

**BEFORE THE FRESHWATER COMMISSION**

<b>UNDER</b>	the Resource Management Act 1991 (the <b>Act</b> or <b>RMA</b> )
<b>IN THE MATTER</b>	of an original submission on the Proposed Regional Policy Statement for Otago 2021 ( <b>PRPS</b> )
<b>BETWEEN</b>	<b>OTAGO WATER RESOURCE USER GROUP</b>  <b>Submitter FPI043</b>  <b>FEDERATED FARMERS NZ INC</b>  <b>Submitter FPI026 and FSFPI026</b>  <b>DAIRY NZ</b>  <b>Submitter FPI024 and FSFPI024</b>
<b>AND</b>	<b>OTAGO REGIONAL COUNCIL</b>  <b>Local Authority</b>

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**EVIDENCE IN CHIEF OF MICHAEL CONRAD FREEMAN:  
ADDITIONAL EVIDENCE FOR FRESHWATER PARTS**

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## **EVIDENCE IN CHIEF OF MICHAEL CONRAD FREEMAN: ADDITIONAL EVIDENCE FOR FRESHWATER PARTS**

1. This brief of evidence is the same as the brief filed in relation to the Otago Regional Policy Statement 2021 - non freshwater parts. New evidence not previously provided to the non-freshwater panel is added in text that is shaded grey for ease of identification.
2. I have been given a copy of the Environment Courts code of conduct for expert witnesses. I have reviewed that document and confirm that this evidence has been prepared in accordance with it and that all opinions that I offer in this evidence are within my expertise. I have not omitted to refer to any relevant document or evidence except as expressly stated. I agree to comply with the code and in particular to assist the Commissions in resolving matters that are within my expertise.

### **Introduction**

3. My full name is Michael Conrad Freeman. I am a senior scientist/planner at Landpro Limited, a firm of consulting planners, scientists, surveyors and engineers. I have been engaged by the Otago Water Resource Users Group (OWRUG), DairyNZ, and Federated Farmers of New Zealand to provide evidence for this hearing on land and water management matters.

### **Qualifications and expertise**

4. I hold the qualifications of BSc (Hons) (Environmental Science, University of Warwick) and PhD (Periphyton and Water Quality, Massey University). I have both the Intermediate and Advanced Sustainable Nutrient Management Certificates from Massey University. I am a current Ministry for the Environment Certified RMA decision-maker with a chairing endorsement.

5. I have approximately 37 years' experience in environmental science, policy, planning and regulatory processes. My previous relevant work experience includes roles as a water quality research scientist, groundwater quality scientist, pollution control manager, regional council director, environmental consultant, and soil and water impact leader. A significant proportion of my current work relates to regional resource consent applications and regional planning processes in Southland, Otago, and Canterbury.
6. I have authored or co-authored scientific and technical papers on water quality management, environmental models, uncertainty, and the resource consent process.<sup>1</sup>
7. I am a member of the New Zealand Freshwater Sciences Society, the Resource Management Law Association, the Environmental Institute of Australia and New Zealand and an associate member of the New Zealand Planning Institute.
8. I have been employed by Landpro since January 2018 and have undertaken a wide variety of resource management-related work for various clients, including regional councils. This work has included preparing resource consent applications, providing policy and regulatory advice, and consent management services.

#### **Code of conduct for expert witnesses**

9. While this is not an Environment Court hearing, I have read the Code of Conduct for Expert Witnesses within the Environment Court Consolidated Practice Note 2014 (CCEW) and I agree to comply with that Code. This evidence is within my area of expertise, except where I state I am relying on what I have been told by another person. To the best of my knowledge, I have not omitted to consider any material

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<sup>1</sup> Freeman M (2011) The resource consent process: Environmental models and uncertainty, RM Journal, August 2011, pp 1-8.

facts known to me that might alter or detract from the opinions I express.

10. As an expert witness my overriding duty is to impartially assist the decision-makers on matters within my area of expertise.
11. I am not an advocate for the parties who have engaged me. Apart from being contracted to provide expert witness evidence, I have no other relationship with any of the parties and I do not have a personal interest in the outcome of the hearing process.
12. In addition to the CCEW, where relevant I make the importance of any relevant scientific uncertainties explicit to ensure that their implications are understood by decision-makers<sup>2</sup>.

#### **Scope of evidence**

13. I understand the processes that now apply to the Proposed Otago Regional Policy Statement (pORPS) including that this evidence is specific to those parts of the pORPS that are not considered to be a freshwater planning instrument<sup>3</sup>. The parts of the pORPS that are defined as freshwater planning instruments will go through a separate hearing process with a common hearing panel and eventually the two parts would be combined to create one integrated ORPS.
14. My evidence focuses on linkages between land and freshwater management, integrated management, and the related objectives and policies that should set a clear RMA framework and direction for the region. My evidence is limited to the objectives and policies in the

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<sup>2</sup> The Environment Court is in the process of revising the 2014 Practice Note, including the CCEW to include additional requirements to more explicitly recognise uncertainties. As at mid November 2022 an updated Practice Note has not been finalised and published.

<sup>3</sup> <https://www.orc.govt.nz/media/12992/porps-edited-version-identifying-non-freshwater-parts.pdf>

Integrated Management (Part 2 - Resource Management Overview)(IM) provisions of the pORPS and a limited number of the Land and freshwater (Part 3 Domains and topics) (LF) provisions.

15. I understand the specificity of the two processes that apply to the two parts of the pORPS. The freshwater planning instruments are those that are defined as "...**directly** related to the maintenance and enhancement of freshwater"<sup>4</sup> (my emphasis) However, I am also very conscious that there are critical connections between provisions that may not be freshwater planning instruments but are **indirectly** relevant to the management of water. For example, land use management provisions that are non-freshwater planning instruments can have indirect implications for freshwater management.
16. I need to highlight that the RMA framework provides for too many policy layers, which often results in difficulties in drafting an appropriate hierarchy of linked and/or cascading provisions. There is policy direction in the RMA, in NPSs, in an RPS and then in regional and district plans as well as linkages with regulations/NES. For example, I see examples of repetition in policy provisions to "maintain and enhance" the quality of the environment. The pORPS is an example of this with many objectives written at the same level of objectives in higher instruments but with slightly different wording. It is inefficient to relitigate high-level objectives that have largely already been established in higher instruments.
17. I accept that the RMA framework does present a challenge but there are examples from other regions where this challenge has been addressed with a more straightforward approach of minimising the repetition at the objective level and concentrating on developing

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<sup>4</sup> <https://www.orc.govt.nz/plans-policies-reports/regional-plans-and-policies/otago-regional-policy-statements/proposed-otago-regional-policy-statement-2021-non-freshwater-parts>

specific policies that would set a clear framework for regional and district planning and the resource consent process.

18. My evidence focuses on the following background and needs:
- (a) **The planning framework** It is useful to briefly summarise the key elements of the planning framework for a Regional Policy Statement (RPS). This includes understanding the purpose of an RPS and its scope.
  - (b) **Improve specificity and direction** The pORPS needs to better comply with the purpose of a regional policy statement, its relationship with national policy statements and other Resource Management Act (RMA) provisions. Specific high-level limitations in the pORPS include unnecessary repetition and/or minor inappropriate modifications to existing RMA and/or NPSFM provisions, a lack of social and economic policies, and a lack of SMART<sup>5</sup> policies as required by the NPSFM.
  - (c) **Give effect to the NPSFM** The ORPS needs to give effect to the full hierarchy of obligations in Te Mana o te Wai. Specifically, the need to include giving effect to the third priority of the NPSFM Te Mana o te Wai obligations i.e., “the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.”. The pORPS provisions appropriately give priority to the first two Te Mana o te Wai priorities but then largely ignore the third priority. While the NPSFM is almost certainly largely the domain of the subsequent freshwater planning process, the aspects of the NPSFM that focus on the third priority are relevant to the non-

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<sup>5</sup> A commonly used guide for goals (e.g., Doran, G. T. 1981, "There's a S.M.A.R.T. way to write management's goals and objectives". *Management Review*. 70 (11): 35–36.) Specific, Measurable, Assignable (or Achievable), Realistic & Time-related.

freshwater components. The ORPS needs to more clearly give effect to the National Policy Statement for Freshwater Management (NPSFM) and give direction, particularly for regional and districts plans in Otago.

- (d) **Give effect to other National Policy Statements** The need for the ORPS provisions to give explicit effect to National Policy Statements including the National Policy Statement on Renewable Electricity Generation 2011 (NPSREG). This is provided for in the RMA in sections 62(3) and 55(2). While there are separate objectives relating to renewable electricity generation (e.g., EIT-EN-O2), by singling out only one dam (the Clyde Dam) the current pORPS provisions neither adequately provide for integrated management nor adequately give effect to the NPSREG.

For example, the Objective of the NPSREG is: *“To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand’s electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government’s national target for renewable electricity generation.”*

In addition, changes are likely to be needed to give effect to the recently released National Policy Statement for Highly Productive Land (NPS-HPL).

- (e) **Enable people and communities** Many provisions ‘pick winners’ (e.g., one nationally significant dam and “food production”) without adequate RMA explanations, and provide very limited proactive support for communities, including the primary sector to contribute to addressing key issues such as climate change or biodiversity. For example, not providing a

clear high-level framework that encourages community initiatives that would align with relevant objectives and/or policies. The reasons given in the Section 32 and 42A report were that community consultation provided feedback that many communities sought "...recognition of the food production occurring across the region." Consideration of the inputs from community consultation is valid. However, care is needed to ensure that such consultation doesn't result in the views of one or more sectors overriding wider matters that need to be taken into account under the RMA.

- (f) **Provide more certainty** The need for more specific objectives and policies that provide the level of certainty that the national policy statements indicate would be needed. For example, in the context of existing RMA and national policy statement provisions, many pORPS objectives do not provide any greater level of direction or certainty. As an example, Objective LF-LS-O11 – Land and soil "*The life-supporting capacity of Otago's soil resources is safeguarded and the availability and productive capacity of highly productive land for primary production is maintained now and for future generations.*"
- (g) **Specify how objectives will be achieved** The need for policies to clarify how the objectives will be achieved rather than many policies effectively stating that existing statutory processes will be followed or restating a "passive tense" objective with an "active tense" policy.
- (h) **Connect science and planning provisions** The need to address a range of potentially important planning and technical limitations in the provisions such as some not being aligned accurately with the relevant scientific information, defined words being applied beyond the provided definition, and a lack of technical information to indicate the feasibility of achieving



some objectives. For example, one definition of the term “resilient or resilience” is proposed<sup>6</sup> and “*means the capacity and ability to withstand or recover quickly from adverse conditions*”. However, the terms are used in some objectives and policies where the ability to measure outcomes would be very challenging, for example, “resilient natural systems”, “resilient infrastructure” and “resilient communities”. When such a simplified definition is used in a scientific context of describing the status of an ecosystem, this is highly likely to lead to major subsequent debates about how this should then be implemented in the development of regional and district plans and how regard should be given to the concept in the resource consent process. For example, a relatively recent review article<sup>7</sup> on ecological resilience includes a page of potential definitions relating to concepts central to understanding ecological resilience. From a planning and scientific perspective, it is not appropriate to apply terminology without appropriately specific and detailed definitions. In contrast, for example, we have commonly accepted definitions of freshwater and terrestrial ecosystem health and well-established scientific methods to estimate freshwater and terrestrial ecosystem health<sup>8,9</sup>. The

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<sup>6</sup> The word “resilience” is a noun. The word “resilient” is an adjective. The definition provided is more suited to a noun rather than an adjective.

<sup>7</sup> Chambers, JC, Allen CR & Cushman SA (2019) Operationalizing Ecological Resilience Concepts for Managing Species and Ecosystems at Risk, *Front. Ecol. Evol.*  
<https://www.frontiersin.org/articles/10.3389/fevo.2019.00241/full>

<sup>8</sup> For example: ecological data for a site in the Cardrona River:  
<https://www.lawa.org.nz/explore-data/otago-region/river-quality/cardrona-river/cardrona-river-mt-barker/>

<sup>9</sup> An example of terrestrial ecological indicators: <https://envirolink.govt.nz/assets/R7-2-Standardised-terrestrial-biodiversity-indicators-for-use-by-regional-councils-LC2109-report.pdf>

concept of ecological resilience does not appear to have well-established indicators.

19. My evidence includes comments on the RMA Section 42A report written by Ms Felicity Ann Boyd who also provided technical oversight for the RMA Section 32 report and was the technical lead for the pORPS Land and Freshwater and Integrated management chapters.

### **The planning framework**

20. Appreciating the full purpose and wide scope of regional policy statements and the hierarchy of planning obligations is important. Section 59 of the Resource Management Act (RMA) establishes the purpose of a regional policy statement (RPS):

*“The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.”*

21. In addition, under Section 61 of the RMA the preparation and change of a regional policy statement must be in accordance with the functions of a regional council under section 30, which include:
- (a) *“the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:*
  - (b) *the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance...”*:
22. This framework appears to establish regional policy statements as instruments that should provide broad direction. In contrast to this wide scope, the pORPS provisions relating to integrated management and land and freshwater appear to be narrowly limited to specific

adverse effects. This is one of the key criticisms of both the current RMA and its implementation in the “Randerson Report” on the RMA<sup>10</sup>

23. The purpose and scope of a regional policy statement and the functions of a regional council are both broad and there does not appear to be a planning basis to narrow that scope in a regional policy statement. For example, this scope includes the positive effects of the use and development of land. The RMA provides for just one RPS for each region and it appears that the scope of an RPS should include all those matters specified in RMA Section 61(b). I consider that the land and freshwater management and integrated management provisions of the pORPS are inappropriately narrow. This appears to be a result of a narrow interpretation that focuses on the NPSFM, including the first two obligations in the hierarchy specified in the NPSFM and does not take account of the third obligation. In addition, the scope of the pORPS provisions appears to be limited by the issue definitions that focus on adverse effects rather than the broader “resource management issues of the region” (RMA Section 59).
24. I understand that the Court of Appeal<sup>11</sup> has confirmed in its endeavour to define the term “policy” that regional policy statements can identify a broad or narrow course of action. It is likely that the focus of pORPS objectives and policies on effects of water management is consistent with this approach. However, the RMA also requires a consideration of the broader effects of policy provisions.
25. I am not aware that any RPS has yet been fully updated to give effect to the NPSFM (2020). However, I am aware that to meet the purpose

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<sup>10</sup> <https://environment.govt.nz/publications/new-directions-for-resource-management-in-new-zealand/>

<sup>11</sup> Auckland Regional Council v North Shore City Council [1995] 3 NZLR 18

of the RMA as defined in Section 5, many other RPSs incorporate statements in water and land management objectives that enable “ ... *people and communities to provide for their social, economic, and cultural well-being and for their health and safety while... sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations...*” (RMA Section 5).

26. Regardless of the scope of resource management issues, RMA Section 32 (Section 32(1)(c)) requires an evaluation of the “...environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.” The following excerpts from the Section 32 report indicate the level of analysis that has been undertaken to assess economic effects.

*Integrated Management provisions*

*“There may be significant economic impacts arising from the requirement to prioritise the long-term life supporting capacity of the environment over human needs. Industries that extract natural resources (e.g., animal husbandry) will incur higher costs. However, this is ultimately subject to higher order legislation or direction, much of which supports a range of uses of resources for economic and other purposes (for example, renewable electricity generation).”*

*Land and freshwater provisions*

*“The provisions in Option 3 represent a paradigm shift in freshwater management in the region. There will be significant constraints on the uses of water and land which will, in turn, have considerable impacts on economic growth and employment. The quantum of these costs has not been identified and will depend, in large part, on the provisions developed under the LWRP to implement Option 3. However, the significant shift in policy direction from the current state means it is likely the costs will be significant.*

*Otago’s communities will incur costs arising from implementing Option 3, particularly from the development and implementation of the LWRP. In the development stage, this includes the cost of preparing submissions and appearing at hearings. The significance and complexity of the LWRP will likely*

*make this engagement a large commitment for most submitters. Implementation of the LWRP will also result in costs to land and water users in Otago, particularly where limits or targets are considerably more conservative than the current planning framework. This is likely to require a range of changes in land and water use practices which will come at a cost that is unable to be quantified at this stage."*

27. While I respect the challenges faced by the authors of the Section 32 report, I consider that the evaluation of economic effects for important land (and water) provisions was not sufficiently detailed. I do not consider, given the potential effects on communities, that it "...corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal." (RMA Section 32(1)(c)). I appreciate that there will have been significant limitations in the development of the pORPS. However, my understanding of current good practice implementation of S32 is that an understanding of the economic consequences should be taken into account in the provisions and timetables. While it may be difficult to quantify the social, economic, and cultural costs there are many possible ways to at least make an effort to assess the likely scale of the costs and implications. That is not to suggest that such an analysis would necessarily result in fundamental changes to key provisions, but it would enable an understanding of the implications and be in a better position to identify strategies that could take account of potential challenges and for example, establish realistic timeframes. If the full implications of provisions are not recognised and addressed there are significant risks that there may be unintended consequences, including a risk that the ORPS could become an aspirational document that fails to achieve its objectives.
28. The ORPS would establish a framework that an Otago Land and Water Regional Plan (LWRP) will have to give effect to (RMA Section 67(3)(c)). The LWRP will also have to give effect to the NPSFM (RMA

Section 67(3)(a)), and other relevant NPS. The Section 32 report and the relevant Section 42A reports<sup>12</sup> conclude that detailed provisions will be included in the LWRP and that plan will provide the “...opportunities ... to consider setting interim or target timeframes.” (Section 32, e.g., page 36). However, it does not appear logical to not undertake an assessment of economic consequences on the basis of the somewhat contradictory arguments that a lower document will determine the specifics and they are “...unable to be quantified...”.

29. The NPSFM while now mainly relevant to the freshwater planning instruments does provide a third priority “...*the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*” It is not clear how this priority was considered and factored into the pORPS provisions.
30. Many specific requirements are already spelt out in some detail in the NPSFM e.g., a timetable by when a percentage of lakes and rivers must be suitable for primary contact recreation and the range of specified national bottom lines. The RMA and NPSFM also specify timetables for freshwater planning instruments. The NPSFM also requires (Clause 3.3 (2) long-term visions that “...*must set goals that are ambitious but reasonable (that is, difficult to achieve but not impossible); and (c) identify a timeframe to achieve those goals that are both ambitious and reasonable (for example, 30 years after the commencement date)*”. While these directions are likely to be specific to freshwater planning instruments, they do signal the level of specificity that is appropriate for RMA planning provisions generally. To do otherwise would risk amassing layer upon layer of aspirational policy direction.

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<sup>12</sup> There appears to be frequent common authorship of relevant parts of the section 32 report and the relevant S42A reports. There is no direction that I am aware of that would make this inappropriate. However, it does mean that the S42A reports cannot be considered as independent assessments in the same way that resource consent S42A reports are .

31. The conclusion that economic costs of important objectives cannot be quantified at this stage does not appear to be consistent with the intent of RMA Section 32(1)(c) or Section 32(2)(a) & (b). Those provisions require a thorough evaluation of the economic and social effects of a proposal, not just the environmental and cultural.
32. A more complete assessment of the economic and social implications would have highlighted many of the likely consequences for communities and should have highlighted the need to identify additional proactive provisions to enable communities to manage the proposed changes needed to achieve integrated management and land and freshwater objectives. The currently proposed provisions lack the necessary complementary policies to enable and facilitate communities to make the needed changes over achievable timeframes.

#### **Improve specificity and direction**

33. The RMA framework involves multiple layers of objectives and policies. This starts at the level of the RMA where effectively high-level objectives are specified in sections 5, 6, 7 and 8, then national policy statements provide further, ideally more specific direction. Sitting under this, RPS objectives and policies must give effect to those NPS. Then in turn an additional layer of objectives and policies will eventually be established in a new Otago LWRP. With so many layers of objectives and policies, it is challenging to establish a clear meaningful hierarchy of objectives in an RPS that doesn't inappropriately duplicate a higher-order provision or supplant a lower-order provision that is more appropriate for inclusion in a regional and/or district plan.
34. It is apparent that many RPSs overcome this potential dilemma with often minimalistic objectives that are consistent with the terminology used in higher-order provisions. For example. the Northland Integrated catchment management objective is simply:

*“Integrate the management of freshwater and the subdivision, use and development of land in catchments to enable catchment-specific objectives for fresh and associated coastal water to be met.”*

35. Similarly, the Canterbury Regional Policy Statement has one high-level objective for the “Sustainable management of freshwater”:  
*“The region’s fresh water resources are sustainably managed to enable people and communities to provide for their economic and social well-being through abstracting and/or using water for irrigation, hydro-electricity generation and other economic activities, and for recreational and amenity values, and any economic and social activities associated with those values, providing:*
- 1. the life-supporting capacity ecosystem processes, and indigenous species and their associated freshwater ecosystems and mauri of the fresh water is safe-guarded;*
  - 2. the natural character values of wetlands, lakes and rivers and their margins are preserved and these areas are protected from inappropriate subdivision, use and development and where appropriate restored or enhanced; and*
  - 3. any actual or reasonably foreseeable requirements for community and stockwater supplies and customary uses, are provided for.”*
36. Therefore, these examples highlight that it is not necessary to develop a complex suite of objectives that may not be consistent with, or give proper effect to, higher level provisions.

### **Integrated Management**

37. Many objectives of the pORPS Integrated Management Section are high-level and very similar to the level of direction found in Sections 5, 6, 7 and 8 of the RMA and the NPSFM. However, they introduce some new expressions and terminology that are not defined in the RMA, the NPSFM or the pORPS, or determined by case law. Some



terminology and words may be synonymous with existing RMA terminology. However, it is my experience that such new terminology can become a stumbling block for subsequent processes resulting in inefficiencies involved in expensive litigation that eventually results in a court ruling on the meaning of a word or expression. Some words such as “resilient” or “resilience” are given a basic definition. However, beyond the basic definition provided, there is no body of science that would enable such a definition to be applied in an actual RMA application such as a regional plan provision and/or a resource consent application. Examples of expressions that do not appear to have established RMA definitions and/or case law include: “resilient natural systems”, “flourish”, “environmental integrity”, “environmental form”, and “environmental resilience”.

38. None of the Integrated management policies provides a clear “course of action” to achieve an objective.

39. The four Integrated management objectives in the pORPS are reproduced below:

## IM – Integrated management

### Objectives

**IM–O1 – Long term vision**

The management of *natural and physical resources* in Otago, by and for the people of Otago, including Kāi Tahu, and as expressed in all resource management plans and decision making, achieves healthy, resilient, and safeguarded natural systems, and the ecosystem services they offer, and supports the well-being of present and future generations, *mō tātou, ā, mō kā uri ā muri ake nei*.

**IM–O2 – Ki uta ki tai**

*Natural and physical resource* management and decision making in Otago embraces *ki uta ki tai*, recognising that the *environment* is an interconnected system, which depends on its connections to flourish, and must be considered as an interdependent whole.

**IM–O3 – Environmentally sustainable impact**

Otago’s communities carry out their activities in a way that preserves environmental integrity, form, function, and *resilience*, so that the life-supporting capacities of air, *water*, soil, ecosystems, and indigenous *biodiversity* endure for future generations.

**IM–O4 – Climate change**

Otago’s communities, including Kāi Tahu, understand what *climate change* means for their future, and *climate change* responses in the region, including adaptation and mitigation actions, are aligned with national level *climate change* responses and are recognised as integral to achieving the outcomes sought by this RPS.

40. High-level objectives that are effectively on the same level as, but use words that are slightly different from, the existing high-level direction in the RMA and relevant NPS are not useful. They do not provide direction, are highly likely to result in legal debate to establish the meaning of new terminology in the context of existing RMA provisions and then how those provisions should be properly given effect to in regional and district plans, and how regard must be given to them in the resource consent process (RMA Section 104(1)(b)(v)).

41. I suggest the four integrated management objectives be changed or deleted to remove all terminology and expressions that are not well defined, specifically the words “resilient” and “resilience”. If these objectives do not provide direction derived from higher instruments they should be removed and either replaced with ones that do or simply repeat the higher-order provisions.
42. I note that the S42A report recommends some significant changes to IM-01 – Long term vision. As an example, the following recommended wording takes that recommendation and removes untested terminology and includes wording that is consistent with the requirement (RMA Section 59) for an RPS to achieve the purpose of the RMA. This change would be a useful improvement.

*The management of natural and physical resources, by and for the people of Otago, in partnership with Kāi Tahu, achieves a healthy and resilient, natural environment, including the ecosystem services it provides, and supports the social, economic and cultural well-being of present and future generations, (mō tātou, ā, mō kā uri ā muri ake nei).*

43. Similarly, Objective IM-03 – Environmentally sustainable impact is fundamentally based on untested terminology “...environmental integrity, form, function and resilience...” and should be deleted in its entirety because the option of removing that terminology would simply result in wording that repeats existing RMA provisions in Part 2 of the RMA.
44. Many Integrated management policies largely repeat existing RMA requirements (“*all provisions ...must be considered*”), suggest constraints that do not exist (“...within the environmental constraints of this RPS”), largely repeat some NPSFM provisions, involve platitudes that do not provide direction (“...*recognises and provides for ecosystem complexity and interconnections...*) or replaces

carefully written NPSFM directions with a poorly worded alternative (“...*using the best information available at the time...*”).

45. I have read the S42A report and the supplementary S42A reports on the Integrated management policies and consider that the changes proposed are significant improvements. Therefore, I have endeavoured to build on those recommendations and make suggested further enhancements to objectives and policies to improve their consistency with the RMA, certainty and provide more direction. However, there are still many provisions that appear at odds with the purpose of the RMA or do not provide adequate certainty or direction.

S42A report Integrated management objective recommendations	Comment	Recommended changes
<p><b>IM-O1 – Long term vision</b>            The management of <i>natural and physical resources in Otago</i>, by and for the people of Otago, <u>including in partnership with Kāi Tahu, and as expressed in all resource management plans and decision-making, achieves a healthy, and resilient, and safeguarded natural systems environment, and including the ecosystem services they offer, it provides</u>, and supports the well-being of present and future generations, (mō tātou, ā, mō kā uri ā muri ake nei).</p>	<p>The wording largely repeats RMA Section 5 directions with the addition of the partnership statement and the omission of a clear reference to social, cultural, and economic well-being. The significance of this omission is likely to lead to subsequent unproductive debate. I can see the benefit of a high-level objective that clarifies that the RMA will be implemented in partnership with Kāi Tahu.</p>	<p>Delete the objective or delete everything past the word “Tahu”.</p>
<p><b>IM-O2 – Ki uta ki tai</b>            The management of <i>natural and physical resources management and decision-making in Otago</i> embraces ki uta ki tai, recognising that the <i>environment</i> is an interconnected system, which depends on its connections to flourish, and must be <u>considered managed</u> as an interdependent whole.</p>	<p>The suggested changes are an improvement. However, the term “flourish” is not an established RMA term, is simply descriptive and therefore that clause should be deleted.</p>	<p>Delete “, which depends on its connections to flourish,”</p>
<p><b>IM-O3 – Environmentally sustainable impact</b>            Otago’s communities carry out their <u>activities in a way provide for their social, economic, and cultural well-being in ways that support or restore</u> preserves environmental integrity, form, function, and resilience, so that the life-supporting capacities of air, water, soil, <u>and ecosystems are safeguarded, and indigenous biodiversity endure</u> for future generations.</p>	<p>Support the changes with the minor suggestion that the RMA terminology and scientific more accurate word “functioning” be used instead of “function”.</p> <p>The former word more accurately describes the multiple linkages of ecosystems.</p>	<p>Replace the word “function” with “functioning”.</p>

S42A report Integrated management objective recommendations	Comment	Recommended changes
<p><b>IM-O4 – Climate change</b>            Otago’s communities, including Kāi Tahu, understand what <i>climate change</i> means for their future, and <u>responses to climate change</u> responses in the region, (including <u>climate change adaptation</u> and <u>climate change mitigation actions</u>);            (1) are aligned with national level <i>climate change</i> responses,            (2) <u>assist with achieving the national target for emissions reduction</u>, and            (3) are recognised as integral to achieving the outcomes sought by this RPS.</p>	<p>The addition of clause (2) is likely to result in an expectation that resource consent applicants would have to demonstrate that a proposal would “assist with achieving the national target for emissions reductions...”. This would conflict with RMA Section 104E. The additional clause (2) is inappropriate, unnecessary and should be deleted.</p>	<p>Delete Clause (2)</p>
<p><b>IM-P1 – Integrated approach to decision-making</b></p> <p>Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise:</p> <p>(1) the life-supporting capacity and mauri of the natural environment and the health needs of people, and then the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.</p>	<p>The first part of the recommended provision would repeat an RMA requirement and is therefore unnecessary. However, the second part of the policy brings in a new consideration, namely the mauri (life force) of the natural environment. It is not clear how this would be given effect to in regional and district plans or how regard would be given to it in the resource consent process. This would be better encapsulated in a specific policy that requires consideration of cultural matters such as the mauri of the natural environment.</p> <p>I appreciate the cultural significance of the mauri of the natural environment. However, under the current RMA framework, there does not appear to be a planning justification to insert the term mauri into a policy at the same level as the life-supporting capacity and the health needs of people.</p>	<p>Streamline the policy to improve its clarity and effectiveness, as proposed below:</p> <p><del>“Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise:</del></p> <p>(1) the life-supporting capacity <del>and mauri</del> of the natural environment and the health needs of people,</p>

	<p>I appreciate that the mauri of freshwater is included in the Canterbury RPS example given earlier. However, the Canterbury objective is written very differently. I consider that such a policy would be best developed separately with guidance from Kāi Tahu. There would also need to be some clear guidance on how the mauri of the natural environment would be measured, for example, if a set of measurable indicators reached specific targets, then perhaps a conclusion could be drawn that this would contribute to enhancing the mauri of that resource. This would assist to ensure that the extent to which the policy has succeeded can be assessed.</p>	<p>and then the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.”</p>
<p><b>IM- P2 Decision priorities</b> Recommended deletion</p>	<p>Agreed</p>	<p>Deletion</p>
<p><b>IM-P3 – Providing for mana whenua cultural values in achieving integrated management</b></p>	<p>I have no specific expertise in mana whenua cultural values. Therefore, no comment is provided.</p>	<p>N/A</p>
<p><b>IM-P4 – Setting a strategic approach to ecosystem health</b> Healthy <u>and resilient</u> ecosystems and ecosystem services are achieved <u>by developing regional and district plans through a planning framework</u> that: (1) <del>protects having</del> <u>have particular regard to their</u> <del>the</del> <u>intrinsic values of ecosystems,</u> (2) <del>takes taking</del> <u>take</u> a long- term strategic approach that recognises <del>changing environments</del> and <u>ongoing environmental change, including the impacts of climate change,</u> (3) <del>recognises recognising</del> <u>recognise</u> and <del>provides providing</del> <u>provide</u> for</p>	<p>The recommended provision is an improvement. However, there are still issues with the suggested approach.</p> <p>The wording of (1) simply repeats the existing requirement of Section 7 of the RMA. Therefore, the provision should be deleted.</p> <p>A "long-term strategic approach" is vague, provides no direction and should be replaced with a more certain commitment that incorporated a clear time-framed commitment.</p> <p>The Incorporation of the word "resilient" introduces uncertainty</p>	<p>Either delete the whole policy or replace it with a policy that provides meaningful direction.</p>

<p>ecosystem complexity and interconnections, and  (4) <del>anticipates</del> <u>anticipating</u> <u>anticipate</u>, or <del>responds</del> <u>responding</u> <u>respond</u> swiftly to, changes in activities, pressures, and trends.</p>	<p>and should be deleted. It has been incorporated as indicated in the S42A report, in part because of an Otago Fish and Game submission. However, that submission doesn't provide any detailed technical information to justify making a distinction between 'health' and 'resilience'.</p>	
<p><b><i>IM-P5 – Managing environmental interconnections</i></b></p> <p>Coordinate the management of interconnected <i>natural and physical resources</i> by recognising and providing for:</p> <p>(1) situations where the value and function of a <i>natural or physical resource</i> extends beyond the immediate, or directly adjacent, area of interest,</p> <p>(2) the effects of activities on a <i>natural or physical resource</i> as a whole, <u>or on the environment</u>, when that resource is managed as sub-units,</p> <p>and</p> <p>(3) the impacts of management of one <i>natural or physical resource</i> on the values of another, or on the <i>environment</i>.</p>	<p>The RMA definition of "environment" includes "all natural and physical resources". Therefore, the final clause needs modifying.</p>	<p>Change Clause (3) to: "the impacts of the management of one natural or physical resource on the wider environment".</p>
<p><b><i>IM-P6 – Acting on best available information</i></b></p> <p>Avoid unreasonable delays and <u>manage uncertainties</u> in decision-making processes by using the best information available at the time, including <del>but not limited to complete and scientifically robust data</del>, <u>mātauraka Māori</u>, <del>local knowledge, and reliable partial</del></p>	<p>The recommended changes are a significant improvement and use appropriate wording based on that in the NPSFM.</p> <p>The key aspect of the policy that is missing is the need to improve the limited investment in environmental monitoring and investigations in Otago. Compared to some other regions, for example, Canterbury</p>	<p>Replace Clause (2) with the following (borrowed from the NPSFM with only the word "National" changed to "Regional"):</p> <p>"(2) A person who is required to use the best information available at the time:</p> <p>(a) must not delay making decisions solely</p>



<p><u>data</u> and:</p> <p>(1) <u>in the absence of complete and scientifically robust data, using information obtained from modelling, reliable partial data, and local knowledge, but in doing so:</u></p> <p>(a) prefer sources of <u>information that provide the greatest level of certainty, and</u></p> <p>(b) <u>take all practicable steps to reduce uncertainty, and</u></p> <p><u>adopt a precautionary approach towards activities whose effects are uncertain, unknown, or little understood, but potentially significantly adverse.</u></p>	<p>and Southland, my experience is that over the past 30 years there appears to have been relatively less investment in environmental investigations and monitoring. Therefore, the policy should include a clear commitment to investigate and monitor the environment to endeavour to ensure that scientifically robust information is available to assist decision-making. However, the introduction of the undefined term “precautionary approach” is highly likely to result in diverging opinions on what this means in practice. It would be preferable to follow the approach taken in the NPSFM.</p>	<p>because of uncertainty about the quality or quantity of the information available; and</p> <p>(b) if the information is uncertain, must interpret it in the way that will best give effect to this Regional Policy Statement</p> <p>Add:</p> <p>(3) ensure that investigations and monitoring of Otago’s natural and physical resources are undertaken to enhance the evidence basis for decision- making.”</p>
<p><b>IM-P7 – Cross boundary management</b></p> <p>Coordinate the management of <i>Otago’s natural and physical resources and the environment</i> across jurisdictional boundaries and, whenever possible, between overlapping or related agency responsibilities.</p>	<p>Largely repeats existing statutory requirements.</p> <p>The word “environment” includes “natural and physical resources”.</p>	<p>The policy is not needed and does not provide any direction beyond existing statutory responsibilities. If it is retained the words “natural and physical resources” should be deleted.</p>
<p><b>IM-P8 – <u>Effects of Climate change impacts</u></b></p> <p>Recognise and provide for <u>the effects of climate change processes and risks</u> by:</p> <p>(1) <u>identifying the effects of climate change impacts in Otago, including impacts from a te ao Māori the perspectives of Kāi Tahu as mana whenua,</u></p>	<p>The policy would benefit from clarifying who is expected to identify the effects of climate change and how they are expected to change over time. For example, would this be implemented by expecting individual resource consent applicants to undertake research and investigations into climate change effects?</p>	

<p>(2) assessing how the <del>impacts</del> <u>effects</u> are likely to change over time, and</p> <p>(3) <del>anticipating</del> <u>taking</u> <del>into account</del> those changes in resource management processes and decisions.</p>		
<p><b>IM-P9 – Community response to <i>climate change</i> impacts</b>  <del>By 2030 Otago’s communities have established responses for adapting to the impacts of <i>climate change</i>, are adjusting their lifestyles to follow them, and are reducing their <i>greenhouse gas</i> emissions to achieve net-zero carbon emissions by 2050.</del></p>	<p>Agreed. The proposed policy is not a ...” course of action to achieve or implement the objective...”<sup>13</sup></p>	<p>Deletion</p>

<sup>13</sup> <https://www.qualityplanning.org.nz/node/610>

S42A report Integrated management policy recommendations	Comment	Recommended changes
<p><b>IM-P10 – Climate change adaptation and climate change mitigation</b> Identify and implement <i>climate change adaptation</i> and <i>climate change mitigation</i> methods for Otago that:</p> <ol style="list-style-type: none"> <li>(1) minimise the <i>effects</i> of <i>climate change processes or risks to existing activities on the environment</i>,</li> <li>(2) prioritise avoiding the establishment of new activities in areas subject to <i>significant risk</i> from the <i>effects of climate change</i>, unless those activities reduce, or are resilient to, those <i>significant risks</i>, and</li> <li>(3) provide Otago’s communities, including Kāi Tahu, with the best chance to thrive, even under the most extreme <i>climate change scenarios</i>, and</li> <li>(4) <u>enhance environmental, social, economic, and cultural resilience to the adverse effects of climate change, including by facilitating activities that reduce negative human impacts on the environment.</u></li> </ol>	<p>Clause (3) does not recognise the current trajectory of climate change.</p> <p>It is inappropriate to mix the concept of ‘thriving’ with “the most extreme climate change scenarios”. The two concepts are not compatible. The policy should recognise the reality of the level of threat posed by climate change and focus on mitigation and adaptation.</p> <p>There is a need for additional wording that recognises the need for a proactive approach to working with communities to develop responses to climate change. However, the proposed wording includes undefined broad terms such as “cultural resilience” that introduces unnecessary uncertainty and should therefore be deleted. The wording “the best chance to thrive” is similarly uncertain.</p>	<p>Replace clauses (3) and (4) with:</p> <p>(3) Facilitate adaptation to the effects of climate change, including by facilitating activities that would reduce the effects of climate change on the environment including communities.</p>
<p><b>IM-P11 – Enhancing environmental resilience to effects of climate change</b> <del>Enhance environmental resilience to the adverse effects of climate change by facilitating activities that reduce human impacts on the environment.</del></p>	<p>Agreed</p>	<p>Deletion</p>

<p><b>IM-P12 – Contravening <del>environmental bottom lines</del> <u>limits for climate change mitigation</u></b></p> <p><del>Despite other provisions in this RPS, <u>W</u>where a proposed activity provides or will provide enduring regionally or nationally significant <u>climate change mitigation</u> <del>mitigation of climate change</del> impacts, with commensurate benefits for the well-being of people and communities and the wider <i>environment</i>, decision makers may, at their discretion, allow non-compliance with an <i>environmental bottom line</i> <u>limit</u> set in, or resulting from, any policy or method of this RPS only if they are satisfied that:</del></p> <p>(1) <del>the activity is designed and carried out to have the smallest possible environmental impact consistent with its purpose and <u>functional needs</u>, <u>adverse effects on the environment resulting from the activity are avoided, remedied, or mitigated so that they are reduced to the smallest amount reasonably practicable.</u></del></p> <p>(2) <del>the activity is consistent and coordinated with other regional and national <i>climate change mitigation</i> activities,</del></p> <p>(3) <del>adverse effects on the <i>environment</i> that cannot be avoided, remedied, or mitigated are offset, or compensated for, <u>and for adverse effects on indigenous biodiversity: if an offset is not possible, in accordance with any specific criteria for using offsets or compensation, and ensuring that any offset is:</u></del></p> <p style="padding-left: 40px;"><del><u>(aa) where there are residual adverse effects after avoidance, remediation,</u></del></p>	<p>This “policy” attempts to direct resource consent decision makers rather than specify a proactive method to achieve an objective. Therefore, it is not clear exactly what objective or outcomes the policy is endeavouring to achieve.</p> <p>The policy is potentially internally inconsistent (allows non-compliance with an environmental limit but indicates that that applies only to those limits that are not set in an NPS or NES) and therefore potentially inconsistent with the RMA and specifically the concept of national bottom lines in the NPSFM.</p> <p>Most importantly, the policy includes such a range of subjective assessments that it provides little or no certainty.</p> <p>It introduces a new term “environmental limit” that is different from the terminology used in NPSs. As a consequence of the above the policy should be deleted.</p>	<p>Deletion</p>
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<p>and mitigation, residual adverse <i>effects</i> are offset in <u>accordance with APP3, and</u>  <u>(ab) if biodiversity offsetting of residual adverse effects is not possible, then those residual adverse effects are compensated for in accordance with APP4,</u>  (a) <del>undertaken where it will result in the best ecological outcome,</del>  (b) <del>close to the location of the activity, and</del> within the same ecological district or coastal marine biogeographic region,  (4) the activity will not impede <del>either the achievement of the objectives of this RPS or the objectives of regional policy statements in neighbouring regions, and</del>  (5) the activity will not contravene a <del>bottom line</del> <u>an environmental limit</u> set in a national policy statement or national environmental standard.</p>		
<p><b><del>IM-P13 – Managing cumulative effects</del></b> Otago’s environmental integrity, form, function, and <i>resilience</i>, and opportunities for future generations, are protected by recognising and specifically managing the cumulative <i>effects</i> of activities on <i>natural and physical resources</i> in plans and <del>explicitly accounting for these effects in other resource management decisions.</del></p>	<p>Agreed</p>	<p>Deletion</p>

S42A report Integrated management policy recommendations	Comment	Recommended changes
<p><b>IM-P14 – Human impact</b> When preparing <i>regional plans</i> and <i>district plans</i>, <del>Preserve</del> opportunities for future generations by:</p> <ol style="list-style-type: none"> <li>(1) identifying <u>environmental limits wherever practicable, to both growth and adverse effects of human activities beyond which the environment will be degraded,</u></li> <li>(2) requiring that activities are established in places, and carried out in ways, that are within those <u>environmental limits</u> and are compatible with the natural capabilities and capacities of the resources they rely on, <del>and</del></li> <li>(3) regularly assessing and adjusting <u>environmental limits and thresholds</u> for activities over time in light of the actual and potential environmental impacts, <u>including those related to climate change, and</u></li> <li>(4) promoting activities that reduce, <u>mitigate, or avoid adverse effects on the environment.</u></li> </ol>	<p>The policy is not at all clear about how opportunities for future generations would be preserved. The four specific matters provide no direction about opportunities for future generations.</p> <p>Each sub-clause effectively restates existing objectives or policies or statutory requirements with no linkage to the introductory policy wording. The result is a policy that provides no direction and should be deleted. An alternative would be to replace the four sub-clauses with one or more that clarify what specific opportunities are being sought. For example, I am aware that in some regions, natural resources are allocated for specific future community needs.</p>	Deletion
<p><b>IM-P15 – Precautionary approach</b> Adopt a precautionary approach towards proposed activities whose <i>effects</i> are uncertain, unknown or little understood, but could be significantly adverse, particularly where the areas and values within Otago have not been identified in <del>plans as required by this RPS.</del></p>	<p>Agreed. The concept of a “precautionary approach” is inadequately defined and subject to very broad potential interpretations.</p>	Deletion

S42A report Land and freshwater objective and policy recommendations	Comment	Recommended changes
<p><b>LF-WAI-P2 – Mana whakahaere</b> Recognise and give practical effect to Kāi Tahu rakaŕirataka in respect of <i>fresh water</i> by:</p> <ol style="list-style-type: none"> <li>(1) facilitating partnership with, and the active involvement of, <i>mana whenua</i> in <i>freshwater</i> management and decision-making processes,</li> <li>(2) sustaining the <del>environmental, social, cultural and economic</del> relationships of Kāi Tahu with <i>water bodies</i>,</li> <li>(3) providing for a range of customary uses, including <del>māhika kai</del> <i>māhika kai</i>, specific to each <i>water body</i>, <del>and</del></li> <li>(4) incorporating mātauraka into decision making, management and monitoring processes, <del>and</del> <u>managing wai and its connections with whenua in a holistic and interconnected way – ki uta ki tai.</u></li> </ol>	<p>The potential applications of the policy in the resource consent process need to be considered. For example, how would the policy be interpreted in the consideration of notification decisions in the resource consent process?</p> <p>There is a risk that the policy could be interpreted in a way that meant that the “practical” and “active” could result in Kāi Tahu being identified as a potentially adversely affected party for all resource consents that relate to water e.g., every land use consent application to install a bore. It is otherwise not clear why the words “practical” and “active” are needed in the policy.</p> <p>It is not clear why a land and freshwater policy is limited to freshwater. It is likely that some land use matters could adversely affect water and would warrant Kāi Tahu input.</p>	<p>Delete the words “practical” and “active”.</p> <p>Change the wording of clause (1) as follows: “facilitating partnership with, and the active involvement of, <u>mana whenua in freshwater management and decision-making processes, that relate to freshwater management and land use management where there are effects on freshwater</u>”</p>
<p><b>LF-WAI-P3 – Integrated management/ki uta ki tai</b> Manage the use of <i>freshwater</i> and <i>land</i>, in accordance with tikanga and kawa, using an integrated approach that:</p> <ol style="list-style-type: none"> <li>(1) recognises, <del>and</del> sustains <u>and, where degraded or lost, restores</u> the <u>natural</u> connections and interactions between <i>water bodies</i> (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral),</li> <li>(2) sustains and, <del>wherever possible</del> <u>where degraded or lost, restores</u> the <u>natural</u> connections and interactions between <i>land</i> and <i>water</i>, from the mountains to the sea,</li> <li>(3) sustains and, wherever possible,</li> </ol>	<p>The policy appears to be trying to address multiple objectives in one policy and is effectively repeating some policies that are already detailed in the Mana whenua and Integrated management sections.</p> <p>All the wording is very high level and none is specifying a course of action. Many provisions simply repeat higher-order provisions albeit with slightly different words or identify a broad direction that may not realistically be achievable. For example, would clause (1) anticipate a process to be started to restore the connections degraded by the Clyde Dam?</p> <p>For example, clause (7) adds no more direction than currently exists in the RMA.</p> <p>Therefore, the policy does not add anything to the existing planning</p>	<p>Deletion.</p>

<p>restores the habitats of <del>ma</del><u>ma</u>hika kai <u>ma</u>hika kai and indigenous species, including taoka species associated with the <del>water body</del> <u>bodies</u>,</p> <p>(4) manages the <i>effects</i> of the use and development of <i>land</i> to maintain or enhance the health and well-being of <i>freshwater, and coastal water and associated ecosystems</i>,</p> <p>(5) encourages the coordination and sequencing of regional or urban growth to ensure it is sustainable,</p> <p>(6) has regard to foreseeable <i>climate change</i> risks <u>and the potential effects of climate change on water bodies</u>, <del>and</del></p> <p>(7) has regard to cumulative <i>effects</i>, and</p> <p>(8) <del>the need to apply</del> <u>applies</u> a precautionary approach where there is limited available information or uncertainty about potential adverse <i>effects</i>.</p>	<p>framework and is more likely to result in debates about the meaning and implications of new or additional wording such as “sequencing”.</p>	
<p><b>LF-VM-O7 – Integrated management</b></p> <p><i>Land and water</i> management apply the ethic of ki uta ki tai and are managed as integrated natural resources, recognising the connections and interactions between <i>fresh water, land</i> and the coastal environment, and between surface water, <i>groundwater</i> and <i>coastal water</i>.</p>	<p>The word “ethic” is not consistent with how the term Ki uta ki tai is referenced or defined elsewhere. It is generally taken to indicate the connection concept of “from the mountains to the sea”<sup>14</sup>.</p>	<p>Change the word “ethic” to “concept”</p>

<sup>14</sup> <https://environment.govt.nz/te-ao-maori/matauranga-maori-and-the-ministry/>

<https://www.orc.govt.nz/news-and-events/news-and-media-releases/2019/april/ki-uta-ki-tai-from-the-mountains-to-the-sea-influences-setting-of-freshwater-management-units-by-otago-regional-council>



<b>S42A report Land and freshwater objective and policy recommendations</b>	<b>Comment</b>	<b>Recommended changes</b>
<p><b>LF-FW-O10 – Natural character</b> The natural character of <i>wetlands</i>, <i>lakes</i> and <i>rivers</i> and their margins is preserved and protected from inappropriate subdivision, use and development.</p>	Repeats the requirement of RMA Section 6(a).	Deletion.
<p><b>LF-FW-P8 – Identifying <i>natural wetlands</i></b> <u>By 3 September 2030, identify</u> <del>identify</del> and map <i>natural wetlands</i> that are:</p> <ol style="list-style-type: none"> <li>(1) 0.05 hectares or greater in extent, or</li> <li>(2) of a type that is naturally less than 0.05 hectares in extent (such as an ephemeral <i>wetland</i>) and known to contain threatened species.</li> </ol>	No issues were identified.	No change.
<p><b>LF-FW-P11 – Identifying <i>Otago's outstanding water bodies</i></b> <i>Otago's outstanding water bodies</i> are:</p> <ol style="list-style-type: none"> <li>(1) the Kawarau River and tributaries described in the Water Conservation (Kawarau) Order 1997,</li> <li>(2) Lake Wanaka and the outflow and tributaries described in the Lake Wanaka Preservation Act 1973,</li> <li>(3) any <del>water bodies</del> <u>body or part of a water body</u> identified as being <del>wholly or partly</del> within an outstanding natural feature or landscape in accordance with NFL-P1, and</li> <li>(4) any other <i>water bodies</i> identified in accordance with APP1.</li> </ol>	One potentially significant limitation of clauses (3) and (4) is that the policy does not make it clear what specific process would be used to apply the criteria identified in APP9. For example, an ORC technical report could apply APP9 and create a list that may be considered to qualify under this policy. Then that list could quite possibly be applied to the resource consent process. This scenario is quite possible and would be inappropriate. Therefore, the two clauses should be deleted	Add the word “currently” after the word “are”. Delete clauses (3) and (4) and add a footnote to briefly explain the plan change and WCO processes that can be used to identify outstanding water bodies.

S42A report Land and freshwater objective and policy recommendations	Comment	Recommended changes
<p><b>LF-FW-P12 – Protecting Identifying and managing outstanding water bodies</b></p> <p><del>The significant and outstanding values of <i>outstanding water bodies</i> are:</del></p> <p><del>(1) identified in the relevant <i>regional and district plans</i>, and</del></p> <p><del>(2) protected by avoiding adverse effects on those values.</del></p> <p><u>Identify <i>outstanding water bodies</i> and their significant and outstanding values in the relevant <i>regional plans</i> and <i>district plans</i> and protect those values by avoiding adverse effects on them, except as provided by EIT-INF-P13 and EIT-INF-P13A.</u></p>	<p>No issues identified.</p>	<p>No change.</p>
<p><b>LF-FW-P13 – Preserving natural character and instream values</b></p> <p>Preserve the natural character <u>and instream values</u> of <i>lakes</i> and <i>rivers</i> and <u>the natural character of their beds</u> and margins by:</p> <p>(1) avoiding the <i>loss of values</i> or extent of a <i>river</i>, unless:</p> <p>(a) there is a <i>functional need</i> for the activity in that location, and</p> <p>(b) the <i>effects</i> of the activity are managed by applying:</p> <p>(i) for <i>effects</i> on indigenous <i>biodiversity</i>, either ECO-P3 or <u>the effects</u></p>	<p>The policy appears to be endeavouring to combine many considerations into one policy.</p> <p>The term “instream values” is not defined. It is also not defined in the RMA or NPSFM.</p> <p>It doesn’t appear useful to have suites of policies that state that other policies apply. Those other policies have the status that they have.</p> <p>The ‘effects management hierarchy’ has status already under the NPSFM and should not be applied in a different manner in the ORPS.</p> <p>A policy should specify a course of action to achieve an objective rather than attempt to direct resource consent decision makers. Objectives and policies should set a clear framework for decision-makers rather than direct them what decision to make or not make. For example, the NES Freshwater includes some decision-making direction but only as a</p>	<p>Delete “and instream values” or provide a robust definition.</p> <p>Delete clauses (1)(b), 2, 3, 4, 5, 6, 7, and 8.</p> <p>Change the proposed new Clause 9 as follows:</p> <p>“maintaining or enhancing the values of riparian margins to support habitat and biodiversity and <u>reduce contaminant loss to sedimentation of water bodies.</u>”</p>

<p>(ii) <u>management hierarchy (in relation to indigenous biodiversity) in ECO-P6</u> (whichever is applicable), and for other effects <u>(excluding those managed under (1)(b)(i))</u>, the effects <u>management hierarchy (in relation to natural wetlands and rivers) in LF-FW-P13A</u>,</p> <p>(2) not granting resource consent for activities in (1) unless <del>Otago Regional Council</del> <u>the consent authority</u> is satisfied that:</p> <p>(a) the application demonstrates how each step of the <u>effects management hierarchies hierarchy (in relation to indigenous biodiversity) in (1)(b)(i) and the effects management hierarchy (in relation to natural wetlands and rivers) in (1)(b)(ii)</u> will be applied to the <i>loss of values</i> or extent of the <i>river</i>, and</p> <p>(b) any consent is granted subject to conditions that apply the <u>effects management hierarchies hierarchy (in relation to indigenous</u></p>	<p>temporary measure because of the absence of comprehensive regional plans.</p> <p>Subsequent clauses largely and/or poorly repeat NPSFM provisions or attempt to replicate existing legislation or WCOs.</p> <p>For example, the clause relating to Lake Wanaka does not include the emergency provisions in the Lake Wanaka Preservation Act 1973. Similarly, the implementation of WCOs does not need an RPS policy, it is already provided for under Section 217 of the RMA.</p> <p>A policy preceded by the term “wherever possible” is at risk of unintended consequences.</p> <p>Prevention of any permanent modification that would reduce the braided character of a river could prevent the replacement of many aging bridges in Otago and similarly prevent the replacement of some water supply</p>	
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<p><u>biodiversity) in (1)(b)(i) and the effects management hierarchy (in relation to natural wetlands and rivers) in (1)(b)(ii) in respect of any loss of values or extent of the river,</u></p> <p>(3) establishing environmental flow and level regimes and water quality standards that support the health and well-being of the water body,</p> <p>(4) wherever possible, sustaining the form and function of a water body that reflects its natural behaviours,</p> <p>(5) recognising and implementing the restrictions in Water Conservation Orders,</p> <p>(6) preventing the impounding or control of the level of Lake Wanaka,</p> <p>(7) preventing permanent modification that would reduce the braided character of a river, and</p> <p>(8) controlling the use of water and land that would adversely affect the natural character of the water body, and</p> <p>(9) <u>maintaining or enhancing the values of riparian margins to support habitat and biodiversity and reduce sedimentation of water bodies.</u></p> <p><b><u>LF-FW-P13A – Effects management hierarchy (in relation to natural wetlands and rivers)</u></b></p> <p><u>The effects management hierarchy (in relation to natural wetlands and rivers) referred to in LF-FW- P9 and LF-FW-P13 is the approach to managing adverse effects of activities that requires that:</u></p> <p>(1) <u>adverse effects are avoided</u></p>		
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<p><u>where practicable,</u></p> <p>(2) <u>where adverse effects cannot be avoided, they are minimised where practicable,</u></p> <p>(3) <u>where adverse effects cannot be minimised, they are remedied where practicable,</u></p> <p>(4) <u>where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible,</u></p> <p>(5) <u>if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided, and</u></p> <p>(6) <u>if aquatic compensation is not appropriate, the activity itself is avoided.</u></p>		
<p><b>LF-FW-P14 – Restoring natural character and instream values</b></p> <p>Where the natural character <u>or instream values</u> of lakes and rivers <del>and</del> <u>or the natural character of</u> their margins has been reduced or lost, promote actions that:</p> <p>(1) restore a form and function that reflect the natural behaviours of the <i>water body</i>,</p> <p>(2) improve <i>water</i> quality or quantity where it is <i>degraded</i>,</p> <p>(3) increase the presence, <i>resilience</i> and abundance of indigenous flora and fauna, including by providing for fish passage within <i>river</i> systems <u>and creating fish barriers to prevent predation where necessary,</u></p> <p>(4) improve <i>water body</i> margins by naturalising bank contours and establishing indigenous vegetation and habitat, and</p> <p>(5) restore <i>water</i> pathways and natural connectivity between <u>and within</u> <i>water</i> systems.</p>	<p>The term “instream values” is not defined. It is also not defined in the RMA or NPSFM.</p> <p>It is not clear what is meant by the term “natural behaviours”.</p> <p>It is not clear how resilience of indigenous flora and fauna would be increased or assessed.</p> <p>It is not clear what a “water pathway” is.</p>	<p>Delete “and instream values” or provide a robust definition.</p> <p>In Clause (1) replace “reflect the natural behaviours” with “is consistent with the natural character”.</p> <p>In Clause (5) delete “water pathways and”.</p>

## Conclusions

46. The non-freshwater planning components of the pORPS that **indirectly** relate to freshwater management do not provide adequate planning direction. Many objectives and policies largely repeat existing higher-order provisions and/or existing statutory requirements with minor additions that are highly likely to distract from the ability of the ORPS to provide regional direction.
47. Many policies do not adequately identify a 'course of action' to achieve an objective.
48. A range of terms are used that are not adequately defined and if retained will introduce unnecessary uncertainty.
49. The provisions do not adequately give effect to all the relevant national policy statements.
50. The provisions do not appear to have been adequately informed by the social and economic considerations that the RMA directs an RPS to consider. Specifically, they do not appear to have considered the social, economic and cultural importance that farming has in Otago, by identifying a timetable and facilitative mechanisms to assist in the transition to meeting the requirements of the NPSFM.
51. The "costs" aspect of section 32(2) of the RMA has not clearly informed the provisions or provided direction on how this transition would realistically occur. Section 32 of the Act requires assessments to "... *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions*"<sup>15</sup>. A more comprehensive Section 32 assessment would have identified these issues and should have identified a more comprehensive package of provisions.

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<sup>15</sup> Section 32(2)(a).

52. An important consequence is a pORPS that lacks clear “ambitious but reasonable” goals, lacks clear courses of action to achieve those goals and is therefore unlikely to achieve the purpose of the RMA.
53. The ORPS provisions need to recognise the challenges involved in making the transition to give effect to all the relevant national policy statements. This requires an integrated approach that identifies clear, ambitious, reasonable, and achievable provisions.
54. A range of suggested improvements to provisions are recommended to better comply with higher instruments, and good practice, and to provide better clarity and certainty.

MIKE FREEMAN

22 May 2023