

Mediation Report: 9.1 Indigenous Biodiversity

To: Independent Hearings Panel – Christchurch Replacement Plan

From: John Mills, Environment Commissioner – Mediator

Date: 24 and 25 February 2016

This is a record of mediation outcome held for this topic. It is prepared in accordance with Clause 10(4) of Schedule 3 to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014.

This report covers mediation sessions on the following Indigenous Biodiversity Proposal topics:

1. Overview
2. Management Plans mechanism
3. Banks Peninsula and Port Hills- Rules and SES
4. Definitions
5. Notified SES on Banks Peninsula
6. Update and discussion of any parked matters from Day 1
7. Low Plains - Rules and SES
8. Strategic Infrastructure and utilities
9. Policy Framework
10. Process from here

Outstanding Matters

Summary of Matters the Panel will be required to determine as identified at the Mediation:

1. The notification and activity status of the Farm Biodiversity Management Plans
2. Kanuka height [subject to last mediation report]
3. Definition of improved pasture
4. Definition of indigenous biodiversity clearance
5. Where grazing 'fits' within the definitions and rules

Session 1: Overview

Attendees: Debbie Hogan (CCC), Matt Conway (Simpson Grierson/ CCC), Dr. Clive Appleton (CCC), Dr. Antony Shadbolt (CCC), Scott Hooson (Boffa Miskell/ CCC), Susan Newell (Crown), Vicki Barker (Crown), Fiona Mackenzie (Federated Farmers #3702), Chris Chamberlain (Federated Farmers), Pam Richardson (#3437), Richard Holloway (#3214), Lynley Holloway (#3214), Michael Bayley (#3285), Annabel Allison (#3285), Max and Liz Mason (Federated Farmers), Jan Cook (Banks Peninsula Trust, Akaroa Civic Trust and Self), Andrew Parrish (Canterbury Regional Council), Jane Doogue (Canterbury Regional Council), Edward Aitken (Federated Farmers), Francis Helps (Federated Farmers), Ian Richardson (Federated Farmers), Peter Anderson (#3614 Forest and Bird), Hamish Craw (#3242), Alice Burnett (Beca/ CCC).

The Council tabled an updated Proposal 9.1 dated 24 February 2016 and provided an overview document of the updated provisions outlining the key amendments since the previous mediation.

Session 2: Management Plans mechanism

Attendees: Debbie Hogan (CCC), Matt Conway (Simpson Grierson/ CCC), Dr. Clive Appleton (CCC), Dr. Antony Shadbolt (CCC), Scott Hooson (Boffa Miskell/ CCC), Susan Newell (Crown), Vicki Barker (Crown), Fiona Mackenzie (Federated Farmers #3702), Chris Chamberlain (Federated Farmers), Pam Richardson (#3437), Richard Holloway (#3214), Lynley Holloway (#3214), Michael Bayley (#3285), Annabel Allison (#3285), Max and Liz Mason (Federated Farmers), Jan Cook (Banks Peninsula Trust, Akaroa Civic Trust and Self), Andrew Parrish (Canterbury Regional Council), Jane Doogue (Canterbury Regional Council), Edward Aitken (Federated Farmers), Francis Helps (Federated Farmers), Ian Richardson (Federated Farmers), Peter Anderson (#3614 Forest and Bird), Hamish Craw (#3242), Alice Burnett (Beca/ CCC).

Discussion was had around the importance of the Management Plans being simple and clear, owned by the landowner, and the cost of developing the Plans and going through the consent process was not too onerous, and they recognised work that was already being undertaken on Banks Peninsula. All parties are supportive of Management Plans being able to be used on a farm wide basis rather than limiting it to identified Sites of Ecological Significance (SES). In this regard it was agreed that the Farm Biodiversity Management Plan framework in the Appendix be amended, where relevant, to be broader than SES and refer to indigenous biodiversity generally.

Agreement was reached that an Appendix for Farm Management Plans be included and that it is a guideline rather than a direction on what has to be in the Plan, as each site is different and some aspects may not apply to all sites.

Discussion was had around the activity status for Farm Biodiversity Management Plans and whether it was possible to build in thresholds to trigger notification or different activity status. The Crown and Forest and Bird do not support a controlled non-notified activity status. Concerns were also raised in relation to uncertainties with the use of a controlled activity status and its inability to manage complete removal of an SES.

The notification and activity status of the Farm Management Plans is a ***matter for the panel.***

Discussion was had around issues related to covenants being exempt from the rules (9.1.2.2.1 P1 vi) including ensuring that a covenant was relevant to biodiversity and that some private covenants have expiry dates. Concerns were also raised about including an 'information' only map of covenants on Banks Peninsula and how to ensure that it would be updated.

Session 3: Banks Peninsula and Port Hills- Rules and SES

Attendees: Debbie Hogan (CCC), Matt Conway (Simpson Grierson/ CCC), Dr. Clive Appleton (CCC), Dr. Antony Shadbolt (CCC), Scott Hooson (Boffa Miskell/ CCC), Susan Newell (Crown), Vicki Barker (Crown), Fiona Mackenzie (Federated Farmers #3702), Chris Chamberlain (Federated Farmers), Pam Richardson (#3437), Richard Holloway (#3214), Lynley Holloway (#3214), Michael Bayley (#3285), Annabel Allison (#3285), Max and Liz Mason (Federated Farmers), Jan Cook (Banks Peninsula Trust, Akaroa Civic Trust and Self), Andrew Parrish (Canterbury Regional Council), Jane Doogue (Canterbury Regional Council), Edward Aitken (Federated Farmers), Francis Helps (Federated Farmers), Ian Richardson (Federated Farmers), Peter Anderson (#3614 Forest and Bird), Hamish Craw (#3242), Alice Burnett (Beca/ CCC).

Suggestions were made to the proposed Rules. Representatives of the Crown noted that P1 (b) was not clearly written and it was unclear if it applied to outside of the SES. It was agreed that the wording could be improved to provide clarity.

Agreement was made to re-word P1 (v) relating to Farm Biodiversity Management Plans to state “approved in accordance with a resource consent under Rule 9.1.2.2.2 C1”, and the same wording be used for RD4 and NC1. There was also discussion about whether this clause is needed at all in relation to 9.1.2.2.1 P1 v.

Agreement was reached to consider tightening the wording in 9.1.2.2.1 P1 ii. relating to the clearance of pest plants and animals in accordance with the Biosecurity Act 1993, to prevent unjustified clearance.

Agreement was made to re-word RD4 to remove the words “cumulative” and “annually of a contiguous area”.

Agreement was made to include the hyperlinks in Table 2 of Appendix 9.1.4.X Indigenous vegetation on Banks Peninsula and the Port Hills.

The Crown and Forest and Bird representatives reiterated that they do not support the Controlled activity status and non-notification for a Management Plan; this is a ***matter for the panel***.

Session 4: Definitions

Attendees: Debbie Hogan (CCC), Matt Conway (Simpson Grierson/ CCC), Dr. Clive Appleton (CCC), Dr. Antony Shadbolt (CCC), Scott Hooson (Boffa Miskell/ CCC), Susan Newell (Crown), Vicki Barker (Crown), Fiona Mackenzie (Federated Farmers #3702), Chris Chamberlain (Federated Farmers), Pam Richardson (#3437), Richard Holloway (#3214), Lynley Holloway (#3214), Michael Bayley (#3285), Annabel Allison (#3285), Max and Liz Mason (Federated Farmers), Jan Cook (Banks Peninsula Trust, Akaroa Civic Trust and Self), Andrew Parrish (Canterbury Regional Council), Jane Doogue (Canterbury Regional Council), Edward Aitken (Federated Farmers), Francis Helps (Federated Farmers), Ian Richardson (Federated Farmers), Peter Anderson (#3614 Forest and Bird), Hamish Craw (#3242), Ainsley McLeod (Transpower), Kim Seaton (#3616 Isaac Conservation Trust), Alice Burnett (Beca/ CCC).

Indigenous vegetation:

Agreement was reached that the definition should remain as currently worded.

Indigenous vegetation clearance:

Discussion was had around whether grazing should be included in the definition of clearance. No agreement was reached but two options for where ‘grazing’ fits within the provisions ***would go to the panel***. Firstly, include grazing which covers current practice (as at July 2015) as a permitted activity in P1 accepting that grazing is indigenous vegetation clearance and will be included in the definition. Secondly, include grazing as a separate activity (P2) and it is not included in the definition of clearance.

Improved pasture:

Discussion was had around whether clause (b) should remain in the definition. No agreement was reached and this is a ***matter for the panel***.

Session 5: Notified SES on Banks Peninsula

Attendees: Debbie Hogan (CCC), Matt Conway (Simpson Grierson/ CCC), Dr. Clive Appleton (CCC), Dr. Antony Shadbolt (CCC), Scott Hooson (Boffa Miskell/ CCC), Susan Newell (Crown), Vicki Barker (Crown), Fiona MacKenzie (Federated Farmers #3702), Chris Chamberlain (Federated Farmers), Pam Richardson (#3437), Lynley Holloway (#3214), Michael Bayley (#3285), Annabel Allison (#3285), Max Mason (Federated Farmers), Jan Cook (Banks Peninsula Trust, Akaroa Civic Trust and Self), Andrew Parrish (Canterbury Regional Council), Jane Doogue (Canterbury Regional Council), Edward Aitken (Federated Farmers), Francis Helps (Federated Farmers), Ian Richardson (Federated Farmers), Peter Anderson (#3614 Forest and Bird), Hamish Craw (Federated Farmers), Kim Seaton (#3616 Isaac Conservation Trust), Alice Burnett (Beca/ CCC).

Agreement was reached that the sites as identified in the previous mediation report could be included as SES. There was no agreement on the remaining SES. The farmers preferred that those where there is no agreement and the collaborative process is to be completed were not included in the plan or schedule.

Session 6: Update and discussion of any parked matters from Day 1

Attendees: Debbie Hogan (CCC), Matt Conway (Simpson Grierson/ CCC), Dr. Clive Appleton (CCC), Dr. Antony Shadbolt (CCC), Scott Hooson (Boffa Miskell/ CCC), Susan Newell (Crown), Vicki Barker (Crown), Fiona Mackenzie (Federated Farmers #3702), Chris Chamberlain (Federated Farmers), Pam Richardson (#3437), Lynley Holloway (#3214), Michael Bayley (#3285), Annabel Allison (#3285), Max Mason (Federated Farmers), Jan Cook (Banks Peninsula Trust, Akaroa Civic Trust and Self), Andrew Parrish (Canterbury Regional Council), Jane Doogue (Canterbury Regional Council), Edward Aitken (Federated Farmers), Francis Helps (Federated Farmers), Ian Richardson (Federated Farmers), Peter Anderson (#3614 Forest and Bird), Hamish Craw (#3242), Kim Seaton (#3616 Isaac Conservation Trust), Alice Burnett (Beca/ CCC).

Ms Hogan tabled a revised version of Topic 9.1 dated 25 February 2016 which incorporated some amendments from the previous days mediation.

Mr Parrish provided a revised version of Appendix 9.1.4.X Farm Management Plan framework. Generally all parties present were in agreement that this version should be integrated with the updated revised proposal where appropriate.

The Crown's preferred option is that the activity status for a Management Plan is to be Restricted Discretionary which allows DoC, Forest and Bird also the general public to be notified. Ms Seaton and Ms Cook agreed with the Restricted Discretionary status.

The Farmers first preference is for controlled activity status but a tightening up on the matters for control. Second preference is for restricted discretionary activity status but non-notified or at least limited notified. Intend to seek professional advice before confirming this position with the Council.

The activity status and notification of a Farm Management Plan was not agreed and is a ***matter for the Panel.***

Session 7: Low Plains- Rules and SES

Attendees: Debbie Hogan (CCC), Matt Conway (Simpson Grierson/ CCC), Dr. Clive Appleton (CCC), Dr. Antony Shadbolt (CCC), Scott Hooson (Boffa Miskell/ CCC), Susan Newell (Crown), Vicki Barker (Crown), Andrew Parrish

(Canterbury Regional Council), Jane Doogue (Canterbury Regional Council), Peter Anderson (#3614 Forest and Bird), Kim Seaton (Isaac Conservation Trust), Dean Chrystal (Fulton Hogan), Sara Harnett (Self), Alice Burnett (Beca/ CCC).

Agreement was reached that the General Clearance rule for the Low Plains would be deleted as the majority of the SES sites have already been identified with the remaining five known sites to be assessed this year. As noted the issue of where 'grazing' fits within the rule framework is a ***matter for the panel***.

There was also a discussion about how to deal with unknown sites of significance that are discovered, as in the absence of a general clearance rule there is a risk that unknown significant indigenous vegetation could be cleared as of right. It was acknowledged that there were likely to be significant sites that were not contained in the schedule. Forest and Bird suggested a policy could be developed to at least provide policy direction in the absence of a rule.

Session 8: Strategic Infrastructure and utilities

Attendees: Debbie Hogan (CCC), Matt Conway (Simpson Grierson/ CCC), Dr. Clive Appleton (CCC), Dr. Antony Shadbolt (CCC), Scott Hooson (Boffa Miskell/ CCC), Susan Newell (Crown), Vicki Barker (Crown), Andrew Parrish (Canterbury Regional Council), Jane Doogue (Canterbury Regional Council), Peter Anderson (#3614 Forest and Bird), Kim Seaton (Isaac Conservation Trust), Dean Chrystal (Fulton Hogan), Sara Harnett (Self), Ainsley McLeod (Transpower), Teresa O'Neil (Orion), Alice Burnett (Beca/ CCC).

It was agreed to have an offline discussion (via email) regarding potential re-wording of Policy 2e or new Policy x- relating to strategic infrastructure and utilities.

The Crown and Forest and Bird expressed concern there is no 'avoid' in the policy and the utilities part of the policy is potentially too broad given the definition of utilities.

Ainsley McLeod agreed to circulate a revised version to all interested parties using the 'middle-ground' policy in Exhibit 4 to the Proposal 9.1 Hearing as the starting point. Revised wording was agreed to be provided to the Council for consideration in the next revised version of the Proposal.

Session 9: Policy Framework

Attendees: Debbie Hogan (CCC), Matt Conway (Simpson Grierson/ CCC), Dr. Clive Appleton (CCC), Dr. Antony Shadbolt (CCC), Scott Hooson (Boffa Miskell/ CCC), Susan Newell (Crown), Vicki Barker (Crown), Fiona Mackenzie (Federated Farmers #3702), Chris Chamberlain (Federated Farmers), Pam Richardson (#3437), Richard Holloway (#3214), Lynley Holloway (#3214), Michael Bayley (#3285), Andrew Parrish (Canterbury Regional Council), Jane Doogue (Canterbury Regional Council), Edward Aitken (Federated Farmers), Francis Helps (Federated Farmers), Ian Richardson (Federated Farmers), Peter Anderson (#3614 Forest and Bird), Ainsley McLeod (Transpower), Kim Seaton (#3616 Isaac Conservation Trust), Sara Harnett (self), Dean Chrystal (Fulton Hogan), Hamish Craw (#3242), Teresa O'Neil (Orion), Alice Burnett (Beca/ CCC).

As noted previously an offline discussion will occur in relation to Policy X Strategic infrastructure and utilities.

Agreement was reached to amend Policy 9.1.1.1.4 (Incentives and Assistance to Maintain and Enhance Indigenous Biodiversity) to include:

- a new clause to refer to continuing the work of the Banks Peninsula Ecological Steering group or similar; and
- the term 'regeneration' in clause iii.

Agreement was reached to change the wording of Policy 9.1.1.1.X Protection of ecologically significant values/indigenous biodiversity values, to include reference to the Rules package in clause (a) and the redrafting of wording in clause (b).

Agreement was reached to amend Policy 9.1.1.1X Farm Biodiversity Management Plans to:

- remove 'avoids complete removal of a' from clause (iii)
- include reference to targets or goals;
- the Council drafting wording relating to plans adapting over time/being flexible.

There was discussion around whether a new policy was needed in relation to providing guidance on when/how management plans could be developed and implemented. The Council would propose wording for consideration when the updated revised proposal sent for comments to mediation attendees.

9.1.1.1.2 Policy 2 Land management – The Council requested the Crown consider this policy further and submit suggested wording. Forest and Bird, Canterbury Regional Council, Transpower and Isaac Conservation Trust are also interested in the re-drafting. Agreed to consider Exhibit 5 to the Proposal 9 Hearing as the starting point and submit further wording to Council to consider in the next revised version of the Proposal.

Session 10: Process from here

Attendees: Debbie Hogan (CCC), Matt Conway (Simpson Grierson/ CCC), Dr. Clive Appleton (CCC), Dr. Antony Shadbolt (CCC), Scott Hooson (Boffa Miskell/ CCC), Susan Newell (Crown), Vicki Barker (Crown), Fiona Mackenzie (Federated Farmers #3702), Chris Chamberlain (Federated Farmers), Pam Richardson (#3437), Richard Holloway (#3214), Lynley Holloway (#3214), Michael Bayley (#3285), Andrew Parrish (Canterbury Regional Council), Jane Doogue (Canterbury Regional Council), Edward Aitken (Federated Farmers), Francis Helps (Federated Farmers), Ian Richardson (Federated Farmers), Peter Anderson (#3614 Forest and Bird), Ainsley McLeod (Transpower), Kim Seaton (#3616Isaac Conservation Trust), Sara Harnett (self), Dean Chrystal (Fulton Hogan), Alyana Limmer (Fulton Hogan), Teresa O'Neil (Orion), Hamish Craw (#3242), Alice Burnett (Beca/ CCC).

Mediation parties to provide further feedback to the Council as soon as possible; i.e. on the policies. The Council will circulate a Revised Proposal outlining the discussed outcomes of the mediation and the offline discussions. Once any comments have been received, the Council will file a memorandum and provide the revised proposal to the Panel. There will then be a timeframe for the closing legal submissions.



John Mills
Environment Court Commissioner - Mediator
16 March 2015