed in Appendix 10C.
2391. At the hearing, *Ms Liz McLennan* tabled a statement and spoke. *Ms McLennan* opposed the recommended increase in the width of the esplanade strip from 5m to 20m, particularly in relation to Sawyers Bay Stream. Her concerns related to the potential for trespass; problems with maintaining the esplanade strip; hazards to the public and associated liability; and a reduction in useable land. She also noted errors in the mapping of the stream on 2GP maps.
2392. In response to *Ms McLennan*, the Reporting Officer noted that an esplanade strip would only be created in the event of a subdivision, in which case an appropriate width for the strip would be considered, taking into account factors such as those raised by the submitter (Revised Recommendations Summary, p.34). Ms Macleod also noted that mapping errors to Sawyers Bay Stream would be corrected under RMA Clause 16.
2393. In response to a question from the Hearing Panel, relating to *STOP* and *Forest and Bird's* requested changes to the esplanade reserves requirement and whether consideration had been given to the issue raised of the potential effects of sea level rise on reserves, Ms Macleod agreed that the effects of sea level rise should be recognised in the esplanade reserve provisions (Revised Recommendations Summary, p.56). However, in her view, this should not be recognised by changing the performance standard as requested by the submitters, but by amending the assessment rule that applies when this standard is breached (Rule 10.4.3.1.b). She recommended an amendment to this rule to ensure that the potential effects of sea level rise are taken into account when determining whether an esplanade reserve of less than 20m should be allowed along the coast.

3.8.4.1 Decision and Reasons

2394. We accept the submission of *Otago Regional Council* (OS908.12) to increase the required width of esplanade strips. We accept the evidence of the Reporting Officer that this should be increased from 5m to 20m to reflect the provisions in the operative Plan, and to correct a drafting error in the 2GP. In response to this submission, we have therefore amended the relevant section of Rule 10.3.1.2 to read:
- “a minimum width of ~~5m~~ 20m”, which
2395. We consider this better reflects the operative Plan requirements, while not precluding the possibility of esplanade strips of greater width.
2396. We accept in part the submissions of *STOP* (OS900.67) and *Forest and Bird NZ* (OS958.46) insofar as they sought to amend provisions to take account of rising sea levels. We agree this is an important consideration in fulfilling the requirements of s229 of the RMA (set out on p252 of the s42A Report), particularly as it relates to public access, given that the landward boundary of esplanade reserves does not vary with movement of the coast or water body. As set out in Section 3 of the s42A Report, we note also the requirement to have particular regard to the matters set out in s7 of the RMA, including the effects of climate change.
2397. We do not support the specific amendment proposed by the submitters, accepting the evidence of the Reporting Officer that the amendment proposed by the submitters covers only one function of esplanade reserves and strips, and that in containing subjective terms the wording may be *ultra vires*. We consider the amendment recommended by the Reporting Officer better achieves the outcome sought.
2398. In response to these submissions, we have therefore amended Rule 10.4.3.1.b by amending general assessment guidance as follows:
- “iii. In assessing a reduction to the required esplanade reserve or esplanade strip, Council will consider...the potential effects of sea level rise on the future level of the mean high water springs, and thus the width of the reserve. {*NatEnv 900.67*}”
2399. We accept in part the submission of *Yellow-eyed Penguin Trust* (OS690.24) insofar as it sought amended provisions clarifying that public access may not be required if it would conflict with biodiversity values. We accept the evidence of the Reporting Officer that the NZCPS and pORPS-dv both contain provisions allowing for the restriction of access where this is necessary to protect certain biodiversity values, and in this light, consider it appropriate that the 2GP makes explicit provision for this. We also accept her evidence that a new policy is not necessary to achieve the outcome sought by submitters, and that given Objective 10.2.4 relates to public access, introducing a policy related to biodiversity under this objective would detract from Plan clarity. We agree that the most appropriate place to add commentary to the effect sought by the submitter is in assessment rules 10.4.3.1.b and 10.4.3.10.b. However, we note there are a range of circumstances listed in the NZCPS and RPS under which restriction of public access may be necessary, and believe it would be inappropriate to highlight only one of these circumstances in assessment guidance.
2400. Therefore, in response to this submission, we have:
- amended Rule 10.4.3.1.b by adding “General assessment guidance” stating that in assessing a change or reduction to the required esplanade reserve or esplanade strip, Council will consider “any relevant circumstances listed in the New Zealand Coastal Policy Statement 2010 or the Regional Policy Statement for Otago that may support restriction of public access.” {*NatEnv 690.24*}

- amended Rule 10.4.3.10.b by adding “General assessment guidance” stating that in assessing a contravention of the setback from the coast and water bodies standard, Council will consider “any relevant circumstances listed in the New Zealand Coastal Policy Statement 2010 or the Regional Policy Statement for Otago that may support restriction of public access.” {NatEnv 690.24}
2401. We accept the submission of *Otago Peninsula Community Board* (OS588.4) to add Battery Creek and Stewarts Creek to the list of identified water bodies in Rule 10.3.1.2, with consequential amendments to Appendix 10C and to the Esplanade Reserves and Strips mapped area. We accept the Reporting Officer's evidence that these creeks have conservation values that support their inclusion in Rule 10.2.1.3.
2402. Therefore, in response to this submission, we have amended Rule 10.3.1.2 as follows:
- “a. Abernathys Creek;
b. Battery Creek {NatEnv588.4}
~~b. c.~~ Andersons Bay Stream;...
ai. Stewarts Creek {NatEnv588.4}
~~ai. aj.~~ Stony Creek;...”
2403. We reject the submissions of *Warren Wilson* (OS535.5) seeking to amend Rule 10.3.1.2 to refer to “riparian strip”. We agree with the Reporting Officer's assessment that it is preferable for the 2GP to employ the same terminology as the RMA. We note that the site-specific concerns about public access along Abernathy's Creek raised by the submitter would most appropriately be considered through the consent process at time of any future subdivision, noting that the Council have indicated they would not anticipate recommending a requirement for public access. We accept the Reporting Officer's evidence that Rule 10.4.3.1.b provides guidance for a range of situations in which provision of public access may not be appropriate.
2404. We reject the submissions of *Liz McLennan* (OS680.3), *Lancaster Trust* (OS898.2), seeking to remove (respectively) Sawyers Bay Stream and Three O'clock Stream from Rule 10.3.1.2. We accept the evidence of the Reporting Officer that both streams possess values that support their continued inclusion in Rule 10.2.1.3. However, we agree with the Reporting Officer's assessment that the site-specific concerns raised by the submitters about the presence and/or relative size of an esplanade strip, and/or the need for public access restrictions, would be appropriately considered through the consent process at time of any future subdivision. We accept the Reporting Officer's evidence that Rule 10.4.3.1.b provides guidance for a range of situations in which provision of public access may not be appropriate.
2405. In relation to the Reporting Officer's recommended amendments to Appendix 10C to update the values for Sawyers Bay Stream and Three O'clock Stream, we do not consider there is scope under the submissions to make these amendments, nor do we consider those amendments can be done as a clause 16 change. We recommend a future Plan review to update the values of all listed water bodies, noting that descriptions in Appendix 10C are all very brief and do not appear to identify terrestrial conservation values associated with the margins of the water bodies.
2406. We reject the submission of *Otago Regional Council* (OS908.13) seeking an amendment to Rule 10.3.1.2 to clarify the approach for unlisted water bodies. We do not consider such an amendment necessary, as s230 of the RMA provides guidance in relation situations in which there would be a presumption in favour of an esplanade reserve, and where there would be a presumption against such requirements.

3.8.5 Esplanade Reserves and Strips Mapped Area

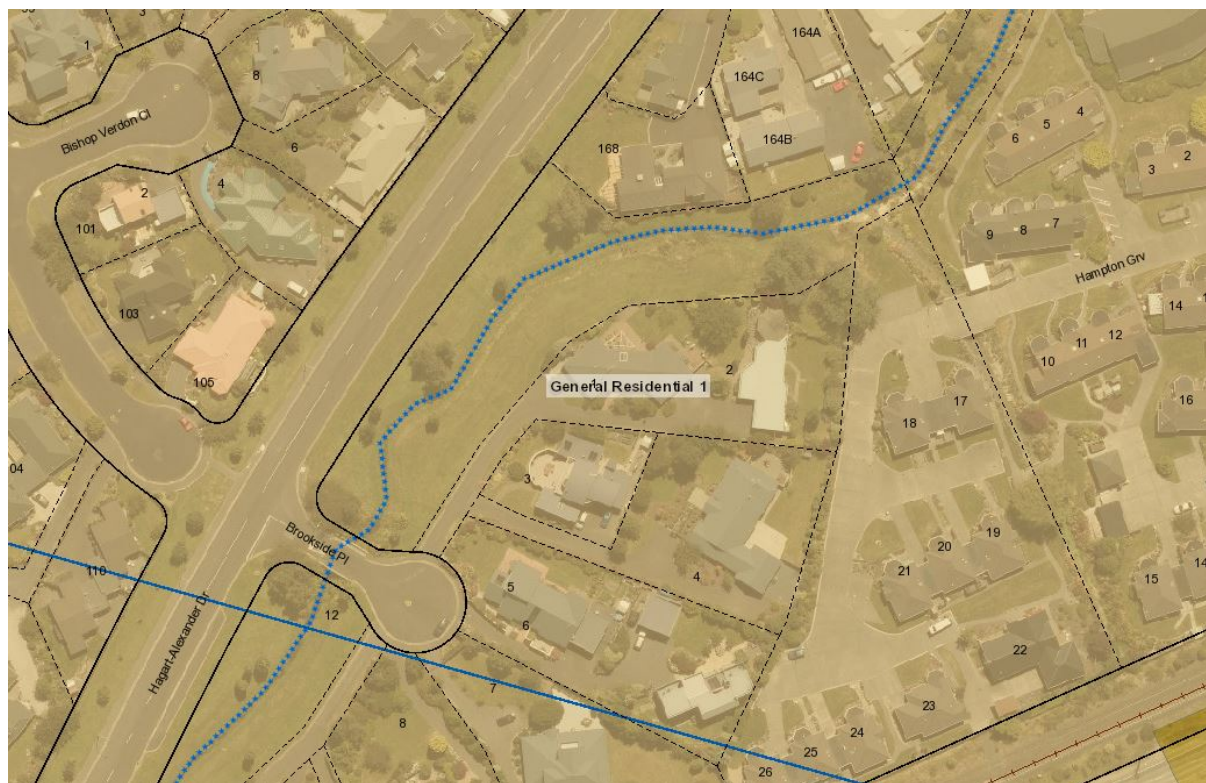
3.8.5.1 Request to amend Esplanade Reserves and Strips Mapped Area in vicinity of 1 Brookside Place, Mosgiel

2407. *Bill Feather* (OS475.2) sought to amend the Esplanade Reserves and Strips Mapped Area in the vicinity of 1 Brookside Place, Mosgiel, stating that “The straight line approach cuts corners and in my case takes in half the house and grounds”.
2408. The Reporting Officer agreed that the location of the Esplanade Reserves and Strips Mapped Area relating to the Owhiro Stream does not align well with the actual location of the stream-bed (s42A Report, pp.262-264). The Reporting Officer recommended that the entirety of the Owhiro Stream Esplanade Reserve Mapped Area be remapped to better reflect the actual location of the Owhiro Stream.

3.8.5.1.1 *Decision and Reasons*

2409. We accept the submission of *Bill Feather* (OS475.2) to amend the mapping of the Esplanade Reserves and Strips Mapped Area in the vicinity of 1 Brookside Place, Mosgiel. We accept the evidence of the Reporting Officer that this has been incorrectly mapped in relation to the bed of the Owhiro Stream.
2410. In response to the submission of *Bill Feather* (OS475.2), we have therefore amended the mapping of the Esplanade Reserves and Strips Mapped Area in the vicinity of 1 Brookside Place, Mosgiel as shown in Figure 11 below.

Figure 11: Esplanade Reserves and Strips Mapped Area at Brookside Place



2411. As noted by the Reporting Officer, the mapping error extends along most of the Owhiro Stream, and we observe the same mapping error appears to apply to all other water bodies. We note the relevant performance standards (Rule 10.3.1, Rule 10.3.2 and Rule 10.3.3) all clearly describe the approach to measuring distance from a water body without any reference to maps. We therefore agree with the Reporting Officer's assessment that the correction of the mapping errors for all water bodies can be progressed as a clause 16 change.

3.8.6 Definitions of Water Body and Wetland

2412. *Federated Farmers of New Zealand (OS919.93)* sought to retain the definition of wetland, as the proposed exclusions appropriately capture areas that are man-made and relate to farming.

2413. *Dunedin Rural Development Inc.* sought to amend the definitions of water body (OS853.3) and wetland (OS853.32) to align with the Regional Policy Statement, so the public had a clearer understanding of the areas to which any related provisions apply. *Otago Regional Council (FS381.30)* supported the submission on the definition of wetland, stating that the definition of should also be consistent with the RMA and should not include a finite list of wetland vegetation.

2414. *Oceana Gold (New Zealand) Limited (OS1088.12)* sought to amend the definition of wetland to exclude constructed wetlands used for mine water. The submitter also requested that the wetland definition excludes the Macraes Gold Project, so that mine closure or mine water treatment can occur in the future without the need for consent.

2415. In relation to *Dunedin Rural Development (OS853.3)*, the Reporting Officer, Jane Macleod, noted that the proposed definition of water body is the same as that in the

operative and proposed Regional Policy Statements and considered that no amendment was required (s42A Report, p.265).

2416. In relation to *Dunedin Rural Development* (OS853.2) and *Otago Regional Council* (FS381.30), the Reporting Officer noted that the first part of the proposed definition of wetland is the same as the proposed RPS and the RMA definitions. Ms Macleod agreed that, while the addition of vegetation-type descriptions may provide guidance on what a wetland may look like or contain, the addition of these descriptions had the potential to confuse plan users and therefore should be removed. She did not, however, agree that the list of exclusions should be removed as she considered that they added clarity to the definition, and no submitters specifically asked for their removal.
2417. In response to *Oceana Gold* (OS1088.12), the Reporting Officer noted that the exclusion “constructed wetlands used for wastewater” allows for these wetlands to contain mine water as a type of wastewater, and recommended that no specific amendment was required to accommodate the Macraes Gold Project.
2418. At the hearing, Dr Michael Thorsen (expert ecologist) appeared for *Oceana Gold* and in his evidence corrected a spelling mistake in the spelling of “*Phormium*” in the definition of wetland (p.18 of Mr Thorsen’s evidence). In revised recommendations, the Reporting Officer noted the recommendation to remove this term from the definition, along with other vegetation-type descriptions (Revised Recommendations Summary, p.14).
2419. In relation to the *Dunedin Rural Development* request (OS853.2) that the definition of wetland be amended to align with that in the RPS, the Panel asked the Reporting Officer whether it was appropriate to retain the exclusion “land sown with exotic grasses containing sparsely distributed wetland plants” from this definition as it is not present in the RPS definition. Ms Macleod consulted with the DCC expert ecologist, Dr Kelvin Lloyd, who recommended that this this exclusion be deleted from the definition, because it describes some ephemeral wetlands, which are an ‘originally rare’ ecosystem type. In response to this advice, Ms Macleod recommended that the exclusion “land sown with exotic grasses containing sparsely distributed wetland plants” be removed from the definition of wetland (Revised Recommendations Summary, p.56).

3.8.6.1 Decision and Reasons

2420. We reject the submission of *Dunedin Rural Development Inc.* (OS853.3) to amend the definition of water body, as the 2GP definition is already the same as in the operative RPS and pORPS-dv.
2421. We accept in part the submission of *Dunedin Rural Development Inc* (OS853.2) to amend the definition of wetland. We do not consider the list of vegetation species should be removed from the definition, as we consider it provides helpful guidance to Plan users. We do consider, however, that the definition should be qualified by stating “...Vegetation is typically dominated by plants such as sedges...” In addition, we accept Mr Thorsen’s evidence that a mistake in the spelling of “*Phormium*” should be corrected (as a clause 16 amendment), and based on the advice from the DCC expert ecologist, we have decided to remove the first exclusion “land sown with exotic grasses containing sparsely distributed wetland plants” from the definition.
2422. Therefore, in response to this submission, we have amended the definition of Wetland as follows:

“Permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.

Vegetation is typically {NatEnv 853.2} dominated by plants such as sedges (Cyperaceae), rushes (Juncaeae), restionads (Restionaceae), raupo (Typha orientalis), flax (Phormium tenax), Sphagnum moss species or other wetland herbs, which emerge from permanent standing water or occupy permanently saturated soil: including riparian and littoral vegetation.

For the purpose of this definition, wetland does not include the following:

- ~~Land sown with exotic grasses containing sparsely distributed wetland plants;~~
 {NatEnv 853.2}
- Constructed reservoirs
- Farm drains and irrigation canals
- Land drainage canals
- Constructed farm dams and detention dams
- Constructed wetlands used for wastewater or stormwater treatment; and
- Oxidation ponds.

2423. We reject the submission of *Oceana Gold (New Zealand) Limited* (OS1088.12). We agree with the Reporting Officer's assessment that the exclusion "constructed wetlands used for wastewater" allows for these wetlands to contain mine water as a type of wastewater, and therefore no specific amendment is required to accommodate the Macraes Gold Project.

3.8.7 Suggested new definition of Margin

2424. *STOP* (OS900.6) and *Forest and Bird NZ* (OS958.5) sought to add a new definition of 'margin' and recommended the definition used in the Canterbury Regional Policy Statement. These submissions were opposed by *Federated Farmers* (FS2449.254, 259) who stated that they have not been adequately justified or shown to be appropriate. *Waste Management* (FS2444.40) opposed the *STOP* submission.

2425. The Reporting Officer noted that the definition of margin proposed by the submitters does not define all instances of the term margin as it is used in the 2GP, with the term being used in a range of different provisions with slightly different usage in each. Rather than adding a definition of margin, the Reporting Officer recommended removing the term margin from rules 10.3.1.1, 10.3.1.3 and 10.3.3.7 as this would both improve the clarity of these rules and negate the need to define 'margin' (s42A Report, pp.269-270). This recommended approach was affirmed by DCC consent planners as matching current practice in terms of defining the point with which esplanade strips and reserves are measured.

3.8.7.1 Decision and Reasons

2426. We accept in part the submissions of *STOP* (OS900.6) and *Forest and Bird NZ* (OS958.5) and have removed the reference to "margin" from Rule 10.3.1.1, Rule 10.3.1.2 and Rule 10.3.3.7. Accepting that the recommended changes reflect current DCC practice, we agree that removal of the word from these rules adds clarity to the Plan, and consider it constitutes alternative relief for these submissions.

2427. In response to these submissions, we have therefore removed the reference to "margin":

- from Rule 10.3.1.1 as follows: "along the bank ~~or the margin~~ {NatEnv900.6} of the following..."
- from Rule 10.3.1.2 as follows: "along the bank ~~or the margin~~ {NatEnv900.6} of the following..."
- from Rule 10.3.3.7 as follows: "setbacks will be measured from the landward side bank ~~or margin~~ {NatEnv 900.6}..."

3.8.8 Policy 10.2.2.2

2428. Policy 10.2.2.2 states “Require buildings, structures, storage and use of hazardous substances, network utilities activities, and earthworks - large scale to be set back from the coast and water bodies an adequate distance to enable the biodiversity and natural character values of coastal and riparian margins to be maintained or enhanced”. This policy is implemented by Rule 10.3.3 (setback from coast and water bodies).
2429. *Ravensdown Limited* (OS893.19) sought to retain Policy 10.2.2.2 as the policy represents good resource management practice.
2430. *KiwiRail Holdings Limited* (OS322.31) and *Oceana Gold (New Zealand) Limited* (OS1088.38) sought that Policy 10.2.2.2 be amended to add “where practicable”, as some activities may not practicably be set back the required distance. This submission was supported by *Ravensdown Limited* as the amendment is pragmatic and appropriate, and by *Federated Farmers* as it is not always practicable to set activities back from the coast and water bodies. *HPPC* opposed *Oceana Gold* because ‘practicable’ is too easily interpreted as meaning an economic impact. *Radio New Zealand Limited* supported *Oceana Gold*, agreeing with the submitter’s reasons.
2431. *Otago Regional Council* (OS908.26) sought to amend Policy 10.2.2.2 to recognise the need for setbacks due to the natural functioning and processes of rivers.
2432. *STOP* (OS900.38) and *Forest and Bird* (OS958.32) sought to amend Policy 10.2.2.2 so that it applies to all types of land use and development, and to enable the biodiversity and natural character values of coastal and riparian margins to be “~~maintained~~ preserved or enhanced.” These submissions were opposed by *John Scott*, *Ben Graham*, *Mathew O’Connell*, *Geoff Scurr Contracting*, *Pigeon Flat Road Group*, *Federated Farmers*, who considered the amendment variously unnecessary, too restrictive, too broad, and against the purpose and principles of the RMA, and by and *Ravensdown Limited*, who considered the notified policy appropriate.
2433. In response to *KiwiRail Holdings* and *Oceana Gold*, the Reporting Officer, Jane Macleod, did not agree that the policy wording should be amended as requested (s42A Report, pp.272-273). Ms Macleod noted that the performance standard that implemented this policy (Rule 10.3.3) already contained exemptions for activities for which it may not be practicable to meet the setback.
2434. Ms Macleod also did not support any amendment to Policy 10.2.2.2 in response to the *Otago Regional Council* submission, being of the opinion that Policy 10.2.2.4 appropriately manages potential effects from development activities on the “natural functioning and processes of rivers”.
2435. In response to *STOP* (OS900.38) and *Forest and Bird* (OS958.32), Ms Macleod did not consider that a rule in the 2GP requiring a setback from water bodies for all activities (including farming) would be the most effective and efficient method of maintaining or enhancing the biodiversity and natural character values of coastal and riparian margins (Policy 10.2.2.2), or ensuring that risk from erosion and flooding is avoided or is no more than low (Policy 11.2.1.19).
2436. At the hearing, *Ravensdown* tabled a statement but did not appear. The statement noted that *Ravensdown* supported retention of Policy 10.2.2.2 and the Reporting Officer has recommended amendment to it, and that a *Ravensdown* further submission in support of a *KiwiRail* submission to amend Policy 10.2.2.2 has been rejected. *Ravensdown* does not wish to pursue this matter any further.
2437. At the hearing, Dr Michael Thorsen (ecological expert) provided evidence and appeared for *Oceana Gold*. Dr Thorsen noted that: “It is not always possible to set

back mining infrastructure from the riparian margin. This is especially true for earthworks such as dams, WRS and pits situated in areas with dense dendritic watercourses (such as most of the Macraes area)” (Thorsen evidence, p.20).

2438. In response, the Reporting Officer noted that neither Policy 10.2.2.2 nor the rule that implements it (Rule 10.3.3) applies to mining earthworks, because the 2GP definition of earthworks excludes “earthworks associated with quarrying or mining, which is included as part of the definition of mining” (Revised Recommendations Summary, p.14).

3.8.8.1 Decision and Reasons

2439. We reject the submissions of *KiwiRail Holdings Limited* (OS322.31) and *Oceana Gold (New Zealand) Limited* (OS1088.38). We accept the Reporting Officer's evidence that, because earthworks associated with mining are excluded from the definition of Earthworks – Large Scale, no amendment to Policy 10.2.2.2 is required to achieve the outcome sought by *Oceana Gold* in relation to this activity. In relation to the other amendments sought, we also accept the Reporting Officer's evidence that a more appropriate way of recognising the inability of specific activities to meet the setback is through exemptions to the performance standard implementing the policy (Rule 10.3.3). We discuss in section 3.8.10 the option of exempting the activities raised in the submission of *Oceana Gold (New Zealand) Limited* (OS1088.38) and that of *KiwiRail Holdings Limited* (OS322.31).
2440. We accept in part the *Otago Regional Council* (OS908.26) submission to amend Policy 10.2.2.2. We do not accept the Reporting Officer's evidence that Policy 10.2.2.4 appropriately manages potential effects from development activities on the “natural functioning and processes of rivers”, as it relates only to controlling risks of sediment movement. However, guided by the higher order policy direction referenced by the Reporting Officer in section 3.0 of the Section 42A Report, we do consider the natural functioning and processes of rivers to be an element of natural character. We note that Policy 13 of the NZCPS specifies that natural character may include matters such as “natural elements, processes and patterns” and “the natural movement of water...”, and that pORPS-dv Policy 3.1.11 echoes this interpretation. In referring to “natural character values of coastal and riparian margins”, therefore, Policy 10.2.2.2 already encompasses considerations of the natural functioning and processes of rivers and it is our assessment that the specific amendment sought by the submitter is not necessary.
2441. As discussed in section 3.10.4, however, in response to another *Otago Regional Council* submission (OS908.33), we have amended Rule 10.4.3.1(a)(iii), Rule 10.4.3.4(v)(iii), and Rule 10.4.3.4(a) to make it clear that the natural functioning and processes of rivers is a component of natural character. We consider this also constitutes partial alternative relief for *Otago Regional Council* (OS908.26).
2442. We accept in part the submissions of *STOP* (OS900.38) and *Forest and Bird* (OS958.32). We note that Policy 10.2.2.2 relates to the setback performance standard outlined in Rule 10.3.3, which applies only to the activities already listed in the policy. We do not support amending Policy 10.2.2.2 to include all land use and development, as it would suggest the performance standard would apply to all activities, including activities that are permitted in the zone and unlikely to result in adverse effects on the coast or water bodies. We agree with the Reporting Officer's assessment that this would not be the most effective and efficient method of achieving the outcomes sought by the 2GP. We also note that other policies under Objective 10.2.2 also specify some controls on other activities near the coast and water bodies (for example vegetation clearance through Policy 10.2.2.3, and subdivision through Policy 10.2.2.5). However, we do consider that there should be a

policy to support an assessment of effects on the values of the coast and riparian margins, for all activities that require discretionary and non-complying consent, irrespective of whether they involve the activities listed in Policy 10.2.2.2. We consider this will assist in achieving Objective 10.2.2, and higher order policy direction, including s6(a) of the RMA, the NZCPS, and Policy 3.1.2 of the pORPS-dv (as outlined in Section 3.0 of the Section 42A Report).

2443. In response to this submission, we have therefore added a new Policy 10.2.2.Y, which states:

- “Only allow land use, development and city-wide activities adjacent to water bodies and the coast where the biodiversity values and natural character of the coast and riparian margins are maintained or enhanced.” {NatEnv 900.38}

2444. We have also made the consequential change to discretionary and non-complying assessment rules (10.6.2.1 and 10.7.2.1) by adding the following as a relevant objective and policy (priority consideration):

- “Activities adjacent to water bodies and the coast maintain or enhance the biodiversity values and natural character of the coast and riparian margins (Policy 10.2.2.Y).” {NatEnv 900.38}

2445. We consider it both appropriate and within the scope of the submissions for new Policy 10.2.2.Y to be linked via discretionary and non-complying assessment rules in Section 5 (Network Utilities), Section 6 (Transportation), Section 16 (Rural Zones), Section 17 (Rural Residential Zones) and Section 20 (Recreation Zones). We have therefore also consequentially amended the following discretionary and non-complying assessment rules to specifically direct activities that are adjacent to water bodies and the coast to rules 10.6.2.1 and 10.7.2.1:

- Rules 5.9.2.1 and 5.10.2.1 (Network Utilities)
- Rule 6.11.3.1 (Transportation)
- Rules 16.11.2.1 and 16.12.2.1 (Rural)
- Rules 17.11.2.2 and 17.12.2.1 (Rural Residential)
- Rules 20.11.2.1 and 20.12.2.1 (Recreation)

2446. We consider this constitutes partial alternative relief for the submitters. We do not however support the suggested change from “maintained” to “preserved”, for the reasons outlined in section 3.6.7.

3.8.9 Policy 10.2.4.1

2447. Policy 10.2.4.1 states “Require buildings, structures, and earthworks - large scale to be set back from the coast and water bodies an adequate distance to maintain or enhance public access along riparian and coastal margins”. This policy is also implemented by Rule 10.3.3 (setback from coast and water bodies).

2448. *Ravensdown Limited* (OS893.22) sought to retain Policy 10.2.4.1 as the policy represents good resource management practice.

2449. *KiwiRail Holdings Limited* (OS322.34) sought to amend Policy 10.2.4.1 by appending “except where health and safety requires otherwise”, as there are health and safety reasons for restricting access to the rail corridor in some instances. *Ravensdown Limited* supported this submission as the amendment is pragmatic and appropriate.

2450. *Oceana Gold (New Zealand) Limited* (OS1088.42) sought to amend Policy 10.2.4.1 by adding the term “where practicable”, because this setback requirement is not always possible for major mining structures and earthworks.

2451. The Reporting Officer, Jane Macleod, agreed with submitters that there may be circumstances where public access to coastal or riparian margins should be restricted, including for health and safety reasons (s42A Report, p.275). Ms Macleod recommended that Policy 10.2.4.1 be amended to add the phrase “where appropriate”, and that the assessment rule that applies to contraventions of Rule 10.3.3 (Rule 10.4.3.10) be amended to include consideration of issues such as public health and safety and site security.
2452. At the hearing, *Ravensdown* tabled a statement but did not appear. The statement noted that Ravensdown supported retention of Policy 10.2.4.1 and the Reporting Officer has recommended amendment to it. *Ravensdown* supports the s42A recommended amendment.
2453. At the hearing, Dr Michael Thorsen (ecological expert) provided evidence and appeared for *Oceana Gold*. Dr Thorsen's evidence supported the s42A recommendation.

3.8.9.1 Decision and Reasons

2454. We accept in part the submissions of *KiwiRail Holdings Limited* (OS322.34) and *Oceana Gold (New Zealand) Limited* (OS1088.42). As discussed in section 3.6.12, we acknowledge that Policy 5.1.1 of the pORPS-dv and Policy 19 of the provide for the restriction of public access under certain circumstances. These circumstances include where a restriction is necessary to protect public health or safety, or to ensure a level of security consistent with the purpose of a resource consent or lawfully established activity – situations outlined by the submitters.
2455. However, we do not support the specific request to qualify the policy with “where practicable” (or the Reporting Officer's recommended “where appropriate”) on the basis that the NZCPS, the pORPS-dv and Objective 10.2.4 of the 2GP all go beyond requiring access only “where practicable” or “where appropriate”. Rather, they provide for restriction of access only “where necessary”, and seek to “maintain and enhance” access.
2456. Instead we consider that it is appropriate for the relevant assessment rule (Rule 10.4.3.10, which guides assessment of contraventions of the setback from the coast and water bodies performance standards) to reference the circumstances listed in the NZCPS and RPS under which restriction of public access may be necessary. Of those circumstances, the assessment rule provides specific guidance only in relation to alternative access arrangements. As outlined in section 3.8.4, we have amended Rule 10.4.3.10.b to include “General assessment guidance” stating that in assessing a contravention of the setback from the coast and water bodies standard, Council will consider “any relevant circumstances listed in the New Zealand Coastal Policy Statement 2010 or the Regional Policy Statement for Otago that may support restriction of public access. {NatEnv 690.24}”. We consider this constitutes partial alternative relief for the submitters.

3.8.10 Rule 10.3.3 Setback from coast and water bodies performance standard

2457. Rule 10.3.3 is the performance standard that controls the setback of buildings and structures, earthworks – large scale, storage and use of hazardous substances, and network utilities from the coast and water bodies.
2458. Multiple submissions were received on Rule 10.3.3 as follows:
- *STOP* (OS900.158) and *Forest and Bird* (OS958.75) sought retention of the rule for conservation reasons.
 - *Transpower New Zealand Limited* (OS806.49) supported the exemption to the rule for network utilities poles and masts.

- *Ravensdown Limited* (OS893.23) sought to retain the 20m setback from mean high water springs, as it represents good resource management practice.
- *Port Otago Limited* (OS737.8) and *Chalmers Properties Limited* (OS749.4) requested that either the rule was deleted or an exemption provided for port activities, and activities in the Harbourside Edge Zone, as it is an operational requirement for these activities to be within 20m of mean high water springs. These submissions were opposed by *HPPC* and supported by *Otago Regional Council* and *BP Oil NZ Ltd* and *Mobil Oil NZ Ltd* and *Z Energy Ltd*.
- *Moi Bien Investments Ltd* (OS826.17) sought that Rule 10.3.3 not apply to the St Clair Neighbourhood Destination Centre, as this would be overly restrictive and onerous and not promote the sustainable management of the area.
- *DCC* (OS360.218) sought that a note was added to the rule to clarify that it does not apply to swale mapped areas.
- *Joel A Vanderburg* (OS189.7) sought to amend Rule 10.3.3 to exclude stock from small water bodies of less than 3m in width, in order to encourage riparian plantings in these areas.
- *KiwiRail Holdings Limited* (OS322.91) sought to exclude causeways from the rule, with no specific reason given for this submission.
- *Lynnore Joan Templeton* (OS735.3) sought an amendment to 2GP provisions for earthworks alongside creeks, in order to enable a water extraction project in the Strath Taieri.
- *Otago Peninsula Community Board* (OS588.7) requested an exception to the standard for structures associated with conservation and ecotourism, such as bird hides, viewing structures and boardwalks.
- *Timothy George Morris* (OS951.16) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.16) sought deletion or amendment of the rule to allow for farming activities to occur.
- The submission from *KiwiRail Holdings Limited* (OS322.31) to amend Policy 10.2.2.2 was also considered as a submission to amend Rule 10.3.3 so that it excluded activities in the rail corridor. We also address this submission here, as we consider that exemptions to Rule 10.3.3 will effectively address the concerns of submitters, rather than including exemptions into the policy.

Submissions on extent of Rule 10.3.3

2459. In response to *Port Otago*, *Chalmers Properties* and *Moi Bien Investments Ltd*, the Reporting Officer, Jane Macleod, commented as follows:

- It was anticipated that there will be development within 20m of mean high water springs in the Harbourside Edge and St Clair Neighbourhood Centre zones as these areas have been significantly altered by development and they are no longer in their natural state.
- It would be appropriate to exempt buildings, structures and earthworks associated with port activities from Rule 10.3.3, for the reason outlined by the submitters, and recommended amending the rule to clarify that it does not apply in the Port Zone.
- The Port Zone s42A Report recommends that Rule 10.3.3 not apply in the Port Zone.
- Provision for public access has already been made within the St Clair Neighbourhood Centre, and Rule 18.6.18.4⁴⁴ contains the requirements for buildings and structures close to the harbour edge in the Harbourside Edge Zone.
- There are other heavily developed areas along the coast, such as the Industrial Port Zone, where Rule 10.3.3 does apply, and whether there is no scope to remove it for all activities.

⁴⁴ We note this was mistakenly referred to as 10.6.18 in the Section 42A Report text

2460. Ms Macleod recommended Rule 10.3.3 be amended to exempt activities in the Harbourside Edge Zone and the St Clair Neighbourhood Centre and a new note added to inform plan users that Rule 18.6.18.4⁴⁵ contains the requirements for buildings and structures close to the harbour edge in the Harbourside Edge Zone (s42A Report, pp.280-281).
2461. Ms Macleod supported in part the amendment sought by *Dunedin City Council*, agreeing that the rule should clearly indicate the types of water body to which it applies. She noted that rules 10.3.3.3 and 10.3.3.4 require setbacks from “any water body with a clearly defined bed”, while Rule 10.3.3.5 requires a setback from “any water body”, without qualification, which could include temporary water courses. She recommended amending Rule 10.3.3.5 to clarify that it applies only to water bodies “with a clearly defined bed”. She did not support adding a note in relation to swales, as these would not qualify as water bodies with a clearly defined bed.
2462. In response to the submission of *Joel A Vanderburg*, Ms Macleod did not consider that a rule in the 2GP requiring a setback from water bodies for activities such as farming would be the most effective and efficient method of enabling the biodiversity and natural character values of coastal and riparian margins to be maintained or enhanced, as any such rules would be very hard to monitor and enforce. She considered that education on best practice farm management techniques, including planting and fencing alongside waterways, and other initiatives undertaken by the Otago Regional Council, are a better way of achieving these aims.

Submissions for additional exemptions

2463. The Reporting Officer, Jane Macleod, supported *KiwiRail's* submission on causeways, as these often occur near or over waterways and it was appropriate that they be excluded from the setback requirement. She noted that jetties, boat ramps and wharves are already exempted and recommended that causeways were added to the exemptions to Rule 10.3.3.
2464. In response to the submission by *Otago Peninsula Community Board*, Ms Macleod agreed that it was appropriate for small scale structures such as bird hides, viewing structures and platforms, and boardwalks to be exempt from the setback requirements. She considered, however, that there should be a scale threshold of 10m² area and 2m height for these structures (excluding boardwalks) to ensure they do not adversely affect the natural character of the areas they occupy.
2465. In response to *Lynnore Joan Templeton*, the Reporting Officer considered that, while new irrigation infrastructure clearly had benefits and must necessarily locate alongside water bodies, it also had the potential to generate significant adverse effects on biodiversity and natural character values, public access and increased risk from erosion. Ms Macleod did not consider that new irrigation infrastructure should be exempt from Rule 10.3.3 as she considered a resource requirement appropriate.
2466. In response to *Timothy George Morris* and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*), the Reporting Officer noted that some farming activities such as grazing of livestock are provided for within setbacks. She did not consider that all farming activities should be exempt from this rule, as this would allow farm buildings and earthworks associated with farming to be undertaken on the banks of streams, rivers and adjoining mean high water springs, which would have potential adverse effects on the quality of these water bodies and would impede the establishment of any future esplanade reserves or strips.

⁴⁵ We note this was mistakenly referred to as 10.6.18 in the Section 42A Report text

2467. The Reporting Officer also considered the *KiwiRail* submission (OS322.31) on Policy 10.2.2.2 in relation to Rule 10.3.3. Ms Macleod recommended that Rule 10.3.3 be amended to exempt activities associated with the operation, repair, and maintenance of the existing rail network, similar to the approach recommended for existing network utilities.
2468. At the hearing, *Ravensdown* tabled a statement but did not appear. The statement noted that *Ravensdown* had supported retention of Rule 10.3.3.1 and the Reporting Officer has recommended amendment to it. *Ravensdown* supports the s42A Report recommended amendment.
2469. At the hearing, *Port Otago* and *Chalmers Properties Limited* tabled a statement but did not appear. *Port Otago* and *Chalmers Properties Limited* support the s42A Report recommended amendment to Rule 10.3.3.
2470. At the hearing, *BP Oil NZ Ltd* and *Mobil Oil NZ Ltd* and *Z Energy Ltd* tabled a statement but did not appear. The statement noted that the Oil Companies were a further submitter in support of the *Port Otago* submission. *BP Oil NZ Ltd* and *Mobil Oil NZ Ltd* and *Z Energy Ltd* support the s42A Report recommended amendment to Rule 10.3.3.
2471. At the hearing, we asked the Reporting Officer whether it is appropriate to exclude causeways, given that a causeway is a road or path across wet ground or water and the road or path may sometimes be able to be relocated away from water. Ms Macleod noted that construction of a new road or additions or alterations to existing roads are a fully discretionary activity, with the relevant assessment rule specifying assessment under Policy 6.2.1.3 (and thus only allowed where the road is located and designed to minimise “adverse effects on water bodies or the coast”). She noted also that operation, repair and maintenance of the roading network is a permitted activity, and that, in effect, Rule 10.3.3 would only therefore apply to any Earthworks – Large Scale associated with these activities. Ms Macleod revised her recommendation that these earthworks should be exempt from Rule 10.3.3 rather than causeways (Revised Recommendations Summary, p.57).
2472. At the hearing, we asked the Reporting Officer why she recommended rejecting *Lynnore Templeton’s* request to exempt irrigation infrastructure and associated earthworks from Rule 10.3.3, given that community scale hydro is exempt from the rule. Ms Macleod acknowledged the contradiction and noted that the Regional Plan: Water manages all the effects that Rule 10.3.3 seeks to manage, except for public access. After weighing potential benefits and costs, Ms Macleod made a revised recommendation that structures associated with irrigation should be exempt from Rule 10.3.3 (Revised Recommendations Summary, p.57).
2473. After the hearing, we asked the Reporting Officer to provide, in consultation with the Otago Regional Council, information on an appropriate upper scale limit for irrigation structure. Ms Macleod responded that it would be appropriate to exempt irrigation pipes of any size and other structures, such as intake structures, with a footprint of up to 2m² (Reporting Officer Memorandum on Scale of Irrigation Structures, 1 November 2017).

3.8.10.1 Decision and Reasons

2474. We accept in part the submissions of *Port Otago Limited* (OS737.8) and *Chalmers Properties Limited* (OS749.4), and accept the submission of *Moi Bien Investments Ltd* (OS826.17). We have decided to exempt the Harbourside Edge Zone and St Clair Neighbourhood Destination Centre from Rule 10.3.3. We accept the evidence of the Reporting Officer that these areas have been significantly altered by development and they are no longer in their natural state. In addition, we accept provision for public

access to the coast is in place in the St Clair Neighbourhood Destination Centre, and that Rule 18.6.18.4 protects the requirement for this within the Harbourside Edge Zone. We therefore consider that the application of Rule 10.3.3 to these areas does not assist in achieving the outcomes sought by Rule 10.2.2.2 and Rule 10.2.4.1 (relating to public access). We also support, as a consequential amendment, a new Plan Note 10.3C, to explain that the activities within the Harbourside Edge Zone are subject to Rule 18.6.18.4.

2475. We note the Reporting Officer's comment that Rule 10.3.3 does not apply in the Port Zone, and consider it appropriate that this is clarified in the rule, which can be done as a clause 16 amendment. We have identified a number of other major facility zones to which Rule 10.3.3 also does not apply, consider that these can also be clarified at the start of the rule as a clause 16 amendment.

2476. We do not, however, consider that buildings, structures and earthworks associated with port activities should be exempt from Rule 10.3.3 as recommended by the Reporting Officer, but rather that additional exemptions should be restricted to the Industrial Port Zone, where port activities are anticipated. In this zone, we accept that port activities need to occur within 20m of the coast for operational reasons, and that (like the Harbourside Edge Zone and St Clair Neighbourhood Destination Centre) the coastal margin in this area has been significantly altered by development and is no longer in its natural state. However, the Industrial Port Zone differs from these other areas as it lacks any provision for public access to the coast. We therefore consider it appropriate to provide an exemption for small structures (up to 10m²) and any earthworks associated with these, but do not support extending the exemption for buildings or larger structures, because we feel it appropriate that consideration be given to public access should new buildings or large structures be proposed within the 20m setback. We have chosen 10m² as the threshold, as this reflects the threshold under which buildings are no longer subject to 2GP provisions.

2477. In response to these submissions, we have therefore amended Rule 10.3.3 as follows:

- "In all zones, other than the Harbourside Edge Zone, {NatEnv 737.8} St Clair Neighbourhood Destination Centre {NatEnv 826.17}, Dunedin Hospital Zone, Dunedin International Airport Zone, Mercy Hospital Zone, Moana Pool Zone, Otago Museum Zone, Port Zone and Wakari Hospital Zone, {NatEnv cl.16} New buildings and structures, additions and alterations, earthworks large scale, storage and use of hazardous substances, and network utilities activities must be set back a minimum of {NatEnv cl.16}..."

6. Except, the following are exempt from this standard...

n. structures with a maximum footprint of 10m² associated with port activities in the Industrial Port Zone; {NatEnv737.8}..."

2478. We accept in part the submission of DCC (OS360.218) and have amended Rule 10.3.3.5 as recommended by the Reporting Officer to clarify that the standard applies to any water body with a clearly defined bed, as follows:

- "5. 5m from any water body with a clearly defined bed {NatEnv360.218} in all other zones"

2479. We agree with the Reporting Officer that this amendment adds more clarity than the specific amendment suggested by the submitter, but consider it has the effect of clarifying swale mapped areas are not subject to the rule.

2480. We accept in part the submission of *Otago Peninsula Community Board* (OS588.7), and have amended Rule 10.3.3 to exempt bird hides, viewing structures and platforms and boardwalks as follows:
- “o. bird hides, viewing structures and viewing platforms with a maximum footprint of 10m² and maximum height of 2m, and boardwalks;” {NatEnv588.7}.
2481. We accept that these structures may in a number of instances be unable to meet the requirements of Rule 10.3.3, and indeed in some instances may be required to maintain or enhance public access or the biodiversity or natural character values of the coast or riparian margins. We consider that exempting these structures from Rule 10.3.3 is consistent with Policy 10.2.2.2 and Policy 10.2.4.1. We agree with the Reporting Officer that there should be a scale limit on structures other than boardwalks, and therefore support the 10m² area and 2m height limits recommended by Ms Macleod.
2482. We reject the submission of *KiwiRail Holdings Limited* (OS322.31), and accept in part the submission of *KiwiRail Holdings Limited* (OS322.91). As discussed in the Transportation Decision Report, we accept that there may be some merit in including rail activity in the Plan if there are problems with relying on a designation. However, in the absence of a set of provisions where there is expert agreement (at least to a substantial degree) that the provisions would be effective and efficient in terms of our obligations under s32AA, our decision at this time is to reject submissions seeking to provide separately for rail activities in the Plan, and to recommend any such changes are progressed by way of a future plan change, to enable potentially affected interests to participate through the Schedule 1 process.
2483. While we do not support including an exemption for ‘causeways’ from Rule 10.3.3, we do accept in part *KiwiRail Holdings Limited* (OS322.91). We accept that the operation, repair and maintenance of assets on existing causeways will not be able to meet setback requirements. Our decision therefore exempts earthworks associated with the operation, repair and maintenance of the roading network from Rule 10.3.3 as recommended by the Reporting Officer, as follows:
- “p. earthworks associated with the operation, repair and maintenance of the existing roading network;” {NatEnv322.91}
2484. We do not consider that activities associated with new roads or additions or alterations to existing roads should be exempted from the performance standard, as we do not accept that assessment against Policy 6.2.1.3 represents a substitute for Rule 10.3.3 in the case of the latter (as suggested by the Reporting Officer). While Policy 6.2.1.3 provides some direction around effects on water bodies and the coast and on natural character values of the coast, it is not concerned with public access along riparian and coastal margins. We consider that earthworks – large scale associated with new roads or additions and alterations to existing roads should continue to be subject to Rule 10.3.3, with any contraventions assessed against policies 10.2.4.1 and 10.2.2.2.
2485. We accept in part the submission of *Lynnore Joan Templeton* (OS735.3) and have exempted irrigation or stock water pipes of any size, and irrigation or stock water structures, such as intake structures, with a maximum footprint of 2m² from Rule 10.3.3 as follows:
- “q. irrigation pipes of any size, and other irrigation or stock water structures such as intake structures with a maximum footprint of 2m²” {NatEnv 735.3}
2486. We accept the Reporting Officer's evidence that the Regional Plan: Water for Otago manages the effects that Rule 10.3.3 seeks to manage, with the exception of public

access issues. On balance, we agree with the Reporting Officer's assessment that the benefits of providing for these structures within certain scale thresholds outweighs the risks of limiting public access to water bodies. We note and support the alignment of the recommended scale thresholds with provisions in the Regional Plan: Water for Otago.

2487. We reject the submission of *Joel A Vanderburg* (OS189.7) seeking to amend Rule 10.3.3 to exclude stock from small water bodies of less than 3m in width, in order to encourage riparian plantings in these areas. We accept that Rule 10.3.3.6.j specifically exempts post and wire fences from this rule, which would enable fencing along waterways to achieve stock exclusion. We further accept the Reporting Officer's evidence that requiring a setback from water bodies for activities such as farming may be difficult to monitor and enforce. We note that the control of land use for the maintenance and enhancement of water and ecosystems in water bodies and coastal water is a responsibility of regional councils under s30(c) of the RMA. At the Rural Hearing, ORC director of policy, planning and resource management Mr Fraser McRae indicated the ORC considered these responsibilities had been delegated to territorial local authorities under a triennial agreement, but could not produce formal confirmation of this delegation. We recommend clarification of this position between the two authorities as a matter of relative urgency, to then enable the resource management issues listed under s30(c) to be considered and the appropriateness of any relevant management options formally assessed.
2488. We reject the submissions of *Timothy George Morris* (OS951.16) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.16). We accept the Reporting Officer's assessment that while some farming activities are provided for within setbacks, not all farming activities should be exempt from Rule 10.3.3 due to the potential for adverse effects on biodiversity and natural character values, and public access, and the potential to impede the establishment of any future esplanade reserves or esplanade strips. We do not consider that an exemption of this nature would be consistent with Policy 10.2.2.2 nor Policy 10.2.4.1.
2489. We reject the submission of *Oceana Gold (New Zealand) Ltd* (OS1088.38) insofar as it sought that new structures and earthworks associated with mining be exempt from the requirements for these activities to be setback from water bodies and the coast. We accept, as noted in section 3.8.8, that earthworks associated with mining are not required to meet the setback from water bodies and the coast performance standard because the 2GP definition of earthworks excludes "earthworks associated with quarrying or mining, which is included as part of the definition of mining".
2490. In relation to structures associated with Mining, while we accept the evidence of Dr Thorsen that it may not always be possible for structures to meet setback requirements from the coast and water bodies, there is no suggestion that this will always be the case. We note that contraventions of Rule 10.3.3 are subject to a restricted discretionary consent, with matters of discretion being effects on biodiversity and natural character of riparian margins and the coast, and effects on public access. As discussed in section 3.5, the 2GP has been amended to include specific provisions relating to biodiversity offsetting and environmental compensation, which provide a pathway for activities to be considered even where they have unavoidable adverse effects on biodiversity values. In relation to public access, as outlined in section 3.8.4, the relevant assessment rule (Rule 10.4.3.10.b) has been amended to reference the circumstances listed in the NZCPS and pORPS-dv under which restriction of public access may be deemed necessary. We consider these amendments constitute appropriate recognition of the constraints that structures associated with Mining may face in meeting setback requirements.

2491. As a consequence of our decisions elsewhere in Rule 10.3.3, an amendment to the earthworks clause to clarify its application can be made under clause 16 as follows:
- “r. earthworks required for any of the structures in (a) (~~r~~) {*NatEnv cl.16*} above...”

3.8.11 Rule 10.4.3.10 Setback from coast and water bodies assessment rule

2492. Rule 10.4.3.10 provides for the assessment of activities that contravene Rule 10.3.3 (setback from coast and water bodies). *Ravensdown Limited* (OS893.24) supported Rule 10.4.3.10, considering that the guidance matters included in the rule are appropriate and necessary.
2493. *STOP* (OS900.76) and *Forest and Bird NZ* (OS958.84) requested that strategic direction Objective 2.2.3 and related policies 2.2.3.1, 2.2.3.3 and 2.2.3.4 should apply to this standard, with no specific reasons given. *Ravensdown Limited* and *Federated Farmers* opposed these submissions, saying that the amendments go further than is appropriate or required.
2494. The Reporting Officer, Jane Macleod, considered that it was unnecessary to add reference to this objective and these policies which are high level and strategic in nature, and not specifically related to the performance standard Rule 10.3.3. Ms Macleod considered the assessment in Rule 10.4.3.10 provides appropriate guidance to plan users and decision makers on the outcomes sought in regard to the effects on biodiversity and natural character of riparian margins and the coast (s42A Report, page 287).
2495. At the hearing, *Ravensdown* tabled a statement but did not appear. The statement noted that *Ravensdown* had supported retention of Rule 10.4.3.10 and the Reporting Officer has recommended amendment to it. *Ravensdown* supported the s42A Report recommended amendment.

3.8.11.1 Decision and Reasons

2496. We accept in part the submissions of *STOP* (OS900.76) and *Forest and Bird NZ* (OS958.84). We accept the Reporting Officer's evidence that the strategic direction provisions the submitters sought to reference from Rule 10.4.3.10 are not specifically relevant to the rule. However, we do note that, in decisions outlined in section 3.3.1.3, 'General assessment guidance' has been added to Rule 10.4.3.10, stating "For those activities that require assessment against Policy 10.2.1.X, in assessing whether the activity meets that policy, the Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1." We consider this constitutes acceptance in part of this element of the submissions.

3.9 Wilding Tree Provisions

3.9.1 Policy 10.2.1.6

2497. Policy 10.2.1.6 states: "Require forestry and tree planting to avoid the use of wilding tree species, unless the risk of wilding tree spread into areas of indigenous vegetation can be avoided or, if avoidance is not possible, is insignificant."
2498. This policy is implemented via Rule 10.3.4 Tree Species, which lists those species with a tendency to wilding that must not be used during Forestry or Tree Planting activities. We note that we have changed the name of Tree Planting to Shelterbelts and Small Woodlots, as set out in the Rural Decision.

2499. Submissions were received on Policy 10.2.1.6 as follows:

- *Department of Conservation (DOC)* (OS949.7) sought to retain Policy 10.2.1.6, on the basis that wilding trees can have negative impacts on indigenous biodiversity, natural character, and water quality and quantity.
- *STOP* (OS900.144) and *Forest and Bird NZ* (OS958.24) sought to amend Policy 10.2.1.6 as follows: “Require forestry and tree planting to avoid the use of wilding tree species, unless the risk of wilding tree spread ~~into areas of indigenous vegetation~~ can be avoided or, if avoidance is not possible, is insignificant. Avoid exotic tree planting into areas of indigenous vegetation.” *DOC* supported this amendment; *Geoff Scurr Contracting* opposed it due to concerns about the use of the word “avoid”; and *Federated Farmers* opposed it as it would alter the intent of the policy and unnecessarily complicate it.
- *Federated Farmers* (OS919.25) sought to amend Policy 10.2.1.6 as follows: “Require forestry and tree planting to avoid the use of wilding tree species, unless the risk of wilding tree spread into areas of indigenous vegetation can be avoided or appropriately managed, ~~if avoidance is not possible, is insignificant.~~” *Federated Farmers* supported the intent of the policy, but considered it should focus on ensuring risks from planting are appropriately managed. *HPPC* opposed this submission as they believed “avoidance” must be the standard, while *Forest and Bird* opposed the submission as they believe the amendments inconsistent with the purpose of the RMA and the provisions of the RPS and the 2GP.

2500. The Reporting Officer, Ms Macleod, agreed in part with *STOP* and *Forest and Bird* that, while the policies in the 2GP focus solely on the biodiversity effects of wilding tree spread, this was not the only potential effect. She recommended that two new policies be added to the plan, to manage the risk of wilding tree spread into landscape and coastal character overlay zones, with consequential amendments to Rule 10.4.3.11 (s42A Report, pp.413-416). She did not agree with *STOP* and *Forest and Bird* that Policy 10.2.1.6 should be amended to control wilding tree spread into any area, but recommended an amendment to assessment Rule 10.4.3.11 to clarify that it applies in all cases where a potential wilding species is to be planted.

2501. The Reporting Officer agreed with *Federated Farmers* that the policy wording is excessively strict in relation to the risk of wilding tree “spread”, and recommended that the policy be amended to refer to wilding tree “establishment”. This would recognise that assessment Rule 10.4.3.11 provides for consideration of mitigation measures to prevent wilding tree establishment, and would be in line with the approach to wilding risk under the draft National Environmental Standard for Plantation Forestry (NES-PF).

2502. At the hearing, Ms Nadia Yozin (planning witness) appeared for *DOC*, and tabled evidence which supported the Reporting Officer recommendations to amend Policy 10.2.1.6 and add new policies 10.2.3.12 and 10.2.5.18 (Yozin evidence, p.18).

2503. Ms Lala Fraser appeared for *STOP* and stated “...once one has seen mature unpruned plantations of tall wilding pine covering whole paddocks, not only reducing the grazing but also taking up scarce water and reducing surrounding streams to trickles, one realises the threat these cause. It is always easier to reduce pest plants earlier rather than later” (*STOP* tabled statement, p.2).

3.9.1.1 Decision and Reasons

2504. We accept in part the submissions of *STOP* (OS900.144) and *Forest and Bird NZ* (OS958.24).

2505. We accept that, as outlined in the New Zealand Wilding Conifer Management Strategy, adverse effects of wilding trees are not limited to impacts on biodiversity, but also include reduction in grazing potential, limits on future land-use, visual effects on landscape, effects on water flows, and wild fires. We accept the evidence of the Reporting Officer that the absence of policies relating to the potential effects of wilding trees spreading into landscape and coastal character overlays appears to be an omission, given the reference to that risk in Rule 10.4.3.11, and therefore support the inclusion of the two new policies recommended by the Reporting Officer. We consider that these two policies will assist with the implementation of Objective 10.2.3 and 10.2.5 respectively.
2506. We agree with the Reporting Officer's assessment that Policy 10.2.1.6, combined with the two recommended new policies 10.2.3.12 and 10.2.5.18, and Rule 10.4.3.11 (including recommended amendments), represents appropriate control against wilding tree spread into areas of indigenous vegetation and areas with special landscape values. We do not support the requested amendment of Policy 10.2.1.6 to control wilding tree spread into any area, as such an approach would be inconsistent with the draft NES-PF.
2507. However, we do accept that these provisions do not consider the potential effects on important values that may exist in other areas, such as rural productivity or water yield. In relation to effects on rural productivity, taking into account the principles of natural justice, we consider any amendments to restrict planting of wilding tree species in certain areas to restrict impacts on rural productivity, should be undertaken by way of future Plan review, to enable a full s32 analysis and afford the public the opportunity to comment.
2508. In relation to potential effects on water yield, the control of land use for the maintenance and enhancement of water quantity and quality in water bodies and coastal water is a responsibility of regional councils under s30(c) of the RMA. At the Rural Hearing, the ORC director of policy, planning and resource management, Mr Fraser McRae, indicated the ORC considered these responsibilities had been delegated to territorial local authorities under a triennial agreement, but could not produce formal confirmation of this delegation. We recommend clarification of this position between the two authorities as a matter of relative urgency, to then enable the resource management issues listed under s30(c) to be considered and the appropriateness of any relevant management options formally assessed.
2509. Therefore, in response to these submissions, we have added two new policies 10.2.3.V and 10.2.5.W relating to the risk of wilding tree establishment in landscape and coastal character overlays as follows (attributed to NatEnv 900.144):

Policy 10.2.3.V

Require forestry and shelterbelts and small woodlots to avoid the use of wilding tree species, unless the risk of wilding tree establishment in Outstanding Natural Coastal Character (ONCC), High Natural Coastal Character (HNCC), and Natural Coastal Character (NCC) overlay zones is insignificant.

Policy 10.2.5.W

Require forestry and shelterbelts and small woodlots to avoid the use of wilding tree species, unless the risk of wilding tree establishment in Outstanding Natural Feature (ONF), Outstanding Natural Landscape (ONL) and Significant Natural Landscape (SNL) overlay zones is insignificant.

2510. In conjunction with the addition of these new policies, we have amended the assessment rule for contraventions of the Tree Species performance standard (Rule 10.4.3.11), to add two new matters of discretion – 'effects on natural character of the coast' (to be assessed against new Policy 10.2.3.V) and 'effects on landscape values'

(to be assessed against new Policy 10.2.5.W). In consequence, we have amended the assessment rules for contraventions of this performance standard that are located in the relevant management zone sections (Section 16 Rural Zones, Section 17 Rural Residential Zones and Section 20 Residential Zone) to add links to these new matters of discretion. This involves amendments to Rules 16.9.3.9, 17.9.3.8 and 20.9.3.4. See Appendix 1 (all amendments attributed to NatEnv 900.144).

2511. We accept in part the submission of *Federated Farmers* (OS919.25).
2512. We accept that the draft National Environmental Standard for Plantation Forestry (NES-PF) promotes the use of a Wilding Spread Calculator, which takes into account a number of factors in assessing wilding spread. We agree with the Reporting Officer's assessment that there is a need for the Policy 10.2.1.6 to be as consistent with the draft NES as possible, and also accept that Rule 10.4.3.11 provides for consideration of mitigation measures to prevent wilding tree establishment. We consider the Reporting Officer's recommended amendment, to focus the policy on management of the risk of wilding tree establishment rather than wilding tree spread, better describes the provisions of the draft NES-PF and more accurately reflects the rule it relates to.
2513. In addition, as discussed in section 3.7.7.25, we do not consider it necessary to specify a preference for avoidance of effects in policies with an "effects are insignificant" test. Although this is appropriate for less restrictive effects tests (e.g. "effects are avoided or, if avoidance is not practicable, adequately mitigated"), in our view it is unnecessary in this case, because the "effects are insignificant" test is already appropriately restrictive, without the need to add the preference for avoidance.
2514. Therefore, in response to the submission of *Federated Farmers* (OS919.25), we have amended Policy 10.2.1.6 as follows: "unless the risk of wilding tree ~~spread into establishment in~~ areas of indigenous vegetation ~~can be avoided or, if avoidance is not possible,~~ is insignificant".
2515. We have also made a consequential amendment to Rule 10.4.3.11 to reflect the amended wording of Policy 10.2.1.6.

3.9.2 Rule 10.3.4 Tree Species performance standard and assessment Rule 10.4.3.11

2516. The tree species performance standard (Rule 10.3.4) applies to Forestry and Tree Planting (renamed as Shelterbelts and Small Woodlots) and lists tree species that cannot be planted as a permitted activity. Activities that breach the tree species performance standard are assessed as a restricted discretionary activity under Rule 10.4.3.11, which provides for the assessment of the risk of tree species becoming established beyond the original location of planting and in either ecologically sensitive or important areas or landscape or natural coastal character overlay zones.
2517. Submissions were received on Rule 10.3.4 as follows:
- *Department of Conservation (DOC)* (OS949.20) supported the rule as it provides clarity.
 - *Robert George & Sharron Margaret Morris* (OS355.2), *Timothy George Morris* (OS951.51) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.51) sought that Rule 10.3.4 be deleted as it is too restrictive and does not make provision for future research or changes in demand.
 - *Lindsay Dempster, Nic Dempster, Simon Pointer, James Dempster and Sarah Dempster* (OS1081.1) sought that Rule 10.3.4 be amended to exclude Douglas fir as it can be suitable in areas that are surrounded by grazing.

- *STOP* (OS900.132) and *Forest and Bird NZ* (OS958.76) sought that Rule 10.3.4 be amended to include 11 additional species, including lilac, willow and rowan species that are very invasive and weeds in a range of locations. These submissions were supported by *DOC*, but opposed by *Federated Farmers* and *Waste Management NZ*. *Federated Farmers* consider that some of the proposed species are useful shade and shelter trees on-farm and do not need to be restricted.
 - *STOP* (OS900.77) and *Forest and Bird NZ* (OS958.85) also sought inclusion of *Pinus radiata* in Rule 10.3.4. The same submissions sought to amend assessment Rule 10.4.3.11 to: ensure that the tree species listed in 10.3.4 are prohibited with the exception of Douglas Fir; add strategic objectives and policies; add a new policy that there be no tree planting in areas of indigenous vegetation; remove para (iii)(1) which considers downwind land use including stocking rate. These submissions were opposed by *Federated Farmers*, who thought they go further than appropriate, and *Geoff Scurr Contracting*.
2518. In response to submissions seeking to remove the rule or exclude certain species, the Reporting Officer sought expert advice from Dr Kelvin Lloyd on the appropriateness of the species in the rule.
2519. In evidence, Dr Lloyd (DCC ecological expert) commented that Rule 10.3.4 is appropriate, as several of the wilding tree species listed under it are associated with significant wilding spread into natural areas. He did however consider some amendments to the species listed could be made.
2520. He described the ecology, relative invasiveness, and potential inclusion of each of the species in Rule 10.3.4.
2521. He commented that Douglas fir is present in commercial forestry plantations in Dunedin and that it is spreading into regenerating forest and shrubland in a number of locations. He commented that the spreading vigour of Douglas fir is second only to Contorta pine, but it has a broader habitat range and is capable of invading forest. It is long-lived species that creates sufficient shading at ground level to eliminate any underlying indigenous vegetation. He considered its inclusion under Rule 10.3.4 warranted.
2522. Based on Dr Lloyd's advice, the Reporting Officer did not recommend the removal of Douglas fir from the rule as requested by the submission of *Lindsay Dempster, Nic Dempster, Simon Pointer, James Dempster* and *Sarah Dempster* (OS1081.1). Ms Macleod considered that this and other species with potential for wilding spread should be managed by the 2GP and did not agree that the rule is overly restrictive.
2523. Dr Lloyd commented that while Scots pine is likely to be very uncommon or absent from Dunedin, it is found at a moderate number of sites nationally, and has a moderately high spread risk. It mostly invades non-forest vegetation would be invasive the proposed Rural High Country and Rural Hill Country zones. He considered its inclusion under Rule 10.3.4 warranted (Lloyd evidence, paras 17-18).
2524. In relation to Corsican pine, he noted it has a limited distribution in Dunedin, but that as a cold-hardy tree it is often used for shelterbelts in summer-dry, winter-cold, inland areas. He stated it has resulted in significant wilding conifer spread in depleted grassland and tussock grassland habitats elsewhere and could be invasive in similar habitats in the proposed Rural High Country and Rural Hill Country zones. He considered its inclusion under Rule 10.3.4 warranted (Lloyd evidence, paras 21-23).
2525. He stated that Larch is not very common in Dunedin, but nationally is being controlled at a relatively high number of sites. He noted as a hardy, cold-tolerant tree it is likely to be more common as an amenity tree species in inland parts of Dunedin, and that with moderately high spread risk it could potentially invade natural areas of tussock

grassland, shrubland, and subalpine vegetation in Dunedin. On this basis he considered its inclusion under Rule 10.3.4 justified (Lloyd evidence, paras 28-30).

2526. Dr Lloyd described Contorta pine as having localised distribution in Dunedin, but as actively invading indigenous vegetation and habitats in certain areas and as a major wilding conifer species with a very high spread risk, having the potential to affect large areas of the proposed Rural High Country and Rural Hill Country zones. He noted under the Regional Pest Management Strategy it has 'total control' status outside clearance and containment areas, and that under the Biosecurity Act 1993 it is an 'unwanted organism'. He stated that given this it may not require additional controls under Rule 10.3.4, though he considered that to avoid doubt and given the threat it poses, its inclusion is warranted (Lloyd evidence, paras 13-16).
2527. He considered it was not necessary to include Mountain pine and Dwarf mountain pine in Rule 10.3.4. He commented that Mountain pine has limited distribution in Dunedin. It has moderate spreading vigour and is being controlled at a relatively small number of sites nationally. He stated that it is mainly a problem in gravel and scree habitats, which are very restricted in Dunedin and mainly on conservation land. He explained that while the Dwarf Mountain pine has been planted in the New Zealand high country it has not been as successful as Mountain pine. He noted that it is not being controlled at any of the wilding conifer control sites, and is not known for wilding spread (Lloyd evidence, paras 24-27).
2528. Based on Dr Lloyd's advice, the Reporting Officer recommended that Mountain pine and Dwarf mountain pine be removed from the rule (s42A Report, p.421). Ms Macleod also recommended that Contorta pine be removed from Rule 10.3.4 because this species is managed through the Biosecurity Act, but that a Plan Note be added to clarify that Contorta pine is managed this way. She considered these amendments were within the scope of the submissions of *Robert George & Sharron Margaret Morris* (OS355.2), *Timothy George Morris* (OS951.51) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.51) to delete Rule 10.3.4.
2529. In response to the *STOP* (OS900.77) and *Forest and Bird NZ* (OS958.85) submissions to add new species, the Reporting Officer did not consider that *Pinus radiata* or *Pinus ponderosa* should be added due to their low spreading rigour and high palatability to stock according to the wilding spread risk calculator. In relation to the other species, Ms Macleod again sought expert advice from Dr Lloyd.
2530. Dr Lloyd did not consider it necessary for the rule to list Bishop Pine (based on low spread risk) or Buddleja (as its typical gravel riverbed habitat is uncommon in Dunedin, and because it does not invade indigenous forest) (Lloyd evidence, paras 37-38, 50-51).
2531. He considered that inclusion of Ponderosa Pine and Maritime Pine should be listed as a precautionary approach (based on spread elsewhere in New Zealand) (Lloyd evidence, paras 39-42).
2532. He commented that Sycamore is a significant invasive tree species in Dunedin, more common in urban Dunedin. He stated that shade-tolerant Sycamore can invade and displace early-successional kanuka; that mature trees are often associated with numerous seedlings; and that its shoots regrow from stumps after cutting requiring application of herbicide for successful control. He considered the significant invasive potential and adverse effects of sycamore easily justify its inclusion under Rule 10.3.4 (Lloyd evidence, paras 43-45).
2533. In relation to Hawthorn, Dr Lloyd commented it has become widely dispersed from the sites in which it was originally planted for hedges and is now common in Dunedin; that it is capable of establishing under a kanuka canopy, and can often be found in riparian sites within lowland indigenous forest; and that its thorns can make access

- problematic when it forms dense stands. He considered its invasive ability and wide habitat range easily justifies its inclusion under Rule 10.3.4 (Lloyd evidence, paras 46-47).
2534. He considered inclusion of African boxthorn (*Lycium ferocissimum*), was also justified based on the ecological significance of the coastal habitats that it invades, with records from Long Beach (Blueskin Bay), Hoopers Inlet (Otago Peninsula) and on Quarantine Island (Otago Harbour). He commented it is almost certainly present at other coastal sites, and if uncontrolled is likely to become more abundant over time in coastal habitats (Lloyd evidence, paras 48-49).
2535. He noted that Grey willow and Crack willow have significant invasive potential (in indigenous wetlands and riparian and wetland habitats respectively), and that both species are 'unwanted organisms' with use controlled under the Biosecurity Act 1993. He considered that, despite this, it would be warranted to include both species under Rule 10.3.4 to avoid doubt and to ensure that local landholders and stakeholders are aware of the serious threat it poses (Lloyd evidence, paras 52-55).
2536. He stated that Rowan has scattered occurrence in Dunedin; is reasonably shade-tolerant and can readily invade kanuka forest; and regenerates from cut stumps, requiring application of herbicide for effective control. He considered the the invasive potential of rowan justifies it being included under Rule 10.3.4 (Lloyd evidence, paras 56-57).
2537. Finally, Dr Lloyd described Cotoneaster as having scattered distribution in Dunedin, seldom abundant, and that it does not appear to significantly affect indigenous vegetation and habitats. He stated it is an 'unwanted organism' controlled under the Biosecurity Act 1993, but considered it should be included under Rule 10.3.4 to avoid doubt and to ensure that local landholders and stakeholders are aware of the serious threat that it poses (Lloyd evidence, paras 58-59).
2538. Based on this expert advice, Ms Macleod recommended that the species controlled under the Biosecurity Act should not be added to Rule 10.3.4, but added to the same Plan Note as *Pinus contorta*. She considered that the inclusion of the remaining five species would not be unduly onerous on landowners as these are not forestry species used in Dunedin and are used for other purposes such as shelter, for which other species could be substituted. Ms Macleod recommended that Maritime pine, Sycamore, Hawthorn, Boxthorn and Rowan be added to Rule 10.3.4.
2539. The Reporting Officer recommended rejecting the *STOP* and *Forest and Bird NZ* submissions to amend assessment Rule 10.4.3.11:
- Prohibited activity status for the species in Rule 10.3.4 would be unjustified and overly onerous and out of keeping with the draft NES-PF, as potential adverse effects can be mitigated in certain circumstances.
 - The strategic direction provisions sought are not directly relevant to Rule 10.4.3.11, compared to the objective and policies already recommended for the rule.
 - Ms Macleod did not support the new policy sought by the submitters, for reasons outlined in Section 5.12.1 of the Section 42A Report.
 - Downwind land use is a relevant matter to be considered in assessing wilding spread risk, and is in line with the draft NES-PF (s42A Report, p.427).
2540. At the hearing, Ms Lala Fraser appeared for *STOP* and stated "It is pleasing to see that this threat is being taken seriously and the list of unwanted species has been expanded...once one has seen mature unpruned plantations of tall wilding pine covering whole paddocks, not only reducing the grazing but also taking up scarce water and reducing surrounding streams to trickles, one realises the threat these

cause. It is always easier to reduce pest plants earlier rather than later” (*STOP* tabled statement, p.2).

- 2541. At the hearing, Mr Brian Rance (expert ecologist) appeared for *DOC*, and tabled evidence which supported the inclusion of the nine species recommended for Rule 10.3.4, considered that the species to be excluded as they are managed under the Biosecurity Act should be retained in Rule 10.3.4, and suggested new species to be included in the rule (p.21 of Rance evidence).
- 2542. The Reporting Officer noted that one of the species, Summer Lilac, had been requested by other submitters but was not considered a necessary inclusion. The submitter was referred to the s42A discussion on this species, and on those species controlled under the Biosecurity Act. The other new species suggested by Mr Rance were considered outside the scope of the *DOC* submission (Revised Recommendations Summary, p.6).
- 2543. At the Final Hearing, we asked the Reporting Officer to consider whether, to provide partial relief to the submissions from *STOP* (OS900.77) and *Forest and Bird NZ* (OS958.85), a non-complying activity status would be more appropriate when an activity contravenes the tree species performance standard.
- 2544. The Reporting Officer noted that when making her recommendation in the s42A Report she had not given consideration to the possibility of applying different activity statuses to breaches of the tree species performance standard in overlays, as opposed to in the ‘normal’ management zones.
- 2545. Having reflected on this, she considered that it would be appropriate to apply a more restrictive activity status to breaches in highly sensitive areas, i.e. ASCVs, ONFs, ONCCs and HNCCs. She recommended that non-complying, rather than restricted discretionary, status be applied to breaches in these areas. She considered non-complying status to be more appropriate in these areas, given that their biodiversity, landscape and natural character values make them particularly sensitive to the effects of wilding tree spread. She also noted that, in comparison with other overlays, these areas are relatively limited in size, which limits the costs of applying more restrictive controls within them.
- 2546. She further noted that forestry is non-complying in these areas anyway (regardless of compliance with the tree species standard), so this change would only make a difference in relation to tree planting that is not part of forestry. She continued to recommend restricted discretionary status for breaches of the tree species standard in ONLs and NCCs. Her rationale for this recommendation was that the draft NES-PF recognises that the risk of wilding tree spread is not just determined by tree species, but also by other factors, including the characteristics of the site of planting, and downwind land use. Therefore, there may be instances where tree species listed in Rule 10.3.4 can be planted without resulting in significant effects on protected values. In addition, she was mindful that the costs of amending the activity status for contraventions from restricted discretionary to non-complying would be more significant in ONLs and NCCs than in ONFs, ONCCs, HNCCs and ASCVs, due to the larger spatial extent of these areas, and the fact that the ‘baseline’ activity status for forestry in these areas is restricted discretionary rather than non-complying.

3.9.2.1 Decision and Reasons

- 2547. We note that, as part of our decision set out in section 3.6.1.6, we have amended the term Area of Significant Conservation Value (ASCV) to Area of Significant Biodiversity Value (ASBV). We use the latter term below.
- 2548. We do not support deletion of Rule 10.3.4 as sought by *Robert George & Sharron Margaret Morris* (OS355.2), *Timothy George Morris* (OS951.51) and *Timothy Morris*

(on behalf of *RG and SM Morris Family Trust*) (OS1054.51), accepting the evidence of Dr Lloyd that several of the wilding tree species listed under Rule 10.3.4 are associated with significant wilding spread into natural areas. As discussed in section 3.9.1, we accept that the spread of wilding tree species can have adverse effects on a range of values, including RMA s6 matters like significant biodiversity values, outstanding landscape values and natural coastal character values. Given this, we consider Rule 10.3.4 is appropriate and necessary to implement Objective 10.2.1 and Policy 10.2.1.6, and to respond to higher order policy direction.

2549. We also, however, accept Dr Lloyd's evidence that it is unnecessary for Mountain pine and Dwarf mountain pine to be listed under Rule 10.3.4, and the evidence of the Reporting Officer that it is unnecessary to list Lodgepole/Contorta pine as it is controlled by the Biosecurity Act 1993. We consider these amendments constitute acceptance in part of the submissions of *Robert George & Sharron Margaret Morris* (OS355.2), *Timothy George Morris* (OS951.51) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.51).
2550. We reject the submissions of *Lindsay Dempster, Nic Dempster, Simon Pointer, James Dempster* and *Sarah Dempster* (OS1081.1), accepting Dr Lloyd's evidence that inclusion of Douglas fir under Rule 10.3.4 is warranted.
2551. We accept in part the submissions of *STOP* (OS900.132) and *Forest and Bird NZ* (OS958.76), accepting Dr Lloyd's evidence that Maritime pine, Sycamore, Hawthorn, Boxthorn and Rowan warrant inclusion in Rule 10.3.4. We were also persuaded by Dr Lloyd's evidence that Ponderosa pine should be included in Rule 10.3.4, notwithstanding the Reporting Officer's recommendation to the contrary. In relation to the further submitters' concerns, we note that the evidence of Dr Lloyd does not highlight any of these species as being of particular importance on farms. We accept the Reporting Officer's evidence that it is not necessary to list species controlled under the Biosecurity Act (Grey willow, Crack willow and Cotoneaster).
2552. Given the threats posed by Lodgepole/Contorta pine, Grey willow, Crack Willow, Cotoneaster and other species listed in the Biosecurity Act 1993 but not covered by Rule 10.3.4, we have also included a new Plan Note 10.3D to highlight that some species are classified as unwanted organisms under the Biosecurity Act, as recommended by the Reporting Officer. We note that Dr Lloyd's evidence highlighted the need for Plan users to be aware of the threat posed by species controlled by the Biodiversity Act, and accept the Reporting Officer's evidence that a note to Plan users is the most appropriate way to achieve that.
2553. We accept in part the submissions of *STOP* (OS900.77) and *Forest and Bird NZ* (OS958.85) and have changed the activity status associated with a contravention of Rule 10.3.4 to non-complying in ASBVs, ONFs, ONLs, HNCC/ONCCs and NCCs.
2554. We accept the evidence of the Reporting Officer that ASBVs, ONFs, ONCCs and HNCCs are most sensitive to wilding spread given their high values. Each of these overlay zones is a response to a matter of national significance under s6 of the RMA, and to provisions of pORPS-dv that direct protection or preservation of the values of these areas, and in the case of ONCC/HNCC overlay zones, to Policy 13 of the NZCPS.
2555. We also accept the Reporting Officer's evidence that, given their relatively small geographic coverage and the non-complying activity status of forestry in these areas, they are areas in which the application of a non-complying activity status for tree species performance standard contraventions will in practice have the least regulatory impact.
2556. In relation to ONLs, as noted elsewhere, Policy 2.4.4.2 describes ONLs, like ONFs, as having "exceptional values", and the Reporting Officer notes that protection of both of these areas is a matter of national importance under section 6(b) of the RMA. Policy

3.2.4 of the pORPS-dv (as outlined in Section 3.0 of the Section 42A Report) applies equally to outstanding natural features and outstanding natural landscapes. It states “Protect, enhance and restore outstanding natural features, landscapes and seascapes”, including by “Avoiding adverse effects on those values which contribute to the significance of the natural feature, landscape or seascape” and “Controlling the adverse effects of pest species, preventing their introduction and reducing their spread”.

2557. While Forestry is a restricted discretionary rather than non-complying activity in ONLs, as discussed in section 3.7.5.3, our decision retains Forestry in Policy 10.2.5.6 and subject to the notified “insignificant” policy test. This is in recognition that not only is Forestry identified as a key threat to values in the case of all three ONL overlay zones, there is also little existing forestry within ONLs, and no submissions were received specifically requesting an amendment to the policy test associated with forestry in this overlay zone. We further note that wilding trees and weeds are identified as a key threat to values for the largest of the ONLs, the High Country Outstanding Natural Landscape, with Appendix A.3.2.1.3 noting “Wilding tree and weed spread, if not controlled, can rapidly extend and threaten existing traditional land use patterns and open landscape values.”
2558. In relation to NCCs (a response to s6(a) of the RMA), we note that these areas of the coastal environment have been assessed as having natural character values of at least medium, and that they are relatively restricted in spatial extent, covering just 0.5% of the city's land area. While Forestry is a restricted discretionary rather than non-complying activity in NCCs, as discussed in section 3.7.8, Appendix A5 lists Forestry as a threat to most NCCs, and our decision retains Forestry in Policy 10.2.3.4 and subject to the notified “no more than minor” policy test.
2559. We consider the change to non-complying activity status for contravention of Rule 10.3.4 in both ONLs and NCCs would correctly signal that the planting of these tree species is not anticipated other than in exceptional circumstances. That is an appropriate response to the values of these areas and to higher order policy direction. While we acknowledge, in the case of ONLs, that this will increase costs associated with resource consents for performance standard contraventions across extensive areas of Dunedin, on balance we consider the amendment is particularly necessary in these areas.
2560. In relation to the other points raised in the submissions from *STOP* (OS900.77) and *Forest and Bird NZ* (OS958.85), our decisions are as follows:
 - We accept the evidence of the Reporting Officer that assessing downwind land use is in line with the draft NES-PF, and as discussed in section 3.9.1, consider that it is appropriate for 2GP provisions to be as aligned with the draft NES as possible. We therefore do not support the deletion of para iii (1) from Rule 10.4.3.11 as sought by the submitters.
 - While the Reporting Officer did not consider *Pinus radiata* should not be added based on its low spreading rigour and high palatability to stock according to the wilding spread risk calculator, we observe that Dr Lloyd's evidence supported the listing of *Pinus ponderosa*, which has the same scores. However, we do not consider it appropriate to list the species in the absence of any ecological evidence on the appropriateness of that approach, especially noting its widespread use in plantation forestry.
 - We accept the Reporting Officer's evidence that the strategic direction provisions the submitters sought to reference from Rule 10.4.3.11 set out the methods used in the 2GP, and are not generally directly relevant to the rule. However, we do note that, as a result of other decisions outlined in section 3.3.1.3, ‘General

assessment guidance' has been added to Rule 10.4.3.11, stating "In assessing whether an activity meets Policy 10.2.1.X, Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1." We consider this constitutes acceptance in part of this element of the submissions.

- We do not support including a new policy stating that there should be no tree planting in areas of indigenous vegetation, for the reasons outlined in section 3.3.4.5.
- In relation to the effects on water yield and rural productivity raised by *STOP*, these matters are discussed in section 3.9.1, above.

2561. The amendments to provisions required for this decision, including consequential amendments, are as follows:

- Amend Rule 10.3.4 to delete Lodgepole/contorta pine (*Pinus contorta*), Mountain pine (*Pinus mugo*) and Dwarf Mountain pine (*Pinus uncinata*) (NatEnv 355.2), and to add Ponderosa pine (*Pinus ponderosa*), Maritime pine (*Pinus pinaster*), Sycamore (*Acer pseudoplatanus*), Hawthorn (*Crataegus mongyna*), Boxthorn (*Lycium ferocissimum*) and Rowan (*Sorbus aucuparia*) (NatEnv 900.132).
- Amend Rule 10.3.4 to apply non-complying activity status to contraventions of the Tree Species performance standard by Forestry in ONLs and NCCs, and by Shelterbelts and Small Woodlots in ASBVs, ONFs, ONLs, and coastal character overlay zones (ONCCs, HNCCs and NCCs) (NatEnv 900.77).
- Consequential amendments to assessment rules resulting from the change to the activity status of contraventions of the Tree Species standard: addition of Rules 10.7.2.A, 10.7.2.C, 10.7.2.D, 16.12.6.10-12, 17.12.6.9-11 and 20.12.5.6-7, and deletion of Rule 16.9.6.1.

See Appendix 1.

2562. We also note that, as a clause 16 amendment, the following new note to plan users has been added to Rule 10.3.4:

A range of species including, for example, Lodgepole/contorta pine (Pinus contorta), Grey willow (Salix cinerea), Crack willow (Salix fragilis) and Cotoneaster simonsii, are classified as "unwanted organisms" under the Biosecurity Act 1993. As a result, these species are subject to strict controls under sections 52 and 53 of that Act. Under section 52, no person may communicate, release or otherwise spread any unwanted organism (except: as part of a pest management plan; in an emergency, as provided for in section 150 of the Act; for a scientific purpose authorised by the Minister for Primary Industries; or if an exception is made by a chief technical officer appointed under the Act). Under section 53, owners of unwanted organisms must not cause or permit the sale, propagation, breeding, or multiplication of that organism, except where an exception is made by a chief technical officer appointed under the Act.

3.10 Requests for other amendments

3.10.1 Natural Environment- entire 2GP Section

2563. A number of submissions were received that either related to the entire Natural Environment Section (Section 10), or to new provisions unrelated to existing provisions, as follows.

- The *University of Otago* (OS308.226) sought to retain the Natural Environment Section, as it supports provisions to protect the natural environment.

- *Rebecca Jane Wilde* (OS471.2) sought to replace the entire Natural Environment Section with simpler and less complex provisions, as she considered the Plan excessively onerous and that it would impose unnecessary costs on individuals and ratepayers.
 - *Federated Farmers (FFNZ)* (OS919.19) sought to rewrite the Natural Environment Section to ensure a 'one stop shop' for plan users, to reduce complexity and the need for cross-referencing between sections. The submitter thought that the Natural Environment Section was unwieldy and difficult to understand.
 - *Otago Regional Council* (OS908.14) sought that the nationally significant surf breaks at Karitane and The Spit are recognised in the 2GP, including provisions for managing activities that may affect access to, and the use and enjoyment of, those surf breaks. The submitter thought this necessary to give effect to the proposed RPS and the NZCPS.
2564. In response to the submissions of *Rebecca Jane Wilde* and *FFNZ*, the Reporting Officer, Michael Bathgate, referred to a discussion in the Plan Overview s42A Report of techniques used to communicate complex 2GP information to plan users (s42A Report, section 5.3.1, pp.108-110). He noted that the 2GP employed a drafting protocol which sought to ensure clear and consistent plan wording and clear and direct links between objectives, policies and rules. In response to *Rebecca Wilde's* statement that the Plan does not make adequate provision for cultural and economic considerations, he stated that the 2GP had been prepared in accordance with meeting the purpose of the RMA, which requires consideration of the social, economic and cultural well-being of people and communities, and gave examples of how the development of provisions in the Strategic Direction and Natural Environment Section had achieved this.
2565. In response to *FFNZ*, Mr Bathgate noted that the rationale for the plan structure is contained in the Plan User Guide available on the 2GP and was the subject of the Plan Overview Hearing. With regard to *FFNZ's* request for clarification over whether activities that are exempt from section 10 rules are captured under other rules, he interpreted this to be a reference to Rule 10.3.2 Vegetation Clearance and Rule 10.3.3 Setback from Coast and Water Bodies, which both contain fairly long lists of exemptions. He pointed out that these exemptions do not mean that an activity will not require resource consent under other rules, in order to manage other types of effect. He stated that all district plans must be considered in their totality and it is common place that not needing consent under one rule does not mean consent will not be required under other rules. Mr Bathgate recommended the submissions of *Rebecca Jane Wild* and *FFNZ* be rejected.
2566. In response to *Otago Regional Council*, the Reporting Officer noted that the 2GP manages access to the surf breaks through Objective 10.2.4 (which requires, amongst other things, that subdivision and development activities maintain and enhance access to coastlines), and contributes to protecting surf breaks through Objective 10.2.2 and associated policies (which states that the biodiversity values and natural character of the coast and riparian margins are maintained and enhanced). The Reporting Officer also noted that the 2GP also recognises and provides for high value coastal landscapes, noting that a surf break is listed in Appendix A3.2.2 as one of the values of the Heyward Coast ONL. The Reporting Officer agreed it would also be appropriate to add the two surf breaks as values to be maintained or enhanced in Appendix A5.3.2 Aramoana Spit and A5.3.16 Waikouaiti Beach (s42A Report, section 5.3.1, pp.110-111).
2567. At the hearing we asked the Reporting Officer whether the Karitane surf breaks should be associated with Huriawa rather than the Waikouaiti Beach NCC overlay zone. The Reporting Officer responded that, on reflection, the surf break should be listed as a

value of the Karitane Peninsula ONF overlay zone rather than the Waikouaiti Beach ONCC overlay zone.

3.10.1.1 Decision and Reasons

2568. We accept in part the submissions of *Rebecca Jane Wilde* (OS471.2) and *FFNZ* (OS919.19) insofar as they sought that the Natural Environment Section be amended to reduce complexity.
2569. We agree with the Reporting Officer's evidence that the 2GP has been prepared in accordance with meeting the purpose of the RMA, which requires consideration of the social, economic and cultural well-being of people and communities, and note a range of amendments have been made in response to submissions where specific concerns have been raised, to refine the 2GP provisions in accordance with the provisions of the RMA and other relevant higher order policy direction. We accept that all district plans must be read in their totality and that it is common for there to be a need to cross-reference between sections. We also accept, as discussed in the Plan Overview Decision Report, that the 2GP drafting protocol has sought to standardise provisions to assist with Plan interpretation, and that a range of approaches are planned to communicate complex 2GP information to Plan users.
2570. We note, however, that as discussed in section 3.4, we have restructured vegetation clearance provisions to reduce their complexity and the need for cross-referencing within the Natural Environment Section itself. While these amendments have been made as clause 16 changes, we consider they constitute partial relief for the submissions of *Rebecca Jane Wilde* (OS471.2) and *FFNZ* (OS919.19).
2571. We accept the submission of *Otago Regional Council* (OS908.14). The 2GP promotes the protection of surf breaks through a number of objectives, including Objective 10.2.2 and Objective 10.2.4, and we consider this is appropriate. We agree with the Reporting Officer that the surf breaks represent values associated with Appendix A3.1.7 Karitane Peninsula Outstanding Natural Feature and Appendix A5.3.2 Aramoana Spit (which is a Natural Coastal Character overlay zone) respectively, and should be listed as such. We also consider reference to The Spit should be added to Appendix A5.3.1 Aramoana Beach.
2572. In response to this submission, we have therefore:
- Amended A3.1.7.2(c) to include: "iii. Karitane is a surf break of national significance" {*NatEnv 908.14*}
 - Amended A5.3.1.2 to include "b. The Spit is a surf break of national significance" {*NatEnv 908.14*}
 - Amended A5.3.2.2 to include "b. The Spit is a surf break of national significance" {*NatEnv 908.14*}

3.10.2 Natural Environment Introduction

2573. Submissions on 10.1 Introduction to the Natural Environment Section were as follows.
- *Federated Farmers of New Zealand (FFNZ)* (OS919.20) sought to amend 10.1 Introduction as shown in the table on pp.113-114 of the s42A Report, to recognise that loss of habitat was within an historic context and was not the fault of individual landowners but a result of overall attitudes and the prevailing government directions at the time. *Horticulture New Zealand* (FS2452.78) supported this submission as the changes more appropriately describe the issues. *HPPC* (FS2267.120) and *Forest and Bird* (FS2482.17) opposed the *FFNZ* submission as the terms suggested are not defined and vague. *HPPC* considered that economic return should be balanced with investment in conservation for long term sustainability.

- *Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou* (OS1071.46) sought to amend the Introduction to recognise the importance of high-quality natural resources to Manawhenua and link to the provisions for mahika kai in the Manawhenua Section.
 - *Oceana Gold (New Zealand) Limited* (OS1088.29) sought to amend 10.1 Introduction by changing the 2nd paragraph as follows: "There is a duty function under section 31 to control land use and development for the purpose of maintaining indigenous biological diversity..." and by amending the 7th paragraph as follows: "In response to these issues, the Natural Environment section proposes to focus on managing impacts on (with a preference for maintaining and enhancing where practicable): significant areas of indigenous vegetation and the important habitats of indigenous fauna; the landscape values of outstanding natural features, outstanding natural landscapes, ~~and significant natural features;~~..." The submitter considered that RMA s31 prescribes a function rather than a duty; that maintenance and enhancement under RMA s6 should not be absolute; that areas with minor indigenous vegetation and fauna should not be covered by the provisions; and SNLs should not be managed as if they were ONLs or ONFs.
 - *HPPC* (OS447.14) sought to amend the Introduction by adding to the end of paragraph 2: "The rural environment is a key aspect of the Dunedin character and has been through our history, even for city dwellers. All Dunedin residents are stakeholders in the rural environment and its preservation. This cultural well-being of the current residents in all of Dunedin and the well-being of future generations is, therefore, accorded an equal priority standing with that of rural development interests." and by adding to the 12th bullet point the words "and significant natural landscapes". The submitter stated that the rural environment also contributes significantly to the broader environment of citizens' lives and cultural well-being, and noted that significant natural landscapes had not been included in the Introduction. This submission was opposed by *Howard Saunders* (FS2373.10) who believed it unnecessary and too prescriptive; *FFNZ* (FS2449.55) who believed it impractical and unfair to allow unrestrained third party interest in rural land use; and *Horticulture New Zealand* (FS2452.77) who believed it inappropriate to confer special status through the Plan.
 - *STOP* (OS900.26) and *Forest and Bird* (OS958.16, OS958.17) sought to amend the Introduction as shown in the table on pp.112-113 of the s42A Report, because they believed that threats to Dunedin's natural environment also include fragmentation of habitats, and they believe that the 5th bullet in the 4th paragraph is unclear and implies that compensation should be given. *FFNZ* (FS2449.56, 57) opposed these submissions as the additions are unnecessary and the deletion of the 5th bullet removes an important point about where costs and benefits lie. *Oceana Gold* (FS2439.11) opposed the *Forest and Bird* submission because they believe the recognition of benefits and costs is important.
2574. In response to *FFNZ*, the Reporting Officer, Michael Bathgate, recommended the changes requested to the 'threats' paragraph be made, with some minor changes to provide a balanced view. He did not, however, agree with the changes proposed by the submitter to either the 'key resource management issues' or the 'response to issues' paragraphs as he held the view that it was not necessary to add the word "inappropriate" as a qualifier to the type of land use, development or subdivision activities that may have adverse effects (s42A Report, pp.116-117).
2575. In response to the *Runaka* submission, Mr Bathgate agreed with the submission and recommended an amendment to the paragraph that begins "The natural environment of Dunedin makes an important contribution to..." (s42A Report, pp.117-118).
2576. The Reporting Officer agreed with the first amendment sought by *Oceana Gold* to change "duty" to "function". Mr Bathgate did not by agree with other amendments

- requested by *Oceana Gold* as he did not consider the “maintaining and enhancing” wording is absolute; considers the 2GP has a mandate to protect indigenous biodiversity not just limited to “significant” areas and “important” habitats; and considered the Introduction should refer to SNLs as these are protected by the 2GP (s42A Report, p.118).
2577. The Reporting Officer did not agree with the first amendment proposed by *HPPC* for the same reasons given in section 5.2.7 of the s42A Report, in response to the *HPPC* submission to add a related objective and policies under Strategic Direction 2.3. Mr Bathgate noted a revised recommended amendment to the Rural Section Introduction in response to the same submitter to highlight the value placed on the rural environment by Dunedin’s citizens. Mr Bathgate did agree with the second amendment proposed by *HPPC* to modify the 12th bullet point to include “and significant natural landscapes” (s42A Report, pp.115-116).
2578. Mr Bathgate agreed with *STOP* and *Forest and Bird* that fragmentation of habitats should be included in the Introduction as a threat to the natural environment, and recommended two amendments to this effect. He did not, however, recommend that the 5th bullet in the 4th paragraph be deleted, because he did not agree that simply acknowledging these costs implied that compensation should be considered. In addition, given that s85(1) includes the phrase “...unless otherwise provided for in this Act”, he considered a statement in a district plan cannot result in a liability for compensation that is not set out in the RMA (s42A Report, p.116).
2579. At the hearing, Dr Thorsen (ecological expert) appeared for *Oceana Gold (New Zealand) Limited* and provided evidence which included comments on the Introduction as follows (pp.14-15 of Thorsen evidence):
- Biodiversity is a value in itself and the extraneous word “values” should be removed from “biodiversity values”.
 - A “focus on maintaining” implies that other activities may be inappropriate and does not allow for a mitigation and compensation hierarchy.
 - The bullet point “areas of indigenous vegetation and the habitats of indigenous fauna” implies that all of these will be maintained or enhanced, which would be very restrictive on land use activities and require substantial resources.
 - There should be consistent use of “maintain or enhance” as opposed to “maintain and enhance” as both phrases are used.
2580. The Reporting Officer noted that the first point made by Dr Thorsen in relation to “biodiversity values” is outside the scope of *Oceana Gold*’s submission, and would also make terminology used in the introduction inconsistent with the rest of the plan. The Reporting Officer noted that “maintain and enhance” is not used in the Introduction, but the phrase “maintenance and enhancement” is used twice, and considered that these phrases are appropriate in the contexts in which they appear.
2581. At the hearing, we questioned the Reporting Officer about whether there was sufficient clarity in the 2GP as to the rationale for SNLs. Mr Bathgate agreed that the rationale was not well set out and recommended that the Introduction could be amended under clause 16 to enhance plan clarity by inserting the following after the first sentence of the second paragraph: “...of the RMA. The maintenance and enhancement of amenity values and the quality of the environment is provided for under section 7(c) and (f) of the RMA, which includes the maintenance and enhancement of Dunedin’s significant natural landscapes...” (Revised Recommendations Summary, pp. 55-56).
2582. Mr Craig Werner, representative for *HPPC*, presented a statement supporting amendments to the Natural Environment section, because they were considered essential for:

- preservation of flora and fauna for its sake alone
- strengthening of the Dunedin brand, particularly as pertains to wildlife and the Otago Harbour
- support of Dunedin's tourism industry
- drawing expertise to a 'great small city' where talent wants to live
- preservation of visual amenity, most importantly for current residents, and the recreating Dunedin citizenry.

3.10.2.1 Decision and Reasons

2583. We accept in part the submission of *FFNZ* (OS919.20) and have amended the second bullet point in the paragraph commencing "Threats to Dunedin's natural environment..." to reflect that many landowners are protecting areas of value, as follows:
- "although many landowners actively protect areas of value {NatEnv 919.20} there can at times {NatEnv 919.20} be tensions between the aspirations of landowners for land use and development and the need to protect those areas and habitats".
2584. We accept the Reporting Officer's evidence that this is a more accurate description of current land management than either the notified wording or that suggested by the submitter. We have also amended the third bullet point in the same paragraph in response to this submission as recommended by the Reporting Officer, as we consider the amendment constitutes more succinct and accurate drafting. The amendment reads as follows:
- "maintaining indigenous biodiversity requires ~~more than both~~ {NatEnv 919.20} the protection of sites of especially high biodiversity value. ~~It also involves and~~ {NatEnv 919.20} the growth, creation, ~~and or~~ {NatEnv 919.20} restoration of new or existing sites".
2585. We do not accept the other changes to the Introduction sought by *FFNZ*. We accept the Reporting Officer's evidence that the qualifier "inappropriate" is unnecessary. We do not support insertion of the word "significant" because, as stated elsewhere (e.g. sections 3.3.1.2, 3.4.4.1), we consider that higher order policy direction mandates maintenance or enhancement of indigenous biodiversity beyond areas that are considered significant. We do not consider it necessary to amend the introduction to further discuss the history of habitat loss, as we consider the Introduction is primarily intended to be forward looking, identifying resource management issues and outlining the general 2GP response.
2586. We accept the submission of *Kati Huirapa Runaka ki Puketeraki* and *Te Runanga o Otakou* (OS1071.46) and have inserted the additional sentences recommended by the Reporting Officer into the Introduction to better recognise the importance of high-quality natural resources to Manawhenua. We accept there are strong links between the health of the natural environment and important cultural considerations such as the availability of mahika kai, and consider the Introduction to be an appropriate place to highlight the connection. The amended text reads as follows:
- "Protection of the natural environment is also an essential part of the maintenance and enhancement of the relationship between Manawhenua and their ancestral lands, water, sites, wāhi tūpuna, and other taoka, as recognised in Section 14 of this plan. For instance, high quality natural resources are necessary for the availability of mahika kai." {NatEnv 1071.46}
2587. We accept in part the submission of *Oceana Gold (New Zealand) Limited* (OS1088.29) and have amended the Introduction to reflect that s31 of the RMA prescribes a

function rather than a duty. We consider this more accurately reflects the provisions of the RMA. The amendment is as follows:

- ~~“There is a duty under section 31~~ Section 31 states that it is a function of Council {NatEnv 1088.29} to control land use and development for the purpose of maintaining indigenous biological diversity.”

2588. While we do not support the deletion of the words “significant natural features”, we do accept an amendment (outlined below) to correct the reference to “significant natural landscapes”. In addition, while we do not consider it necessary to outline the finer distinctions in the management of various overlay zones in the Introduction itself, we do accept that the Introduction does not clearly articulate the RMA basis for SNLs, as it does for other Natural Environment provisions. Rather than accepting the deletion requested by the submitter, we support the addition to the second paragraph recommended by the Reporting Officer, and consider this can be added as a clause 16 change.
2589. We do not agree with the other parts of the *Oceana Gold* submission. We accept the Reporting Officer’s evidence that the wording of the paragraph commencing “In response to these issues...” is not absolute, and consider that the inclusion of the words “focus on” means the clause does not preclude the mitigation and compensation hierarchy. While we accept that the paragraph does not reflect the various distinctions in management approach taken for each topic, we do not consider it necessary for the Introduction to reflect the finer detail of provisions in the section. We also do not support inserting the words “significant” or “important”, for the same reason as given in response to *FFNZ*.
2590. We agree with the Reporting Officer’s assessment that the deletion of the word “values” sought by Mr Thorsen is beyond the scope of submissions received. However, we do note that in response to submissions, decisions outlined in sections 3.1.2 and 3.6.1.6 introduce a definition of both “biodiversity” and “biodiversity values”, which clarifies the meaning in both instances. We also accept the Reporting Officer’s evidence that use of the words “maintenance and enhancement” and “maintaining and enhancing” are appropriate in the context in which they are used in the Introduction.
2591. We accept in part the submission of *HPPC* (OS447.14) and have amended the Introduction to refer to “the landscape values of outstanding natural features, outstanding natural landscapes, and significant natural ~~features~~ landscapes {NatEnv 447.14}” as this corrects a drafting error. In addition, we agree with the submitter that the Introduction should be amended to better recognise the social and cultural importance of the natural environment. We acknowledge that amongst other social and cultural functions the natural environment provides amenity and recreational opportunities, and serves to build a sense of identity, and accept that these matters are not canvassed in the Introduction. We do not, however, support the wording requested by the submitter as we consider it emphasises themes that could be interpreted as relating to notification requirements. However, we consider that, by way of alternative relief, acknowledgement of the importance of the natural environment to residents’ social and cultural wellbeing is achieved by amendments to the third paragraph of the Introduction in response to a submission point (OS447.10) from the same submitter, as described in section 3.6.1.4 above.
2592. We have also amended the fourth paragraph to clarify that the sentence relating to urban bush constitutes an example, acknowledging it also serves other environmental functions. Further, we have added a sentence at the end of this paragraph to acknowledge the natural environment (both rural and urban) as a source of recreational opportunities, and that natural character, biodiversity and landscape

values of the natural environment help shape residents' sense of identity. This amendment is as follows:

- For example, in the {NatEnv cl.16} the urban environment, areas of bush contribute significantly to amenity values, as well as providing habitat and ecological corridors for indigenous fauna and serving other environmental functions. Dunedin residents look to the natural environment (both rural and urban) for recreational opportunities, and natural character, biodiversity and landscape values of the natural environment help shape residents' sense of identity. {NatEnv 447.14}

2593. We accept in part the submissions of *STOP* (OS900.26) and *Forest and Bird* (OS958.16, OS958.17) and have amended the Introduction to recognise fragmentation as a threat to the natural environment, as follows:

- "Threats to Dunedin's natural environment include the reduction or loss of habitats due to contamination, disturbance, destruction, fragmentation {NatEnv 900.26} invasive pest species, and surrounding land uses."

2594. We do not agree with the parts of these submissions seeking to delete the 5th bullet in the 4th paragraph. We agree with *Federated Farmers of New Zealand* that the statement articulates a known issue about the distribution of costs and benefits. We also accept the evidence of the Reporting Officer that acknowledging costs does not imply that compensation should be considered, and that a statement in a district plan cannot result in a liability for compensation that is not set out in the RMA.

2595. We considered these amendments to the Natural Environment Introduction in tandem with the submissions of *STOP* (OS900.22, OS900.102) and *HPPC* (OS447.70), which sought similar changes to the Rural Introduction and are discussed in the Rural Decision Report. We consider these changes also constitute partial acceptance and alternative relief in relation to those submissions.

3.10.3 Notification rule

2596. Rule 16.4.3.2 in the Rural Section (Section 16) states that "Applications for resource consent for the following activities will be publicly notified in accordance with section 95A(2) of the RMA:....2. new residential building greater than 60m² in an Outstanding Natural Landscape (ONL);..."

2597. Submissions were received on Rule 16.4.3.2 as follows.

- *Dianne Reid* (OS592.32) and *Pigeon Flat Road Group* (OS717.30) sought that Rule 16.4.3.2 be deleted, as the activity listed in the rule does not involve effects on resources of wider public interest or of national importance.
- *Timothy George Morris* (OS951.47) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.47) sought that Rule 16.4.3.2 be deleted, as it is unnecessarily onerous and adds unnecessary compliance costs and complexity.
- *HPPC* (OS447.137) and *STOP* (OS900.167) sought that Rule 16.4.3.2 be amended so that applications for new residential buildings over 60m² in all landscape and coastal character overlay zones (not just ONLs) and in ASCVs be publicly notified. The submitters considered that the public has the right to know of all consent applications that fail to meet Plan standards, despite the cost to the DCC. These submissions were opposed by *Federated Farmers* (FS2449.376, 377), who considered the proposed approach indiscriminate and resource intensive.

2598. The Reporting Officer, Jane Macleod, stated that new residential buildings over 60m² in Outstanding Natural Landscapes and in other landscape and coastal character

overlays zones can have significant adverse effects on landscape values, but this is not always the case. She agreed with *Dianne Reid*, the *Pigeon Flat Road Group*, *Timothy George Morris*, and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) that, for applications of this kind, a case by case assessment of the effects under section 95A would be preferable to the mandatory notification requirement under Rule 16.4.3.2 (s42A Report, pp.244-245).

2599. At the hearing, *HPPC* tabled a statement, which stated “*HPPC* believes that structures over 60m² certainly have the *potential* for adverse effects and that current residents, rather than staff, are better sensitized to negative impacts caused by structures” (*HPPC* tabled statement, p.1).

3.10.3.1.1 *Decision and Reasons*

2600. We accept the submissions of *Dianne Reid* (OS592.32), *Pigeon Flat Road Group* (OS717.30), *Timothy George Morris* (OS951.47) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.47) and have deleted Rule 16.4.3.2. We accept the Reporting Officer’s evidence that a case-by-case assessment of the effects under section 95A of the RMA would be preferable to mandatory notification.
2601. Accordingly, we reject the submissions of *HPPC* (OS447.137) and *STOP* (OS900.167).

3.10.4 Assessment Rules

2602. This part of this Decision considers general submissions on assessment rules. Submissions on assessment rules that relate to specific provisions (such as performance standards or activities in overlay zones) are considered alongside submissions on those specific provisions in other parts of this Decision.

3.10.4.1 10.4.2 Assessment of all performance standard contraventions

2603. Rule 10.4.2 provides assessment guidance for all contraventions of performance standards.
2604. *Forest and Bird NZ* (OS958.78) supported Rule 10.4.2, with no specific reason given. *Oceana Gold (New Zealand) Limited* (OS1088.49) also supported Rule 10.4.2, particularly the reference to conservation activity.
2605. *HPPC* (OS447.40) and *STOP* (OS900.73) sought to amend Rule 10.4.2 by amending clause (b) as follows: “b. The degree of non-compliance with the performance standard is minor where, for numerically defined performance standards, the deviation is less than 10%” and inserting a new clause (d): “d. The site is owned by a person(s) with a legacy that historically the site or land adjacent to the site was first owned by a grandparent or older direct forbearer and family ownership has been continuous.” The reasons given were that, for clause (b), vague terms such as “minor” should be used with numeric values; and for new clause (d), zoning changes should be avoided unless absolutely necessary, as they are very disruptive to the lives of property owners, especially in cases of long-standing family linkages and identification with the land. These submissions were opposed by *Howard Saunders* (FS2373.20, 59) as they were too prescriptive and the DCC should be impartial in regard to the matters in proposed clause (d); and *Federated Farmers* (FS2449.195, 200) as they go significantly further than appropriate or required.
2606. The Reporting Officer, Michael Bathgate, recommended these submissions be rejected because the proposed guidance that a deviation must be “less than 10%” to be considered minor is inappropriate in an assessment rule as it is an arbitrary threshold. In his view, better outcomes were likely if decision makers had the discretion to make appropriate decisions on each application with appropriate guidance on that assessment provided by the Plan, including through clearly linked and worded

objectives and policies, which in his view was provided by the drafting protocol used for the plan and detail provided in these rules (10.4.3 and 10.4.4). For the proposed new clause (d) in relation to legacy holdings, he did not see the fact that a site may have been in continuous family ownership as a valid RMA reason for treating any application for any of the development activities listed in Rule 10.4 any differently (s42A Report, p.560).

3.10.4.1.1 *Decision and Reasons*

2607. We accept in part the submissions of *HPPC* (OS447.40) and *STOP* (OS900.73). We agree with the Reporting Officer's assessment that continuous family ownership is not a valid RMA reason for treating development activities listed in Rule 10.4 differently from those with other ownership history. We also accept the Reporting Officer's evidence that the suggested amendment to clause (b) appears to be arbitrary, and that decisions about what constitutes minor are better made by way of an assessment of any given proposal against the provisions of the Plan.
2608. However, as discussed elsewhere, we do consider that linking from assessment rule guidance to the design guidelines in Appendix A11 strengthens the assessment framework for contraventions involving assessments of effects on landscape and natural character. As a clause 16 clarification, we have amended assessment rules 10.4.3.6, 10.4.3.7, 10.4.3.8, 10.4.3.9, 10.4.3.10.a, 10.4.4.1 and 10.4.4.2, to state that in assessing effects (on landscape or natural character values, whichever is relevant to the rule), Council will consider the extent to which the development follows the design guidelines in Appendix A11. We consider this constitutes partial alternative relief for the submissions of *HPPC* (OS447.40) and *STOP* (OS900.73).

3.10.4.2 10.4.3 Assessment of performance standard contraventions located in Natural Environment (5.13.2)

2609. Rule 10.4.3 provides for the assessment of contraventions of the esplanade reserves and strips, vegetation clearance, minimum building separation, reflectivity, setback from coast and water bodies and tree species performance standards.
2610. *Otago Regional Council* (OS908.33) sought to amend Rule 10.4.3 to consider effects on water bodies, natural character and natural functioning of water bodies. The submitter stated "that it is important the effects of land based activities on water body values are considered when consent is sought".
2611. In response to the *Otago Regional Council*, the Reporting Officer, Michael Bathgate, agreed that it was important that the effects of land based activities on water body values were considered when consent was sought (s42A Report, pages 561-562). Mr Bathgate noted that assessment Rule 10.4.3.1 for esplanade reserves and strips made specific reference to the water body values in Appendix 10C, under the matter of discretion "effects on biodiversity and natural character values of riparian margins and the coast". He recommended that this assessment rule and Rule 10.4.3.4 (which assesses applications for vegetation clearance within the margins of wetlands, the coast and water bodies) are amended to include guidance on assessing the effects on the adjacent water bodies.

3.10.4.2.1 *Decision and Reasons*

2612. We accept in part the submission of the *Otago Regional Council* (OS908.33) to amend Rule 10.4.3 to consider effects on water bodies, natural character and natural functioning of water bodies.
2613. In relation to effects on natural character, we note that (incorporating amendments discussed in section 3.6.1.6) "Effects on biodiversity values {*NatEnv* 958.60} and the

natural character values of riparian margins and the coast” is listed as a matter of discretion under Rule 10.4.3.1.a (associated with contraventions of the esplanade reserves and strips performance standard), Rule 10.4.3.4 (associated with contraventions of the performance standard controlling vegetation clearance in protected areas) and Rule 10.4.3.10 (associated with contraventions of the setback from coast and water bodies performance standard). We consider in these instances effects on natural character will be considered, as sought by the submitter, but support the Reporting Officer’s recommendation that this be clarified in the ‘General assessment guidance’ associated with Rule 10.4.3.1.a and 10.4.3.4. We also consider, for consistency, that ‘General assessment guidance’ to this effect should also be added to Rule 10.4.3.10.

2614. In relation to effects on the natural function of water bodies, guided by the higher order policy direction referenced by the Reporting Officer in section 3.0 of the s42A Report, and the wording of policies of the 2GP, we consider this to be an element of natural character. We note that Policy 13 of the NZCPS specifies that natural character may include matters such as “natural elements, processes and patterns” and “the natural movement of water...”, and that pORPS-dv Policy 3.1.11 echoes this interpretation. In addition, Policy 10.2.2.5 (referenced from Rule 10.4.3.1.a) lists “the natural functioning of the adjacent sea or water body” as one of “the following...natural character values”.
2615. However, we accept that it would assist Plan users if Rule 10.4.3.4 and Rule 10.4.3.10.a (which do not have the benefit of links to a clarifying policy) were amended to clarify that natural functioning of water bodies is an element of natural character.
2616. We also accept the Reporting Officer’s evidence that it is appropriate the effects of land based activities on water body values are considered when consent is sought. Noting that the water body values in Appendix 10C are already referenced directly from ‘General assessment guidance’ under Rule 10.4.3.1.a, we support the addition of ‘General assessment guidance’ under Rule 10.4.3.4 to reference water body values, and consider this should also be added to Rule 10.4.3.10.a.
2617. In response to this submission, we have therefore made the following amendments:
 - amended Rule 10.4.3.1.a.iii to state “In assessing a change or reduction to the required esplanade reserve or esplanade strip {NatEnv 360.152}, Council will consider:
 1. the effects on the values of the water body as identified in Appendix 10C;
 2. the effects on the natural functioning of the water body;
 3. the effects on other biodiversity values and natural character values; and {NatEnv 908.33}
 4. any other measure proposed to enhance the biodiversity of the riparian or coastal margin and associated water body.”
 - amended Rule 10.4.3.4 to include ‘General assessment guidance’ stating “In assessing a contravention of the of the performance standards for vegetation clearance or indigenous vegetation clearance, Council will consider:
 1. the effects on the values of the water body and the natural functioning of the water body; and
 2. the effects on other biodiversity values and natural character values.” {NatEnv 908.33}
 - amended Rule 10.4.3.10.a to include ‘General assessment guidance’ stating “In assessing a contravention of the setback from coast and water bodies performance standard, Council will consider:

1. the effects on the values of the water body and the natural functioning of the water body; and
2. the effects on other biodiversity values and natural character values.”
{NatEnv 908.33}

2618. In the interests of consistency, we consider it may be beneficial for these clarifications to also be made to other relevant assessment rules, particularly relevant parts of Rule 10.5.3. However, we do not consider there is scope for this, so instead signal it for consideration as part of a future plan review.

3.10.4.3 Rule 10.4.4.5 Sediment control (earthworks standards) assessment rule

2619. Rule 10.4.4.5 assesses any contravention of the sediment control part of the earthworks standard, which states “Earthworks must be undertaken in a way that prevents sediment entering water bodies, stormwater networks or going across property boundaries”.

2620. *STOP* (OS900.79) and *Forest and Bird* (OS958.86) sought to add objectives and policies to Rule 10.4.4.5 as set out in the table on page 562 of the s42A Report, with no specific reason given. These submissions were opposed by *Federated Farmers* (FS2449.206), as they go significantly further than appropriate or required.

2621. The Reporting Officer, Michael Bathgate, recommended both submissions were rejected, noting that the objectives and policies suggested do not have a direct relationship with the rule and, therefore, were not relevant to what the policy and related rule was focused on. Mr Bathgate considered that it would detract from the clarity of this assessment to expand the assessment rule as suggested to consider these other matters (s42A Report, p.563).

3.10.4.3.1 Decision and Reasons

2622. We reject the submissions of *STOP* (OS900.79) and *Forest and Bird* (OS958.86). We accept the Reporting Officer’s evidence that the strategic direction provisions the submitters sought to reference from Rule 10.4.4.5, setting out the methods used in the 2GP, do not have a direct relationship with the rule.

3.10.4.4 10.5.2 Assessment of restricted discretionary activities

2623. Rule 10.5.2 assesses restricted discretionary activities with respect to their effects on the natural environment.

2624. *STOP* (OS900.133) and *Forest and Bird NZ* (OS958.88) supported Rule 10.5.2.1 which assesses earthworks - large scale, but did not give specific reasons for their support.

2625. *Dunedin City Council* (OS360.164) sought to amend Rules 10.5.2.4 and 10.5.2.7 to align with Recreation Zone activity status rules and clarify that large buildings in the recreation zone are included.

2626. *HPPC* (OS447.50) sought to change a number of the assessment rules under Rule 10.5.2 so that they don’t “consider” but “will give precedence to, and be restricted by” the natural character values in Appendix A5 or landscape values in Appendix A3. The submitters state that “The foundation and reason for creating publicly recognized landscape and coastal overlay management zones is that their landscape and character values are to be ‘protected’. Protection cannot be achieved unless what we are trying to preserve and shield from injury is assigned a top priority.” This submission was opposed by *Radio New Zealand Limited* (FS2332.18), who thought it unnecessary; *Howard Saunders* (FS2373.68), who thought the notified wording adequate; and *Federated Farmers* (FS2449.220), as the changes are not effects

based or necessary and will make the rules impractical, unworkable and inconsistent with relevant policies.

2627. *Timothy George Morris* (OS951.19) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.19) sought to amend Rule 10.5.2 to reference Policy 16.2.1.1, without giving specific reasons for this request.
2628. In response to the *Dunedin City Council*, the Reporting Officer noted that other assessment rules under 10.5.2 simply use the phrase “All RD buildings and structures activities”, and rely on these being appropriately linked from activity status tables and assessment rules in other management zones (s42A Report, pp.566-568). Mr Bathgate noted that, in the Plan Overview Hearing, amendments were suggested to better clarify which activities also need to be assessed based on overlay zones through the addition of a plus symbol in the activity status table. He considered this approach would be simpler and clearer than any variation of the proposed amendment in this submission and made a recommendation to this effect. He also noted an error in the drafting of the Recreation Zone activity status table (Rule 20.3.4.4) and recommended a correction of this.
2629. In response to *HPPC*, the Reporting Officer did not recommend acceptance of the submitted wording because ‘general assessment guidance’ in the assessment rules is used to provide information about how something will be assessed generally in terms of the information that will be considered, not about the weight to be given, which should be directed by the wording of objectives and policies. Mr Bathgate did not consider that the assessment component within the Natural Environment section should as a matter of course take precedence over assessment of an application against objectives included elsewhere in the 2GP, nor that the assessment of effects on natural character of the coast or landscape should be restricted to the values listed within the appendices.
2630. In response to the *Morris* family submissions, Mr Bathgate did not support this amendment as it was contrary to the Plan structure to include reference to a management zone policy in a city-wide section. He did, however, understand the concern of the submitter that this objective and policy do not get referenced in the rural zones assessment rules where associated activities (buildings and structures) may need consent because they are in a landscape or natural coastal character overlay. To address this, he recommended adding a row to Rule 16.10.3 (assessment of RD development activities) and Rule 16.10.5 (assessment of RD development activities in an overlay zone, mapped area or affecting a scheduled item) to allow all restricted discretionary assessment to consider the positive effects of an activity in terms of supporting farming or conservation activity.

3.10.4.4.1 *Decision and Reasons*

2631. We accept in part the submission of the *Dunedin City Council* (OS360.164) and have amended Rule 10.5.2.4 and Rule 10.5.2.7 to clarify that they apply to all restricted discretionary buildings and structures activities. Decisions outlined in the Plan Overview Decision Report clarify in the activity status tables the activities that need to be assessed, and in this context we accept the Reporting Officer’s evidence that this approach is simpler and clearer.
2632. Therefore, in response to these submissions we have:
- amended Rule 10.5.2.4 as follows:
~~“New buildings or structures greater than 60m², or additions and alterations that result in a building or structure that is greater than 60m² CFA and/or has any wall longer than 20m~~ All restricted discretionary buildings and structures activities that

are linked to Section 10.5 {NatEnv360.164}

~~All other buildings and structures activities {NatEnv360.164}~~"

- amended Rule 10.5.2.7 as follows:

~~"New buildings or structures, or additions and alterations, that result in a building or structure that is greater than 60m² GFA and/or has any wall longer than 20m All restricted discretionary buildings and structures activities that are linked to Section 10.5 {NatEnv360.164}~~

~~All other structures {NatEnv360.164}"~~

2633. We consider the error in Rule 20.3.4.4 identified by the Reporting Officer can be corrected in response to this submission as follows:

- "New buildings or additions and alterations *that result in a building that is greater than 60m² and less than or equal to 350m² and/or has any wall longer than 20m and does not have any wall longer than 20m* {NatEnv 360.164}"

2634. We reject the submission of *HPPC* (OS447.50). We accept the evidence of the Reporting Officer that 'General assessment guidance' is intended to provide information about the aspects that will be considered, while objectives and policies are intended to indicate how much weight ought to be afforded any given matter.

2635. We accept in part the submissions of *Timothy George Morris* (OS951.19) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.19). We accept the Reporting Officer's evidence that the submitters' suggested amendment is contrary to Plan structure. We also accept that, for the restricted discretionary activities listed in Rules 16.10.3 and 16.10.5 in the Rural Section, any positive effects in terms of supporting farming or conservation activities would be unable to be considered, and that this does not seem appropriate in the context of Objective 16.2.1.

2636. In response to this submission, we have therefore created two new assessment rules (Rule 16.10.3.A and Rule 16.10.5.A), to add a matter of discretion concerning the positive effects of an activity in supporting farming or conservation activity, which includes Objective 16.2.1 as a relevant objective. The amendments are as follows:

A. {NatEnv 951.19}	<u>All restricted discretionary activities listed below</u> {NatEnv 951.19}	<u>a. Positive effects in terms of supporting farming or conservation activity</u> {NatEnv 951.19}	<u>Relevant objectives and policies:</u> <u>i. Objective 16.2.1</u> {NatEnv 951.19}

3.10.4.5 10.5.2.2 Assessment of all subdivision activities

2637. Rule 10.5.2.2 provides for assessment of the effects of all restricted discretionary subdivision activities.

2638. *Dunedin City Council* (OS360.155) sought to amend Rule 10.5.2.2.c.v to improve plan clarity, through spelling out the phrase "esplanade reserve or esplanade strip", which will allow hyperlinking to the definitions of esplanade reserve and esplanade strip.

2639. *STOP* (OS900.134) and *Forest and Bird NZ* (OS958.89) sought to add a number of additional objectives and policies to Rule 10.5.2.2, and to remove clause (ii) and place an amended version of it under "General assessment guidance". The submitters stated that the matters of discretion need to include biodiversity and other objectives and policies should apply. *Forest and Bird NZ* noted that they are seeking deletion of Policy 10.2.1.9 which is referenced in clause (ii). *Federated Farmers* (FS2449.234, 238) opposed these submissions, as the changes are not effects based or necessary

and will make the rules impractical, unworkable and inconsistent with relevant policies.

2640. The Reporting Officer, Michael Bathgate, recommended the *DCC* submission be accepted to improve plan clarity by allowing hyperlinking of “esplanade reserve” (s42A Report, ppp.571-572).
2641. In response to *STOP* and *Forest and Bird*, Mr Bathgate noted that, generally speaking, strategic directions policies mainly get referenced in terms of non-complying activities as they can be helpful in assessing what is contrary to the plan integrity (particularly in terms of ‘out-of-zone’ applications). In his opinion they are not helpful (and probably will cause confusion to plan users) to add as requested by the submitter. He then stated that any indigenous vegetation clearance required as a result of subdivision or subsequent land use activity will be subject to the vegetation clearance Rule 10.3.2, which will separately assess such objectives and policies. The intent of having a matter of discretion for effects on areas of indigenous vegetation and the habitat of indigenous fauna in Rule 10.5.2.2 is to encourage the design of subdivision to take account of existing areas of indigenous vegetation or habitat, for example, in the way that new resultant sites are laid out.
2642. In terms of the request to remove para (ii) and add it under general assessment guidance, Mr Bathgate did not recommend that this amendment was made, as he was not recommending the removal of Policy 10.2.1.9. On that basis, he considered that Policy 10.2.1.9 should remain as a relevant policy in Rule 10.5.2.2.

3.10.4.5.1 Decision and Reasons

2643. We accept the submission of the *Dunedin City Council (DCC)* (OS360.155) to amend Rule 10.5.2.2.c.v, as we agree this will assist in Plan clarity. This amendment is as follows:
- “Council will consider the positive effects for public access provided by the subdivision, including those that are additional to any esplanade reserve or esplanade strip {*NatEnv* 360.155} requirements that apply.”
2644. We accept in part the submission of *STOP* (OS900.134) and *Forest and Bird NZ* (OS958.89).
2645. We accept the Reporting Officer’s evidence that the strategic direction provisions the submitters sought to reference from Rule 10.5.5.2, setting out the methods used in the 2GP, generally do not have a direct relationship with the rule. However, we note that, in decisions outlined in section 3.3.1.3, ‘General assessment guidance’ has been added to assessment rule 10.5.A.1 (all restricted discretionary activities), stating “For those activities that require assessment against Policy 10.2.1.X, in assessing whether the activity meets that policy, the Council will consider whether the area affected meets one or more of the criteria set out in Policy 2.2.3.1.” As Rule 10.5.2.2 requires assessment via Policy 10.2.1.9 as to whether subdivision activity is in accordance with Policy 10.2.1.X, we consider this constitutes acceptance in part of this element of the submissions.
2646. We do not support removal of clause (ii) and the placement of an amended version of it under “General assessment guidance”. As discussed elsewhere, although our decision amends Policy 10.2.1.9, it does not delete it, and we consider it remains relevant as a policy in Rule 10.5.2.2.

3.10.4.6 10.6.2 Assessment of discretionary activities

2647. Rule 10.6.2 (Assessment of discretionary activities) includes the provisions related to assessment of discretionary activities with respect to the topics covered in Section 10 Natural Environment.
2648. *Blackhead Quarries Ltd* (OS874.44) and *Tussock Top Farm Ltd* (OS901.37) sought to remove Rule 10.6.2.3, which assesses mining and landfills as a discretionary activity. While no specific reason was given for this request, these submitters have requested that new mining activity is restricted discretionary, and expansion of existing mining is a controlled activity. *Blackhead Quarries Ltd* (OS874.35) and *Tussock Top Farm Ltd* (OS901.28) also sought to remove Rule 10.6.2.5, which assesses mining and landfills in ONL or SNL overlay zones.
2649. *Timothy George Morris* (OS951.20) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.20) sought to amend Rule 10.6.2 to include consideration of Policy 16.2.1.1, which enables farming, grazing and conservation activities in rural zones.
2650. *HPPC* (OS447.61, OS447.63) and *STOP* (OS900.95, OS900.97) sought to amend rules 10.6.2.4 and 10.6.2.9 to make the test read “not physically possible” for public amenities. The submitters state that “The term 'practicable' can allow higher cost considerations to be an element of consideration. However, all such costs are a fair and acceptable price to protect landscape overlays from public amenities as these are of a less necessary nature than hazards and transportation.” *Federated Farmers* (FS2449.239, 241) opposed the submissions by *STOP*, as the amendments are excessive, inappropriate and overly onerous.
2651. *HPPC* (OS447.62) and *STOP* (OS900.96) sought to amend Rule 10.6.2.5.b and 10.6.2.5.c by inserting the words “effects with less than 10% visible from other properties, roads or public places” into the assessment rules. The submitters stated that “a definition with a numeric measure is required to insure decision-making consistency. In addition, quantifying a measure has the advantage that applicants will be clear about a standard rather than wonder what subjective judgment might be made.” These submissions were opposed by *Federated Farmers* (FS2449.240), who stated that figures like 10% are arbitrary; and *Oceana Gold* (FS2439.34), who thought the “less than 10% visible” requirement is unduly onerous for mining activities which can be large scale and visible.
2652. In response to the *Blackhead Quarries* and *Tussock Top Farm* submissions, the Reporting Officer, Mr Bathgate, noted that the Reporting Officer in the Cross-Plan: Mining Activities s42A Report did not recommend that new mining should be a restricted discretionary activity or the expansion of existing mining a controlled activity (s42A Report, pp.579-581). For that reason, Mr Bathgate did not consider that Rule 10.6.2.3 should be removed; he also considered that it was appropriate to assess the effects of mining on the natural environment, including areas of indigenous vegetation and the habitats of indigenous fauna. Mr Bathgate also did not recommend that Rule 10.6.2.5 be removed as, in his view, it was appropriate that the effects on landscape values were assessed where mining or landfill activity is proposed in either an ONL or SNL overlay zone.
2653. In response to the *Morris* submissions, Mr Bathgate, recommended the submissions be rejected, in line with his same in response to the same submitters in section 3.10.4.4 above, as it is contrary to the 2GP structure to include reference to a management zone policy in a city-wide section. Mr Bathgate considered that partial relief could be given to these submissions by amending the discretionary assessment rule 16.11.2.1 (all discretionary land use activities) in the Rural Section to specifically consider Objective 16.2.1.

2654. In response to the *HPPC* and *STOP* submissions relating to public amenities, Mr Bathgate considered that rules 10.6.2.4 and 10.6.2.9 were in error by including “discretionary public amenities” as there were no public amenities activities that are discretionary, except for two performance standards which become discretionary within a certain range of contravention (namely, light spill and noise). He, therefore, recommended an amendment to remove the reference to public amenities from rules 10.6.2.4 and 10.6.2.9.
2655. In response to the *HPPC* and *STOP* submissions to amend Rule 10.6.2.5.b and 10.6.2.5.c, Mr Bathgate noted that he assumed that the submitters were seeking that only less than 10% of an activity may be visible from outside the site, otherwise resource consent should not be granted. He did not recommend that this amendment was accepted as he considered it to be inappropriate to include an arbitrary threshold in the assessment rule, given that the resource consent process allows the individual circumstances of each application to be considered on a case by case basis.

3.10.4.6.1 *Decision and Reasons*

2656. We reject the submissions of *Blackhead Quarries Ltd* (OS874.44, OS874.35) and *Tussock Top Farm Ltd* (OS901.37, OS901.28) to remove rules 10.6.2.3 and 10.6.2.5. As discussed in the Cross-Plan: Mining Activities Decision Report, we consider a discretionary activity status appropriate for Mining activities. Further, as discussed in section 3.6.5, we consider it appropriate that Mining, as with all discretionary land use and development activities, should be subject to an assessment of effects on biodiversity. However, as discussed in that same section, we consider that new Policy 10.2.1.W provides a more appropriate test for mining and landfill activities, and we note that Rule 10.6.2.3 has been consequentially deleted (with Rule 10.6.2.1 now being the appropriate assessment rule for mining and landfills in rural zones and their effects on biodiversity values).
2657. We do not consider that Rule 10.6.2.5 be removed as we agree with the Reporting Officer’s assessment that effects on landscape values should be assessed where mining or landfill activity is proposed in either an ONL or SNL overlay zone. We do note, however, that as a result of the decision outlined in section 3.7.8.2 to amend the status of Mining in ONLs to non-complying, this rule no longer applies to ONLs.
2658. We accept in part the submissions of *Timothy George Morris* (OS951.20) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.20). We accept the Reporting Officer’s evidence that the submitters’ suggested amendment is contrary to Plan structure. However, we also accept that Objective 16.2.1 is a relevant consideration for discretionary activities listed in Rules 16.11.2 in the Rural Section, and have amended assessment Rule 16.11.2.1.a by including Objective 16.2.1 as a relevant objective as follows:
- “a. Objectives 16.2.1, 16.2.2, 16.2.3, 16.2.4.” {*NatEnv951.20*}
2659. In relation to the submissions of *HPPC* (OS447.61, OS447.63) and *STOP* (OS900.95, OS900.97) seeking to amend rules 10.6.2.4 and 10.6.2.9 we note that, as a consequential change associated with decisions on policy wording outlined in section 3.7.5.2, both rules have been deleted, and affected activities moved to other assessment rules. None of these rules links to policies uses the wording “minimised as far as practicable”, although for public amenities activities in both ONLs and SNLs, the relevant policies provide an alternative “adequately mitigated” policy test for situations in which there are “no practicable alternative locations”. We consider this appropriate given the relatively large spatial extent of these two overlays (26% and 10% of the city’s land area respectively), and the potential need for these activities to establish in these overlay zones for operational reasons, despite not being able to meet the standard policy test for the overlay zone. We do, however, consider that

these amendments constitute acceptance in part of the submissions of *HPPC* (OS447.61, OS447.63) and *STOP* (OS900.95, OS900.97), given the higher bar the amendments set for public amenities activities in ONFs.

2660. We accept the Reporting Officer's assessment that the references to public amenities from rules 10.6.2.4 and 10.6.2.9 appear to be in error as there are no discretionary public amenities activities. We consider the references to public amenities can be removed from rules 10.6.2.4 and 10.6.2.9 as a clause 16 change.
2661. We reject the *HPPC* (OS447.62) and *STOP* (OS900.96) to amend rules 10.6.2.5.b and 10.6.2.5.c. We agree with the assessment that the 10% figure suggested by the submitter is arbitrary, and that it is more appropriate to rely on a case-by-case assessment through the resource consent process, guided by the provisions of the Plan. We would expect that a landscape assessment, as part of the resource consent process, would consider effects from public viewpoints.

3.10.4.7 Rule 10.7 Assessment of non-complying activities

2662. Rule 10.7 provides guidance on the assessment of resource consents for activities that are non-complying, in relation to effects covered by the Natural Environment section. This includes consents involving scheduled ASCVs and in landscape and natural coastal character overlay zones.
2663. *HPPC* (OS447.65) and *STOP* (OS900.99) sought to amend rules 10.7.2.4 and 10.7.2.5 so that these apply to restricted discretionary activities that become non-complying as a result of performance standard contravention. *HPPC* and *STOP* considered these amendments necessary to clarify the types of non-complying activity that the rules apply to. These submissions were opposed by *Vodafone* (FS2076.24, 29), *Chorus* (FS2079.9, 14), *Spark* (FS2146.9, 14) and *PowerNet* (FS2264.9, 14), due to their opposition to blanket non-complying activity rules for network utilities. They were also opposed by *Federated Farmers* (FS2449.245, 247), who stated "It is completely inconsistent with the structure and intent of the RMA to make conditions for non-complying activities the same as those for lesser activities including permitted activities. If the activities could meet permitted activity conditions, the applicant would not need consent. The proposals are illogical, inconsistent and outside the scope of the RMA."
2664. *STOP* (OS900.98) sought to amend Rule 10.7.1.1 so that all non-complying activities must meet performance standards for permitted, restricted discretionary and discretionary land use, development and subdivision activities. This submission was opposed by *Vodafone* (FS2076.30), *Chorus* (FS2079.15) and *Spark* (FS2146.15), who stated "It is not appropriate to pre-determine the specific scope of conditions such as meeting all performance standards for otherwise P, D and RD activities. The reason for seeking consent in the first place may be as the result of not meeting a performance standard. This may be appropriate depending on the particular circumstances." It was also opposed by *Powernet* (FS2264.28), who did not think a blanket non-complying status should apply to network utility activities and structures. It was opposed by *Howard Saunders* (FS2373.62), who stated "Inappropriate wording for the Introduction; guidance where necessary is already in the table." It was also opposed by *Federated Farmers* (FS2449.246), for the same reasons as given in response to *HPPC* (OS447.65) and *STOP* (OS900.99) above.
2665. *Timothy George Morris* (OS951.21) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.21) sought to amend Rule 10.7.2 to include consideration of Policy 16.2.1.1. This was supported by *Geoff Scurr Contracting* (FS2391.20), who considered the recommended amendment appropriate.

2666. In response to *HPPC* (OS447.65) and *STOP* (OS900.99), the Reporting Officer, Michael Bathgate, did not consider it would aid plan clarity to add the amendment, when the 2GP is not guiding all instances of a non-complying performance standard contravention specifically to the Natural Environment section (s42A Report, p.584). Mr Bathgate noted that, for a non-complying activity, any effects on Natural Environment matters may still be considered as part of the assessment of any resource consent.
2667. In response to *STOP* (OS900.98), Mr Bathgate noted that the same request had been made by *HPPC* (OS447.64) and considered on pages 110-111 of the Plan Overview Section 42A Report. Mr Bathgate concurred with the same reasons as given by the Plan Overview Reporting Officer, Dr Anna Johnson, for rejecting this submission.
2668. In response to the *Morris'* submissions, Mr Bathgate did not recommend the amendment was made as it was contrary to the Plan structure to include reference to a management zone policy in a city-wide section. He noted the *Morris'* had made a similar request in terms of RD and D activity assessment rules, for which he did recommend an amendment to give relief to the issue being raised. However, in the case of non-complying activities, he did not make the same recommendation for two reasons. Firstly, positive effects with respect to any of the Plan's objectives can be considered if decision-makers determine them to be relevant. Secondly, in determining something should be treated as non-complying, the Plan has already determined that something should only be granted as a 'true exception' and, therefore, the guidance in related policies and assessment rules is focused on what might constitute a 'true exception'. In his opinion, "Enabling farming, grazing and conservation activity in the rural zones" was not a high enough bar.

3.10.4.7.1 *Decision and Reasons*

2669. We reject the submissions of *HPPC* (OS447.65) and *STOP* (OS900.98). We agree the suggested amendment would not aid plan clarity, given the 2GP is not guiding all instances of a non-complying performance standard contravention to the Natural Environment section specifically, noting that any effects can be considered as part of a non-complying resource consent. As discussed elsewhere, we did not accept submissions seeking insertion of new performance standards including a specification that breaches of these become non-complying.
2670. We reject the submission of *STOP* (OS900.98). As discussed in the Plan Overview Decision Report, we do not consider it necessary for non-complying activities to comply with performance standards. We consider that requiring compliance with these standards may in some cases be inappropriate, and in others nonsensical, and that the relevant performance standards will be considered as part of the permitted baseline assessment in any event.
2671. We reject the submissions of *Timothy George Morris* (OS951.21) and *Timothy Morris* (on behalf of *RG and SM Morris Family Trust*) (OS1054.21). We accept the Reporting Officer's evidence that the amendment sought would be contrary to the Plan structure. We also accept that no amendment is necessary to enable consideration of the objective, given that positive effects with respect to any of the Plan's objectives can be considered if decision-makers determine them to be relevant.

3.11 Landscape Mapping

3.11.1 Background

2672. This section outlines our decisions on requests to amend the spatial extent of landscape overlay zones themselves.
2673. Policy 2.4.4.1 states “Identify and assess natural features and natural landscapes based on the following values:
- a. natural science factors;
 - b. aesthetic values and memorability;
 - c. expressiveness and legibility;
 - d. transient values;
 - e. whether values are shared and recognised;
 - f. value to takata whenua; and
 - g. historical associations.”
2674. Policy 2.4.4.2 states “Classify and map natural features and natural landscapes as:
- a. Outstanding Natural Features (ONFs) and Outstanding Natural Landscapes (ONLs) where features and landscapes have exceptional values; and
 - b. Significant Natural Landscapes (SNLs) where landscapes have values of high significance.”
2675. The Landscape Section 32 Report explained that the boundaries and classification of each landscape overlay zone were determined through a review by Boffa Miskell (*Dunedin Landscape Management Areas Review 2007*) and a series of subsequent reports by landscape architects Mr Michael Moore and Dr Marion Read further assessing and refining landscape areas (Landscape Section 32 Report, Section 5.3, pp.14-18). These latter assessments were based on the ‘Amended Pigeon Bay Criteria’, for which the NZILA Best Practice Note states there is ‘accumulated case law and a level of acceptance of their use as a framework for landscape assessment’.
2676. The Council called Mr Moore and Dr Marion Read, landscape experts, who provided evidence regarding the assessment, values and mapping of landscape overlay zones in the 2GP. Dr Read’s evidence was focussed on the Saddle Hill ONF and SNL, while Mr Moore’s evidence covered all other landscape overlay zones. When paragraph numbers are provided in the text to follow, these relate to paragraphs within the experts’ evidence.
2677. In considering requests to amend the boundaries of landscape and coastal character overlay zones, we have considered:
- submissions and evidence presented;
 - relevant case-law;
 - the criteria outlined in policies 2.4.4.1 and 2.4.4.2;
 - what the 2GP provisions (as amended) permit in the zone subject to the overlay in question;
 - what the 2GP provisions (as amended) permit in the overlay zone, including what is considered fair and reasonable in terms of any restrictions the overlay may impose of private landowners;
2678. A more detailed introduction to landscape overlay zones, their statutory basis and spatial extent, is provided in section 3.7. Our decisions on the strategic directions policies relating to landscape and coastal character overlays are also outlined in section 3.7, along with our decisions on the policy and rule framework for activities in these overlay zones.

3.11.2 Outstanding Natural Feature (ONF) Mapping

2679. Submissions were received on the mapping of three of the ONF overlay zones - the Sandfly Bay, Tunnel Beach and Saddle Hill ONFs. All submissions sought to amend the boundaries of ONF overlay zones to reduce their extent over private properties.

3.11.2.1 Saddle Hill Outstanding Natural Feature

2680. *Tussock Top Farm* (OS901.43) sought to delete Appendix A3.1.14, which was inferred to be a request to remove the Saddle Hill ONF overlay zone.
2681. *Saddle View Estates* (OS458.29) sought to remove Saddle Hill ONF from their properties because the environment, including quarries, is highly modified.
2682. *Peter Macmillan* (OS140.1) sought to move the boundary of the Saddle Hill ONF so that a 'plateau' area on 185, 177, 175, and 187 Saddle Hill Road is wholly within the adjacent Saddle Hill SNL (rather than partly in the ONF). Reasons given included to allow for development on the property, and because he felt that a building further back from the ridgeline would be less visible.
2683. In paras 14-16 of her evidence, Dr Marion Read (landscape architect for DCC) acknowledged that quarrying had permanently modified the Saddle Hill ONF (specifically Jaffray Hill), but stated that that "enough of the hill remains to ensure that the saddle retains its natural form and the hill overall, something close to its natural profile". She noted that Saddle Hill is classified in the New Zealand Geopreservation Index as regionally significant and highly vulnerable. She considered the eastern summit had particularly high values and the feature as a whole "almost iconic status" as a defining Taieri landmark. She considered that the entire hilltop feature should be treated as one as "to do otherwise would be to ignore the importance of the saddle itself, and to cut the taniwha in half". She stated that landscape classification areas do not need to have a completely consistent character or quality, and believed that the entire hill is appropriately classified as an ONF.
2684. In relation to the submission of *Peter Macmillan*, Dr Read considered the pillowy landforms immediately adjacent to the volcanic peaks (the 'plateau' area referred to by the submitter) to be landslide debris from the upper slopes. She stated (para 12) "The slopes dropping from the plateau area are much steeper than the slopes rising from it. Because of this the plateau has a stronger connection to the peak than to the slopes below. For this reason I consider that the boundary, as notified, is drawn in the appropriate location".
2685. Based on the expert landscape evidence of Dr Read, the Reporting Officer recommended that the submissions to amend Saddle Hill ONF overlay zone boundaries be rejected (Section 42A Report, section 5.15.2, page 671).
2686. *Peter & Michelle Macmillan* spoke at the hearing and tabled a statement, including historic and current images of the property. *Mr Macmillan* stated that the most prominent visual area is in the SNL, while the less visual part is in the ONF. The boundary line is halfway through the plateau area but should be at the nape of the hill, at approximately the 350m contour.

3.11.2.1.1 Decision and Reasons

2687. As discussed in section 3.7.2, we consider landscape overlay zones an appropriate 2GP method (responding as they do to both s6 and s7 requirements of the RMA). We also accept that the amended Pigeon Bay criteria are appropriate for the purposes of assessing and classifying landscapes. We note that the boundaries of ONFs were

determined with expert input using this established methodology (noting that criteria are also aligned with those included in the pORPS-dv).

2688. We accept the evidence of Dr Read in relation to both submissions. We note also that aesthetic values, which both submitters have emphasised in their submissions, are one of a number of considerations under the amended Pigeon Bay criteria. Others include natural science factors, memorability, expressiveness and legibility, transient values, whether values are shared and recognised, value to takata whenua and historical associations. We note Dr Read has canvassed a number of these considerations in her evidence and, overall, we accept her assessment that the boundary of the ONF is appropriate as notified. While submitters raised concerns about the constraints that the overlay zones may place on their properties, they did not present any expert landscape evidence.
2689. Our decision is to reject the submissions of *Tussock Top Farm* (OS901.43), *Saddle View Estates* (OS458.29) and *Peter Macmillan* (OS140.1) and to retain the boundary of the Saddle Hill ONF as notified.

3.11.2.2 Sandfly Bay Outstanding Natural Feature

2690. *Robert George & Sharron Margaret Morris* (OS355.19), *Timothy George Morris* (OS951.13) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.13) sought to amend the Sandfly Bay ONF boundary, because they considered the rules associated with the provisions 'overly onerous' and questioned the mapping and consultation. Note that these submissions also sought amendment to the mapping of the Peninsula Coast Outstanding Natural Landscape (ONL) for the same reasons, although specific amendments were not indicated as they were for ONF boundaries. These elements of the submission are discussed under Section 3.11.3 below.
2691. The evidence of Mr Mike Moore (landscape architect for DCC) noted that as a transgressive dune system, the extent of this ONF can be mapped as a matter of fact (para 11). Mr Moore drew on advice from a coastal geomorphologist, Dr. Teresa Konlechner, to confirm the proposed ONF boundary based on the inland limits of the dunal system (paras 12-14).
2692. Dr. Konlechner's advice, quoted directly in Mr Moore's evidence, stated: "While the boundaries in the 2GP maps could be tweaked slightly to more precisely follow the boundaries of the dune system...based on the data we have to hand I feel they appropriately identify the inland limit of wind-blown sand, and hence the dunal system." She further commented: "Any further work would have to comprise ground based investigations of substrate to precisely determine the boundary between wind-blown sand and not. It should also be noted that the dune boundary appears to extend beyond our boundaries in the upper right corner of the dune system in Figure 3.2 (in the submission) and should probably have been included in the Sandfly Bay ONF."
2693. Based on the expert landscape evidence of Mr Moore, the Reporting Officer recommended that the submissions to amend Sandfly Bay ONF overlay zone boundaries be rejected (Section 42A Report, section 5.15.2, page 671).
2694. *Mr Tim Morris* spoke at the hearing and tabled a statement, including images from the submissions showing the amendments sought to the Sandfly Bay ONF and Peninsula Coast ONL overlay zones. *Mr Morris* was concerned about consultation processes and the constraints that may be placed on farming by the overlay zones, including on buildings and vegetation clearance.

3.11.2.2.1 *Decision and Reasons*

2695. Our decision is to reject the submissions of *Robert George & Sharron Margaret Morris* (OS355.19), *Timothy George Morris* (OS951.13) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.13) and to retain the boundary of the Sandfly Bay ONF as notified.
2696. We note that the values and boundaries of the ONF overlay zone was determined with expert input based on the amended Pigeon Bay criteria (aligned with those specified in the pORPS-dv). We accept the evidence supplied by Mr Moore that the boundary follows the extent of the dune system. We accept that further refinement would require ground based investigations of substrate. We note that no expert evidence was presented supporting a contrary view.
2697. We do not consider there is scope for the extension of the ONF suggested in Mr Moore's evidence.
2698. Concerns raised by *Mr Tim Morris* at the hearing were focused on potential implications of the overlay zones for farming operations, particularly in relation to indigenous vegetation clearance. We note that some activities, including Farming, are permitted in all landscape overlay zones. Section 3.4 discusses provisions relating to Indigenous Vegetation Clearance, and outlines a number of amendments, the effect of which is to permit a more types of clearance in most cases, although generally the provisions have become more restrictive in ONFs.

3.11.2.3 Tunnel Beach Outstanding Natural Feature

2699. *Chris Walker* (OS289.5) sought to remove the Tunnel Beach ONF from his property at 281 Hillhead Road, suggesting the edge of the Council reserve and the cliff tops is the obvious extent of the ONF.
2700. The evidence of Mr Mike Moore (landscape architect for DCC) stated that as currently drawn, the Tunnel Beach ONF boundary coincides with the inland boundary of the coastal environment (as defined by a "marked change in slope from gentler undulating slopes above, to steeper coast facing slopes below") (para 18-19). Mr Moore further stated that "the character of the slopes between the cliff tops and the change in slope is of particular importance to the wild and scenic aesthetic values of this section of the coast". He considered the minimal presence and visual impact of built elements and the dominance of natural vegetation patterns meant that the slopes had high naturalness and that an ONF would afford them appropriate protection from inappropriate subdivision, use and development.
2701. Based on the expert landscape evidence of Mr Moore, the Reporting Officer recommended that the submission of *Chris Walker* (OS289.5) to amend Tunnel Beach ONF overlay zone boundary be rejected (Section 42A Report, section 5.15.2, p. 671).

3.11.2.3.1 *Decision and Reasons*

2702. Our decision is to reject the submission of *Chris Walker* (OS289.5) and retain the boundary of the Tunnel Beach ONF as notified.
2703. We note that the values and boundaries of both the ONF overlay zone was determined with expert input based on the amended Pigeon Bay criteria (aligned with those specified in the pORPS-dv). We accept the evidence supplied by Mr Moore that the boundary follows the extent of the coastal environment in this vicinity, and that management of the character of the slopes above the clifftops is important to protection of the values of the ONF. We note that no expert evidence was presented supporting a contrary view, and that the suggested alternative boundary does not appear to be based on any landscape assessment.

2704. We note that this decision does not preclude the submitter from building on his property, as there is an identified building platform located outside the ONF overlay zone.

3.11.3 Outstanding Natural Landscape (ONL) Mapping

2705. Submissions were received on the mapping of the High Country ONL and the Peninsula Coast ONL. These submissions sought to amend the boundaries of the ONL overlay zones to reduce their extent over private properties.
2706. Two submissions sought to include new ONL overlay zones in the 2GP - a new Otago Peninsula ONL, and a new Western Harbour ONL.

3.11.3.1 High Country Outstanding Natural Landscape

2707. *Clutha District Council* (OS686.4) supported the High Country ONL where it adjoins Clutha District near Mahinerangi, as this aligns with the landscape study undertaken for Clutha District.
2708. *Barry James Williams* (OS886.2) and *Strath Taieri Community Board* (OS905.4) sought to remove the High Country ONL Overlay Zone from the Strath Taieri/Middlemarch area. This was inferred from the submissions, which indicated that the submitters did not agree with the overlay zone.
2709. The Reporting Officer recommended the submissions of *Barry James Williams* and *Strath Taieri Community Board* were rejected, as the identification and protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development is a requirement under section 6(b) of the RMA (Section 42A Report, Section 5.15.4, p. 676). The Reporting Officer also noted that this was also an approach that is consistent with Policy 3.2.3 of the pORPS-dv.
2710. *Lancaster Trust* (OS898.1) sought the removal of the ONL from 1553 Hindon Road, Hindon (Lambhill Station). The reasons given were that no justification for this overlay on this property could be found in the supporting documentation, or the Section 32 Report, and that the costs of the ONL outweigh the benefits to landowners.
2711. In relation to this submission, Mr Mike Moore (landscape architect for DCC) explained that, while the extent of the overlay zone in this vicinity was reduced from the landscape overlay in the operative District Plan, in his opinion Taieri Gorge itself is appropriate for inclusion in the 2GP's High Country ONL for the following reasons (para 25):
1. "The Taieri River Gorge is included in the inventory and maps of important geological sites and landforms in the Otago Region (Hayward and Kenny, 1998) as an excellent example of a large, deeply incised, meandering river gorge, of high scenic and aesthetic value;
 2. The gorge is highly expressive of its formative processes and is a visually dramatic and memorable landscape. Naturalness values are modified by the presence of exotic weeds and the presence of the railway but natural landform coherence is high. It has attributes of remoteness and wildness based on the presence of the river, the steep rocky landforms and the minimal presence of built elements (other than the railway);
 3. The gorge has very high shared and recognized values as a scenic corridor and the area included in the ONL is the most natural and scenic part of the gorge. It is noted as an outstanding natural feature and landscape (ONFL) in the Otago Regional Plan: Water;

4. The Taieri River has significance to tangata whenua as indicated by the wahi tupuna notation in the 2GP; and
 5. The gorge has historic heritage values due to the presence of the railway and the associated structures, dating from the early 1890's."
2712. The Reporting Officer recommended that the *Lancaster Trust* submission (OS898.1) was rejected, on the basis of Mr Moore's evidence that an ONL overlay status over part of the property provides for sustainable management of the landscape values of this part of the Taieri Gorge (Section 42A Report, Section 5.15.4, p. 676).

3.11.3.1.1 *Decision and reasons*

2713. Our decision is to reject the submissions of *Barry James Williams* (OS886.2) and *Strath Taieri Community Board* (OS905.4).
2714. We note that the submissions of *Barry James Williams* and the *Strath Taieri Community Board* were not specific and no evidence was produced, thus limiting our ability to give much consideration to the issue raised. As discussed in relation to our decision on Objective 2.4.4, we consider landscape overlay zones an appropriate 2GP method (including ONLs, which respond to the requirements of s6 of the RMA), and the amended Pigeon Bay criteria are appropriate for the purposes of assessing and classifying landscapes. We note that the boundaries of the High Country ONL was determined with expert input using this established methodology (noting that criteria are also aligned with those included in the pORPS-dv).
2715. We also reject the submission of the *Lancaster Trust* (OS898.1).
2716. Having reviewed the Dunedin LMA Review (Boffa Miskell, 2007) and the report 'Dunedin City, Coastal Landscape and Outstanding Natural Landscape boundary mapping' (Moore, 2013), we agree that there is comparatively little discussion in these reports on the landscape values of Taieri Gorge itself, relative to other parts of the Hill Country ONL. Recommendations in the Boffa Miskell report include defining 'Sutton Lowland Tor' as 'Outstanding Landscape'/ 'Rock Reserve, and the Otago Excursion Railway Line as 'Strategic Scenic Corridor', rather than commenting specifically on Taieri Gorge itself. We note that Appendix A3.2.1 includes only limited mention of the Taieri Gorge. In this context, we have some sympathy for the questions of clarity raised by the submitter.
2717. However, the evidence of Mr Moore directly addressed the landscape values of the Taieri Gorge with more detailed discussion specific to Taieri Gorge, and no expert evidence was called providing an alternative view. Given this, we accept the evidence of Mr Moore, that inclusion of the Taieri Gorge is warranted for the reasons he outlines above.
2718. While we do not consider the submission provides scope to clarify Appendix A3.2.1 insofar as it relates to the landscape values of Taieri Gorge, we recommend that updating the values should be considered as part of a future plan change process.

3.11.3.2 *Peninsula Coast Outstanding Natural Landscape*

2719. *Robert George & Sharron Margaret Morris* (OS355.19), *Timothy George Morris* (OS951.13) and *Timothy Morris (on behalf of RG and SM Morris Family Trust)* (OS1054.13) sought to amend the Sandfly Bay ONL boundary, because they considered the rules associated with the provisions 'overly onerous' and questioned the mapping and consultation. These submissions sought specific amendment to the Sandfly Bay ONF boundaries, but in the case of the ONL, no specific mapping amendments were requested.

2720. A number of submissions were received relating to an area of the Peninsula Coast ONL in the vicinity of Centre Road, as follows:
- *Sally Dicey* (OS318.2) sought to amend the ONL boundary so that its south-western extent ends further uphill along Centre Road (past the cluster of houses and small sections which characterize this part of the road), as the area is not particularly natural.
 - *Sally Stewart* (OS484.3) sought to remove the ONL from 11 Centre Road, as it has a General Residential 1 Transition Overlay Zone (GR1TZ) overlay and is surrounded by General Residential 1 zoning. This submission was opposed by *Dale Benson* (FS2116.3) who was concerned about intensification adversely affecting wildlife on Smaill's beach, and *Lloyd McGinty* (FS2479.3) who expressed concern about drainage, stability and loss of rural character.
 - *Christopher Valentine* (OS464.12) and *Kumari Fernando* (OS569.1) sought to amend the ONL to remove the land below 44 Centre Road and to align the western boundary with that in the operative Plan. The submitters referred to supporting documents for the overlay zone which did not identify the area as outstanding and considered the area rural urban in nature.
 - *Karen Valentine* (OS802.1) sought to remove the overlay zone from areas to the west and east of the southern end of Centre Road, because the change has not been identified in the supporting documents and the submitter believes that the overlay would "have a disproportionate effect to what is reasonable land and residential management of small land blocks".
2721. On the question of whether ONL overlays are compatible with GR1TZ areas, Mike Moore (landscape architect for DCC) in his evidence stated "I believe it is clear that they are not, as built form will overwhelm the natural landscape character" (para 35). Mr Moore considered that either the GR1TZ extent or the ONL extent should be amended to ensure that there is no conflict. In his opinion the amended ONL boundary, shown by the yellow line in Figure A4 of his evidence, would be appropriate in this regard.
2722. The matter of the ONL boundary in this area was also traversed in the Urban Land Supply Hearing, in relation to the appropriateness of the GR1TZ proposed for 11 Centre Road. The submissions, Section 42A recommendation and evidence heard on this matter is discussed in detail in the Urban Land Supply Decision Report. We do note, however, that the evidence Mr Moore presented at that Hearing was consistent, stating that while the notified boundary "appropriately enough defines the extent of the area with open rural character, there is no compelling reason as to why the urban / rural interface should not be adjusted to provide for some expansion of urban land supply. The scale of the rural landscape backdrop is such that the adjustment in question is relatively minor, and only the Tomahawk side of the spur, already influenced by urban development, is impacted" (para 13).
2723. On the issue of whether the landscape values of the southern part of Centre Road are consistent with ONL status and the boundary appropriately located, Mr Moore stated (in his Natural Environment Hearing evidence, para 33): "The area in question is the end of a gentle spur landform, terminating in low cliffs at the coast. This spur separates two smaller scale landscapes i.e. those of Tomahawk, which, by the coast, is predominantly urban in character, and Smaill's Beach, which is predominantly rural. At higher levels on this spur and further back from the coast, the outstanding natural landscape values are strongly expressed, in particular the open rural character in which the eroded volcanic physical origins, the brisk coastal climate, and the historic dairy farming heritage landscape is highly coherent. At this spur-end area however, these values are modified by the adjacent urban development, the presence of a significant number of houses and a less coherent vegetation pattern associated both

with the coastal influence and the small lots and associated greater variety in land management regimes.”

2724. Mr Moore provided the following rationale for recommending the exclusion of only the Tomahawk side of the lower spur: “On the northwestern (Tomahawk) side of the spur, to reflect the transition from the area more influenced by surrounding built development, to one in which larger scale rural character and a highly coherent landscape pattern is expressed. On the southeastern (Smaills Beach) side, to include essentially the whole visual catchment of this valley system” (para 34).
2725. On the basis of this expert evidence, the Reporting Officer recommended that the boundary of the Peninsula Coast ONL be amended to match the solid yellow line in the top left of Figure A4 of Mr Moore’s evidence, to exclude the General Residential 1 Transition Overlay Zone Priority 1 area including 11 Centre Road (Section 42A Report, Section 5.15.4, page 674). The Reporting Officer also recommended that the submissions that sought to exclude the Smaills Beach side of the spur from the Peninsula Coast ONL be rejected.
2726. At the hearing, Mr Moore was asked about the perspective toward the spur separating the Tomahawk and Smaills catchments. Mr Moore emphasised that it was looking up from the Smaills side, in particular, where the landscape values should be retained.
2727. *Mr Christopher Valentine* spoke at the hearing and showed images of the area. Mr Valentine cited previous landscape assessment reports which did not indicate any change to the ONL boundary in this location. *Mr Valentine* considered it a significant impact on landowners, stating the area is historically a rural-urban interface, is relatively densely populated, should be rural residential zoning and is modified by earthworks and therefore does not meet criteria for being outstanding.

3.11.3.2.1 *Decision and reasons*

2728. In relation to the ONL in the vicinity of Sandfly Bay, we note *Robert George & Sharron Margaret Morris, Timothy George Morris and Timothy Morris (on behalf of RG and SM Morris Family Trust)* queried the consultation process and the impacts on farming and related activities of the ONL, rather than suggesting specific amendment to the ONL boundaries. We note that the boundary of the Peninsula Coast ONL in this area aligns with the boundary of the Sandfly Bay ONF. We are satisfied with the process undertaken for identifying and assessing the landscape values of the Otago Peninsula, including those used to determine the Sandfly Bay ONF boundary, and thus do not consider any amendment of the ONL boundary necessary (with the exception of boundary changes at Centre Rd, discussed below).
2729. In terms of farming operations, we do not consider the provisions for ONLs would unduly impact on these. We note that Farming is permitted in all landscape overlay zones. Section 3.7.8 discusses provisions relating to Indigenous Vegetation Clearance, and outlines a number of amendments, the effect of which is to permit a more types of clearance in most cases (including in ONLs). In section 3.7.5 of this Decision Report, we discuss changes to policies that provide an alternative policy test for a number of activities (including Buildings and Structures) in ONLs, recognising situations in which there are “no alternative practicable locations” with a lower bar “adequately mitigated” policy test.
2730. In relation to the ONL in the vicinity of Centre Rd, we accept Mr Moore’s evidence that the Outstanding Natural Landscape values are more strongly expressed at higher levels on the spur and further back from the coast, where they are “highly coherent”. We agree with the distinction drawn by Mr Moore between the Tomahawk catchment (with its more modified, predominantly urban character) and the Smaills Beach catchment (which is predominantly rural), and accept that further urban development

can be absorbed in the area as long as it is confined to the Tomahawk side of the spur. We consider the cluster of houses on Centre Road provides an area of demarcation between the two catchments, characterised as it is by the presence of a significant number of houses. As outlined in the Urban Land Supply Decision Report, in the context of this evidence we agree that 11 Centre Road is an appropriate area for residential zoning. We accept the evidence of Mr Moore that this type of development is incompatible with an ONL classification, and as such consider the amendment of the ONL overlay zone boundary should also recognise the existing cluster of houses on the lower reaches of Centre Road, where landscape values are modified. In reaching this decision, we have relied on the evidence of Mr Moore and the images presented to the Hearing by *Mr Valentine*, demonstrating that this is an area where landscape values have been modified by built development.

2731. Our decision is to accept the submission of *Sally Stewart* (OS484.3) and amend the south western boundary of Peninsula Coast ONL to exclude the General Residential 1 Transition Overlay Zone Priority 1 area, including 11 Centre Road (as per the solid yellow line in Figure A4 of Mr Moore's evidence); and to accept in part the submissions of *Sally Dicey* (OS318.2), *Christopher Valentine* (OS464.12) and *Kumari Fernando* (OS569.1), and to amend the boundary of the Peninsula Coast ONL overlay zone to exclude the cluster of houses on the east side of Centre Road extending from 14 to 44 Centre Road.
2732. The amended mapping of Peninsula Coast ONL in the vicinity of Centre Road is shown in Figure 12 below.

Figure 12: Peninsula Coast ONL at lower Centre Road



3.11.3.3 Suggested new Otago Peninsula Outstanding Natural Landscape

2733. *Harboursides and Peninsula Preservation Coalition (HPPC)* (OS447.126) sought to add a new ONL overlay zone for Otago Peninsula. It suggested this would be additional to the Peninsula Coast ONL and would cover much of the area proposed to be North West Peninsula SNL. The submitter was of the opinion that this area should be classified as outstanding because of the area's exceptional values. *Clifton Trust* (FS2202.17) opposed this because the submitter considered that the proposed 2GP zones provided adequate protection. *Robert Charles Duffy* (FS2353.1) opposed the submission in part specifically in regard to his property and the effects of an overlay on development potential. *Howard Saunders* (FS2373.38) opposed the submission of HPPC because it "...shows no consideration for past development of zoning and landscape overlay zones".
2734. In relation to the suggested Otago Peninsula ONL, Mike Moore (landscape architect for DCC) stated that "whilst landscape values are high, they are not outstanding, and that SNL rather than ONL status is appropriate. The area has high cultural and historic association values and significant scenic qualities associated with rural character and landform coherence, but it is gentler, less dramatic and more domesticated than the ocean coast facing side of the peninsula, and has less significant natural character and wild and scenic values" (paragraph 50).
2735. The Reporting Officer relied on this expert evidence to form a view that the area falls short in any assessment (conducted in accordance with the amended Pigeon Bay factors, as described above) required to amend it from an SNL to an ONL overlay

zone, and recommended no addition of an Otago Peninsula ONL in response to this submission (Section 42A Report, Section 5.15.8, p. 715).

2736. *HPPC* tabled a statement at the hearing. The submitter considered that the holistic character of Otago Harbour is ignored by landscape studies, that variation in quality does not mean a broader area should be excluded from outstanding status, that on-going modification to an area is the reason that action is needed, and that the Otago Harbour is unique within New Zealand.

3.11.3.3.1 *Decision and Reasons*

2737. Our decision is to reject the *HPPC* submission (OS447.126) and not add an Otago Peninsula ONL to the 2GP.
2738. We note that the values and boundaries of both the ONL and SNL overlay zones in this area were determined with expert input based on the amended Pigeon Bay criteria (aligned with those specified in the pORPS-dv). We accept the expert evidence of Mr Moore that the values of the suggested ONL are not outstanding, and note no expert evidence was presented offering a different view.
2739. We do note, however, that in response to submissions received and expert evidence heard across several hearings, we have amended the policy framework to provide protection for green breaks between settlements, in order to maintain visual amenity and the identity of individual settlements. This is discussed in more detail in the Urban Land Supply Decision Report.

3.11.3.4 Suggested new Western Harbour Outstanding Natural Landscape

2740. *HPPC* (OS447.127) sought to add a new Western Harbour ONL, extending along the west harbour summits from Signal Hill to Heyward Point, and including Mt Cargill, Mt Holmes, Mt Kettle, Mopanui and Potato Point. The submitter stated that the Otago Harbour surrounds is an area that has exceptional values.
2741. Mike Moore (landscape architect for DCC) provided evidence in response to *HPPC*, noting that he had assessed the suggested ONL in two parts to recognise that the Heyward Coast is a different visual compartment, and has a substantially different character than the harbourside area of the suggested ONL (para 49). Mr Moore summarised his assessment of the first part of suggested ONL as follows: "There are significant natural and cultural values, and whilst parts of it have high aesthetic values, other parts are significantly modified and have more moderate aesthetic qualities. Overall, I believe that the area is too modified and variable in quality to qualify as an ONL" (para 52).
2742. With regard to the second part of the suggested ONL, Mr Moore stated "The Heyward Coast portion of the proposed West Harbour ONL...is a rural, coastal landscape with high naturalness values, high scenic qualities and which is highly expressive of its volcanic geology. It also has significant cultural and social values...I note however that whilst the area currently mapped ONL has the most significant values, I am not sure that making a distinction between the coastal environment and the adjacent hinterland (to the east of the Purakaunui Road spur only) makes much sense in terms of landscape experience and believe that this entire area (as shown in Figure A7) could reasonably be considered outstanding" (para 53).
2743. On the basis of this expert evidence, the Reporting Officer recommended no addition of a Western Harbour ONL on the hill slopes facing the Otago Harbour, but did recommend accepting the *HPPC* submission in part by amending the Heyward Coast ONL (as shown in Figure A7 of Mr Moore's evidence) (Section 42A Report, section 5.15.8, page 717).

2744. HPPC tabled a statement at the hearing which, while it did not mention the suggested Western Harbour ONL specifically, discussed the holistic and unique character of Otago Harbour as set out above in relation to the suggested Otago Harbour ONL.

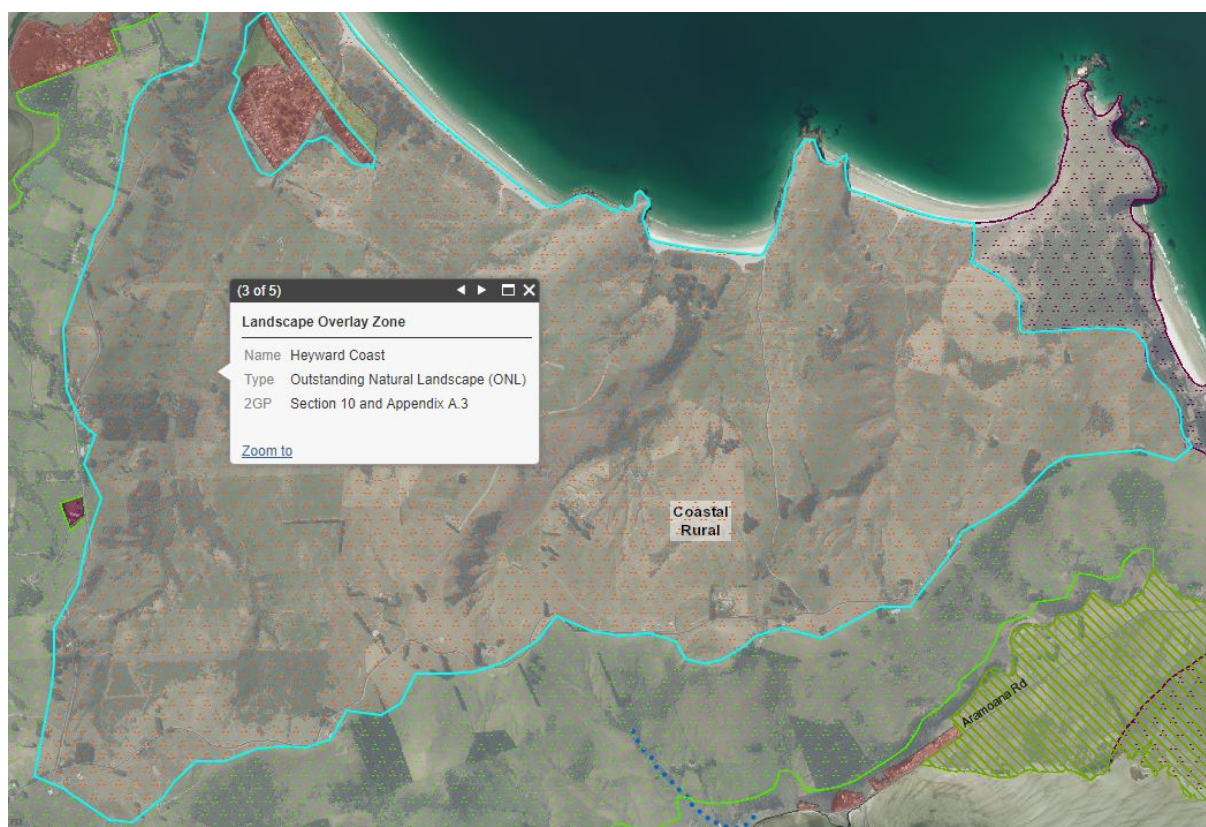
3.11.3.4.1 *Decision and reasons*

2745. Our decision is to accept in part the submission of HPPC (OS447.127), by amending the Heyward Coast ONL boundary as set out in Figure A7 of the evidence of Mr Moore's evidence and consequently amending the Heyward Coast SNL boundary to align with this change. The amended Heyward Coast ONL is shown in Figure 13 below.

2746. We accept the evidence of Mr Moore that the Heyward Coast portion of the suggested West Harbour ONL does indeed hold values consistent with outstanding natural landscape status, but that the remaining (Harbour-facing) area of the suggested West Harbour ONL is too modified and variable in quality to qualify as an Outstanding Natural Landscape.

2747. We do note, however, that in response to submissions received and expert evidence heard across several hearings, we have amended the policy framework to provide protection for green breaks between coastal settlements, in order to maintain amenity and the identity of individual settlements. This is discussed in more detail in the Urban Land Supply Decision Report.

Figure 13: Heyward Coast ONL



3.11.4 Significant Natural Landscape (SNL) Mapping

2748. Submissions were received on the mapping of seven of the eight proposed SNL overlay zones. No submissions were received on the Durdan Hill SNL. These submissions primarily sought to amend the boundaries of the SNL overlay zones to reduce their extent over private properties, although some submissions sought to extend SNL overlay zones. The most submitted-on SNL was the Flagstaff-Mt Cargill SNL. For this SNL, we outlined our decisions area-by-area in the interest of clarity.

3.11.4.1 Flagstaff-Mt Cargill SNL - West Harbour area

2749. Submissions were received relating to the West Harbour part of the Flagstaff-Mt Cargill SNL overlay zone as follows:

- *Rose Laing* (OS48.1) sought the removal of the SNL from the Brick Hill Road/Strawberry Lane area where subdivision consent has been granted as the SNL restrictions could affect site desirability.
- *Bevan Palmer* (OS550.1) sought the removal of the Flagstaff-Mt Cargill SNL overlay from 22A Weka Street, St Leonards as the property is zoned rural residential, and the overlay zone will have a negative effect on enjoyment and use of the property.
- *Margaret and Jeffery Kilpatrick* (OS371.1) considered that the SNL that covers 198 Upper Junction Road is too low, impacting on community growth, and noted that six dwellings have already been established in this area without having a lot of impact on the natural environment.
- *Christopher Kilpatrick* (OS505.2), *Liz McLennan* (OS680.2) and *Amy Popplewell* (OS732.1) all sought that the SNL boundary in the vicinity of 140 Upper Junction Road, 121 Hall Road, and more generally, should remain consistent with the operative Plan boundary of the Flagstaff Mt Cargill LCA, as the SNL puts too many restrictions on property rights.
- *David Middleton* (OS992.2) and *Gavin and Karen Middleton* (OS999.2) sought the removal of the SNL overlay from 147 St Leonards Drive, St Leonards or alternatively a change to SNL provisions to remove restrictions on land use activities. The reasons were that that the property is partially zoned Rural Residential 1 and will act as a bridge between the Rural Residential 1 area on North Road and the Rural Residential area on the Dunedin Port Chalmers Road.

2750. Mike Moore (landscape architect for DCC) provided evidence in response to these submissions, stating that on the West Harbour side of the Flagstaff-Mt Cargill SNL, the lower boundary “has been drawn to reflect the general change in character from more settled / built lower slopes, to more natural / unbuilt upper slopes and largely adopts the 100m contour as indicative of this character change” (para 91).

2751. In response to the submission of *Rose Laing*, Mr Moore stated: “the SNL boundary (following the 100m contour) encompasses the top of a spur form that grades gently to the north and more steeply to the south...the spur top is reasonably visually sensitive and is seen as the top of rural bush covered slopes. On balance it is my opinion that retaining the boundary as currently shown is appropriate and that the SNL overlay in this location would facilitate the sustainable management of the landscape values” (para 93).

2752. In response to *Bevan Palmer*, Mr Moore stated “is unfortunate that the rural-residential zone extends onto the steeper, more visually prominent part of the site (above the existing house) because of the potential effect of Rural-residential development on the characteristic pattern of more rural / natural upper and mid-slope

- areas. In this situation, I believe that it is appropriate to have the overlay covering the site generally, and very important that it covers the upper part of the property in particular” (para 96).
2753. In response to *Margaret and Jeffery Kilpatrick*, Mr Moore stated: “The SNL currently includes spur top areas above steeper partly bush covered slopes...I believe it is appropriate to include this moderately visually sensitive spur top area within the SNL” (para 94).
2754. In response to *Christopher Kilpatrick*, Mr Moore stated: “The landscape in this vicinity is characterised by gentle spur and gully topography covered by largely pastoral grassland with exotic shelter trees and areas of regenerating scrub, much of it native. These are features that contribute positively to the values of the Otago Harbour landscape. The property is located at mid-slope level and is moderately – highly visually prominent from viewpoints around the harbour. It is my assessment that the proposed SNL boundary is more appropriate than the operative District Plan LCA boundary” (para 95).
2755. Regarding the submission of *Liz McLennan*, Mr Moore stated: “The area in question is a relatively visually prominent spur with an open rural character that contributes significantly to the wider landscape of Sawyers Bay and the West Harbour generally. The LCA line excludes the open pastoral land whereas the proposed SNL line includes this above the 100m contour. In my assessment it is appropriate to include the mid-slope rural land in the SNL given its contribution to the landscape values, and that the proposed SNL boundary is more appropriate than the current LCA boundary” (para 97).
2756. In response to *Amy Popplewell*, Mr Moore stated: “I believe that the 100m contour or thereabouts, is generally appropriate in that it delineates the more densely settled lower slope areas (typically characterised by residential development or scattered higher density rural housing set in areas of bush) from less settled rural land (typically characterised by areas of pasture and bushland). The proposal to zone many of the mid-slope areas rural-residential only makes it more important that the SNL zone extends to lower levels, in order to appropriately protect the landscape values” (para 98).
2757. Mr Moore also provided evidence in response to *David Middleton* and *Gavin and Karen Middleton*. Mr Moore stated: “there is no reason to deviate from the proposed SNL boundary in this instance. The proposed boundary has been identified with regard to the character and pattern of the western hill slopes of the harbour generally, and applies here equally. Despite there being a more visually recessive area present within this property, above the 100m contour, this area is still visible from external viewpoints and SNL provisions would still provide a useful tool to ensure sustainable management of the west harbour landscape” (para 99).
2758. On the basis of the expert evidence of Mr Moore, the Reporting Officer did not recommend any amendment to the Flagstaff-Mt Cargill SNL boundaries in the West Harbour area in response to these submissions (Section 42A Report, section 5.15.6, page 696).
2759. At the hearing Ms Emma Peters (resource management consultant) appeared for *Mr David Middleton*, who also called Hugh Forsyth (landscape architect). Ms Peters and Mr Forsyth attended the hearing and tabled statements, with evidence pre-circulated prior to the hearing.
2760. Mr Forsyth's evidence contained a landscape assessment of 147 St Leonards Drive, St Leonards, addressing the context, visibility, character and potential effects of development on the site. Mr Forsyth recommended an adjustment to the SNL boundary to the uphill side of the pasture areas of the site, concluding that this part of

the site was neither natural nor prominent. Mr Forsyth also recommended a number of conditions to be placed on site development.

2761. Ms Peters clarified that the request to move the SNL boundary is independent of a separate submission to rezone the property. Ms Peters sought a structure plan approach to the site based on the list of conditions proposed by Mr Forsyth. This would give more certainty to the landowner than the consent required for development in an SNL.
2762. Mr Moore responded to Mr Forsyth's evidence in a Memorandum attached to the Reporting Officer's Revised Recommendations Summary. Mr Moore considered that the most appropriate place for the SNL boundary was where the slopes steepen below the existing house on the site, and did not recommend any amendment. On the basis of Mr Moore's response, the Reporting Officer did not propose any change to the Section 42A Report recommendation to reject the submissions of *David Middleton* (OS992.2) and *Gavin and Karen Middleton* (OS999.2), noting that the conditions proposed by the submitters are too detailed to include in the 2GP for potential development on a single site, but may be of use were any resource consent application required in future.

3.11.4.1.1 *Decision and reasons*

2763. We reject the submissions of *Rose Laing* (OS48.1), *Bevan Palmer* (OS550.1), *Margaret and Jeffery Kilpatrick* (OS371.1), *Christopher Kilpatrick* (OS505.2), *Liz McLennan* (OS680.2) and *Amy Popplewell* (OS732.1). We accept the evidence of Mr Moore that the SNL boundary reflects a general change in character from more settled / built lower slopes, to more natural / unbuilt upper slopes, around the 100m contour. No expert evidence was presented supporting the submitters' suggested amendments.
2764. Our decision is to reject the submissions of *David Middleton* (OS992.2) and *Gavin and Karen Middleton* (OS999.2) and to retain the SNL overlay zone as notified at 147 St Leonards Drive.
2765. The two landscape experts differed in their assessment of the appropriate location of the SNL boundary at 147 St Leonards Drive. Mr Moore preferred a line where the slopes steepen below the existing house on the site, while Mr Forsyth suggested it could be pulled back to the uphill side of the pasture areas of the site. The evidence of Mr Forsyth also, however, suggested a raft of conditions (relating to building size, height, reflectivity, and other landscape measures) that he considered should be imposed on residential activities on the lower portion of the site, below his suggested SNL line. In our assessment this supports the conclusion that landscape values on the lower portion of the site are indeed sufficiently significant that they warrant inclusion in the SNL. We note the provisions of the 2GP as they relate to SNL overlay zones do not preclude activities from occurring, but rather provide an opportunity for greater consideration of potential effects on landscape values by way of resource consent requirements for various activities, including Buildings and Structures over 60m² and Forestry (the two potential activities mentioned as possible future uses of the site by Ms Peters). To exclude the area in question from the SNL overlay zone would be to preclude assessment of these potential effects and appropriate mitigating conditions from any subsequent resource consent process. Having weighed the evidence, we therefore prefer the evidence of Mr Moore in relation to the location of the SNL in this area.
2766. We note that the submitters' request to amend the zoning of 147 St Leonards Drive to Rural Residential 1, and the structure plan approach promoted by Ms Peters to embed the suggested conditions as part of that, is discussed in the Urban Land Supply Decision Report.

3.11.4.2 Flagstaff-Mt Cargill SNL - Waitati area

2767. Submissions were received relating to the removal or amendment of the boundaries of the Waitati catchment of the Flagstaff-Mt Cargill SNL as follows:

- *David Holdsworth* (OS73.1) sought to extend the SNL overlay zone to include native forest remnants at the bottom of Fergusons Creek and on the east side of Waitati Valley Road, to protect and enhance native forest relics in Waitati Valley and improve the range of the SNL in the Waitati Valley.
- *Graeme and Marie Bennett* (OS298.2) sought amendment to the SNL boundary at 128D Doctors Point Road from the 100m contour to the 110m contour. The reasons given were that this would better reflect the change in character from the more settled/built lower slopes to the more natural/unbuilt upper slopes.
- *Blackhead Quarries Ltd* (OS874.53) sought the removal of the SNL overlay as it relates to Mt Kettle Quarry at 386 Mt Cargill Road. The reason given was that landscape overlays are not appropriate where the quarry exists.
- *Nigel Harwood* (OS96.2) sought to amend the SNL boundary in the Blueskin Road area to the southern side of Green Road. The reason given was that there are enough existing buildings and features that do not comply with the new plan in this area to make the application of the SNL rules unfair to those who have not yet built. This submission was supported by *Danny Ballie* (FS2351.1), for similar reasons as the original submission.
- *Murray Soal* (OS291.2) sought to have the SNL maps changed 'to allow land use' at 427 Waitati Valley Road.
- *Antonie Vandervis* (OS1026.1) sought the removal of the SNL overlay from 69 O'Connell Road, Pigeon Flat. The reasons cited were that the property is not able to be viewed by the general public and the overlay will seriously impact on the economic return from the property.
- *Shane Johnston and Sharee Watts* (OS1067.1) sought that the proposed SNL in the vicinity of 517 Mt Cargill Road should be as per the operative Plan. The reasons given related mainly to objections to associated SNL provisions and restrictions on the use of the land.
- *Bruce Norrish* (OS461.4) sought amendment of the SNL boundary to be consistent with the Environment Court ruling RMA 1032/99 that would then remove the overlay from 171 Pigeon Flat Road.
- *Bruce Bohm* (OS632.3) sought amendment to the boundary of the SNL in the vicinity of 452 Waitati Valley Road so that it coincides with the adjacent CO94 QEII covenant. The reason given was that although the area included within 452 Waitati Valley Road is a visually prominent hill top, it is predominantly covered in 20 year old exotic trees, has two obtrusive power line corridors crossing the area and does not contribute to any amenity value.
- *Graham and Nothburga Prime* (OS399.1) sought that the boundaries of the overlay be redrawn to remove 'excessive impositions' on the working rural landscape and refer to their own property which has the overlay boundary dividing two paddocks. This submission was supported by *Bruce McLennan* (FS2322.1), who also sought that the SNL be amended at 549 Mt Cargill Road to revert to the landscape boundary in the operative Plan.

3.11.4.2.1 Section 42A Report

2768. Based on the expert landscape evidence of Mike Moore (set out below), the Reporting Officer recommended a number of amendments to the Flagstaff-Mt Cargill SNL boundary, in line with Mr Moore's recommended amendments. These amendments were based on the submissions of *Nigel Harwood*, *Murray Soal*, *Antonie Vandervis*,

Shane Johnston and Sharee Watts, Bruce Norrish, Bruce Bohm and Graham and Nothburga Prime. The recommended amendments are set out on page 692 (Section 5.15.6) of the s42A Report as Amendments 4-8, 10.

3.11.4.2.2 *Evidence of Mr Moore*

2769. Mike Moore (landscape architect) provided evidence for DCC in response to these submissions. In response to the *David Holdsworth* submission, he stated: “whilst I agree that there are forest areas within the lower parts of Waitati Valley that are worthy of protection, I am not sure that the SNL, which takes a broader, contextual approach, is the appropriate vehicle to achieve this. I do not believe that the lower, visually recessive valley area, which is also at least moderately modified by rural land use, is legitimately part of the SNL” (para 72).
2770. In response to the *Graeme and Marie Bennett* submission, Mr Moore stated: “the land above the existing built development to the north of 128D Doctors Point Road is steep, and as illustrated in Figure B4.2, quite visually prominent. The SNL boundary in this area has been identified to reflect the existing landscape pattern to a large extent, and to promote retention of an adequately bold rural landscape context to the built development around the southern shore of Blueskin Bay. I can see no justification in terms of landscape character, to adjust the line upward” (para 77).
2771. Mr Moore provided evidence in response to *Blackhead Quarries*, stating: “The quarry clearly modifies the natural character values of the upper slopes of Mt Cutten but is located at the core (the upper hill slopes and ridgelines) of the SNL. Given its highly prominent location and the natural character values associated with the major hill tops and ridgelines generally, it is my recommendation that the SNL overlay should cover this property and that no exclusion should apply” (para 81).
2772. In response to *Nigel Harwood*, Mr Moore stated that: “In this instance however [meaning in the vicinity of Blueskin Road], subdivision has already occurred, the development pattern is already in place and considerable built development has already taken place. The resulting landscape is not one that is a particularly good fit with SNL values as Figure B4.3 illustrates. A significant change in the landscape character occurs at Green Road and I believe that this is the appropriate position for the boundary” (para 75). Mr Moore recommended amending the Flagstaff-Mt Cargill SNL boundary to exclude the built environment as shown in Figure B4:3 of his evidence.
2773. In response to *Murray Soal*, Mr Moore stated: “Murray Soal’s property at 427 Waitati Valley Road is largely below the 300m contour and has only moderate levels of visual prominence generally. In common with other properties in this area, it includes regenerating bush in gully areas that create natural corridors linking with the valley floor and the Waitati River. Whilst these have landscape value, mapping them requires a considerable level of detail and given the visually recessive nature of the area, protection mechanisms other than SNL overlays are likely to be more appropriate” (para 76). Mr Moore recommended amending the Flagstaff-Mt Cargill SNL boundary above 427 Waitati Valley Road to the 300m contour as shown on Figure B5:2 of his evidence.
2774. In response to *Antonie Vandervis*, Mr Moore noted that 69 O’Connell Road is located at the head of the Wetherstons Creek Valley, stating: “I believe that it is appropriate to amend the SNL boundary to exclude land below the 300m contour in this vicinity on the basis that visual prominence is low and natural character values somewhat variable” (para 82). Mr Moore recommended amending the Flagstaff-Mt Cargill SNL boundary in the vicinity of 69 O’Connell Road to the 300m contour line and as shown on Figure B5.1 of his evidence.

2775. In response to the *Shane Johnston and Sharee Watts* submission which relates to a property on the eastern side of the Wetherstons Creek valley, Mr Moore stated that “whilst there are clearly natural character values associated with indigenous bush cover, this area is visually recessive...and it is my recommendation that the SNL overlay is removed from areas below the 300m contour in this vicinity” (para 83). Mr Moore recommended amending the Flagstaff-Mt Cargill SNL boundary in the vicinity of 517 Mt Cargill Road to the 300m contour line and as shown on Figure B5.1 of his evidence.
2776. Mr Moore stated in response to *Bruce Norrish* that “Mr Norrish’s submission refers to a 2002 Environment Court ruling which determined the LCA line. It is my understanding that this ruling does not constrain review of the new landscape overlay under the 2GP...having reviewed the proposed boundary in this area, I consider that the line as currently proposed in the 2GP is unjustifiably inclusive of land that has little natural character value or wider visual prominence (other than from State Highway 1). It is my assessment that the 300m contour represents an appropriate boundary to adopt, as when viewed in broad context, it generally represents a change in character from more to less developed and a change in visual prominence from lower to higher, with increasing elevation. Figure B5.3 illustrates this. I believe that this line is more appropriate, in terms of reflecting landscape character and protecting landscape values at least, than one based on the 420m contour” (paras 78-79). Mr Moore recommended amending the Flagstaff-Mt Cargill SNL boundary in the vicinity of 171 Pigeon Flat Road as shown in Figure B5:3 of his evidence in response to this submission.
2777. In response to *Bruce Bohm*, Mr Moore noted that the property has moderately high visual prominence as viewed from the north but is within the containment of the higher hills to the south, and has variable natural character values as illustrated in Figure B5.2 of his evidence (para 80). Mr Moore concluded “it is my recommendation that this area is excluded from the SNL altogether”. Mr Moore recommended amending the Flagstaff-Mt Cargill SNL boundary in the vicinity of 452 Waitati Valley Road as shown in Figure B5:2 of his evidence.
2778. In response to *Graham and Nothburga Prime*, Mr Moore stated: “The areas included [in the SNL], when considered overall, have at least moderate natural character when considered on a spectrum from pristine to cityscapes, and farmed landscapes are legitimately included...I do not accept that the SNL should be as narrowly defined as they [the submitters] (OS399.1) seem to suggest. However, on review of the boundaries, I have recommended some refinement in a number of places, to exclude areas where justification for inclusion on natural character or visual amenity contribution grounds was not considered sufficiently robust” (paras 111-113). Mr Moore recommended amending the Flagstaff-Mt Cargill SNL boundary in the vicinity of 549 Mt Cargill Road to run along the 150m contour line as shown in Figure B1 of his evidence.

3.11.4.2.3 *Submitter evidence*

2779. *Mr Murray Soal* spoke at the hearing and tabled a statement. *Mr Soal* supported the amendment to the SNL boundary but suggested that it could be redrawn to correspond to their back boundary, as the small area of the property in the SNL is mostly gorse and minimal indigenous growth.
2780. *Mr Nigel Harwood* spoke at the hearing and tabled a statement. *Mr Harwood* supported the s42A Report recommendation to move the SNL boundary to above Green Road.
2781. At the hearing, *Mr Bruce Norrish* tabled a statement, stating that the SNL boundaries are not acceptable for a working farm forestry property, and citing an earlier report by

Mr Moore as part of a resource consent matter that concluded that the landscape was not of outstanding visual quality. Asked about this at the hearing, Mr Moore responded that while the area was not outstanding, it does meet the criteria for an SNL.

2782. *Graeme Bennett* spoke at the hearing and tabled a statement. *Mr Bennett* asked that his rezoning request (part of the Urban Land Supply hearing) be considered either before or alongside any decision on the SNL boundary. *Mr Bennett* said that Mr Moore's assessment of the SNL boundary should be considered alongside Mr Knox's Urban Land Supply evidence that Township and Settlement zoning is compatible with this site.

3.11.4.2.4 *Panel request for further information*

2783. During the deliberations we became concerned with scope for the changes proposed. Given this, and the number of submissions involved, we sought the following from staff:
- i. an assessment of whether the recommended amendments to the mapping of the Flagstaff-Mt Cargill SNL are within the scope of the submissions;
 - ii. a revised assessment by the Council's expert landscape architect where any of the recommended amendments are deemed to be not within scope; and
 - iii. a peer review by an independent landscape architect of any revision to recommended amendments by Council's expert landscape architect.

3.11.4.2.5 *Reconvened Natural Environment hearing*

2784. This further information and evidence was presented at the Reconvened Natural Environment Hearing in the form of:
- a memorandum from Michael Bathgate, Reporting Officer, outlining the scope issues;
 - amended evidence from Mr Moore as to where the boundary of the SNL should be changed, within the scope of submissions; and
 - a peer review of this boundary by Mr Forsyth (landscape architect).
2785. In terms of scope, in addition to specific areas in which scope for amendments is provided by property- or zone-specific submissions, the Reporting Officer considered there is scope to further amend the mapping of the SNL as long as the amendments reflect the intent of the submission of *Shane Johnson and Sharee Watts* (OS1076.1) to return towards (but not beyond) the operative LCA boundary. Mr Bathgate also noted the *Blueskin Resilient Communities Trust (BRCT)* sought to either remove SNL overlay zones from the 2GP, or to amend the Seacliff SNL in the vicinity of Porteous Hill. Mr Bathgate considered scope to make amendments under this submission "uncertain", however. He therefore asked Mr Moore to revise his evidence where his original recommendations had suggested reducing the extent of the proposed SNL beyond the operative LCA boundary, and there was not scope from other submissions for this change.
2786. In the southern part of this area (86 Waitati Valley Road through to 239 Waitati Valley Road), Mr Moore confirmed his recommendation amendment to adopt the 300m contour as the SNL boundary, except for those locations where scope issues dictate that the operative LCA boundary should be retained.
2787. At 305 Waitati Valley Road, Mr Moore's revised evidence recommended the SNL boundary follow the 300m contour, then adopt the operative LCA boundary where it reflects the pasture-bush transition. In the eastern extent of this property and extending into 345 and 427 Waitati Valley Road, Mr Moore recommended extending the SNL (beyond the notified extent in some locations) to incorporate the bush areas

in the vicinity of Fergusons Creek (in response to the submission of *David Holdsworth*).

2788. At 427 Waitati Valley Road, Mr Moore recommended that the SNL boundary largely follows the LCA boundary with the exception of an extension in the Fergusons Creek area. Mr Moore made this recommendation to “coherently align” the SNL boundary with properties on either side, and reflect “the change in character from more modified to more natural areas and/or from lower more visually recessive to higher more visually prominent areas”. The Reporting Officer note this revision results in more of *Mr Soal's* property falling within the SNL compared to the recommendation in Mr Moore's earlier evidence.
2789. North of 427 Waitati Valley Road, Mr Moore recommended that the SNL boundary not follow the LCA boundary, which is not accurately mapped. Instead, he considered the area at lower elevation where landform changes to steep bush-covered slopes provides an appropriate boundary for the SNL.
2790. Mr Forsyth's peer review largely agreed with Mr Moore's evidence and the extent of the SNL line. He noted that the majority of the land in the amended SNL area falls within the category of RMA s7(f), relating to quality of the environment, rather than RMA s7(c) relating to amenity values, as the revised areas that have been included are not widely visible. Mr Forsyth also suggested that any future Plan review could consider the inclusion of an area of mid-valley vegetation.
2791. Mr Bathgate made revised recommendations which:
- amended the SNL boundary on the Rural Residential 1 zoned land and adopted the notified boundary be in the vicinity of 777, 779, 780 Mt Cargill Rd, based on the submission of *G & J Sommers Edgar* (OS889.1, 2)
 - amended the Flagstaff-Mt Cargill SNL boundary as per the revised figure provided by Mr Moore, based on the submissions of *Shane Johnson and Sharee Watts* (OS1076.1) where the boundary is reduced and based on the submission of *David Holdsworth* (OS73.1) where it is increased.
2792. Mr Bathgate did not make a recommendation in respect of the scope of the *BRCT* submission, nor on the suggestion by Mr Forsyth for a future Plan change in respect to the area around Fergusons Creek, but he did note that he believed the Panel had scope should it decide to extend the SNL boundary in this area through the *David Holdsworth* submission.
2793. *David Holdsworth* spoke at the reconvened hearing regarding his property at 305 Waitati Valley Road and his long term plans for the property. *Mr Holdsworth* thought the SNL should exclude pasture areas, and considered the amended boundary to be more pragmatic than the notified SNL boundary. *Mr Holdsworth* considered the forest area near Fergusons Creek highlighted by Mr Forsyth to be of high value.
2794. *Bruce Bohm* spoke at the reconvened hearing and tabled a statement. *Mr Bohm* was concerned about the impacts of an SNL on his property, and considered there was potential for others to use and abuse his land as they saw fit.
2795. *Murray Soal* spoke at the reconvened hearing and tabled a statement. *Mr Soal* questioned the coherence of the landscape in the wider area. *Mr Soal* considered the 300m contour did not mean anything and didn't provide landscape cohesion. *Mr Soal* was concerned about needing to gain resource consent for farming activities such as buildings, structures or forestry.

3.11.4.2.6 *Reconvened Network Utilities hearing*

2796. At the reconvened Network Utility Hearing, BCRT confirmed that their primary concern was the Seacliff SNL and its implications for the establishment of renewable energy generation activities.

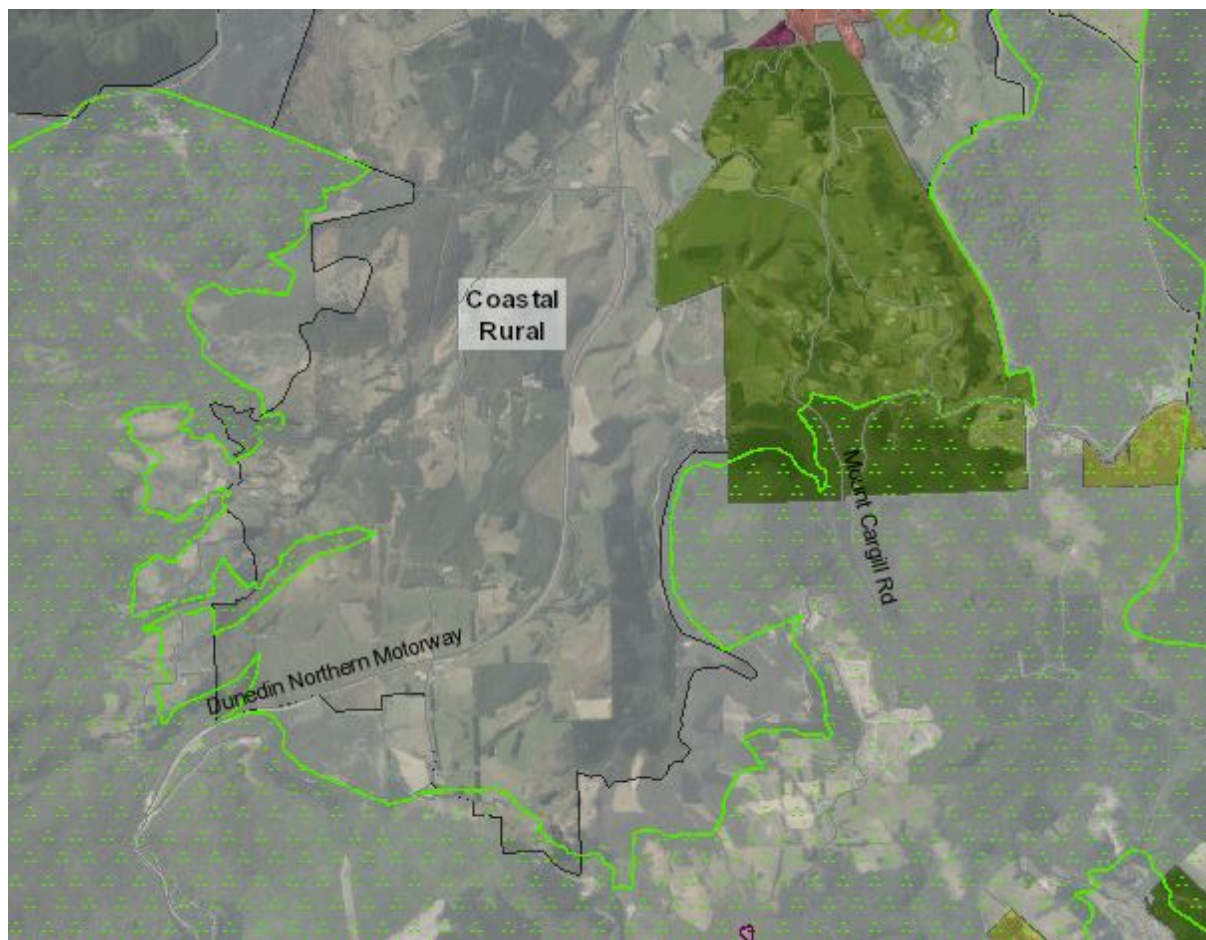
3.11.4.2.7 **Decision and Reasons**

2797. We accept the submission of *Bruce Bohm* (OS632.3), and accept in part the submissions of *G&J Sommers Edgar*, *Nigel Harwood* (OS96.2), *David Holdsworth* (OS73.1) *Shane Johnson and Sharee Watts* (OS1076.1) *Murray Soal* (OS291.2), *Antonie Vandervis* (OS1026.1), *Bruce Norrish* (OS461.4) and *Graham and Nothburga Prime* (OS399.1), and have adjusted the boundary of the Flagstaff-Mt Cargill SNL overlay zone in accordance with the revised recommendations of Mr Moore and Mr Bathgate, at the Reconvened Natural Environment Hearing. In doing so we reject the submissions of *Blackhead Quarries Ltd* (OS874.53) and *Graeme and Marie Bennett* (OS298.2).
2798. We accept Mr Bathgate's assessment that there is scope under the submission of *Shane Johnson and Sharee Watts* (OS1076.1) to return the SNL line towards (but not beyond) the operative LCA boundary, where there is no scope from other property- or zone-specific submissions to do so. We agree with the Reporting Officer's assessment that relying on the submission of *Blueskin Resilient Communities Trust (BRCT)* for scope for further amendments is questionable, particularly in light of the clarifications made by *BRCT* representatives at the Reconvened Network Utilities hearing, and on balance we consider it would not be appropriate to rely on this submission to further amend the boundary of the Flagstaff-Mt Cargill SNL overlay zone beyond the operative LCA boundary.
2799. Mr Moore's revised recommendations were supported by Mr Forsyth's peer review, which gives us a high level of confidence in the landscape evidence (based on the amended Pigeon Bay criteria, which are aligned with those specified in the pORPS-dv).
2800. Some submitters cited lack of visibility of their property as a reason for seeking removal of the SNL overlay zone in their vicinity, or requested that the SNL be pulled back to identified geographic, geological or cultural features. We note that while all of these are relevant parts of a landscape assessment, the amended Pigeon Bay consider a range of matters in determining the boundary of a landscape. We rely on the landscape evidence of Mr Moore and Mr Forsyth in this regard.
2801. We note a number of submitters cited concerns about the impact of the SNL overlay zone on their ability to continue farming operations. We do not consider the SNL provisions will unduly affect farming operations. A range of activities are permitted in SNL overlay zones, including Farming. Some activities that might commonly form part of farming operations (e.g. buildings and structures over 60m², and Forestry) are subject to a restricted discretionary resource consent, however as outlined in section 3.7 of this Decision Report, an alternative lower bar "adequately mitigated" policy test exists for discretionary and restricted discretionary activities in SNLs, recognising situations in which there are "no alternative practicable locations". In addition, section 3.4 discusses provisions relating to Indigenous Vegetation Clearance, and outlines a number of amendments, the effect of which is to permit more types of clearance, including in SNLs.
2802. In relation to the submission of *Graeme and Marie Bennett* (OS298.2), as requested by the submitter we consider this in conjunction with submissions discussed at the Urban Land Supply Hearing. As discussed in the Urban Land Supply Decision Report, we have decided not to extend the Township and Settlement zoning in this area, and

we rely on the evidence of Mr Moore that the SNL overlay zone is in the appropriate location.

2803. In relation to the submission of *Blackhead Quarries Ltd* (OS874.53), we rely on the evidence of Mr Moore that this property is most appropriately retained within the SNL overlay zone.
2804. While we consider there is scope to extend the SNL overlay zone to include the mid-valley bush area around Fergusons Creek identified by Mr Forsyth as a possible addition, we were not convinced that there were strong landscape reasons to do so.
2805. The amended mapping of the Flagstaff-Mt Cargill SNL in the upper Waitati Valley is shown in Figure 14 below. This figure shows the SNL at a very broad scale, and we suggest that Plan users will need to consult the 2GP maps to ascertain the mapping of the SNL at an individual property level.

Figure 14: Flagstaff-Mt Cargill SNL at Waitati Valley



3.11.4.3 Flagstaff-Mt Cargill SNL - North East Valley/Leith Valley areas

2806. Submissions were received relating to the removal or amendment of boundaries of the North-East and Leith Valley parts of the Flagstaff-Mt Cargill SNL as follows:

- *Barbara and Donald McCabe* (OS251.2) sought the removal of the SNL overlay from the area of 122 Campbells Road, as the area isn't in its natural state and the terrain modifications and built structures seem at odds with SNL status.
- *Stephen Gregory Johnston* (OS1030.4) sought the removal of the small area of SNL overlay at 55 Patmos Avenue, with no specific reason given.
- *Shane Carter* (OS180.2) sought the removal of the SNL overlay from 191 Norwood Street, Normanby as the property is a mix of pasture, gorse, and various plantations of *Macrocarpa*, Pine and *Eucalyptus* trees. The property is not visually prominent and has no distinctive natural landforms or areas of indigenous vegetation.

2807. In response to *Barbara and Donald McCabe*, Mr Moore stated: "This area is part of the rural landscape context to urban Dunedin and in particular, North-east Valley and Opoho. It is highly visually prominent and has natural character values associated with coherent natural landform and areas of regenerating bush. In my assessment, the SNL overlay in this area is appropriate" (para 107).

2808. In response to *Shane Carter*, Mr Moore stated: "I believe that there is some validity to his assertions. The valley divides into a number of headwaters at this point and much of 191 Norwood Street has a recessive aspect when viewed from lower parts of North-east Valley. I agree too that the character of the property is such that natural landscape values are not of great significance. This property is near the point where the proposed SNL boundary changes from adopting the 100m contour to the 160m contour, and an alternative whereby adoption of the 160m contour was extended further westward would be an acceptable alternative in my opinion. To the southwest of this property the SNL boundary (at the 100m contour) encompasses an area of indigenous bushland which I believe is appropriately included, along with the adjacent more visually prominent part of 191 Norwood St. Figure B6 illustrates my recommendation for modification to the boundary" (para 105).
2809. In response to *Stephen Gregory Johnston*, Mr Moore stated that "In my assessment there is no particular justification for removal of the SNL from 55 Patmos Road. If anything, given the visual prominence of this area from residential viewpoints in the Glenleith area, combined with the rural/natural character attributes, it may have been more appropriate that the boundary was drawn lower. On the other hand, it could be argued that the state highway forms a more meaningful boundary in this particular location given the narrowness of the land between the proposed boundary and the motorway. Overall, it is my conclusion that retaining the boundary as shown currently and following the 200m contour, is the best fit with the mapping rationale, and should have little impact on land use" (para 108).
2810. Based on this expert evidence, the Reporting Officer recommended accepting the submission of *Shane Carter*, and amending the boundary of the Flagstaff-Mt Cargill SNL as shown in Figure B6 of Mr Moore's evidence. The Reporting Officer recommended rejecting the submissions of *Barbara and Donald McCabe* and *Stephen Gregory Johnston*, and not amending the Flagstaff-Mt Cargill SNL in response to these submissions (Section 42A Report, section 5.16.6, p. 700).
2811. At the hearing, Mr Moore was asked about the recommended amendment to the SNL boundary to run up a spur rather than along a contour, in response to the *Shane Carter* submission. Mr Moore responded that the boundary followed a contour either side of this amendment; the valley splits into different headwater catchments at this spur; that it is important to keep the areas of bush in the SNL; and that the slopes to the southern side of the spur are more prominent.
2812. Also at the hearing, a statement was tabled by *Barbara and Donald McCabe*. The submitters considered the upper part of the property to be visually recessive and two building platforms should be able to be developed in a visually recessive, extensively modified part of site closer to Campbells Rd, along with a covenant to protect landscape and encourage regrowth of native bush. The submitters consider the Section 42A Report findings (Section 5.15.6, p. 701) out of context with the topography, surroundings and current land use of the area.
2813. During deliberations, we became concerned with scope for the changes proposed in response to the submission of *Shane Carter*. We sought the following from staff:
- i. an assessment of whether the recommended amendments to the mapping of the Flagstaff-Mt Cargill SNL are within the scope of the submissions; and
 - ii. a revised assessment by the Council's expert landscape architect if the recommended amendments are deemed to be not within scope.
2814. This further information and evidence was presented at the Reconvened Natural Environment Hearing as a memorandum from the Reporting Officer, Michael Bathgate, outlining the scope issues.

2815. In terms of scope, Mr Bathgate considered there is scope to further amend the mapping of the SNL beyond that sought by *Mr Carter* (OS180.2) as long as the amendments reflect the intent of the submission of *Shane Johnson and Sharee Watts* (OS1076.1) (discussed in the previous section) to return towards (but not beyond) the operative LCA boundary. As Mr Moore's recommended amendment does not extend beyond the operative LCA boundary (refer Figure B6 of Mr Moore's Graphic Supplement B), Mr Bathgate did not request that Mr Moore reconsider his recommendations based on scope.

3.11.4.3.1 *Decision and reasons*

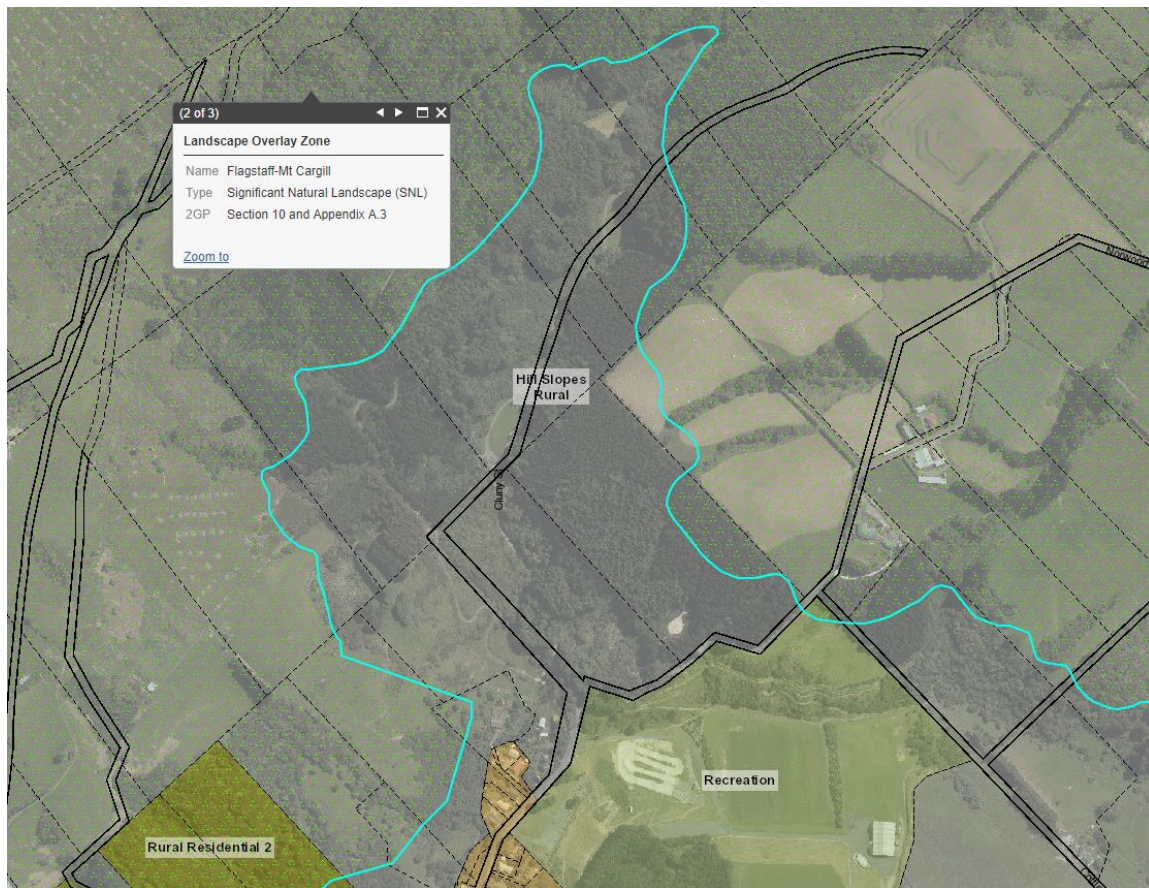
2816. In relation to 122 Campbells Road, we accept the expert evidence of Mr Moore, that the area is highly visually prominent, has coherent natural landform and areas of regenerating bush, and as such the SNL overlay zone is appropriate in this area. We note that there was no expert evidence presented supporting a change to the SNL in this area. We acknowledge that, as outlined in the Rural Residential Decision Report, we have rezoned this property Rural Residential 2, however, this is to acknowledge existing development, rather than to provide for greater development potential. We note the provisions of the 2GP do not preclude development activities from occurring in SNLs, but rather provide an opportunity for greater consideration of potential effects on landscape values by way of resource consent requirements for various activities. Based on the evidence of Mr Moore, we consider that very appropriate in this instance. We therefore reject the submission of *Barbara and Donald McCabe* (OS251.2) and our decision is to retain the SNL overlay zone as notified over 122 Campbells Road.

2817. With respect to 55 Patmos Road, we accept the expert evidence of Mr Moore, that the area's visual prominence and rural/natural character warrants its inclusion in the SNL overlay zone. We note there was no expert evidence presented supporting a change to the SNL overlay zone on the property. Our decision is therefore to reject the submission of *Stephen Gregory Johnston* (OS1030.4), and to retain the SNL overlay zone as notified over 55 Patmos Road.

2818. We accept in part the submissions of *Shane Carter* (OS180.2) and *Shane Johnson and Sharee Watts* (OS1076.1), and have amended the SNL boundary in the vicinity of 191 Norwood St as recommended by Mr Moore and Mr Bathgate. In doing so, we accept and rely on the evidence of Mr Moore that the area recommended for removal from the SNL does not warrant this level of protection.

2819. The amended mapping of Flagstaff-Mt Cargill SNL in the vicinity of 191 Norwood Street is shown in Figure 15 below.

Figure 15: Flagstaff-Mt Cargill SNL at Norwood Street



3.11.4.4 Heyward Coast SNL

2820. *Brian W Wilson* (OS809.2) sought to have the Heyward Coast SNL overlay removed from 853 Aramoana Road. The reason given was that the submitter intended to remove some of the regrowth native bush.
2821. Expert evidence from Mike Moore (landscape architect for DCC) discussed the landscape values of the area and concluded: “It is my assessment that the parts of the property at 853 Aramoana Road that are within the mapped overlay form a core part of the SNL in this area, and that it is appropriate to retain the overlay” (para 117).
2822. Based on this expert evidence, the Reporting Officer recommended that the submission of *Mr Wilson* be rejected.

3.11.4.4.1 *Decision and reasons*

2823. Our decision is to reject the submission of *Brian W Wilson* (OS809.2), and to retain the SNL overlay zone as notified over 853 Aramoana Road. We accept the expert evidence of Mr Moore, that the parts of 853 Aramoana Road within the Heyward Coastal SNL form a core part of the SNL overlay zone. We note there was no expert evidence presented supporting a change to the SNL overlay zone on the property.

2824. We note the submitter's major concerns appeared to relate to Indigenous Vegetation provisions within SNLs. As outlined in section 3.4 of this Decision Report, provisions for Indigenous Vegetation Clearance have been amended, particularly as they relate to clearances of regenerating indigenous vegetation on pasture, which may provide some alternative relief for this submitter.

3.11.4.5 Maungatua SNL

2825. *Clutha District Council* (OS686.1) sought to review the boundaries of the Maungatua SNL, because the Clutha District Plan does not contain SNL areas.
2826. Mike Moore (landscape architect for DCC) provided evidence in relation to the boundary of Maungatua SNL where it abuts the Clutha District boundary, in the Waipori Valley catchment. Mr Moore's assessment concluded: "It is clearly important that there is consistency of management across boundaries. In this case however, based on my assessment, and insofar as landscape character and values are concerned, rather than exclude the Waipori Valley from the SNL within Dunedin City, it may be more appropriate that Clutha District Council consider a similar overlay on the other side of the boundary" (para 121).
2827. On the basis of this expert evidence, the Reporting Officer recommended that the submission of *Clutha District Council* to review the boundaries of the Maungatua SNL be rejected.

3.11.4.5.1 Decision and reasons

2828. We accept the expert evidence of Mr Moore in relation to the boundary of the Maungatua SNL overlay zone where it abuts the Clutha District Council boundary, noting that this assessment was based on the amended Pigeon Bay criteria (consistent with the requirements of the pORPS-dv) and that no expert evidence was produced supporting any change to the SNL in this area.
2829. We therefore reject the submission of *Clutha District Council* (OS686.1), and, based on the evidence heard, encourage the submitter to review the landscape values (and associated approaches to protection) of the portion of the Waipori Valley that sits within the *Clutha District Council's* jurisdiction.

3.11.4.6 North West Peninsula SNL

2830. Submissions were received relating to the boundaries of the North West Peninsula SNL overlay zone as follows:
- *Peter Murray Raffills* (OS108.2) sought removal of the North West Peninsula SNL overlay from 656, 657, 658 and 659 Portobello Road (inferred), in order to create employment and amenity.
 - *Philip and Shakuntala Cunningham* (OS965.2) sought to have the North West Peninsula SNL overlay removed from 457 Highcliff Road, as the land has similar topographical features to adjoining residential zoned land to the west and little in common with adjacent land zoned Rural Hill Slopes and Rural Residential 2.
2831. In relation to *Mr Raffills'* submission, the evidence of Mike Moore (landscape architect for DCC) stated: "The landform on the western side of this settlement rises and visually contains it. In my assessment it is appropriate that this containing landform is included in the SNL. I consider however, that some adjustment to the boundary is appropriate to exclude the existing buildings and lower lying land within 657 and 658 Portobello Road, as illustrated in Figure C3" (para 124).

2832. Regarding the submission of *Philip and Shakuntala Cunningham*, Mr Moore noted that the boundary mapping in this area was intended to reflect the change in character from a patchwork of housing, scrub, woodlots and pasture (to the west) to generally open pasture covered slopes (to the east). He concluded "In my assessment, and as illustrated in Figure C4, it would be appropriate to amend the boundary in this area to follow the Highcliff Road boundaries of 457 and 453 Highcliff Road and the eastern boundaries of 453 Portobello Road and 311 Portobello Road" (para 125).
2833. Based on this expert evidence, the Reporting Officer recommended that the two submissions seeking amendment to the North West Peninsula SNL be accepted in part, and that the following amendments be made (Section 42A Report, section 5.15.6, p. 706):
- amend the boundary of the North West Peninsula SNL boundary around 657-658 Portobello Road as shown in Figure C3 of Mr Moore's evidence; and
 - amend the boundary of the North West Peninsula SNL boundary in the vicinity of 457 Highcliff as shown in Figure C4 of Mr Moore's evidence.

3.11.4.6.1 *Decision and reasons*

2834. We accept Mr Moore's evidence in relation to 656, 657, 658 and 659 Portobello Road (recommending an amendment to exclude buildings and lower lying land), noting that no expert evidence was presented supporting removal of the overlay zone from these properties. Our decision is therefore to accept in part the submission of *Murray Raffills* (OS108.2) and to amend the North West Peninsula SNL overlay zone as shown in Figure C3 of Mr Moore's evidence.
2835. The amended mapping of the North West Peninsula SNL in the vicinity of 656-659 Portobello Road is shown in Figure 16 below.
2836. We also accept Mr Moore's evidence in relation to 457 Highcliff Road, that the SNL could be amended in this vicinity to better reflect the change in character to generally open pasture covered slopes (to the east). However, we do not consider the SNL boundary in this vicinity should be amended to the full extent recommended by Mr Moore and the Reporting Officer, as we do not consider there is scope provided by the submission of *Philip and Shakuntala Cunningham* (OS965.2) to amend the SNL on sites other than 457 Highcliff Road. In general, we do not prefer SNL boundaries to be drawn to property boundaries, but acknowledge that sometimes this is necessary when any amendments are limited by the scope of submissions.
2837. Our decision is therefore to accept the submission of *Philip and Shakuntala Cunningham* (OS965.2) to remove the North-West Peninsula SNL overlay zone from 457 Highcliff Road.
2838. The amended mapping of the North West Peninsula SNL in the vicinity of 457 Highcliff Road is shown in Figure 17 below.

Figure 16: North West Peninsula SNL at 656-650 Portobello Road

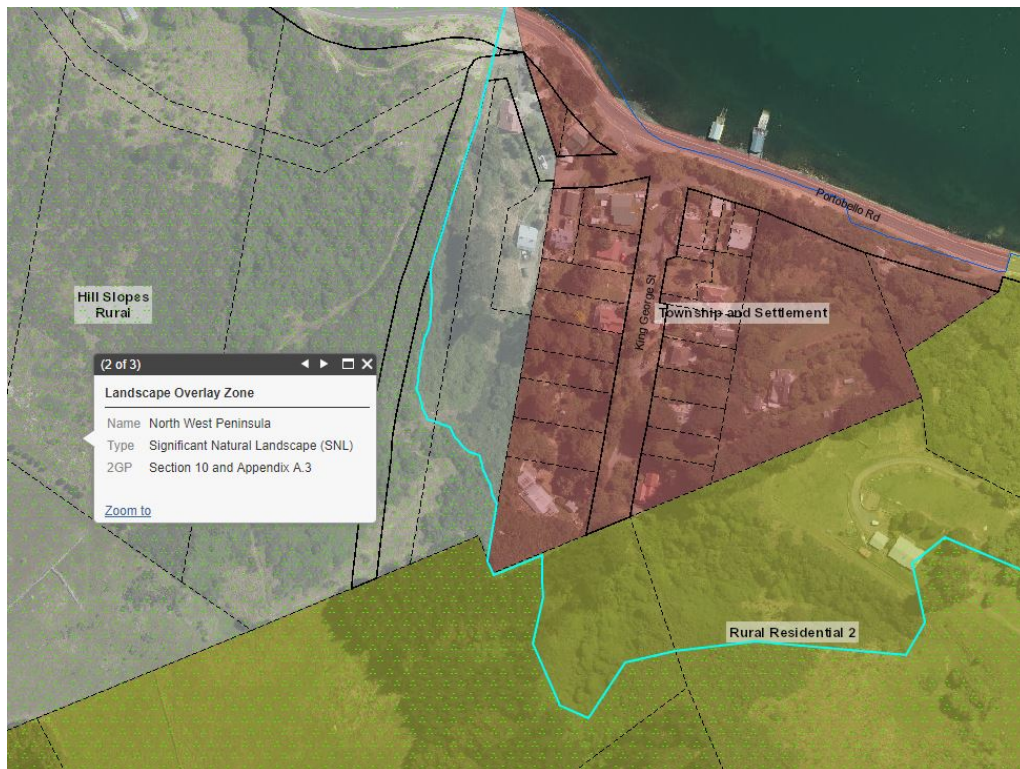
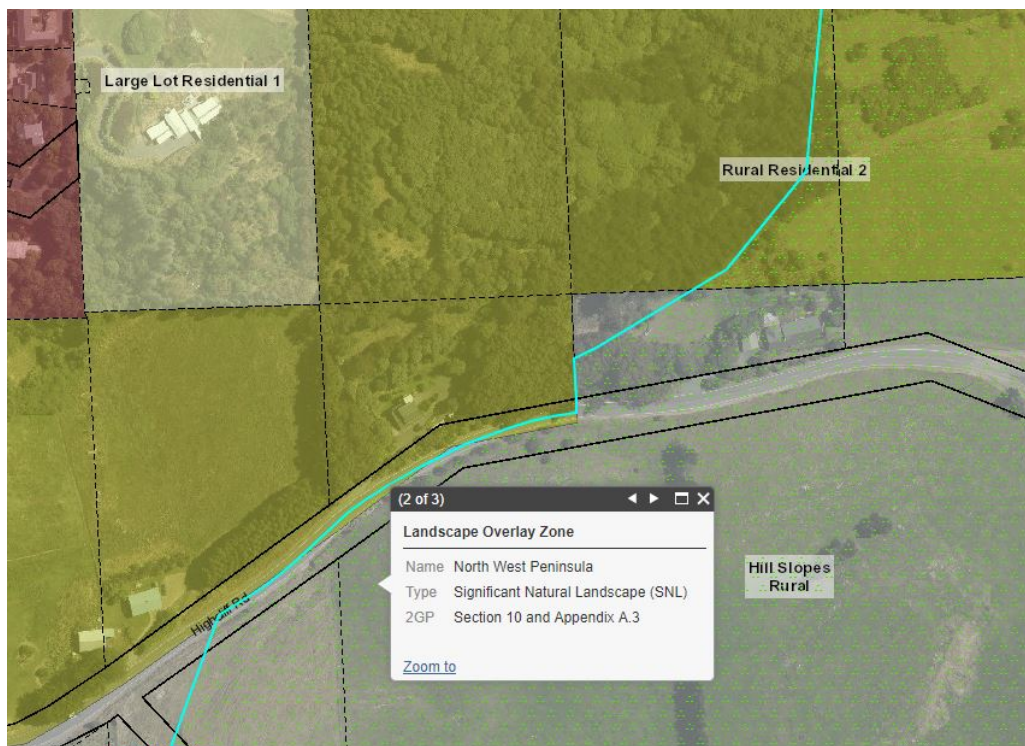


Figure 17: North West Peninsula SNL at 457 Highcliff Road



3.11.4.7 Saddle Hill SNL

2839. Submissions were received relating to the removal or amendment of the boundaries of the Saddle Hill SNL overlay zone as follows:

- *Craig Horne* (OS368.2), *John Buchan* (OS610.1), *Kimberly John Taylor* (OS660.1), *Chris Kelliher* (OS666.1), *Blue Grass Limited* (OS693.1), *Saddle Views Estate Limited* (OS813.1) and *Mainland Property 2004 Limited* (OS816.1) sought to move the Saddle Hill SNL boundary to the change in landform above their properties on the lower slopes of Saddle Hill. The submitters sought to enable rural residential development through this amendment.
- *Irene Mosley* (OS994.4) sought a review of the Saddle Hill SNL, because the "areas along the side of Saddle Hill, including my own land marked as of natural significance are predominantly pine trees, gorse and possums".
- *Scroggs Hill Farm Limited* (OS1052.6) sought to confine the Saddle Hill SNL to the same boundaries as the operative Plan, noting that the "Significant Natural Landscape zoning is huge". They considered it should be limited to the summit of Scroggs Hill.
- *Saddle Views Estate Limited* (OS458.55) and *Tussock Top Farm Ltd* (OS901.40) sought to remove the Saddle Hill SNL because the environment, including the Saddle Hill quarry and properties, is 'highly modified'.

2840. A submission was also received from *Peter Macmillan* (OS140.1), who sought that the boundary between the Saddle Hill SNL and the Saddle Hill ONF be moved to approximately the 350m contour in the area of 185, 177, 175 and 187 Saddle Hill Road. This submission, associated evidence and Hearings appearances, and the decision, are discussed in Section 3.11.2, above.

2841. Dr Marion Read provided expert landscape evidence for DCC in relation to these submissions. In relation to the submissions of *Craig Horne* and others, Dr Read assessed the SNL alignment suggested by submitters as "following a mix of cadastral boundaries and the northern edge of a pine plantation", approximately corresponding with a change in gradient (para 20).

2842. Dr Read considered the area promoted by the submitters for a realigned SNL boundary as not providing high visual amenity (due to the presence of exotic plantations) and in fact degrading the quality of the landscape both up and down slope. She went on to state: "It is, however, a relatively small area within the larger landscape, not a landscape in its own right, and the dominant characteristics and quality of the overall SNL are maintained...In my opinion the submitters have not provided any cogent landscape based argument to justify the proposed alteration to the boundary of the proposed SNL. Locating it as they request would diminish the coherence and quality of the unit overall. I continue to consider that the boundary of the SNL in the vicinity of submitters' properties is appropriately located on the maps notified" (paras 21-22).

2843. In relation to the *Mosley* submission, Dr Read commented "...it is well established that landscape classification areas do not need to have a completely consistent character and quality. That is, the location of the boundaries of areas cannot be either entirely precise, nor exclude every small area which is of a differing character or quality" (para 31).

2844. In relation to the *Scroggs Hill Farm* submission, Dr Read noted that the actual extent of the SNL is similar to the LCA in the operative Plan, and that: "The alteration to the boundaries...better reflect the actual character and quality of the landscape" (para 25). In relation to Scroggs Hill, Dr Read stated that while it is a "notable feature of the coastal hills landscape, and important for the visual amenity of the Taieri, in

particular”, its character and quality “is consistent with the surrounding landscape and is more appropriately subsumed within the SNL” (para 25).

2845. In relation to the submissions of *Saddle Views Estate* and *Tussock Top Farm*, Dr Read noted that landscape character and quality does not need to be completely consistent, that both properties are completely subsumed within the surrounding SNL, and that “from a landscape perspective I see no reasons to exclude the properties from the SNL” (para 28).
2846. Based on the expert evidence of Dr Read, the Reporting Officer did not recommend any amendment to the Saddle Hill SNL overlay zone (Section 42A Report, section 5.15.6, page 690).
2847. At the Urban Land Supply (Part 2) Hearing, Mr Cubitt (resource management consultant) tabled some Environment Court evidence relating to landscape matters, authored by Mr Mike Moore. He stated that the submitters are seeking the boundary to be moved to a position higher up the slope to better reflect the landform, based on the evidence of Mr Moore. Mr Cubitt highlighted that in Mr Moore's view, the SNL boundary could more legitimately be located at the change in landform above submitters' proposed development. Additional evidence was also presented at the hearing by Dr Read, which had some overlap with the evidence presented at the Natural Environment hearing, but also discussed the submitters' proposed development from a landscape perspective.

3.11.4.7.1 *Decision and reasons*

2848. We accept the evidence of Dr Read in relation to the SNL boundary, noting that no expert evidence was presented supporting any amendment of the SNL boundary, and therefore none of the proposed amendments to the unit are justified from a landscape perspective. Specifically, we accept that while the quality of landscape varies across the SNL, the dominant characteristics and quality of the overall SNL are maintained across the unit.
2849. We therefore reject the submissions of *Craig Horne* (OS368.2), *John Buchan* (OS610.1), *Kimberly John Taylor* (OS660.1), *Chris Kelliher* (OS666.1), *Blue Grass Limited* (OS693.1), *Saddle Views Estate Limited* (OS813.1, OS458.55) and *Mainland Property 2004 Limited* (OS816.1) *Irene Mosley* (OS994.4), *Scroggs Hill Farm Limited* (OS1052.6) and *Tussock Top Farm Ltd* (OS901.40) to amend or remove the Saddle Hill SNL overlay zone.
2850. Many of the submitters seeking amendments to the SNL overlay zone boundary also sought a change of zoning relating to their properties in the same vicinity. These submissions, associated evidence hearing appearances and decisions, are traversed in the Urban Land Supply Decision Report.

3.11.4.8 *Seacliff SNL*

2851. Submissions were received relating to the removal or amendment of boundaries of the Seacliff SNL as follows:
- *Rachel Ozanne* (OS595.1) sought an expansion of the Seacliff SNL to encompass the entirety of Porteous Hill, as the area was identified as a 'significant landscape feature' in previous Dunedin City Council consultation documents. This submission was supported by *Geraldine Tait* (FS2160.7), as Porteous Hill is a very prominent feature viewed from the whole of Blueskin Bay, the local communities, the sea, the Heyward Coast and the northern transport corridor, and because local people value the rural landscape. This submission was opposed by *Blueskin Resilient Communities Trust*

(FS2229.13), as SNLs should not be provided for in the 2GP or should be consistent with the Coastal Landscape Preservation Area in the operative Plan.

- The *Blueskin Resilient Communities Trust* (OS1070.16) sought the removal of SNL overlays from the Plan or amendment of the boundary of the Seacliff SNL so that it applies to the coastal flanks only and not the Porteous Hill summit – as per the Coastal Landscape Preservation Area in the operative Plan. This submission was opposed by *Simon Ryan* (FS2438.6) who considered that SNLs or comparable overlays are an appropriate and effective tool for the recognition and protection of landscape values, and that both the coastal flanks and summit of Porteous Hill have significant landscape values. The submission was also opposed by *Geraldine Tait* (FS2160.12) for similar reasons.

2852. Mike Moore (landscape architect for DCC) provided evidence relating to these submissions. In relation to the mapping of Seacliff SNL in the vicinity of Porteous Hill, Mr Moore stated: “The prime rationale for the SNL is to recognize the rural amenity values of the wider coastal hinterland and includes mainly coast facing slopes accordingly...The summits and higher slopes of the two most significant hills are included as these are visually prominent and are contiguous with the coast facing slopes. It is my conclusion that the boundary of the Seacliff SNL in the vicinity of Porteous Hill as delineated in the 2GP is appropriate” (para 136).
2853. In relation to whether all SNL overlay zones should be removed from the 2GP, Mr Moore stated that the RMA basis for SNLs is “Section 7 (c), the maintenance and enhancement of amenity values’ and (f) maintenance and enhancement of the quality of the environment. Section 7 landscape overlays (often termed visual amenity landscapes) are reasonably common in District Plans throughout New Zealand and have been recognized by the Environment Court” (para 134).
2854. On the basis of Mr Moore’s expert evidence, the Reporting Officer that submissions to amend the boundaries of the Seacliff SNL be rejected (Section 42A Report, section 5.15.6, page 707). The Reporting Officer also recommended rejecting that part of the *Blueskin Resilient Communities Trust* submission that sought that SNL overlay zones should be removed from the 2GP, agreeing with Mr Moore that these are an important tool for managing landscapes under the RMA.
2855. *Simon Ryan* spoke at the hearing, stating that the Seacliff SNL has important economic value for tourism, with cruise ships often lingering offshore. *Mr Ryan* considered the SNL category of landscape appropriate and the submission to remove it is not supported by RMA reasons. *Mr Ryan* supported the 2GP hierarchy of overlay provisions in landscape and coastal areas.

3.11.4.8.1 *Decision and reasons*

2856. We reject the submission of the *Blueskin Resilient Communities Trust* (OS1070.16) to the extent that it may be seeking to remove SNL overlays from the Plan. As discussed in section 3.7.2 of this Decision Report, we consider SNLs to be an appropriate response to s7(c) and (f) of the RMA, and to the pORPS-dv, specifically policies 3.2.5 and 3.2.6, which require the identification and management of highly valued natural features, landscapes and seascapes.
2857. In relation to Porteous Hill, we accept the expert evidence of Mr Moore in relation to the SNL boundary in this vicinity, noting that no expert evidence was presented supporting the amendment of the SNL overlay zone either to encompass more of the Hill, or to reduce coverage on the Hill. Specifically, we accept Mr Moore’s evidence that the summits and higher slopes of Porteous Hill has been included in the SNL

overlay zone as they are visually prominent and contiguous with the coast facing slopes that comprise the majority of the Seacliff SNL.

2858. Our decision is, therefore, to reject the submissions of *Rachel Ozanne* (OS595.1) and the *Blueskin Resilient Communities Trust* (OS1070.16), and to retain the SNL overlay zone as notified in the vicinity of Porteous Hill.

3.11.4.9 Silver Peaks SNL

2859. Three submissions were received relating the Silverpeaks SNL overlay zone as follows:

- *Stephen Waldron* (OS9.1) sought to have the SNL moved back to the boundary of the property at 432 Steep Hill Road, Merton, as the overlay would affect harvesting of a pine forest and because the boundary line crosses access tracks several times, creating 'difficulties'.
- *Robert Andrew Van Turnhout* (OS388.1) sought the removal of the SNL from the property at 506 Steep Hill Road and to have the boundary line redrawn at the Department of Conservation land boundary. The reasons were that the provisions would mean resource consents were needed for activities such as forestry and maintaining farm tracks; adjacent forestry blocks on similar land are exempted; the SNL boundaries should more appropriately coincide with the DOC reserve boundaries; and the land is mainly lower than 400m and not visible to the public.
- *Silverpeaks Station Limited* (OS469.1) sought the realignment of the SNL boundary in the vicinity of Silverpeaks Station to coincide with the boundary of the adjoining Department of Conservation Land. The reasons were that the land does not fit within the description of the SNL or illustrate the values to be protected; there is no justification for an overlay specifically to protect tussock; the land is not visible from any public place except Jubilee Hut; additional controls are not needed as no forestry is present or contemplated and farm track infrastructure is in place; and the DOC boundary is the logical boundary as Silverpeaks Station was left with land of apparently lesser landscape significance when the adjacent reserve was acquired for conservation purposes.

2860. Mike Moore (landscape architect for DCC) provided evidence in response to *Stephen Waldron*. Mr Moore stated: "the original mapping intention was that the boundary in this area should follow the Waikouaiti River South Branch. Figure C6 shows that the boundaries as currently shown in the 2GP map are not sufficiently accurate and should be adjusted to avoid encroachment onto the 432 Steep Hill Road property" (para 140).
2861. On the basis of this expert evidence, the Reporting Officer recommended the submission of *Stephen Waldron* (OS9.1) be accepted, and the Silverpeaks SNL boundary amended to follow the boundary of 432 Steep Hill Road (Section 42A Report, section 5.15.6, p. 708).
2862. In relation to the *Van Turnhout* submission, Mr Moore stated "In general, north of the Silverpeaks Reserve, the elevation of the hills reduces and the bush cover becomes less. Figure C8.1 illustrates the character of the landscape in the upper Mount Misery Creek catchment and shows that it is typified by high rugged, tussock covered hills with some native scrub and gorse cover as well as some significant native bush areas. In my assessment it is appropriate that the SNL boundary is located to include the higher country and contiguous areas of bush cover and to exclude lower more modified areas. Having reassessed this area I believe it is appropriate to amend the boundary as shown in Figure C7 accordingly. This amendment has a fairly minor

impact on the area included within the property at 506 Steep Hill Road but I believe is more appropriate overall" (para 141).

2863. On the basis of this expert evidence, the Reporting Officer recommended the submission of *Robert Andrew Van Turnhout* (OS388.1) be accepted in part, and the SNL boundary be amended as shown in Mr Moore's evidence (Section 42A Report, section 5.15.6, p. 709).
2864. *Robert Van Turnhout* spoke at the hearing and tabled a statement. *Mr Van Turnhout* considered that the landscape assessment is weighted towards visual amenity factors, yet his farm is not visually prominent and has little visible high country. He considered that the area is not an SNL any more than the wider, surrounding country. He was concerned about restrictions on the harvesting and replanting of forestry, and sought that the SNL boundary for the northern farm properties is moved back to the DOC reserve boundary.
2865. In response to *Mr Van Turnhout's* appearance at the hearing, the Reporting Officer discussed the mapping of this SNL with Mr Moore; his response is detailed below, including also discussion of the points raised by *Silverpeaks Station Limited*.
2866. In relation to the *Silverpeaks Station* submission, Mr Moore's evidence stated: "Having reassessed the area, it is my opinion that the boundaries as proposed are appropriate. Whilst natural character values are somewhat reduced outside the reserve by the effects of grazing (and some tracking), they are still high, based on coherent natural landform (reinforced by naturalistic vegetation patterns), the presence of indigenous vegetation, and particularly in the south, rugged rocky outcrop topography...This area forms the immediate context to the reserve and is visible from the main tramping track through the area. It also forms the focus of the main view down-valley from Jubilee Hut...I consider that the boundary as currently proposed within the Christmas Creek catchment is appropriate" (paras 142, 145).
2867. Mike, Virginia and Annalise Cowie appeared at the hearing for *Silverpeaks Station Limited* (OS469.1) and showed video images. They sought removal of the SNL which covers 900ha or about 1/3 of their property, and puts the viability of the farm at risk. They were concerned about restrictions on forestry, fences, farm tracks, and the clearance of bush. The submitters stated that much of the farm in the SNL can't be seen from DOC land, and questioned why the modified neighbouring forestry properties are exempt from the SNL.
2868. In response to the appearances by *Mr Van Turnhout* and *Silverpeaks Station*, the Reporting Officer discussed the mapping of this SNL with Mr Moore, and outlined in the revised recommendations the methodology used by Mr Moore to assess the area. While Mr Moore remained of the opinion that the SNL mapping recommended in the Section 42A Report (Section 5.15.6, p. 709) was appropriate, he acknowledged that values within the SNL may be variable and could benefit from further, more refined assessment.
2869. In revised recommendations, the Reporting Officer proposed three options for consideration: 1) maintaining the Section 42A Report version of the SNL; 2) conducting a refined assessment of the SNL, subject to landowner willingness; 3) reverting to the earlier (2013) assessment boundaries which follow the DOC scenic reserve boundary to the north and west of the SNL.

3.11.4.9.1 *Panel request for further information*

2870. During our deliberations on this matter, we requested an independent peer review by a landscape architect of the assessment and mapping of the Silverpeaks Significant Natural Landscape Overlay Zone. This was to include site visits to the properties of

the two submitters, to allow for more detailed assessment of the factors that may contribute toward inclusion of these areas in the SNL.

3.11.4.9.2 *Reconvened Natural Environment Hearing*

2871. This further information and evidence was presented at the Reconvened Natural Environment Hearing in the form of:

- a memorandum from Mr Bathgate overviewing the evidence of the peer reviewer, canvassing issues of scope, and setting out a revised recommendation;
- a peer review of the boundary of the northern and northwestern extent of the Silverpeaks SNL overlay zone by Mr Hugh Forsyth (landscape architect, Site Environmental Consultants).

2872. The peer review conducted by Mr Forsyth (including site visits to both 506 Steep Hill Rd and Silverpeaks Station) recommended reducing the northern and north-western extent of the Silverpeaks SNL overlay zone to align with the scenic reserve boundary, with a small exception in the location of Jubilee Hut.

2873. In evidence, Mr Forsyth identified the dome pasture area on the northern upper slopes of Christmas Stream as “a contentious area”. He noted the landform is unusual in the context of the surrounding ridges and slope and it provides the visual foreground to viewers from Jubilee Hut. He considered however that as tussock pasture land, with areas of gully bracken, it does not support the higher value of the Jubilee Hut valley (Evidence, para 7.4).

2874. Mr Forsyth also noted the large expanse of ridge slopes to the south of Christmas Creek as “a second high profile area”. He stated that this series of small peaks and valleys form the more natural end of spectrum of natural features and farm management that ends with the consistent pastoral management that occurs downstream. He considered if this landscape area was consistent in terms of valley forest vegetation and uplands pattern of occasional pasture and rock outcrops, the assessment of this area would also be ‘amenity’, but this was not observed to be the case (Evidence, para 7.5).

2875. Mr Bathgate did not make any revised recommendations in response to this new evidence, but noted that Mr Forsyth’s site visits had afforded him the opportunity for a more thorough assessment of values, to visit a number of areas within the proposed overlay zone that Mr Moore would not have been able to view and easily assess, and to conduct discussion with landowners in terms of the history of land use and management.

2876. Mr Bathgate pointed out there is a question of scope in relation to any decision, as both Mr Moore and Mr Forsyth have recommended amendment to the SNL that includes removal of properties or parts of properties that were not the subject of any submission (1010 Blucher Road, Waikouaiti, 1493 Blucher Road, Waikouaiti and 1553 Hindon Road, Hindon).

2877. He noted there were no submissions seeking any general reduction or removal of the Silverpeaks SNL overlay zone. There was a submission (OS1070.16) from *Blueskin Resilient Communities Trust (BRCT)* to either remove SNL overlay zones from the 2GP or to amend the Seacliff SNL in the vicinity of Porteous Hill. Mr Bathgate stated that he understood that at the Reconvened Network Utilities Hearing the legal representative for BRCT clarified that the submitter sought review of SNLs as a method, and that less onerous provisions should be associated with them, rather than necessarily their entire removal from the 2GP.

2878. He considered that the submission of *BRCT* to remove SNLs from the 2GP may provide sufficient scope to remove these areas from the SNL, with it seeming unlikely that any person would be unduly prejudiced by these changes.
2879. *Mr Van Turnhout* appeared at the reconvened hearing and tabled a statement. *Mr Van Turnhout* supported the revision of the northern boundary of the SNL recommended by Mr Forsyth. *Mr Van Turnhout* stated that he had spoken to the three landowners in the subject area who were not submitters, and they all agreed with the removal of the SNL from their properties. *Mr Van Turnhout* stated that no-one would be prejudiced and it would be a waste of time to undertake a future plan change to achieve the same SNL boundary amendment.
2880. Mike and Virginia Cowie appeared at the reconvened hearing for *Silverpeaks Station Limited* and tabled a statement. Mr and Mrs Cowie described for the Panel the land uses and natural features in relation to the areas of Silverpeaks Station under review. Mr and Mrs Cowie are still opposed to the SNL being over their property, although they consider the small area proposed by Mr Forsyth for inclusion in the SNL is reasonable and would not affect their farming operations.

3.11.4.9.3 *Panel request for further information*

2881. During our deliberations on this matter, we requested that Mr Forsyth and the Council's expert landscape architect Mr Mike Moore jointly consider adjusting the western boundary of the Silverpeaks Significant Natural Landscape Overlay Zone in the vicinity of the Silverpeaks Scenic Reserve. In particular, we asked the landscape architects to consider arriving at a joint position on the following in relation to Mr Forsyth's peer review evidence:
- more appropriate mapping of the SNL in relation to the 'straight line' boundaries formed by the Silverpeaks Scenic Reserve;
 - the potential inclusion of the Christmas Creek catchment, extending toward the dome pasture area on the northern upper slopes of Christmas Creek; and
 - the potential inclusion of the ridge slopes to the south of Christmas Creek.
2882. We also requested that Mr Forsyth provide mapping of two areas which he described in paragraphs 7.4 and 7.5 of his peer review evidence.

3.11.4.9.4 *Memorandum and further evidence*

2883. The Reporting Officer, Michael Bathgate, responded in a memorandum entitled '*Further mapping of Silverpeaks Significant Natural Landscape overlay zone*' dated 9 February 2018, with two additional pieces of landscape evidence attached.
2884. In response to the request for more appropriate mapping of the SNL in relation to the 'straight line' boundaries formed by the Silverpeaks Scenic Reserve, Mr Moore and Mr Forsyth presented a map with a line which the two experts described as an agreed position that makes landscape sense. The stated rationale for this is a boundary that more or less corresponds with the scenic reserve boundary, but that rationalises this in a way that relates to the landform or other landscape features (areas of bush) where the reserve boundary appears arbitrary on the topography. A second line indicated an amended landscape boundary that Mr Moore was willing to support, broadly the same as his earlier evidence, but reduced in the area of Lamb Hill to follow the ridge rather than take in the broad plateau top.
2885. Also supplied were three maps of the areas described in paragraphs 7.4 and 7.5 of Mr Forsyth's peer review evidence, and represented adjuncts to Mr Forsyth's earlier Peer Review Report.

3.11.4.9.5 *Reconvened Network Utilities hearing*

2886. At the reconvened Network Utility Hearing *BCRT* confirmed that their primary concern was the Seacliff SNL and its implications for the establishment of renewable energy generation activities.

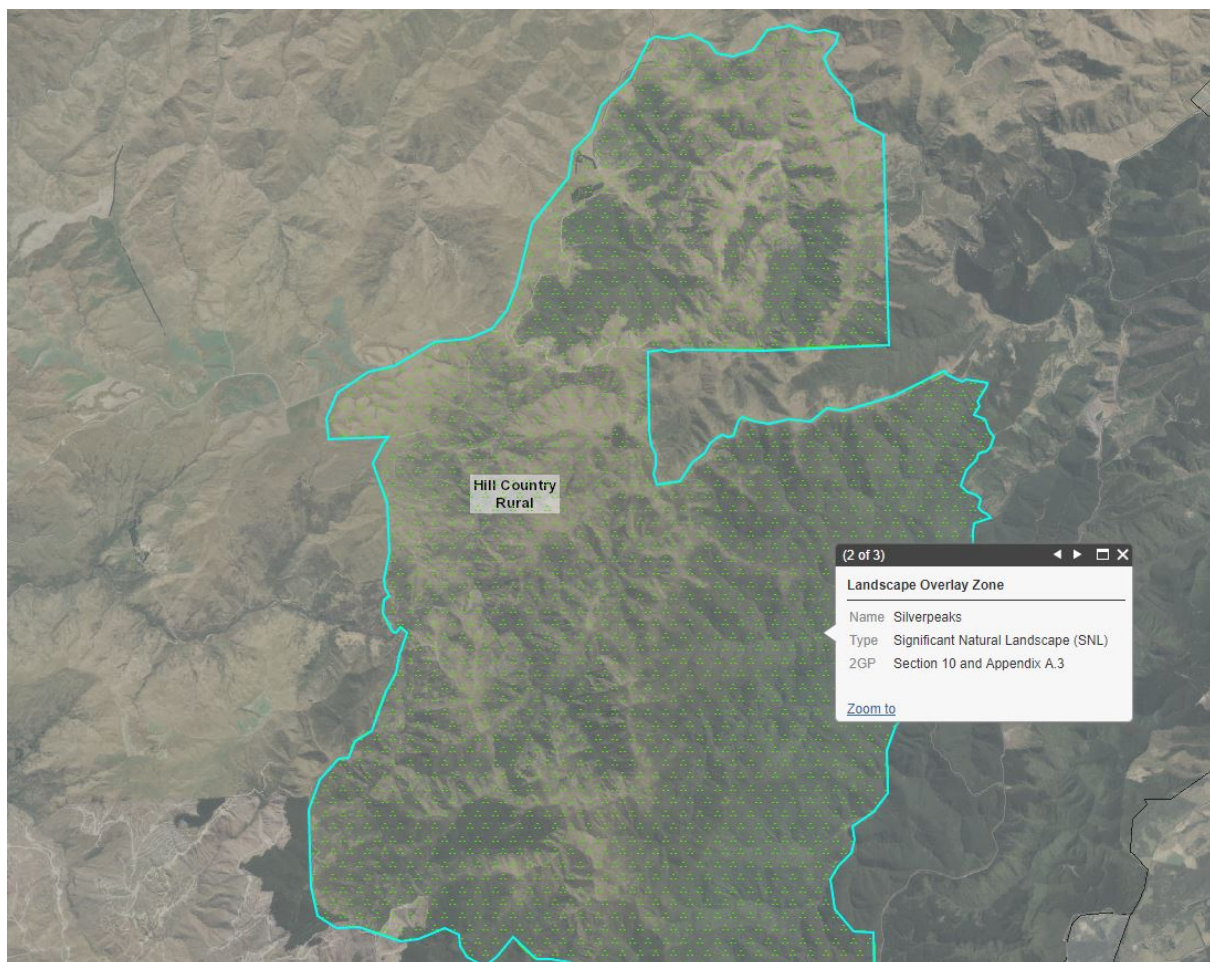
3.11.4.9.6 *Decision and Reasons*

2887. Our decision is to accept the submission of *Stephen Waldron* (OS9.1) and amend to the SNL line to follow the boundary of 432 Steep Hill Road, as shown in Figure C6 of Mr Moore's evidence. In doing so, we rely on the expert evidence of Mr Moore that this will correct a mapping error.
2888. We accept the submission of *Robert Andrew Van Turnhout* (OS388.1), and accept in part the submission of *Silverpeaks Station Limited* (OS469.1).
2889. In terms of scope, as discussed in section 3.11.4.2, we consider that relying on the submission of *Blueskin Resilient Communities Trust (BRCT)* for scope to amend SNL overlay zones in areas that were not subject to submissions, particularly in light of the clarifications made by *BRCT* representatives at the Reconvened Network Utilities hearing, would not be appropriate. We note that we received a letter in support of *Mr Van Turnhout's* submission from one of the landowners affected, but that they did not submit, so we do not consider they can be treated differently to other affected landowners from whom we have received no correspondence.
2890. We have therefore considered the evidence of Mr Moore and Mr Forsyth only insofar as it relates to the areas subject to the submissions of *Robert Andrew Van Turnhout* (OS388.1) and *Silverpeaks Station Limited* (OS469.1).
2891. We note that, despite being unable to agree on a recommended boundary for the SNL, the landscape experts were substantially in agreement about the areas outside of the reserve boundary that most warranted consideration for protection. In the final evidence presented, both experts agreed that the SNL overlay zone should be removed from 506 Steep Hill Road, Merton. Both experts agree that, at a minimum, the SNL boundary could not follow the reserve boundary along its full extent, but rather would need to follow an amended line to ensure the boundary "makes landscape sense". We consider this (the green and red line on the map provided in Appendix 1 of the 9 February memorandum) to be the minimum evidentially supported extent of the northwestern SNL overlay zone boundary. When this is accepted as the minimum, we note the amended landscape boundary that Mr Moore was willing to support, and the two areas that Mr Forsyth's evidence identifies as just missing the standard for inclusion, are very well aligned.
2892. In respect to 262 Silverpeak Road, Hindon (Silverpeaks Station) we have balanced the evidence presented by Mr Moore and Mr Forsyth with the provisions of the SNL overlay zones, and the evidence of the submitters themselves. We note that the major concerns of Mike, Virginia and Annalise Cowie as expressed at the hearing related to concern about restrictions on forestry, fences, farm tracks, and the clearance of bush.
2893. We do not consider the SNL provisions will unduly affect these farming operations. A range of activities are permitted in SNL overlay zones, including Farming and Fences. Provisions associated with earthworks for the erection of new fences, or the construction of tracks, are the same as those in the underlying rural zone - where the fence or track is associated with a permitted land use or citywide activity it is permitted, provided that the earthworks do not result in a change in finished ground level that exceeds 1m and do not exceed 3m in width. Provisions relating to Indigenous Vegetation Clearance are subject to amendments outlined in section 3.4,

the effect of which is to generally permit more types of clearance, and these provisions do not differ between the underlying rural zones and SNLs.

2894. Forestry is subject to a restricted discretionary resource consent in SNLs, however as outlined in section 3.7 of this Decision Report, our decision incorporates an alternative policy test for discretionary and restricted discretionary activities in SNLs, recognising situations in which there are “no alternative practicable locations” with a lower bar “alternatively mitigated” policy test.
2895. Overall, we consider the evidence suggests there are areas of 262 Silverpeak Road that have values that warrant protection (by way of the retention of the Silverpeaks SNL zone), and that any imposition this overlay zone may cause to the landowner is not substantial enough to warrant its removal on this basis. Having considered all the evidence, on balance, we consider the SNL overlay zone can be reduced over this property, but only to the extent supported by the final evidence of Mr Moore.
2896. Our decision has therefore amended within scope the northern and north-western boundaries of the Silverpeaks SNL overlay zones. This amended mapping is shown in Figure 18 below. This figure shows the SNL at a very broad scale, and we suggest that Plan users will need to consult the 2GP maps to ascertain the mapping of the SNL at an individual property level.

Figure 18: Silverpeaks SNL – northern and north-western extents



3.11.4.10 Suggested new Taieri Slopes SNL

2897. *Harboursides and Peninsula Preservation Coalition (HPPC)* (OS447.128) sought to add a new Taieri Slopes SNL to include all land above 75m encircling the Taieri Plain. The reasons were that this area exhibits values of high significance and the rural hills contribute significant amenity to the population living on the Taieri Plains.
2898. Mike Moore (landscape architect for DCC) provided evidence in response to the *HPPC* submission and stated: "Whilst I believe that visual contribution to the amenity of wider areas is a valid consideration in identifying SNL's, I do not believe that the intrinsic values of the hill country concerned sufficiently reinforce this...it is my overall assessment that whilst the area suggested is visually prominent, its landscape values are of only moderate significance overall and SNL status is difficult to adequately justify" (paras 148-149).
2899. On the basis of this expert evidence, the Reporting Officer did not recommend the addition of a Taieri Slopes SNL overlay zone to the 2GP (Section 42A Report, section 5.15.8, p. 717).
2900. Mr Moore was asked about Chain Hills at the Hearing, and responded that, due to the level of development, the area no longer met the criteria for inclusion in a landscape overlay.
2901. *HPPC* tabled a statement at the hearing. As well as its general comments about landscape assessment summarised above in relation to its request for a new Otago Peninsula ONL, *HPPC* stated that the context of visibility is important and that, for many living in Mosgiel suburbia, the Taieri slopes enhance their quality of life.

3.11.4.10.1 Decision and Reasons

2902. We accept the expert evidence of Mr Moore, that the hills surrounding the Taieri Plain (with the exception of those already included in the Maungatua and Saddle Hill SNL overlay zones) do not meet the criteria for inclusion in an SNL overlay zone. We note that no expert evidence was presented offering a different view. Our decision is therefore to reject the *HPPC* submission (OS447.128).
2903. We do, however, consider that that further work is needed to assess the landscape values of the area to a finer degree, as the landscape unit assessed by Mr Moore was substantial in size, and it may be that there are smaller units that do on their own meet the criteria for inclusion in an SNL. We have recommended that this work be undertaken as part of a future Plan review process, and that it include assessment of the potential threats to area.

3.11.5 Landscape Overlays and Underlying Zoning

2904. *G & J Sommers Edgar* (OS889.2, 26) sought to remove all SNL and ONL overlay zones from rural residential zones, because it was considered inappropriate to have such overlays on rural residential land. The submitters considered the provisions overly onerous, and that land has been developed to a high standard without the provisions. The submission (OS889.2) in relation to SNL overlay zones was supported by *Candida Savage* (FS2022.2), in order to simplify resource consent processes; and *Howard Saunders* (FS2373.2), who saw a conflict between the overlay zone and zoning for lifestyle blocks and associated residential activities, citing the maximum height standard as an example of this. The submission in relation to SNL overlay zones was

opposed by *Glynny Kiesel* (FS2057.1), as "the approach into Dunedin from the north is one of the more beautiful approaches into a city" and needs to be preserved.

2905. In response to *G & J Sommers Edgar*, the DCC expert landscape architect, Mike Moore, stated "It is my opinion that the two are not automatically mutually exclusive and that in some circumstances landscape overlays could provide an appropriate tool to promote integration of rural residential subdivision and development with the landscape" (paragraph 75 of Moore evidence). The Reporting Officer agreed with Mr Moore and recommended the *G & J Sommers Edgar* submissions be rejected for the same reasons (s42A Report, pp.626-627).

3.11.5.1 Decision and Reasons

2906. We accept in part the submissions of *G & J Sommers Edgar* (OS889.2, OS889.26).
2907. We note there are no areas in which ONL overlay zones coincide with areas of rural residential zoning, but that there are instances in which SNLs overlay rural residential zoning. In some of these instances, specific submissions have sought amendment of the SNL overlay zone, and decisions on these submissions have been considered on a case-by-case basis, taking into account the evidence presented.
2908. In general terms, we accept the evidence that rural residential zones and SNL overlay zones are not mutually exclusive because, where rural residential zones are already established and landscape values are identified still to exist, the provisions associated with SNL overlay zones can minimise the adverse effects of rural residential development on these values. We note there are a number of instances of semi-developed rural residential zones coinciding with SNL overlay zoning, which have been assessed as possessing landscape values that merit a level of protection. By way of example, section 3.11.4.1 of this Decision Report discusses 22A Weka Street, which is a rural residential zone that coincides with the Mt Cargill SNL overlay zone. In evidence relating to this site, we received landscape evidence that where rural residential subdivision and development has not yet taken place, an SNL overlay is a useful tool to ensure landscape values are appropriately considered when development proposals are submitted, and that it was "very important" that the overlay zone cover the upper part of the property. We therefore conclude it is appropriate that the SNL overlay zone continue to apply in these areas.
2909. We note another instance, discussed in section 3.11.4.2 of this Decision Report, of landscape evidence supporting the removal of the Flagstaff-Mt Cargill SNL overlay zone from a rural residential zone in the Waitati area, stating that it is "not a particularly good fit with SNL values" due to the development pattern and considerable built development that has already taken place. In this instance, we have supported removal of the overlay zone, as we accept the evidence that the values of the area have been eroded by the development pattern to the extent that the area no longer meets the criteria for inclusion. We consider this SNL boundary adjustment constitutes partial acceptance of the submission of *G & J Sommers Edgar*.
2910. Taken together we consider this evidence supports two key conclusions:
1. Rural residential provisions alone will not necessarily result in development that maintains landscape values, and that the SNL overlay zone provisions should therefore apply to rural residential zones where these values exist to be protected.
 2. Areas within landscape overlays are not the best places for new rural residential development, given the sensitivity of these overlays to buildings and structures activities, and that when new rural residential zoning is required, these generally should be located outside of identified landscape

overlay zones. This matter is further discussed in the Rural Residential Decision Report.

3.12 Coastal Character Mapping

3.12.1 Background

2911. This section outlines our decisions on requests to amend the spatial extent of coastal character overlay zones themselves.

2912. Policy 2.4.5.1 states:

Identify and assess areas that contribute to the natural character of the coastal environment based on the following criteria:

- a. natural elements, processes and patterns;*
- b. biophysical, ecological, geological and geomorphological aspects;*
- c. natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, estuaries, reefs, freshwater springs and surf breaks;*
- d. the natural movement of water and sediment;*
- e. the natural darkness of the night sky;*
- f. places or areas that are wild or scenic;*
- g. a range of natural character from pristine to modified; and*
- h. experiential attributes, including the sounds and smell of the sea; and their context or setting.*

2913. Policy 2.4.5.2 states:

Classify and map coastal areas as:

- a. Outstanding Natural Coastal Character areas (ONCC) where the natural character of these areas is exceptional;*
- b. High Natural Coastal Character areas (HNCC) where the natural character of these areas is of high significance; and*
- c. Natural Coastal Character areas (NCC) where natural character is of less than high significance but restoration or enhancement of natural character will be promoted.*

2914. In addition, a Coastal Environment Mapped Area represents areas of medium or medium - high natural character that coincides with a landscape overlay zone.

2915. The Natural Environment Section 32 Report explained that the boundaries and classification of the coastal character overlay zones were based on a report jointly commissioned by the ORC and the DCC (*Coastal Environment of Otago: Natural Character of Outstanding Natural Features and Landscapes Assessment – Dunedin City Section Report 2015*) (Natural Environment Section 32 Report, Section 5.3, p23-24). This Report drew on Policy 1 of the NZCPS for its definition of 'coastal environment', and used criteria provided by the Otago Regional Council for its natural character assessments, as follows:

- Geomorphological and hydrological naturalness, broken into the following aspects:
 - o The degree to which the landforms / seabed are the product of natural processes
 - o The degree to which natural geomorphological and hydrological processes are operating unconstrained

- o The degree to which water quality and quantity are unaffected by land use activities
 - Ecological naturalness, broken into the following aspects:
 - o The degree to which the vegetation patterns are a product of natural processes
 - o The degree to which the vegetation cover is indigenous to the area
 - o The (apparent) health and level of modification of intertidal and aquatic habitats
 - o The degree to which wildlife is present and sustained;
 - Experiential naturalness, broken into the following aspects:
 - o The degree to which buildings, structures and earthworks (including dredging) influence the character of the landscape or seascape.
 - o The degree to which there are wild and scenic qualities.
2916. Mr Mike Moore provided expert evidence regarding the assessment, values and mapping of coastal character overlay zones and the Coastal Environment Mapped Area. In some cases he drew on other expert input. When paragraph numbers are provided in the text to follow, these relate to paragraphs within the experts' evidence.
2917. In considering requests to amend the boundaries of landscape and coastal character overlay zones, we have considered:
- submissions and evidence presented;
 - relevant case-law;
 - the criteria outlined in policies 2.4.5.1 and 2.4.5.2
 - what the 2GP provisions (as amended) permit in the zone subject to the overlay in question;
 - what the 2GP provisions (as amended) permit in the overlay zone, including what is considered fair and reasonable in terms of any restrictions the overlay may impose of private landowners;
2918. A more detailed introduction to coastal character overlay zones, their statutory basis and spatial extent, is provided in section 3.7.1. Our decisions on the strategic directions policies relating to coastal character overlay zones are outlined in section 3.7.3, and sections 3.7.5 and 3.7.8-14 document our decisions on the policy and rule framework for activities in these overlay zones.

3.12.2 Issues relating to the Coastal Environment Mapped Area

2919. The Coastal Environment Mapped Area is of relevance to a number of submissions. As discussed in more depth below, it is of particular relevance to the *HPPC* (OS447.130) and *STOP* (OS900.131) submissions that sought to add an Outstanding Natural Coastal Character overlay over Portobello Peninsula. Portobello Peninsula is a Coastal Environment Mapped Area in the 2GP, but both Mr Moore and the Reporting Officer recommended applying an NCC overlay zone to this area. The method is also of relevance to the *HPPC* (OS447.131) submission to add a NCC overlay zone over all Township and Settlement zoned land from Harwood to Taiaroa Head (to which Mr Moore's also recommended adding a Coastal Environment Mapped Area). The function of the Coastal Environment Mapped Area appears to have been misunderstood by Mr Moore, and there are also errors in the Section 42A commentary relating to the Coastal Environment Mapped Area.
2920. We understand that intent of the Coastal Environment Mapped Area is to limit the number of overlay zones applying to any one location (it has been applied where an area of medium-high coastal character overlaps with a landscape overlay zone), but nevertheless to indicate that a particular control (indigenous vegetation clearance) applies in these locations. It is not associated with a policy suite as with other coastal character overlay zones, and has no associated appendix for each mapping unit.

Instead, the Coastal Environment Mapped Area relies on the policies for the coinciding landscape overlay zone, and the landscape values listed in the relevant section of Appendix A3. General assessment guidance for contraventions of the Maximum area of indigenous vegetation clearance performance standard in these areas states the 'natural science values' outlined in Appendix A3 will be considered.

2921. As a result of decisions outlined elsewhere in this Decision Report, primarily in response to submissions seeking that policies be amended to give better effect to the NZCPS, 2GP provisions now differ for activities between NCC overlay zones, SNL overlay zones and ONL overlay zones. Consequently, the policy and rule framework associated with the Coastal Environment Mapped Area no longer reflects that associated with the NCC overlay zone. As discussed in section 3.2.5, in our view this falls short of meeting the requirements of the NZCPS, and amendment is required such that that the appropriate provisions apply (including assessment against natural character and biodiversity values, rather than just landscape values). However, with the principles of natural justice in mind, we consider the extent of the changes required to give proper effect to this to be more appropriately progressed as a Plan change.

3.12.3 Highcliff - Pudneys Cliff ONCC (Appendix A5.1.1) and Smaills Beach/Tomahawk NCC (Appendix A5.3.12) Mapping

2922. *Timothy David Deans Ritchie* (OS382.2) sought to amend the boundary of the Highcliff - Pudneys Cliff ONCC overlay zone boundary at 478 Tomahawk Road, to correspond with the visually prominent/visually recessive boundary in the operative Plan; or to follow a fence line demarcating steep from more level ground. The key reasons given were that: 1. areas of outstanding natural coastal character must be correctly identified to avoid undue restrictions on land use; and 2. the map of the ONCC overlay contains a large area that does not meet the description of the overlay (section A5.1.1.1), makes no practical visual sense and appears to be derived from the location of the Karetai Track.
2923. *Timothy David Deans Ritchie* (OS382.1) also sought to move the boundary of Smaills Beach–Tomahawk NCC overlay zone boundary at 478 Tomahawk Road so that it extended no further than Tomahawk Beach, because "the flat land in question is historic land fill" and the overlay zone may constrain potential future activities. We will respond to this request in conjunction with *Dr Ritchie's* request to amend the ONCC boundary at 478 Tomahawk Road.
2924. With regard to the mapping of these coastal overlay zones, Mr Moore noted (paras 152-153): "The Highcliff – Pudneys Cliff unit, which was assessed as having high and outstanding natural character covers the rocky, cliffed coastline between Smaills Beach and Boulder Beach, and covers a large portion of the property. The Smaills Beach / Tomahawk unit, which was assessed as having medium natural character covers the beaches and dunes at Smaills and Tomahawk beaches, and extends into a small part of the property adjacent to Smaills Beach...The key factor in defining the boundary in this area is visual prominence and the contribution of the headland to wider coastal natural character, landscape and visual qualities and amenity values. In my assessment, this inland line of the coastal environment is appropriately sited."
2925. With regard to the ONCC, Mr Moore states (paras 154-155): "I agree with the submitter that the character of the area included within the ONCC at 478 Tomahawk Road is not completely consistent with the character and values description outlined in section A5.1.1 of the 2GP, but note that this is not surprising as overlay descriptions relate to the natural character units as a whole and there will often be discrepancies when considering portions of an area only...It is my conclusion that the extent of the

Highcliff – Pudneys Cliff ONCC overlay as mapped in this area, appropriately includes a visually significant headland.”

2926. With regard to the NCC, Mr Moore stated (paras 194-195): “In my assessment, the extent of the Smaills Beach / Tomahawk NCC overlay is approximately right in its relationship to the adjacent Highcliff / Pudneys Cliff ONCC overlay. I do not believe it is appropriate to reduce the extent of the identified coastal environment completely and it would be my recommendation that the outcome of any reduction to the NCC would therefore merely result in an extension of the ONCC...It is my conclusion that the Smaills Beach-Tomahawk NCC overlay is appropriately mapped in the vicinity of 478 Tomahawk Road.”
2927. In the Section 42A Report (pp. 652-653; 663) the Reporting Officer recommended, on the basis of the expert evidence, that both the submissions of *Dr Ritchie* be rejected.
2928. *Dr Ritchie* appeared and tabled evidence at the hearing. *Dr Ritchie* spoke to a visual presentation that highlighted his concerns around: the inclusion of an old landfill site within Smaills Beach-Tomahawk NCC; the extent of the Highcliff – Pudneys Cliff ONCC, which he does not consider is all visually spectacular or of outstanding natural character; and the restrictions that overlay zones will have on his ability to use the property, particularly for conservation activities and the accommodation of conservation volunteers.
2929. Ms Emma Peters, resource management consultant for *Dr Ritchie*, noted that the property has gone from one to three overlay zones, and now has a more stringent activity status of non-complying for buildings and structures within the ONCC overlay zone, which is where the submitter wants to erect structures associated with visitor accommodation and conservation.
2930. The evidence of Mr Hugh Forsyth, landscape architect for *Dr Ritchie*, suggested maintaining the ONCC overlay zone only on the headland boundaries, and lifting of the NCC overlay zone from the lower terrace area within the property. Mr Forsyth concluded at paras 4.1-4.3 of his evidence:
- I support the general approach of considering the coastal environment of Otago and Otago Peninsula as being the location of the higher value landscapes and areas of natural character within the region but consider the assessment framework has extrapolated ‘outstanding’ from its visual position and apparentness within the coastal environment...This may be the case geographically but the assessment of naturalness and natural character is confined to the coastal marine area of [sic] areas with a direct connection to it and should not, in my view, be used as a generator for assessing wider area of inner slope as having outstanding natural character unless there is a wider range of attributes that contribute to that conclusion...I do not consider the lower parts of the site exhibit natural character or high landscape values and recommend that both assessment overlays are removed or modified as set out in my Figure 9 and Figure 10.*
2931. In evidence appended to the Revised Recommendation Summary (pp. 60-62), Mr Moore disagreed with Mr Forsyth’s contention that the coastal environment has been incorrectly identified on this site, referring to the items in Policy 1 of the NZCPS used to determine the coastal environment. Mr Moore stated that the ONCC/NCC boundary is appropriate, although could be adjusted in detail to better relate to the edge of the old landfill. Mr Moore suggested that the coastal overlay zones at 478 Tomahawk Rd were not modified as per Mr Forsyth’s recommendations.
2932. After the hearing, we issued a Minute to Ms Peters seeking a plan that clearly showed the extent of the overlay zones sought by *Dr Ritchie*, and the location on the site that Mr Ritchie wishes to establish a building platform for a future accommodation unit.

2933. In a memo dated 28 June 2017, Ms Peters provided a series of plans showing various configurations of overlay zones. Figure 10 rev A reflected Mr Forsyth's technical assessment, and represented the outcome most desired by the submitter. Figure 10 rev B showed the first alternative discussed in the 'decision sought' section of the original submission, and represented the outcome least supported by the submitter. Figure 10 rev C showed the second alternative discussed in the 'decision sought' section of the submission, and was explained to be the second most preferred option, with the ONCC boundary following various fence lines. The memo also requested (para 8), if altering the ONL boundary was deemed out of scope, that the Panel consider a concept plan for the property, allowing for "the identification of:

- Potential landscape building platform(s) meaning the erection of buildings and structures on any identified landscape building platform(s) becomes a controlled activity pursuant to Rule 10.3A.2.2 rather than a restricted discretionary activity
- The plantings pursuant to the revegetation plan
- The landfill site."

3.12.3.1 Decision and Reasons

2934. Our decision is to accept in part the submission of *Timothy Ritchie* (OS382.2) and amend the boundary of the Pudneys Cliff ONCC overlay zone boundary at 478 Tomahawk Road to align with the suggested ONCC boundary in Figure 10 rev B (appended Ms Peter's memo dated 28 June 2017), extending the Smaills Beach-Tomahawk NCC overlay zone to meet this amended boundary line. We reject the submission of *Timothy Ritchie* (OS382.1) to reduce the Smaills Beach-Tomahawk NCC overlay zone boundary at 478 Tomahawk Road.

2935. Mr Moore and Mr Forsyth presented two very different expert opinions about the appropriate extent of the Pudneys Cliff ONCC and the Smaills Beach-Tomahawk NCC overlay zone on this site.

2936. Our decisions relating to coastal overlay zone as a Plan method and associated criteria (canvassed in Mr Forsyth's evidence) are outlined in section 3.7.3 of this Decision Report, and our decision here is consistent with that. In the 2GP, coastal character overlay zones are applied to areas of the coastal environment assessed as having natural character values of medium or higher. Mr Forsyth's evidence suggested that parts of 478 Tomahawk Rd should not only be excluded from the relevant NCC and ONCC overlay zones, but that no coastal character overlay zone should apply to the areas in which the ONCC overlay was to be removed. As described in section 3.7.1 of this Decision Report, under the provisions of the 2GP, the absence of all coastal character overlay zones would suggest the area is either not part of the coastal environment, or that it possesses less than 'medium' natural character values. We do not consider the evidence presented supports either of these conclusions.

2937. We agree with Mr Moore's assessment (in his Memorandum dated 23 June, appended to the Reporting Officer's Revised Recommendations Summary) the areas suggested for exclusion from coastal overlay zones by Mr Forsyth are part of "the headland and hill context" for Smaills Beach, and contribute to the natural character, visual qualities and amenity values of the coastal environment in this area, consistent with the requirements of the NZCPS, specifically Policy 1 (2) (f). We consider this particularly clear from Figure 2, Figure 3 and Figure 6 appended to Mr Forsyth's evidence. We accept the evidence of Mr Moore that the area "retains significant natural character...due to its coherent (largely) natural landform and minimal impact of built form".

2938. We consider that the Plan would benefit from more detailed descriptions of each coastal character overlay zone in Appendix A5, and have recommended that this is

considered as part of a future Plan review (see section 5.0). Taking into account the general brevity of the descriptions, values and threats listed in the notified 2GP, we accept that not every part of any given overlay zone will match all of the description and values outlined. We consider that at least some of the values listed in Appendix A5.1.1 describe the parts of the site suggested for exclusion from the ONCC, and agree with Mr Moore's assessment that they "align acceptably".

2939. We also agree that as Policy 1 (2) (i) of the NZCPS states modifications can be expected in the coastal environment, there are no grounds to exclude the area from a coastal character overlay zone simply on the basis that it includes a historic landfill.
2940. We also consider that elements of the approach promoted by Ms Peters (based on the assessment of Mr Forsyth) fall beyond the scope of the original submission. We do not consider, for example, that there is scope to review the extent of the ONL overlay zone in this area, as it was not requested by *Dr Ritchie* in his original submission (and therefore have not assessed specific evidence for or against its removal). For the same reasons, we do not consider there is scope to reduce the ONCC overlay zone to the extent suggested in Mr Forsyth's evidence.
2941. We do consider that some refinement of the ONCC/NCC boundary is warranted, particularly given the presence of the historic landfill in the ONCC overlay zone. We agree it would be reasonable to exclude the historic landfill from the ONCC, and note this was supported by Mr Moore. As outlined above, we are not convinced that the evidence supports complete removal of any coastal character overlay zone, and as such consider that where the ONCC is removed, an NCC overlay zone would appropriately reflect the values of this site, in line with the evidence of Mr Moore. While we believe a further reduction of the ONCC overlay zone (and increase in the NCC overlay zone) may be warranted, for the reasons described above we do not support a reduction to the extent promoted by Mr Forsyth. Taking into account the evidence heard, we consider the extent of the ONCC mapped in Figure 10 rev B the most appropriate option of those presented. This was described by Ms Peters described (in response to a further information request, in a memo dated 28 June 2017, para 6) as following "the line of the visually prominent/visually recessive interface in the operative district plan with a tweak proposed by *Mr Ritchie* in his submission to exclude part of the headland".
2942. In terms of the request to consider a concept plan, we consider that, given the submitter's intentions to develop the land for only one or two buildings, it is not necessary or appropriate to include a detailed concept plan in the 2GP. We note a portion of the site, in the vicinity of the current house site, is not subject to any coastal character overlay zones, and that in the context of the amended ONCC/NCC boundary, the area identified by the submitter as the likely location for a future building is subject to the provisions of the NCC overlay zone. We consider any buildings within the boundary of overlay zones best dealt with through a resource consent process.
2943. In the NCC overlay zone (and the ONL overlay zone, which also overlays the site), new buildings or structures less than or equal to 60m² are permitted activities (subject to adherence with performance standards), and those greater than 60m² are restricted discretionary. Elsewhere in this Decision Report, we outline decisions that amend the relevant policies and assessment rules to provide an alternative policy test and associated guidance for situations in which there are "no practicable alternative locations" for the activity. We also note that the relevant assessment rules allow for consideration of positive effects for activities supporting conservation activity (which we understand the submitters' planned building is intended to achieve). Therefore, we do not consider these overlays unduly compromise the submitter's ability to use the site.

2944. The amended mapping of the Highcliff / Pudneys Cliff ONCC overlay zone is shown below in Figure 19.

Figure 19: Highcliff / Pudneys Cliff ONCC



3.12.4 Suggested new Portobello Peninsula ONCC

2945. *HPPC* (OS447.130) and *STOP* (OS900.131) sought to add an Outstanding Natural Coastal Character overlay zone over Portobello Peninsula because of its 'exceptional' coastal landscape values.
2946. The Portobello Peninsula is within the Coastal Environment Mapped Area and is also within the North West Peninsula SNL overlay zone. It is mapped as part of the Coastal Environment Mapped Area rather than as part of a coastal character overlay zone, because it overlaps with the North West Peninsula SNL. As Mr Moore's evidence states at para 158, the Portobello Peninsula and Goat and Quarantine Islands were assessed as having an overall natural character rating of medium-high in the Coastal Environment of Otago Natural Character and Outstanding Natural Features and Landscapes Assessment, Dunedin City Section Report.
2947. Mr Moore's evidence continues (para 159): "Given the Medium-high natural character rating overall I do not believe that an ONCC overlay can be justified for this unit. As illustrated in Figure D2 factors such as the presence of the road and farm tracks, the presence of the aquarium and the power pylons, and the dominance of farmed exotic grassland, precludes such a rating. I do believe, however, that Portobello Peninsula as well as Goat and Quarantine Islands should have a NCC overlay, given the Medium-

high rating, and for consistency with other similarly assessed areas in the 2GP. I agree with the submitters that Portobello Peninsula has high visual prominence and sensitivity, and high scenic landscape values. These are recognized by the SNL overlay (part of the North-west Peninsula SNL).”⁴⁶

2948. On the basis of this expert evidence, the Reporting Officer recommended in the Section 42A Report (p. 666) that the submissions of *HPPC* (OS447.130) and *STOP* (OS900.131) be accepted in part, and that a new NCC overlay was added to the 2GP that covered Portobello Peninsula (and the Otago Harbour islands – Goat and Quarantine).
2949. On behalf of *STOP*, Ms Lala Frazer tabled a statement and spoke at the hearing. Ms Frazer described the very high ecological values of Portobello Peninsula, including that it contains the only land/sea interface on the Otago Peninsula that retains original native vegetation (in particular, grass trees and tree daisies, and some ground orchids), and wildlife values of high significance.
2950. Mr Moore was asked to review the natural character assessment of Portobello Peninsula with respect to its ecological values. Mr Moore asked Ryder Consulting Ltd, who undertook the ecological assessment component of the original natural character assessment in 2015, to review the assessment in light of the matters raised by *STOP*.
2951. As a result, and as set out in revised evidence from Mr Moore specific to Portobello Peninsula (in a memorandum dated 7 September 2017), Ryder Consulting commented that it seemed “reasonable to accept...as correct” (p 1) the ecological information *STOP* presented, and that the presence of remnant coast vegetation and wildlife which is classified under NZ Threat Classification System as At Risk: Declining does increase the ecological value. Accordingly, Ryder Consulting prepared a revised version of the unit assessment for ecological naturalness with increased ratings for three of the four criteria, which is attached to Mr Moore’s revised evidence.
2952. Mr Moore’s revised evidence concludes (p. 2): “In terms of what this adjustment means for the overall unit natural character rating, it is my assessment that the Medium high rating is most appropriately retained. Ecological naturalness is one of three criteria areas, along with geomorphological/hydrological naturalness and experiential naturalness. As outlined in the report, the overall natural character rating is the result of a composite assessment and ‘areas assessed as having high natural character required high or predominantly high scores in all disciplinary areas.’ As indicated in the assessment sheet attached, ‘medium high’ is the predominant score overall, and I have confirmed with Ryder Consulting Ltd that it is not their assessment that the significant ecological values should be given such weight as to make a higher overall ranking appropriate...Despite a now high score in the degree to which wildlife is present and sustained, natural character overall, is modified by factors such as the presence of the road and farm tracks, the presence of the aquarium and the power pylons, and the dominance of farmed exotic grassland. Accordingly, it is my conclusion that medium high remains the most appropriate rating for this unit. For consistency overall, this leads me to confirm my previous recommendation that a NCC overlay is the most appropriate coastal overlay for Portobello Peninsula in the 2GP.”

3.12.4.1 Decision and Reasons

2953. We accept in part submissions of *HPPC* (OS447.130) and *STOP* (OS900.131).
2954. We accept the evidence of *STOP* and Ryder Consulting, that the ecological values of Portobello Peninsula are higher than had originally been assessed in the Coastal Environment of Otago Natural Character and Outstanding Natural Features and

⁴⁶ Refer to the discussion of issues associated with the Coastal Environment Mapped Area, in section 3.2.5.

Landscapes Assessment, Dunedin City Section Report. We note that Ryder Consulting considers that this increases Peninsula's rating against three of the four 'ecological naturalness' criteria.

2955. We also accept the assessment of Mr Moore, that this does not change the overall natural character rating for the Peninsula, given that 'ecological naturalness' is just one of a number of criteria used to determine the overall natural character rating.
2956. As explained in section 3.2.5, we consider the Coastal Environment Mapped Area to have shortcomings as a method to effectively protect natural character values. As such, we accept an NCC overlay zone should be added to the Portobello Peninsula, consistent with the evidence of Mr Moore and the recommendation of the Reporting Officer. We have therefore amended planning maps to add a new NCC overlay zone covering Portobello Peninsula, and have added new 'A.5.3.X Portobello Peninsula' to Appendix A5.3 Natural Coastal Character Values, to describe the relevant values. These values have been drafted based on Mr Moore's revised evidence. See Appendix 1; amendments are attributed to NatEnv 447.130.
2957. While not directly relevant to the submission, the evidence of Mr Moore raised the question of how Goat and Quarantine Islands are treated from a coastal environment perspective. We note there is no coastal character overlay zone or Coastal Environment Mapped Area on the two islands, despite them having been identified (as outlined in Mr Moore's evidence) as possessing medium – high natural character values. We do not consider we have scope to address this but recommend it be addressed as part of a future Plan review process (see section 5.0).
2958. The mapping of the new Portobello Peninsula NCC overlay zone is shown in Figure 20 below.

Figure 20: Portobello Peninsula NCC



3.12.5 Aramoana Salt Marsh HNCC (Appendix A5.2.1) Mapping

2959. *Brian W Wilson* (OS809.1) sought to remove the Aramoana Salt Marsh HNCC from part of 860 Aramoana Road because it is rural land, used for grazing (inferred not stated). This submission was opposed by *Department of Conservation* (FS2379.8) who noted that the land is part of the Aramoana Ecological Area under the Conservation Act 1987 and "any vegetation clearance would require separate authorisation..." *Forest and Bird* (FS2482.3) also opposed removing the overlay zone from the area because of the area's high natural character.
2960. In his evidence in response to the *Brian W Wilson* submission, Mr Moore stated (para 165-166): "The Aramoana Saltmarsh unit encompasses tidal flats, saltmarsh and relict transgressive dunes, and as illustrated in Figure D3, includes both unmodified saltmarsh as well as areas of historic saltmarsh now impacted by agricultural land use. The 'high' natural character rating reflects an assessment of the unit overall...Finer grained mapping and assessment could have differentiated between the largely unmodified saltmarsh and the more modified areas and may have refined the area identified as HNCC (or ONCC)...In this case, I do not believe that the current extent of the HNCC overlay is inappropriate because it is a single geomorphological entity and the assessment has taken account of the modification."
2961. On the basis of the expert evidence of Mr Moore, the Reporting Officer recommended in the Section 42A Report (p. 655-657) that the submission of *Brian W Wilson* (OS809.1) be rejected.

3.12.5.1 Decision and Reasons

2962. Our decision is to reject the submission of *Brian W Wilson* (OS809.1) seeking amendment to the boundary of the Aramoana Salt Marsh HNCC.
2963. We note that the boundaries of this overlay zone were determined with expert input using established methodologies (including criteria substantially aligned with the requirements of the NZCPS and the pORPS-dv). We accept Mr Moore's evidence that the nature of the Aramoana Salt Marsh HNCC overlay zone, which includes both largely unmodified and modified areas, has been taken into account and is reflected in the overall rating of the area. Our decision relies on the expert evidence of Mr Moore, as detailed above, noting that no expert evidence was produced presenting an alternative view.

3.12.6 Sandfly Bay HNCC (Appendix A5.2.4) Mapping, and the Coastal Environment Mapped Area at Sandfly Bay and Hoopers Inlet

2964. *Robert George & Sharron Margaret Morris* (OS355.16, OS355.21), *Timothy George Morris* (OS951.10, OS951.15) and *Timothy Morris on behalf of RG and SM Morris Family Trust* (OS1054.10, OS1054.15) sought to amend the boundaries of the Sandfly Bay HNCC, and the boundaries of the Coastal Environment Mapped Area at Sandfly Bay and Hoopers Inlet, because they considered the mapping had not been based on appropriate consultation, and in the case of the Coastal Environment Mapped Area, had not been "ground truthed".
2965. In relation to the extent of the HNCC, Mr Moore noted (para 170): "The boundary of the HNCC overlay coincides with both that of the coastal environment and the Sandfly Bay ONF. The reason for this is that it follows the extent of the transgressive dune system which is clearly a product of coastal processes. This definition is consistent

with the guidance on the extent of the coastal environment in Policy 1 of the New Zealand Coastal Policy Statement 2010. The geomorphological rationale for mapping this dune system has already been discussed...based on the advice of Coastal geomorphologist Dr Teresa Konlechner, I believe that the HNCC is appropriately mapped.”

2966. In relation to the extent of the Coastal Environment Mapped Area at Sandfly Bay, Mr Moore referred to Policy 1 of the NZCPS, (paras 204-206) stating:

The area in question at Sandfly Bay is a cliffed coastline and the mapping rationale in these areas is to include:

- *Significant changes of slope defining land adjacent to the coast with coastal aspect; and/or*
- *The extent of landforms which are primarily a product of coastal processes; and/or*
- *Areas that are visually prominent in wider coastal views (e.g. headlands)...*

Having reviewed the original maps on which the 2GP map layer is based, I believe there is scope for refinement as illustrated in Figure E7. The amended line follows the crest of a minor spur form to include only land with a clifftop aspect.

2967. At paragraph 207, Mr Moore addresses Hoopers Inlet and notes the area

...is lower lying and the mapping rationale in these situations is to include:

- *The extent of areas previously mapped as being subject to coastal hazards; and/or*
- *The extent of tidal reach (where salinity affects the ecology rather than simply water movement); and/or*
- *The top of the coastal escarpment where this exists; and/or;*
- *The extent of landforms which are primarily a product of coastal processes.*

Having reviewed the original maps on which the 2GP map layer is based, and discussed the matter with ecologist Brian Stewart, I believe that the Mapped Area as currently drawn in the 2GP is appropriate. Whilst the area has been modified by the construction of Hoopers Inlet Road, drainage and agricultural use, it is very low lying, partially subject to occasional inundation and the flora and fauna show estuarine influence.

2968. On the basis of the expert evidence, the Reporting Officer, recommended in the Section 42A Report (pp. 668-669) that submissions relating to the Coastal Environment Mapped Area be accepted in part, and that the Coastal Environment Mapped Area in the vicinity of Sandfly Bay be amended as shown in Figure E7 of Mr Moore's evidence.
2969. *Mr Tim Morris* spoke at the hearing and tabled a statement, including images from the submissions showing the amendments sought to the Sandfly Bay HNCC and the Coastal Environment Mapped Area. *Mr Morris's* concerns related to restrictions the Mapped Area will have on carrying out farming activities; concerns that the areas are not accurately mapped; and that they result from inappropriate levels of land-owner consultation. In response, the Reporting Officer did not recommend change to Section 42A Report recommendations.

3.12.6.1 Decision and Reasons

2970. Our decision is to reject the submissions of *Robert George & Sharron Margaret Morris* (OS355.16, OS355.21), *Timothy George Morris* (OS951.10, OS951.15) and *Timothy Morris on behalf of RG and SM Morris Family Trust* (OS1054.10, OS1054.15).

2971. We note that the boundaries of both the HNCC and the Coastal Environment Mapped Area were determined with expert input using established methodologies (including criteria substantially aligned with the requirements of the NZCPS and the pORPS-dv). We agree with Mr Moore's assessment that Policy 1 (2) (c) of the NZCPS suggests "areas where coastal processes, influences or qualities are significant" should be recognised as part of the coastal environment. We accept the evidence that, in line with these requirements, the extent of the HNCC reflects the extent of the transgressive dune system, and the Coastal Environment Mapped Area in the vicinity of Hoopers Inlet reflects the extent of occasional inundation and biota that demonstrate estuarine influence. We note no expert evidence was presented supporting a contrary view.
2972. We were less convinced by the evidence of Mr Moore in relation to the extent of the Coastal Environment Mapped Area in the vicinity of Sandfly Bay. We note that his amendment extends beyond that requested by the submitter, and therefore question scope for the full extent of the change. The "minor spur" referred to in evidence (para 206) was not clear to us from the figures presented, and it was unclear to us how the suggested amendment better met the criteria outlined in the report. While a change may be appropriate, we did not consider the evidence presented was sufficiently strong to justify the change.
2973. Concerns raised by *Mr Tim Morris* at the hearing were focused on potential implications of the overlay zones and Coastal Environment Mapped Area for farming operations, particularly in relation to Indigenous Vegetation Clearance. We note that a range of activities, including Farming and Fencing, are permitted in all coastal character overlay zones. Amended provisions (specifically, Rule 8A.5.1.1, which is discussed in the Earthworks Decision Report) permit earthworks associated with the establishment of fences and tracks in NCC overlay zones, provided that: the activity is associated with a permitted land use or city-wide activity; the change in finished ground level does not exceed 1m; and the width of the track does not exceed 2m. Under the vegetation clearance provisions discussed in section 3.4 of this decision, any vegetation clearance required for the erection of fences is permitted subject to compliance with Rule 10.3.2.4 Protected Species (i.e. fences posts must be located outside the dripline of certain mature indigenous trees referred to in the rule, and the erection of fences must not damage certain threatened plant species, important breeding, refuge, feeding or resting sites for indigenous fauna, or mature indigenous trees referred to in the rule). In addition, any vegetation clearance required for the construction of tracks is generally permitted up to 2m in width in NCCs, again subject to Rule 10.3.2.4; in the case of indigenous vegetation clearance this exemption applies in NCCs only if the track is associated with a permitted land use or city-wide activity (such as farming). And in section 3.7.5.2, we discuss changes to policies that provide an alternative lower bar "adequately mitigated" policy test for specified restricted discretionary or discretionary activities in NCC overlay zones, recognising situations in which there are "no alternative practicable locations". We therefore disagree that the overlays in question would place any undue constraints on farming operations.

3.12.7 Tunnel Beach HNCC (Appendix A5.2.5) Mapping

2974. *Blackhead Quarries Ltd* (OS874.5) sought to remove the HNCC overlay zone from the very small area of 333 Blackhead Road that it coincides with. The submitter did not consider the overlay appropriate on a property where a quarry exists.
2975. *Chris Walker* (OS289.6) sought amendment of the HNCC boundary to align with the Council reserve, approximately 20m from the cliff top. The submitter considered that the beach and cliffs are what gives the area its natural character (especially when

viewed from Tunnel Beach itself) with the area beyond the cliffs being "a modified and impacted landscape".

2976. With regard to *Blackhead Quarries*, Mr Moore's evidence noted (para 177) that "the overlap of the HNCC overlay on 333 Blackhead Road is minimal and that the area included within the overlay is confined to the clifftops, cliffs and beach – all areas with natural character. The already highly modified part of the property i.e. the exotic woodlot and areas of modified landforms are excluded. Considering section 6(a) of the RMA and Policy 6 (1) (h) and (i) of the NZCPS, I do not believe that it is inappropriate to provide for the protection of areas of remaining natural character on quarry sites".
2977. In response to *Chris Walker*, Mr Moore stated (paras 175-176): "The inland boundary corresponds with the mapped extent of the coastal environment. For most of this unit, this has been identified with reference to the marked change in slope from gentler undulating slopes above, to steeper coast facing slopes below...In my assessment, inclusion of the steeper coast facing slopes above the cliffs within the mapped coastal environment is appropriate because this is the area experienced as the coastal landscape from within...
2978. He continues "A boundary corresponding with the reserve boundary as suggested would make no sense in terms of landform or vegetation character...I believe that there is a generally consistent character along the length of the sandstone cliff section and that the 'high' natural character evaluation (as opposed to 'outstanding') has taken into account the modified nature of the vegetation cover".
2979. On the basis of the expert evidence of Mr Moore, the Reporting Officer recommended in the Section 42A Report (pp. 655-657) that the submissions of *Blackhead Quarries Ltd* (OS874.5) and *Chris Walker* (OS289.6) to amend the HNCC overlay zone be rejected.

3.12.7.1 Decision and Reasons

2980. Our decision is to reject the submissions of *Blackhead Quarries Ltd* (OS874.5) and *Chris Walker* (OS289.6).
2981. As discussed in section 3.7.3 of this Decision Report, we consider the coastal character overlay zone an appropriate methodology to give effect to the NZCPS, and that it is appropriate to apply a coastal character overlay zone wherever natural character values have been identified as medium or greater. We note that the boundaries of the HNCC were determined with expert input using established methodologies (including criteria substantially aligned with the requirements of the NZCPS and the pORPS-dv). We note no expert evidence was presented supporting a contrary view.
2982. In relation to 333 Blackhead Road, we accept Mr Moore's assessment that where the HNCC overlay zone coincides with the property, it is confined to the cliff tops, cliffs and beach, all of which have natural character values. We note that the extent of the overlay coinciding with 333 Blackhead Road is very minor, and that no expert landscape evidence was presented suggesting it was inappropriate.
2983. In relation to the submission of *Mr Walker*, we accept Mr Moore's assessment that the boundary of the HNCC corresponds with the identified extent of the coastal environment, as defined by a marked change of slope. We agree that a boundary corresponding with the edge of the reserve would make no sense in natural character terms. We further accept Mr Moore's evidence that that the overall natural character evaluation has factored in the modified nature of the vegetation cover. We again note that this decision does not preclude the submitter from building, as the property has an identified building platform located outside the HNCC overlay zone.

3.12.8 Blueskin Bay NCC (Appendix A5.3.3) Mapping

2984. *Ron and Rowena Park* (OS281.9, 10) sought to remove the Blueskin Bay NCC Overlay Zone from Rural Residential 2 zones along the Blueskin Bay coastline, including their property at 6 Park Road, Warrington. The submitters thought it 'inconsistent' to apply a NCC overlay over some parts of the bay and not others, and questioned why the overlay applies on Rural Residential 2 land but not adjacent Township and Settlement land when the coastal landscape has already been modified. The submission to remove the NCC overlay from Rural Residential 2 zones (including 6 Park Street) was opposed by *Malgosia Szukiel*, who considered it to be important to protect coastline in areas near Township and Settlement zones "to balance the over-urbanization that has already occurred"; and *Bronislaw and Eleonora Szukiel* who wished to "protect the remaining coastal land from further development".
2985. *Mark Thom* (OS914.3) sought to remove the Blueskin Bay NCC overlay from his property at 13 McLachlan Street, Waitati, because the land was 'developed pasture', not 'natural coastal character.'
2986. *John Kaiser* (OS165.2) sought to include 135 and 145 Doctors Point Road in the Blueskin Bay NCC overlay, because he considered the property to have 'excellent' coastal character values. *Murray Johnston* (OS273.5) also sought to apply the Blueskin Bay NCC overlay to the same property because of its high amenity value. *Wendy Harrex* (OS170.2) sought to extend the Blueskin Bay NCC Overlay Zone to coastal Blueskin Bay Township and Settlement zoned properties to "protect, maintain and enhance the existing values of Blueskin Bay".
2987. In terms of the *Ron and Rowena Park* submission, Mr Moore noted that coastal overlays or the Coastal Environment Mapped Area had been applied only in rural, rural residential and recreation zones and to units where natural character had been assessed as medium – high or greater. He commented "In terms of Council's responsibilities under Section 6(a) of the RMA and the NZCPS, I believe it is appropriate that a mapped area or overlay is applied as generally as possible, wherever natural character values exist (amongst other reasons). It is my assessment that the NCC overlays around Blueskin Bay, including that over 6 Park Road, are justifiable and appropriate" (para 185 of Moore evidence). The Reporting Officer agreed with Mr Moore's comments and recommended no amendment in response to the *Ron and Rowena Park* submission.
2988. In response to *Mark Thom*, Mr Moore stated (para 186): "In this instance the coastal environment has been identified to include the open, rural low lying land seaward of Doctors Point Road and the township edge. This reflects that this area includes areas of tidal influence, is subject to coastal hazard, and that the open rural amenity of the area contributes to natural character. Whilst I do not consider this inappropriate, I believe that the boundary could be refined to coincide with the area of mapped coastal hazard...as this is perhaps the most significant determinant of the extent of the coastal environment in this situation". Mr Moore concluded (para 189): "In response to Mark Thom's submission, I believe it is appropriate that the NCC overlay extends south of the railway line at 13 McLachlan Street, but that some refinement of the boundary as indicated in Figure E1 would be justifiable".
2989. In response to *John Kaiser* and *Murray Johnston*, Mr Moore noted (para 184): "It is my understanding that NCC overlays (and the Coastal Environment Mapped areas) apply only where the underlying zoning is Rural, Rural-residential or Recreation in the 2GP. 135 and 145 Doctors Point Road are zoned Rural in the Operative District Plan but Township and Settlement in the 2GP. Had the decision been to apply coastal overlays more widely, they would only apply within the coastal environment. This was mapped in the Coastal Environment of Otago, Dunedin City Section report and was

located to correspond to the top of the distinctive coastal scarp form more or less as illustrated in Figure E1. Given the generally low elevation and subdued terrain of these properties it would be difficult to justify their more general inclusion within the coastal environment.” Mr Moore concluded (para 187): “...it is my conclusion that were coastal overlays to apply to areas zoned Township and Settlement, they would only be appropriate within the coastal environment i.e. to the top of the coastal scarp.” Mr Moore did not comment specifically on the submission of *Wendy Harrex*.

2990. On the basis of the expert evidence, the Reporting Officer in the Section 42A Report (pp. 661-665) recommended that:
- a) the submission of *Mark Thom* be accepted in part and the extent of the Blueskin Bay NCC overlay amended as shown in Figure E1 of Mr Moore's evidence, and
 - b) the submissions of *John Kaiser*, *Murray Johnston* and *Wendy Harrex* be rejected.
2991. *John Kaiser* spoke at the hearing and tabled a statement setting out the threats to the 'Opeke' site (135 and 145 Doctors Point Road) which he considered would be remedied by applying a NCC overlay to the site. *Mr Kaiser* stated that even if the zoning decision is for Large Lot Residential, the NCC overlay zone should still apply to the site.
2992. In response to *Mr Kaiser*, in the revised recommendations summary the Reporting Officer noted that if the site is rezoned to a non-residential zoning as a result of Urban Land Supply decisions, the Panel may wish to consider applying the NCC overlay zone to the coastal scarp part of site as per Mr Moore's evidence (para 184).

3.12.8.1 Decision and Reasons

2993. We reject the submissions of *Ron and Rowena Park* (OS281.9, OS281.10) seeking to remove the Blueskin Bay NCC Overlay Zone from Rural Residential 2 zones along the Blueskin Bay coastline, and in particular from 6 Park Road, Warrington. We acknowledge that the 2GP maps the coastal environment only in areas of rural, rural residential and recreation zoning, where natural character values have been identified as medium – high or greater, and that this does create some inconsistencies. However, we do not consider that it would be appropriate to resolve these inconsistencies by removing coastal overlay zones from areas that have been assessed as being part of the coastal environment. We accept the evidence that s6(a) of the RMA and the NZCPS require protection of natural character values in the coastal environment, and that it may therefore be appropriate for NCC overlay zones to be applied to other areas assessed as being part of the coastal environment. As explained in section 3.2.5, we recommend that a future Plan review consider identifying the full extent of the coastal environment in the 2GP, and provisions to protect coastal values in these areas.
2994. We note, as discussed in the Urban Land Supply Decision Report, that our decision rezones part of 6 Park Road as Township and Settlement, but as this area does not coincide with the NCC overlay zone, it does not affect our decision on this point.
2995. We accept in part the submission of *Mark Thom* (OS914.3) and amend the extent of the Blueskin Bay NCC overlay zone as shown in Figure E1 of Mr Moore's evidence. We accept the evidence of Mr Moore, that the extent of the NCC overlay zone could be refined to coincide with the area of mapped coastal hazard (as the most significant determinant of the extent of the coastal environment, noting that this is one of the criterion for identifying the coastal environment set out in NZCPS Policy 1).
2996. We accept in part the submissions of *John Kaiser* (OS165.2), *Murray Johnston* (OS273.5) and *Wendy Harrex* (OS170.2), and amend the extent of the Blueskin Bay NCC overlay zone to include those parts of 135 and 145 Doctors Point Road mapped

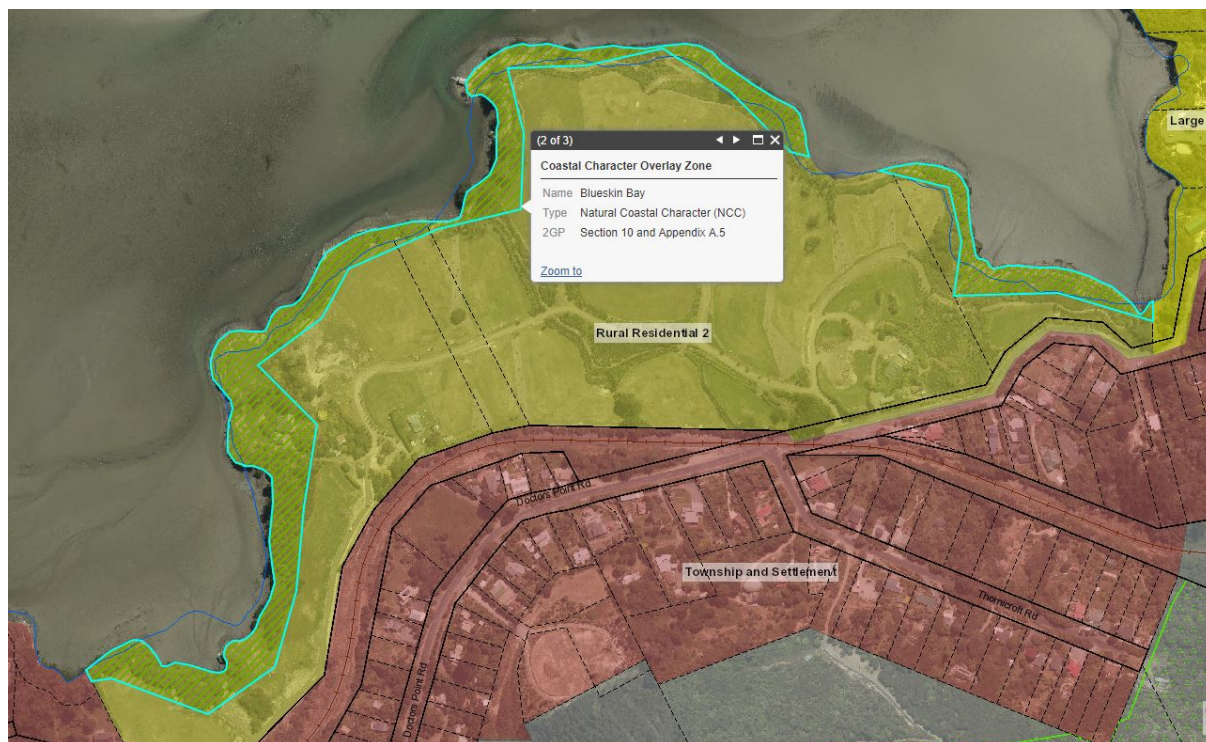
as coastal environment in the *Coastal Environment of Otago – Dunedin City Section Report 2015*. We note that decisions outlined in the Urban Land Supply Decision Report determine rural residential zoning to be the most appropriate for 135 and 145 Doctors Point Road. We accept the evidence of Mr Moore that the underlying Township and Settlement zoning was the reason for the qualifying part of the area not being included in the Blueskin Bay NCC overlay zone, and therefore, with the change in zoning, consider the NCC overlay zone should be applied to the extent of the coastal environment.

2997. In relation to the submission of *Wendy Harrex*, as explained above, while we accept that the coastal overlay zones do not reflect the full extent of the coastal environment, and we have recommended that this is addressed in a future plan review, it's our view that including areas in the 2GP assessed as having medium – low natural coastal character values and/or tracts of residential zoning would require introduction of new provisions and/or significant amendment of notified provisions. Given the complexity of the changes that would ensue (and especially considering there are a large number of landowners in this area who would not have been aware of these potential changes), we consider it more appropriate to recommend provisions be developed and consulted on through a future Plan review process. As such, we do not support the inclusion of the suggested area in the NCC overlay zone at this time.
2998. The amended mapping of the Blueskin Bay NCC overlay zone in response to the submission of *Mark Thom* is shown in Figure 21, while the amended mapping of the Blueskin Bay NCC overlay zone in response to the submissions of *John Kaiser*, *Murray Johnston* and *Wendy Harrex* is shown in Figure 22 below.

Figure 21: Blueskin Bay NCC at McLachlan Street



Figure 22: Blueskin Bay NCC at 135 and 145 Doctors Point Road



3.12.9 Island Park NCC (Appendix A5.3.6) Mapping

2999. *Blackhead Quarries Ltd* (OS874.52) sought to remove the small area of Island Park NCC overlay from 333 Blackhead Road, because the submitter did not consider such overlays are appropriate where a quarry is already in existence.
3000. In response to *Blackhead Quarries Ltd*, Mr Moore's evidence stated (paras 191-192): "This is obviously the result of a mapping inaccuracy, as Blackhead Road represents the line at which the character changes from the quarried Blackhead landform to the native scrub covered dune lands...I believe it is appropriate to amend the NCC Blackhead Road boundary to avoid any overlap with 333 Blackhead Road".
3001. On the basis of the expert evidence, the Reporting Officer in the Section 42A Report (pp. 661-665) recommended that the *Blackhead Quarries Ltd* submission be accepted and the Island Park NCC overlay amended to exclude 333 Blackhead Road, as shown on Figure E3 of Mr Moore's evidence.

3.12.9.1 Decision and Reasons

3002. We agree with Mr Moore's assessment that the area in question is inconsistent in terms of natural character values to the remainder of the Island Park NCC overlay zone, and accept the submission of *Blackhead Quarries Ltd* (OS874.52) amendment to exclude 333 Blackhead Road, as shown on Figure E3 of Mr Moore's evidence.
3003. The amended mapping of the Island Park NCC overlay zone is shown in Figure 23 below.

Figure 23: Island Park NCC at Blackhead



3.12.10 Waikouaiti Estuary NCC (Appendix A5.3.17) Mapping

3004. *William Rangi Hawea Ellison* (OS323.1) sought to remove the Waikouaiti Estuary NCC overlay from the Maori land of which he is an owner (40 and 50 Merton Station Road). The submitter was concerned about 'excessively onerous' restrictions, and did not consider the land warrants 'special protection' and requested that the land be removed from the overlay or to only have the ridgeline on the property included. He expressed concerns about consultation and about the potential impact of activity status rules.
3005. In response to *William Ellison*, Mr Moore stated (paras 197-199): "The NCC overlay encompasses the Waikouaiti River Estuary and associated river flats and the boundary mapping rationale in this vicinity is to reflect the top of a low coastal scarp. This scarp is considered to be an appropriate boundary in terms of the NZCPS Policy 1...As can be seen in Figure E5 this intent has not been translated very accurately to the 2GP map and requires amendment as indicated. Whilst this will have the effect on increasing coverage on 40 and 50 Merton Station Road, the actively farmed parts of the property are excluded...It is my conclusion that removal of the NCC overlay at 40 and 50 Merton Station Road is not consistent with the NZCPS but that correction to the mapping is required."
3006. On the basis of the expert evidence, the Reporting Officer in the Section 42A Report (pp. 661-665) recommended the submission of *William Rangi Hawea Ellison* be accepted in part, and the boundary of the Waikouaiti Estuary NCC amended as shown in Figure E5 of Mr Moore's evidence.

3007. *Mr Ellison*, along with Desiree Williams from the Ngāi Tahu Māori Law Centre, spoke at the hearing seeking removal of the NCC overlay zone from *Mr Ellison's* property or exclusion of currently farmed areas. The overlay over the northern part of his property was of particular concern as this includes farmland. Mr Ellison clarified that the 'ridgeline' referred to in his submission meant the top of the coastal scarp at the western extent of his property.
3008. In response to the appearance of *Mr Ellison*, the Reporting Officer provided a revised recommendation. He considered the recommended amendment in the Section 42A Report to extend the NCC at the northern extent of the property should be outside the scope of the submission. However, the Reporting Officer recommended that the Section 42A amendment to extend the NCC at the western extent of the property be accepted, as this was within scope of Mr Ellison's submission, with the 'ridgeline' being identified as the top of the coastal scarp.

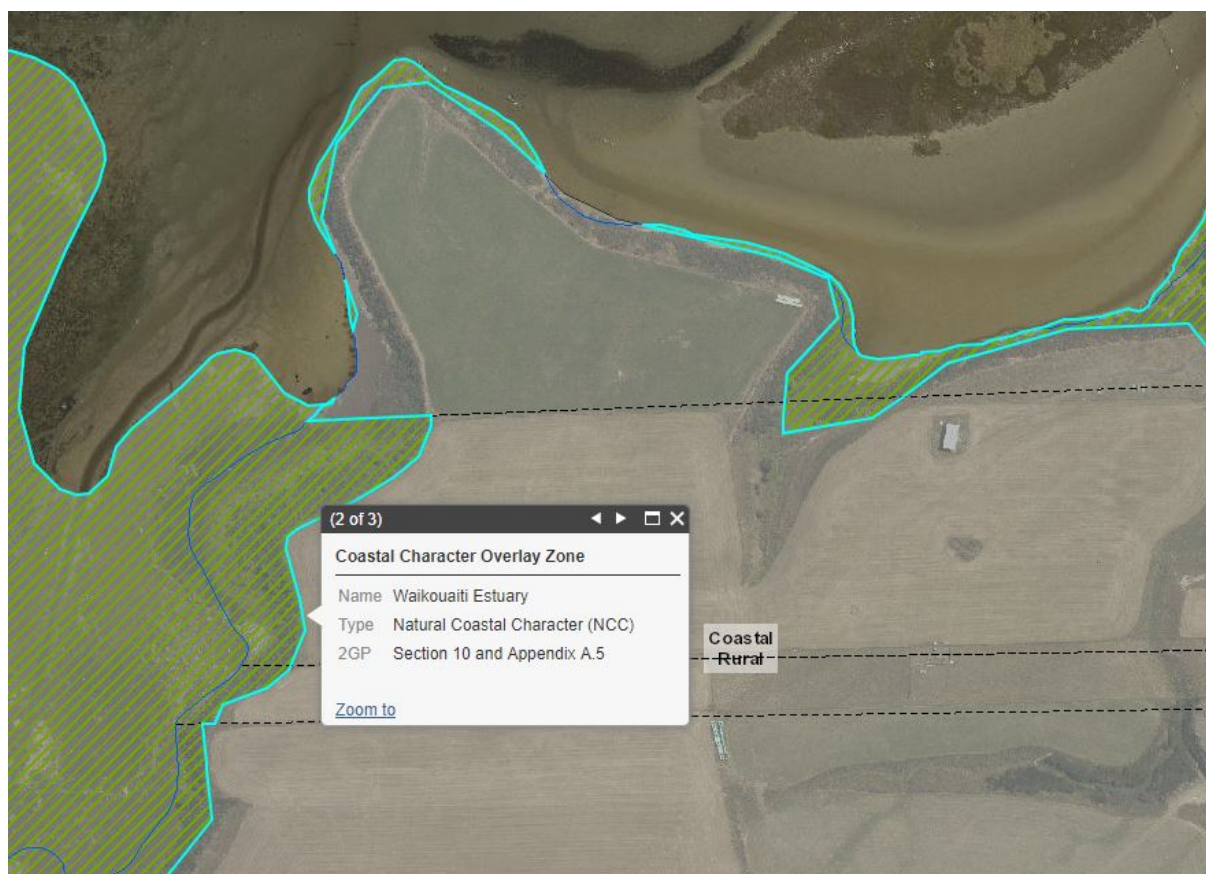
3.12.10.1 Decision and Reasons

3009. Our decision is to accept in part the submission of *William Rangi Hawea Ellison* (OS323.1) and to amend the Waikouaiti Estuary NCC overlay at the western extent of 40 and 50 Merton Station Road to the suggested line in Figure E5 of Mr Moore's evidence. However, we do not accept Mr Moore's suggested amendment to the NCC at the northern part of the property, as we consider this outside the scope of *Mr Ellison's* submission.
3010. In relation to the western boundary, we accept the evidence of Mr Moore that the map would more appropriately follow the top of the low coastal scarp, as the extent of the coastal environment in this area (in line with NZCPS Policy 1). Having confirmed with Mr Ellison at the Hearing that this feature is what he refers to as the 'ridgeline' in his original submission, we consider this amendment within the scope of the original submission. The amended mapping of the NCC is shown in Figure 24 below.
3011. Amendments to the northern boundary of 40 and 50 Merton Station Road suggested by Mr Moore stray beyond the scope of the submission, and we therefore have not considered these.
3012. We note that a number of the submitter's concerns related to the potential impact of the NCC overlay zone on the activity status of various activities on their land. Any provisions relating to the overlay zone apply only on the part of the property that the overlay zone coincides with. We note that a range of activities, including Farming and Fencing, are permitted in all coastal character overlay zones. Amended provisions (specifically, Rule 8A.5.1.1, which is discussed in the Earthworks Decision Report) permit earthworks associated with the establishment of fences and tracks in NCC overlay zones, provided that: the activity is associated with a permitted land use or city-wide activity; the change in finished ground level does not exceed 1m; and the width of the track does not exceed 2m. Under the vegetation clearance provisions discussed in section 3.4 of this decision, any vegetation clearance required for the erection of fences is permitted subject to compliance with Rule 10.3.2.4 Protected Species (i.e. fences posts must be located outside the dripline of certain mature indigenous trees referred to in the rule, and the erection of fences must not damage certain threatened plant species, important breeding, refuge, feeding or resting sites for indigenous fauna, or mature indigenous trees referred to in the rule). In addition, any vegetation clearance required for the construction of tracks is generally permitted up to 2m in width in NCCs, again subject to Rule 10.3.2.4; in the case of indigenous vegetation clearance this exemption applies in NCCs only if the track is associated with a permitted land use or city-wide activity (such as farming). And in section 3.7.5.2, we discuss changes to policies that provide an alternative lower bar "adequately mitigated" policy test for specified restricted discretionary or discretionary

activities in NCC overlay zones, recognising situations in which there are “no alternative practicable locations”. We therefore disagree that the overlays in question would place any undue constraints on farming operations.

3013. This submission is one of a number that have raised questions about the accuracy of the mapping in the notified 2GP. We do not consider that we have scope in submissions to make general improvements to the quality of the mapping, as it would have implications for notified boundaries, but we highlight the issue for consideration as part of a future Plan review process. We recommend that this review pays particular attention to the position of Mean High Water Springs, as it appears in some cases (including at 40 and 50 Merton Station Road) the 2GP has mapped overlay zones outside of its jurisdiction.

Figure 24: Waikouaiti Estuary NCC at Merton Station Road



3.12.11 Suggested new Harwood-Taiaroa Head NCC

3014. HPPC (OS447.131) sought to add a NCC overlay zone over all Township and Settlement zoned land from Harwood to Taiaroa Head. The submitter stated that "We seek to preserve the historic village-rural-village settlement pattern of the iconic Otago Harbour" and explained that a NCC overlay zone could address harbour-side sprawl.
3015. Mr Moore's evidence responded to HPPC, stating (paras 201-202): "In terms of how the 2GP is structured and for internal consistency, I do not believe that a NCC overlay

is appropriate in this area. This is because, as I understand it, coastal overlays are only identified where the natural character assessment ratings...were Medium or higher (and this area was assessed as medium – low), and because the overlays exclude urban zoned land. Having said this, I strongly support the aims stated in the HPPC submission and believe that Council has obligations under Sections 6(a) and 7(c) of the RMA to preserve remaining natural character and to maintain and enhance amenity values. As illustrated in Figure E6, much of the area in question is within the coastal environment...and in my opinion, the 2GP maps err in not identifying the coastal environment mapped area in this vicinity. Given the coastal hazard and natural character issues in this area, I believe that the HPPC submission raises valid concerns about the extent and continuity of the Township and Settlement Zone.”

3016. Mr Moore concluded (para 202): “It is my conclusion that a NCC overlay would not be consistent with the rationale for these areas adopted for the 2GP, but that a coastal environment mapped area should be identified in this area. I also recommend that the extent and continuity of the Township and Settlement zone in this vicinity be reviewed for consistency with the NZCPS provisions.”⁴⁷
3017. In the Section 42A Report, the Reporting Officer (p. 667) recommended that the HPPC submission be rejected, stating “The NCC overlays manage development activities, including requiring resource consent for buildings and structures over 60m² and indigenous vegetation clearance, and setting a more restrictive threshold for what may be considered earthworks – small scale. I do not consider that the NCC overlay zones should apply in residential zones. I consider that, in accordance with Policy 6 of the NZCPS, the 2GP recognises that these already-existing developed residential areas have had their natural character modified to such an extent that built development can be enabled within these areas without compromising their coastal values.”
3018. The Reporting Officer did not agree with Mr Moore’s conclusion that a Coastal Environment Mapped Area should apply in this area, and stated: “The coastal environment mapped area is linked specifically to a rule that sets a restricted discretionary activity status for any indigenous vegetation clearance. The intent of the coastal mapped area is to manage indigenous vegetation clearance in coastal rural areas that were not assessed as being of sufficient natural character values to be mapped as an ONCC, HNCC or NCC⁴⁸. It is also employed in certain landscape overlay zones where, to avoid over-complexity of provisions, an NCC was not applied but the coastal mapped environment was included to manage indigenous vegetation clearance. As I do not consider that a rule to manage indigenous vegetation clearance is required in these residential zones, I do not recommend that a coastal environment mapped area is applied over the Township and Settlement zoned land from Harwood to Taiaroa Head.”
3019. In terms of the issue of ‘harbourside sprawl’, the Reporting Officer stated (p. 667) that this: “is best addressed through the application of management zone provisions, rather than overlay provisions. This will include assessing the extent of built development that is appropriate in the coastal environment. Policy 6 (c) of the NZCPS is to “encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth”. I consider that the 2GP has addressed this by reviewing the appropriate extent of residential zoning in the coastal environment and generally discouraging urban expansion in these areas.”

⁴⁷ Refer to the discussion of issues associated with the Coastal Environment Mapped Area, in section 3.2.5.

⁴⁸ Refer to the discussion of issues associated with the Coastal Environment Mapped Area, in section 3.2.5.

3020. *HPPC* tabled a statement at the hearing, which stated that Mr Moore's evidence indicated that some form of protective management zone provision or mapped area should be added. The submitter considers that "the NZCPS directly targets 'sprawling' development which this area does typify." The submitter disagreed with the Reporting Officer that the 2GP has addressed the extent of residential zoning in coastal areas, stating "perhaps that is true for other coastal areas of Dunedin but NOT for the harbourside coastline from Harwood to Taiaroa Head."

3.12.11.1 Decision and Reasons

3021. Our decision is to reject the submission of *HPPC* (OS447.131) to add a NCC overlay zone to all Township and Settlement zoned land from Harwood to Taiaroa Head.
3022. We accept the evidence of the Reporting Officer, that the area suggested by *HPPC* for inclusion in the proposed overlay does not meet the criteria used to establish an NCC overlay zone (or a Coastal Environment Mapped Area) due to substantial tracts of Township and Settlement zoning, and having been assessed as having medium – low natural character values.
3023. As explained in section 3.2.5, we query the adequacy of the notified approach management of areas of the coastal environment with low-medium natural character. It's our recommendation that a future Plan review consider identifying the full extent of the coastal environment in the 2GP, and provisions to protect coastal values in these areas. To this extent we support the intent of the submission of *HPPC* as reinforced by the evidence of Mr Moore, and consider the area identified by the submitter as a good example of a location that would benefit from this type of approach.
3024. However, it's our view that including areas in the 2GP assessed as having medium – low values (especially those with tracts of residential zoning) would require introduction of new provisions and/or significant amendment of notified provisions. Given the complexity of the changes that would ensue (and especially considering there are a large number of landowners in this area who would not have been aware of these potential changes) we consider it more appropriate to recommend provisions be developed and consulted on through a future Plan review process. As such, we do not support the inclusion of the suggested area in the NCC overlay zone at this time.
3025. We agree with the Reporting Officer's assessment that management of urban expansion is more appropriately managed by way of management zones, than coastal character overlay zones. The Urban Land Supply Decision Report details our decisions on these matters, however no submissions were received requesting specific reductions in the extent of the Township and Settlement Zone in this vicinity, meaning there was no scope to consider such a change.
3026. We do note, however, that in response to submissions received and expert evidence heard across several hearings, we have amended the policy framework to provide protection for green breaks between settlements (in order to maintain visual amenity and the identity of individual settlements). This is discussed in more detail in the Urban Land Supply Decision Report.

3.13 Mapping errors

3027. *Dunedin City Council* (OS360.112, 116 and 118) sought to remove part of the Flagstaff-Mt Cargill SNL overlay zone because of mapping errors.
3028. *Dunedin City Council* (OS360.169) also sought to remove the Natural Coastal Character (NCC) overlay zone from properties on Taieri Mouth Road, Brighton, because of mapping errors.

3029. In the Section 42A Report (Section 5.15.6, p. 623), the Reporting Officer agreed that these errors need to be addressed and recommended the submissions (OS360.112, 116, 118 and 169) were accepted.

3.13.1 Decision and Reasons

3030. We accept the submissions of the *Dunedin City Council* (OS360.112, OS360.116 and OS360.118 and OS360.169) to amend mapping areas associated with the Flagstaff-Mt Cargill SNL overlay boundaries at Lot 18 BLK II DP 164 at 8 Mark Street, Ravensbourne {*NatEnv 360.112*}; 2 Mark Street, Ravensbourne {*NatEnv 360.116*}; 3 Albert Road and 27-35 Bradley Street, Osborne {*NatEnv 360.118*}. We agree that these amendments will correct a mapping error.
3031. We accept the submission of the *Dunedin City Council* (OS360.169) to remove the Natural Coastal Character (NCC) Overlay Zone from 787, 969, 967, 955, 953, 945, 939, 937, 931, 929 and 915 Taieri Mouth Road, Brighton {*NatEnv 360.169*}. We agree that these amendments will correct a mapping error.
3032. We note that 927 Taieri Mouth Road was also included in the NCC overlay zone. Like the properties subject to this submission, 927 Taieri Mouth Road is also zoned Township and Settlement Zone. We consider that this was also a mapping error upon notification of the 2GP. We have removed the NCC overlay zone from 927 Taieri Mouth Road under clause 16 as a minor and inconsequential amendment to correct this error.

4.0 Future Plan change reviews and other suggestions

3033. In considering this topic, and as noted throughout this Decision report, it was our opinion that the Plan may have been improved by reviewing possible provisions, as set out below, together with some suggestions we have made as to future work that may be carried out via plan changes or as part of the next plan review:

- manage vegetation clearance along coastal margins in the urban environment, outside of the Recreation Zone (refer to section 3.2.4);
- the appropriateness of the coastal environment mapped area method, and the extent of coastal character overlay zones (section 3.2.5);
- expanding the ASBV schedule to include those Important Bird Areas not already included in existing ASBVs (section 3.3.1.4);
- review the extent and values of scheduled ASBVs and compatible activities that should be included in the schedules at the time of the assessment (section 3.3.4.1);
- undertake a comprehensive and sustained Council-initiated work programme outside of the 2GP to schedule areas of significant indigenous vegetation and the significant habitats of indigenous species, including a review of the existing ASBVs for alignment against the new 2GP significance criteria, and any required amendments to be made by way of a future plan change (section 3.3.5.1);
- develop a clear, easily accessible list of appropriate plant species for “eco-sourcing” of each part of Dunedin in order to manage biodiversity values or natural character values (section 3.4.6.3);
- reconsider the current exemption from indigenous vegetation clearance rules for mānuka adversely affected by Mānuka Blight (*Eriococcus orariensis*) as recommended in Dr Lloyd’s evidence (section 3.4.6.3);
- address the inconsistency with the threatened plant species lists, which include “locally uncommon” and “at risk – naturally uncommon” species (section 3.4.7.4);
- review the list of threatened wildlife to assess the need for the addition of other species (section 3.4.7.4);
- conduct a thorough assessment of existing and potential UBMA to:
 - o confirm whether new UBMA should be identified and included in the Plan;
 - o better describe biodiversity values within each UBMA, including descriptions of trees;
 - o assess whether any UBMA or parts of UBMA meet significance criteria and therefore should be scheduled as ASBVs (sections 3.4.8.1 and 3.4.8.4);
 - o confirm the extent of the new UBMA at Doctors Point and describe its values (section 3.3.5.8);
- consider adding “Effects on biodiversity values” as a matter of discretion for earthworks to other restricted discretionary activities in rural, rural residential and recreation zones (section 3.6.1.7);

- consider including in Appendix A3 any principal threats to values in relation to ONFs (section 3.8.9.1);
 - in reviewing the provisions in ONLs for potential loosening of the rules around building additions and alterations to holistically review any potentially unacceptable cumulative effects on landscape values from that (section 3.7.9.1);
 - consider the rule requiring 200m minimum separation distance between buildings, which may have perverse outcomes for landscape and natural coastal character values (section 3.7.10.2);
 - review extending the application of Rule 10.3.6 to smaller buildings, and more widely across the rural and residential zones (section 3.7.12.3);
 - update the values of all listed water bodies, noting that descriptions in Appendix 10C are all very brief and do not appear to identify terrestrial conservation values associated with the margins of the water bodies (section 3.8.4.1);
 - restrict planting of wilding tree species in certain areas to restrict impacts on rural productivity (section 3.9.1.1);
 - clarifications to relevant assessment rules for performance standard contraventions in 10.4.3, and relevant parts of Rule 10.5.3 (section 3.10.4.2);
 - updating the landscape values of Taieri Gorge in Appendix A3.2.1 (section 3.11.3.1);
 - assess the landscape values of the hills surrounding the Taieri Plain area to a finer degree, including assessment of the potential threats to area (section 3.11.4.10);
 - include more detailed descriptions of each coastal character overlay zone in Appendix A5 (section 3.12.3.1);
 - investigate a coastal character overlay zone or Coastal Environment Mapped Area on Goat and Quarantine Islands (section 3.12.4.1); and
 - consider identifying the full extent of the coastal environment in the 2GP, and provisions to protect coastal values in these areas (section 3.12.8.1).
3034. We note the issues raised by a submitter in relation to stormwater discharge and habitat destruction that are considered to be affecting the biodiversity values of the Caversham Valley UBMA, and draw these to the attention of the relevant Council departments for investigation and possible action (section 3.4.8.4).
3035. We also recommend that a comprehensive and sustained Council-initiated work programme outside of the 2GP is essential to assist landowners with interpretation of the new rules; to help them understand on-farm values; to recognise and support good practice; and to encourage “ownership of the issues, rules and regulations...at the individual and community level” (*Federated Farmers* submission, paras 14-21). We consider this will not only help achieve the certainty that submitters sought by increasing the rate of scheduling of areas of ASBVs, but will also support the broader ambitions for maintenance or enhancement of biodiversity outlined in the Plan.

5.0 Minor and Inconsequential Amendments

3036. Clause 16(2) of Schedule 1 of the RMA allows a local authority to make an amendment where the alteration “is of minor effect”, and to correct any minor errors, without needing to go through the submission and hearing process.
3037. This Decision includes minor amendments and corrections that were identified by the DCC Reporting Officers and/or by us through the deliberations process. These amendments are referenced in this report as being attributed to “cl.16”. These amendments generally include:
- correction of typographical, grammatical and punctuation errors
 - removing provisions that are duplicated
 - clarification of provisions (for example adding ‘gross floor area’ or ‘footprint’ after building sizes)
 - standardising repeated phrases and provisions, such as matters of discretion, assessment guidance, policy wording and performance standard headings
 - adding missing hyper-linked references to relevant provisions (eg. performance standard headings in the activity status tables)
 - correctly paraphrasing policy wording in assessment rules
 - changes to improve plan usability, such as adding numbering to appendices and reformatting rules
 - moving provisions from one part of the plan to another
 - rephrasing plan content for clarity, with no change to the meaning
3038. Minor changes such as typographical errors have not been marked up with underline and strikethrough. More significant cl. 16 changes (such as where provisions have been moved) are explained using footnotes in the marked-up version of the Plan.

Appendix 1 –Amendments to the Notified 2GP (2015)

Please see www.2gp.dunedin.govt.nz/decisions for the marked-up version of the notified 2GP (2015). This shows changes to notified 2GP with strike-through and underline formatting and includes related submission point references for the changes.

Appendix 2 – Summary of Decisions

1. A summary of decisions on provisions discussed in this decision report (based on the submissions covered in this report) is below.
2. This summary table includes the following information:
 - Plan Section Number and Name (the section of the 2GP the provision is in)
 - Provision Type (the type of plan provision e.g. definition)
 - Provision number from notified and new number (decisions version)
 - Provision name (for definitions, activity status table rows, and performance standards)
 - Decision report section
 - Section 42A Report section
 - Decision
 - Submission point number reference for amendment

Summary of Decisions

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
1. Plan Overview and Introduction	Definition	1.5		Conservation	Do not amend definition as requested		3.1.1	5.1.1
1. Plan Overview and Introduction	Definition	1.5		Biodiversity	Add new definition of biodiversity	NatEnv 690.2	3.1.2	5.1.2
1. Plan Overview and Introduction	Definition	1.5		Indigenous Vegetation	Amend definition	NatEnv 900.4	3.4.2	5.8.1
1. Plan Overview and Introduction	Definition	1.5		Vegetation Clearance	Amend definition	NatEnv 919.86 NatEnv 1088.8 and 312.9	3.4.3	5.8.3
1. Plan Overview and Introduction	Definition	1.5		Biodiversity Offset	Add new definition of biodiversity offsets	NatEnv 949.1	3.5.5	5.1.3
1. Plan Overview and Introduction	Definition	1.5		No Net Loss	Add new definition of no net loss	NatEnv 949.2	3.5.5	5.1.3
2. Plan Overview and Introduction	Definition	1.5		Biodiversity values	Add new definition	NatEnv 958.60	3.6.1	5.4.1
2. Plan Overview and Introduction	Definition	1.5		Wetland	Amend definition wording	NatEnv 853.2	3.8.6	5.7.2
2. Plan Overview and Introduction	Definition	1.5		Margin (requested new definition)	Do not add new definition as requested		3.8.7	5.7.3
2. Strategic Directions	Policy	2.2.3.1	2.2.3.2		Amend policy wording, including to delete references to the methods for protecting significant areas of significant indigenous vegetation and/or significant habitats of indigenous fauna (this aspect of the change is linked to the addition of new Policy 2.2.3.X, which sets out the methods).	NatEnv 900.9 NatEnv 949.22 NatEnv 958.8 NatEnv	3.3.1 3.3.2	5.2.2

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
						1088.14		
2. Strategic Directions	Policy	2.2.3.2	2.2.3.3		Amend policy wording	NatEnv 690.5 NatEnv 900.10	3.2.2	5.2.3
2. Plan Overview and Introduction	Policy	2.2.3.2	2.2.3.3		Amend policy by adding a new method 'require the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities' - linked to addition of new Policy 10.2.1.W	NatEnv 900.35	3.6.1	5.4.2
2. Strategic Directions	Policy	2.2.3.3	2.2.3.4		Amend policy wording	NatEnv 908.24	3.2.3	5.2.4
2. Plan Overview and Introduction	Policy	2.2.3.4.d			Amend policy to reflect change to Objective 10.2.4 (remove the word 'identified')	NatEnv 1088.41	3.6.11	5.4.20
2. Strategic Directions	Policy	2.2.3.4	2.2.3.5		Amend policy wording	NatEnv 900.12	3.2.4	5.2.5
2. Strategic Directions	Policy	2.2.3.5 (New)	2.2.3.6		Add new policy regarding the use of biodiversity offsetting	NatEnv 949.29	3.5.5	5.1.3
2. Strategic Directions	Policy	2.2.3.6 (New)	2.2.3.7		Add new policy regarding the use of environmental compensation	NatEnv 1088.15	3.5.5	5.1.3
2. Strategic Directions	Policy	2.2.3.X (New)	2.2.3.1		Add new policy, to set out the methods for protecting significant areas of significant indigenous vegetation and/or significant habitats of indigenous fauna (in notified provisions, these methods were included in Policy 2.2.3.1)	NatEnv 900.9 NatEnv 958.8	3.3.1 3.3.2	5.2.2
2. Strategic Directions	Objective	2.2.3			Amend objective wording	NatEnv 958.7 NatEnv 1088.13	3.2.1	5.2.1
2. Strategic Directions	Policy	2.4.4.3			Amend policy wording to better reflect the methods used in the Plan to protect the values of identified ONFs, ONLs and SNLs	NatEnv 919.12 NatEnv 447.75	3.7.4	5.2.11
2. Strategic Directions	Objective	2.4.4			Do not remove or amend Objective 2.4.4 and do not remove associated policies	NatEnv 458.19	3.7.2	5.2.9
2. Strategic Directions	Policy	2.4.5.1			Retain Policy 2.4.5.1 as notified	NatEnv 958.13	3.7.3	5.2.13
2. Strategic Directions	Policy	2.4.5.3			Amend policy wording to better reflect the methods used in the Plan to protect the	NatEnv 919.13	3.7.4	5.2.15

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
					values of identified ONCCs, HNCCs and NCCs	NatEnv 447.75		
2. Strategic Directions	Objective	2.4.5			Amend objective wording	NatEnv 900.21	3.7.3	5.2.12
3. Public Amenities	Activity Status	3.3.2.4		Public artworks - large scale	Do not amend activity status in landscape and coastal character overlays to become NC	NatEnv 447.58 NatEnv 447.83	3.7.8	5.12.9
5. Network Utilities	Assessment of Discretionary Activities	5.9.2.1			Amend to add guidance in relation to effects on biodiversity values - linked to addition of new Policy 10.2.1.W, which provides for the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities	NatEnv 900.35	3.6.1	5.4.2
5. Network Utilities	Assessment of Discretionary Activities	5.9.2.1			Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast - linked to addition of new Policy 10.2.2.Y	NatEnv 900.38	3.8.8	5.7.4
5. Network Utilities	Assessment of Non-complying Activities	5.10.2.1			Amend to add guidance in relation to effects on biodiversity values - linked to addition of new Policy 10.2.1.W, which provides for the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities	NatEnv 900.35	3.6.1	5.4.2
5. Network Utilities	Assessment of Non-complying Activities	5.10.2.1			Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast - linked to addition of new Policy 10.2.2.Y	NatEnv 900.38	3.8.8	5.7.4
6. Transportation	Policy	6.2.1.3			Amend policy wording to remove clause b.iii., i.e. the test relating to effects on natural environment values (because these effects are managed by policies in Section 10)	NatEnv 900.142 and others	3.6.13	5.4.4
6. Transportation	Assessment of Discretionary Activities	6.11.3.1	6.12.3.1		Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast - linked to addition of new Policy 10.2.2.Y	NatEnv 900.38	3.8.8	5.7.4

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
6. Transportation	Assessment of D Activities	6.11.3.2	6.12.3.2		Amend guidance wording to reflect change to Policy 6.2.1.3	NatEnv 900.142 and others	3.6.13	5.4.4
8. Natural Hazard Mitigation	Assessment of Discretionary Activities	8.5.2.1			Amend to add guidance in relation to effects on biodiversity values - linked to addition of new Policy 10.2.1.W, which provides for the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities	NatEnv 900.35	3.6.1	5.4.2
10. Natural Environment	Introduction	10.1			Amend Introduction	NatEnv 958.57	3.2.5	5.2.6
10. Natural Environment	Introduction	10.1			Amend introduction	NatEnv 588.1	3.6.1	5.4.1
10. Natural Environment	Introduction	10.1		Introduction	Amend introduction	NatEnv 1088.29, NatEnv 1071.46, NatEnv 447.14, NatEnv 900.26, NatEnv 919.20	3.10.2	5.3.2
10. Natural Environment	Policy	10.2.1.1	10.2.1.5		Retain policy as notified		3.6.3	5.2.2 EW
10. Natural Environment	Policy	10.2.1.2	10.2.1.4		Amend policy wording	NatEnv 690.8 NatEnv 900.142 NatEnv 1088.32	3.3.3	5.4.4
10. Natural Environment	Policy	10.2.1.2	10.2.1.4		Amend policy to reflect change to activity status for shelterbelts and small woodlots and all other site development activities from P to RD in ASBVs	NatEnv 958.107	3.3.4	5.12.1
10. Natural Environment	Policy	10.2.1.3	10.2.1.6		Amend policy wording	NatEnv 900.28	3.4.5	5.8.6
10. Natural Environment	Policy	10.2.1.4	10.2.1.7		Amend policy wording	NatEnv 949.5 NatEnv 900.29 NatEnv	3.4.7	5.8.7

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
						1088.34		
10. Natural Environment	Policy	10.2.1.5	10.2.1.8		Amend policy wording to refer to new appendix A10	NatEnv 900.31	3.4.8	5.8.5
10. Natural Environment	Policy	10.2.1.6	10.2.1.9		Amend policy wording (effects test)	NatEnv 919.25	3.9.1	5.9.1
10. Natural Environment	Policy	10.2.1.7	10.2.1.10		Amend policy wording	NatEnv 900.143, NatEnv 949.8, NatEnv 958.58	3.6.4	5.4.5
10. Natural Environment	Policy	10.2.1.8	N/A (Deleted)		Delete policy	NatEnv 949.9	3.6.5	5.4.6
10. Natural Environment	Policy	10.2.1.9	10.2.1.11		Amend policy wording: to amend the policy tests for the effects of subdivision on biodiversity values; to delete the reference to UCMAs (the effects of subdivision on UBMs, as UCMAs are now referred to, are now managed by Policy 10.2.1.5); and to add references to other relevant policies.	NatEnv 958.60, NatEnv 958.27	3.6.6	5.4.7
10. Natural Environment	Policy	10.2.1.10	N/A (Deleted)		Delete policy (its contents is now covered by amended Policy 10.2.1.2)	NatEnv 949.11	3.6.6	5.4.7
10. Natural Environment	Policy	10.2.1.W (new)	10.2.1.1		Add new policy: "Only allow land use, development and city-wide activities where biodiversity values are maintained or enhanced."	NatEnv 900.35	3.6.1	5.4.2
10. Natural Environment	Policy	10.2.1.X (New)	10.2.1.2		Add new policy that requires activities to avoid adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna if practicable, and add to assessment guidance of activities with the potential to create significant effects	NatEnv 900.142NatEnv 1088.15	3.3.13.5.5	5.2.2
10. Natural Environment	Policy	10.2.1.X (New)	10.2.1.2		Add reference to Policy 2.2.3.5 in Policy 10.2.1.X	NatEnv 949.29	3.5.5	5.1.3
10. Natural Environment	Policy	10.2.1.X (New)	10.2.1.2		Add reference to Policy 2.2.3.6 in Policy 10.2.1.X	NatEnv1088.15	3.5.5	5.1.3
10. Natural Environment	Policy	10.2.1.Y (new)	10.2.1.3		Add new policy	NatEnv 690.8 NatEnv 900.142 NatEnv 1088.32	3.3.3	5.4.4

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
						NatEnv 1088.15		
10. Natural Environment	Policy	10.2.1.Y (New)	10.2.1.3		Add reference to Policy 2.2.3.5 in Policy 10.2.1.Y	NatEnv 949.29	3.5.5	5.1.3
10. Natural Environment	Policy	10.2.1.Y (New)	10.2.1.3		Add reference to Policy 2.2.3.6 in Policy 10.2.1.Y	NatEnv1088.15	3.5.5	5.1.3
10. Natural Environment	Objective	10.2.1			Amend objective	NatEnv 958.60, NatEnv 361.1, NatEnv 900.141	3.6.1	5.4.1
10. Natural Environment	Objective	10.2.1			Do not amend the wording of policies under this objective as requested.	OS447.15	3.6.1	5.4.1
10. Natural Environment	Objective	10.2.1		Requested new policy	Do not add the following new policy under this objective, as requested: "Maintain, protect or enhance areas of modified indigenous vegetation which contain indigenous biodiversity and habitats for indigenous species."	OS958.60	3.6.1	5.4.1
10. Natural Environment	Policy	10.2.2.1			Retain policy as notified		3.6.8	5.4.9
10. Natural Environment	Policy	10.2.2.2			Retain Policy 10.2.2.2 as notified		3.8.8	5.7.4
10. Natural Environment	Policy	10.2.2.4	10.2.2.5		Amend policy wording	NatEnv 1088.40	3.6.9	5.4.10
10. Natural Environment	Policy	10.2.2.5	10.2.2.7		Amend policy wording	NatEnv 360.147	3.8.1	5.6.1
10. Natural Environment	Policy	10.2.2.5	10.2.2.7		Do not amend policy as requested		3.8.2	5.6.2
10. Natural Environment	Policy	10.2.2.6	10.2.2.8		Amend policy wording	NatEnv 951.8	3.6.10	5.4.11
10. Natural Environment	Policy	10.2.2.Y (new)	10.2.2.6		Add new policy 10.2.2.Y to manage effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast	NatEnv 900.38	3.8.8	5.7.4
10. Natural Environment	Objective	10.2.2			Do not amend the wording of policies under this objective as requested.	OS447.15	3.6.1	5.4.1
10. Natural Environment	Objective	10.2.2			Retain objective as notified		3.6.7	5.4.8

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
10. Natural Environment	Policy	10.2.3.1	N/A (Deleted)		Remove policy; the activities that were managed by this policy in ONCCs and HNCCs are now managed by amended Policy 10.2.3.2	NatEnv 900.46	3.7.5	5.4.14
10. Natural Environment	Policy	10.2.3.2			Amend policy to refer to rural activities that are non-complying in ONCCs and HNCCs	NatEnv 900.46	3.7.5	5.4.15
10. Natural Environment	Policy	10.2.3.2			Amend policy wording (effects test)	NatEnv 908.17	3.7.5	5.4.15
10. Natural Environment	Policy	10.2.3.2			Amend policy wording as a consequence of changing activity status of indigenous vegetation clearance - large scale from restricted discretionary to non-complying in ONCCs and HNCCs (add reference to activity)	NatEnv 958.106	3.7.8	5.12.7
10. Natural Environment	Policy	10.2.3.3			Amend policy to refer to transportation activities and public amenities (which are, respectively, discretionary and restricted discretionary activities in ONCCs and HNCCs)	NatEnv 949.19	3.7.5	5.4.12
10. Natural Environment	Policy	10.2.3.3			Amend policy wording as a consequence of changing activity status of indigenous vegetation clearance - large scale from restricted discretionary to non-complying in ONCCs and HNCCs (delete reference to activity)	NatEnv 958.106	3.7.8	5.12.7
10. Natural Environment	Policy	10.2.3.4	10.2.3.5		Amend policy to add reference to crematoriums to reflect change in activity status to RD+ in NCC overlay zones	NatEnv 447.77	3.7.8	5.12.6
10. Natural Environment	Policy	10.2.3.5	N/A (Deleted)		Remove policy; the activities that were managed by this policy in ONCCs, HNCCs and NCCs are now managed via amended Policy 10.2.3.3, new Policy 10.2.3.X or new Policy 10.2.3.Y	NatEnv 908.17	3.7.5	5.4.18
10. Natural Environment	Policy	10.2.3.6	10.2.3.9		Do not amend policy as requested		3.7.12	5.11.3
10. Natural Environment	Policy	10.2.3.7			Amend policy wording (effects test only)	NatEnv 958.43 NatEnv 900.46	3.7.5	5.4.12
10. Natural Environment	Policy	10.2.3.10			Delete policy; the activities that were managed by this policy in NCCs are now managed by new Policy 10.2.3.Y	NatEnv 576.62	3.7.5	5.4.12
10. Natural Environment	Policy	10.2.3.V	10.2.3.12		Add new policy to manage effects on natural character of the coast for activities that contravene Tree Species standard - linked to addition of this effect as a matter of discretion	NatEnv 900.144	3.9.1	5.9.1

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
					for this activity (new Rule 10.4.3.11.b)			
10. Natural Environment	Policy	10.2.3.W (New)	10.2.3.1		Add new policy to reflect change in activity status of mining and landfills in ONCC and HNCC overlay zones from NC to Pr	NatEnv 447.75 NatEnv 447.76	3.7.8	5.12.1
10. Natural Environment	Policy	10.2.3.X	10.2.3.4		Add new policy to manage natural hazard mitigation activities in ONCCs and HNCCs (policy contains a less restrictive effects test for activities that have no practicable alternative locations)	NatEnv 908.17	3.7.5	5.4.12
10. Natural Environment	Policy	10.2.3.Y	10.2.3.6		Add new policy to manage a range of activities in NCCs (policy contains a less restrictive effects test for activities that have no practicable alternative locations)	NatEnv 908.17 NatEnv 576.62	3.7.5	5.4.12
10. Natural Environment	Objective	10.2.3			Do not delete this objective and its policies as requested	OS355.15	3.6.1	5.4.1
10. Natural Environment	Objective	10.2.3			Do not amend the wording of policies under this objective as requested.	OS447.15	3.6.1	5.4.1
10. Natural Environment	Objective	10.2.3			Amend objective wording	NatEnv 958.37	3.7.5 3.7.6	5.4.13
10. Natural Environment	Policy	10.2.4.1			Retain Policy 10.2.4.1 as notified		3.8.9	5.7.5
10. Natural Environment	Policy	10.2.4.3			Amend policy wording (minor)	NatEnv 360.148	3.8.1	5.6.1
10. Natural Environment	Policy	10.2.4.3			Do not amend policy as requested		3.8.3	5.6.3
10. Natural Environment	Policy	10.2.4.4 (new)			Do not amend policy as requested		3.6.12	5.4.21
10. Natural Environment	Objective	10.2.4			Do not amend this objective or its associated policies as requested	OS355.17	3.6.1	5.4.1
10. Natural Environment	Objective	10.2.4			Do not amend the wording of policies under this objective as requested.	OS447.15	3.6.1	5.4.1
10. Natural Environment	Objective	10.2.4			Amend objective wording to remove the word 'identified'	NatEnv 1088.41	3.6.11	5.4.20
10. Natural Environment	Policy	10.2.5.1	N/A (Deleted)		Remove policy; the activities that were managed by this policy in ONFs are now managed by amended Policy 10.2.5.4	NatEnv 874.14	3.7.5	5.4.22
10. Natural Environment	Policy	10.2.5.2	N/A (Deleted)		Remove policy; the activities that were managed by this policy in ONFs are now managed by amended Policy 10.2.5.4	NatEnv 874.14	3.7.5	5.4.22
10. Natural	Policy	10.2.5.3	10.2.5.3		Amend policy wording to manage the effects	NatEnv	3.7.8	5.12.7

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
Environment					of indigenous vegetation clearance - large scale on the identified values of ONFs	958.106		
10. Natural Environment	Policy	10.2.5.4	10.2.5.2		Amend policy to refer to rural activities that are non-complying in ONFs	NatEnv 874.14	3.7.5	5.4.22
10. Natural Environment	Policy	10.2.5.4	10.2.5.2		Amend policy wording (effects test)	NatEnv 908.17	3.7.5	5.4.22
10. Natural Environment	Policy	10.2.5.5	N/A (Deleted)		Remove policy; the activities that were managed by this policy in ONFs, ONLs and SNLs are now managed via new Policy 10.2.5.Y, new Policy 10.2.5.Z and amended Policy 10.2.5.7	NatEnv 908.17	3.7.5	5.4.22
10. Natural Environment	Policy	10.2.5.6	10.2.5.7		Amend policy to delete references to large buildings and structures, to earthworks - large scale, and to a range of network utility activities, because these activities are now managed via new Policy 10.2.5.Z (which provides a less restrictive effects test for activities that have 'no practicable alternative locations').	NatEnv 464.10 NatEnv 576.62	3.7.5	5.4.22
10. Natural Environment	Policy	10.2.5.6	10.2.5.7		Amend policy wording to remove reference to landfills and mining due to change in activity status in ONL overlays zones from D to NC	NatEnv 447.75 NatEnv 447.76	3.7.8	5.12.1
10. Natural Environment	Policy	10.2.5.7	10.2.5.9		Amend policy to manage public amenities, natural hazard mitigation activities and transportation activities in SNLs (transferred from deleted Policy 10.2.5.5)	NatEnv 908.17 NatEnv 908.3	3.7.5	5.4.22
10. Natural Environment	Policy	10.2.5.7	10.2.5.9		Amend policy to provide a less restrictive effects test for activities that have no practicable alternative locations	NatEnv 458.12	3.7.5	5.4.22
10. Natural Environment	Policy	10.2.5.7	10.2.5.9		Amend policy to add reference to crematoriums to reflect change in activity status to RD+ in SNL overlay zones	NatEnv 447.77	3.7.8	5.12.6
10. Natural Environment	Policy	10.2.5.8	10.2.5.12		Amend policy wording	NatEnv 900.59	3.7.12	5.11.3
10. Natural Environment	Policy	10.2.5.11	10.2.5.10		Amend policy wording (effects test)	NatEnv 908.17 NatEnv 908.3 NatEnv 900.46	3.7.5	5.4.22
10. Natural Environment	Policy	10.2.5.12	10.2.5.13		Do not amend policy as requested		3.7.10	5.11.2

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
10. Natural Environment	Policy	10.2.5.W	10.2.5.15		Add new policy to manage effects on landscape values for activities that contravene Tree Species standard - linked to addition of this effect as a matter of discretion for this activity (new Rule 10.4.3.11.C)	NatEnv 900.144	3.9.1	5.9.1
10. Natural Environment	Policy	10.2.5.X (New)	10.2.5.1		Add new policy to reflect change in activity status of mining and landfills in ONF overlay zones from NC to Pr	NatEnv 447.75 NatEnv 447.76	3.7.8	5.12.1
10. Natural Environment	Policy	10.2.5.Y	10.2.5.4		Add new policy to manage a range of activities in ONFs (policy contains a less restrictive effects test for activities that have no practicable alternative locations)	NatEnv 908.17	3.7.5	5.4.22
10. Natural Environment	Policy	10.2.5.Z	10.2.5.8		Add new policy to manage a range of activities in ONLs (policy contains a less restrictive effects test for activities that have no practicable alternative locations)	NatEnv 908.17 NatEnv 464.10 NatEnv 576.62	3.7.5	5.4.22
10. Natural Environment	Objective	10.2.5			Do not delete this objective and its policies as requested	OS355.18	3.6.1	5.4.1
10. Natural Environment	Objective	10.2.5			Do not amend the wording of policies under this objective as requested.	OS447.15	3.6.1	5.4.1
10. Natural Environment	Objective	10.2.5			Do not amend Objective as requested	NatEnv 447.23 NatEnv 919.28	3.7.53.7.7	5.4.23
10. Natural Environment	Objective	10.2			Do not amend Natural Environment Objectives and Policies to note the importance of the natural environment to tourism and the wider economy	OS588.1	3.6.1	5.4.1
10. Natural Environment	City Wide Performance Standard	10.3.1		Esplanade Reserves and Strips	Amend rule to delete references to the 'margin' of water bodies, to increase the width of esplanade strips from 5m to 20m, and to add an esplanade strip requirement to subdivision alongside Battery Creek and Stewarts Creek	NatEnv 360.149, NatEnv 900.6, NatEnv 908.12, NatEnv 588.4	3.8.4, 3.8.7	5.6.4, 5.7.3
10. Natural Environment	Development Performance Standard	10.3.2.1	10.3.2.4	Maximum area of vegetation clearance (UBMA)	Amend performance standard to clarify or add exemptions	NatEnv 949.15 NatEnv 1090.27	3.4.4	5.8.4 5.8.5

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
						NatEnv 291.5		
10. Natural Environment	Development Performance Standard	10.3.2.A (notified as 10.3.2.2)		Indigenous vegetation clearance - small scale thresholds	Amend performance standard to:clarify or add types of clearance that are considered small scale;to change time period for 3 rural zones; andto change maximum area in 3 rural zones.	NatEnv 949.15NatEnv 1090.27NatEnv 900.147NatEnv 860.5NatEnv 1082.1NatEnv 355.11NatEnv 900.2NatEnv 138.1NatEnv 291.5NatEnv 361.7	3.4.43.4.6	5.8.45.8.6
10. Natural Environment	Development Performance Standard	10.3.2.A (notified as 10.3.2.2)		Indigenous vegetation clearance - small scale thresholds	Amend rule so that ONFs are treated in the same way as ASBVs and coastal character overlay zones in terms of the types of clearance that are always treated as 'indigenous vegetation clearance – small scale', and so that in ONFs indigenous vegetation clearance is treated as 'large scale' if it is not of the types listed in Rule 10.3.2.A.a, regardless of whether it meets the area thresholds set out in Rule 10.3.2.A.c	NatEnv 958.106	3.7.8	5.12.7
10. Natural Environment	Development Performance Standard	10.3.2.3	10.3.2.2	Protected areas (vegetation clearance)	Amend performance standard to clarify or add exemptions	NatEnv 949.15NatEnv 1090.27NatEnv 291.5	3.4.43.4.7	5.8.45.8.7
10. Natural Environment	Development Performance Standard	10.3.2.4	10.3.2.3	Protected species (indigenous vegetation clearance)	Amend performance standard to: clarify or add exemptions; to improve clarity of introductory wording; and to add threatened indigenous fauna species.	NatEnv 949.15 NatEnv 1090.27 NatEnv 291.5 NatEnv 900.155 NatEnv	3.4.4 3.4.7	5.8.4 5.8.7

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
						958.72		
10. Natural Environment	City Wide Performance Standard	10.3.3		Setback from Coast and Water Bodies	Amend rule to delete references to the 'margin' of water bodies	NatEnv 900.6	3.8.7	5.7.3
10. Natural Environment	City Wide Performance Standard	10.3.3		Setback from Coast and Water Bodies	Amend performance standard so that it does not apply in certain zones, to clarify that the setback from water bodies only applies to water bodies ' with a clearly defined bed', and to exempt additional activities from the performance standard (via addition of 10.3.3.6.n, o, p & q).	NatEnv 737.8, NatEnv 826.17, NatEnv 360.218	3.8.10	5.7.6
10. Natural Environment	Development Performance Standard	10.3.4		Tree species	Amend performance standard to change the activity status of contraventions of the standard from restricted discretionary to non-complying for Forestry in ONLs and NCCs, and for Shelterbelts and Small Woodlots in ASBVs, ONFs, ONLs, ONCCs, HNCCs and NCCs	NatEnv 900.77	3.9.2	5.9.2
10. Natural Environment	Development Performance Standard	10.3.4		Tree species	Amend performance standard to delete certain tree species and to add others	NatEnv 355.2, NatEnv 900.132	3.9.2	5.9.2
10. Natural Environment	City Wide Performance Standard	10.3.5		Number and Location of Permitted Buildings (was Minimum Building Separation)	Amend performance standard generally to be more enabling in terms of the number and location of permitted buildings, but to limit the total number of new permitted buildings per site to three additional buildings from the date of notification of the decision, rather than two new buildings per five year period as notified.	NatEnv 464.1, NatEnv 951.63, NatEnv 447.35	3.7.10	5.11.2
10. Natural Environment	City Wide Performance Standard	10.3.6	10.3.6 still (see note)	Reflectivity	Amend performance standard: to clarify that it applies to roofs; to exempt natural wood finishes, glass, clear plastic, soffits and flues; and to clarify that LRV will be measured based on an 'as weathered' condition, for materials like stone whose LRV changes with weathering.	NatEnv 447.36, NatEnv 464.6, NatEnv 951.64	3.7.12	5.11.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.2.1	10.5.2.1		Amend guidance (remove content), linked to content being added to 10.4.3.A	NatEnv 690.10 NatEnv 690.12	3.7.5	5.4.13

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.2.1	10.5.2.1		Do not amend rule as requested		3.10.4	5.13.1
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.1	10.5.3.2		Amend guidance to add new Policy 10.2.1.X	NatEnv 900.142NatEnv 900.9	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.1	10.5.3.2		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.1	10.5.3.2		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.1	10.5.3.2		Amend assessment guidance to reflect amendment of policy wording	NatEnv 360.147	3.8.1	5.6.1
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.1	10.5.3.2		Amend guidance wording (minor)	NatEnv 360.147, NatEnv 360.152, NatEnv 360.153	3.8.1	5.6.1
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.1	10.5.3.2		Amend guidance wording (new general assessment guidance)	NatEnv 900.67, NatEnv 690.24, NatEnv 908.33	3.8.4	5.6.4

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.2	10.5.3.3		Amend assessment guidance to add new Policy 10.2.1.X	NatEnv 900.142 NatEnv 900.9	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.2	10.5.3.3		Amend assessment guidance to reflect amendment to Policy 10.2.1.5	NatEnv 900.31	3.4.8	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.2	10.5.3.3		Amend assessment guidance to add guidance relating to ecological assessment provided under new special information Rule 10.8.2	NatEnv 958.95	3.4.9	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.2	10.5.3.3		Add reference to Policy 2.2.3.5 in guidance Add reference to Guidance on Good Practice Biodiversity Offsetting	NatEnv 949.29 NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.2	10.5.3.3		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.4	10.5.3.4		Amend assessment guidance to add new Policy 10.2.1.X	NatEnv 900.142 NatEnv 900.9	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.4	10.5.3.4		Amend guidance wording to reflect amendments to Policy 10.2.1.4	NatEnv 949.5 NatEnv 900.29 NatEnv 1088.34	3.4.7	5.2.2

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.4	10.5.3.4		Amend assessment guidance to add guidance relating to ecological assessment provided under new special information Rule 10.8.2	NatEnv 958.95	3.4.9	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.4	10.5.3.4		Add reference to Policy 2.2.3.5 in guidance Add reference to Guidance on Good Practice Biodiversity Offsetting	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.4	10.5.3.4		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.4	10.5.3.4		Amend guidance (to add to 'general assessment guidance')	NatEnv 908.33	3.10.4	5.13.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.5	10.5.3.5		Amend assessment guidance to add new Policy 10.2.1.X	NatEnv 900.142 NatEnv 900.9	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.5	10.5.3.5		Amend guidance wording to reflect amendments to Policy 10.2.1.4	NatEnv 949.5 NatEnv 900.29 NatEnv 1088.34	3.4.7	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.5	10.5.3.5		Amend assessment guidance to add guidance relating to ecological assessment provided under new special information Rule 10.8.2	NatEnv 958.95	3.4.9	5.2.2

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.5	10.5.3.5		Add reference to Policy 2.2.3.5 in guidanceAdd reference to Guidance on Good Practice Biodiversity Offsetting	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.5	10.5.3.5		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.8	10.5.3.8		Amend assessment guidance to add general assessment guidance on assessing effects based on visibility and considering guidelines in Appendix A11	NatEnv 447.41 and others	3.7.12	5.11.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.9	10.5.3.9		Amend assessment guidance to add general assessment guidance on assessing effects based on visibility and considering guidelines in Appendix A11	NatEnv 447.41 and others	3.7.12	5.11.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.10	10.5.3.10		Amend assessment guidance for contravention of setback from coast and water bodies standard to add reference to new Policy 10.2.1.X	NatEnv 900.142 NatEnv 900.9	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.10	10.5.3.10		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.10	10.5.3.10		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.10	10.5.3.10		Amend assessment guidance to reflect changes to wording of Policy 10.2.2.4	NatEnv 1088.40	3.6.9	5.4.10
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.10	10.5.3.10		Amend guidance wording (new general assessment guidance)	NatEnv 690.24, NatEnv 908.33	3.8.4	5.6.4
10. Natural Environment	Assessment of RD Performance Standard Contraventions	10.4.3.11.a	10.5.3.11.a	Effects on biodiversity values	Amend guidance (change to 'potential circumstances that may support a consent application) - linked to addition of separate matters of discretion for effects on natural character of the coast and effects on landscape values (new Rules 10.4.3.11.b and 10.4.3.11.c)	NatEnv 900.144	3.9.1	5.9.1
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.11.b (new)	10.5.3.11.b	Effects on natural character of the coast	Add new matter of discretion for contravention of Tree Species performance standard	NatEnv 900.144	3.9.1	5.9.1
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.11.c (new)	10.5.3.11.c	Effects on landscape values	Add new matter of discretion for contravention of Tree Species performance standard	NatEnv 900.144	3.9.1	5.9.1
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.11	10.5.3.11		Amend assessment guidance to add new Policy 10.2.1.X	NatEnv 900.142	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard	10.4.3.11	10.5.3.11		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3

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	Contraventions							
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.11	10.5.3.1 1		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.11	10.5.3.1 1		Amend guidance to reflect change to Policy 10.2.1.6	NatEnv 919.25	3.9.1	5.9.1
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.3.A (New)	10.5.3.1	Positive effects on biodiversity values or the natural character of the coast	Add a new matter of discretion applying to all restricted discretionary contraventions of performance standards in Section 10; add assessment guidance linking to Policy 10.2.1.1; and add a 'potential circumstance that may support a consent application' relating to conservation activities	NatEnv 690.10 NatEnv 690.12	3.7.5	5.4.13
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.4.1	10.5.4.2		Do not amend guidance as requested		3.7.11	5.11.4
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.4.5	10.5.4.6		Amend assessment guidance to reflect changes to wording of Policy 10.2.2.4	NatEnv 1088.40	3.6.9	5.4.10
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.4.5	10.5.4.6		Do not amend rule as requested		3.10.4	5.13.3
10. Natural Environment	Assessment of Restricted Discretionary Performance	10.4.4.6	10.5.4.7		Amend assessment guidance to add new Policy 10.2.1.X	NatEnv 900.142	3.3.1	5.2.2

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	Standard Contraventions							
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.4.6	10.5.4.7		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.4.6	10.5.4.7		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.4.6	10.5.4.7		Amend paraphrasing of Policy 10.2.1.7	NatEnv 900.143, NatEnv 949.8, NatEnv 958.58	3.6.4	5.4.5
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.4.7	10.5.4.8		Amend assessment guidance to add new Policy 10.2.1.X	NatEnv 900.142	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.4.7	10.5.4.8		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.4.4.7	10.5.4.8		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance	10.4.4.A (New)	10.5.4.1	Positive effects on biodiversity values or the natural character	Add a new matter of discretion applying to all restricted discretionary contraventions of performance standards in other sections (where the contravention links to section	NatEnv 690.10 NatEnv 690.12	3.7.5	5.4.13

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	Standard Contraventions			of the coast	10.4); add assessment guidance linking to Policy 10.2.1.1; and add a 'potential circumstance that may support a consent application' relating to conservation activities			
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.1	10.6.3.2		Amend assessment guidance to add new Policy 10.2.1.X	NatEnv 900.142	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.1	10.6.3.2		Add reference to Policy 10.2.2.4	NatEnv 908.27	3.6.9	5.4.10
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.2	10.6.3.5		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.2	10.6.3.5		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.2	10.6.3.5		Amend to reflect change to Policy 10.2.1.9	NatEnv 958.60	3.6.6	5.4.7
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.2	10.6.3.5		Amend assessment guidance to reflect amendment of policy wording	NatEnv 360.147	3.8.1	5.6.1
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.2	10.6.3.5		Amend guidance	NatEnv 360.155	3.10.4	5.13.5
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.3	10.6.3.6		Amend assessment guidance to add new Policy 10.2.1.X	NatEnv 900.142	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.3	10.6.3.6		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted	10.5.2.3	10.6.3.6		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
	Discretionary Activities							
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.3	10.6.3.6		Amend guidance to reflect amendment to Policy 10.2.3.7	NatEnv 958.43 NatEnv 900.46	3.7.5	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.3	10.6.3.6		Amend assessment guidance as a consequence of changing activity status of indigenous vegetation clearance - large scale from restricted discretionary to non-complying in ONCCs and HNCCs (remove guidance)	NatEnv 958.106	3.7.8	5.12.7
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.3	10.6.3.6		Amend guidance to reflect amended Rule 10.8.1	NatEnv 447.135	3.7.13	5.11
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.4	10.6.3.7		Amend guidance wording to add new Policy 10.2.1.X	NatEnv 900.142 NatEnv 900.9	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.4	10.6.3.7		Amend assessment guidance to add guidance relating to ecological assessment provided under new special information Rule 10.8.2	NatEnv 958.95	3.4.9	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.4	10.6.3.7		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.4	10.6.3.7		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.4	10.6.3.7		Amend guidance to add reference to crematoriums to reflect change in activity status to RD+ in NCC overlay zones	NatEnv 447.77	3.7.8	5.12.6
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.4	10.6.3.7		Amend assessment guidance by adding a new potential circumstance that may support a consent application	NatEnv 464.4	3.7.9	5.11.1
10. Natural Environment	Assessment of Restricted	10.5.2.4	10.6.3.7		Amend assessment guidance to add general assessment guidance on assessing effects of	NatEnv 447.74	3.7.14	5.10

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
	Discretionary Activities				forestry based on guidelines in Appendix A11.3			
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.4	10.6.3.7		Amend guidance to change activities it applies to from 'new buildings and ads and alts >60m or 20m length and 'all other building and structures activities' to 'all RD buildings and structures activities that are linked to Section 10.5'	NatEnv 360.164	3.10.4	5.13.4
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.5	10.6.3.8		Amend assessment guidance to add new Policy 10.2.1.X	NatEnv 900.142 NatEnv 900.9	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.5	10.6.3.8		Amend assessment guidance to add new Policy 10.2.3.Y, including guidance relating to "no practicable alternative locations"	NatEnv 908.17	3.7.5	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.5	10.6.3.8		Amend assessment guidance to provide guidance around use of solar panels and other structures that may cause glare	NatEnv 447.49	3.7.15	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.5	10.6.3.8		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.5	10.6.3.8		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.5.2.5	10.6.3.8		Amend guidance to add reference to Policy 10.2.3.Y, and to add 'general assessment guidance' on how the Council will assess whether an activity has 'no practicable alternative locations'- linked to decision to add new Policy 10.2.3.Y	NatEnv 576.62	3.7.5	5.4.12
10. Natural Environment	Assessment of Restricted Discretionary Performance Standard Contraventions	10.5.2.5	10.6.3.8		Amend guidance to delete reference to Policy 10.2.3.10 - linked to decision to delete Policy 10.2.3.10	NatEnv 576.62	3.7.5	5.4.12
10. Natural Environment	Assessment of Restricted	10.5.2.6	10.6.3.9		Amend guidance to reflect amendment to Policy 10.2.3.7	NatEnv 958.43	3.7.5	5.4.12

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	Discretionary Activities					NatEnv 900.46		
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.6	10.6.3.9		Amend guidance to reflect amended Rule 10.8.1	NatEnv 447.135	3.7.13	5.11
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.7	10.6.3.10		Amend guidance to reflect amended Policy 10.2.1.2	NatEnv 690.8 NatEnv 900.142 NatEnv 1088.32	3.3.3	5.4.4
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.7	10.6.3.10		Amend guidance to reflect amended Policy 10.2.1.4	NatEnv 690.8 NatEnv 900.142 NatEnv 1088.32	3.3.3	5.4.4
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.7	10.6.3.10		Amend guidance by removing reference to indigenous vegetation clearance to reflect change in activity status from RD to NC in ASBVs	NatEnv 949.13	3.3.4	5.12.1
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.7	10.6.3.10		Amend guidance to add reference to shelterbelts and small woodlots and site development activities to reflect change in activity status from P to RD in ASBVs	NatEnv 958.107	3.3.4	5.12.1
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.7	10.6.3.10		Amend guidance to change activities it applies to from new buildings and ads and alts >60m or 20m length and 'all other structures activities' to 'all RD buildings and structures activities that are linked to Section 10.5'	NatEnv 360.164	3.10.4	5.13.4
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.8	N/A (Deleted)		Delete assessment rule - linked to decision to delete Policy 10.2.1.10	NatEnv 949.11	3.6.6	5.4.7
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.9	10.6.3.11		Amend to reflect change to Policy 10.2.1.9	NatEnv 958.60	3.6.6	5.4.7
10. Natural Environment	Assessment of Restricted Discretionary	10.5.2.10	10.6.3.12		Amend guidance to reflect new Policy 10.2.1.X	NatEnv 900.142	3.3.1	5.2.2

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
	Activities							
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.10	10.6.3.1 2		Amend guidance to reflect amended Policy 10.2.1.5	NatEnv 900.142	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.10	10.6.3.1 2		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.10	10.6.3.1 2		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.10	10.6.3.1 2		Amend to reflect change to Policy 10.2.1.9	NatEnv 958.60	3.6.6	5.4.7
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.11	10.6.3.1 3		Amend guidance to manage the effects of indigenous vegetation clearance - large scale on the identified values of ONFs	NatEnv 958.106	3.7.8	5.12.7
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.13	10.6.3.1 5		Amend guidance to reflect amendment to Policy 10.2.5.11	NatEnv 908.17 NatEnv 908.3 NatEnv 900.46	3.7.5	5.4.22
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.13	10.6.3.1 5		Amend guidance to reflect amended Rule 10.8.1	NatEnv 447.135	3.7.13	5.11
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.14	N/A (Deleted)		Remove guidance to reflect deletion of Policy 10.2.5.5	NatEnv 908.17	3.7.5	5.4.22
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.15	10.6.3.1 6		Amend guidance to reflect amendment to Policy 10.2.5.6 (i.e. to remove references to large buildings and structures, earthworks - large scale, and network utility activities)	NatEnv 464.10 NatEnv 576.62	3.7.5	5.4.22
10. Natural Environment	Assessment of Restricted Discretionary	10.5.2.15	10.6.3.1 6		Amend assessment guidance to add general assessment guidance on assessing effects of forestry based on guidelines in Appendix	NatEnv 447.74	3.7.14	5.10

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	Activities				A11.3			
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.16	10.6.3.18		Amend guidance to manage public amenities activities (public artworks - large scale) in SNLs - linked to decision to add these activities to Policy 10.2.5.7	NatEnv 908.17NatEnv 908.3	3.7.5	5.4.22
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.16	10.6.3.18		Amend guidance to reflect the change to Policy 10.2.5.7 (effects test) and to add 'general assessment guidance' on how the Council will assess whether an activity has 'no practicable alternative locations'	NatEnv 458.12	3.7.5	5.4.22
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.16	10.6.3.18		Amend guidance to add reference to crematoriums to reflect change in activity status to RD+ in SNL overlay zones	NatEnv 447.77	3.7.8	5.12.6
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.16	10.6.3.18		Amend assessment guidance by adding a new potential circumstance that may support a consent application	NatEnv 464.4	3.7.9	5.11.1
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.16	10.6.3.18		Amend assessment guidance to add general assessment guidance on assessing effects of forestry based on guidelines in Appendix A11.3	NatEnv 447.74	3.7.14	5.10
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.A (New)	10.6.3.1	Positive effects on biodiversity values or the natural character of the coast	Add a new matter of discretion applying to all restricted discretionary activities that link to section 10.5; add assessment guidance linking to Policy 10.2.1.1 and add a 'potential circumstance that may support a consent application' relating to conservation activities	NatEnv 690.10 NatEnv 690.12	3.7.5	5.4.13
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.B (New)	10.6.3.3		Amend assessment guidance to add new Policy 10.2.1.X	NatEnv 900.142	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.B (New)	10.6.3.3		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.B (New)	10.6.3.3		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted	10.5.2.B (new)	10.6.3.3	Effects on biodiversity	Add this matter of discretion for Earthworks - large scale in rural zones (links to new Rule	NatEnv 958.100	3.6.1	5.2.2

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	Discretionary Activities			values	8A.7.2.A)			
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.C (New)	10.6.3.4		Amend guidance to reflect new Policy 10.2.1.X	NatEnv 900.142	3.3.1 3.4.9	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.C (New)	10.6.3.4		Amend guidance to reflect amended Policy 10.2.1.3	NatEnv 900.28	3.3.1 3.4.9	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.C (New)	10.6.3.4		Amend guidance to reflect new Rule 10.8.2	NatEnv 958.95	3.3.1 3.4.9	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.C	10.6.3.4		Add reference to Policy 2.2.3.5 in guidance	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.C	10.6.3.4		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.D	10.6.3.1 4		Add guidance with reference to new Policy 10.2.5.Y and with 'general assessment guidance' on how the Council will assess whether an activity has 'no practicable alternative locations' - linked to decision to add new Policy 10.2.5.Y	NatEnv 908.17	3.7.5	5.4.22
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.E	10.6.3.1 7		Add guidance with reference to new Policy 10.2.5.Z and with 'general assessment guidance' on how the Council will assess whether an activity has 'no practicable alternative locations' - linked to decision to add new Policy 10.2.5.Z	NatEnv 464.10	3.7.5	5.4.22
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.E (New)	10.6.3.1 7		Add guidance to reflect amended activity status of crematoriums to RD+ in ONL overlay zones	NatEnv 447.77	3.7.8	5.12.6
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.2.E (New)	10.6.3.1 7		Amend assessment guidance by adding a new potential circumstance that may support a consent application	NatEnv 464.4	3.7.9	5.11.1

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10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.A.1 (New)	10.6.A.1		Amend assessment guidance for all RD activities that are linked to section 10.5 to add reference to new Policy 10.2.1.X	NatEnv 900.142 NatEnv 900.9	3.3.1	5.2.2
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.A.1 (New)	10.6.A.1		Add reference to Policy 2.2.3.5 in guidance. Add reference to Guidance on Good Practice Biodiversity Offsetting	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Restricted Discretionary Activities	10.5.A.1 (New)	10.6.A.1		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.1	10.7.2.1		Amend assessment guidance for all D activities that are linked to section 10.6 to add reference to new Policy 10.2.1.X	NatEnv 900.142 NatEnv 900.9	3.3.1	5.2.2
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.1	10.7.2.1		Add reference to Policy 2.2.3.5 in guidance. Add reference to Guidance on Good Practice Biodiversity Offsetting	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.1	10.7.2.1		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.1	10.7.2.1		Amend guidance so that all discretionary activities that are linked to Section 10.6 are assessed against new Policy 10.2.1.W, relating to effects on biodiversity values	NatEnv 900.35	3.6.1	5.4.2
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.1	10.7.2.1		Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast - linked to addition of new Policy 10.2.2.Y	NatEnv 900.38	3.8.8	5.7.4
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.2	10.7.2.2		Amend guidance to reflect change to wording of Policy 10.2.2.6	NatEnv 951.8	3.6.10	5.4.11
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.2	10.7.2.2		Amend assessment guidance to add general assessment guidance relating to public access	NatEnv 322.35	3.6.12	5.4.21
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.3	N/A (Deleted)		Delete assessment rule - linked to decision to delete Policy 10.2.1.8	NatEnv 949.9	3.6.5	5.4.6
10. Natural	Assessment of	10.6.2.4	N/A		Remove guidance to reflect deletion of Policy	NatEnv	3.7.5	5.4.22

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
Environment	Discretionary Activities		(Deleted)		10.2.5.5	908.17		
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.5	10.7.2.4		Amend guidance to refer to new Policy 10.2.5.Z and to add 'general assessment guidance' on how the Council will assess whether an activity has 'no practicable alternative locations'- linked to decision to add new Policy 10.2.5.Z	NatEnv 464.10	3.7.5	5.4.22
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.5	10.7.2.4		Amend guidance to manage natural hazard mitigation activities and transportation activities in SNLs - linked to decision to add these activities to Policy 10.2.5.7	NatEnv 458.12	3.7.5	5.4.22
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.5	10.7.2.4		Amend guidance to reflect the change to Policy 10.2.5.7 (effects test) and to add 'general assessment guidance' on how the Council will assess whether an activity has 'no practicable alternative locations'	NatEnv 458.12	3.7.5	5.4.22
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.5	10.7.2.4		Amend guidance remove reference to ONL overlays to reflect change in activity status for mining and landfills from D to NC	NatEnv 447.75 NatEnv 447.76	3.7.8	5.12.3
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.6	N/A (Deleted)		Delete assessment rule - linked to decision to delete Policy 10.2.1.10	NatEnv 949.11	3.6.6	5.4.7
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.7	10.7.2.5		Amend guidance to reflect amended Policy 10.2.1.2	NatEnv 690.8 NatEnv 900.142 NatEnv 1088.32	3.3.3	5.4.4
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.9	N/A (Deleted)		Remove guidance to reflect deletion of Policy 10.2.3.5	NatEnv 908.17	3.7.5	5.4.18
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.A	10.7.2.3		Add guidance with reference to new Policy 10.2.5.Y and with 'general assessment guidance' on how the Council will assess whether an activity has 'no practicable alternative locations' - linked to decision to add new Policy 10.2.5.Y	NatEnv 908.17	3.7.5	5.4.22
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.B (New)	10.7.2.6		Add guidance to reflect amendment to Policy 10.2.3.3	NatEnv 949.19	3.7.5	5.4.12

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.C (New)	10.7.2.7		Add guidance with reference to new Policy 10.2.3.X and with 'general assessment guidance' on how the Council will assess whether an activity has 'no practicable alternative locations' - linked to decision to add new Policy 10.2.3.X	NatEnv 908.17	3.7.5	5.4.12
10. Natural Environment	Assessment of Discretionary Activities	10.6.2.D (New)	10.7.2.9		Add guidance with reference to new Policy 10.2.3.Y and with 'general assessment guidance' on how the Council will assess whether an activity has 'no practicable alternative locations' - linked to decision to add new Policy 10.2.3.Y	NatEnv 908.17	3.7.5	5.4.12
10. Natural Environment	Assessment of Non-complying Activities	10.7.1.1	10.8.1.1		Retain rule as notified		3.10.4	5.13.9
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.1	10.8.2.1		Amend guidance to reflect change to wording of Objective 2.2.3	NatEnv 958.7 NatEnv 1088.13	3.2.1	5.2.1
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.1	10.8.2.1		Amend assessment guidance for all NC activities that are linked to section 10.7 to add reference to new Policy 10.2.1.X	NatEnv 900.142 NatEnv 900.9	3.3.1	5.2.2
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.1	10.8.2.1		Amend assessment guidance for all NC activities that are linked to section 10.7 to add reference to new Policy 10.2.1.Y	NatEnv 900.38	3.3.1	5.2.2
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.1	10.8.2.1		Add reference to Policy 2.2.3.5 in guidance. Add reference to Guidance on Good Practice Biodiversity Offsetting	NatEnv 949.29, NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.1	10.8.2.1		Add reference to Policy 2.2.3.6 in guidance	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.1	10.8.2.1		Amend guidance so that all non-complying activities that are linked to Section 10.7 are assessed against new Policy 10.2.1.W, relating to effects on biodiversity values	NatEnv 900.35	3.6.1	5.4.2
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.1	10.8.2.1		Amend guidance to reflect amended wording of Objective 2.4.5	NatEnv 900.21	3.7.3	5.2.12
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.1	10.8.2.1		Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins,	NatEnv 900.38	3.8.8	5.7.4

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
					for activities adjacent to water bodies and the coast - linked to addition of new Policy 10.2.2.Y			
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.2	10.8.2.2		Amend guidance to refer to new Policy 10.2.1.Y (which applies to non-complying activities in ASBVs) instead of Policy 10.2.1.2 (which now applies to restricted discretionary and discretionary activities in ASBVs)	Amend activity status from D to P	3.3.3	5.4.4
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.2	10.8.2.2		Add reference to Policy 2.2.3.5 in guidance.	NatEnv 900.142	3.5.5	5.1.3
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.2	10.8.2.2		Add reference to Policy 2.2.3.6 in guidance.	NatEnv 1088.15	3.5.5	5.1.3
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.4	10.8.2.4		Amend guidance to reflect amendment to wording of Policy 10.2.3.2	NatEnv 908.17	3.7.5	5.4.15
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.5	10.8.2.6		Add guidance to reflect amendment to wording of Policy 10.2.5.4	NatEnv 908.17	3.7.5	5.4.22
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.A (new)	10.8.2.3		Add new guidance (consequential to change in activity status of Tree Species performance standard contravention)	NatEnv 900.77	3.9.1	5.9.2
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.B (new)	10.8.2.5		Add new guidance (consequential to change in activity status of Tree Species performance standard contravention)	NatEnv 900.77	3.9.1	5.9.2
10. Natural Environment	Assessment of Non-complying Activities	10.7.2.D (new)	10.8.2.8		Add new guidance (consequential to change in activity status of Tree Species performance standard contravention)	NatEnv 900.77	3.9.1	5.9.2
10. Natural Environment	Special Information Requirement	10.8.1	10.9.1		Amend special information requirements to indicate building platforms must be identified where new residential development potential created	NatEnv 447.135	3.7.13	5.11
10. Natural Environment	Special Information Requirement	10.8.1	10.9.1		Amend rule wording to expand range of values considered and reference design guidelines	NatEnv 900.70	3.7.13	5.11
10. Natural Environment	Special Information Requirement	10.8.2 (New)	10.9.2	Vegetation Clearance	Add new special information requirement rule	NatEnv 958.95	3.4.9	5.8.8
10. Natural Environment	Special Information Requirement	10.8.2 (new)	10.9.2	Vegetation Clearance	Include reference to Policy 2.2.3.5 in Special Information Requirement	NatEnv 958.95 and 949.29	3.5.5	5.1.3

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
10. Natural Environment	Special Information Requirement	10.8.2 (new)	10.9.2	Vegetation Clearance	Include reference to Policy 2.2.3.6 in Special Information Requirement	NatEnv 958.95 and 949.29	3.5.5	5.1.3
10. Natural Environment	Special Information Requirement	10.8.3 (New)	10.9.3	Biodiversity Offset	Add new special information requirement rule relating to biodiversity offset management plans, which refers to new Policy 2.2.3.5	NatEnv 949.29	3.5.5	5.1.3
10. Natural Environment	Special Information Requirement	10.8.4 (new)	10.9.4	Assessment of alternative locations	Add new special information requirement rule	NatEnv 900.142 and others	3.3.1 3.3.3 3.7.5	5.4.12 5.4.22 5.4.4
10. Natural Environment	Assessment of Controlled Activities	10.3A.2	10.4.2		Amend guidance wording to add general assessment guidance "In assessing effects on natural character values, Council will consider the extent to which the development follows the design guidelines in Appendix A11"	NatEnv 191.1	3.7.13	5.11
10. Natural Environment	Section	10		Natural Environment	Do not amend whole section as requested		3.10.1	5.3.1
11. Natural Hazards	City Wide Performance Standard	11.3.2.4		Maximum Area of Vegetation Clearance in the Hazard Overlay Zones	Amend performance standard to clarify or add exemptions	NatEnv 949.15	3.4.4	5.8.4
16. Rural Zones	Introduction	16.1			Amend introduction	NatEnv 588.1	3.6.1	5.4.1
16. Rural Zones	Policy	16.2.3.10 (new)			Add new policy linked to new P/S for reflectivity of the exterior surfaces of buildings and structures in the Hill Slopes Rural Zone that exceed 300m2	NatEnv 447.36	3.7.12	5.11.3
16. Rural Zones	Activity Status	16.3.3.2		Domestic animal boarding and breeding (not including dogs)	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.80	3.7.8	5.12.4
16. Rural Zones	Activity Status	16.3.3.3		Domestic animal boarding and breeding (including dogs)	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.81	3.7.8	5.12.4
16. Rural Zones	Activity Status	16.3.3.4		Intensive farming	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.82	3.7.8	5.12.4
16. Rural Zones	Activity Status	16.3.3.6. d		Farming	Do not amend activity status in ASBVs	NatEnv 355.7	3.3.4	5.12.1
16. Rural Zones	Activity Status	16.3.3.7. d		Forestry	Do not amend activity status in ASBVs	NatEnv 355.7	3.3.4	5.12.1
16. Rural	Activity Status	16.3.3.7		Forestry	Do not amend activity status in landscape and	NatEnv	3.7.8	5.12.2

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
Zones					coastal character overlays	951.42		
16. Rural Zones	Activity Status	16.3.3.9.d		Grazing	Do not amend activity status in ASBVs	NatEnv 355.7	3.3.4	5.12.1
16. Rural Zones	Activity Status	16.3.3.10.d		Landfills	Do not amend activity status in ASBVs	NatEnv 447.75 NatEnv 796.6	3.3.4	5.12.1 5.12.3
16. Rural Zones	Activity Status	16.3.3.10		Landfills	Amend activity status to NC in ONLs and Pr in ONF/ONCC/HNCC	NatEnv 447.75	3.7.8	5.12.3
16. Rural Zones	Activity Status	16.3.3.13.d	16.3.3.15.d	Mining	Do not amend activity status in ASBVs	NatEnv 447.76	3.3.4	5.12.1 5.12.3
16. Rural Zones	Activity Status	16.3.3.13	16.3.3.15	Mining	Amend activity status from D to NC in ONL overlay zones and NC to Pr in ONF/ONCC/HNCC overlay zones	NatEnv 447.76	3.7.8	5.12.3
16. Rural Zones	Activity Status	16.3.3.17	16.3.3.20	Rural research - large scale	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.84	3.7.8	5.12.4
16. Rural Zones	Activity Status	16.3.3.23	16.3.3.26	Standard residential	Do not amend activity status in landscape and coastal character overlays	NatEnv 951.44	3.7.8	5.12.5
16. Rural Zones	Activity Status	16.3.3.24	16.3.3.27	Supported living facilities	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.85	3.7.8	5.12.5
16. Rural Zones	Activity Status	16.3.3.34	16.3.3.37	Veterinary services	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.93	3.7.8	5.12.5
16. Rural Zones	Activity Status	16.3.3.35	16.3.3.38	Visitor accommodation	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.87	3.7.8	5.12.5
16. Rural Zones	Activity Status	16.3.3.38	16.3.3.45	Rural industry	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.88	3.7.8	5.12.5
16. Rural Zones	Activity Status	16.3.3.40.d	16.3.3.47.d	Cemeteries	Do not amend activity status in ASBVs	NatEnv 900.112	3.3.4	5.12.6
16. Rural Zones	Activity Status	16.3.3.41.d	16.3.3.48.d	Crematoriums	Do not amend activity status in ASBVs	NatEnv 900.113	3.3.4	5.12.6
16. Rural Zones	Activity Status	16.3.3.41	16.3.3.48	Crematoriums	Amend activity status to RD+ in ONL/SNL/NCC overlays (e.g. to indicate that there will be additional matters of discretion in these overlays)	NatEnv 447.77	3.7.8	5.12.6
16. Rural Zones	Activity Status	16.3.3.42.d	16.3.3.51.d	All other major facility activities	Do not amend activity status in ASBVs	NatEnv 900.114	3.3.4	5.12.6
16. Rural Zones	Activity Status	16.3.3.42	16.3.3.51	All other major facilities activities	Amend activity status to indicate that additional assessment applies in landscape and coastal overlays	NatEnv 447.79	3.7.8	5.12.6
16. Rural Zones	Activity Status	16.3.3.Y (New)	16.3.3.14	Mineral exploration that	Amend activity status from D to NC in ONL overlay zones	NatEnv 447.76	3.7.8	5.12.3

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
				involves blasting				
16. Rural Zones	Activity Status	16.3.3			Do not amend activity status of all P and D activities in ASBVs	NatEnv 900.136	3.3.4	5.12.1
16. Rural Zones	Activity Status	16.3.4.3.b			Do not amend activity status to RD as requested	NatEnv 447.80	3.7.13	5.11
16. Rural Zones	Activity Status	16.3.4.3.c		New buildings on landscape building platform	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.8	3.7.8	5.11.1
16. Rural Zones	Activity Status	16.3.4.3.d		New buildings greater than 60m ² footprint on a landscape building platform	Amend activity status from P to RD in ASBVs	NatEnv 958.107	3.3.4	5.12.1
16. Rural Zones	Activity Status	16.3.4.4.c		New buildings or structures or adds/alts up to 60m ²	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.8	3.7.8	5.11.1
16. Rural Zones	Activity Status	16.3.4.5.c		New buildings or structures or adds/alts over 60m ²	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.8 NatEnv 73.3 NatEnv 592.21	3.7.8	5.11.1
16. Rural Zones	Activity Status	16.3.4.7		All other buildings and structures activities	Change activity status from RD to P in landscape and coastal character overlays	NatEnv 360.137	3.7.9	5.11.1
16. Rural Zones	Activity Status	16.3.4.16	NA deleted	Earthworks - large scale	Do not amend activity status in landscape and coastal character overlays	NatEnv 900.85	3.7.8	5.12.8
16. Rural Zones	Activity Status	16.3.4.23.d	16.3.4.2 7.d	Shelterbelts and small woodlots	Amend activity status from P to RD in ASBVs	NatEnv 958.107	3.3.4	5.12.1
16. Rural Zones	Activity Status	16.3.4.23	16.3.4.2 7	Shelterbelts and small woodlots	Do not amend activity status in landscape and coastal character overlays	NatEnv 958.105	3.7.8	5.12.8
16. Rural Zones	Activity Status	16.3.4.24.d	16.3.4.2 8.d	All other site development activities	Amend activity status from P to RD in ASBVs	NatEnv 958.107	3.3.4	5.12.1
16. Rural Zones	Activity Status	16.3.4.20 A.d (New)	16.3.4.2 4.d	Indigenous Vegetation Clearance -large scale	Amend activity status from RD to NC in ASBVs	NatEnv 949.13	3.3.4	5.12.1
16. Rural Zones	Activity Status	16.3.4.20 A (New)	16.3.4.2 4	Indigenous Vegetation Clearance -large scale	Do not amend activity status to D	NatEnv 949.14	3.4.6	5.8.4

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
16. Rural Zones	Activity Status	16.3.4.20 A (New)	16.3.4.24	Indigenous vegetation clearance - large scale	Amend activity status from RD to RD+ in ONF, and from RD to NC in ONCC/HNCC	NatEnv 958.106	3.7.8	5.12.7
16. Rural Zones	Activity Status	16.3.5.1.d		General subdivision	Do not amend activity status in ASBVs	NatEnv 900.136	3.3.4	5.12.1
16. Rural Zones	Activity Status	16.3.5.1		General subdivision	Do not amend activity status in landscape and coastal character overlays	NatEnv 958.108	3.7.8	5.12.8
16. Rural Zones	Notification Rule	16.4		Notification	Amend rule to remove mandatory notification of new residential buildings greater than 60m ² in an Outstanding Natural Landscape (ONL)	NatEnv 596.32	3.10.3	5.5
16. Rural Zones	Land Use Performance Standard	16.5.11	16.5.12	Site restoration	Amend rule so that the restoration requirement is broadened with respect to 'biodiversity values' (the notified rule required, more narrowly, that 'indigenous vegetation' be restored)	NatEnv 900.143, NatEnv 949.8, NatEnv 958.25	3.6.4	5.4.5
16. Rural Zones	Development Performance Standard	16.6.6	16.6.5	Maximum Height	Do not amend rule as requested (16.6.6.1.c)		3.7.11	5.11.4
16. Rural Zones	Development Performance Standard	16.6.7	16.6.6	Number and Location of Permitted Buildings (was Minimum Building Separation)	Do not delete rule as requested		3.7.10	5.11.2
16. Rural Zones	Development Performance Standard	16.6.10	16.6.9	Reflectivity	Amend performance standard to add a limit to the reflectivity of the exterior surfaces of buildings and structures in the Hill Slopes Rural Zone that exceed 300m ²	NatEnv 447.36	3.7.12	5.11.3
16. Rural Zones	Assessment of RD Performance Standard Contraventions	16.9.3.9.b (new)		Effects on natural character of the coast	Add new matter of discretion for contravention of Tree Species performance standard (linking to new Rule 10.4.3.11.b)	NatEnv 900.144	3.9.1	5.9.1
16. Rural Zones	Assessment of RD Performance Standard Contraventions	16.9.3.9.c (new)		Effects on landscape values	Add new matter of discretion for contravention of Tree Species performance standard (linking to new Rule 10.4.3.11.c)	NatEnv 900.144	3.9.1	5.9.1
16. Rural	Assessment of	16.9.4.X	16.9.4.1	Positive effects in	Add matter of discretion	NatEnv	3.4.6	5.8.6

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
Zones	Restricted Discretionary Performance Standard Contraventions	(New)		terms of supporting farming or conservation activity		951.18		
16. Rural Zones	Assessment of RD Performance Standard Contraventions	16.9.4.Y (new)	16.9.4.9		Add new assessment rule linked to new P/S for reflectivity of the exterior surfaces of buildings and structures in the Hill Slopes Rural Zone that exceed 300m2	NatEnv 447.36	3.7.12	5.11.3
16. Rural Zones	Assessment of RD Performance Standard Contraventions	16.9.6.1	NA deleted		Delete rule (consequential to change in activity status of Tree Species performance standard contravention)	NatEnv 900.77	3.9.2	5.9.2
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.3.A (new)	16.10.3.1	Positive effects in terms of supporting farming or conservation activity	Add matter of discretion	NatEnv 951.19	3.10.4	5.13.4
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.1	16.10.5.2		Amend guidance to manage the effects of indigenous vegetation clearance - large scale on the identified values of ONFs	NatEnv 958.106	3.7.8	5.12.7
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.1	16.10.5.2		Amend guidance to reflect changed activity status for 'all other buildings and structures activities' (remove guidance)	NatEnv 360.137	3.7.9	5.11.1
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.2	16.10.5.3		Amend guidance to add reference to crematoriums to reflect change in activity status to RD+ in ONL or SNL overlay zones	NatEnv 447.77	3.7.8	5.12.6
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.2	16.10.5.3		Amend guidance to reflect changed activity status for 'all other buildings and structures activities' (remove guidance)	NatEnv 360.137	3.7.9	5.11.1
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.3	16.10.5.4		Amend assessment guidance as a consequence of changing activity status of indigenous vegetation clearance - large scale from restricted discretionary to non-complying in ONCCs and HNCCs (remove	NatEnv 958.106	3.7.8	5.12.7

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
					guidance)			
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.3	16.10.5.4		Amend guidance to reflect changed activity status for 'all other buildings and structures activities' (remove guidance)	NatEnv 360.137	3.7.9	5.11.1
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.4	16.10.5.5		Amend guidance to add reference to crematoriums to reflect change in activity status to RD+ in NCC overlay zones	NatEnv 447.77	3.7.8	5.12.6
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.4	16.10.5.5		Amend guidance to reflect changed activity status for 'all other buildings and structures activities' (remove guidance)	NatEnv 360.137	3.7.9	5.11.1
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.5	16.10.5.6		Amend guidance by removing reference to indigenous vegetation clearance to reflect change to activity status from RD to NC in ASBVs	NatEnv 949.13	3.3.4	5.12.1
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.5	16.10.5.6		Amend guidance to add reference to shelterbelts and small woodlots, and site development activities to reflect change in activity status from P to RD in ASBVs	NatEnv 958.107	3.3.4	5.12.1
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.5	16.10.5.6		Amend guidance to reflect changed activity status for 'all other buildings and structures activities' (remove guidance)	NatEnv 360.137	3.7.9	5.11.1
16. Rural Zones	Assessment of Restricted Discretionary Activities	16.10.5.A (new)	16.10.5.1	Positive effects in terms of supporting farming or conservation activity	Add matter of discretion	NatEnv 951.19	3.10.4	5.13.4
16. Rural Zones	Assessment of Discretionary Activities	16.11.2.1			Amend to add guidance in relation to effects on biodiversity values - linked to addition of new Policy 10.2.1.W, which provides for the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities	NatEnv 900.35	3.6.1	5.4.2
16. Rural Zones	Assessment of Discretionary Activities	16.11.2.1			Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast - linked to addition of new Policy	NatEnv 900.38	3.8.8	5.7.4

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
					10.2.2.Y			
16. Rural Zones	Assessment of Discretionary Activities	16.11.2.1			Amend guidance wording (add reference to Objective 16.2.1)	NatEnv 951.20	3.10.4	5.13.8
16. Rural Zones	Assessment of Discretionary Activities	16.11.2.4			Amend guidance to remove reference to ONL overlays to reflect change in activity status for mining and landfills from D to NC	NatEnv 447.75 NatEnv 447.76	3.7.8	5.12.3
16. Rural Zones	Assessment of Non-complying Activities	16.12.2.1			Amend to add guidance in relation to effects on biodiversity values - linked to addition of new Policy 10.2.1.W, which provides for the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities	NatEnv 900.35	3.6.1	5.4.2
16. Rural Zones	Assessment of Non-complying Activities	16.12.2.1			Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast - linked to addition of new Policy 10.2.2.Y	NatEnv 900.38	3.8.8	5.7.4
16. Rural Zones	Assessment of Non-complying Activities	16.12.3.7	16.12.3.7		Amend guidance to remove reference to mining and landfills to reflect change in activity status in ONF, ONCC and HNCC overlay zones from NC to Pr	NatEnv 447.75 NatEnv 447.76	3.7.8	5.12.3
16. Rural Zones	Assessment of Non-complying Activities	16.12.3.7	16.12.3.7		Amend guidance to remove reference to crematoriums to reflect change in activity status from NC to RD+ in ONF, ONCC and HNCC overlay zones	NatEnv 447.77	3.7.8	5.12.6
16. Rural Zones	Assessment of Non-complying Activities	16.12.3.Y (New)	16.12.3.8		Add guidance to reflect change in activity status for mining, landfills and mineral exploration that involves blasting in ONL overlay zones from D to NC	NatEnv 447.75 NatEnv 447.76	3.7.8	5.12.3
16. Rural Zones	Assessment of Non-complying Activities	16.12.3.Y (New)	16.12.3.8		Exclude crematoriums from the guidance to reflect change in activity status	NatEnv 447.79	3.7.8	5.12.6
16. Rural Zones	Assessment of Non-complying Activities	16.12.3.Z (New)	16.12.3.9		Exclude crematoriums from the guidance to reflect change in activity status	NatEnv 447.79	3.7.8	5.12.6
16. Rural Zones	Assessment of Non-complying Activities	16.12.4.2			Amend assessment guidance as a consequence of changing activity status of indigenous vegetation clearance - large scale from restricted discretionary to non-	NatEnv 958.106	3.7.8	5.12.7

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					complying in ONCCs and HNCCs (add guidance)			
16. Rural Zones	Assessment of Non-complying Activities	16.12.4.4			Add guidance to reflect change in activity status for indigenous vegetation clearance - large scale from RD to NC in ASBVs	NatEnv 949.13	3.3.4	5.12.1
16. Rural Zones	Assessment of NC Performance Standard Contraventions	16.12.6.1 0 (new)	16.12.5. 9		Add new guidance linking to Section 10.7 (consequential to change in activity status of Tree Species performance standard contravention)	NatEnv 900.77	3.9.2	5.9.2
16. Rural Zones	Assessment of NC Performance Standard Contraventions	16.12.6.1 1 (new)	16.12.5. 10		Add new guidance linking to Section 10.7 (consequential to change in activity status of Tree Species performance standard contravention)	NatEnv 900.77	3.9.2	5.9.2
16. Rural Zones	Assessment of NC Performance Standard Contraventions	16.12.6.1 2 (new)	16.12.5. 11		Add new guidance linking to Section 10.7 (consequential to change in activity status of Tree Species performance standard contravention)	NatEnv 900.77	3.9.2	5.9.2
19. Rural Residential Zones	Activity Status	17.3.3.2		Domestic animal boarding and breeding (not including dogs)	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.91	3.7.8	5.12.4
16. Rural Residential Zones	Activity Status	17.3.3.4		Forestry	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.90	3.7.8	5.12.2
17. Rural Residential Zones	Activity Status	17.3.3.A (New)	17.3.3.9	Landfills	Amend activity status to Pr in ONF/HNCC	NatEnv 900.109	3.7.8	5.12.3
17. Rural Residential Zones	Activity Status	17.3.3.B (New)	17.3.3.1 0	Mining	Amend activity status to Pr in ONF/HNCC	NatEnv 900.109	3.7.8	5.12.3
17. Rural Residential Zones	Activity Status	17.3.4.3. b		New buildings on landscape building platform	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.97	3.7.8	5.11.1
17. Rural Residential Zones	Activity Status	17.3.4.4. b		New buildings or structures or adds/alts up to 60m2	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.98	3.7.8	5.11.1
17. Rural Residential	Activity Status	17.3.4.5. b		New buildings or structures or	Do not amend activity status in landscape and coastal character overlays	NatEnv 997.99	3.7.8	5.11.1

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Zones				adds/alts over 60m2				
17. Rural Residential Zones	Activity Status	17.3.4.7		All other buildings and structures activities	Change activity status from RD to P in landscape and coastal character overlays	NatEnv 360.138	3.7.9	5.11.1
17. Rural Residential Zones	Activity Status	17.3.4.18 A (New)	17.3.4.20	Indigenous vegetation clearance - large scale	Amend activity status from RD to RD+ in ONF, and from RD to NC in HNCC	NatEnv 958.106	3.7.8	5.12.7
17. Rural Residential Zones	Development Performance Standard	17.6.6	17.6.5	Maximum Height	Do not amend rule as requested (17.6.6.1.b)		3.7.11	5.11.4
17. Rural Residential Zones	Assessment of RD Performance Standard Contraventions	17.9.3.8.b (new)		Effects on natural character of the coast	Add new matter of discretion for contravention of Tree Species performance standard (linking to new Rule 10.4.3.11.b)	NatEnv 900.144	3.9.1	5.9.1
17. Rural Residential Zones	Assessment of RD Performance Standard Contraventions	17.9.3.8.c (new)		Effects on landscape values	Add new matter of discretion for contravention of Tree Species performance standard (linking to new Rule 10.4.3.11.c)	NatEnv 900.144	3.9.1	5.9.1
17. Rural Residential Zones	Assessment of Restricted Discretionary Activities	17.10.5.1			Amend guidance to manage the effects of indigenous vegetation clearance - large scale on the identified values of ONFs	NatEnv 958.106	3.7.8	5.12.7
17. Rural Residential Zones	Assessment of Restricted Discretionary Activities	17.10.5.1			Amend guidance to reflect changed activity status for 'all other buildings and structures activities' (remove guidance)	NatEnv 360.138	3.7.9	5.11.1
17. Rural Residential Zones	Assessment of Restricted Discretionary Activities	17.10.5.2			Amend guidance to reflect changed activity status for 'all other buildings and structures activities' (remove guidance)	NatEnv 360.138	3.7.9	5.11.1
17. Rural Residential Zones	Assessment of Restricted Discretionary Activities	17.10.5.3			Amend assessment guidance as a consequence of changing activity status of indigenous vegetation clearance - large scale from restricted discretionary to non-complying in ONCCs and HNCCs (remove guidance)	NatEnv 958.106	3.7.8	5.12.7
17. Rural Residential	Assessment of Restricted	17.10.5.3			Amend guidance to reflect changed activity status for 'all other buildings and structures	NatEnv 360.138	3.7.9	5.11.1

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
Zones	Discretionary Activities				activities' (remove guidance)			
17. Rural Residential Zones	Assessment of Restricted Discretionary Activities	17.10.5.4			Amend guidance to reflect changed activity status for 'all other buildings and structures activities' (remove guidance)	NatEnv 360.138	3.7.9	5.11.1
17. Rural Residential Zones	Assessment of Discretionary Activities	17.11.2.2	17.11.2.1		Amend to add guidance in relation to effects on biodiversity values - linked to addition of new Policy 10.2.1.W, which provides for the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities	NatEnv 900.35	3.6.1	5.4.2
17. Rural Residential Zones	Assessment of Discretionary Activities	17.11.2.2	17.11.2.1		Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast - linked to addition of new Policy 10.2.2.Y	NatEnv 900.38	3.8.8	5.7.4
17. Rural Residential Zones	Assessment of Non-complying Activities	17.12.2.1			Amend to add guidance in relation to effects on biodiversity values - linked to addition of new Policy 10.2.1.W, which provides for the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities	NatEnv 900.35	3.6.1	5.4.2
17. Rural Residential Zones	Assessment of Non-complying Activities	17.12.2.1			Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast - linked to addition of new Policy 10.2.2.Y	NatEnv 900.38	3.8.8	5.7.4
17. Rural Residential Zones	Assessment of Non-complying Activities	17.12.4.2			Amend assessment guidance as a consequence of changing activity status of indigenous vegetation clearance - large scale from restricted discretionary to non-complying in ONCCs and HNCCs (add guidance)	NatEnv 958.106	3.7.8	5.12.7
17. Rural Residential Zones	Assessment of NC Performance Standard Contraventions	17.12.6.9 (new)	17.12.6.8		Add new guidance linking to Section 10.7 (consequential to change in activity status of Tree Species performance standard contravention)	NatEnv 900.77	3.9.2	5.9.2
17. Rural	Assessment of	17.12.6.1	17.12.6.		Add new guidance linking to Section 10.7	NatEnv	3.9.2	5.9.2

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Residential Zones	NC Performance Standard Contraventions	0 (new)	9		(consequential to change in activity status of Tree Species performance standard contravention)	900.77		
17. Rural Residential Zones	Assessment of NC Performance Standard Contraventions	17.12.6.1 1 (new)	17.12.6.10		Add new guidance linking to Section 10.7 (consequential to change in activity status of Tree Species performance standard contravention)	NatEnv 900.77	3.9.2	5.9.2
20. Recreation Zone	Activity Status	20.3.4.4		New buildings or additions and alterations that result in a building that is greater than 60m ² and less than or equal to 350m ² and/or has any wall longer than 20m <u>and does not have any wall longer than 20m</u>	Amend activity name wording (correct drafting error - not substantive)	NatEnv 360.164	3.10.4	5.13.4
20. Recreation Zone	Activity Status	20.3.4.23 .c	20.3.4.2 7.c	Shelterbelts and small woodlots	Amend activity status from P to RD in ASBVs	NatEnv 958.107	3.3.4	5.12.1
20. Recreation Zone	Activity Status	20.3.4.24 .c	20.3.4.2 8.c	All other site development activities	Amend activity status from P to RD in ASBVs	NatEnv 958.107	3.3.4	5.12.1
20. Recreation Zone	Activity Status	20.3.4.19 A.c (New)	20.3.4.2 1A.c	Indigenous Vegetation Clearance -large scale	Amend activity status from RD to NC in ASBVs	NatEnv 949.13	3.3.4	5.12.1
20. Recreation Zone	Assessment of RD Performance Standard Contraventions	20.9.3.4. b (new)		Effects on natural character of the coast	Add new matter of discretion for contravention of Tree Species performance standard (linking to new Rule 10.4.3.11.b)	NatEnv 900.144	3.9.1	5.9.1
20. Recreation Zone	Assessment of RD Performance Standard Contraventions	20.9.3.4.c (new)		Effects on natural character of the coast	Add new matter of discretion for contravention of Tree Species performance standard (linking to new Rule 10.4.3.11.c)	NatEnv 900.144	3.9.1	5.9.1

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
20. Recreation Zone	Assessment of Restricted Discretionary Activities	20.10.5.7	20.10.5.4		Amend guidance by removing reference to indigenous vegetation clearance to reflect change in activity status from RD to NC in ASBVs	NatEnv 949.13	3.3.4	5.12.1
20. Recreation Zone	Assessment of Restricted Discretionary Activities	20.10.5.7	20.10.5.4		Amend guidance to add reference to shelterbelts and small woodlots, and site development activities to reflect change in activity status from P to RD in ASBVs	NatEnv 958.107	3.3.4	5.12.1
20. Recreation Zone	Assessment of Discretionary Activities	20.11.2.1			Amend to add guidance in relation to effects on biodiversity values - linked to addition of new Policy 10.2.1.W, which provides for the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities	NatEnv 900.35	3.6.1	5.4.2
20. Recreation Zone	Assessment of Discretionary Activities	20.11.2.1			Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast - linked to addition of new Policy 10.2.2.Y	NatEnv 900.38	3.8.8	5.7.4
20. Recreation Zone	Assessment of Non-complying Activities	20.12.2.1			Amend to add guidance in relation to effects on biodiversity values - linked to addition of new Policy 10.2.1.W, which provides for the assessment of effects on biodiversity values for discretionary and non-complying land use, development and city-wide activities	NatEnv 900.35	3.6.1	5.4.2
20. Recreation Zone	Assessment of Non-complying Activities	20.12.2.1			Amend to add guidance in relation to effects on the biodiversity values and natural character of the coast and riparian margins, for activities adjacent to water bodies and the coast - linked to addition of new Policy 10.2.2.Y	NatEnv 900.38	3.8.8	5.7.4
20. Recreation Zone	Assessment of Non-complying Activities	20.12.4.3 (New)	20.12.4.2		Add guidance to reflect change to activity status for indigenous vegetation clearance - large scale from RD to NC in ASBV	NatEnv 949.13	3.3.4	5.12.1
20. Recreation Zone	Assessment of NC Performance Standard Contraventions	20.12.5.6 (new)	20.12.6.5		Add new guidance linking to Section 10.7 (consequential to change in activity status of Tree Species performance standard contravention)	NatEnv 900.77	3.9.2	5.9.2
20. Recreation Zone	Assessment of NC	20.12.5.7 (new)	20.12.6.6		Add new guidance linking to Section 10.7 (consequential to change in activity status of	NatEnv 900.77	3.9.2	5.9.2

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	Performance Standard Contraventions				Tree Species performance standard (contravention)			
10. Natural Environment	Appendix	10A.2 (New)	10A.3	Threatened fauna species list	Add appendix of threatened fauna species	NatEnv 900.155	3.4.7	5.8.7
10. Natural Environment	Appendix	10B		Pest plant species	Amend wording of appendix	NatEnv 588.5	3.4.7	5.8.7
10. Natural Environment	Appendix	10C		Water Body Values	Amend appendix to add Battery Creek and Stewarts Creek	NatEnv 588.4	3.8.4	5.6.4
8A. Earthworks	Objective	8A.2.1			Do not amend objective as requested, to refer to management of effects on "indigenous vegetation and habitats of indigenous species"	OS958.100	3.6.1	5.2.2 EW
8A. Earthworks	City Wide Performance Standard	8A.5.7			Amend rule to refer to best practice sediment control management	NatEnv 908.27	3.6.9	5.4.10
8A. Earthworks	Note to Plan User	8A.5.7A (new)			Add note to plan users	NatEnv 908.27	3.6.9	5.4.10
8A. Earthworks	Assessment of Restricted Discretionary Activities	8A.7.2.A (new)	8A.7.2.2	Effects on biodiversity values	Add this matter of discretion for Earthworks - large scale in rural zones	NatEnv 958.100	3.6.1	5.2.2
A5. Natural Character of the Coast Values	Appendix	A.5.3.X (new)		Portobello Peninsula	Amend appendix wording to add natural character of the coast values (associated with addition of new Portobello Peninsula NCC Overlay Zone)	NatEnv 447.130	3.12.4	5.16.6
A1. Schedules		A1.2		Schedule of ASBVs	Do not amend A1.2 to add all areas that qualify as significant	NatEnv 949.3	3.3.1	5.2.2
A1. Schedules		A1.2		Schedule of ASBVs	Amend A1.2 to reflect amended Policy 2.2.3.1	NatEnv 900.9 NatEnv 949.22 NatEnv 958.8 NatEnv 1088.14	3.3.2	5.2.2
10. Natural Environment	Appendix	A10		Urban Biodiversity Mapped Area Values	Add appendix of urban biodiversity mapped area values	NatEnv 900.31	3.4.8	5.8.5
A11. Natural Environment	Appendix	A11.2			Amend appendix wording	NatEnv 447.134 NatEnv 447.36NatEn	3.7.14, 3.7.12, 3.7.13	5.11.6

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						v 900.70		
A3. Landscape Values	Appendix	A3.1		Outstanding Natural Features	Amend landscape values	NatEnv 908.14, NatEnv 1071.120	3.7.16, 3.10.1	5.3.1, 5.15.1
A3. Landscape Values	Appendix	A3.2		Outstanding Natural Landscapes	Retain landscape values as notified		3.7.16	5.15.1
A3. Landscape Values	Appendix	A3		Landscape Values	Amend wording of values to be protected in A3.1 Outstanding Natural Features and A3.3 Significant Natural Landscapes	NatEnv 1071.118, NatEnv 360.6	3.7.16	5.15.5
A5. Natural Character of the Coast Values	Appendix	A5.2		High Natural Coastal Character Values	Retain natural character of the coast values as notified		3.7.17	5.16.2
A5. Natural Character of the Coast Values	Appendix	A5.3		Natural Coastal Character Values	Amend natural character of the coast values	NatEnv 908.14, NatEnv 220.3 and others	3.7.17, 3.10.1	5.3.1, 5.16.5
2. Strategic Directions	Policy	Requested new policies			Do not add new policies under Objective 2.2.3	NatEnv 592.2 NatEnv 717.3 NatEnv 919.10	3.2.5	5.2.6
2. Strategic Directions	Policy	Requested new policies			Do not add new objective and policies under 2.3	NatEnv 447.1	3.2.6	5.2.7
10. Natural Environment	Appendix	Requested new schedule		Important Bird Areas	Do not add new schedule as requested	NatEnv 958.8	3.3.1	5.2.2
10. Natural Environment	Development Performance Standard	Requested new performance standards		Vegetation Clearance	Do not add new vegetation clearance performance standards as requested	NatEnv 580.1 NatEnv 869.1 NatEnv 919.31	3.4.10	5.8.9
0. Plan	Terminology				Replace all references to "Areas of Significant Conservation Value", throughout the Plan, with "Areas of Significant Biodiversity Value"	NatEnv 958.60	3.6.1	5.4.1
0. Plan	Terminology				Replace all references to "urban conservation	NatEnv	3.6.1	5.4.1

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					mapped area", throughout the Plan, with "urban biodiversity mapped area"	958.60		
0. Plan	Terminology				Replace all instances of "Effects on biodiversity" with "Effects on biodiversity values" in assessment rules, throughout the Plan	NatEnv 958.60	3.6.1	5.4.1
0. Plan	Terminology				Replace all instances of "Effects on biodiversity and natural character values of riparian margins and the coast" with "Effects on biodiversity values and natural character values of riparian margins and the coast" in assessment rules, throughout the Plan	NatEnv 958.60	3.6.1	5.4.1
0. Plan	Terminology				Replace all instances of "Effects on areas of indigenous vegetation and the habitat of indigenous fauna" with "Effects on biodiversity values" in assessment rules, throughout the Plan	NatEnv 958.60	3.6.1	5.4.1
16. Rural Zones	Policy			Requested new policy	Do not add policy to Rural Zone section as requested, requiring all activities to maintain indigenous biodiversity and protect significant areas of indigenous vegetation and habitats for indigenous fauna	OS958.111	3.6.1	5.4.1 (Rural)
2. Strategic Directions	Policy	New policy requested			Do not add new policy under Objective 2.4.4	NatEnv 1070.8	3.7.2	5.2.9
2. Strategic Directions	Policy	New policy requested			Do not add new policy under Objective 2.4.5	NatEnv 1070.9	3.7.3	5.2.12
10. Natural Environment	Policy	New policy requested			Do not add new policy under Objective 10.2.3 as requested	NatEnv 717.10	3.7.6	5.4.13
10. Natural Environment	Policy	New policy requested			Do not add new policy under Objective 10.2.5 as requested	NatEnv 717.9 NatEnv 447.29	3.7.7	5.4.23
16. Rural Zones	Activity Status	New rule requested			Do not add new activity status rule for landscape building platforms as requested	NatEnv 720.8	3.7.13	5.11
10. Natural Environment	Development Performance Standard	New performance standard requested		Size and number of permitted buildings and structures	Do not add performance standard for size and number of permitted buildings and structures	NatEnv 447.133	3.7.14	5.11.6

