

**In the Environment Court of New Zealand
Christchurch Registry**

I Te Kooti Taiao O Aotearoa

Ōtautahi Rohe

ENV-2024-CHC-

Under the Resource Management Act 1991 (the Act)

In the matter of an appeal under Clause 14(1) of the First Schedule of the Act

And in the matter of the decisions by Otago Regional Council in respect of the Proposed Otago Regional Policy Statement 2021

Between **New Zealand Transport Agency Waka Kotahi**
Appellant

And **Otago Regional Council**
Respondent

**Notice of Appeal of New Zealand Transport Agency Waka Kotahi on
the Proposed Otago Regional Policy Statement**

Dated 16 May 2024

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To: The Registrar
Environment Court
Christchurch

- 1 New Zealand Transport Agency Waka Kotahi (**'NZTA'**) appeals against the decisions of the Otago Regional Council (the **'Respondent'**) on the Proposed Otago Regional Policy Statement 2021 (non-freshwater parts) (**'PORPS'**).
- 2 NZTA made a submission (number 305) and further submission (number 305) on the PORPS.
- 3 NZTA is not a trade competitor for the purpose of section 308D of the Act.
- 4 NZTA received notice of the decision on 3 April 2024.
- 5 The decision was made by the Respondent.

Provisions being appealed

- 6 The decisions that NZTA is appealing are the Respondent's decisions on the PORPS that relate to indigenous biodiversity and wetlands, as well as integrated management.
- 7 In particular, NZTA appeals the Respondent's decisions on the following provisions:
 - a CE-P5;
 - b EIT-INF-P13;
 - c IM-O3;
 - d IM-O5;
 - e Appendix 2 - Criteria for Identifying areas that qualify as indigenous natural areas (SNAs);
 - f Appendix 3 - Principles for biodiversity offsetting;
 - g Appendix 4 - Principles for biodiversity compensation.

General reasons for the appeal

- 8 The general reasons for this appeal are that, in the absence of the relief sought, the Respondent's decisions:
- a Will not promote the sustainable management of resources, and will therefore not achieve the purpose of the Act, including by not meeting the reasonably foreseeable needs of future generations;
 - b Will not promote the efficient use of natural and physical resources;
 - c Do not adequately provide for the efficient function of the transport network as a significant physical resource, and therefore a matter of national importance under Part 2 of the Act;
 - d Do not represent the most appropriate way to achieve the objectives of the PORPS, as required by section 32 of the RMA.
 - e Will not assist NZTA in meeting its requirements under section 96 of the Land Transport Management Act 2003, to exhibit a sense of social and environmental responsibility in meeting its objectives and undertaking its functions; and
 - f Will not assist the Respondent in achieving Part 2 of the Act by providing for the use of natural and physical resources in a way which enables people and communities to provide for their health and safety (section 5(2)).

Reasons for appeal of particular provisions

- 9 Without limiting the generality of paragraph 8, the reasons of NZTA for appealing the provisions listed above are:
- a Parts of the State Highway network are located in the coastal environment. It is not always possible to avoid significant adverse effects on Significant Natural Areas ('**SNAs**') and taoka when carrying out required maintenance and upgrade works;
 - b The functional and operational needs of infrastructure need to be recognised and provided for in the PORPS;
 - c It is unreasonable for Policy EIT-INF-P13 to apply to all wetlands. Its application should be limited to 'natural inland wetlands' as defined in the National Policy Statement for Freshwater Management 2020 ('**NPS-FM**');

- d The objectives of the integrated management chapter prioritise the natural environment and ecosystems, over enabling provisions which seek sustainable management of natural and physical resources. NZTA seeks these objectives are balanced to recognise the benefits that infrastructure provides to the environment, and are amended to better align with Part 2 of the Act;
- e Appendix 2 is inconsistent with Policy 5 of the National Policy Statement for Indigenous Biodiversity ('**NPSIB**') in that it will not provide national consistency in the identification of SNAs;
- f The criteria set out in Appendix 3 in relation to biodiversity offsetting are ambiguous, will result in perverse outcomes, create conflict, and introduce unacceptable hard limits. The criteria are presented in such a manner that they could be perceived as a definitive list, rather than a non-exhaustive list of examples as intended;
- g The criteria which have been added to Appendix 4 relating to biodiversity compensation are overly restrictive, ambiguous, and may result in the compensation not being available as a pathway. Further, the criteria conflicts with those set out in Appendix 3. The criteria are presented in such a manner that they could be perceived as a definitive list, rather than a non-exhaustive list of examples as intended.

Relief sought

- 10 NZTA seeks the following relief:
 - a Amendments to the provisions listed above (and any related provisions) in order to address the reasons for the appeal as set out in this notice, specifically (our amendments to the decisions version of the PORP in underline/strike-out):
 - i CE-P5: delete the criteria relating to SNAs and toaka, and revert back to the notified wording which is consistent with New Zealand Coastal Policy Statement 2010;
 - ii EIT-INF-P13: replace all references to "wetlands" with "natural inland wetlands" so as to be consistent with NPS-FM;
 - iii IM-O3: amend the wording as follows:

IM-O3 - Sustainable impact

Otago's communities ~~provide for their~~ social, economic, and cultural well-being is provided for in ways that support sustainable management of natural and physical resources ~~or restore environmental integrity, form, functioning and resilience,~~ so that the life supporting capacities of air, water, soil, and ecosystems are sustainably managed for future generations.

- iv IM-O5: insert new objective which recognises and provides for regionally and nationally significant infrastructure as follows:

IM-O5 – Regionally and nationally significant infrastructure

The social, economic and cultural well-being of Otago's communities is enabled through the appropriate protection, use and development of regionally and nationally significant infrastructure.

- v APP2: amend as follows:

...

Attributes of ecological context

(3) An area that qualifies as an SNA under this criterion has at least one of the following attributes:

...

~~*(e) an area that is important for a population of indigenous fauna during a critical part of their lifecycle, either seasonally or permanently, e.g. for feeding, resting, nesting, breeding, spawning or refuges from predation.*~~

- vi APP3: amend as follows:

....

(2) When biodiversity offsetting is not appropriate: Biodiversity offsets are not appropriate in situations where indigenous biodiversity values cannot be offset to achieve a net gain. Examples of an offset not being appropriate include where:

(a) residual adverse effects cannot be offset because of the irreplaceability or vulnerability of the indigenous biodiversity affected:

(b) effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse or irreversible:

(c) there are no technically feasible options by which to secure gains within an acceptable timeframe.

~~*(d) the loss from an ecological district of any individuals of Threatened taxa, other than kanuka (Kunzea robusta and Kunzea serotina), under the New Zealand Threat Classification System (Townsend et al, 2008); or*~~

~~*(e) the likely worsening of the conservation status of any indigenous biodiversity as listed under the New Zealand Threat Classification System (Townsend et al, 2008); or*~~

~~*(f) the removal or loss of health and resilience of a naturally uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna.*~~

vii APP4: amend as follows:

...

(2) When biodiversity compensation is not appropriate: Biodiversity compensation is not appropriate where indigenous biodiversity values are not able to be compensated for. Examples of biodiversity compensation not being appropriate include where:

(a) the indigenous biodiversity affected is irreplaceable or vulnerable;

(b) effects on indigenous biodiversity are uncertain, unknown, or a little understood, but potential effects are significantly adverse or irreversible;

(c) there are no technically feasible options by which to secure a proposed net gain within acceptable timeframes.

~~*(d) the loss from an ecological district of Threatened taxa, other than kanuka (Kunzea robusta and Kunzea serotina), under the New Zealand Threat Classification System (Townsend et al, 2008); or,*~~

~~*(e) removal or loss of viability of the habitat of a Threatened indigenous species of fauna or flora under the New Zealand Threat Classification System (Townsend et al, 2008),*~~

~~(f) removal or loss of health and resilience of a naturally uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna,~~

~~(g) the likely worsening of the conservation status of any Threatened or At Risk indigenous biodiversity listed under the New Zealand Threat Classification System (Townsend et al, 2008).~~

b Such further or alternative relief, or ancillary changes, that resolve the concerns set out in this notice of appeal; and

c Costs

11 The following documents are attached to this notice of appeal:

a **Appendix A:** A copy of the submission and further submissions of NZTA on the PORPS; and

b **Appendix B:** A list of names and addresses of persons to be served with this notice of appeal; and

c **Appendix C:** A copy of the relevant parts of the decision. The rest of the decision can be found at: <https://www.orc.govt.nz/media/16468/report-and-recommendations-of-the-non-freshwater-and-freshwater-hearings-panels-to-the-otago-regional-council.pdf>

12 NZTA agrees to participate in mediation or other alternative dispute resolution mechanism.

Dated 16 May 2024



Nicky McIndoe

Counsel for the New Zealand Transport Agency Waka Kotahi

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New Zealand Transport Agency

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New Zealand

Email: environmentalplanning@nzta.govt.nz

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the part of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

**Appendix A Submission and further submission of NZTA on the
PORPS**

From: [Helen Dempster](#)
To: [RPS](#)
Subject: Waka Kotahi NZ Transport Agency submission on the Proposed ORC RPS 2021
Date: Thursday, 2 September 2021 2:50:20 p.m.
Attachments: [Waka Kotahi NZ Transport Agency submission on the Proposed ORC RPS 2021.pdf](#)

Hello,

Please find attached the submission of Waka Kotahi NZ Transport Agency on the Otago Regional Council's Proposed Regional Policy Statement 2021.

I would be grateful if you could please confirm receipt of this submission.

Regards

Helen

Helen Dempster / Senior Planner
Poutiaki Taiao | Environmental Planning

System Design

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Waka Kotahi NZ Transport Agency submission on a notified proposal for the Proposed Otago Regional Policy Statement June 2021 under Clause 6 of Schedule 1 of the Resource Management Act 1991

2 September 2021

Otago Regional Council
Private Bag 1954
Dunedin

via email: RPS@orc.govt.nz

This is a submission on the following:

Proposed Otago Regional Policy Statement June 2021.

The specific provisions of the proposal that this submission relates to are:

The Proposed Otago Regional Policy Statement June 2021 (RPS) in its entirety to the extent the provisions have the potential to compromise Waka Kotahi NZ Transport Agency's (Waka Kotahi) statutory obligations in terms of ensuring an effective, efficient and safe transport network.

The Waka Kotahi submission is:

1. Waka Kotahi is a Crown entity that takes an integrated approach to transport planning, investment and delivery. The statutory objectives of Waka Kotahi are to undertake its functions in a way that contributes to an effective, efficient and safe land transport system in the public interest. Our vision is for a sustainable, multi-modal land transport system where public transport, active or shared modes are the first choice for most daily transport needs.
2. Waka Kotahi has a mandate under the Land Transport Management Act 2003 (LTMA), the Government Roothing Powers Act 1989 (GRPA), and the Government Policy Statement on Land Transport 2018/19-2027/28 (GPS) to carry out its functions in a way that delivers on the transport outcomes set by the government.
3. In the 2018-2021 National Land Transport Programme, Waka Kotahi has allocated significant investment in the Otago Region to the improvement, operation and maintenance of the State Highway network, including public transport investment, walking and cycling and transport planning. In addition, Waka Kotahi is a co-funder of the local roading network. Waka Kotahi is therefore a significant investor in the infrastructure required to achieve the land use change and growth anticipated in the Proposed Otago Regional Policy Statement June 2021.
4. Overall, Waka Kotahi has an interest in the Proposed Otago Regional Policy Statement June 2021 as a result of its role as a:
 - Transport investor – to maximise effective, efficient and strategic returns for New Zealand;
 - Planner of land transport networks – to ensure the integration of infrastructure and land use so as to support liveable communities and the development of an effective and resilient land transport network for customers;

- Provide for access to and the use of the land transport system – to shape smart, efficient, safe and responsible transport choices; and
 - Manager of the state highway network – to deliver efficient, safe and responsible highway solutions for customers.
5. The Waka Kotahi submission seeks amendments to the Proposed Otago Regional Policy Statement June 2021 in the following areas:
- Amendments to the Definitions chapter to provide greater clarity to Policy Statement users;
 - Amendments to the Energy, infrastructure and transport chapter to ensure the ongoing operational and functional needs of regionally and nationally significant infrastructure are not compromised;
 - Amendments to the Air, Coastal environment and Land and freshwater 'Domain' chapters as they relate to the state highway network;
 - Amendments to the following 'Topic' chapters, as they relate to the state highway network: Ecosystems and indigenous biodiversity, Hazards and Risks, Historical and cultural values, Natural features and landscapes, and Urban form and development.
 - Any other chapters and associated provisions which may have an impact or effect on the safe and efficient operation of state highways.
6. The changes requested are made to:
- a. Ensure that Waka Kotahi can carry out its statutory objective and functions.
 - b. Reduce interpretation and processing complications for decision makers.
 - c. Provide clarity for all policy statement users.
7. Further points are summarised in Table 1, which forms the bulk of our submission.
8. Where a provision is not specified in Table 1 below, Waka Kotahi generally supports the way it is drafted.
9. Waka Kotahi could not gain an advantage in trade competition through this submission.

We seek the following decision from the local authority:

Amend the provisions of the Proposed Otago Regional Policy Statement June 2021 as detailed in Table 1 (attached) including such further, alternative or consequential relief as may be necessary to fully achieve the relief sought in this submission.

Waka Kotahi would like to be heard in support of its submission. If others make a similar submission, Waka Kotahi will consider presenting a joint case with them at a hearing.

Signature of person authorised to sign on behalf of Submitter:



Richard Shaw



Team Lead Environmental Planning (South) / Poutiaki Taiao

Waka Kotahi NZ Transport Agency

EnvironmentalPlanning@nzta.govt.nz

Richard.Shaw@nzta.govt.nz



Table 1: Decisions Sought on the Proposed Otago Regional Policy Statement June 2021

The following table sets out the amendments sought by Waka Kotahi to the Proposed Otago Regional Policy Statement June 2021 and also identifies those provisions that Waka Kotahi supports.

Underline = proposed additions

Strikethrough = ~~proposed deletions~~

Item	Specific Provision	Support/ Support in Part/ Oppose	Comments/Reasons	Relief Sought
General Comments				
General Comments	It would be useful to have the 'Explanation' section before the objectives and policies, rather than after those provisions, to provide the context for the matters that are the subject of the objectives and policies.			
Item 1				
Part 1 – Introduction and General Provisions				
Interpretation				
Definitions				
General Provisions	Functional need	Support	Waka Kotahi supports the inclusion of this definition of functional need	Retain as notified.
Definitions	Hard protection structure	Support, in part	Waka Kotahi supports the inclusion of a definition for hard protection structure and seeks that the definition is widened to provide for rip rap outside the coastal environment.	The definition for Hard Protection Structure is amended to include the following: And, Outside the coastal environment, means any dam, weir, stopbank, carriageway, groyne, reservoir, <u>rip rap</u> , and any structure or appliance of any kind which is specifically established for the purpose of natural hazard mitigation.
	Lifeline utilities	Support	Waka Kotahi supports the definition for lifeline utilities.	Retain as notified.
	Operational need	Support	Waka Kotahi supports the inclusion of this definition of operational need.	Retain as notified.
	New definition – Reverse Sensitivity		Reverse sensitivity effects are referred to within the proposed RPS, however a definition is not provided for 'reverse sensitivity' within the proposed RPS. Reverse sensitivity effects are a key concern for Waka Kotahi. It is	The Definitions chapter is amended to include a definition of Reverse Sensitivity, and we suggest the following, or similar, definition, which is taken from the Partially Operative Otago RPS 2018:

Item	Specific Provision	Support/ Support in Part/ Oppose	Comments/Reasons	Relief Sought
			considered that a definition of this term would provide clarity to all users of the policy statement.	<u>The potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity.</u>
Part 2 – Resource Management Overview				
IM - Integrated Management				
Policies	IM-P1	Support	Waka Kotahi supports this policy as it provides direction and support for users of the document. Throughout Waka Kotahi's submission it has been sought to include recognition of the functional and operational needs of nationally and regionally significant infrastructure. As there are a number of provisions across the RPS which include the term 'avoid' or 'avoidance', provision for infrastructure is of importance and this policy including the application of 'terms in which they are expressed' highlights the importance of ensuring infrastructure is provided for across the provisions of the RPS.	Retain as notified.
	IM-P9	Support	Waka Kotahi supports this policy as it promotes the reduction in emissions of greenhouse gases which aligns with one of the objectives of the GPS on Land Transport which Waka Kotahi is required to implement.	Retain as notified.
	IM-P10	Support	Waka Kotahi supports this policy as, in (1), it seeks to achieve the same outcomes as Waka Kotahi in regards to the existing state highway network.	Retain as notified.
	IM-P13	Support	Waka Kotahi supports this policy as it recognises the need to manage the cumulative effects of activities on physical resources like the state highway network.	Retain as notified.

Item	Specific Provision	Support/ Support in Part/ Oppose	Comments/Reasons	Relief Sought
Part 3 – Domains and Topics				
Domains				
AIR - Air				
Policies	AIR-P2	Support	Waka Kotahi supports this policy, in particular (1), as it recognises that the spatial distribution of activities directly influences the need for travel, and the impact on ambient air quality from the discharge of emissions from transportation.	Retain as notified.
Methods	AIR-M3	Support	Waka Kotahi supports this method as it highlights the importance of an appropriate urban form and more environmentally sustainable modes of transport as a means to improve air quality.	Retain as notified.
	AIR-M5	Support	Waka Kotahi supports this method as it recognises the importance of encouraging the use of more environmentally sustainable modes of transport as a means to improve air quality.	Retain as notified.
CE – Coastal Environment				
Policies	CE-P4	Support in part	Waka Kotahi is generally supportive of this provision but seeks that it includes recognition and provision for infrastructure.	Amend the wording of policy CE-P4 to include a sixth point which identifies that the coastal environment can include nationally and regionally significant infrastructure and the operational and functional needs of this infrastructure shall also be provided for.
	CE-P5	Support in part	Waka Kotahi is generally supportive of this provision, but it is sought that the functional and operational needs of infrastructure are recognised and provided for.	Amend the wording of policy CE-P5 to provide for the functional and operational needs of infrastructure. This could include the insertion of a third point which could be worded as follows: '(3) while recognising the functional and

Item	Specific Provision	Support/ Support in Part/ Oppose	Comments/Reasons	Relief Sought
				operational needs of nationally and regionally significant infrastructure’.
	CE-P6	Support in part	Waka Kotahi is generally supportive of this provision, but it is sought that the functional and operational needs of infrastructure are recognised and provided for.	Amend the wording of policy CE-P6 to provide for the functional and operational needs of infrastructure. This could include the insertion of a fifth point which could be worded as follows: ‘(5) while recognising the functional and operational needs of nationally and regionally significant infrastructure’.
	CE-P9	Support	Waka Kotahi supports this policy as, in (1), it promotes consolidated patterns of land use and development, and in (3) recognises the importance of infrastructure, like the land transport network, in providing for the needs of people and communities.	Retain as notified.
	CE-P10	Support	Waka Kotahi support the inclusion of this policy as it provides for the functional and operational needs of use and development in the coastal marine area.	Retain as notified.
	CE-P12	Support	Waka Kotahi supports this policy as it recognises that reclamation may be the most practicable solution for maintaining the safe and efficient use of the state highway system.	Retain as notified.
Anticipated environmental results	CE-AER2	Support in part	Waka Kotahi generally supports the intention of this AER, but is concerned that the terminology, specifically, the ‘no reduction’ requirement, might impact the ability for Waka Kotahi to maintain the state highway. It is recommended that this AER be re-worded to clarify how the requirement for ‘no reduction’ is applied with regards to nationally and	Amend the wording of Anticipated Environmental Result CE-AER2 as follows, or similar: There is no reduction, <u>as far as practicable</u> , in the extent of identified areas of high and outstanding natural character in the coastal environment.

Item	Specific Provision	Support/ Support in Part/ Oppose	Comments/Reasons	Relief Sought
			regionally significant infrastructure that is located in those locations.	Or There is no reduction in the extent of identified areas of high and outstanding natural character in the coastal environment, <u>while recognising the functional and operational needs of regionally and nationally significant infrastructure.</u>
LF – Land and freshwater				
Objectives	LF-VM-O2	Support in part	Waka Kotahi is supportive of the intentions of this objective, but recognition needs to be included that at times it is necessary to undertake works that may modify or effect the behaviour of waterways particularly when associated with infrastructure. This could be achieved through cross referencing with other chapters of the Policy Statement or providing a specific provision for infrastructure.	Amend the objective to cross reference provisions in other chapters of the RPS that provide for modification of waterbodies as a result of infrastructure works, or include a new specific provision, to recognise that, at times, it may be necessary to undertake infrastructure works that may modify the shape and behaviour of waterbodies.
	LF-VM-O5	Support in part	Waka Kotahi is supportive of the intentions of this objective, but recognition needs to be included that at times it is necessary to undertake works that may modify or effect the behaviour of waterways particularly when associated with infrastructure. This could be achieved through cross referencing with other chapters of the RPS or providing a specific provision for infrastructure.	Amend the objective to cross reference provisions in other chapters of the RPS that provide for modification of waterbodies as a result of infrastructure works, or include a new specific provision, to recognise that, at times, it may be necessary to undertake infrastructure works that may modify the shape and behaviour of waterbodies.
Policies	LF-FW-P9	Support	Waka Kotahi supports this policy as it provides for the maintenance and operation of specified infrastructure, which includes state highways that are regionally significant infrastructure, as well as infrastructure operated by a lifeline utility, such as state highways.	Retain as notified.

Item	Specific Provision	Support/ Support in Part/ Oppose	Comments/Reasons	Relief Sought
	LF-FW-P12	Support in part	Waka Kotahi supports the intentions and purpose of this policy but is concerned that the term avoidance is potentially too strong in consideration of values for waterbodies as it relates to infrastructure. It is sought that this policy is amended to provide for the functional and operational needs of infrastructure.	Amend policy LF-FW-P12 to include a third point which could be worded as follows: <u>where relating to nationally or regionally significant infrastructure, protection through minimising adverse effects on those values.</u> This would also better align with provisions in the National Environmental Standard for Freshwater.
	LF-FW-P13	Support in part	Waka Kotahi is generally supportive of this provision, but it is sought that the functional and operational needs of infrastructure are recognised and provided for through an additional point.	Amend policy LF-FW-P13 to include an additional point which could be worded as follows: <u>while recognising the functional and operational needs of nationally and regionally significant infrastructure.</u>
	LF-FW-P15	Support in part	Waka Kotahi is generally supportive of this provision, but it is sought that the functional and operational needs of infrastructure are recognised and provided for through an additional point.	Amend policy LF-FW-P15 to include an additional point which could be worded as follows: <u>while recognising the functional and operational needs of nationally and regionally significant infrastructure</u>

Topics				
ECO – Ecosystems and indigenous biodiversity				
Policies	ECO-P4	Support	Waka Kotahi supports this policy as it acknowledges that at times there is an operational or functional need to locate state highway infrastructure within significant natural areas or indigenous species or ecosystem of taoka.	Retain as notified.
	ECO-P5	Oppose	Waka Kotahi considers that this policy is difficult to apply and could be interpreted or applied in a more restrictive manner than intended. In the first instance it is sought that the policy is reworded to provide greater clarity including recognition of existing activities. It is also sought that the policy is amended to include similar wording to ECO-P4 (1) which provides for the operational and functional needs of infrastructure.	Policy ECO-P5 is amended to include similar wording to ECO-P4 (1) which provides for the operational and functional needs of infrastructure.
	ECO-P6	Support in part	Waka Kotahi is supportive of the maintaining of indigenous biodiversity and the intentions of this policy but as raised elsewhere in this submission, there are inconsistencies in the use of the term 'avoid' through this policy. Alternative wording should be considered such as 'minimise'. In order to maintain consistency with other provisions in this chapter it is also sought that this provision includes recognition of the functional and operational needs for infrastructure.	Policy ECO-P6 is amended to include recognition of the functional and operational needs for infrastructure, and to replace 'avoid' with 'minimise' or similar.
	ECO-P7	Support in part	Waka Kotahi is supportive of the management of adverse effects on coastal biodiversity through this policy and associated provisions but seeks that the policy includes recognition of the functional and operational needs for infrastructure.	Amend policy ECO-P7 is amended to include recognition of the functional and operational needs for infrastructure.
Methods	ECO-M4	Support	Waka Kotahi supports this provision as it provides for structures for transport on land by cycleways, rail, roads,	Retain as notified.

			walkways or any other means to occur on the beds of lakes and rivers in Otago.	
	ECO-M5	Support	Waka Kotahi supports this provision as it provides for the functional and operational needs of land transport infrastructure and structures.	Retain as notified.
EIT – Energy, infrastructure and transport				
Objectives	EIT-EN-O3	Support	Waka Kotahi supports this objective as it recognises that appropriate design and location of development can reduce the need for travel and the use of energy, like fossil fuels, and consequential greenhouse gas emissions.	Retain as notified.
	EIT-INF-O4	Support	Waka Kotahi supports this objective as it recognises the importance of having an efficient, effective, and enduring land transport network.	Retain as notified.
	EIT-INF-O5	Support	Waka Kotahi supports this objective as it recognises the importance of an integrated planning approach to land use change and the development of the state highway network, which seeks to minimise adverse environmental outcomes and to ensure the efficient use and development of the state highway network. It is critical that land use developments work with infrastructure providers as developments, if not carried out correctly, can adversely affect the safety and efficiency of infrastructure networks.	Retain as notified.
	EIT-TRAN-O7	Support in part	Waka Kotahi supports this objective as it highlights the importance of having a safe, efficient, effective, enduring and integrated transport network. However, it is suggested that the wording is amended to include the importance of reverse sensitivity effects in order to protect the land transport network from the establishment of activities that may be impacted by transport related	Amend objective EIT-TRAN-O7 to include that the operational and functional needs of nationally and regionally significant infrastructure are protected from the establishment of new activities that may result in reverse sensitivity effects.

			effects. This would avoid compromising the functional or operational needs of the land transport network.	
	EIT-TRAN-O8	Support in part	Waka Kotahi generally supports this objective as it recognises the important role the transport system has in supporting the movement of people, goods and services. Waka Kotahi supports integrated planning which ensures land use and transport decisions are made and implemented together and provide for modal choice. However, there is concern about the statement that the transport system should be adaptable to changes in demand, as it gives the impression that there is a follow-on obligation placed on Waka Kotahi, as a land transport provider, to provide further infrastructure at the dictation of demand. This objective appears to be directing investment priorities for Waka Kotahi.	Amend the wording of objective EIT-TRAN-O8 as follows: The transport system within Otago supports the movement of people, goods and services, is integrated with land use, provides a choice of transport modes and is adaptable to changes in demand.
	EIT-TRAN-O9	Support in part	Waka Kotahi supports this objective as it aligns with one of the outcomes sought in the Government Policy Statement on land transport 2021 that seeks to reduce greenhouse gas emissions from the transport system, which Waka Kotahi is obliged to implement. The level of greenhouse gas emissions is not only contingent on the number and type of vehicles using the transport system, but also on the distance they travel. It is suggested that the objective be re-worded to also encourage higher density living in existing urban areas close to commercial centres.	Amend the wording of objective EIT-TRAN-O9 to recognise and encourage higher density living in existing urban areas close to commercial centres.
Policies	EIT-EN-P9	Support	Waka Kotahi supports this policy as it recognises that appropriate design and location of development can encourage active and public transport and reduce the need for private vehicles and the use of energy, like fossil fuels.	Retain as notified.

	EIT-INF-P10	Support	Waka Kotahi supports this policy as it provides for the functional and operational needs of the state highway system, being nationally significant infrastructure, by requiring decision-makers give consideration to the needs of the state highway network when deciding on the use and allocation of natural and physical resources.	Retain as notified.
	EIT-INF-P11	Support in part	Waka Kotahi is generally supportive of this policy as it recognises the functional and operational needs of existing state highway infrastructure, but it is considered that there is the potential for some confusion as to when an activity is considered operation and maintenance versus an upgrade or new infrastructure. For example, it is unclear whether a slight realignment of a corner in the highway be considered maintenance, upgrade or new infrastructure works. Wording should be amended to clarify this. In addition, point (1) of the policy seeks avoidance but point (2) provides for when avoidance is not possible. Avoid is a strong term and the overall structure of the policy is not consistent with the term avoid. It is sought that that the policy is amended to instead seek that adverse effects are minimised.	Policy EIT-INF-P11 is amended to include clearer distinction between the operation, maintenance, upgrade and new infrastructure, and replace 'avoid' with 'minimise' or similar.
	EIT-INF-P12	Support	Waka Kotahi supports this policy as it provides for the development of, and upgrades to, the state highway system, as part of an integrated planning approach, and it aligns with Waka Kotahi commitments to provide efficient, effective, safe and enduring state highway infrastructure.	Retain as notified.
	EIT-INF-P13	Support in part	Waka Kotahi supports this policy, only in part, because it is considered that there is already confusion as to what is considered new infrastructure versus an upgrade or maintenance. Wording should be amended to clarify this. In addition, avoidance is sought through the policy but provision is made for when avoidance is not	Amend the wording of policy EIT-INF-P13 to include clearer distinction between the operation, maintenance, upgrade and new infrastructure, and replace 'avoid' with 'minimise' or similar.

			possible. Avoid is a strong term and the overall structure of the policy is not consistent with the term avoid. It is sought that that the policy is amended to instead seek that adverse effects are minimised.	
	EIT-INF-P14	Support in part	Waka Kotahi is supportive of the intentions of this policy but it considers that, for the same reasons previously raised in other submission points, consideration needs to be given to the application of the terms 'develop', 'upgrade' or 'substantial upgrades' as there is the potential for confusion around the interpretation of the terms and how they are applied. Consideration of alternatives (point (1)) aligns with the provisions of the Resource Management Act 1991 but reducing adverse effects from existing infrastructure (point (2)) steps beyond this. It is sought that point (2) is amended to instead encourage a reduction in adverse effects as opposed to requiring it.	Amend policy EIT-INF-P14 to clarify the interpretation and application of the terms 'develop', 'upgrade' and 'substantial upgrade', and also amend the policy to encourage, rather than require, a reduction in adverse effects arising from existing infrastructure at the time that works are undertaken to upgrade that infrastructure.
	EIT-INF-P15	Support	Waka Kotahi supports this policy as it provides for the protection of state highways, being nationally significant infrastructure, from the effects of other activities, including reverse sensitivity effects.	Retain as notified.
	EIT-INF-P17	Support	Waka Kotahi supports this policy as it provides for land transport infrastructure, being additional infrastructure, to support existing and future planned urban growth.	Retain as notified.
	EIT-TRAN-P18	Support in part	Waka Kotahi generally supports this policy as it promotes integrated transport and land use planning, and multi-modal transport. However, there is concern about the statement in (2) which requires the provision of transport infrastructure 'as demand requires'. This statement gives the impression that there is a follow-on obligation placed on Waka Kotahi, as a land transport provider, to provide further infrastructure at the dictation of demand. This	Amend the wording of policy EIT-TRAN-P18 as follows: <u>Land uses contribute to the social, cultural and economic wellbeing of the people of Otago through</u>

			policy appears to be directing the investment priorities of Waka Kotahi. Better clarity is sought as to who this policy is placing an obligation on – land transport providers like Waka Kotahi, and/or developers of land creating the demand for additional transport infrastructure.	<p>(1) <u>integration with transport activities including across all transport modes; and</u></p> <p>(2) <u>the provision of transport connections that enable service delivery.</u></p>
	EIT-TRAN-P19	Support in part	Waka Kotahi generally supports this policy as it recognises the need for an efficient and enduring transport network that is based on an integrated planning approach, and which promotes more sustainable modal choice. However, as noted in previous submission points, clarification is sought as to who this policy is placing an obligation on to provide an adaptable transport system.	Amend the wording of policy EIT-TRAN-P19 to provide clarification of the intent of the policy regarding obligations for the provision of an adaptable transport system.
	EIT-TRAN-P20	Support in part	Waka Kotahi generally supports this policy, including that the policy supports modal choice including active modes, and encourages consideration of the accessibility needs to the community. However, it is recommended that the policy be re-worded to emphasise that developments need to be designed to encourage good links to transport infrastructure including multi-modal transport. The current policy wording can be interpreted to suggest that the onus falls on transport infrastructure providers, like Waka Kotahi, to develop the transport system to achieve the outcomes of this policy.	Amend the wording of policy EIT-TRAN-P20 to emphasise that developments are designed to encourage the outcomes sought in (1) to (3).
	EIT-TRAN-P21	Support in part	Waka Kotahi generally supports this policy as it recognises the importance of maintaining the functionality of the land transport system, promotes efficiency gains and more sustainable transport modes within the transport network. However, it is recommended that the policy be re-worded to clarify intent of the policy regarding obligations for the provision of a functional land transport system, including transport modes.	Amend the wording of policy EIT-TRAN-P21 to provide clarification of the intent of the policy regarding obligations for the provision of a functional land transport system, including transport modes.

	EIT-TRAN-P22	Support in part	Waka Kotahi generally supports this policy as it promotes sustainable transportation and reducing reliance on fossil fuels that contribute to greenhouse gas emissions. Land use and development activities are well placed to contribute to this policy through the incorporation of facilities, such as electric vehicle charging stations. It is sought that this policy be amended to more clearly recognise that the sustainability of the transport network is driven by both land transport providers and land developers.	Amend the wording of Policy EIT-TRAN-P22 to recognise that land use and development activities can also enhance the sustainability of transport networks through the provision of new technologies and contribute towards a reduction in reliance on fossil fuels.
Methods	EIT-EN-M2	Support	Waka Kotahi supports this method as it recognises the importance of multi-modal transport options in (7).	Retain as notified.
	EIT-INF-M4	Support in part	Waka Kotahi generally supports the intention of this provision including that effects are managed, but section (2) of the provision is open to interpretation including prioritisation and what constitutes a 'highly valued' natural and physical resource. It is noted that (2) requires effects to be avoided or minimised, but it is unclear how the choice is to be made. This prioritisation has potential cost and feasibility implications for infrastructure providers. 'Avoiding' an adverse effect could come at a considerable cost for an infrastructure project. This policy, as worded, will require a balance to be struck between cost and effect, but it is unclear how this is to be achieved. Amendments are sought to provide better clarity of these provisions including that in section (2) adverse effects are minimised as opposed to avoided.	Amend method EIT-INF-M4 to clarify what constitutes a 'highly valued' natural and physical resource, and also give further consideration to the implications of the prioritisation detailed in (2) to ensure that a suitable balance between cost and effect are achieved. Also, replace 'avoid' with 'minimise' or similar.
	EIT-INF-M5	Support in part	Waka Kotahi supports this provision but seeks that a further point is inserted to recognise and provide for the functional and operational needs of nationally and regionally significant infrastructure, including its protection. Also, for the same reasons previously raised	Amend Method EIT-INF-M5 to provide better clarity of this provision, including that adverse effects are minimised as opposed to avoided, and to recognise and provide for nationally and regionally significant infrastructure, including its protection.

			in another submission point, section (7) of the provision is open to interpretation including around the prioritisation and what constitutes a high valued natural and physical resource. Amendments are sought to provide better clarity of this provision, including that adverse effects are minimised as opposed to avoided.	
	EIT-INF-M6	Oppose	Waka Kotahi opposes this provision as it is unclear as to when this provision should be applied, including that there are a variety of factors which are relevant in considering when to replace or upgrade infrastructure. The use of the term significant adverse effects is subjective and open to interpretation. In the first instance it is sought that this provision is rewritten to include recognition of the existing use rights of infrastructure and that infrastructure cannot always be easily upgraded or replaced. Alternatively, this provision should be deleted.	Amend the wording of method EIT-INF-M6 to include recognition of the existing use rights of infrastructure and that infrastructure cannot always be easily upgraded or replaced. Alternatively, this provision should be deleted.
	EIT-TRAN-M7	Support	Waka Kotahi considers this method is appropriate and supports, in particular, (1) and (2)(a), which recognise the importance of providing for the ongoing functionality of the transport system, including infrastructure that will support sustainable modes of transport.	Retain as notified.
	EIT-TRAN-M8	Support	Waka Kotahi supports this method as it requires integrated land use and transport planning, with particular direction given to providing for active and sustainable multi-modal and public transport options and discouraging private vehicle use as well as land use activities that adversely affect the transport system.	Retain as notified.
	EIT-TRAN-M9	Support	Waka Kotahi supports this method as it aligns the RLTP and RPTP to the RPS.	Retain as notified.

Explanation	EIT-TRAN-E3	Support in part	The opening sentence of the Explanation can be interpreted as placing an onus on transport infrastructure providers, like Waka Kotahi, to provide transport infrastructure to meet all needs. It is suggested that this part of the provision should be re-worded to better recognise the role of developers in also providing well-designed developments that also provide transport infrastructure that functions effectively, including providing for accessibility for different modes and purposes.	Amend the wording of Explanation EIT-TRAN-E3 to provide better clarity of the role of developers in providing transport infrastructure.
Principal reasons	EIT-INF-PR2	Support in part	Waka Kotahi generally supports this provision, but as previously submitted on, in respect to the use of the term 'avoid', it needs to be ensured that a consistency of language is maintained which could include the use of the phrase 'the minimisation of effects' as opposed to 'avoidance'.	Further consideration is given to the appropriateness and implications for infrastructure providers of the use of 'avoid' in this Principal Reason, with preference that the term 'avoid' is replaced with 'minimise' or similar.
	EIT-TRAN-PR3	Support in part	Waka Kotahi generally supports this provision but considers that that the intent of the provision could be expressed more clearly, so that it is more readily understandable.	This provision is rewritten to provide greater clarity of the intentions of the provision and that the information is presented in a more legible manner, such as through the inclusion of bullet points.
Anticipated environmental results	EIT-INF-AER7	Support	Waka Kotahi supports this provision as it seeks to protect state highways from incompatible land use and development activities and associated potential reverse sensitivity effects. It is noted that the RPS does not define 'reverse sensitivity' and we would seek the inclusion of a definition of that term to provide clarity.	Retain as notified.
	EIT-INF-AER8	Support	Waka Kotahi supports this provision as it recognises that the state highway network has locational requirements that mean adverse effects cannot always be avoided and may only be able to be minimised.	Retain as notified.
	EIT-TRAN-AER9	Support	Waka Kotahi supports this provision as it advocates multi-modal transport choice.	Retain as notified.

	EIT-TRAN-AER10	Support	Waka Kotahi supports this provision as it encourages active transport.	Retain as notified.
	EIT-TRAN-AER11	Support in part	Waka Kotahi supports this provision as it promotes residential development in locations serviced by public transport. It is considered that the best way to achieve this is through increases in density of development and land use within centrally located areas and service nodes.	Amend the wording of Anticipated Environmental Result EIT-TRAN-AER11 to read as follows, or similar: The number of dwellings per hectare in areas accessible to public transport increases over the life of this RPS <u>through increases in density of development and land use within centrally located areas and service nodes.</u>
	EIT-TRAN-AER12	Support	Waka Kotahi supports measures to increase public transport patronage and measures that seek to improve the efficiency of the transport network while decreasing congestion.	Retain as notified.
	EIT-TRAN-AER13	Support in part	Waka Kotahi generally supports the reduction of greenhouse gas emissions arising from transportation and use of fossil fuels, as well as the enabling of active, shared and public transport options. It is recommended that the wording of this AER be amended to recognise that this AER is also achieved through increases in the density of land use and development in centrally located areas and service nodes.	Amend anticipated environmental results EIT-TRAN-AER13 as follows: Greenhouse gas emissions arising from the transport system reduce over time from increased active transport, shared travel and public patronage, and reduced reliance on fossil fuels <u>and increases in the density of development and land use activities in centrally located areas and service nodes.</u>
HAZ – Hazards and risks				
Policies	HAZ-NH-P4	Support	Waka Kotahi supports this policy, as it provides for the functional and operational needs of lifeline utilities, which includes state highways.	Retain as notified.
	HAZ-NH-P5	Support	Waka Kotahi supports this policy because an approach to manage risk is promoted including avoidance and adaptive management which facilitates consideration of the functional and operational needs of infrastructure.	Retain as notified.

	HAZ-NH-P7	Support	Waka Kotahi supports this policy as it provides for the use of hard protection structures to protect lifeline utilities, which includes state highways.	Retain as notified.
	HAZ-NH-P8	Support in part	Waka Kotahi generally supports this policy as it aligns with the commitments of Waka Kotahi to provide a safe and enduring state highway system. But the use of the term 'relocate' does imply that the policy includes existing infrastructure. It is recommended that the wording of this policy be amended to provide for relocation where practicable.	Amend the wording of the policy as follows: Locate, relocate (<u>where practicable</u>), and design lifeline utilities and facilities for essential or emergency services to:
	HAZ-NH-P9	Support	Waka Kotahi supports this policy as it recognises the importance of protecting the functional needs of hazard mitigation measures, and lifeline utilities like the state highway network, from adverse effects arising from other land use and development activities.	Retain as notified.
Methods	HAZ-NH-M4	Support	Waka Kotahi supports this provision as written.	Retain as notified
Anticipated environmental results	HAZ-NH-AER5	Support	Waka Kotahi supports this provision as it recognises the importance of managing the effects of natural hazards on lifeline utilities like the state highway network.	Retain as notified.
HCV – Historical and cultural values				
Policies	HCV-HH-P5	Support in part	Waka Kotahi generally supports the intention of this policy, however, it is unsure whether the 'avoid' requirement in (2) and (3) is appropriate because it might impact the ability for Waka Kotahi to maintain the state highway. In addition, (6) of this policy refers to policy EIT-INF-P13, which Waka Kotahi has submitted on separately and raised concerns about. Rewording is sought that the functional and operational needs of infrastructure are recognised and provided for.	Amend policy HCV-HH-P5 to recognise and provide for the functional and operational needs of infrastructure. This could include the insertion of an additional point which could be worded as follows: '(7) while recognising the functional and operational needs of nationally and regionally significant infrastructure'. Replace 'avoid' with 'minimise' or similar.

	HCV-HH-P6	Support in part	Waka Kotahi supports the intentions of this provision but wishes to ensure that any applicant is only required to undertake those enhancements where reasonable.	Amend policy HCV-HH-P6 to read as follows: “.....wherever possible, <u>and reasonable</u> , through the implementation of”
Methods	HCV-HH-M4	Support in part	Waka Kotahi supports the method in general but notes the inclusion of references to policy HCV-HH-P5 in (3); as per the submission point on that policy, Waka Kotahi is interested in whether the ‘avoid’ requirement included in that policy is appropriate because it might impact the ability to maintain the state highway.	Retain as notified.
	HCV-HH-M5	Support in part	Waka Kotahi supports the method in general but notes the inclusion of references to policy HCV-HH-P5 in (3); as per the submission point on that policy, Waka Kotahi is interested in whether the ‘avoid’ requirement included in that policy is appropriate because it might impact the ability to maintain the state highway.	Retain as notified.
NFL – Natural features and landscapes				
Policies	NFL-P2	Support in part	Waka Kotahi is generally supportive of this provision but considers that the combination of the two points in this policy could create confusion including whether effects have to be avoided and what constitutes an ‘other adverse effect’.	Rewording is sought, and depending on the determined wording, it is also sought that the functional and operational needs of infrastructure are recognised and provided for. This could include the insertion of a third point which could be worded as follows: ‘(3) while recognising the functional and operational needs of nationally and regionally significant infrastructure’.
	NFL-P3	Support in part	Waka Kotahi is generally supportive of this provision but considers that the combination of the two points in this policy could create confusion including whether effects have to be avoided and what constitutes an ‘other adverse effect’.	Rewording is sought, and depending on the determined wording, it is also sought that the functional and operational needs of infrastructure are recognised and provided for. This could include the insertion of a third point which could be worded as follows: ‘(3) while recognising the functional and operational needs of nationally and regionally significant infrastructure’.

Methods	NFL-M2	Support in part	Waka Kotahi supports the method in general but notes the inclusion of references to policies NFL-P2 and NFL-P3 in (1); as per the submission points on those policies, we are interested in whether the 'avoid' requirement included in these policies is appropriate because it might impact the ability for Waka Kotahi to maintain the state highway.	Further consideration is given to the appropriateness and implications for infrastructure providers of the use of 'avoid' in this method.
	NFL-M3	Support in part	Waka Kotahi supports the method in general but notes the inclusion of references to policies NFL-P2 and NFL-P3 in (1); as per the submission points on those policies, we are interested in whether the 'avoid' requirement included in these policies is appropriate because it might impact the ability for Waka Kotahi to maintain the state highway.	Further consideration is given to the appropriateness and implications for infrastructure providers of the use of 'avoid' in this method.
UFD – Urban form and development				
Objectives	UFD-02 – (5)	Support	The proposed objective will contribute to well-functioning urban environments and sustainable transport systems.	Retain as notified.
	UFD-02 – (8)	Support	Waka Kotahi supports the sustainable and efficient use of land and infrastructure	Retain as notified.
	UFD-02 – (9)	Support	Waka Kotahi supports the integration of land use and transport infrastructure as means of providing good environmental outcomes and supporting the efficient use of infrastructure.	Retain as notified.
	UFD-02 – (10)	Support	Having consolidated urban form as the primary focus for accommodating urban growth will reduce urban sprawl and enable efficient use of existing and planned infrastructure.	Retain as notified.
	UFD-03 – (1)	Support	Ensuring there is sufficient infrastructure capacity for development, expansion and redevelopment of urban	Retain as notified.

			areas will provide for the sustainable management of physical resources	
	UFD-04 – (3)	Support	Waka Kotahi supports urban expansion occurring as anticipated by strategic planning or zoning within district plans. Out of sequence or out of zone urban expansion can result in the inefficient use of, and has adverse effects on, infrastructure.	Retain as notified.
	UFD-05 – (1)	Support	Waka Kotahi supports the intent to reduce climate change impacts as it is aligned with one of the Governments Land Transport strategic priorities to develop a low carbon transport system that supports emissions reductions.	Retain as notified.
	UFD-05 – (4)	Support	Waka Kotahi supports this Objective as it is aligned with one of the Governments Land Transport strategic priorities to develop a low carbon transport system that supports emissions reductions.	Retain as notified.
Policies	UFD-P1 – (1)	Support	Waka Kotahi supports strategic planning processes being undertaken prior to urban growth and development to ensure integration of land use and additional infrastructure. This provides certainty as to infrastructure requirements and provides better environmental outcomes.	Retain as notified.
	UFD-P1 – (2)	Support	Requiring sufficient development capacity and integrated infrastructure will reduce the requirement to allow for 'out of sequence' urban expansion which has greater adverse effects.	Retain as notified.
	UFD-P1 – (5)	Support in Part	Waka Kotahi supports the requirement to have well connected urban areas but suggests this policy should be amended to explicitly outline that improved connectivity and connections relates to all places and all modes of transport. That is, urban areas should have good connections between places as well as good connections	Amend the Policy UFD-P1 – (5) as follows: (5) indicate how connectivity will be improved and <u>multi modal</u> connections will be provided within <i>urban areas</i> .

			between all modes of travel, e.g. active travel and public transport.	
	UFD-P3 – (2)	Support	Waka Kotahi supports the intensification of urban areas that have sufficient existing or planned infrastructure capacity. This supports the efficient use and sustainable management of resources.	Retain as notified.
	UFD-P4 – (2)	Support	Waka Kotahi does not support sporadic ad hoc patterns of residential growth as it does not provide good urban outcomes and can have adverse effects on the transport system. Consequently, Waka Kotahi supports this Policy.	Retain as notified.
	UFD-P4 – (3)	Support	Waka Kotahi supports the integration of urban expansion and infrastructure in a strategic, timely and coordinated way as this supports good urban outcomes and efficient use of existing and planned infrastructure.	Retain as notified.
	UFD-P6 – (3)	Support	Waka Kotahi supports this policy which seeks to ensure the efficient use of industrial zoned land and associated infrastructure which promotes the sustainable use of resources.	Retain as notified.
	UFD-P8 – (2)	Support	Waka Kotahi supports ensuring land identified, or likely to be required, for future urban development is used for that purpose as this provides the most sustainable use of this resource and associated infrastructure.	Retain as notified.
	UFD-P8 – (5)	Support	Rural residential zones and rural lifestyle zones should only occur in locations that have sufficient existing or planned infrastructure capacity. For this reason, Waka Kotahi supports this policy.	Retain as notified.
	UFD-P10 – (2)	Support in part	Waka Kotahi supports this policy but suggests it should be amended to align with the intent of the NPS-UD 2.1 Objective 3. That is, significant development capacity within Tier 2 Urban Environments (being Queenstown and	Amend this policy as follows: the proposal is well-connected to the existing or planned urban area, particularly if it is located along existing or planned public transport corridors for Tier 2 urban

			Dunedin) could be provided if it is located along existing or planned <u>public</u> transport corridors. The existing wording, i.e. 'along existing or planned transport corridors' is appropriate for other urban areas within the region.	<u>environments and</u> along existing or planned transport corridors <u>for other urban environments</u> .
	UFD-P10 – (3)	Support	Waka Kotahi supports the requirement to ensure that a proposed plan change can be serviced without impacting or reducing the capacity of already planned development infrastructure.	Retain as notified.
Methods	UFD-M1 – (1-7)	Support	Waka Kotahi supports the requirement of strategic planning, housing and business development capacity assessments. The use of these methods will assist in ensuring urban redevelopment, intensification and expansion is coordinated and integrated with development and additional infrastructure which provides sustainable environmental outcomes.	Retain as notified.
	UFD-M2 – (1)	Support	Waka Kotahi supports the requirement for Territorial Authorities to update their District Plans to give effect to future development strategies and strategic plans. Giving statutory weight to these strategies and plans will provide increased certainty to infrastructure providers of how and where urban expansion and intensification will occur.	Retain as notified.
	UFD-M2 – (3)	Support	Waka Kotahi supports the requirement for urban development to achieve efficient use of land, energy and infrastructure, and to minimise potential reverse sensitivity effects as these will contribute to the sustainable management of natural and physical resources.	Retain as notified.
	UFD-M2 – (4-9)	Support	Waka Kotahi supports identifying and providing appropriate locations for urban intensification, urban expansion, commercial, industrial, rural, rural residential and rural lifestyle activities. Having certainty where	Retain as notified.

			activities will be located assists with infrastructure planning and delivery.	
Explanation	UFD-E1	Support	Waka Kotahi supports this explanation as it highlights the importance of good urban form, strategic planning and the avoidance of impacts on the operation of regionally and nationally significant infrastructure. This along with providing direction on where development is and is not appropriate will assist in the sustainable management of the transport system.	Retain as notified.
Principal reasons	UFD-PR1	Support	Waka Kotahi agrees with the principal reasons outlined in this section particularly the key requirements of strategic planning, and to maximise the efficient use of energy, land and transport infrastructure. Prioritising development in and around existing urban areas and by integrating land use and infrastructure will also assist in sustainable management of the transport system.	Retain as notified.
Anticipated environmental results	UFD-AER1	Support	Ensuring regulatory plans give effect to strategic planning will assist in the achievement of desirable environmental outcomes. For this reason, Waka Kotahi supports this anticipated environmental result	Retain as notified.
	UFD-AER2	Support	Integrating and coordinating urban expansion with infrastructure availability and capacity will ensure physical resources are sustainably managed.	Retain as notified.
	UFD-AER3	Support	Waka Kotahi supports this anticipated environmental result which expects the integrated planning and provision of infrastructure to be implemented before the planned urban intensification and expansion occurs.	Retain as notified.
	UFD-AER4	Support	Ensuring good urban design of new developments and redevelopments that support public and multi modal transport will reduce the need for private vehicle trips.	Retain as notified.

			This will contribute to the sustainable management of the transport system.	
	UFD-AER5	Support	Mixed use developments that support active and public transport reduces the need for private vehicle trips and contributes to the sustainable use of the transport system.	Retain as notified.
	UFD-AER6	Support	This will contribute to the reduction of transport emissions and assist with the sustainable management of the transport system.	Retain as notified.
	UFD-AER9	Support	Increasing the range of housing types and densities within existing and planned urban areas reduces the need for urban sprawl which has adverse transport and infrastructure effects.	Retain as notified.
	UFD-AER11	Support	Inappropriately located rural residential and rural lifestyle development increases the need to travel which has adverse effects on the transport system. For this reason, Waka Kotahi supports this anticipated environmental result.	Retain as notified.



Waka Kotahi NZ Transport Agency further submission on notified proposal for the Proposed Otago Regional Policy Statement June 2021 under Clause 8 of Schedule 1 of the Resource Management Act 1991

12th November 2021

Otago Regional Council

Private Bag 1954

Dunedin

via email: RPS@orc.govt.nz

This is a further submission on a change proposed to the following plan:

Proposed Otago Regional Policy Statement June 2021.

Submitter ID number: 0305

The Waka Kotahi further submission is:

1. Waka Kotahi NZ Transport Agency (Waka Kotahi) is a Crown entity that takes an integrated approach to transport planning, investment and delivery. The statutory objectives of Waka Kotahi are to undertake its functions in a way that contributes to an effective, efficient and safe land transport system in the public interest. Our vision is for a sustainable, multi-modal land transport system where public transport, active or shared modes are the first choice for most daily transport needs.
2. Waka Kotahi has a mandate under the Land Transport Management Act 2003 (LTMA), the Government Rounding Powers Act 1989 (GRPA), and the Government Policy Statement on Land Transport 2021/22-2030/31 (GPS) to carry out its functions in a way that delivers on the transport outcomes set by the government.
3. In the 2021-2024 National Land Transport Programme, Waka Kotahi has allocated significant investment in the Otago Region to the improvement, operation and maintenance of the State Highway network, including public transport investment, walking and cycling and transport planning. In addition, Waka Kotahi is a co-funder of the local roading network and transport initiatives, as well as a significant investor in the infrastructure in the Otago Region for land use change and growth.
4. Overall, Waka Kotahi has an interest in the Proposed Otago Regional Policy Statement June 2021 as a result of its role as a:
 - Transport investor – to maximise effective, efficient and strategic returns for New Zealand;

- Planner of land transport networks – to ensure the effective integration of infrastructure and land use to support liveable communities and the development of an effective and resilient land transport network for customers;
 - Provide for access to and the use of the land transport system – to shape smart, efficient, safe and responsible transport choices; and
 - Manager of the state highway network – to deliver efficient, safe and responsible highway solutions for customers.
5. For these reasons it is considered that Waka Kotahi has an interest which is greater than the general public.
 6. Further points are summarised in Table 1, which forms the bulk of our submission. In general Waka Kotahi has not made a further submission on provisions already covered by its primary submission due to the volume of submissions received.
 7. Waka Kotahi could not gain an advantage in trade competition through this submission.

We seek the following decision from the local authority:

Amend the provisions of the Proposed Otago Regional Policy Statement June 2021 as detailed in Table 1 (attached) including such further, alternative or consequential relief as may be necessary to fully achieve the relief sought in this further submission.

Waka Kotahi would like to be heard in support of its submission. If others make a similar submission, Waka Kotahi will consider presenting a joint case with them at a hearing.

Signature of person authorised to sign on behalf of Submitter:



Sarah Ho

Principal Planner – Poutiaki Taiao/Environmental Planning

Waka Kotahi NZ Transport Agency

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Table 1: Decisions Sought on the Proposed Otago Regional Policy Statement June 2021

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
General				
Dunedin City Council	General submission (Submission Point 00139.001)	Support	Waka Kotahi are supportive of the comments made by Dunedin City Council and seek any relief required to address the concerns identified to enable the safe, effective and efficient establishment, operation and maintenance of transport infrastructure.	Accept submission
Part 1 – Introduction and General Provisions				
Interpretation				
Definitions				
Royal Forest and Bird Protection Society Inc	General Submission – Terminology (Submission point 00230.002)	Support	The term ‘environmental limits’ is used throughout the RPS, but it is not defined. It is unclear how this term is to be interpreted, and Waka Kotahi considers there is merit in replacing reference to environmental limits with the specific outcome sought.	Accept submission
Queenstown Lakes District Council	New definition - Affordability (Submission point 00138.205)	Support	Waka Kotahi supports inclusion of a definition around “Affordable Housing” to clarify what this constitutes.	Accept submission
Queenstown Lakes District Council	New definition - Biodiversity offsetting	Support in part	Waka Kotahi supports the inclusion of a definition for biodiversity offsetting.	A definition for ‘biodiversity offsetting’ be included in the Plan,

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
	(submission point 00138.028)			however the specifics of this definition need to be clarified.
Royal Forest and Bird Protection Society Inc	Hard protection structure (Submission Point 00230.006)	Oppose in part	Waka Kotahi considers that the inclusion of the word 'flooding' could unduly limit the application of the definition.	Reject inclusion of 'flooding' within the proposed definition.
Dunedin City Council	Regionally Significant Infrastructure (Submission Point 00139.007)	Support	Waka Kotahi agree with the Dunedin City Council that the definition should refer to the "One Network Framework" rather than the "One Network Road Classification".	Accept submission
Otago Fish and Game Council and the Central South Island Fish and Game Council	New definition – Minimise (submission point 00231.017)	Support	Waka Kotahi supports the inclusion of a definition for 'minimise'.	Accept submission
Otago Fish and Game Council and the Central South Island Fish and Game Council	New definition – Restore (submission point 00231.019)	Support	Waka Kotahi agrees that the term 'restore' is used throughout the Policy Statement and it is appropriate for a definition to be included, to provide certainty to plan users.	Accept submission
Director General of Conservation	Effects Management Hierarchy (Submission point 00137.009)	Support	Waka Kotahi agrees that the hierarchy of the approach to manage effects differs between the definition (avoid, <i>minimise</i> , remedy, offset, compensation - and is taken from the NPS-FM) and Policy ECO-P6 (avoid, remedy, <i>mitigate</i> , offset, compensation) and a consistent approach	Accept submission

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			is necessary to avoid uncertainty and ensure consistency.	
Network Waitaki Limited; Aurora Energy Limited; PowerNet Limited	New definition – Effects Management Hierarchy (other matters) (Submission points 00320.012, 00315.014, 00511.012)	Support	Waka Kotahi supports the inclusion of a new definition of Effects Management Hierarchy for other matters (not only for natural inland wetlands and rivers). It provides clear direction that all practicable steps shall be taken to address the effects of activities, but acknowledges that in some cases, it is not possible to avoid effects entirely (such as infrastructure which often has a functional or operational need to be located somewhere).	Accept submission
Part 2 – Resource Management Overview				
SRMR - Significant resource management issues				
Fulton Hogan Limited	SRMR – General (submission point 0322.004)	Support	Waka Kotahi supports Fulton Hogan’s submission, as aggregates are an essential element to the construction of regionally and nationally significant infrastructure. This is not to be undervalued and there is significant environmental benefit in being able to source resources locally resulting in resource efficiency, and reduction in carbon footprints.	Accept submission
Queenstown Lakes District Council	SRMR-14 (submission point not summarised)	Support	Waka Kotahi supports QLDC submission that SRMR-14 does not mention the impact of the form of urban growth on carbon emissions and Climate Change, as consolidation of growth and the way urban areas develop can increase the	Accept submission

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
			need for people to travel by private motor vehicle, thereby increasing carbon emissions.	
Dunedin City Council	SRMR-14 (Submission point 00139.017)	Support	Deaths and serious injuries can occur on all roads, not just rural state highways. Road to Zero – NZs Road Safety Strategy sets an initial target to reduce deaths and serious injuries on New Zealand's roads, streets, cycleways and footpaths by 40 percent over the next 10 years (2020-2030).	Accept submission
IM - Integrated Management				
New Zealand Infrastructure Commission	IM – Integrated Management General (Submission point 00321.102)	Support	Waka Kotahi agrees that there is an inconsistency between taking a holistic, integrated management approach (ki uta ki tai) to managing the environment and resources in Otago, and placing a hierarchy of obligations, placing the environment ahead of people.	Accept submission
Fonterra Co-Operative Group Limited	IM – Integrated Management New Provision (Submission 00213.002)	Support	Waka Kotahi supports an additional objective which clearly provides for regionally significant infrastructure but would also seek to include nationally significant infrastructure.	Accept submission, but to also include the provision of nationally significant infrastructure
Port of Otago Ltd	IM-01 (Submission point 00301.010)	Support	Waka Kotahi agrees that the objective should be amended to reflect section 5 of the RMA.	Accept submission

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
Te Waihangā New Zealand Infrastructure Commission	IM-O2 (Submission Point 00321.015)	Support	Waka Kotahi agrees that the objective should be amended to recognise the benefits that infrastructure provides to the environment.	Accept submission
Ravensdown	IM-O3 (submission point 00121.017)	Support	Waka Kotahi supports the proposed amended wording which better aligns with the purpose of the RMA.	Accept submission
Te Ao Marama	IM-O4 (submission point 00223.054)	Support	Waka Kotahi supports the proposed amended wording.	Accept submission
Christchurch International Airport Limited	IM-P2 (Submission Point 00307.006)	Support	Waka Kotahi supports the proposed amendments to remove the reference to the terms firstly, secondly and thirdly in this policy, and thereby remove the decision-making hierarchy it creates. The proposed amendments will better reflect Part 2 of the RMA.	Accept submission
Dunedin City Council	IM-P2 (Submission Point 00139.027)			
Queenstown Lakes District Council	IM-P2 (submission point 00138.008)	Support	Waka Kotahi supports QLDC approach that the 'decision priority' framework in IM – P2 be limited to decisions made on freshwater/those matters managed under the NPSFM 2020, however a more balanced approach to other environments.	Accept submission
Director General of Conservation	IM-P4 (submission point 00137.041)	Oppose	The proposed inclusion of the term 'enhances' creates uncertainty in respect of what "enhances" means in this context and the potential implications for the operation and	Reject submission

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
			maintenance of regionally and nationally significant infrastructure.	
Kāi Tahu ki Otago	IM-P4 (submission point 00226.092)	Support	The proposed amendment clarifies that climate change is included in this policy	Accept submission
Wise Response Society Inc	IM-P5 (Submission point 00509.035)	Oppose	The amendments to the policy proposed will change its intent and will potentially have implications for the operation and maintenance of regionally and nationally significant infrastructure.	Reject submission
Dunedin City Council	IM-P5 (submission point 00139.030)	Support	Waka Kotahi supports to retain the policy as notified.	Accept submission
Contact Energy Ltd; Trustpower Ltd	IM-P12 (submission points 00318.009, 00311.011)	Support	The proposed amendments provide better clarity and are considered appropriate	Accept submissions
Royal Forest and Bird Protection Society Inc	IM-P12 (submission point 00230.036)	Oppose	Waka Kotahi opposes the proposed amendment in particular the deletion of the offsetting and compensation measures in clause (3). The inclusion of the term 'reasonable alternative' in proposed clause (6) creates uncertainty as to what is considered 'reasonable'.	Reject submission
Otago Fish & Game Council and the Central South Island Fish & Game Council	IM-P13 (submission point 00231.039)	Oppose in part	Waka Kotahi opposes the removal of the term "natural and physical resources" and its proposed replacement with "the environment". Case law recognises the state highway network	Reject proposed amendment relating to "natural and physical resources"

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
			as a 'physical resource'. Removal of the reference to physical resources eliminates this connection to the state highway.	
Christchurch International Airport Limited	IM-P14 (Submission point 00307.012)	Support	Waka Kotahi agree that the Policy should be amended to recognise the importance of regionally significant infrastructure. Waka Kotahi agree that the policy also requires amendment to provide clearer guidance as to the purpose for setting limits and the state of environment which the limit is aiming to achieve or move towards.	Accept submission or amend the policy as raised by other submitters to IM-P14 below.
Transpower New Zealand Limited; Aurora Energy Limited; Contact Energy Limited; Network Waitaki Limited; PowerNet Limited; Queenstown Airport Corporation Limited	IM-P14 (Submission Points 00314.012, 00315.017, 00318.010, 00320.014, 00511.014, 00313.007)	Support in part	Waka Kotahi agree with the submitters that introducing the concept of "environmental limits" from the consultation draft of the proposed Natural and Built Environments Bill is premature. There is uncertainty as to what the "environmental limits" are intended for – i.e. consenting triggers or bottom lines.	Accept submission to provide clarification of environmental limits.
Transpower New Zealand Limited;	IM-P15 (Submission points 00314.013,	Support in part	Waka Kotahi agree that the policy creates uncertainty, particularly due to the effects never really being understood or known due to the science still developing around certain	Amend Policy IM-P15 to provide more certainty

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Aurora Energy Limited; Trustpower Limited	00315.018, 00311.012)		environmental aspects (i.e. groundwater and surface water).	
Otago Fish & Game Council and the Central South Island Fish & Game Council	IM-M1 (submission point 00231.032)	Oppose	Fish and Game seeks to amend provision (4) to replace 'natural and physical resources' with 'natural environment'. Case law recognises the state highway network as a 'physical resource'. Removal of the reference to physical resources eliminates this connection to the state highway.	Reject submission
Part 3 – Domains and Topics				
Domains				
CE – Coastal Environment				
Royal Forest and Bird Protection Society of NZ Inc	New Provision (Submission Point 00230.023b)	Oppose in part	Waka Kotahi recognises that hard protection structures can restrict coastal habitats and prevent migration of coastal habitats and ecosystems. We would wish to see any new policy, as suggested, also recognise that hard protection structures also can provide benefit to creating new ecological habitats in some cases, protecting property and safety of the transport network.	Reject submission or if a new provision is included, to recognise also the benefits of creating hard protection structures.
Te Rūnanga o Ngāi Tahu	CE- General (submission point 00234.013)	Support	Waka Kotahi agrees with Te Rūnanga o Ngāi Tahu submission, in particular to make the structure of the chapter clearer and easier to read and understand, with better alignment with other air, land, and freshwater provisions.	Accept submission

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
Kai Tahu ki Otago	CE- New Provision (submission 00226.130)	Support	Waka Kotahi agrees that “te mauri o te moana” should take precedence as the first objective for the coastal provisions.	Accept submission
Kai Tahu ki Otago	CE- New Provision (Submissions 00226.016 00226.149)	Neutral	Kai Tahu ki Otago seeks policy guidance in relation to discharges, dredging and sedimentation. Waka Kotahi are interested in all new provisions which may arise from this submission. In particular, the attenuation and treatment of stormwater prior to discharge into coastal waters, as it applies to existing infrastructure due to the significant implications this may have.	If new provisions are included, Waka Kotahi seeks that its interests are protected.
Kai Tahu ki Otago	New Provision (Submission point 00226.150)	Neutral	Kai Tahu ki Otago seek to insert a new policy(s) to provide guidance on activities that directly modify the land, freshwater, and coastal marine area interface, and to respond to the activities of concern raised in their submission. Waka Kotahi is not opposed to this but cautions that earthworks are a common occurrence and will need to be appropriately managed appropriately within the coastal environment.	If a new provision is provided, Waka Kotahi seeks that its interests are protected and for earthworks to be appropriately managed.
Director General of Conservation	CE-O1 (submission point 00137.049)	Oppose in part	It is unclear what the ‘enhancement’ of the mauri of coastal water would entail and the implication for activities undertaken by Waka Kotahi. It is also considered that it is not always necessary or appropriate to enhance natural biological and physical processes in the coastal environment, and should remain as “maintained or enhanced”	Reject proposed amendments to clauses 1 and 3

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
Director General of Conservation	CE-02 (submission point 00137.050)	Oppose	Waka Kotahi considers the original wording is appropriate and should remain as “maintain or enhance”.	Reject submission
Director General of Conservation	CE-03 (submission Point 00137.051)	Oppose	There may be circumstances where areas of natural character, natural features, landscapes and seascapes within the coastal environment have been compromised as a result of state highway infrastructure being located in these areas due to a functional or operational need. The proposed amendment to this objective seeks to require restoration, rather than encourage restoration, in these circumstances.	Reject submission
Aurora Energy Limited	CE-05 (Submission point 00315.021)	Support	Amendment provides sufficient certainty that infrastructure with a functional or operational need is provided for.	Accept submission
Kai Tahu ki Otago Te Runanga o Ngai Tahu	CE-05 (Submission Points 00226.135, 00226.135)	Support in part	Waka is supportive of enabling infrastructure which is of operational or functional need in the coastal environment, and for cultural values to be preserved. However, Waka Kotahi seeks amendments to remove “avoid” as an absolute, with preference to minimise or similar due to the practicalities of being able meet this in all cases.	Accept submission however remove any wording relating to “avoid” with a preference to minimise or similar.
Kai Tahu ki Otago	CE-P1 (Submission point 00226.136)	Support in part	There is merit in taking an integrated approach to the coastal environment, but consideration needs to be had for regionally and nationally significant infrastructure.	Accept submission, however provision to be made for regionally and nationally significant infrastructure

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Dunedin City Council	CE-P4 (submission point 00139.065)	Support	Agree that the use “avoid” as an absolute term needs to be used sparingly, and in this case, should be amended.	Accept submission
Aurora Energy Ltd	CE-P4 (submission point 00315.023)	Support in part	Agree that an effects management hierarchy approach should be taken, however this should apply to all regionally and nationally significant infrastructure, not just existing infrastructure.	Accept submission as it applies to regionally and national infrastructure
Kai Tahu ki Otago	CE-P5 (submission point 00226.140)	Support	Waka Kotahi agrees that it does not make sense to have a separate policy for coastal indigenous biodiversity and this should be reconciled with the ECO policies.	Accept submission
Meridian Energy Limited	CE-P6 (submission point 00306.030)	Support	Amendments to the provision simplify and clarify application of the policy.	Accept submission
Royal Forest and Bird Protection Society of NZ Inc	CE-P8 (submission point 00230.058)	Oppose	The change to the preamble by adding “adjacent to” would raise some potential issues as there could be a range of permitted activities or activities approved by designation which could be compromised by the change in (9). There is uncertainty of the effect of the changes proposed to activities required for operation and maintenance of strategic infrastructure in the coastal environment.	Reject submission
Royal Forest and Bird Protection Society of NZ Inc	CE-M1 (submission point 00230.061)	Oppose	Royal Forest and Bird seek an additional clause that undermines the mapping to be provided in clause (1), by seeking case-by-case consideration of whether an activity is actually in	Reject submission

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			the coastal environment. This is not considered appropriate.	
LF – Land and freshwater				
Royal Forest and Bird Protection Society of NZ incorporated	New provision (Submission point 00230.078)	Oppose	The introduction of a new overarching provision will lead to uncertainty as to how it should be applied in relation to other provisions in the plan.	Reject submission
Otago Fish & Game Council and the South Island Fish & Game Council	LF-WAI-P3 (submission point 00231.047)	Oppose	The proposed amendments create uncertainty with potential implications on how Waka Kotahi manages its infrastructure.	Reject submission
Director General of Conservation	LF-FW-08 (Submission point 00137.070)	Support in part	Waka Kotahi agrees in principle with the proposed amendment but would request that those provisions seeking to inflexibly 'protect' are amended to include 'where practicable'.	Accept submission however the provisions be amended "protect where practicable".
Otago Fish & Game Council and the South Island Fish & Game Council	LF-FW-08 (submission point 00231.053)	Support in part	While Waka Kotahi supports, in principle, the intent of the proposed new clause A1, a balance needs to be achieved between ensuring the health, well-being and resilience of a water body and the operational and functional needs to nationally significant infrastructure.	Accept submission however the provisions be amended to ensure the operational and functional needs of nationally significant infrastructure.
Kai Tahu ki Otago	LF FW-P7 (submission point 00226.182)	Support	The proposed wording changes provide better clarity	Accept submission

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
Otago Fish & Game Council and the South Island Fish & Game Council	LF-FW-P7 (submission point 00231.055)	Oppose	The proposed amendments create uncertainty with potential implications on how Waka Kotahi manages its infrastructure.	Reject submission
Royal Forest and Bird Protection Society of NZ incorporated	LF-FW-P10 (submission point 00230.090)	Oppose	The proposed amendments create uncertainty with potential implications on how Waka Kotahi manages its infrastructure.	Reject submission
Royal Forest and Bird Protection Society of NZ incorporated	LF-FW-P14 (submission point 00230.093)	Oppose	Amending the wording from 'promote' to 'require' (restoration of natural character of lakes and rivers and their margins) alters the intent of this provision.	Reject submission
Otago Fish & Game Council and the South Island Fish & Game Council	LF-FW-M6 (submission point 00231.06)	Oppose	Proposed clause (4)(ca) seeks protection of trout and salmon habitat and potential for restoration of that habitat, and, in doing so, makes this provision more onerous.	Reject submission
Royal Forest and Bird Protection Society of NZ incorporated	LF-LS-M12 (submission point 00230.095)	Oppose	The proposed amendment would require avoidance, rather than minimisation, therefore making the provision more onerous.	Reject submission
Topics				
ECO – Ecosystems and indigenous biodiversity				
Otago Fish & Game Council and the South Island Fish & Game Council	New provision ECO-P11 (Submission point 00231.075)	Oppose	The proposed policy requires the habitat of trout and salmon to be 'protected' and 'restored' in a manner consistent with the protection and restoration of habitat of indigenous freshwater species. This makes the consequences of this provision uncertain.	Reject submission

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Kai Tahu ki Otago	ECO-P3 (submission point 00226.189)	Support	"biodiversity values" helps provide clarification in the policy.	Accept submission
Royal Forest and Bird Protection Society of NZ Incorporated	ECO-P3 (submission Point 00230.102)	Oppose	Waka Kotahi is opposed to the proposed deletion of references to the exceptions provided for by policies ECO-P4 and ECO-P5, as these policies recognise and provide for the development or upgrade of nationally and regionally significant infrastructure, such as state highways, in significant natural areas or where they may adversely affect indigenous species and ecosystem that are taoka, and for existing activities in significant natural areas.	Reject submission
EIT – Energy, infrastructure and transport				
Transpower New Zealand Limited; Aurora Energy Limited; Contact Energy Limited; Te Waihanga New Zealand Infrastructure Commission; Queenstown Airport Corporation Limited;	EIT-INF-04 (Submission Points 00314.033, 00315.043, 00318.031, 00321.051, 00313.015, 00301.032, 00310.004, 00320.023, 00511.023)	Support	Waka Kotahi agree that using the concept of "environmental limits" from the consultation draft of the Natural and Built Environments Bill is inappropriate as the Proposed Otago RPS has been notified under the RMA. In addition, the concept of environmental limits is still unknown and it is not clear how infrastructure is to be managed within "environmental limits".	Accept submission

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Port of Otago Limited; Chorus New Zealand Limited, Spark New Zealand Trading Limited, and Vodafone New Zealand; Network Waitaki Limited PowerNet Limited				
Christchurch International Airport Ltd (CIAL)	EIT-INF-04 (Submission point 00307.015)	Support	Waka Kotahi supports the suggested amendment to acknowledge the public benefits, lifeline utility role and the functional and operational constraints that infrastructure has to work within. The amendment of the objective to include “safe” also better reflects the statutory objective of Waka Kotahi.	Accept submission
Maryhill Limited	EIT-TRAN-07 (Submission point 00118.050)	Oppose	Waka Kotahi considers it is appropriate for development proposals to address resulting transportation impacts including, where required, upgrades to affected infrastructure.	Reject submission
Maryhill Limited	EIT-TRAN-08 (Submission point 00118.051)	Oppose	Waka Kotahi considers it is appropriate for development proposals to address resulting transportation impacts including, where required, upgrades to affected infrastructure.	Reject submission

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Royal Forest and Bird Protection Society of NZ incorporated	EIT-INF-P11 (Submission Point 00230.129)	Oppose	Waka Kotahi considers that some of the wording sought will fundamentally change the interpretation and application of the policy.	Reject submission
Queenstown Lakes District Council	EIT-INF-P12 (submission point 00138.118) EIT-INF-P14 (submission point 00138.120)	Support	Waka Kotahi agrees that there could be better clarification as to what policy applies to regionally and nationally significant infrastructure vs other infrastructure. Consider combining EIT-INF-P12 and P14 together.	Accept submission
Maryhill Limited	EIT-TRAN-P18 (Submission point 00118.052)	Oppose	Waka Kotahi considers it is appropriate for development proposals to address resulting transportation impacts including, where required, upgrades to affected infrastructure.	Reject submission
Maryhill Limited	EIT-TRAN-P19 (Submission point 00118.053)	Oppose	Waka Kotahi considers it is appropriate for development proposals to address resulting transportation impacts including, where required upgrades, to affected infrastructure.	Reject submission
Dunedin City Council	EIT-TRAN-M8 (Submission point 00139.187)	Support	Waka Kotahi agrees that a definition for “high trip generating” activities would provide certainty regarding the application of the provision.	Accept submission
HAZ – Hazards and risks				

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
Transpower New Zealand Limited	HAZ-NH-P3 (Submission Point 00314.044)	Support	Waka Kotahi agree that the policy needs to provide for situations where nationally significant infrastructure, such as State Highways, cannot avoid locating in an area of significant hazard risk.	Accept submission
Aurora Energy Limited	HAZ-NH-P3 (Submission Point 00315.061)			
Dunedin City Council	HAZ-NH-P3 (Submission Point 00139.196)			
Dunedin City Council	HAZ-NH-P6 (Submission point 00139.199)	Support	Waka Kotahi supports the request to recognise that this policy should operate consistently with the infrastructure policies in the Plan. The maintenance and protection of infrastructure could include many modified features that contribute to mitigating the effects of natural hazards and climate change.	Accept submission
HCV – Historical and cultural values				
Director General of Conservation	HCV-HH-P5 (Submission Point 00137.145)	Support	Waka Kotahi agrees that the policy needs to provide greater clarity for plan users on how to determine whether historic heritage values or features are special or outstanding.	Accept submission
NFL – Natural Features and Landscapes				

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
Queenstown Airport Corporation	NFL – 02 (submission point 00313.029)	Support	Waka Kotahi supports the amendments proposed as it provides greater certainty that significant infrastructure is recognised and can be provided.	Accept submission
Aurora Energy Ltd	NFL – 03 (submission point 00315.075)	Support	Waka Kotahi supports the amendments proposed as it provides greater clarification as to which policy takes preference.	Accept submission
UFD – Urban form and development				
Christchurch International Airport Limited (CIAL)	UFD-02 (submission point 00307.035)	Support	Waka Kotahi supports the suggested amendment to facilitate the development of future regionally significant infrastructure. The suggested amendment recognises that infrastructure needs will change through the life of the RPS and that more regionally significant infrastructure may be required in the future.	Accept submission
Daisy Link Garden Centres Limited	UFD-03 (submission point 00204.003)	Oppose	Waka Kotahi is opposed to the suggested amendment as Waka Kotahi considers that some of the wording sought will fundamentally change the interpretation and application of the policy. Strategic planning should occur before significant development of urban areas to ensure the necessary infrastructure can be planned, funded and delivered as required. The removal of the words ' <i>in advance of</i> ' will provide for significant out of sequence developments.	Reject submission
Sipka Holdings Limited	UFD-03	Oppose	Waka Kotahi is of the view that strategic planning needs to consider the views of many stakeholders including local and central	Reject submission

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	(submission point 00402.004)		government, infrastructure providers and others to encompass a district wide or regional view. This is not normally an exercise undertaken by individual proponents of private plan changes.	
Glenpanel Limited Partnership	UFD-O4 (submission point 00405.005)	Oppose	Waka Kotahi supports the retention of the requirement for urban expansion to only occur where this has been identified as appropriate through District Plan zoning or strategic planning. This will assist in providing functional urban forms and sustainable transport systems.	Reject submission
Kai Tahu ki Otago	UFD-O5 (Submission point 00226.311)	Support	The proposed working is helps to clarify that human actions contribute to climate change, and both need to be considered when managing urban development.	Accept submission
Daisy Link Garden Centres Limited	UFD-P1 (submission point 00204.005)	Oppose	Waka Kotahi suggests that out of sequence and unanticipated developments will not provide for the integration of land use and infrastructure and will not provide good environmental outcomes.	Reject submission
Queenstown Lakes District Council	UFD-P2 (submission point 00138.212)	Support	Waka Kotahi considers that providing sufficient housing and business development capacity in urban areas will reduce the need for out of zone urban sprawl which is difficult to service with sustainable transport solutions.	Accept submission
Queenstown Lakes District Council	UFD-P5 (submission point 00138.215)	Support	Waka Kotahi supports this provision. Having appropriately scaled commercial activities located in urban areas to service community needs can reduce the need to travel which will	Accept submission

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			contribute to the sustainable management of the transport system.	
Glenpanel Limited Partnership	UFD-P7 (submission point 00405.013)	Oppose	Waka Kotahi does not support the unplanned urban expansion into rural areas as it does not provide good urban outcomes and efficient integrated use of transport systems.	Reject submission
Waterfall Park Developments Limited	UFD-P8 (1) (submission point 00023.005)	Oppose	Waka Kotahi supports the retention of the requirement for the establishment, development or expansion of rural lifestyle and rural residential zones that are well connected to existing or planned urban areas with good access to employment and services. This will result in a more functional urban form and increases the potential for more sustainable transport options to be utilised.	Reject submission
Daisy Link Garden Centres Limited	UFD-M1 (submission point 00204.009)	Oppose	Waka Kotahi suggests that out of sequence and unanticipated developments will not provide for the integration of land use and infrastructure and will not provide sustainable environmental outcomes.	Reject submission
Tussock Rise Ltd	UFD-M2 (submission point 00401.012)	Oppose	Waka Kotahi supports development to occur as anticipated by Future Development Strategies as this provides certainty for infrastructure providers and ensures physical resources can be sustainably managed.	Reject submission
Part 5 – Appendices and Maps				
Appendices				

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
Director General of Conservation	APP1 – Criteria for identifying outstanding waterbodies (submission point 00137.156)	Support	Waka Kotahi agrees that greater clarity is required to identify the values that constitute an outstanding waterbody.	Accept submission
Contact Energy Ltd, Network Waitaki Limited	APP2 – Significant criteria for indigenous biodiversity (submission point 00318.020 and 00320.020)	Support	Waka Kotahi agrees that the significance criteria for indigenous biodiversity needs to be amended to be targeted and avoid the inclusion of inappropriate areas.	Accept submission
Royal Forest and Bird Protection Society Inc	APP3 - Criteria for biodiversity offsetting (submission point 00230.148)	Oppose	Waka Kotahi do not support the inclusion of proposed clause 2(j) as it forecloses an option to consider offsetting, and potentially undermines the intent of the plan in relation to the effects management hierarchy.	Reject submission
Aurora Energy Limited, Contact Energy Ltd, Network Waitaki, Oceana Gold Ltd, Powernet Ltd, Queenstown Airport Corporation	APP3 – Criteria for biodiversity offsetting (submission points 0315.083, 00318.02, 00320.021, 00115.024)	Support	Waka Kotahi consider the criteria for biodiversity offsetting is too high. It agrees that clause 1 of the provision is unreasonable and should be deleted, and that the compensation criteria are amended to achieve consistency with national direction and pragmatism. In particular 2(e) has significant implications for transport infrastructure which will have a functional or	Accept submission

This further submission is in relation to the submission of:	The particular submission point I/we support or oppose is:	My/our position on this submission point is:	The reasons for my/our support or opposition are:	I/we seek that the whole (or part [describe part]) of the submission be allowed (or disallowed) :
			operational need to be in that location and may have no option but to offset biodiversity.	
Aurora Energy Limited, Contact Energy Ltd, Network Waitaki Ltd, Oceana Gold Ltd, Powernet, Queenstown Airport Corporation	APP4 – Criteria for biodiversity compensation (submissions 00315.084, 00318.022, 00320.022, 00115.025, 00511.022, 00313.035)	Support	Waka Kotahi consider that the criteria for biodiversity compensation is too high. It agreed that clause 1 of the provision is unreasonable and should be deleted, and that the compensation criteria are amended to achieve consistency with national direction and pragmatism.	Accept submission
Royal Forest and Bird Protection Society Inc	APP4 – Criteria for biodiversity compensation (submission point 00230.149)	Oppose	Waka Kotahi do not support the inclusion of proposed clause 2(x) as it forecloses an option to consider compensation, and potentially undermines the intent of the plan in relation to the effects management hierarchy.	Reject submission

RPS

From: Sarah Ho <Sarah.Ho@nzta.govt.nz>
Sent: Friday, 12 November 2021 8:14 a.m.
To: RPS
Cc: Helen Dempster; Richard Shaw
Subject: Waka Kotahi Further Submission to ORPS
Attachments: Waka Kotahi NZ Transport Agency Further Submission to ORPS.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Further Submission

To whom it may concern,

Please find attached Waka Kotahi NZ Transport Agency Further submission to the Otago Regional Policy Statement.

Kind regards

Sarah Ho

Principal Planner - Poutiaki Taiao | Environmental Planning

System Design, Transport Services

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Out of Office: Fridays

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Appendix B List of names and addresses of persons to be served

APPENDIX B - list of names and addresses of persons to be served

Party	Address for service
Royal Forest and Bird Protection Society of New Zealand Incorporated	Contact Name: Rick Zwaan Contact Email: r.zwaan@forestandbird.org.nz
Sanford Ltd.	Contact Name: Alison Undorf-Lay Contact Email: AUndorf-Lay@sanford.co.nz
Z Energy Limited, BP Oil NZ Limited, Mobil Oil NZ Limited (the Fuel Companies)	Contact Name: Mark Laurensen Contact Email: markl@4sight.co.nz
Director-General of Conservation	Contact Name: Murray Brass Contact Email: mbrass@doc.govt.nz
Federated Farmers of New Zealand	Contact Name: Eleanor Linscott Contact Email: elinscott@fedfarm.org.nz
Highton, John	Contact Name: John Highton Contact Email: John.highton@otago.ac.nz
Kāi Tahu ki Otago / Aukaha	Contact Name: Sandra McIntyre Contact Email: sandra@aukaha.co.nz
New Zealand Infrastructure Commission	Contact Name: Robert Addison Contact Email: Robert.addison@tewaihanga.govt.nz
Otago Rock Lobster Industry Association Inc and Pauamac 5 Incorporated	Contact Name: Kate Hesson Contact Email: katekhesson@gmail.com
Transpower New Zealand Limited	Contact Name: Ainsley McLeod Contact Email: ainsley@amconsulting.co.nz
Wise Response Society Inc	Contact Name: Professor Elizabeth Slooten Contact Email: secretary@wiseresponse.org.nz
Yellow-eyed Penguin Trust	Contact Name: Dr. Trudi Webster Contact Email: science-advisor@yeptrust.org.nz
Dunedin City Council	Contact Name: Anna Johnson Contact Email: Anna.Johnson@dcc.govt.nz
Aurora Energy Limited	Contact Name: Joanne Dowd Contact Email: joanne.dowd@auroraenergy.nz
Otago Water Resource Users Group (OWRUG)	Contact Name: Bridget Irving Contact Email: bridget.irving@gallawaycookallan.co.nz

Party	Address for service
Meridian Energy Limited	Contact Name: Andrew Feierabend Contact Email: andrew.feierabend@meridianenergy.co.nz
Trustpower Limited	Contact Name: Nicola Foran Contact Email: nicola.foran@trustpower.co.nz
Central Otago District Council (CODC)	Contact Name: Ann Rodgers Contact Email: ann.rodgers@codc.govt.nz
Christchurch International Airport Limited (CIAL)	Contact Name: Amy Hill Contact Email: amy.hill@chapmantripp.com
Contact Energy Limited	Contact Name: Chris Drayton Contact Email: chris.drayton@contactenergy.co.nz
Network Waitaki Limited	Contact Name: Megan Justice Contact Email: megan.justice@mitchelldaysh.co.nz
PowerNet Ltd	Contact Name: Megan Justice Contact Email: megan.justice@mitchelldaysh.co.nz
Maryhill Limited	Contact Name: Laura McLaughlan Contact Email: laura.mclaughlan@al.nz
Mt Cardrona Station	Contact Name: Laura McLaughlan Contact Email: laura.mclaughlan@al.nz
Beef & Lamb NZ and Deer Industry NZ	Contact Name: Lilly Lawson Contact Email: Lilly.Lawson@beeflambnz.com
Business South Inc	Contact Name: Mike Collins Contact Email: mike.collins@business-south.org.nz
Chorus, New Zealand Limited, Spark New Zealand Trading Limited and Vodafone New Zealand	Contact Name: Chris Horne Contact Email: chris@incite.co.nz
Port of Otago Ltd	Contact Name: Rebecca McGrouther Contact Email: rmcgrouther@portotago.co.nz
Queenstown Airport Corporation	Contact Name: Melissa Brook Contact Email: melissa.brook@queenstownairport.co.nz
Queenstown Lakes District Council	Contact Name: Erin Auchterlonie Contact Email: Erin.auchterlonie@qldc.govt.nz
Te Ao Marama	Contact Name: Sandra McIntyre

Party	Address for service
	Contact Email: sandra@aukaha.co.nz
Trojan Holdings Limited (Trojan)	Contact Name: Ben Farrell Contact Email: ben@cuee.nz
Wayfare Group Ltd	Contact Name: Ben Farrell Contact Email: ben@cuee.nz
Oceana Gold (New Zealand) Ltd	Contact Name: Alison Paul Contact Email: alison.paul@oceanagold.com
Ernslaw One	Contact Name: Peter Weir Contact Email: Peter.Weir@Ernslaw.co.nz
Greenpeace Aotearoa	Contact Name: Christine Rose Contact Email: crose@greenpeace.org
Graymont (NZ) Limited	Contact Name: Benjamin Murray Contact Email: bmurray@graymont.com
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Lane Hocking	Contact Name: Laura McLaughlan Contact Email: laura.mclaughlan@al.nz
Otago Fish & Game Council and the Central South Island Fish & Game Council	Contact Name: Nigel Paragreen Contact Email: nparagreen@fishandgame.org.nz
Ravensdown Limited	Contact Name: Carmen Taylor Contact Email: carmen@planzconsultants.co.nz
Universal Developments Hawea Limited	Contact Name: Laura McLaughlan Contact Email: laura.mclaughlan@al.nz
University of Otago	Contact Name: Kevin Wood Contact Email: kevin.wood@otago.ac.nz
Blackthorn Lodge Glenorchy Limited	Contact Name: Katharine Hockly Contact Email: katharine.hockly@laneneave.co.nz
Horticulture New Zealand	Contact Name: Rachel McClung Contact Email: rachel.mcclung@hortnz.co.nz
City Forests Limited	Contact Name: Peter Oliver Contact Email: peter.oliver@cityforests.co.nz

Party	Address for service
Stewart, Lynne	Contact Name: Lynne Stewart Contact Email: phil.lynne2@xtra.co.nz
Central Otago Environmental Society	Contact Name: Phil Murray Contact Email: philh.murray@xtra.co.nz
Pomahaka Water Care Group	Contact Name: Lloyd McCall Contact Email: lloyd@m90fs.co.nz
McCall, Lloyd	Contact Name: Lloyd McCall Contact Email: lloyd@m90fs.co.nz
Rayonier Matariki Forests	Contact Name: Kelsey Tills Contact Email: kelsey.tills@rayonier.com
Silver Fern Farms	Contact Name: Steve Tuck Contact Email: steve.tuck@mitchelldaysh.co.nz
Matakanui Gold Limited	Contact Name: Craig Barr Contact Email: craig@townplanning.co.nz
Alluvium Ltd and Stoney Creek Mining Ltd	Contact Name: Kate McKenzie Contact Email: kate.mckenzie@tpri.co.nz
Danny Walker, Peter Hall, Cold Clutha Ltd and Awa Koura Mining Ltd	Contact Name: Kate McKenzie Contact Email: kate.mckenzie@tpri.co.nz
Fulton Hogan Limited	Contact Name: Tim Ensor Contact Email: tensor@tonkintaylor.co.nz
Straterra	Contact Name: Jeremy Harding Contact Email: jeremy@straterra.co.nz

Appendix C Copy of the relevant parts of the PORPS decision

Section 5: Integrated Management (IM)

1. Introduction

1. The purpose of a regional policy statement is to provide an overview of the resource management issues of the region and the policies and methods to achieve integrated management of the natural and physical resources of the region. Integrated management is an approach to environmental management that seeks to manage resources together under one regime rather than creating silos by managing different areas, resources, or effects separately. The concept of integrated management is consistent with the Kāi Tahu understanding that all parts of the environment (te taiao) are interconnected, and that it is important to reflect this through holistic management. A holistic approach to managing te taiao must value all parts of the environment and recognise and reflect the interconnections between these components.
2. The National Planning Standards provide for (but do not require) an RPS to include a chapter on integrated management, within Part 2 – Resource Management Overview. This allows for provisions to be included that address integrated management of resources across domains and topics, and as such ORC has incorporated such a chapter. The pORPS 2019 has been criticised for providing limited direction on how integrated management is to be achieved, particularly in relation to providing specific direction on matters that cross domains and topics, such as freshwater management. The Council considered that including an integrated management chapter, as provided for by the National Planning Standards, would assist with ensure this regional policy statement is more explicit and direct in setting out how integrated management is expected to occur.
3. The *IM – Integrated management* chapter is to be read alongside all of the other chapters of the pORPS 2021. It directs how integrated management is to be achieved in the management of Otago's environment and provides specific direction on climate change adaptation and mitigation. It is intended that the provisions of this chapter will assist decision-makers to resolve tensions between provisions in other chapters of the pORPS.
4. The underlying principle expressed in s.59 of the RMA bears repetition at the start of this chapter consideration:

59 Purpose of regional policy statements

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.

(our emphasis)

5. The topics addressed particularly in IM-P1 and IM-P2 as to the Integrated Approach and Decision Priorities respectively tended to dominate and permeate the whole of the hearings before us. The significance of that focus on the issue of prioritisation of 'protection' of natural resources is reflected in the lengthy discussion in the Legal Section in Appendix One of the differing views which we broadly termed as 'enabling' or 'protectionist' approaches.
6. We do not intend to repeat any of that legal section discussion in this chapter consideration and hence only where necessary will make reference to the findings made there.
7. The consideration of particularly IM-O1 and IM-03 and IM-P1, IM-P2 and IM-P14 in this chapter will accordingly be very limited.

8. In relation to the amendments we have suggested for those provisions, and for IM-P6, IM-P13, IM-P14 and IM-P15, there has been an underlying legal purpose. The 32AA assessment for those amendments, therefore, is that they all are intended to more accurately align the provisions involved with the purpose of the RMA in the manner directed by the Supreme Court's decisions in *NZ King Salmon, Save Our Sounds* and the *Port Otago* case.

2. IM-01 and IM-03

9. The notified versions of these two objectives were as follows:

IM-01 – 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-03 – 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.

10. In essence the submissions on these objectives, as with those on IM-P1 and IM-P2, were primarily focussed on the prioritisation issues. The outcome of those considerations were affected by the Supreme Court decisions as discussed in the Legal Section of this report. The consequence is addressed in the finally recommended IM-P1 which recommended amalgamating IM-P1 and IM-P2 and creating a consent pathway utilising the 'structured analysis' approach applied by the Supreme Court in the *Port Otago* case.

11. There were some other changes which were consistent with that approach recommended by the final 10 October, 2023 reply report which we set out below:

IM-01 – Long term vision (*mō tātou, ā, mō kā uri ā muri ake nei*)

The management of *natural and physical resources in Otago*, by and for the people of Otago, 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, and supports the well-being of present and future generations, *mō tātou, ā, mō kā uri ā muri ake nei*.

IM-03 – Environmentally sustainable impact

Otago's communities ~~carry out their activities in a way provide for their social, economic, and cultural well-being in ways that support or restore~~ preserves environmental integrity, form, functioning, and resilience, so that the life-supporting capacities of air, water, soil, and ecosystems are safeguarded, and ~~indigenous biodiversity~~ endure for future generations.

12. The Panel agrees with the changes recommended with only one change to IM-03 to amend the phrase 'are safeguarded' to read 'are sustainably managed' to be consistent with the aim of ensuring there is not an implied prioritisation, and to be closely consistent with the s.5 RMA language.

2.1. Recommendation

13. As discussed above, the 10 October, 2023 version wording for IM-01 is recommended to be accepted, but the wording for IM-03 is recommended to be amended as follows:

IM-01 – Long term vision (mō tātou, ā, mō kā uri ā muri ake nei)

The management of *natural and physical resources* in Otago, by and for the people of Otago, including in partnership with Kā 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, and supports the well-being of present and future generations, mō tātou, ā, mō kā uri ā muri ake nei.

IM-03 – Environmentally sustainable impact

Otago's communities carry out their activities in a way provide for their social, economic, and cultural well-being in ways that support or restore preserves environmental integrity, form, functioning, and *resilience*, so that the life-supporting capacities of air, water, soil, and ecosystems are safeguarded sustainably managed, and indigenous *biodiversity* endure for future generations.

3. IM-P1 and IM-P2

14. In the final reply reports in May, 2023 these two policies were recommended to be amalgamated into one policy with which the Panel was in agreement.
15. Then in the aftermath of the *Port Otago* Supreme Court decision the ORC in final closing submissions of counsel outlined why the final 10 October, 2023 version of the PORPS recommended major changes to the prioritisation issue in these two policies, and recommended a 'structured analysis' approach to achieve intergated management.
16. In the Legal section of this report after the discussion of the *Port Otago* Supreme Court decision and the ORC change of position, we had continued on to address why the 10 October, 2023 recommended wording still required further amendment. That was because of the need to potentially resolve objective or policy differences arising between a range of various statutory instruments.

3.1. Recommendation

17. We do not propose to repeat that Legal section discussion here, but for the sake of the record as to this chapter topic we do set out below our recommendation as to the changes we recommend to the final 10 October, 2023 version of the amended and combined IM-P1 and IM-P2 by deleting those notified provisions and replacing them with the following IM-P1:

IM-P1 – Integrated approach to decision-making

Giving effect to the integrated package of objectives and policies in this RPS and other relevant statutory provisions requires decision-makers to:

- (1) consider all provisions relevant to an issue or decision and apply them purposively according to the terms in which they are expressed, and
- (2) if after (1) there is an irreconcilable conflict between any of the relevant RPS and/or statutory provisions which apply to an activity, only consider the activity if:
 - (a) the activity is necessary to give effect to a relevant policy or statutory provision and not merely desirable, and
 - (b) all options for the activity have been considered and evaluated, and
 - (c) if possible, the chosen option will not breach any other relevant policy or statutory provision, and
 - (d) if (c) is not possible, any breach is only to the extent required to give effect to the policy or statutory provision providing for the activity, and
- (3) if 2(d) applies, evaluate all relevant factors in a structured analysis to decide which of the conflicting policies or statutory provisions should prevail, or the extent to which any relevant policy or statutory provision should prevail, and
- (4) in the analysis under (1) or (2), and in the structured analysis under (3), assess the nature of the activity against the values inherent in the relevant policies or statutory provisions in the particular circumstances.

4. IM-P4 – Setting a Strategic approach to ecosystem health

18. This policy was notified as follows:

IM-P4 – Setting a strategic approach to ecosystem health

Healthy ecosystems and ecosystem services are achieved through a planning framework that:

- (1) protects their intrinsic values,
- (2) takes a long-term strategic approach that recognises changing environments,
- (3) recognises and provides for ecosystem complexity and interconnections, and
- (4) anticipates, or responds swiftly to, changes in activities, pressures, and trends.

19. Submissions on IM-P4 requested the following:

- Amendments to balance ecological health with use, development and growth;
- Several amendments to increase clarity and give the policy more ‘teeth’, for example through clause (1) seeking to enhance as well as maintain intrinsic values, promote ecological resilience, and recognise that cumulative effects often undermine ecological health.

- Clarity as to whether the policy applies to resource consent processes or only to district and regional plan preparation;
- That clause (2) refer to RMIA-MKB-I5 to acknowledge the need for a partnership approach, and references the ‘impacts of climate change’;
- Recognition of the importance of robust science and monitoring data; and
- An additional clause recognising the importance of environmental limits in ecosystem health.

20. The s.42A and reply reports by Ms Boyd recommended a number of amendments in response to these submissions, including:

- Clarifying that the policy applies to district and regional plan development and not resource consents;
- Changing ‘protects’ to ‘have particular regard’ in clause (1) to better reflect s.7(d) of the RMA;
- Recognising the impacts of climate change in clause (2);

21. We note that there are a number of provisions that are relevant to this policy, including RMIA-MKB-I5. Referring to this issue in isolation would potentially confuse matters. We also do not agree that this policy should reference resource use, as the impacts on ecosystem health are the subject of this policy. Such matters are appropriate to be addressed in the ECO chapter, and human impacts in a broader sense are addressed in IM-P14.

22. IM-P6 addresses the use of scientific data and monitoring and requires that the best available information be used. We do not consider it necessary to repeat this through recognising the importance of science and monitoring data in IM-P4, as requested by Federated Farmers. Similarly, cumulative effects are addressed by IM-P13 and environmental limits by IM-P14. We don’t consider is appropriate to address these matters in IM-P4 as well.

4.1. **Recommendation**

23. We recommend that the wording in the reply report version of the PORPS be adopted for IM-P4, as follows:

IM-P4 – Setting a strategic approach to ecosystem health

Healthy and resilient ecosystems and ecosystem services are achieved by developing regional plans and district plans through a planning framework that:

- (1) protects have particular regard to their the intrinsic values of ecosystems,
- (2) takes take a long-term strategic approach that recognises changing environments ongoing environmental change, including the impacts of climate change,
- (3) recognises recognise and provides provide for ecosystem complexity and interconnections, and
- (4) anticipates anticipate, or responds respond swiftly to, changes in activities, pressures, and trends.

5. IM-P5 – Managing environmental interconnections

24. The notified version of IM-P5 was as follows:

IM-P5 – Managing environmental interconnections

Coordinate the management of interconnected *natural and physical resources* by recognising and providing for:

- (1) situations where the value and function of a *natural or physical resource* extends beyond the immediate, or directly adjacent, area of interest,
- (2) the effects of activities on a *natural or physical resource* as a whole when that resource is managed as sub-units, and
- (3) the impacts of management of one *natural or physical resource* on the values of another, or on the *environment*.

25. In her s.42A report, Ms Boyd recommended deleting IM-P13 – Managing cumulative effects and adding a new clause (4) to IM-P5 addressing cumulative effects. This was opposed by submitters, including Kāi Tahu ki Otago and the Director General of Conservation, and Ms Boyd recommended in her reply report that IM-P13 be reinstated, albeit in an amended form. We agree with that approach, which is addressed in relation to IM-P13 later in this report, and consider that a clause addressing cumulative effects is not required in IM-P5.

26. There was concern from submitters, including Wise Response and Kāi Tahu ki Otago, as to how IM-P5 would be applied and implemented. For example, would it apply to both regulatory and non-regulatory work? Ms Boyd discussed this in her supplementary evidence and reply report, stating that she considered that it should apply to all resource management processes. Ms Boyd’s supplementary evidence recommended amending the chapeau as follows:

In resource management decision-making, manage the use and development
~~Coordinate the management of interconnected *natural and physical resources* by recognising and providing for:~~

...

27. Ms McIntyre for Kāi Tahu questioned “why the scope of the policy has been limited to “resource management decision-making”, as recognition of environmental connections should be an integral part of all resource management processes”.¹ In her reply report, Ms Boyd stated that she considered that decision-making “occurs in a range of resource management processes, such as plan-making, consent applications, and during monitoring and enforcement”.²

28. We have some sympathy for Ms McIntyre’s view that ‘resource management decision-making’ may be too narrow to capture the breadth of resource management processes that this integrated management policy is clearly intended to capture. Ms Boyd’s list of examples only includes regulatory decision-making and, in our view, this could be a common interpretation. We prefer the following wording proposed by Ms McIntyre in Appendix 1 to her Evidence in Chief:

¹ EIC of Ms Sandra McIntyre for Kāi Tahu ki Otago, para 82(b)

² Reply Report of Ms Felicity Boyd, 23 May 2023, para 84

Manage the use and development of interconnected natural and physical resources by recognising:

...

29. Turning to other submissions, we agree with Ms Boyd's recommendation to accept the request by Fish and Game and Kāi Tahu that clause (2) should refer to the 'environment' rather than 'natural and physical resources'.

5.1. Recommendation

30. We recommend the following amendments to IM-P5:

IM-P5 – Managing environmental interconnections

~~Coordinate the management of~~ Manage the use and development of interconnected natural and physical resources by recognising ~~and providing for:~~

- (1) situations where the value and function of a *natural or physical resource* extends beyond the immediate, or directly adjacent, area of interest,
- (2) ~~the effects of activities on a natural or physical resource as a whole when that resource is managed as sub-units~~ situations where the effects of an activity extend to a different part of the environment, and
- (3) the impacts of management of one *natural or physical resource* on the values of another, or on the *environment*.

6. IM-04 – Climate change

31. As notified, IM-04 reads:

IM-04 – 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.

32. Five submitters sought to retain this provision as notified while a number sought changes. Many of the changes sought requested that the objective reference local, regional, and national objectives and targets for climate change. Wise Response requested that the objective require a reduction in the rate of resource and energy use to sufficient "fair share" and concurrently promote a shift to essential renewable energy. Manawa Energy (Manawa) sought reference to strategic actions alongside adaptation and mitigation while Contact Energy (Contact) sought better recognition of renewable energy's role.
33. Ms Boyd, the s42A report author, made some changes in response to these submissions, and also in relation to the broader submissions on climate change. The changes did not include any recognition of the role renewable electricity generation will play in addressing climate change which, in her opinion, is the more appropriately located in the EIT-EN section is.
34. While we generally with, and accept, the changes Ms Boyd has made, we do feel that greater recognition should be provided for the role of renewable electricity generation in this provision.

We heard compelling evidence from all the REGs, particularly from Contact, on how significant this role will be. Ms Hunter, the planner for Contact, stated at paragraph 8.5 of her EIC:

Mr Hunt explains that New Zealand law sets a target for the country to reduce net emissions of greenhouse gases to zero by 2050.⁸ The Government also has an aspirational target of transitioning to 100% REG by 2030.⁹ Mr Hunt also explains that electricity demand is expected to grow substantially as New Zealand uses more electricity to decarbonise the economy.¹⁰ The ongoing use and development of new REG facilities is, therefore, a critical and significant component of climate change mitigation in New Zealand.

35. While we agree with Ms Boyd in section 6.5 of her s42A report that REGs do not need a standalone provision in the IM section, we agree with Ms Hunter that it should at least be recognised, given the IM provisions address integrated management of resources across domains and topics', as Ms Boyd stated in her introductory chapter. The development of REGs generally affects 'resources across domains and topics', some of which will have restrictive limits to their use. In our view, IM-P12 recognises this by acknowledging that climate mitigation/adaptation activities will potentially compromise these limits when addressing climate change. REGs projects are likely to be some of the most important of these activities in the near future.

6.1. Recommendation

36. The Panel recommends amending IM-04 as follows:

IM-04 – Climate change

Otago's communities, including Kāi Tahu, understand what *climate change* means for their future, and responses to climate change responses in the region, (including climate change adaptation and climate change mitigation actions,):

- (1) are aligned with national level *climate change* responses,
- (2) assist with achieving the national target for emissions reduction, including by having a highly renewable energy system, and
- (3) are recognised as integral to achieving the outcomes sought by this RPS.

7. IM-P8 – Climate change impacts

37. As notified, IM-P8 reads:

IM-P8 – Climate change impacts

Recognise and provide for *climate change* processes and *risks* by identifying *climate change* impacts in Otago, including impacts from a te ao Māori perspective, assessing how the impacts are likely to change over time and anticipating those changes in resource management processes and decisions.

38. A number of submitters sought retention of this policy as notified (CIAL, CODC, Greenpeace and Ravensdown) while others sought a range of wording changes along with the inclusion of reference to information requirements and consultation processes. Ms Boyd made some minor

changes in response to these submissions and promoted a restructuring of the policy so that its direction is more clearly expressed.

39. We have reviewed Ms Boyd’s assessment of the submissions and find ourselves in agreement with the conclusions she has reached.

7.1. Recommendation

40. The Panel recommends amending IM-P8 as follows:

IM-P8 – Effects of Climate change impacts

Recognise and provide for the effects of climate change processes and risks by:

- (1) identifying the effects of climate change impacts in Otago, including impacts from a te ao Māori the perspectives of Kāi Tahu as mana whenua, assessing how the impacts effects²⁰⁴ are likely to change over time, and
- (2) anticipating taking into account²⁰⁵ those changes in resource management processes and decisions.

8. IM-P9 – Community response to climate change impacts

41. As notified, IM-P9 reads:

IM-P9 – Community response to climate change impacts

By 2030 Otago’s communities have established responses for adapting to the impacts of *climate change*, are adjusting their lifestyles to follow them, and are reducing their *greenhouse gas* emissions to achieve net-zero carbon emissions by 2050.

42. Six submitters sought retention of this policy. The Waitaki Irrigators requested that it either be deleted or that it become an anticipated environmental result. Federated Farmers also requested that it be deleted, questioning whether the policy aligned with the requirements of the RMA and suggested that it is a matter for climate change legislation or regulations. Several other submitters sought changes to the policy.

43. Ms Boyd agreed with the submitters who questioned whether IM-P9 is expressed as a policy. She felt that part of the policy is an outcome (the reference to ‘achieving net-zero carbon emissions’) with other parts being methods (that communities adjust their lifestyles and reduce greenhouse gas emissions). She recommended that it be deleted provided her recommendation to incorporate “*assist with achieving the national target for emissions reduction*” into IM-O4 is accepted.

44. We have recommended the requested amendment to IM-O4 and agree with Ms Boyd that the other parts of the provision are not appropriate for a policy and that they lack clarity. Hence, we have accepted her recommendation to delete IM-P9.

8.1. Recommendation

45. The Panel recommend as follows:

- (a) Delete IM-P9.

(b) incorporate the reference to the national target for emissions reduction into IM-04.

9. IM-P10 – Climate change adaptation and mitigation

46. As notified, IM-P10 reads:

IM-P10 – *Climate change* adaptation and mitigation

Identify and implement *climate change* adaptation and mitigation methods for Otago that:

- (1) minimise the *effects* of *climate change* processes or *risks* to existing activities,
- (2) prioritise avoiding the establishment of new activities in areas subject to *risk* from the *effects* of *climate change*, unless those activities reduce, or are resilient to, those *risks*, and
- (3) provide Otago’s communities, including Kāi Tahu, with the best chance to thrive, even under the most extreme *climate change* scenarios.

47. Along with support to retain the policy as notified, there were numerous requests for amendments on a range of issues. No submission sought the deletion of this policy. Ms Boyd has recommended a number of changes in response to the submissions. We generally accept this recommendation with the exception of deleting the phrase ‘existing activities’ from the first clause.

48. While we agree with the addition of the wider environment to clause (1), explicit reference to ‘existing activities’ is considered appropriate by the Panel given the focus of this provision. There will be some, if not many, existing activities that will require adaptation plans to be implemented to protect them against the effects of climate change. Consequently, we have recommended a modified version of Ms Boyd’s amendment as proposed in her supplementary report.

49. We also agree with Ms Boyd’s recommendation, in response to the DCC submission to include IM-P11 into IM-P10 (with the amendments made in response to Dr Freeman for OWRUG), but we again agree with both Manawa and Contact that the policy needs to recognise the role that renewable electricity generation plays in mitigation. In the Panel’s view, that activity will be critical in addressing the climate change issue. We have therefore adopted a combination of the wording proposed by Ms Styles (for Manawa) and Ms Hunter (for Contact), as follows:

Protects its existing renewable electricity facilities and provides for the development of new renewable electricity generation and infrastructure.

9.1. Recommendation

50. The Panel recommend as follows:

(a) Amend IM-P10 as follows:

IM-P10 – *Climate change* adaptation and climate change mitigation

Identify and implement *climate change* adaptation and climate change mitigation methods for Otago that:

- (1) minimise the effects of climate change processes or risks on existing activities and the wider environment,
- (2) prioritise avoiding the establishment of new activities in areas subject to risk from the effects of climate change, unless those activities reduce, or are resilient to, those risks, and
- (3) provide Otago's communities, including Kāi Tahu, with the best chance to thrive, even under the most extreme climate change scenarios
- (4) enhance environmental, social, economic, and cultural resilience to the adverse effects of climate change, including by facilitating activities that reduce those effects, and
- (5) protects Otago's existing renewable electricity facilities and provides for the development of new renewable electricity generation and infrastructure.

(b) Delete IM-P11.

10. IM-P12 – Contravening environmental bottom lines for climate change mitigation

51. As notified, IM-P12 reads:

IM-P12 – Contravening environmental bottom lines for climate change mitigation

Where a proposed activity provides or will provide enduring regionally or nationally significant mitigation of *climate change* impacts, with commensurate benefits for the well-being of people and communities and the wider *environment*, decision makers may, at their discretion, allow non-compliance with an environmental bottom line set in any policy or method of this RPS only if they are satisfied that:

- (1) the activity is designed and carried out to have the smallest possible environmental impact consistent with its purpose and *functional needs*,
- (2) the activity is consistent and coordinated with other regional and national *climate change* mitigation activities,
- (3) adverse *effects* on the *environment* that cannot be avoided, remedied, or mitigated are offset, or compensated for if an offset is not possible, in accordance with any specific criteria for using offsets or compensation, and ensuring that any offset is:
 - (a) undertaken where it will result in the best ecological outcome,
 - (b) close to the location of the activity, and
 - (c) within the same ecological district or coastal marine biogeographic region,
- (4) the activity will not impede either the achievement of the objectives of this RPS or the objectives of regional policy statements in neighbouring regions, and

- (5) the activity will not contravene a bottom line set in a national policy statement or national environmental standard.

52. This provision attracted a range of submissions including several submitters seeking its retention to those requesting it be deleted. Others sought that this approach be applied to other provisions that regulate important infrastructure. Wise Response submitted that the Government would legislate for individual projects if they are important enough so sought deletion of the policy or alternatively, that approval be sought from the Minister of Conservation to breach bottom lines. OWRUG also sought deletion of the policy or that it be amended for consistency with the purpose of the RMA. They submit it is not clear whether this policy achieves the purposes of the RMA or if it can be reconciled with other highly directive provisions within relevant NPSs or the pORPS 2021 itself. Federated Farmers considers that the policy sets such a high bar for these activities that it is unlikely any activities would meet the criteria. A range of other amendments were also sought by other submitters.
53. Ms Boyd recommended a number of amendments in her s42A report but revisited this provision in her reply given the lengthy discussion in the various hearings in relation to the importance of increasing renewable electricity generation as a method for reducing greenhouse gas emissions. The REG submitters generally considered that IM-P12 provided an important pathway for developing climate change mitigation projects.
54. In response to that, Ms Boyd made further changes which led to the following provision being recommended by her:

IM-P12 – Contravening *environmental bottom lines* limits for climate change mitigation

~~Where if a proposed activity provides or will provide enduring regionally or nationally significant climate change mitigation mitigation of *climate change* impacts, with commensurate benefits for the well-being of people and communities and the wider *environment*, decision makers may, at their discretion, allow non-compliance with an *environmental bottom line limit* set in, or resulting from, any policy or method of this RPS only if they are satisfied that:~~

- ~~(1) the activity is designed and carried out to have the smallest possible environmental impact consistent with its purpose and *functional needs*~~
- ~~(2) the activity is consistent and coordinated with other regional and national *climate change mitigation* activities, and~~
- ~~(3) adverse *effects* on the *environment* that cannot be are avoided, remedied, or mitigated so that they are minimised to the greatest extent practicable and any residual adverse *effects* are offset, or compensated for, and if an offset is not possible, in accordance with any specific criteria for using offsets or compensation, and ensuring that any offset is:
 - ~~(a) _____ undertaken where it will result in the best ecological outcome,~~
 - ~~(a) _____ close to the location of the activity, and~~
 - ~~(b) _____ within the same ecological district or coastal marine biogeographic region,~~~~

- (4) ~~the activity will not impede either the achievement of the objectives of this RPS or the objectives of regional policy statements in neighbouring regions, and~~
- (5) ~~the activity will not contravene a bottom line set in a national policy statement or national environmental standard., and~~
- (6) it is demonstrated that there are no other reasonable alternatives to the activity proposed.

55. While the Panel considers this iteration of the policy to be an improvement, we are of the opinion that there are still a number of clauses that are unlikely to assist with the development of key projects that are designed to address climate change impacts. We address these below.

56. While Port Otago considered the policy a practical balancing approach to facilitate climate change mitigation projects, they sought explicit recognition of climate change adaptation because it is not clear whether this is provided for in the policy.

57. In her s42A report, Ms Boyd agreed with Port Otago that it is unclear whether the policy applies to climate change adaptation or climate change mitigation or both. But she went on to say:

“I note that the title and clause (2) refer only to climate change mitigation, but the chapeau refers to “mitigation of climate change impacts” which is more aligned with adaptation. In my opinion, environment limits are important to protecting the health of natural resources and breaches should only be provided for in limited circumstances. Climate change mitigation assists to reduce the sources or enhance the sinks of greenhouse gases, meaning that less adaptation may be required. I consider that breaching environmental limits for this purpose could be appropriate in certain circumstances due to the national and potentially international benefits of climate change mitigation. For these reasons, I consider the policy should be clearly focused only on climate change mitigation, not climate change adaptation, and therefore do not recommend accepting the submission point by Port Otago”.

58. The Panel does not understand why this provision should not be available to projects that may be critical in protecting or relocating communities and infrastructure from actual or expected climate effects. In our view, this will be just as important in the response to climate change effects as reducing the source of that change. The rate and magnitude of climate change impacts is not known with any great certainty so communities must have all options available to them for any necessary response. Hence, we agree with Port Otago and have included *climate change adaptation* within the policy.

59. Meridian considers that clause (2) is unclear in terms of how ‘consistency’ is to be determined and seeks its deletion. That clause reads *“the activity is with other regional and national climate change mitigation activities”*. The Meridian submission queried whether *“this requires the same source of renewable electricity generation (e.g., hydro, solar or wind); or consistency of technology used; or scale of electricity generation; or scale of greenhouse emissions avoided relative to electricity generated.”*

60. In her response to this matter, Ms Boyd referred to the Climate Change Response Act which sets up the policy framework for climate change action in New Zealand. The emissions reduction plan

which will flow from this legislation will describe how the country will meet emissions budgets and make progress towards achieving the 2050 target. As a consequence, Ms Boyd considers that *“it is important that the application of this policy is consistent with the broader policy framework for climate change mitigation”* and recommended against accepting the submission.

61. We agree with Meridian on this point. In our view, this clause introduces an unnecessary degree of uncertainty in its current form. But regardless of this, it is not needed given the chapeau refers to ‘regionally or nationally significant’ projects, and given the fact that it is not mandatory to apply the policy. One would expect that any applicant looking to utilise this provision would need to address the matter Ms Boyd’s report raises to convince the decision maker it is worthy.
62. On the point of it not being mandatory, several submitters requested that the decision makers must always apply the policy in such circumstances. However, we believe that where limits are being compromised, a value judgment will be required before it can be determined whether this policy should be applied or not. Hence, we have not recommended that change but do consider the word ‘only’ to be superfluous in the last line of the chapeau.
63. The remaining matter to discuss is Ms Boyd’s response to Mr Farrell (for Fish and Game), who was of the view that, as she put it, *“activity is to be provided the ability to ‘get around’ the policies and methods of the pORPS ...then it is appropriate that this should be as a ‘last resort’ – i.e. after assessment has determined that there are no other reasonable alternatives.”* Ms Boyd accepted this proposition, given the alternative pathway this policy provides, and recommended a clause addressing this matter accordingly.
64. Again, we consider this superfluous given that the chapeau refers to ‘regionally or nationally significant’ projects, and the fact that it is not mandatory to apply the policy. It raises similar issues to that which Meridian raised in respect of clause 2. There will always be alternatives to the project, but the issue is always whether there is a proponent for these projects. Hence, we do not accept this recommendation.
65. In line with our recommendations to other provisions, we also recommend that ‘to the greatest extent practicable’ be replaced ‘to the extent reasonably practicable’.

10.1. Recommendation

66. The Panel recommends the following amendments to IM-P12 (changes compared to the Reply Report):

IM-P12 – Contravening environmental bottom lines limits for climate change mitigation and climate change adaptation.

Where if a proposed activity provides or will provide enduring regionally or nationally significant *climate change mitigation* or *climate change adaptation* mitigation of *climate change* impacts, with commensurate benefits for the well-being of people and communities and the wider *environment*, decision makers may, at their discretion, allow non-compliance with an *environmental* bottom line limits set in, or resulting from, any policy or method of this RPS only if they are satisfied that:

- (1) ~~the activity is designed and carried out to have the smallest possible environmental impact consistent with its purpose and functional needs,~~
- (2) ~~the activity is consistent and coordinated with other regional and national~~

climate change mitigation activities, and

- (3) ~~adverse effects on the environment that cannot be are avoided, remedied, or mitigated so that they are minimised to the extent reasonably practicable, and any significant residual adverse effects are offset, or compensated for, and if an offset is not possible, in accordance with any specific criteria for using offsets or compensation, and ensuring that any offset is:~~
 - ~~(a) undertaken where it will result in the best ecological outcome,~~
 - ~~(b) close to the location of the activity, and~~
 - ~~(c) within the same ecological district or coastal marine biogeographic region,~~
- (4) ~~the activity will not impede either the achievement of the objectives of this RPS or the objectives of regional policy statements in neighbouring regions, and~~
- (5) ~~the activity will not contravene a bottom line set in a national policy statement or national environmental standard.~~

11. Other IM Climate Change Provisions

67. Related to the IM climate change objectives and policies, are several methods, being IM-M1(2) and (3), IM-M3(1), IM-M4 and IM-M5. IM-AER3 is also related to climate change. We have reviewed the submissions on those provisions and Ms Boyd's responses. The Panel has not identified any issue of concern with these provisions as now recommended and adopt them accordingly.

68. Ms Boyd also addressed climate change in a general sense in section 6.3.1 of her s42A report. She made several recommendations on the relevant provisions in that section. We agree with those recommendations except where a change has been recommended in our decision report on the specific provisions.

12. IM-P6 and IM-P15 – Uncertain~~?~~s and Precau~~?~~nary approach

69. Two policies addressed these linked issues in the notified PORPS. Policy IM-P6 was initially notified as addressing the need to use the best available information and to avoid delay in doing so. Policy IM-P15 addressed the need to reflect the NZCPS 2010 Policy 3 imperative as to a precautionary approach to decision-making, (which also appears expressly or impliedly in other forms in other national policy statements). That required that a precautionary approach was to be adopted to RMA decision-making where effects are uncertain, unknown or little understood.

70. Policy IM-P6 as notified adopted a very simplistic response to a complex issue and read:

IM-P6 – Acting on best available information

Avoid unreasonable delays in decision-making processes by using the best information available at the time, including but not limited to mātauraka Māori, local knowledge, and reliable partial data.

71. The risks of such a simplified approach can be at either end of the spectrum.

72. At the 'protectionist' end it can lead to decisions being made to always avoid effects because enough information as to those effects is not available. Particularly where an activity is new that may well always be the case. At the other end of the scale a permissive or too 'enabling' approach may lead to decisions being made to allow activities because adverse effects are not known, rather than incur delay whilst attempts are made to prove sustainable effects. If that was to occur then there is the risk that in actual practice serious adverse effects may occur, or cumulatively arise.

73. The notified version of IM-P15 addressed the precautionary principle as follows:

IM-P15 – Precautionary approach

Adopt a precautionary approach towards proposed activities whose effects are uncertain, unknown or little understood, but could be significantly adverse, particularly where the areas and values within Otago have not been identified in plans as required by this RPS.

74. The submission responses to these policies were varied. As to IM-P6 Kāi Tahu sought retention as notified; DOC sought an emphasis on the precautionary principle; DCC sought speedier albeit careful decision-making to enable evidence to be gathered; Federated Farmers and OWRUG sought that reliable data be available before decisions were made; Fonterra also sought more detailed reliable evidence before decisions were made; University of Otago and others such as Lauder Creek Farming and the Yellow-eyed Penguin Trust stressed the need for 'robust' or 'scientific' evidence. Harbour Fish and Southern Inshore Fisheries sought opportunity for stakeholder input. Wise Response sought greater emphasis on timely decision-making against reliable evidence.

75. As to IM-P15, similarly there was a wide variety of views in submissions (summarised at paragraphs 437 to 447 of the s.42A report). In the case of this policy, though, many sought that it be deleted for various reasons. One of the more compelling of those submissions was from OWRUG which asserted that where susceptible areas and values may not have been identified in the manner required by the PORPS, this policy potentially could operate as a holding pattern that prevented activities which could achieve the purpose of the RMA from commencing. It made the point that that outcome would not be reasonable or appropriate.

76. As had been demonstrated as long ago as 2014 in the Supreme Court decision in *Sustain our Sounds v. NZKS* SC 84/2013 [2014] NZSC 40, the issue of uncertainty as to effects of decision-making under the RMA has long been addressed, particularly in the aquaculture area, by a system of practical adaptive management. In large measure, as demonstrated by that case, that practice probably developed a particular impetus from the need to meet Policy 3 of the NZCPS, as well as the natural antipathy of decision-makers to grant consents when some potential adverse effects were uncertain or unknown.

77. In essence that adaptive management practice involves a proposition whereby consents are staged to enable some limited initial activity, often staged over years or seasons, where effects are closely measured and monitored, with those results being commonly compared to predictive computer-modelled outcomes. If the results of those measurements of effects demonstrates sustainable levels of effects, then the consent conditions imposed will allow movement to the next consented stage to be measured and monitored. That type of adaptive management approach was not expressly provided for in the notified PORPS. It has become standard now in many areas – particularly also as to the effects of drawdown from both surface and groundwater takes where computer-modelled outcomes are given an opportunity to be proven in practice.

78. The outcome of the submission response and inputs from the Panel during the hearings was a recommended change by the s.42A report to amend IM-P6 and other provisions to enable an adaptive management approach to be adopted by regional, coastal and district plans. The report writer also recommended that IM-P6 and IM-P15 as to the precautionary principle be amalgamated as they were addressing related issues. That amalgamation had been sought by submitters such as DOC and Mr. Highton.

79. The recommended provision was:

IM-P6 – Acting on best available information Managing uncertainties

~~Avoid unreasonable delays in decision-making processes by using the best information available at the time, including but not limited to mātauraka Māori, local knowledge, and reliable partial data.~~

In resource management decision-making, manage uncertainties by using the best information available at the time, including scientific data and mātauraka Māori, and:

(1) taking all practicable steps to reduce uncertainty, and:

(a) in the absence of complete and scientifically robust data, using information obtained from modelling, reliable partial data, and local knowledge, with preference for sources of information that provide the greatest level of certainty, and

(b) avoiding unreasonable delays in making decisions because of uncertainty about the quality or quantity of the information available, and

(2) adopting a precautionary approach, including through use of adaptive management, towards activities whose effects are uncertain, unknown, or little understood, but potentially significantly adverse.

80. There was some resistance to that proposed amalgamation by Ms. McIntyre for Kāi Tahu on the basis that such a change would appear to emphasise the consenting aspect ahead of the precautionary principle. The report writer's view was that each aspect was important, neither was stressed as a priority, and that they sensibly could and should be in the same provision.

81. The Panel's desire to see adaptive management practices identified as an appropriate decision-making tool was recognised by the wording proposed. Therefore, the Panel was satisfied that the suggested amendments addressed the concerns of submitters, and at the same time in the same provision appropriately applied the precautionary principle.

12.1.1. **Recommendation**

82. That IM-P6 and IM-P15 be amalgamated into an amended IM-P6 as follows, with IM-P15 being deleted:

IM-P6 – Acting on best available information Managing uncertainties

~~Avoid unreasonable delays in decision-making processes by using the best information available at the time, including but not limited to mātauraka Māori, local knowledge, and reliable partial data.~~

In resource management decision-making, manage uncertainties by using the best information available at the time, including scientific data and mātauraka Māori, and:

- (1) taking all practicable steps to reduce uncertainty, and:
 - (a) in the absence of complete and scientifically robust data, using information obtained from modelling, reliable partial data, and local knowledge, with preference for sources of information that provide the greatest level of certainty, and
 - (b) avoiding unreasonable delays in making decisions because of uncertainty about the quality or quantity of the information available, and
- (2) adopting a precautionary approach, including through use of adaptive management, towards activities whose effects are uncertain, unknown, or little understood, but potentially significantly adverse.

13. IM-P13 – managing cumulative effects

83. The management of cumulative effects has been one of the most vexed issues in relation to various parts of the environment. Effects such as the effects of discharges on freshwater and coastal water quality from sedimentation is a classic illustration in many parts of the country where multiple sources could potentially be contributing to the adverse effects on water quality. In the RMA itself in s.3 cumulative effects are defined as an integral part of the suite of ‘effects’ the definition including:

- any cumulative effect which arises over time or in combination with other effects, regardless of the scale, intensity, duration, or frequency of the effect.

84. Significant new such effects over recent years have been the increasing, yet often hard to perceive, effects of climate change and related sea-level rise.

85. As notified the PORPS addressed cumulative effects issues in IM-P13 as follows:

IM-P13 – Managing cumulative effects

Otago’s environmental integrity, form, function, and resilience, and opportunities for future generations, are protected by recognising and specifically managing the cumulative effects of activities on natural and physical resources in plans and explicitly accounting for these effects in other resource management decisions.

86. Once again as with other notified provisions the emphasis in the notified version contained a protectionist tone.

87. The submitter response was again diverse (and is summarised at paragraphs 403-409 of the S.42A report by Ms. Boyd). Kāi Tahu identified the omission of climate change and sea level rise; some such as Federated Farmers were concerned that terms like ‘accounting’ were impractical and not RMA related language, and OWRUG maintained such effects were impractical to definitively ‘account for’; a number sought use of the term ‘environment’ rather than natural and physical resources, as such resources fell within the definition of ‘environment’; and DCC advanced a wording which provided more balance between use and protection of the environment.

88. It is significant, though, that no submitter sought the deletion of Policy IM-P13 which probably reflects the level of concern that is felt as to the serious potential impacts of cumulative effects in some areas of the environment. That reality is reflected most significantly by the stringent terms of the NPSFM attempting to address the dual problems of cumulative effects on water

quality, and over allocation. (That observation once more highlights how nonsensical it is to attempt to address integrated management of the environment in a discussion which is not supposed to address freshwater quality and quantity issues.)

89. The report writer Ms. Boyd waxed and waned about the outcome of the submitter response initially and after hearing their evidence and submissions. In her initial report she did not think policy IM-P13 provided particularly clear direction on how it should be implemented. She addressed this policy again in a statement of supplementary evidence, where she proposed to incorporate the direction about managing cumulative effects in a new clause in IM-P5 instead. In that evidence she also concluded that IM-P13 that provided the policy direction to IM-M1(4) and without that policy, it was difficult to understand what that part of the method is implementing. As notified IM-M1(4) had stated:

(4) ensure cumulative effects of activities on natural and physical resources are accounted for in resource management decisions by recognising and managing such effects, including:

- (a) the same effect occurring multiple times,
- (b) different effects occurring at the same time,
- (c) different effects occurring multiple times,
- (d) one effect leading to different effects occurring over time,
- (e) different effects occurring sequentially over time,
- (f) effects occurring in the same place,
- (g) effects occurring in different places,
- (h) effects that are spatially or temporally distant from their cause or causes, and,
- (i) more than minor cumulative effects resulting from minor or transitory effects,

90. All of those effects are variants of cumulative effects so without a policy as a base the method would have been left swinging unsupported by a policy framework. At that stage Ms. Boyd had recommended that Policy IM-P13 be deleted and be replaced by a new additional cumulative effects clause being added to Policy IM-P5.

91. But finally, in the face of strong opposition from DOC and Kāi Tahu to such a change the Reply report in May 2023 recommended a more balanced approach by amendment to Policy IM-P13 as follows:

IM-P13 – Managing cumulative effects

~~Otago’s environmental integrity, form, function, and resilience, and opportunities for future generations, are protected by recognising and specifically managing the cumulative effects of activities on natural and physical resources in plans and explicitly accounting for these effects in other resource management decisions.~~

In resource management decision-making, recognise and manage the impact of cumulative effects on the form, functioning and resilience of Otago’s environment (including resilience to climate change) and the opportunities available for future generations.

92. Given the Supreme Court’s direction as to the need to avoid prioritisation, but also taking into account the general concern about the potential seriousness of cumulative effects, the Panel is satisfied that the policy should be retained, and that the wording finally recommended is appropriate. The reference to ‘climate change’ is possibly arguably unnecessary in this policy because that issue is subject to express policies in the final recommended version of IM-P8, IM-

P10 and IM-P12. However, as climate change is one form of cumulative effect we are not concerned about that added reference.

13.1.1. **Recommendation**

93. The Panel recommends that the wording for policy IM-P13 in the reply report version dated 10 October 2023 be adopted as follows:

IM-P13 – Managing cumulative effects

~~Otago’s environmental integrity, form, function, and resilience, and opportunities for future generations, are protected by recognising and specifically managing the cumulative effects of activities on natural and physical resources in plans and explicitly accounting for these effects in other resource management decisions.~~

In resource management decision-making, recognise and manage the impact of cumulative effects on the form, functioning and resilience of Otago’s environment (including resilience to climate change) and the opportunities available for future generations.

14. IM- P14 – sustaining resource poten❖

94. The notified form of IM-P14 read:

IM-P14 – Human impact

Preserve opportunities for future generations by:

- (1) identifying limits to both growth and adverse effects of human activities beyond which the environment will be degraded,
- (2) requiring that activities are established in places, and carried out in ways, that are within those limits and are compatible with the natural capabilities and capacities of the resources they rely on, and
- (3) regularly assessing and adjusting limits and thresholds for activities over time in light of the actual and potential environmental impacts.

95. Much of the submission response focussed on concerns at what was perceived to be a ‘protectionist’ approach by use of terminology such as ‘preserve’ in the chapeau, coupled with ‘limits’ on use for that purpose. In short much of the submission and argument about this Policy related to the prioritisation issue addressed earlier in relation to IM-P1, which was addressed as the initial major issue in the Legal section of the Introduction to this report. The removal of any aspect of prioritisation such as a start point of ‘preservation’ would necessarily require some amendment to this policy also to ensure the focus was on management of effects while addressing all relevant considerations.

96. However, much of the submission response also related to the use of the term ‘limits’ – and that issue has been addressed in the Definitions section of the Introduction to this Report. In that discussion we concluded that we could not see any difficulty with the definition and use of that term in the manner proposed. Whilst not needing to repeat that consideration here, for ease of reading the discussion related to this policy we repeat that the definition we have recommended to be adopted is:

Limit

In the LF – Land and freshwater chapter, “limit” has the meaning defined in the NPSFM, and elsewhere, “limit” has its natural and ordinary meaning.

97. The natural meaning of a ‘limit’ according to the Oxford dictionary is:

Any of the fixed points between which the possible or permitted extent, amount, duration, range of action, or variation of anything is confined; a bound which may not be passed, or beyond which something ceases to be possible or allowable.

98. In the definitions section the Panel had decided that was an entirely appropriate use of the term ‘limit’ for RMA purposes.

99. The final recommended 10 October 2023 version responded positively to the submission input seeking a more ‘enabling’ approach to activities and was worded as follows:

IM-P14 – Human impact Sustaining resource potential

When preparing regional plans and district plans, preserve opportunities for future generations by:

(1) where necessary to achieve the objectives of this RPS, identifying environmental limits to both growth and adverse effects of human activities beyond which the environment will be degraded,

(2) requiring that activities are established in places, and carried out in ways, that are within those environmental limits and are compatible with the natural capabilities and capacities of the resources they rely on, and

(3) regularly assessing and adjusting environmental limits and thresholds for the way activities are managed over time in light of the actual and potential environmental impacts, including those related to climate change, and

(4) providing for activities that reduce, mitigate, or avoid adverse effects on the environment.

100. At first sight the wording of sub-clause (4) as recommended may appear to be too ‘protective’ in tone by appearing to limit activities to those with no effects, by using the terms ‘avoid’ and ‘reduce’ adverse effects. However, on further reflection the use of ‘mitigate’ does envisage that adverse effects may not be able to be completely avoided, or reduced to any great extent. On that basis the Panel can accept that phraseology as being enabling, but appropriately requiring ‘mitigation’ of adverse effects.

101. The only other concern the Panel has with that suggested wording relates to its start point in a policy relating to human activities. The term ‘preserves’ in the chapeau is not consistent in our view with the Supreme Court’s directions as discussed in the Legal section of the Introduction to this report. Again, as for the change we recommended in relation to IM-03 above, we recommend that a wording is used of ‘sustainably manage’ rather than ‘preserve’. As we observed above in relation to IM-03 that phraseology better reflects s.5 RMA language and is consistent with the aim of ensuring there is not an implied prioritisation of ‘preservation’.

14.1.1. **Recommendation**

102. Accordingly we recommend that the wording of Policy IM-P14 is amended to read:

IM-P14 – Human impact Sustaining resource potential

When preparing regional plans and district plans, Preserve sustainably manage opportunities for future generations by:

- (1) where necessary to achieve the objectives of this RPS, identifying environmental limits to both growth and adverse effects of human activities beyond which the environment will be degraded,
- (2) requiring that activities are established in places, and carried out in ways, that are within those environmental limits and are compatible with the natural capabilities and capacities of the resources they rely on, and
- (3) regularly assessing and adjusting environmental limits and thresholds for the way activities are managed over time in light of the actual and potential environmental impacts, including those related to climate change, and
- (4) providing for activities that reduce, mitigate, or avoid adverse effects on the environment.

Section 7: Coastal Environment (CE)

1. Introduction

1. The coastal environment of the Otago region is some 480 kilometres long and encompasses a range of differing types of environments including open coast, harbours, estuaries and terrestrial features and ecosystems which together comprise the coastal marine area and areas adjacent to it. The coastal marine area is defined in s.2 of the RMA as being the area that extends as its seaward boundary from the outer limit of the territorial sea inshore to the line of mean high water springs. That inner boundary is extended where it crosses a river at which locations the inland line is drawn at the lesser point of one kilometre upstream from the river mouth, or a point five times the width of the river mouth. In other words fully or partially estuarine areas are included in the coastal marine area.
2. The term 'coastal environment' itself is not defined, either in the RMA or in the PORPS. Nor is it specifically defined even in the NZCPS 2010 which repetitively applies its objectives and policies to the 'coastal environment'. That repetitive reference in the NZCPS to the 'coastal environment' is of course consistent with the expression in Part 2 of the RMA that the protection of the 'coastal environment' is a matter of national importance. The provisions of s.6(a) of the RMA commence as follows:

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development: ...*

(Panel's emphasis)

3. However, Policy 1(2) of the NZCPS does describe the extent of the coastal environment in very broad terms. That description includes, amongst other matters, coastal lakes and wetlands and their margins, as well as features of coastal vegetation and landscapes, and other inter-related coastal marine and terrestrial systems. Policy 1 provides:
 - (1) *Recognise that the extent and characteristics of the coastal environment vary from region to region and locality to locality; and the issues that arise may have different effects in different localities.*
 - (2) *Recognise that the coastal environment includes:*
 - (a) *the coastal marine area;*
 - (b) *islands within the coastal marine area;*
 - (c) *areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;*
 - (d) *areas at risk from coastal hazards;*

- (e) *coastal vegetation and the habitat of indigenous coastal species including migratory birds;*
- (f) *elements and features that contribute to the natural character, landscape, visual qualities or amenity values;*
- (g) *items of cultural and historic heritage in the coastal marine area or on the coast;*
- (h) *inter-related coastal marine and terrestrial systems, including the intertidal zone; and*
- (i) *physical resources and built facilities, including infrastructure, that have modified the coastal environment.*

4. Against that broad background description of the coastal environment the PORPS as notified identified a range of significant resource management issues for the coastal environment listed in the SRMR chapter. The issue most directly identified in this chapter related to the coastal environment is also identified in SRMR-I8 as follows:

SRMR-I8 – Otago’s coast is a rich natural, cultural and economic resource that is under threat from a range of terrestrial and marine activities

5. SRMR-I1 as to natural hazard effects; SRMR-I2 as to climate change impacts; SRMR-I3 as to pest species; SRMR-I7 as to effects of predators and pests; and SRMR-I10 as to environmental impacts of activities, also relate in varying degrees to the coastal environment.
6. In addition in the RMIA chapter as to resource management issues of significance to iwi authorities in the region, the section under the sub-header RMIA-CE identified 5 issues arising from: a lack of integrated management across the land-water interface RMIA-CE-I1; the degradation of water quality from discharges RMIA-CE-I2; the effects of activities on Kāi Tahu ability to access and harvest kaimoana RMIA-CE-I3; the decline in species as a result of habitat disturbance and modification RMIA-CE-I4; and the poor recognition and protection of wāhi tapu and wāhi tūpuna values RMIA-CE-I5.
7. In relation to most of those issues the hearing panel accepted the reasoning and conclusions advanced by the s.42A reports as they developed, which in large part particularly as to the coastal environment accepted propositions advanced by Kāi Tahu submitters and DOC. As we observed in the overall Introduction to the joint reports ORC made every effort to liaise with Kāi Tahu and the outcome was often an agreed position which the panel accepted. Therefore, only a few limited issues related to Kāi Tahu’s relationship with the coastal environment need specific discussion in this chapter.
8. As discussed in the legal section of this report the preservation of the natural character of the coastal environment, wetlands and lakes and rivers required by s.6(a) of the RMA is qualified by the additional words “*and the protection of them from inappropriate subdivision, use and development*”. The NZCPS consequently has a range of policies aimed at providing that level of preservation and protection, while at the same time it contains other policies aimed at enabling activities, which must be taken as being recognised by the NZCPS as being appropriate in some settings within that coastal environment. It is in those activity areas in the coastal environment where potential conflicts between protection and activity policies may arise, and where, unsurprisingly, emphasis arose in the PORPS submissions process and hearings.
9. The start point of that consideration of the NZCPS policies has to be s.62(3) of the RMA which requires that an RPS “must give effect” to a New Zealand coastal policy statement.

10. Examples of the NZCPS objectives and policies which provide for activities include Objective 6 which includes direction enabling certain forms of subdivision, use, and development in the coastal environment. In particular, bullet points 1 and 2 of Objective 6 acknowledge that:

- *the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;*
- *some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;*

Then bullet point 3 recognises that: '*functionally some uses and developments can only be located on the coast or in the coastal marine area*': with bullet point 4 acknowledging that:

- *the coastal environment contains renewable energy resources of significant value;*

11. More specifically, there are then a range of policies in the NZCPS supportive of the enabling of activities, or in some cases requiring provisions for them. They include Policy 6 as to provision of infrastructure and extraction of minerals; Policy 7 as to varying types of urban activity; Policy 8 as to aquaculture; Policy 9 as to ports; and Policy 10 as to closely limited circumstances for reclamations providing significant regional or national benefit.

12. Another area of activity identified in the NZCPS which is particularly relevant to the evidence called by Kāi Tahu entities is Policy 6(d) which provides:

Policy 6: Activities in the coastal environment

1. In relation to the coastal environment:

- (a) ...*
- (b) ...*
- (c) ...*
- (d) recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them; ...*

13. The reason why Policy 6(1)(d) is so crucial to Kāi Tahu communities in Otago is because their evidence was clear that in gross historical breaches of the Treaty they have lost almost all of their lands, and have been left with only a few pockets of Māori lands or Māori-owned general lands which are commonly near the coast. Their marae are in or near the coastal environment in Otago.

14. In terms of other Part 2 RMA considerations we will not repeat here the conclusions reached in the legal section of this report other than to emphasise what is now the clear legal outcome, that no general priority is to be afforded to directive protection policies over other directive policies which enable activities. In the legal section of this report, and in the Integrated Management chapter topic discussion, particularly of IM-P1, we have also taken up the direction of the Supreme Court in the Port Otago case to ensure consent pathways exist to enable a consideration of activity applications for consent in a structured analysis approach.

15. An example of where a general prioritisation has been recommended is in a new CE-P3(1A) as follows:

CE-P3 – Coastal water quality

Manage water quality in the coastal environment by:

(1A) prioritising the restoration of coastal water quality where it is considered to have deteriorated to the extent described within CE-P2(2), ...

For reasons described in the legal section and summarised above this wording is not in accord with the Supreme Court’s judgment in the *Port Otago* case and we do not accept that aspect of the suggested new policy. The issue of restoration will be one of the factors needing to be assessed in a structured way.

16. In terms of s.32AA of the RMA the wording we recommend below is necessary to ensure that the policy is the most appropriate way to achieve the purpose of this Act.

1.1 Recommendation

17. That can be achieved by rewording the suggested new subclause 1A as follows:

CE-P3 – Coastal water quality

Manage water quality in the coastal environment by:

(1A) restoring coastal water quality where it is considered to have deteriorated to the extent described within CE-P2(2), ...

18. In some respects, for example as to wetland protection, the coastal chapter is treated somewhat differently in the PORPS provisions, often because of the application of NZCPS or exclusionary definitions in the NPSFM and NPSIB as to coastal wetlands. The challenge for this part of the report on the Coastal Environment topic chapter is to ensure that a consistent approach is adopted for the vexed protection and enabling provisions in response to submissions.

19. We agree with the nearly all of the summary of the primary issues needing consideration in respect of this chapter provided in the reply report of 23 May 2023 by the s.42A report writer Mr Andrew McLennan. That summary was as follows:

- a. Kāi Tahu relationship with the coastal environment
- b. Identifying biodiversity in the coastal environment
- c. Providing for infrastructure in the coastal environment
- d. Connections to other chapters within the pORPS21
- e. Identifying the extent of the coastal environment
- f. Providing for aquaculture

20. We propose to address each of those issues other than (e) in that order, as we do not consider that we need to address issue (e). We do, however, also address in this section a legal funding issue, and regional surf breaks.

2. Kāi Tahu relationship with the coastal environment

21. The relationship of Kāi Tahu with the coastal environment in the notified version of the PORPS in its coastal environment chapter was encompassed primarily in Objective CE-01:

CE-01 – Safeguarding the coastal environment

The integrity, form, functioning and resilience of Otago's coastal environment is safeguarded so that:

- (1) the mauri of coastal water is protected, and restored where it has degraded,
- (2) coastal water quality supports healthy ecosystems, natural habitats, water-based recreational activities, existing activities, and customary uses, including practices associated with mahika kai and kaimoana, ...

22. That objective was supported by a more specific objective CE-O4 as follows:

CE-O4 – Kāi Tahu associations with Otago's coastal environment

The enduring cultural association of Kāi Tahu with Otago's coastal environment is recognised and provided for, and mana whenua are able to exercise their kaitiaki role within the coastal environment.

23. The relevant policies included first a requirement in Policy CE-P2(2) and (3) to identify areas where adverse effects on coastal water was restricting mahika kai practices, and areas of particular interest to mana whenua (using that term for takata whenua for reasons discussed in the MW chapter). In addition, other policies of relevance to mana whenua included CE-P3 as to water quality requiring protection against adverse effects on the identified areas of particular interest to mana whenua; CE-P5 as to indigenous biodiversity requiring avoidance of significant adverse effects on habitats of importance for cultural purposes; CE-P8 as to public access, which at subclause (5) excepted the right for unimpeded public access where required to '*protect places or areas of significance to takata whenua, including wāhi tūpuna*'; CE-P11 as to aquaculture which sought to enable this activity at appropriate locations taking into account, inter alia, potential '*..cultural benefits associated with the operation and development of aquaculture activities*'.

24. The most specific policy, however, was CE-P13 as follows:

CE-P13 – Kaitiakitaka

Recognise and provide for the role of Kāi Tahu as kaitiaki of the coastal environment by:

- (1) involving mana whenua in decision making and management processes in respect of the coast,
- (2) identifying, protecting, and improving where degraded, sites, areas and values of importance to Kāi Tahu within the coastal environment, and managing these in accordance with tikaka,
- (3) providing for customary uses, including mahika kai and the harvesting of kaimoana,
- (4) incorporating the impact of activities on customary fisheries in decision making, and
- (5) incorporating mātauraka Māori in the management and monitoring of activities in the coastal environment.

25. In submissions by mana whenua submitters a more specific objective and policy suite was sought principally seeking greater flexibility for mana whenua to carry out activities which

were either in or affected the coastal environment. The particular objective was sought as a primary objective, rather than as a sub-clause to CE-01 as notified, but was finally recommended to be adopted in the reply report by Mr MacLennan in the following restricted form. (We observe in passing that the title to this new provision emanated from mana whenua submitters):

CE-01A – Te Mauri o te Moana

The mauri, health and well-being of Otago’s coastal water is protected, and restored where it is degraded, including through enhancing coastal water quality where it has deteriorated from its natural condition.

26. This recommended provision effectively adapts a highly protective concept very similar to that utilised in the NPSFM for Te Mana o te Wai. We accept the evidence and reasoning advanced in support of such an objective seeking to protect the health and wellbeing of coastal waters, and the enhancement of them where degraded, because that will protect the mauri of the coastal waters. We do have, though, two reservations.

27. The first is that there is an important, albeit subtle, difference in the wording proposed here, as compared to the wording used in the NPSFM. In the NPSFM the fundamental concept of ‘Te Mana o te Wai’ is described by recognising that *‘protecting the health of freshwater protects the health and wellbeing of the wider environment. It protects the mauri of the wai ...’* As we discussed in the legal section of this report that approach neatly avoids any need to define what is ‘mauri’, whereas this proposed wording will require that ‘mauri’ is closely defined because it is specifically required to be protected. That wording arose from the notified version of subclause (1) of CE-01, which was worded in a manner that emphasised the protection of ‘mauri’ even more specifically, as follows:

(1) the mauri of coastal water is protected, and restored where it has degraded,

28. The second problem is that as recommended once again there is a failure in this provision to recognise the qualifier in s.6(a) of the RMA that protection of the coastal environment is only required against inappropriate activities.

29. Once again in terms of s.32AA of the RMA the wording we recommend below is needed to ensure that the objective is worded in a manner that ensures it is the most appropriate way to achieve the purpose of this Act.

2.1 Recommendation

30. In our view those two problems can be overcome by some small but important changes as follows:

CE-01A – Te Mauri o te Moana

The mauri, health and well-being of Otago’s coastal water is:

(a) protected from inappropriate activities so as to protect the health and well-being of the wider environment and the mauri of coastal waters, and

(b) restored where it is degraded, including through enhancing coastal water quality where it has deteriorated from its natural condition.

31. A consequential change would also need to be made to the final recommended version of CE-P2 (2)(a)(i) as to identification of degraded quality water areas which was recommended in the following form:

CE-P2 – Identification

Identify the following in the coastal environment: ...

(2) areas of water quality in the coastal marine area that are considered to have deteriorated so that:

(a) it is having a significant adverse effect on:

(i) the mauri of coastal water

2.2 Recommendation

32. Consistency would require that provision to read:

(i) the mauri health of coastal water

33. Other provisions in the coastal environment chapter which directly relate to Kāi Tahu's relationship with the coastal environment included Policies CE-P9 and CE-P10 as to activities respectively on land and otherwise in the coastal environment. Kāi Tahu through its planning witness Mr Bathgate particularly sought inclusion of specific policy provision enabling mana whenua to provide for their needs for papakāika, marae and associated developments. The final s.42A report response (at paragraph 149) was that CE-M3 and CE-M4 (1)-(3) already addressed location issues. However, Policy 6 of the NZCPS specifically stated in this regard as follows:

Policy 6 Activities in the coastal environment

(1) *In relation to the coastal environment:*

...

(d) recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them;

34. We do not consider that mention of activities in methods CE-M3 and CE-M4 (1)-(3) specifically apply to that goal or are at all sufficient to meet that specific directive in the NZCPS. CE-M4(9) by contrast does make that provision in respect of district plans when it says:

(9) recognise takata whenua needs for papakāika, marae and associated developments within the coastal environment and make appropriate provision for them,

35. However, that is a method which rather 'hangs' out on its own at the moment as there is no policy support for it.

2.3 Recommendation

36. We agree with Mr Bathgate that a new clause is required in CE-P9 as follows:

(7) enabling mana whenua to provide for their cultural and social needs for papakāinga, marae and associated developments and make appropriate provision for them.

2.4 Recommendation

37. Finally, in accordance with the conclusions reached in the Mana Whenua chapter consideration we accept that all references to ‘takata whenua’ in this coastal chapter should be changed to ‘mana whenua’.

38. In terms of s.32AA of the RMA that two recommendations are respectively required first to ensure the policy support for the method is the most appropriate way to achieve the purpose of this Act, and secondly is required for consistency.

3. Identifying biodiversity in the coastal environment

39. The first point to be noted in respect of indigenous biodiversity in the coastal environment chapter is that the new NPSIB specifically acknowledges that it only applies in the ‘terrestrial environment’ (clause 1.3(1) of the NPSIB) and that while both NPSs apply in the terrestrial coastal environment that in the event of conflict between the two “*the New Zealand Coastal Policy Statement prevails.*” (clause 1.4(1) and (2) NPSIB).

40. The base problem faced in both terrestrial and coastal environments is the identification and mapping of areas of significant indigenous biodiversity or natural character that may be under threat. That problem is often capable of being at least reduced in scope in the terrestrial environment by means of recourse to desktop reviews of aerial photography, and doubtless in future assisted by drone footage – all of which can be readily available at relatively low cost for large areas with follow-up ground research in addition being practical by using the assistance of vehicles on a broad basis.

41. In the coastal environment those low-cost methods of identification on a broad basis are not available. Marine biological research is a painstakingly slow process involving divers carrying out benthic assessments, aided in deeper waters to some extent by submersibles operated from larger surface vessels but again with only short distance viewing available and at huge cost. Moreover, for a large stretch of unprotected coast as in the Otago region off-shore weather and visibility conditions have a major impact.

42. These concerns were raised by the hearing panel repetitively during the coastal hearings as it seemed that the massive cost and time span required to identify and map indigenous biodiversity and natural character in the marine environment may not have been properly appreciated. The panel was concerned at that cost factor given the provisions of CE-P5 which as notified stated:

CE-P5 – Coastal indigenous biodiversity

Protect indigenous biodiversity in the coastal environment by:

(1) identifying and avoiding adverse effects on the following ecosystems, vegetation types and areas:

(a) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists,

- (b) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened,
- (c) indigenous ecosystems and vegetation types in the coastal environment that are threatened or are naturally rare,
- (d) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare,
- (e) areas containing nationally significant examples of indigenous community types, and (f) areas set aside for full or partial protection of indigenous biodiversity under other legislation, and

(2) identifying and avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects on the following ecosystems, vegetation types and areas:

- (a) areas of predominantly indigenous vegetation in the coastal environment,
- (b) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species,
- (c) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable,
- (d) areas sensitive to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh,
- (e) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes,
- (f) habitats, including areas and routes, important to migratory species, and
- (g) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

43. The method that flowed from Policy CE-P5 was CE-M3 which required that local authorities must work collaboratively together to:

3) identify areas and values of indigenous biodiversity within their jurisdictions in accordance with CE-P5, map the areas and describe their values in the relevant regional and district plans, and

44. One of the major concerns expressed by some submitters was a concern at how workable or practical the policy was when it required 'avoidance' of effects with all its near prohibitive connotations on areas that it would be well-nigh impossible physically and financially to have identified during the life of the coastal plan.

45. The Panel itself was not so concerned about the cost imposition on applicants for resource consent because as a matter of preparation on their assessment of environmental effects, they would have to carry out benthic research which would disclose what types of species were present and estimate effects and propose mitigation measures if warranted anyway. The concern was more at the overall cost to councils of imposing those mapping burdens – and particularly on ORC itself in respect of the marine environment.

46. Moreover, adding to that concern was the fact that the NZCPS did not require such a detailed level of identification and mapping for indigenous biodiversity in Policy 11 as it did for areas

of high natural character in Policy 13(1)(c) and for natural features and landscapes in Policy 15(d). Counsel for ORC in closing opined that the reason for that mapping not being required for Policy 11 purposes in the NZCPS was because it seemed likely that the Board of Inquiry into the NZCPS was contemplating DOC would provide the requisite mapping. That has not occurred.

47. The cost and practical concerns were raised by the hearing panel with ORC's counsel who in closing on 29 May 2023 formally responded as follows:

332. The concern was that, at least in the marine environment, little work had been done and ORC was imposing upon itself a significant and costly obligation.

333. Substantial progress had in fact been made by the Regional Council through the NIWA report, Identification of Significant Ecological Areas for the Otago Coastal Marine Area, June 2022; although the report does identify gaps in available information and makes recommendations for cost-effective ground-truthing and monitoring programmes.

334. ORC does not resile from the task of identifying important and vulnerable biodiversity in the coastal environment

48. The marine area involved is so vast, (including as it does the whole of the territorial sea area out to 12 nautical miles or approximately 22 kilometres off-shore), the task required by CE-P5 so detailed, and the costs potentially so large that the panel still holds serious concerns as to its practicality. However, faced with that formal response by ORC through its counsel the panel is unable to gainsay such a formal assurance by ORC. As it can take the matter no further, no change is recommended.

49. One other related matter that we need to address is the recommended move of CE-P5 to replace the notified version of ECO-P7 which as notified stated:

ECO-P7 – Coastal indigenous biodiversity

Coastal indigenous biodiversity is managed by CE-P5, and implementation of CE-P5 also contributes to achieving ECO-O1.

50. We struggle to understand why that change is recommended.

51. Other changes that were recommended to us for the ECO chapter in the final 10 October 2023 version included the insertion of the phrase "*Outside the coastal environment*". That occurs now in the final recommended version at the start of ECO-P3 as to protection of significant natural areas and taoka, and ECO-P4 as to consent pathways for certain new activities. Plainly in those important areas in the ECO chapter those exclusionary words mean it is recommended that the CE chapter provisions will apply to the coastal environment and the ECO chapter outside it. Even more relevant is the fact that in the final recommended version of ECO-P6 as to management of effects on indigenous biodiversity the same qualifier appears - that it only applies "*Outside the coastal environment*". We fail to understand why one would then follow those provisions in the ECO chapter with a provision applying only to the coastal environment, particularly when it opens with the words:

Protect indigenous biodiversity in the coastal environment by:

52. Finally, as to this recommended move, we wonder if the s.42A report writer considered clause 9 of the National Planning Standards which provides:

8. Excluding the provisions in Part 2, provisions that apply to the coastal marine area must be located in the Coastal marine area section.

53. The provisions in Part 2 (of Table 2 in the National Planning Standards) relate to overview matters being:

Significant resource management issues for the region

Resource management issues of significance to iwi authorities in the region

Integrated management

54. In other words, all other coastal marine area provisions, such as CE-P5, must be in the CE chapter as we read clause 8 of the National Planning Standards.

55. In terms of s.32AA of the RMA the discussion above describes sufficiently the factors that have led us to the recommendation that CE-P5 remains in the coastal chapter.

3.1 Recommendation

56. As a consequence of all those considerations we recommend that CE-P5 remains in the coastal chapter. (In the discussions below on provision for infrastructure and aquaculture development we look again in more detail at the extent of the protective wording of CE-P5).

3.2 Scientific Uncertainty

57. The final issue we need to discuss as to indigenous biodiversity in the coastal environment chapter related to methods CE-M3(6) and CE-M4(6). Those provisions require a precautionary approach in assessing the effects of activities where “*there is scientific uncertainty*”. The concern raised was whether that was broad enough to cover actual gaps in knowledge because many such gaps exist or may not have been filled in sufficient detail, i.e. where there was no or inadequate information available.

58. The response in closing by ORC’s counsel was that “*Deficits in knowledge do create uncertainty*” on the basis that “*When there are information shortfalls, there is scientific uncertainty.*” (paras 337-338). Whilst we can see the force of those arguments we would still prefer to see the precautionary approach broadened to include the phrase “*or a lack of relevant knowledge*” in both those methods so that no arguments can arise, as we fear that lack of relevant knowledge will be the most likely scenario for years to come.

59. Again, in terms of s.32AA of the RMA that recommendation is the most appropriate way to achieve the purpose of this Act.

3.2.1 Recommendation

60. That methods CE-M3(6)(a) and CE-M4(6)(a) be amended to read:

(a) there is scientific uncertainty or a lack of relevant knowledge, or ...

4. Providing for infrastructure in the coastal environment

61. The concerns of infrastructure providers in terrestrial settings were echoed in the coastal chapter hearings. In short infrastructure submitters who took part in the coastal chapter hearings were concerned that the same overly protectionist objectives and policies framework also applied in the coastal environments chapter as applied on land. In the Panel's view those Part 2 RMA issues are in principle guided by the Supreme Court's decisions in *King Salmon* and *Port Otago* – both of which of course related to and arose out of provisions in the NZCPS. We do not need, therefore, to repeat the discussion canvassed in the legal section of this report here.
62. Rather it is a matter of standing back and considering whether the protectionist prioritisation complained of in terrestrial settings applies in the coastal environment chapter, and whether there is a consent pathway providing for the 'structured analysis' approach specified by the Supreme Court in the event of an apparent conflict between applicable policies.
63. In that regard there are two areas of policy and methods which immediately come to attention. The first is that CE-P4 as to natural character does not contain the qualifier of protection from inappropriate use development and subdivision that occurs in s.6(a) RMA and also in Policy 13(1) of the NZCPS.
64. Another aspect of concern in the PORPS is that CE-M3 (5)(a) as to regional plan content in the notified version controlled the use and development of the coastal marine area, in order to:
- (a) preserve natural character; natural features, landscapes and seascapes; and indigenous biodiversity of the coastal marine area in accordance with CE-P4, CE-P5 and CE-P6.
- (Our emphasis)
65. Again, no qualifier appeared in that provision as to protection from inappropriate activities. (We also record that no qualifier appears in the chapeau to CE-P6, which it should do, to be consistent with the s.6 RMA approach.)
66. Finally, the term 'prioritising', (which given the *Port Otago* case must raise flags), appears again in the recommended final version of Policy CE-P3 as we have discussed above.
67. These protective provisions in the coastal environment chapter have been sought to be reconciled as to provision for infrastructure in the coastal environment by the provision of Objective CE-O5 and Policies CE-P9 as to activities on land within the coastal environment; and CE-P10 as to activities within the coastal marine area; (with CE-P11 being enabling as to aquaculture). The NZCPS at Policy 6(1)(a) and other provisions requires a recognition of the vital need for enabling some crucial energy related infrastructure and mining activities in some settings:

Policy 6 Activities in the coastal environment

(1) In relation to the coastal environment:

(a) recognise that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals are activities important to the social, economic and cultural well-being of people and communities; ...

68. The most crucial policy in the coastal marine area in the PORPS for infrastructure is Policy CE-P10. It opens with wording that is directive. However, as notified, it was most difficult to accept it as being truly enabling when it commenced with the use of the word ‘must’ allied with ‘maintain or improve’ in subclause (2):

CE-P10 – Activities within the coastal marine area

Use and development in the coastal marine area must:

- (1) enable multiple uses of the coastal marine area wherever reasonable and practicable, and
- (2) maintain or improve the health, integrity, form, function and resilience of the coastal marine area, or and
- (3) have a functional need or operational need to be located in the coastal marine area, or
- (4) have a public benefit or opportunity for public recreation that cannot practicably be located outside the coastal marine area.

69. The construction of infrastructure, such as for example a main state highway armouring or a telecom tower or some renewable energy construction such as for tidal or wind power capture, simply cannot always ‘*maintain or improve the health, integrity, form, function and resilience of the coastal marine area,*’. Construction of such infrastructure is always going to have some adverse effect. This wording as notified was too prescriptive to meet the needs recognised in Policy 6(1)(a) of the NZCPS, but the recommended addition of the alternative between subclauses (1) and (2) and sub-clauses (3) and (4) by the use of the word ‘or’ instead of the word ‘and’ resolves that issue.

70. Once more in terms of s.32AA of the RMA that recommended wording which we agree with is the most appropriate way to achieve the purpose of this Act by enabling a realistic consent pathway.

4.1 Recommendation

The chapeau to CE-P6 should be amended to read:

Protect natural features, and landscapes ~~and~~ (including seascapes) in the coastal environment from inappropriate activities by:

...

71. The recommended use of ‘or’ after subclause (2) of CE-P10 as in the recommended 10 October 2023 version is adopted providing consent pathways through subclauses (3) and (4).

5. Connections to other chapters within the pORPS21

72. In para 61 of the opening legal submissions on the CE chapter Mr Logan counsel for ORC said:

61. The National Planning Standards provide that if specific provisions relating to the coastal environment are located in other chapters, they must be cross-referenced to the coastal environment chapter.”

73. As authority for that he cited clause 7 of the National Planning Standards. It provides:

7. Any specific provisions relating to the coastal environment which are located in other topic chapters must be cross-referenced in the Coastal environment chapter.)

74. In other parts of the PORPS which are addressed in other sections of this report other views may be expressed as to the need or otherwise for such cross-referencing. However, in the CE chapter we accept that the National Planning Standards do require such cross-references and we do not therefore recommend any removal from that chapter of cross-referencing that has occurred.

6. Providing for aquaculture

75. The major submitters in the aquaculture area were Kāi Tahu, DOC and Sanford Limited. At the time of our hearings Sanford had under active development a concept for a series of consents to enable major off-shore marine structures for salmon farming. While this process plainly does not involve decision-making on that proposal, it was a useful example against which to test the assertions made by Sanford that the PORPS notified provisions made appropriate provision for aquaculture consent pathways as required by Policy 8 of the NZCPS and should not be significantly changed. Policy 8 of the NZCPS provides:

Policy 8 Aquaculture

Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by:

(a) including in regional policy statements and regional coastal plans provision for aquaculture activities in appropriate places in the coastal environment, recognising that relevant considerations may include:

(i) the need for high water quality for aquaculture activities; and

(ii) the need for land-based facilities associated with marine farming;

(b) taking account of the social and economic benefits of aquaculture, including any available assessments of national and regional economic benefits; and

(c) ensuring that development in the coastal environment does not make water quality unfit for aquaculture activities in areas approved for that purpose.

(Panel's emphasis)

76. The propositions advanced by some of DOC's and Kāi Tahu's planning witnesses which caused concern for Sanford related to requests to effectively strengthen the protective provisions of the RPS in relation to indigenous biodiversity and as to significant natural areas. We have discussed above in relation to infrastructure our concerns about the level of protection for natural character in CE-P4 failing to adopt the qualifier of protection from inappropriate activities contained in s.6(a) of the Act. We have also discussed in the legal section of this

report the distinction between s.6(a) and (b) protection with that qualifier, as compared to s.6(c) as to indigenous biodiversity which does not have that qualifier.

77. The difference in protection levels by the two subclauses (1) and (2) of CE-P5 are that in subclause (1) protection is required to avoid effects on ecosystems within the tightly described types of at-risk species or fauna habitats in subclause (1). In other words that is a strong 'avoid' directive as to all effects, based squarely on s.6(c). By contrast in subclause (2) the requirement is worded as follows:

(2) identifying and avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects on the following ecosystems, vegetation types and areas:

78. The difference in protection levels reflects what is found between Policies 11(a) and 11(b), 13(a) and 13(b), and 15(a) and 15(b) of the NZCPS.
79. What that distinction highlights is the necessity to ensure a provision like CE-P5 does not extend beyond the s.6(c) protection which bears repeating:

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(Panel's emphasis)

80. Both the notified and recommended versions of CE-P5 distinguished between the protection offered by subclauses (1) and (2). The list of matters protected under subclause (1) as notified were all matters which it is unlikely could be challenged as being "*significant indigenous vegetation and significant habitats of indigenous fauna*". In fact they echo those in Policy 11(1) of the NZCPS. The initial s.42A response to the DOC and Kāi Tahu planning evidence seeking additional protection for more species or habitats was to suggest addition of a subclause to CE-P5(1) that added in areas identified in accordance with APP2. That caused concern for Mr Low, the Sanford planning witness. However, in his final recommendations Mr MacLennan the s.42A report writer sought to ensure that concern was removed by moving down the recommended reference to: "*(h) significant natural areas identified in accordance with APP2 that are not included in (1) above*" from the subclause (1) level of protection to subclause (2) level.

81. In our view that amendment would have been appropriate on the recommended wording of the definition of 'significant natural area' in the PORPS as it was at the coastal environment hearings in May 2023 prior to the promulgation of the NPSIB. In that form it was recommended as follows:

Significant natural area means areas of significant indigenous vegetation and significant habitats of indigenous fauna that are located outside the coastal environment.

82. However, the definition of SNA or significant natural area has now changed in the October 2023 recommended version to read:

Significant natural area¹

means areas of significant indigenous vegetation and significant habitats of indigenous fauna that are located outside the coastal environment.

has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):

means:

- (a) any area that, after the commencement date, is notified or included in a district plan as an SNA following an assessment of the area in accordance with Appendix 1; and
- (b) any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which case it remains as a significant natural area unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant habitat of indigenous fauna.

83. There is a need to amend that definition as the NPSIB definition refers to APP 1, whereas in the PORPS APP 1 is headed 'APP 1- Criteria for identifying outstanding water bodies' with APP 2 containing 'Criteria for identifying areas that qualify as significant natural areas (SNAs)'. That definition in (a) needs correction so that we can recommend that the final recommended version of CE-P5 is adopted.

6.1 Recommendation

84. Accordingly, we need to recommend the definition of SNA in (a) is amended to delete the reference to APP 1 and for it to read APP 2 as follows:

Significant natural area

means areas of significant indigenous vegetation and significant habitats of indigenous fauna that are located outside the coastal environment.

has the same meaning as in the Interpretation section of the National Policy Statement for Indigenous Biodiversity 2023 (except with a reference to Appendix 2 rather than Appendix 1) as set out below:

means:

- (a) any area that, after the commencement date, is notified or included in a district plan as an SNA following an assessment of the area in accordance with Appendix 2; and
- (b) any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which case it remains as a significant natural area unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant habitat of indigenous fauna.

85. With that amendment to the definition of an SNA the wording of CE-P5 does leave open a consent pathway for aquaculture which will have to address any potential for conflict between the protective CE-P5 and the enabling policies in Policy 8 of the NZCPS and Policy CE-P11 of the PORPS, as to provision for aquaculture. That will have to occur in a structured analysis approach reconciling the relevant policies in their particular factual setting in accordance with the *Port Otago* case.

¹ 00139.129 DCC, 00237.049 Beef & Lamb NZ

86. The enabling Policy CE-P11 as to aquaculture was recommended in the October 2023 final version to provide:

CE-P11 – Aquaculture

Provide for the development and operation of aquaculture activities ~~within appropriate locations and limits~~ where this is in accordance with CE-P3 to CE-P12, taking into account:

- (1) the need for high quality water required for an aquaculture activity,
- (2) the need for land-based facilities and infrastructure required to support the operation of aquaculture activities, and
- (3) the potential social, economic and cultural benefits associated with the operation and development of aquaculture activities.

87. We do have a concern, though, with the words “*where this is in accordance with*”. From one point of view that phrase potentially gives rise to the possibility of an argument that failure to comply with any provision in CE-P3 to CE-P12 would mean consent cannot be given. We do not understand that that is what was intended. Rather what we take those words to be intended to mean is that any consideration of particular aquaculture proposals has to take into account all of the relevant policies in the particular factual context involved. Some of those policies have an ‘avoid’ approach, and some have an ‘enabling’ approach.

6.2 Recommendation

88. We consider it is necessary instead to adapt the Supreme Court approach in the Port Otago case of specifying that all relevant matters have to be considered. As a consequence, we recommend an amended wording as follows for the opening words of CE-P11:

CE-P11 – Aquaculture

Provide for the development and operation of aquaculture activities ~~within appropriate locations and limits~~ taking into account policies CE-P3 to CE-P12, and:

- (1) the need for high quality water required for an aquaculture activity,
- (2) the need for land-based facilities and infrastructure required to support the operation of aquaculture activities, and
- (3) the potential social, economic and cultural benefits associated with the operation and development of aquaculture activities.

89. In terms of s.32AA of the RMA that recommendation is needed to ensure the policy provides for the most appropriate way to achieve the purpose of this Act

7. Funding Issue

90. In the Mana Whenua chapter, we discussed the effect of the litigation involving Te Whānau a Kai v. Gisborne District Council which culminated in an exchange of memoranda between counsel for ORC and Kāi Tahu and DCC accepting that provisions requiring mandatory funding of resources in an RPS was not in accordance with relevant Local Government Act provisions

controlling funding processes for local governments. One of the PORPS provisions of that nature identified by Mr Logan for ORC was CE-M1A(2). As recommended in the final 10 October 2023 version it provided:

(2) implementing actions to foster the development of *mana whenua* capacity to contribute to the Council’s decision-making processes, including resourcing,

91. In the ORC memorandum on this issue Mr. Logan as counsel for ORC observed that this provision could not stand. The panel agrees but only as to the last phrase ‘including resourcing.’ Otherwise the balance wording is the same as the wording proposed by Kāi Tahu’s counsel on 25 July and accepted by ORC’s counsel on 25 September, 2023.

92. We have also considered CE-M5 which is worded differently with its opening wording stating:

“*Local authorities shall consider the use of other mechanisms or incentives to assist in achieving Policies CE-P2 to CE-P123, including*” and there then follow a range of possible actions including “(4) funding assistance for restoration projects (for example, through Otago Regional Council’s ECO Fund).”

(Panel’s emphasis)

93. We agree with Mr Logan who classed such provisions as being discretionary, and that being so, they are able to comply with local government funding requirements before being adopted. That provision in our view does not offend the Te Whānau a Kai judicial direction.

94. In terms of s.32AA this change to CE-M1A(2) is needed to respond to a legal clarification made of the restrictions imposed on RMA funding commitments by the need to observe other local government funding legislation.

7.1 Recommendation

95. We recommend that CE-M1A(2) be amended to read:

(2) implementing actions to foster the development of *mana whenua* capacity to contribute to the Council’s decision-making processes

8. Surf breaks – CE-P2, CE-P7, and CE-M3(2), CE-M3(5)(b), CE-M4(10) and CE-M5(6)

96. These provisions as notified provided, (with only relevant parts quoted):

CE-P2 – Identification

Identify the following in the coastal environment:

...

(5) the nationally significant surf breaks at Karitane, Papatowai, The Spit, and Whareakeake and any regionally significant surf breaks.

CE-P7 – Surf breaks

Manage Otago's nationally and regionally significant surf breaks so that:

- (1) nationally significant surf breaks are protected by avoiding adverse effects on the surf breaks, including on access to and use and enjoyment of them, and
- ~~(2) the values of and access to regionally significant surf breaks are maintained.~~

CE-M3 – Regional plans

Otago Regional Council must prepare or amend and maintain its regional plans no later than 31 December 2028 to:

- (1) map areas of deteriorated water quality in the coastal environment, in accordance with CE- P2(2) and CE-P2(3),
- (2) map the areas and characteristics of, and access to, nationally and regionally significant surf breaks,

...

- (5) control the use and development of the coastal marine area, in order to:
 - (a) preserve the natural character; natural landscapes, features, and seascapes; and indigenous biodiversity of the coastal marine area in accordance with CE-P4, CE-P5 and CE-P6, and
 - (b) manage Otago's nationally and regionally significant surf breaks in accordance with CE- P7,

CE-M4 – District plans

Territorial authorities must prepare or amend and maintain their district plans to:

...

- (10) provide access to nationally and regionally significant surf breaks, and

97. Submissions were made in support by Kāi Tahu, Wise Response, Forest & Bird, and in opposition as to the regional aspect by DCC and Port Otago. The s.42A report concluded no change needed to be made, and no recommendation was made to delete the reference to regional surf breaks.
98. The thrust of the opposition was that while the NZCPS in Policy 16 specifically directed protection for national significant surf breaks, it did so by specific identification of those in Schedule 1. Four of those listed in Schedule 1 of the NZCPS are located in the Otago Region. They are identified for protection by that specific method as being expressly identified as being of national significance.
99. In the PORPS in the Environmental section of the Impact Snapshot for SRMR-18 surf breaks are referred to in the second paragraph, but only at a nationally significant level:

Natural features, landscapes, seascapes, and surf breaks of national significance can be affected by human activity, climate change, and natural hazards.

100. In the notified objectives CE-O1(5) specifically seeks to protect surf breaks but only those of national significance:

CE-O1 – Safeguarding the coastal environment

The integrity, form, functioning and resilience of Otago's coastal environment is safeguarded so that:

...

(5) surf breaks of national significance are protected.

101. Then the policy in CE-P2(5), already cited above, specifically identifies where those national significance surf breaks are located:

(5) the nationally significant surf breaks at Karitane, Papatowai, The Spit, and Whareakeake and any regionally significant surf breaks.

102. The problem raised in opposition submissions was that there is no method specifying how surf breaks qualify to be identified as regional surf breaks, and no criteria exist in the PORPS to assist in that regard.

103. The s.42A response to that problem at paragraph 291 was to refer to the provisions of Policy 13(2)(c) of the NZCPS and Policy CE-P4 of the PORPS which each together might enable identification of areas of natural character requiring protection from inappropriate development. The conclusion reached was:

Therefore, in a general sense there is a mechanism within CE – P4 of the pORPS to identify and preserve surf breaks within the region that are not identified as nationally significant within Schedule 1 of the NZCPS. However, there is a growing body of research that highlights the need to provide greater protection of surf breaks within the RMA framework. This research has also developed a methodology for identifying surf breaks of regional significance (Atkin, Bryan, Hume, Mead, & Waiti, 2019).

104. However, that research methodology is not specified in the PORPS and no submission we are aware of sought its inclusion.

105. We are of the view that with no such mechanism or criteria for identification existing in the PORPS for regionally significant surf breaks, that it is not appropriate to have policies and methods providing for their protection and identification.

8.1 Recommendation

106. That all references to regionally significant surf breaks in CE-P2, CE-P7, and CE-M3(2), CE-M3(5)(b), CE-M4(10) and CE-M5(6) as follows:

CE-P2 – Identification Identify the following in the coastal environment:

...

(5) the nationally significant surf breaks at Karitane, Papatowai, The Spit, and Whareakeake and any regionally significant surf breaks.

CE-P7 – Surf breaks

Manage Otago’s nationally and regionally significant surf breaks so that:

- (1) nationally significant surf breaks are protected by avoiding adverse effects on the surf breaks, including on access to and use and enjoyment of them, and
- (2) the values of and access to regionally significant surf breaks are maintained.

CE-M3 – Regional plans

Otago Regional Council must prepare or amend and maintain its regional plans no later than 31 December 2028 to:

- (1) map areas of deteriorated water quality in the coastal environment, in accordance with CE- P2(2) and CE-P2(3),
- (2) map the areas and characteristics of, and access to, nationally and regionally significant surf breaks,
- ...
- (5) control the use and development of the coastal marine area, in order to:
 - (a) preserve the natural character; natural landscapes, features, and seascapes; and indigenous biodiversity of the coastal marine area in accordance with CE-P4, CE-P5 and CE-P6, and
 - (b) manage Otago’s nationally and regionally significant surf breaks in accordance with CE- P7,

CE-M4 – District plans

Territorial authorities must prepare or amend and maintain their district plans to:

- ...
- (10) provide access to nationally and regionally significant surf breaks, and

Section 9: Ecosystems and indigenous biodiversity (ECO)

1. Introduction

1. This chapter presents our recommendations on the Indigenous Ecosystems and Biodiversity (ECO) chapter of the PORPS. All of the provisions of this chapter are part of the non-freshwater process.
2. The “*protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna*” is a matter of national importance under section 6(c) of the RMA. Also of relevance are sections 7(d), (f) and (g) which require the panel to have particular regard to the ‘intrinsic values of ecosystems’, maintenance and enhancement of the quality of the environment’, and ‘any finite characteristics of natural and physical resources’ respectively. Section 30(1)(ga) requires regional council to establish “*objectives, policies and methods for maintaining indigenous biological diversity*”. The directions in the RMA underpinned the development of the PORPS and the evidence we received.
3. Biodiversity means the variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems. The Otago region contains a varied biological diversity, from albatrosses and yellow-eyed penguins on the Otago Peninsula to endangered skinks of Central Otago and kea of the Southern Alps, as well as internationally rare, braided rivers. The Otago region, like other areas in New Zealand, has experienced significant loss of indigenous biodiversity, including mahika kai and taoka species, and continues to be subject to significant pressure.
4. Indigenous biodiversity is present in terrestrial, freshwater and marine environments. Section 62(1)(i)(iii) of the RMA requires that the RPS sets out which local authority is responsible for specifying provisions that control the use of land to maintain indigenous biodiversity. Local authorities have duties under sections 30 and 31 of the RMA 1991 to have objectives, policies and methods to maintain indigenous biological biodiversity. This creates a need to be clear about the responsibilities for each local authority, as well as ensuring an integrated approach is taken across the policy statement.

1.1 The National Policy Statement for Indigenous Biodiversity

5. After many years of gestation and two draft iterations, the National Policy Statement for Indigenous Biodiversity 2023 (NPSIB) was gazetted on 7 July 2023 and came into force on 4 August 2023. The hearings on the non-freshwater parts of the pORPS were adjourned on 29 May 2023, so there was no opportunity during the formal hearing process for parties to address the NPSIB.
6. The Panel issued Minute 15 on 13 July 2023 which directed a timetable (later amended by Minute 19 issued on 13 September 2023) for the circulation of material by ORC and submitters to address the implications of the NPSIB for the non-freshwater process. ORC officers were invited to provide evidence and supporting submissions, with submitters then provided time to respond, and the ORC officers provided a final response. The Panel considered this material

on the papers and the hearing was not reconvened. Any implications for the freshwater process were addressed through those hearings.

7. Over 416 submission points were received on the ECO chapter provisions and related appendices. Many of the submission points have since become redundant by the gazettal of the NPSIB, which has complicated some matters and simplified others. It is important to note that the Panel can only amend a provision to be consistent with the NPSIB if a submission provides the scope to do so.
8. In response to the NPSIB, the ORC officers have recommended substantial changes to the ECO chapter, the PORPS definitions and related Appendices 2, 3 and 4. Some of the key issues addressed at the hearing have been superseded by the NPSIB, and the Panel has had to reconcile the information presented in submissions and evidence with the subsequent NPSIB and supporting material.
9. In addition to the NPSIB, the NZCPS and the NPSFM contain direction relating to the management of indigenous biodiversity in coastal and freshwater environments respectively.
10. There are commonalities between many of the submission points, as there are between some of the provisions. We have grouped topics and provisions where appropriate for ease of discussion, after first addressing the general themes. We discuss below where key matters that arose during the submissions and hearing have been superseded by the NPSIB.
11. The Panel received a helpful s42A report and reply report from Ms Melanie Hardiman, with statements on the implications of the NPSIB being prepared by Mr Andrew Maclellan. Given the technical nature of this chapter, we received technical advice from a number of ecologists and we acknowledge their efforts at caucusing on Appendix 2 of the RPS, on identifying significant biodiversity. To say that the ECO chapter has been complicated is an understatement and we particularly thank Mr Maclellan and Dr Lloyd for ORC for their advice and recommendations on the implications of the NPSIB, and the submitters who provided supplementary submissions or evidence on this matter.

2. General themes

12. The following general themes emerged:
 - Maintaining and protecting
 - Effects management hierarchies, biodiversity offsetting and biodiversity compensation;
 - Nationally and regionally significant infrastructure; and
 - Significant natural areas.
13. We address these matters below prior to considering definitions and the specific provisions.

2.1 Maintaining and protecting

14. This was the subject of much debate and the legal position was discussed in detail in our Legal Issues section. We revisit this briefly here, as it is an integral part of the position we take in our recommendations. As stated above, we interpreted s 30(1)(ga) as requiring the regional council to maintain the region-wide values of indigenous biodiversity. This means that the PORPS provisions cannot have the result of worsening the region-wide state of indigenous biodiversity. The emphasis here is on region-wide, which does not mean that activities cannot have some level of adverse effect on indigenous biodiversity. It means that, if they do, an equivalent improvement needs to be made elsewhere.

15. The concept of protection fits within the region-wide requirement to maintain, whereby s6(c) directs specific protection of “*significant indigenous vegetation and significant habitats of indigenous fauna*”. This applies to areas or circumstances where the values mark them apart from the general indigenous values in the region, and the level of significance warrants protection.

16. We also note here the sole objective of the NPSIB, which is as follows:

The objective of this National Policy Statement is:

(a) *to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and*

(b) *to achieve this:*

(i) *through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and*

(ii) *by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and*

(iii) *by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and*

(iv) *while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.*

[Panel’s emphasis]

17. The PORPS must therefore maintain indigenous biodiversity to ensure that there is no overall loss, as per clause (a), while also protecting significant natural areas (SNAs) as required by s.6(c) and Policy 7 of the NPSIB. This protection in s.6(c) is definitive, and it is important to note that s.6(c) does not have the qualifier of protection ‘from inappropriate subdivision, use and development’. Policy 7 requires that ‘SNAs are protected by avoiding or managing adverse effects from new subdivision, use and development’.

18. This is addressed in the PORPS in ECO-01, which we consider reflects well the direction outlined above. ECO-01 was notified as follows:

ECO-01 – Indigenous biodiversity

Otago’s indigenous *biodiversity* is healthy and thriving and any decline in quality, quantity and diversity is halted.

19. This evolved through the process to the final recommended ECO-01 which reads:

ECO-01 – Indigenous biodiversity

Otago’s indigenous *biodiversity* is healthy and thriving and any overall decline in quality condition, quantity and diversity is halted.

20. The addition of ‘overall’ reflects the direction of the NPSIB. We note that ‘indigenous biodiversity’ is defined in the NPSIB and that the Panel later recommend that this definition is included in the PORPS. We therefore recommend that ‘indigenous’ should also be italicised to refer to this definition.

21. The NPSIB also includes a definition of ‘maintenance of indigenous biodiversity’ which is relevant to ECO-P6 – Maintaining indigenous biodiversity. Mr MacLennan’s NPSIB Reply Report recommends that this definition be included and referenced in ECO-P6. We agree that this is appropriate to give effect to the NPSIB.

2.1.1 Recommendation

22. We recommend that the following definition be inserted into the Interpretation section of the PORPS:

Maintenance of indigenous biodiversity

has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):

means:

(a) the maintenance and at least no overall reduction of all the following:

(i) the size of populations of *indigenous species*:

(ii) indigenous species occupancy across their natural range:

(iii) the properties and function of ecosystems and *habitats* used or occupied by *indigenous biodiversity*:

(iv) the full range and extent of ecosystems and *habitats* used or occupied by *indigenous biodiversity*:

(v) connectivity between, and buffering around, ecosystems used or occupied by *indigenous biodiversity*:

(vi) the resilience and adaptability of ecosystems; and

(b) where necessary, the restoration and enhancement of ecosystems and *habitats*.

23. We recommend that ECO-01 be amended as follows:

ECO-01 – Indigenous biodiversity

Otago's *indigenous biodiversity* is healthy and thriving and any overall decline in condition, ~~quality~~ quantity and diversity is halted.

2.2 The effects management hierarchy, biodiversity offsetting and biodiversity compensation

24. The legal aspects of biodiversity offsetting and compensation were also addressed in our Legal Issues section. Mr. Christensen, for Oceana Gold, had submitted that there is a mandatory need to provide a consent pathway involving the s.104(1)(ab) methodology of offsetting or compensation. We did not accept this, considering that “*the mandatory aspect is only triggered at resource consent stage, and is a mandatory requirement to give genuine consideration to the offsetting or compensation which has been proposed as part of the application for resource consent. That does not convert it into a mandatory matter at the regional policy statement stage*”.

25. Principles for biodiversity offsetting and compensation are provided in Appendix 3 and Appendix 4 of the NPSIB respectively, and these are applied through the application of an effects management hierarchy. The effects management hierarchy is defined in the NPSIB as follows and directions for its applications are in clauses 3.10, 3.11 and 3.16:

effects management hierarchy means an approach to managing the adverse effects of an activity on indigenous biodiversity that requires that:

- (a) adverse effects are avoided where practicable; then*
- (b) where adverse effects cannot be avoided, they are minimised where practicable; then*
- (c) where adverse effects cannot be minimised, they are remedied where practicable; then*
- (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, biodiversity offsetting is provided where possible; then*
- (e) where biodiversity offsetting of more than minor residual adverse effects is not possible, biodiversity compensation is provided; then*
- (f) if biodiversity compensation is not appropriate, the activity itself is avoided.*

26. Appendix 3 and Appendix 4 of the PORPS also provide for biodiversity offsetting and compensation. These attracted considerable debate through submissions and evidence, which we consider has been superseded by the NPSIB. Mr Maclellan recommended that these appendices be replaced with those in the NPSIB. In his reply report relating to additional evidence as to the NPSIB (the NPSIB Reply Report), he accepted amendments requested by the Director General of Conservation and Oceana Gold to amend the heading from ‘criteria’ to ‘principles’ and clarify the requirements of clause 3.10(4)(b) of the NPSIB to comply with principles (1) to (6) and have regard to the remaining principles.

27. We accept these amendments and consider that in the case of biodiversity offsetting and compensation, the clearest way to implement the requirements of the NPSIB is through replicating its requirements.
28. The notified PORPS defined ‘effects management hierarchy’ in the Interpretation section, and effectively replicated it in ECO-P6, which was then cross-referenced in ECO-P3 and ECO-P4. The notified PORPS applied the NPSFM definition of effects management hierarchy to the ECO chapter. Through submissions, the NPSIB and subsequent evidence, the NPSIB Reply Report recommended adopting the definition of ‘effects management hierarchy’ in the NPSIB. While we consider there to be little difference between this definition and the NPSFM definition, we consider it to be a preferable and more appropriate approach to implement the NPSIB definition which is specifically aimed at this aspect of the general environment rather than the NPSFM which has a prioritised base to it.
29. As a consequence, the Reply Report version of the PORPS recommends that
- The NPSIB definition of ‘effects management hierarchy’ be included in the Interpretation section titled ‘effects management hierarchy (in relation to indigenous biodiversity)’ to distinguish it from the NPSFM definition which is also included;
 - ECO-P6 refers to the definition in the Interpretation section rather than replicating the definition; and
 - ECO-P3 and ECO-P4 utilise the definition rather than referring to ECO-P6.
30. We consider that this approach is simpler, clearer and better reflects the requirements of the NPSIB.

2.2.1 Recommendation

31. We recommend that:
- The versions of APP3 – Principles for biodiversity offsetting and APP4 – Principles for biodiversity compensation contained in the PORPS reply version dated 10 October 2023 be adopted; and
 - The NPSIB definition of ‘effects management hierarchy’ be included in the Interpretation section titled ‘effects management hierarchy (in relation to indigenous biodiversity)’.
32. Amendments to ECO-P3, ECO-P4 and ECO-P6 are discussed later in this section.
33. Considering s.32AA, we consider that these amendments are necessary to implement the NPSIB.

2.3 Nationally and regionally significant infrastructure

34. A number of submitters raised concerns about the implications of the ECO chapter provisions for nationally and regionally significant infrastructure. These included extensive submissions

and evidence from Waka Kotahi, Oceana Gold, Contact Energy and Manawa Energy. Provisions ECO-P3, ECO-P4 and ECO-P6 are relevant here, and we also note that EIT-INF-P13 directs new nationally and regionally significant infrastructure to avoid locating in SNAs as a first priority.

35. Clause 1.3(3) of the NPSIB is of particular relevance to renewable electricity generation and electricity transmission networks and states:

Nothing in this National Policy Statement applies to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities. For the avoidance of doubt, renewable electricity generation assets and activities, and electricity transmission network assets and activities, are not “specified infrastructure” for the purposes of this National Policy Statement.

36. The Government is preparing replacements for the current NPSREG and NPSET and we understand that the draft releases of these documents each contained an effects management hierarchy for these activities. As these documents are draft, they have no weight in these proceedings, and we have not considered them further.

37. In response to clause 1.3(3) of the NPSIB, Mr Maclellan recommended a new ECO-P6A to address renewable electricity generation and electricity transmission networks. This in effect amended the effects management hierarchy for these activities. This approach was not supported by submitters for varying reasons, and in response, Mr Maclellan recommended in his NPSIB Reply Report to delete ECO-6A and references to it. He recommended to amend the definition of ‘effects management hierarchy (in relation to indigenous biodiversity)’ to reflect the direction in clause 1.3(3) and add an additional clause to ECO-P6 to reflect the different approach for renewable electricity generation and electricity transmission networks.

38. We agree with Mr Maclellan’s recommended approach and consider it preferable to what was a complex ECO-P6A. We consider that the exclusion in brackets in the introductory sentence of ECO-P6 should be part of the main text.

39. We return to nationally and regionally significant infrastructure that is not for renewable electricity generation or electricity transmission networks in relation to the specific relevant provisions.

2.3.1 Recommendation

40. We recommend that the following definition is inserted into the Interpretation section of the PORPS:

Effects management hierarchy (in relation to indigenous biodiversity)	<p>means an approach to managing the adverse effects of an activity on <i>indigenous biodiversity</i> that requires that:</p> <p>(a) adverse effects are avoided where practicable; then</p> <p>(b) where adverse effects cannot be avoided, they are minimised where practicable; then</p>
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- (c) where adverse effects cannot be minimised, they are remedied where practicable; then
- (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, *biodiversity offsetting* is provided where possible; then
- (e) where *biodiversity offsetting* of more than minor residual adverse effects is not possible, *biodiversity compensation* is provided; then
- (f) if *Biodiversity compensation* is not appropriate, the activity itself is avoided, unless the activity is *regionally significant infrastructure* and *nationally significant infrastructure* that is either *renewable electricity generation* or the *National Grid* then:
- (g) if compensation is not appropriate to address any residual adverse effects:
 - (i) the activity must be avoided if the residual adverse effects are significant; but
 - (ii) if the residual adverse effects are not significant, the activity must be enabled if the national significance and benefits of the activity outweigh the residual adverse effects.

41. We recommend that ECO-P6 be amended as follows:

ECO-P6 – Maintaining indigenous *biodiversity*

Outside the coastal environment and excluding areas managed protected under ECO-P3, Maintain manage Otago’s *indigenous biodiversity* (excluding the coastal environment and areas managed under ECO-P3) by:

- (1) applying the following *biodiversity effects management hierarchy* (in relation to *indigenous biodiversity*) to manage significant adverse effects on *indigenous biodiversity*, and
- (2) requiring the *maintenance of indigenous biodiversity* for all other adverse effects of any activity, and
- (3) notwithstanding (1) and (2) above, for *regionally significant infrastructure* and *nationally significant infrastructure* that is either *renewable electricity generation* or the *National Grid* avoid, remedy, or mitigate adverse effects to the extent practicable.

in decision-making on applications for *resource consent*, and notices of requirement:

- (1) ~~avoid adverse effects as the first priority,~~
- (2) ~~where adverse effects demonstrably cannot be completely avoided, they are remedied,~~
- (3) ~~where adverse effects demonstrably cannot be completely avoided or remedied, they are mitigated,~~
- (4) ~~where there are residual adverse effects after avoidance, remediation, and mitigation, then the residual adverse effects are offset in accordance with APP3, and~~
- (5) ~~if *biodiversity offsetting* of residual adverse effects is not possible, then:~~

- (a) ~~the residual adverse effects are compensated for in accordance with APP4, and~~
- (b) ~~if the residual adverse effects cannot be compensated for in accordance with APP4, the activity is avoided.~~

2.4 Significant natural areas

42. As stated above, s.6(c) of the RMA provides for the “*protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna*” as a matter of national importance. This is implemented through the following NPSIB policies:

Policy 6: Significant indigenous vegetation and significant habitats of indigenous fauna are identified as SNAs using a consistent approach.

Policy 7: SNAs are protected by avoiding or managing adverse effects from new subdivision, use and development.

Policy 9: Certain established activities are provided for within and outside SNAs.

43. Part 3 Subpart 2 of the NPSIB sets out how to identify and manage SNAs and Appendix 1 provides the criteria for identifying SNAs. Mr Maclellan’s evidence on the implications of the NPSIB helpfully summarises the relevant provisions in Part 3 Subpart 2 and we do not repeat these here.

44. Clause 3.8 requires territorial authorities to assess land to identify areas that qualify as SNAs, and clause 3.9 dictates how these areas are to be included in district plans. These clauses are given effect to in the PORPS by ECO-P2 and ECO-M2 which were notified as follows:

ECO-P2 – Identifying significant natural areas and taoka

Identify:

- (1) the areas and values of *significant natural areas* in accordance with APP2, and
- (2) indigenous species and ecosystems that are taoka in accordance with ECO-M3.

ECO-M2 – Identification of significant natural areas

Local authorities must:

- (1) in accordance with the statement of responsibilities in ECO-M1, identify the areas and values of *significant natural areas* as required by ECO-P2, and
- (2) map the areas and include the values identified under (1) in the relevant *regional* and *district plans*,
- (3) recognise that indigenous *biodiversity* spans jurisdictional boundaries by:
 - (a) working collaboratively to ensure the areas identified by different *local authorities* are not artificially fragmented when identifying *significant natural areas* that span jurisdictional boundaries, and
 - (b) ensuring that indigenous *biodiversity* is managed in accordance with this

RPS,

- (4) require ecological assessments to be provided with applications for resource consent and notices of requirement that identify whether affected areas are *significant natural areas* in accordance with APP2,
- (5) in the following areas, prioritise identification under (1) no later than 31 December 2025:
 - (a) intermontane basins that contain indigenous vegetation and habitats,
 - (b) areas of dryland shrubs,
 - (c) braided *rivers*, including the Makarora, Mātukituki and Lower Waitaki Rivers,
 - (d) areas of montane tall tussock grasslands, and
 - (e) limestone habitats.

45. There were 15 submissions on ECO-P2, ranging from Fish and Game who sought that the policy is retained as notified, to Fulton Hogan who sought its deletion. Concerns about APP2 emerged here as well, with concerns expressed that ECO-P2 combined with APP2 could see large areas of Otago classified as SNAs. The NPSIB requirements largely override these submissions and, in response, the NPSIB Reply Report of Mr Maclellan recommended a substantial rewording of clause (1) to refer to the SNA assessment criteria in APP2. We consider this to be appropriate, with minor amendments to correct italicising.

46. Additional clauses were recommended to be added to ECO-M2 and amendments made to existing clauses to obtain consistency with clauses 3.8 and 3.9 of the NPSIB. We have reviewed the supplementary submissions and evidence received from submitters, along with Mr Maclellan's recommendations and consider that the recommended amendments are appropriate, with minor amendments to correct italicising.

47. NPSIB clause 3.10 sets out the requirements for managing adverse effects of new subdivision, use or developments on SNAs. Adverse effects specified in clause 3.10(2) must be avoided unless provided for by the exceptions in clause 3.11 whereby the effects are to be managed by applying the effects management hierarchy.

48. In the PORPS ECO-P3 is to protect SNAs and taoka and ECO-P4 provides the exemptions for new activities. ECO-P3 and ECO-P4 were notified as follows:

ECO-P3 – Protecting *significant natural areas* and taoka

Except as provided for by ECO-P4 and ECO-P5, protect *significant natural areas* and indigenous species and ecosystems that are taoka by:

- (1) avoiding adverse *effects* that result in:
 - (a) any reduction of the area or values (even if those values are not themselves significant) identified under ECO-P2(1), or
 - (b) any loss of Kāi Tahu values, and

- (2) after (1), applying the *biodiversity effects management hierarchy* in ECO-P6, and
- (3) prior to *significant natural areas* and indigenous species and ecosystems that are taoka being identified in accordance with ECO-P2, adopt a precautionary approach towards activities in accordance with IM-P15.

ECO-P4 – Provision for new activities

Maintain Otago’s indigenous *biodiversity* by following the sequential steps in the effects management hierarchy set out in ECO-P6 when making decisions on plans, applications for resource consent or notices of requirement for the following activities in *significant natural areas*, or where they may adversely affect indigenous species and ecosystems that are taoka:

- (1) the development or upgrade of *nationally* and *regionally significant infrastructure* that has a *functional* or *operational need* to locate within the relevant *significant natural area(s)* or where they may adversely affect indigenous species or ecosystems that are taoka,
- (2) the development of *papakōiika*, marae and ancillary facilities associated with customary activities on Māori land,
- (3) the use of Māori land in a way that will make a significant contribution to enhancing the social, cultural or economic well-being of *takata whenua*,
- (4) activities that are for the purpose of protecting, restoring or enhancing a *significant natural area* or indigenous species or ecosystems that are taoka, or
- (5) activities that are for the purpose of addressing a severe and immediate *risk* to public health or safety.

49. Again, substantial amendments were recommended to these policies. The supplementary evidence from Mr Brass for the Director General of Conservation recommended that the adverse effects listed in clause 3.10(2) be included in clause (1) of ECO-P3. These contain more prescriptive ecological criteria, and we agree that these are necessary inclusions to ensure consistency with the NPSIB. Mr MacLennan recommended accepting Mr Brass’s addition and we consider that the resulting amended ECO-P3 is appropriate with the following exception.

50. ECO-P3 as notified excluded those matters covered by ECO-P4 and ECO-P5. As we soon discuss, we consider it appropriate to delete ECO-P5 and we support a replacement ECO-P5A to implement the requirements of the NPSIB. We consider that ECO-P5A should be referred to as an exclusion in ECO-P3, replacing the reference to ECO-P5.

51. It is important to note the ‘except as provided for by ECO-P4...’ in the chapeau of ECO-P3 as this provides for the exemptions in ECO-P4 to apply.

52. Turning to ECO-P4, again substantial amendments were recommended to ensure that the exemptions are consistent with those in clause 3.11 of the NPSIB, and the approach to managing effects is consistent with clause 3.10(3) and (4). We note here that clause 3.11(1)(a)(i) includes the term ‘specified infrastructure’ which is defined as:

specified infrastructure means any of the following:

- (a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002):
- (b) regionally or nationally significant infrastructure identified as such in a National Policy Statement, the New Zealand Coastal Policy Statement, or a regional policy statement or plan:
- (c) infrastructure that is necessary to support housing development, that is included in a proposed or operative plan or identified for development in any relevant strategy document (including a future development strategy or spatial strategy) adopted by a local authority, in an urban environment (as defined in the National Policy Statement on Urban Development 2020):
- (d) any public flood control, flood protection, or drainage works carried out:
 - (i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or
 - (ii) for the purpose of drainage, by drainage districts under the Land Drainage Act 1908:
- (e) defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990.

52. This new definition of specified infrastructure is broader than the definitions of regionally significant infrastructure and nationally significant infrastructure in the PORPS. Mr MacLennan has appropriately recommended that this definition be included, and we consider that the breadth of submissions on this policy provide the scope for this amendment.

53. A new ECO-P5A is recommended to replace notified ECO-P5. Concerns were raised by submitters as to whether ECO-P5 would conflict with activities which had existing use rights under s.10 of the RMA. We shared the submitters' concerns and were pleased to see that Ms Hardiman recommended in her reply report to delete ECO-P5. This left a gap for managing the effects of existing activities on SNAs.

54. **Policy 9** of the NPSIB states that:

Certain established activities are provided for within and outside SNAs.

This policy is implemented within SNAs through clause 3.15 of the NPSIB which manages the effects of activities established within or affecting an SNAs. Clause 3.15(2) requires that local authorities include provisions in policy statements and plans:

...to enable specified established activities, or specified types of established activities, to continue where the effects of the activity on an SNA (including cumulative effects):

- (a) *are no greater in intensity, scale, or character over time than at the commencement date; and*
- (b) *do not result in the loss of extent, or degradation of ecological integrity, of an SNA.*

55. It is a mandatory requirement to include provisions in a policy statement in accordance with clause 3.15 and, with the deletion of ECO-P5, this requirement was not met. ECO-P5A was therefore recommended by Mr MacLennan as follows:

ECO-P5A – Managing adverse effects of established activities on *significant natural areas*

Enable the maintenance, operation, and upgrade of established activities (excluding activities managed under ECO-P3 and ECO-P4), where the *effects* of the activity, including cumulative *effects*, on a *significant natural area*:

- (1) are no greater in intensity, scale, or character over time than at 4 August 2023, and
- (2) do not result in the loss of extent or degradation of *ecological integrity* of an *significant natural area*.

56. We consider that the wording of proposed ECO-P5A appropriately reflects the requirements of clause 3.15 of the NPSIB however, consistent with the approach taken to managing activities through ECO-P3, ECO-P4 and ECO-P6, we consider that it should not apply to the coastal environment. Accordingly, we do not accept the addition of the officer’s proposed clause (3A). There were broad submissions requesting amendments to ECO-P5 which provide scope for the addition of ECO-P5A.

57. APP2 of the PORPS as notified contained ‘significant criteria for indigenous biodiversity’ which were referenced through ECO-P2 and ECO-M2. While not labelled as such, these criteria were essentially to be used to determine SNAs. They were the subject of a large number of submissions and expert evidence, with some submitters requesting that the criteria for identifying SNAs that was included in the draft NPSIB be included in the PORPS. These matters were largely but not completely resolved through expert caucusing and a joint witness statement. We thank the submitters’ respective ecological experts for their engagement in this process.

58. Appendix 1 of the NPSIB contains criteria for identifying SNAs and clause 3.8(2) provides a set of six principles that must be used for SNA assessments. Mr MacLennan has recommended that the Appendix 1 NPSIB criteria replace APP2 and that the principles in clause 3.8(2) are included in APP2 prior to the criteria. He notes that a key distinction between Appendix 1 of the NPSIB and APP2 of the PORPS is that APP2 applies not only to ecological districts but also to freshwater and marine bioregions.

59. One key amendment to the criteria is recommended by Dr Lloyd and supported by Mr MacLennan. Dr Lloyd recommended that an additional criterion for Otago addressing fauna habitat be added as an attribute to the Ecological Context Criterion. Dr Lloyd stated at paragraph 28 of his evidence:¹

Both the PORPS and NPS-IB criteria sets contain attributes for buffering and connectivity, but the NPS-IB criterion does not capture important indigenous fauna habitats. The PORPS criterion for indigenous fauna habitats is particularly important in an Otago context, providing a basis for the recognition and protection of indigenous

¹ Prepared for ORC and dated 8 September 2023.

fauna habitats across many species groups.² The joint witness statement includes the following agreed fauna habitat criterion:

An area that is important for a population of indigenous fauna during a critical part of their life cycle, either seasonally or permanently, e.g. for feeding, resting, nesting, breeding, spawning, or refuges from predation.³

60. This recommended addition was not supported by Ms Justice for the EDBs or by Mr Christensen for Oceana Gold. Mr Christensen’s view is informed by clause 3.1(2) of the NPSIB which, states:

Nothing in this Part:

(a) prevents a local authority adopting more stringent measures than required by this National Policy Statement...

Mr Christensen maintains that this clause “does not allow a local authority to include more stringent matters in a RPS or plan, and cannot override a statutory requirement in the RMA to “give effect to the NPS”.”⁴

61. While we acknowledge the distinction between these clauses in the NPSFM and NPSIB, we struggle to agree with Mr Christensen that clause 3.1(2) of the NPSIB prevents us from including a more stringent and Otago-focussed addition. If this were the intent, we would have expected it to be explicitly stated. In our view the wording of clause 3.1(2) is permissive, i.e. if a local authority for a particular reason in a particular contextual setting saw it as its duty to protect the maintenance of indigenous biodiversity by use of a particular provision applicable to that setting, it is open to it to adopt such a provision even if it is not in the NPSIB.
62. We acknowledge the conclusions reached in the joint witness statement and agree that the additional criterion proposed by Dr Lloyd is appropriate in the Otago context.

2.4.1 Recommendations

63. We recommend the following amendments to ECO-P2:

ECO-P2 – Identifying significant natural areas and taoka

Identify and map:

- (1) the areas of significant indigenous vegetation or significant habitat of indigenous fauna that qualify as significant natural areas using the assessment criteria in APP2 and in accordance with ECO-M2, and values of significant natural areas in accordance with APP2 and
- (2) where appropriate, indigenous species and ecosystems that are taoka, including those identified by mana whenua as requiring protection, in accordance with ECO-M3.

64. We recommend the following amendments to ECO-M2:

² Paragraphs 13, 14 and 20 of Dr Lloyd’s evidence, dated 8 September 2023.

³ Joint Witness Statement of Ecologists dated 31 March 2023 at page 10

⁴ Submissions on behalf of Oceana Gold prepared by Mr Stephen Christensen, paragraph 13

ECO-M2 – Identification of *significant natural areas*

Local authorities must:

- (1) in accordance with the statement of responsibilities in ECO-M1, identify the areas and *indigenous biodiversity* values of *significant natural areas* as required by ECO-P2, and
- (2) map and verify the areas and include the *indigenous biodiversity* values identified under (1) in the relevant *regional plans* and *district plans*, no later than 31 December 2030,
- (3) recognise that *indigenous biodiversity* spans jurisdictional boundaries by:
 - (a) working collaboratively to ensure the areas identified by different *local authorities* are not artificially fragmented when identifying *significant natural areas* that span jurisdictional boundaries, and
 - (b) ensuring that *indigenous biodiversity* is managed in accordance with this RPS,
- (4) until *significant natural areas* are identified and mapped in accordance with (1) and (2), require ecological assessments to be provided with applications for *resource consent*, *plan changes* and notices of requirement that identify whether affected areas are *significant natural areas* in accordance with APP2, and
- (5) in the following areas, prioritise identification under (1) no later than 31 December 2025:
 - (a) intermontane basins that contain *indigenous vegetation* and habitats,
 - (b) areas of dryland shrubs,
 - (c) braided rivers, including the Makarora Makarore, Mātukituki Mātakitaki and Lower Waitaki Rivers,
 - (d) areas of montane tall tussock grasslands, and
 - (e) limestone habitats.
- (6) when identifying *significant natural areas*, ensuring that:
 - (a) if the values or extent of a proposed *significant natural area* are disputed by the landowner, the local authority:
 - (i) conducts a physical inspection of the area,
 - (ii) or, if a physical inspection is not practicable, uses the best information available to it at the time, and
 - (b) if requested by a territorial authority, the regional council will assist the territorial authority in undertaking its district-wide assessment, and
 - (c) where a territorial authority has identified a *significant natural area* prior to 4 August 2023, and prior to 4 August 2027, a suitably qualified ecologist is engaged by the territorial authority to confirm that the methodology originally used to identify the area as a *significant natural area*, and its application, is consistent with the assessment approach in APP2, and

- (d) if a territorial authority becomes aware (as a result of a resource consent application, notice of requirement or any other means) that an area may be an area of significant indigenous vegetation or significant habitat of indigenous fauna that qualifies as a significant natural area, the territorial authority:
 - (i) conducts an assessment of the area in accordance with APP2 as soon as practicable, and
 - (ii) if a new significant natural area is identified as a result, includes it in the next appropriate plan or plan change notified by the territorial authority, and
- (e) when a territorial authority does its 10-yearly plan review, it assesses its district in accordance with ECO-P2 and APP2 to determine whether changes are needed, and
- (7) allow an area of Crown-owned land to qualify as a significant natural area without the need for the assessment required by ECO-P2, using APP2, if:
 - (a) the land is managed by the Department of Conservation under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act, and
 - (b) the territorial authority is reasonably satisfied, after consultation with the Department of Conservation, that all or most of the area would qualify as a significant natural area under APP2, and
 - (c) the area is:
 - (i) a large and more-or-less contiguous area managed under a single protection classification (such as a national park), or
 - (ii) a large, compact, and more-or-less contiguous area under more than one classification (such as adjoining reserves and a conservation park), or
 - (iii) a well-defined landscape or geographical feature (such as an island or mountain range), or
 - (iv) a scientific, scenic or nature reserve under the Reserves Act 1977, a sanctuary area, ecological area, or wildlife management area under the Conservation Act 1987, or an isolated part of a national park.

65. We recommend the following amendments to ECO-P3:

ECO-P3 – Protecting significant natural areas and taoka

Outside the coastal environment, and except as provided for by ECO-P4 and ECO-P5-ECO-P5A, protect significant natural areas and indigenous species and ecosystems that are taoka by:

- (1) first avoiding adverse effects that result in:

- (a) ~~any reduction of the area or values (even if those values are not themselves significant identified under ECO-P2(1), or~~
- (aa) loss of ecosystem representation and extent,
- (ab) disruption to sequences, mosaics, or *ecosystem function*,
- (ac) fragmentation of *significant natural areas* or the loss of buffers or connections within an SNA,
- (ad) a reduction in the function of the *significant natural area* as a buffer or connection to other important habitats or ecosystems, or
- (ae) a reduction in the population size or occupancy of *Threatened or At Risk (declining) species* that use an *significant natural area* for any part of their life cycle, or
- (b) any loss of Kāi Tahu taoka values identified by *mana whenua* as requiring protection under ECO-P2(2), and
- (2) after (1), applying the *biodiversity effects management hierarchy (in relation to indigenous biodiversity)* in ECO-P6 to areas and values other than those covered by ECO-P3(1), and
- (3) prior to *significant natural areas* and *indigenous species* and ecosystems that are taoka being identified and mapped in accordance with ECO-P2, adopt a precautionary approach towards activities in accordance with IM-P15IM-P6(2).

66. We recommend the following amendments to ECO-P4:

ECO-P4 – Provision for new activities

Outside of the coastal environment, ~~M~~maintain Otago's *indigenous biodiversity* by following the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)* ~~set out in ECO-P6~~ when making decisions on plans, applications for *resource consent* or notices of requirement for the following activities in *significant natural areas*, or where they may adversely affect *indigenous species* and ecosystems that are taoka that have been identified by *mana whenua* as requiring protection:

- (1) the development, operation, maintenance or upgrade of *specified infrastructure nationally significant infrastructure and regionally significant infrastructure* that provides significant national or regional public benefit that has a *functional need* or *operational need* to locate within the relevant *significant natural area(s)* or where they may adversely affect *indigenous species* or ecosystems that are taoka, and there are no practicable alternative locations,
- (1A) the development, operation and maintenance of *mineral* extraction activities that provide a significant national public benefit that could not otherwise be achieved within New Zealand and that have a *functional need* or *operational need* to locate within the relevant *significant natural area(s)* or where they may adversely affect *indigenous species* or ecosystems that are taoka, and there are no practicable alternative locations,

- (1B) the development, operation and maintenance of aggregate extraction activities that provide a significant national or regional benefit that could not otherwise be achieved within New Zealand and that have a functional need or operational need to locate within the relevant significant natural area(s) or where they may adversely affect indigenous species or ecosystems that are taoka,
- (1C) the operation or expansion of any coal mine that was lawfully established before August 2023 that has a functional need or operational need to locate within the relevant significant natural area(s) or where they may adversely affect indigenous species or ecosystems that are taoka, and there are no practicable alternative locations; except that, after 31 December 2030, this exception applies only to such coal mines that extract coking coal,
- (2) the development of *papakāika*, marae and ancillary facilities associated with customary activities on Native reserves and Māori land,
- (2A) the sustainable use of mahika kai and kaimoana (seafood) by mana whenua,
- (3) the use of Native reserves and Māori land in a way that will make a significant contribution to enable mana whenua to maintain their connection to their whenua and enhancing the social, cultural or economic well-being of takata whenua,
- (4) activities that are for the purpose of protecting, maintaining, restoring or enhancing a *significant natural area* or *indigenous species* or ecosystems that are taoka, or
- (5) activities that are for the purpose of addressing a severe and or immediate risk to public health or safety,;
- (6) activities that are for the purpose of a developing a single residential dwelling on an allotment that was created before 4 August 2023, and can demonstrate there is no practicable location within the allotment where a single residential dwelling and essential associated on-site infrastructure can be constructed, or
- (7) activities that are for the purpose of harvesting indigenous tree species from an significant natural area carried out in accordance with a forest management plan or permit under Part 3A of the Forests Act 1949.

67. We recommend that notified ECO-P5 be deleted and that an additional policy, ECO-P5A, be inserted as follows:

ECO-P5A – Managing adverse effects of established activities on *significant natural areas*

Outside of the coastal environment, Enable the maintenance, operation, and upgrade of established activities (excluding activities managed under ECO-P3 and ECO-P4), where the effects of the activity, including cumulative effects, on a significant natural area:

- (1) are no greater in intensity, scale, or character over time than at 4 August 2023, and

- (2) do not result in the loss of extent or degradation of *ecological integrity* of a *significant natural area*.

68. We recommend that APP2 be amended as per the Reply Report version of the PORPS dated 10 October 2023.

3. Definitions

69. There are a range of submissions relating to the terms defined in the ECO chapter. There are also a number of terms that are defined in the NPSIB that are used in the PORPS. Officers have recommended that definitions be amended to reflect the NPSIB, or that NPSIB definitions be included for terms used in the PORPS that were not defined. We consider that this is an appropriate approach and note that, in some cases, submitters requested definitions be introduced that are now defined by the NPSIB. It is important to note that were NPSIB-defined terms not to be included in the PORPS, the definitions would apply anyway.

70. We recommend below that NPSIB definitions are adopted in the PORPS. In some cases, this means an amendment to refer to the NPSIB rather than any material change to the definition.

3.1 Recommendation

71. We recommend that the NPSIB definitions of the following terms are included in the Interpretation section of the PORPS, in addition to those discussed and recommended previously. Where terms are already included in the PORPS, they are to be replaced with the NPSIB definition of these terms:

- Biodiversity compensation
- Biodiversity offset
- Depositional landform
- Ecological district
- Ecosystem function
- Exotic pasture species
- Habitat
- Improved pasture
- Indigenous biodiversity
- Maintenance of improved pasture
- Restoration (in relation to indigenous biodiversity)
- SNA or significant natural area, but with the reference to “Appendix 1” changed to “APP2”
- Specified infrastructure
- Threatened or At Risk, and Threatened or At Risk (declining)

4. ECO-02 – Restoring or enhancing and ECO-P8 – Enhancement

72. ECO-02 seeks an increase in Otago’s indigenous biodiversity through restoration and enhancement, while ECO-P8 sets out the actions to achieve this. These provisions were notified as follows:

ECO-02 – Restoring or enhancing

A net increase in the extent and occupancy of Otago’s indigenous *biodiversity* results from restoration or enhancement.

ECO-P8 – Enhancement

The extent, occupancy and condition of Otago’s indigenous *biodiversity* is increased by:

- (1) restoring and enhancing habitat for indigenous species, including taoka and mahika kai species,
- (2) improving the health and *resilience* of indigenous *biodiversity*, including ecosystems, species, important ecosystem function, and *intrinsic values*, and
- (3) buffering or linking ecosystems, habitats and ecological corridors.

73. These two provisions implement Policy 13 and Policy 14 of the NPSIB which are included below:

Policy 13: Restoration of indigenous biodiversity is promoted and provided for.

Policy 14: Increased indigenous vegetation cover is promoted in both urban and non-urban environments.

74. We also note here Policy 8:

Policy 8: The importance of maintaining indigenous biodiversity outside SNAs is recognised and provided for.

75. Ngāi Tahu ki Murihiku and Fulton Hogan were unsure what the term ‘occupancy’ meant in ECO-02 and requested either that it be deleted or defined.⁵ In response, Ms Hardiman recommended the following definition of occupancy be included in the Interpretation section:

Means, in relation to measuring indigenous biodiversity, the number of units per area occupied by a species or taxa.

76. Other submitters, including QLDC and Forest and Bird, sought additional clarity with Forest and Bird requesting consistency with the language used in ECO-01. We note that the final recommended version of ECO-01 refers to the ‘condition, quality and diversity’ of indigenous biodiversity, whereas ECO-P2 uses ‘extent and occupancy’.

⁵ Refer p25 of s.42A

77. We also observe that the final recommendation for ECO-01 uses the term ‘overall decline’ while ECO-02 uses ‘net increase’. ‘Net’ was recommended by Ms Hardiman in her reply report prior to the release of the NPSIB, and this was recommended to be replaced by ‘overall’ to ensure consistency with the objective of the NPSIB.
78. We consider that consistency of language between provisions is important unless there is a good reason not to. This is primarily to avoid future debates about what different phrases mean and whether the difference in phraseology is significant. It also makes regulatory documents much easier to digest.
79. While we acknowledge Forest and Bird’s desire for consistency, we accept Ms Hardiman’s position in her Reply Report that ‘extent’ and ‘occupancy’ are ecological terms that relate to restoration outcomes. We accept that in this instance it is appropriate to use different terms and, as we discuss below, we also consider it appropriate to use these terms in ECO-P8.
80. We consider that ‘overall increase’ is a suitable phrase to use in ECO-02 to ensure consistency with the NPSIB and ECO-01. In our view it has the same meaning as net in this context and we recommend that this is a consequential amendment from ECO-P1.
81. Restoration is defined in the NPSIB and we have earlier recommended that this definition be included in the PORPS. This is not reflected in the recommended ECO-02 through italicising ‘restoration’ and we recommend this as a consequential amendment. Similarly, we consider that ‘indigenous’ should be italicised to reflect the new definition of ‘indigenous biodiversity’.
82. Clause 3.21 of the NPSIB promotes the restoration of indigenous biodiversity and is relevant to ECO-P8. Sub-clause (1) of clause 3.21 of the NPSIB requires the PORPS to include provisions “to promote the restoration of indigenous biodiversity, including through reconstruction of areas” and sub-clause (2) states that:
- The objectives, policies and methods must prioritise all the following for restoration:*
- (a) SNAs whose ecological integrity is degraded:
 - (b) threatened and rare ecosystems representative of naturally occurring and formerly present ecosystems:
 - (c) areas that provide important connectivity or buffering functions:
 - (d) natural inland wetlands whose ecological integrity is degraded or that no longer retain their indigenous vegetation or habitat for indigenous fauna:
 - (e) areas of indigenous biodiversity on specified Māori land where restoration is advanced by the Māori landowners:
 - (f) any other priorities specified in regional biodiversity strategies or any national priorities for indigenous biodiversity restoration.
83. Sub-clause (2)(d) is implemented through LF-FW-P10, whereas the remaining sub-clauses are implemented through the ECO chapter. As notified, ECO-P8 falls short of achieving the above directive through setting out actions but not prioritising areas for restoration. Mr MacLennan recommends that the above prioritised areas in clause 3.21(2) of the NPSIB be included in ECO-P8. We agree that this is necessary with the exception of clause (2)(d) which is addressed in the LF chapter through LF-FW-P10.

84. Turning to submissions on ECO-P8, we agree with the submission of Kāi Tahu ki Otago and Forest and Bird to include the term 'restoration' in the heading. Forest and Bird consider the term 'enhancement' to be too subjective and preferred 'improving'. We agree with Ms Hardiman that 'enhancement' is a well understood term that is used throughout the PORPS in a similar context.
85. QLDC requested that 'intrinsic values' be added to the chapeau of ECO-P8 to more clearly link to clause (2). Ms Hardiman recommended accepting this amendment but we consider that this is unnecessary duplication with clause (2).

4.1 Recommendation

86. We recommend that ECO-02 be amended as follows:

ECO-02 – Restoring or and enhancing

Restoration and enhancement activities result in an A net overall increase in the extent and *occupancy* of Otago's *indigenous biodiversity* results from restoration or enhancement.

87. We recommend the following amendments to ECO-P8:

ECO-P8 – Restoration and eEnhancement

The extent, *occupancy* and condition of Otago's *indigenous biodiversity* is increased by:

- (1) restoring and enhancing *habitat* for *indigenous species*, including taoka and *mahika kai* species,
- (2) improving the health and *resilience* of *indigenous biodiversity*, including ecosystems, species, important ecosystem function, and *intrinsic values*, and
- (3) buffering or linking ecosystems, habitats and ecological corridors, ki uta ki tai and
- (4) prioritising all the following for restoration:
 - (a) significant natural areas whose *ecological integrity* is degraded,
 - (b) threatened and rare ecosystems representative of naturally occurring and formerly present ecosystems,
 - (c) areas that provide important connectivity or buffering functions,
 - (d) areas of *indigenous biodiversity* on native reserves and *Māori land* where *restoration* is advanced by the Māori landowners,
 - (e) any other priorities specified in regional biodiversity strategies or any national priorities for *indigenous biodiversity restoration*.

5. ECO-03 – Kaitiakitaka stewardship and ECO-P1 - Kaitiakitanga

88. ECO-03 and ECO-P1 were notified as follows:

ECO-03 – *Kaitiakiaka* and stewardship

Mana whenua are recognised as kaitiaki of Otago's indigenous *biodiversity*, and Otago's communities are recognised as stewards, who are responsible for:

- (1) te hauora o te koiora (the health of indigenous *biodiversity*), te hauora o te taoka (the health of species and ecosystems that are taoka), and te hauora o te taiao (the health of the wider *environment*), while
- (2) providing for te hauora o te takata (the health of the people).

ECO-P1 – Kaitiakitaka

Recognise the role of Kāi Tahu as kaitiaki of Otago's indigenous *biodiversity* by:

- (1) involving Kāi Tahu in the management of indigenous *biodiversity* and the identification of indigenous species and ecosystems that are taoka,
- (2) incorporating the use of mātauraka Māori in the management and monitoring of indigenous *biodiversity*, and
- (3) providing for access to and use of indigenous *biodiversity* by Kāi Tahu, including mahika kai, according to tikaka.

89. We note that NPSIB Policy 2 contains similar direction to ECO-03 and ECO-P1, stating:

Tangata whenua exercise kaitiakitanga for indigenous biodiversity in their rohe, including through:

- (a) *managing indigenous biodiversity on their land; and*
- (b) *identifying and protecting indigenous species, populations and ecosystems that are taonga; and*
- (c) *actively participating in other decision-making about indigenous biodiversity.*

90. We have considered the submissions and amendments recommended by Ms Hardiman and Mr Maclellan. We have put particular weight on the NPSIB and the submissions of Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago. We found the supplementary evidence of Mr Bathgate for iwi submitters on the NPSIB particularly helpful, as was the discussion in the NPSIB Reply Report of Mr Maclellan. We do not repeat the key points of those discussions here and support the final recommendations for these provision, with minor amendments to italicise 'indigenous' and 'biodiversity' in ECO-P1(3).

5.1 Recommendation

91. We recommend that ECO-03 be amended as follows:

ECO-03 – *Kaitiaki* *Kaitiakitaka* and stewardship

Mana whenua exercise their role are recognised as kaitiaki of Otago’s *indigenous biodiversity*, and Otago’s communities are recognised as stewards, who are responsible for:

- (1) te hauora o te koiora (the health of *indigenous biodiversity*), te hauora o te taoka (the health of species and ecosystems that are taoka), and te hauora o te taiao (the health of the wider *environment*), while
- (2) providing for te hauora o te takata (the health of the people).

ECO-P1 – *Kaitiakitaka*

Recognise the role of Enable Kāi Tahu to exercise their role as kaitiaki of Otago’s *indigenous biodiversity* by:

- (1) involving partnering with Kāi Tahu in the management of *indigenous biodiversity* to the extent desired by *mana whenua*,
- (1A) working with Kāi Tahu to identify and the identification of *indigenous species* and ecosystems that are taoka,
- (2) incorporating the use of mātauraka Māori in the management and monitoring of *indigenous biodiversity*, and
- (3) providing for facilitating access to and use of *indigenous biodiversity* by Kāi Tahu, including *mahika kai*, according to tikaka.

6. Coastal indigenous biodiversity

92. The PORPS as notified contained ECO-P7 as follows:

ECO-P7 – Coastal indigenous biodiversity

Coastal indigenous *biodiversity* is managed by CE-P5, and implementation of CE-P5 also contributes to achieving ECO-01.

93. The final recommendation from the officers was to move CE-P5 to the ECO chapter and delete ECO-P7. We considered this in the CE chapter where we rejected that change, recommending that CE-P5 remain in the CE chapter. Part of our consideration in this regard was clause 9 of the National Planning Standards, which states:

8. Excluding the provisions in Part 2, provisions that apply to the coastal marine area must be located in the Coastal marine area section.

94. The NPSIB applies to indigenous biodiversity in the terrestrial environment. ‘Terrestrial environment’ is described as follows:

terrestrial environment means land and associated natural and physical resources above mean high-water springs, excluding land covered by water, water bodies and freshwater ecosystems (as those terms are used in the National Policy Statement for Freshwater Management 2020) and the coastal marine area.

95. We interpret this as meaning that the NPSIB applies to land in the coastal environment that is above mean high water springs and is not covered by water, water bodies and freshwater ecosystems. Therefore, there may potentially be some overlap with the provisions of the NZCPS where Policy 11 starts with:

To protect indigenous biological diversity in the coastal environment

and 'coastal environment' is given a rather broad and indistinct description of its extent and characteristics in Policy 1 of the NZCPS.

96. Any potential for conflict between the provisions of the NPSIB and the NZCPS is helpfully resolved by clause 1.4(2) of the NPSIB which states:

If there is a conflict between the provisions of this National Policy Statement and the New Zealand Coastal Policy Statement 2010 (or any later New Zealand Coastal Policy Statement issued under the Act), the New Zealand Coastal Policy Statement prevails.

97. CE-P5 is intended to implement Policy 11 of the NZCPS in an Otago context. If there is any conflict between the provisions of the ECO and CE chapters, it is likely that this will be resolved through consideration of the higher order NZCPS and NPSIB, where the NZCPS will prevail.

98. Of note, some provisions in the ECO chapter do not apply to the coastal environment, including ECO-P3, ECO-P4 and ECO-P6. The identification of SNAs under ECO-P2 does apply to the coastal environment and we consider that this is consistent with the NPSIB and CE-P5.

99. This takes us back to considering ECO-P7 and whether such a policy that cross-references to CE-P5 is necessary. We consider that it is, especially due to the close association and, on occasion, potentially overlapping provisions of the ECO and CE chapters. We consider that the s.42A recommended wording of ECO-P7 should be reinstated with amendments to reflect ECO-P5A replacing ECO-P5. Some submitters, including Port Otago, considered the CE-ECO split unclear. We agree and hope that the recommended version aids users by specifying which provisions apply and which are excluded from consideration in the coastal environment.

6.1 Recommendation

100. We recommend that ECO-P7 be amended as follows:

ECO-P7 – Coastal indigenous *biodiversity*

Coastal indigenous *biodiversity* in the coastal environment is managed by CE-P5, in addition to all objectives and policies of the ECO chapter except ECO-P3, ECO-P4, ECO-P5A and ECO-P6 and implementation of CE-P5 also contributes to achieving ECO-O1.

7. Wilding conifers

101. We heard from submitters, including the Director General of Conservation and DCC, who requested broader policy direction on pest species recognising that their impacts are not only on indigenous biodiversity but also on other matters including primary production and landscape values. This also linked with submissions we received from OWRUG and other primary sector groups who sought increased recognition and direction for impacts on primary production.
102. This was addressed in the reply report with Ms Hardiman and Ms Boyd recommending that ECO-P9 be replaced with a new policy in the LF-IS chapter which also incorporates NFL-P5. We accepted this recommendation and discuss the new policy and associated changes in the LF-IS section of this report. As a consequence ECO-M5(6), paragraph 3 of ECO-E1, and ECO-AER4 become redundant.

7.1 Recommendation

103. We recommend that the following are deleted: ECO-P9, ECO-M5(6), paragraph 3 of ECO-E1, and ECO-AER4.

8. ECO-P10 – Integrated management and ECO-M6 – Engagement

104. Subpart 1 of Part 2 of the NPSIB details the approach to implementing the objective and policies. Of relevance here is clause 3.4 which requires local authorities *“to manage indigenous biodiversity and the effects on it from subdivision, use and development in an integrated way, which means:*
- (a) recognising the interconnectedness of the whole environment and the interactions between the terrestrial environment, freshwater, and the coastal marine area; and*
 - (b) providing for the coordinated management and control of subdivision, use and development, as it affects indigenous biodiversity across administrative boundaries; and*
 - (c) working towards aligning strategies and other planning tools required or provided for in legislation that are relevant to indigenous biodiversity.*
105. This is implemented in part in the PORPS through ECO-P10 and ECO-M6 which were notified as follows:

ECO-P10 – Integrated management

Implement an integrated and co-ordinated approach to managing Otago's ecosystems and indigenous *biodiversity* that:

- (1) ensures any permitted or controlled activity in a *regional* or *district plan* rule does not compromise the achievement of ECO-01,
- (2) recognises the interactions *ki uta ki tai* (from the mountains to the sea)

between the terrestrial *environment, fresh water, and the coastal marine area, including the migration of fish species between fresh and coastal waters,*

- (3) promotes collaboration between individuals and agencies with *biodiversity responsibilities,*
- (4) supports the various statutory and non-statutory approaches adopted to manage indigenous *biodiversity,*
- (5) recognises the critical role of people and communities in actively managing the remaining indigenous *biodiversity occurring on private land, and*
- (6) adopts regulatory and non-regulatory regional pest management programmes.

ECO-M6 – Engagement

Local authorities, when implementing the policies in this chapter, will:

- (1) work collaboratively with other *local authorities* to adopt an integrated approach to managing Otago’s *biodiversity* across administrative boundaries,
- (2) engage with individuals (including landowners and *land* occupiers), community groups, government agencies and other organisations with a role or an interest in *biodiversity* management, and
- (3) consult directly with landowners and *land* occupiers whose properties potentially contain or are part of *significant natural areas.*

106. ECO-P10 goes a long way to implement clause 3.4 of the NPSIB but focuses on managing ecosystems and indigenous biodiversity rather than “*indigenous biodiversity and the effects on it from subdivision use and development*”. We agree with Mr Maclellan that the chapeau of ECO-P10 should be amended to reflect the broader scope of clause 3.4.

107. Similarly, Mr Maclellan recommends amending clauses (3) and (4) of ECO-P10 to reflect the wording in subclauses (b) and (c) of clause 3.4 of the NPSIB. We consider this to be appropriate.

108. Turning to submissions, there were 11 submissions on ECO-P10 with two submitters seeking it be retained as notified. Some of the submission points have been superseded by the requirements of the NPSIB. Kāi Tahu ki Otago sought that clause (2) better reflects the connection between the terrestrial and coastal environments. Ms Hardiman has recommended amendments in response to that submission and, while we consider that these strengthen the intent of the policy, we also note that these matters are addressed in a more general sense in the IM chapter.

109. Kāi Tahu ki Otago also sought an additional clause to acknowledge the effects of climate change on indigenous biodiversity and we agree with Ms Hardiman that this is an important consideration in this policy. We recommend a minor wording change below to refer to activities which ‘may’ exacerbate the effects of climate change and also note that this assists to implement Policy 4 and clause 3.6 of the NPSIB.

110. We note that the final recommended reply report version of the PORPS has an amendment to the title of ECO-P10 from ‘integrated management’ to ‘Co-ordinated approach’. This was requested by Kāi Tahu ki Otago. Given the focus of the policy is on integration rather than co-ordination, we are reluctant to accept this change. Our preference is for a hybrid title of ‘Integrated approach’ which reflects the title of clause 3.4 of the NPSIB.
111. Turning to ECO-M6, we agree with Mr MacLennan’s assessment that this method is consistent with clause 3.4(1)(b) of the NPSIB and that no amendments are required to ensure consistency with the NPSIB.
112. There were seven submissions on ECO-M6 with five of these seeking that it be retained as notified. Kāi Tahu ki Otago sought that the provision be clarified with respect to how Kāi Tahu will be involved in the management of indigenous biodiversity. Ms Hardiman considered that this was addressed in the MW chapter, specifically MW-M3 and MW-M4. We consider that this matter should also be addressed in the ECO chapter methods and note the recommended addition of ECO-M4D – Native reserves and Māori land and ECO-M7A – Kāi Tahu kaitiakitaka in response to the NPSIB. We consider that these address Kāi Tahu’s concerns.

8.1 Recommendation

113. We recommend that ECO-P10 be amended as follows:

ECO-P10 – Integrated management approach

Manage *indigenous biodiversity* and the *effects* on it from subdivision, use and development in an integrated way, which means: ~~Implement an integrated and co-ordinated approach to managing Otago’s ecosystems and indigenous *biodiversity* that:~~

- (1) ensuring any permitted or controlled activity in a *regional plan* or *district plan* rule does not compromise the achievement of ECO-01,
- (2) recognising the interactions *ki uta ki tai* (from the mountains to the sea) between the terrestrial *environment*, *fresh water*, and the *coastal marine area*, including:
 - (a) the migration of fish species between *fresh* and *coastal waters*, and
 - (b) the effects of land-use activities on coastal biodiversity and ecosystems,
- (2A) acknowledging that *climate change* will affect *indigenous biodiversity* and managing activities which may exacerbate the *effects* of *climate change*,
- (3) providing for the coordinated management and control of subdivision, use and development, as it affects *indigenous biodiversity* across administrative boundaries, ~~promotes collaboration between individuals and agencies with *biodiversity* responsibilities,~~
- (4) working towards aligning strategies and other planning tools required or provided for in legislation that are relevant to *indigenous biodiversity*, ~~supports the various statutory and non-statutory approaches adopted to manage indigenous *biodiversity*,~~

- (5) recognising the critical role of people and communities in actively managing the remaining *indigenous biodiversity* occurring on private *land*, and
- (6) adopting regulatory and non-regulatory regional *pest* management programmes.

114. We recommend that ECO-M6 be retained as notified.

9. New policies ECO-P11 and ECO-P12

115. In his NPSIB evidence Mr Maclellan recommended two new policies to address matters in the NPSIB that are not addressed in the PORPS.

116. The first of these is resilience to climate change. Policy 4 of the NPSIB states:

Policy 4: Indigenous biodiversity is managed to promote resilience to the effects of climate change.

117. Clause 3.6 of the NPSIB addresses resilience to climate change and implements Policy 4. It reads as follows:

(1) *Local authorities must promote the resilience of indigenous biodiversity to climate change, including at least by:*

(a) *allowing and supporting the natural adjustment of habitats and ecosystems to the changing climate; and*

(b) *considering the effects of climate change when making decisions on:*

(i) *restoration proposals; and*

(ii) *managing and reducing new and existing biosecurity risks; and*

(c) *maintaining and promoting the enhancement of the connectivity between ecosystems, and between existing and potential habitats, to enable migrations so that species can continue to find viable niches as the climate changes.*

(2) *Local authorities must recognise the role of indigenous biodiversity in mitigating the effects of climate change.*

118. Mr Maclellan has recommended wording for ECO-P11 that closely mirrors that above and we consider his recommendation is appropriate and that there is scope in submissions to include this additional policy.

119. The second matter is the management of the effects of plantation forestry activities on SNAs. This is addressed in the NPSIB through Policy 12 and clause 3.14. Policy 12 reads as follows:

Policy 12: Indigenous biodiversity is managed within plantation forestry while providing for plantation forestry activities.

120. Clause 3.14 reads as follows:

(1) *Except as provided in subclause (2), the adverse effects of plantation forestry activities in any existing plantation forest on any SNA must be managed in a manner that:*

(a) maintains indigenous biodiversity in the SNA as far as practicable; while

(b) providing for plantation forestry activities to continue.

(2) Despite clause 3.10, any part of an SNA that is within an area of an existing plantation forest that is planted, or is intended to be, replanted in trees for harvest must be managed over the course of consecutive rotations of production in the manner necessary to maintain the long-term populations of any Threatened or At Risk (declining) species present in the area.

(3) Every local authority must make or change its policy statements and plans to be consistent with the requirements of this clause.

121. Similar to his recommendation for ECO-P11, Mr MacLennan has recommended wording for ECO-P12 that closely mirrors the wording of clause 3.14. We consider that this is appropriate and that there is scope in submissions to include this additional policy.

9.1 Recommendation

122. We recommend the addition of two new policies, numbered ECO-P11 and ECO-P12 as follows:

ECO-P11 – Resilience to climate change

Promote the resilience of indigenous biodiversity to climate change, including at least by:

- (1) allowing and supporting the natural adjustment of habitats and ecosystems to the changing climate, and
- (2) considering the effects of climate change when making decisions on:
 - (a) restoration proposals, and
 - (b) managing and reducing new and existing biosecurity risks, and
- (3) maintaining and promoting the enhancement of the connectivity between ecosystems, and between existing and potential habitats, to enable migrations so that species can continue to find viable niches as the climate changes, and
- (4) recognising the role of indigenous biodiversity in mitigating the effects of climate change.

ECO-P12 – Plantation forestry activities

Manage:

- (1) the adverse effects of plantation forestry activities in any existing plantation forest on any significant natural area in a manner that:
 - (a) maintains indigenous biodiversity in the significant natural area as far as practicable, while
 - (b) provides for plantation forestry activities to continue, and

- (2) over the course of consecutive rotations of production, any part of a *significant natural area* that is within an area of an existing *plantation forest* that is planted, or is intended to be, replanted in trees for harvest in the manner necessary to maintain the long-term populations of any *Threatened or At Risk (declining) species* present in the area.

10. Other provisions

123. We have reviewed the submissions and recommendations of the officers for the following remaining methods that have not been addressed above:

- ECO-M1 – Statement of responsibilities
- ECO-M3 – Identification of taoka
- ECO-M4 – Regional plans
- New recommended ECO-M4A – Increasing indigenous vegetation cover in response to Policy 14 and clause 3.22 of the NPSIB
- New recommended ECO-M4B – Specified highly mobile fauna in response to Policy 15 and clause 3.20 of the NPSIB
- New recommended ECO-M4C – Maintenance of improved pasture for farming in response to clause 3.17 of the NPSIB
- New recommended ECO-M4D – Native reserves and Māori land in response to clause 3.18 of the NPSIB
- ECO-M5 – District plans
- New recommended ECO-M7A – Kāi Tahu kaitiakitaka in response to clause 3.3 of the NPSIB
- New recommended ECO-M7B – Information requirements in response to Policy 17 and clause 3.24 of the NPSIB
- ECO-M7 – Monitoring
- ECO-M8 – Other incentives and mechanisms
- New recommended ECO-M9 – Regional Biodiversity Strategy in response to clause 3.23 and Appendix 5 of the NPSIB

124. There are several new methods proposed to implement the requirements of the NPSIB and, similar to those discussed earlier, the proposed wording generally mirrors that of the respective NPSIB provisions. We consider that the amendments in response to the NPSIB are appropriate and support the additional recommendations and reasoning in the reply report for those amendments that are not in response to the NPSIB.

125. Turning to ECO-E1 – Explanation, there are consequential amendments which follow from our recommendations above. We have not accepted moving CE-P5 to the ECO chapter and therefore do not accept Ms Hardiman’s recommendation to amend ECO-P1 to reflect this. We

are referring to her recommendation to add a sentence referring to protecting coastal indigenous biodiversity at the end of the first paragraph, and her recommendation to delete the first sentence of the second paragraph. We consider that the first and second paragraphs should remain as notified.

126. The third paragraph of ECO-E1 refers to wilding conifers, which we addressed earlier in our discussion and recommendation to delete ECO-P9.
127. ECO-PR1 – Principal reasons is recommended to remain largely as notified, with a minor correction to italicise ‘Mahika kai’ and an additional reference to ‘coastal indigenous biodiversity’ at the end of the second bullet point. As for ECO-E1 and given that we have not accepted the recommendation to move CE-P5 to the ECO chapter, we do not support this addition. We also recommend a minor amendment to italicise ‘indigenous’ when referring to ‘indigenous biodiversity’.
128. Ms Hardiman has recommended minor amendments to ECO-AER1 and ECO-AER2 to replace ‘quality’ with ‘condition’. This is consistent with our recommended wording for ECO-O1 as well as other provisions in the ECO chapter. We therefore accept this recommendation. Ms Hardiman has also recommended deleting ECO-AER4 which addressed wilding pines and which we have addressed earlier in relation to the deletion of ECO-P9.

10.1 Recommendation

129. Adopt the Reply version of the PORPS dated 10 October 2023 for the following provisions:
- ECO-M1 – Statement of responsibilities
 - ECO-M3 – Identification of taoka
 - ECO-M4 – Regional plans
 - ECO-M4A – Increasing indigenous vegetation cover
 - ECO-M4B – Specified highly mobile fauna
 - ECO-M4C – Maintenance of improved pasture for farming
 - ECO-M4D – Native reserves and Māori land
 - ECO-M5 – District plans
 - ECO-M7A – Kāi Tahu kaitiakitaka
 - ECO-M7B – Information requirements
 - ECO-M7 – Monitoring
 - ECO-M8 – Other incentives and mechanisms
 - ECO-M9 – Regional Biodiversity Strategy
130. We recommend that ECO-E1 be retained as notified except for the deletion of the third paragraph commencing “*Wilding conifers are a particular issue...*”.

131. We recommend that ECO-PR1 be retained as notified with minor corrections to italicise 'indigenous' when referring to 'indigenous biodiversity', and the italicisation of 'Mahika kai'

132. We recommend that the anticipated environmental results are amended as follows:

ECO-AER1 There is no further decline in the condition quality, quantity or diversity of Otago's indigenous *biodiversity*.

ECO-AER2 The condition quality, quantity and diversity of indigenous *biodiversity* within Otago improves over the life of this Regional Policy Statement.

ECO-AER3 Kāi Tahu are involved in the management of indigenous *biodiversity* and able to effectively exercise their *kaitiakitaka*.

~~**ECO-AER4** Within *significant natural areas*, the area of *land* vegetated by *wilding conifers* is reduced.~~

Section 10: Energy, Infrastructure and Transport (EIT)

1. Introduction

1. The Otago region includes nationally and regionally significant renewable energy resources, infrastructure, and transport networks, as well as other infrastructure that is important at a local level. There are overlapping responsibilities between regional and district councils for managing the effects from energy, infrastructure, and transport networks in accordance with their functions under the RMA. In addition, there is a suite of regulations under several other statutes which interface with RMA functions. Many of the energy, transport and infrastructure matters also traverse the coastal environment, both within the coastal marine area and adjacent to it and interact with urban form and development.
2. The EIT chapter addresses these matters in three sub-chapters as follows:
 - Energy,
 - Infrastructure, and
 - Transport.
3. The original reporting officer on the EIT chapter was Mr Peter Stafford, who was at the time a Senior Policy Analyst at the Otago Regional Council. Mr Stafford left the Council before the hearing on the EIT chapter. Mr Marcus Langman, an independent planning consultant, was engaged by the Council to take over the reporting on the EIT chapter. Mr Langman produced several supplementary reports, including a final reply report that addressed outstanding matters.
4. This Recommendation Report largely follows the format of Mr Langman's reply report although not entirely. We also address a number of other matters that were not considered in Mr Langman's reply. As has been our approach in other chapters, we have not addressed provisions where we agree with the recommendation of the officer, although we have made some recommendations in the SODR table on some minor changes requested by submitters.

2. Chapter structure

5. As we noted above, Mr Langham was not the author of the s42A report but became involved prior to the pre-hearing meetings on the EIT chapter. In his supplementary evidence, he addressed the structure of the EIT chapter. He advised that the format of the chapter followed the specific order of the National Planning Standards, being Energy, then Infrastructure, then Transport. Mr Langham considered this to be a mandatory chapter in the National Planning Standards, although we note it must only be included if it is relevant to the regional policy statement. Quite obviously it is relevant to this RPS as these matters are significant resource management issues for the region, particularly the management of renewable energy resources and the activities that utilise them.
6. After reviewing the chapter, he came to the conclusion it would be better arranged if it began with the general infrastructure provisions followed by the more specific provisions relating to energy and transport. This has resulted in the structure of the chapter changing significantly, but the Panel agrees that it is a more logical layout.

7. As a part of that review, Mr Langman also agreed with the electricity transmission and distribution companies that better alignment could be achieved by including the electricity distribution and transmission activities in the EIT-EN – Energy sub-chapter (alongside renewable electricity generation), rather than in the EIT-INF – Infrastructure section. Again, we agree given that distribution and transmission are solely associated with energy.
8. In response to submissions from the REGs, Mr Langman also considered whether standalone provisions (or “carve out” provisions) are required to address separately the management of the effects of REG infrastructure and of electricity transmission and distribution infrastructure. In his opinion, there would need to be a clear justification for treating this type of infrastructure differently from other regionally or nationally significant infrastructure, particularly if EIT-INF-P13 was not to apply. He concluded that standalone or carve-out provisions for this infrastructure is not appropriate and would not give effect to or address the various bottom-line approaches of the relevant NPSs or other section 6 matters.
9. We largely deal with this issue in the next section of this report, but given the style of this particular RPS, we agree that standalone provisions are not necessary for these types of infrastructure. However, throughout the PORPS we have strengthened the recognition of how important this infrastructure will be in addressing the climate change issue.

3. Definition of regionally significant infrastructure

3.1. Discussion

10. As notified, the definition of Regionally significant infrastructure reads:

Regionally significant infrastructure

means:

- (1) roads classified as being of regional importance in accordance with the One Network Road Classification
- (2) electricity sub-transmission infrastructure,
- (3) renewable electricity generation facilities that connect with the local distribution network but not including renewable electricity generation facilities designed and operated principally for supplying a single premise or facility,
- (4) telecommunication and radiocommunication facilities
- (5) facilities for public transport, including terminals and stations,
- (6) the following airports: Dunedin, Queenstown, Wanaka Alexandra, Balclutha, Cromwell, Oamaru, Taieri.
- (7) navigation *infrastructure* associated with airports and commercial ports which are nationally or regionally significant,
- (8) defence facilities
- (9) community drinking water abstraction, supply treatment and distribution *infrastructure* that provides no fewer than 25 households with drinking water for not less than 90 days each calendar year, and community water supply abstraction, treatment and distribution *infrastructure* (excluding delivery systems or infrastructure primarily deployed for the delivery of

water for irrigation of land or rural agricultural drinking-water supplies)

- (10) community stormwater *infrastructure*,
- (11) *wastewater* and sewage collection, treatment and disposal *infrastructure* serving no fewer than 25 households, and
- (12) Otago Regional Council's hazard mitigation works including flood protection infrastructure and drainage schemes.

11. A number of submitters requested the addition of other types of infrastructure, or amendments to the definitions of regionally significant infrastructure (RSI), or nationally significant infrastructure (NSI). The s42A report author accepted a number of these requests which led to the inclusion of Dunedin's oil terminals and bulk fuel storage facilities in the RSI list along with some other amendments for clarification.
12. Those submitters whose submission points were not recommended for acceptance, addressed their concerns at the hearing. A number of other submitters were concerned with the recommendations that were made to broaden the definition because the framework for RSI and NSI is more enabling than for general infrastructure, which they believe could lead to an inappropriate level of effects on s6 matters.
13. Mr Langman revisited this issue in his reply report. In reviewing the submissions, he applied a number of qualitative matters that he considered would qualify the infrastructure for inclusion into the definition of RSI. These were:
 - a. The infrastructure serves a regional or national benefit;
 - b. There will often be operational or functional constraints in terms of the location of the infrastructure;
 - c. The infrastructure may include lifeline utilities;
 - d. The infrastructure is at a scale that could result in the potential for significant adverse effects on significant environmental values;
 - e. The infrastructure is generally of a physical nature, being 'hard infrastructure' and does not support living, social or commercial activities; and
 - f. Similar activities are provided for in the definition of RSI in adjacent regions, in particular where there are cross boundary issues where different management regimes may give rise to difficulties with implementation.
14. These matters are wider than the opinion expressed by Ms McIntyre for Kai Tahu that RSI should be limited to infrastructure that has a lifeline utility function. To broaden the definition would, in Ms McIntyre's view, "*give inappropriate priority to the needs of infrastructure over the life-supporting capacity of the environment and the matters to be recognised and provided for in section 6 of the RMA*". While we agree that lifeline utilities will be RSI, and most RSI will be lifeline utilities, we do not agree that RSI should be solely restricted to lifeline utilities. Hence, we agree with Mr Langman that the matters he identifies provide useful guidance in this context.

15. Assessing the submissions against this criteria, Mr Langman recommended changes in respect to the following activities:
- a. Significant electricity distribution infrastructure (SEDI) (RSI);
 - b. Municipal landfills (RSI);
 - c. Established community scale irrigation and stockwater infrastructure (RSI);
 - d. Ski area infrastructure (RSI);
 - e. The expression of facilities for public transport (RSI); and
 - f. Changes to how airports might be included within the definition of regionally significant infrastructure (RSI).
16. He advised that those additions/amendments sought by a submitter that he did not address was on the basis that he did not recommend any change for the reasons stated in the s42A report.
17. In relation to municipal landfills, both the DCC and QLDC sought the inclusion of these within the RSI definition. This was initially rejected by the s42A report author, but Mr Langman accepted the amendment proposed by Mr Barr to be appropriate and consistent with the matters outlined above. The amendment links the landfill to a local authority ownership or operation. While we accept that landfills are regionally significant infrastructure, we do have some apprehension around the qualifier as landfills are now often privately owned facilities even though they may serve a region. A good example of that is the AB Lime landfill near Winton, Southland. That facility is privately owned but takes most of the waste from the Southland region. It is also the only Class 1 landfill south of Christchurch.
18. However, no evidence was provided that dealt with this issue, so we are comfortable with Mr Langman's final recommendation.
19. In relation to SEDI, Mr Langman recommended in his supplementary evidence the inclusion of this infrastructure in the RSI definition, along with a framework for electricity distribution. We agree. The evidence from Ms Justice, Mr Zweis, and Ms Dowd on behalf of distribution companies was significant in this regard. They outlined some of the practical challenges to the network in light of growth and increased demand for electricity. These challenges are compounded by the fact that such infrastructure often needs to locate within sensitive environments. While we understand the concern expressed by HortNZ, we do not think it outweighs the need to recognise such critical infrastructure. Reverse sensitivity issues can still be dealt with, regardless of the infrastructure classification.
20. Mr Langman was also comfortable with including established community-scale stockwater and irrigation infrastructure as RSI (sought by Federated Farmers and Waitaki Irrigators), largely on the basis of the cross-boundary issue with the Canterbury RPS, which classifies them as RSI. We were swayed by the evidence of Ms Soal (for Waitaki Irrigators) on this matter, who highlighted the fact that a number of water schemes in Otago serve a dual purpose (community water supply and irrigation) but that the notified definition would mean that only part of the system was RSI. We agree that this addition should be made to the RSI definition.
21. With respect to the inclusion of ski area infrastructure, we agree with Mr Langman's approach of aligning the definition with that included in the NPSFM. That definition is confined to the

actual infrastructure required for the operation of the ski area as opposed to the ski field itself, or commercial activities associated with it. We note that Ms Galloway-Baker's legal submission highlighted the addition of this definition to the NPSFM and did not address the definition sought by Trojan and Wayfare.

22. With respect to Ms McIntyre's (for Kāi Tahu ki Otago) requested amendments to the definition of public transport facilities, Mr Langman agreed with the suggested deletions but not to the insertion of "rail lines". That was because the rail network is identified as nationally significant infrastructure (NSI), and as a result, is also automatically identified as RSI.
23. We therefore question why the definition of 'airport' needs to be amended to recognise other airports that are serviced by aeroplanes capable of carrying more than 30 passengers. Such airports are recognised as NSI and are also automatically identified as RSI. With the exception of the Dunedin and Queenstown, the listed airports would not meet the nationally significant threshold but are regionally important.
24. Hence, while we agree with Mr Langman in relation to public transport, we do not agree with the amendment proposed to the airport clause within the RSI definition. It is already provided for in the appropriate definition, as it is included in the NSI definition.
25. One issue that Mr Langman did not address in his reply was the DCC's concern with the amendment made to the 'road' entry in the RSI definition. In his evidence on behalf of the DCC, Mr Taylor was concerned that the use of the 'One Network' terminology required consequential adjustment to refer to which of the specific One Network categories are Regionally Significant Infrastructure. In Mr Taylor's opinion the variability and flexibility of classifications within the One Network Framework mean that it is possible that some roads that have regional importance are not classified with a sufficiently high road order. He gave examples of lower order roads that provide lifeline connections to communities to illustrate this concern.
26. To overcome this issue, he recommended an amendment to recognise "*roads which provide a lifeline connection for a community*" within the RSI definition. In the Panel's opinion, this raises an issue similar to that explained to us by the distribution companies in relation to some of their lines that service remote communities such as Makarora and Glenorchy. Accordingly, we recommend that Mr Taylor's submission be accepted on this point.

3.2. Recommendation

27. The Panel recommends that the definition of RSI is amended as follows:

**Regionally
significant
infrastructure**

- (1) roads which provide a lifeline connection for a community OR roads classified as being of regional importance in accordance with the ~~One Network Road Classification~~ One Network Framework,
- (2) electricity sub-transmission infrastructure,
- (2A) significant electricity distribution infrastructure,
- (3) renewable electricity generation facilities that connect with the local distribution network but not including renewable electricity generation facilities designed and operated principally for supplying a single premise or facility,

- (4) telecommunication and radiocommunication facilities, networks,
- (5) ~~facilities for public transport, including terminals and stations,~~
- (6) the following airports: Dunedin, Queenstown, Wanaka Wānaka, Alexandra, Balclutha, Cromwell, Oamaru Āmaru, Taieri, Taiari,
- (7) navigation *infrastructure* associated with airports and commercial ports which are nationally or regionally significant,
- (8) defence facilities for defence purposes in accordance with the Defence Act 1990,
- ~~(8A) established community-scale irrigation and stockwater infrastructure,~~
- (9) community drinking water abstraction, supply treatment and distribution *infrastructure* that provides no fewer than 25 households with drinking water for not less than 90 days each calendar year, and community water supply abstraction, treatment and distribution *infrastructure* (excluding delivery systems or infrastructure primarily deployed for the delivery of water for irrigation of land or rural agricultural drinking-water supplies)
- (10) community stormwater *infrastructure,*
- (11) *wastewater* and sewage collection, treatment and disposal *infrastructure* serving no fewer than 25 households, and
- ~~(11A) oil terminals, bulk fuel storage and supply infrastructure, and ancillary pipelines at Port Chalmers and Dunedin,~~
- (12) Otago Regional Council's hazard mitigation works including flood protection *infrastructure* and drainage schemes.,
- ~~(13) landfills and associated solid waste sorting and transfer facilities which are designated by, or are owned or operated by a local authority,~~
- ~~(14) ski area infrastructure, and~~
- ~~(15) any infrastructure identified as nationally significant infrastructure.~~

**Ski area
infrastructure**

has the same meaning as in the clause 3.21(1) of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)

infrastructure necessary for the operation of a ski area and includes: transport mechanisms (such as aerial and surface lifts, roads, and tracks); facilities for the loading or unloading of passengers or goods; facilities or systems for water, sewerage, electricity, and gas; communications networks; and snowmaking and snow safety systems

4. EIT-INF-P11

4.1. Discussion

28. As notified, EIT-INF-P11 reads:

EIT-INF-P11 – Operation and maintenance

Except as provided for by ECO-P4, allow for the operation and maintenance of existing *nationally* and *regionally significant infrastructure* while:

- (1) avoiding, as the first priority, significant adverse *effects* on the *environment*, and
- (2) if avoidance is not practicable, and for other adverse *effects*, minimising adverse *effects*.

29. There were a range of submissions on EIT-INF-P11, with some seeking it be retained as notified and others seeking its deletion. Others sought amendments to clarify its intent, and to make it more enabling.

30. In relation to those who sought deletion of the policy or amendment to merely ‘allow’ infrastructure (Contact, Network Waitaki and PowerNet and NZIC), Mr Stafford (the original s42A report author) was of the view that:

‘the present policy wording provides better direction for the treatment of adverse effects. **Removal of the wording as proposed would effectively permit development of infrastructure without consideration of its effects** and would not represent sustainable management of natural and physical resources or recognise and provide for the matters set out in s6 RMA. The alternative provided through the amendments requested would have a similar effect. I also refer to my consideration of the Aurora submission in relation to removal of reference of ECO-P4...’. **(Panel emphasis)**

31. In her evidence for the EDBs, Ms Justice raised concern about the implementation of the policy (as did others), particularly with the fact that it only relates to existing nationally and regionally significant infrastructure. This, too, is of concern to the Panel. Mr Stafford’s statement repeated above suggests that it would apply in a consenting scenario. However, we agree with Ms Justice’s interpretation, and struggled to understand the intention of the policy, when existing use rights will as a matter of law allow for operation and maintenance of existing activities without the qualifier in this policy. The only benefit we can see is the recognition of ‘maintenance’ but again that is all part of operating an existing, consented activity.

32. As a consequence of the forgoing, we recommend that the policy be deleted as requested by Contact, Network Waitaki and PowerNet and NZIC.

4.2. Recommendation

33. The Panel recommends that EIT-INF-P11 be deleted.

5. REG Policy Framework

5.1. Discussion

34. The Panel notes that a similar provision to EIT-INF-P11 is included in the Energy sub-chapter. EIT-EN-P1 reads “the operation and maintenance of existing renewable electricity generation activities is provided for while minimising its adverse effects”. We have similar concerns about this provision although we note in this context, Policy E2 of the NPS-REG requires plans to include objectives, policies, and methods to provide for the operation of these facilities as well as their development, maintenance and upgrading. The likely application of the policy is when REGs that utilise water are being re-consented.

35. There are a number of submissions on this provision, with some requesting upgrading and expansion be included in its scope while the DCC request that it be combined with P3 (Development and upgrade of REG activities) and P4 (Identifying new sites or resources), and that the management of effects clause is moved into EIT-EN-P6. As recommended, P3 and P4 read as follows:

EIT-EN-P3 – Development and upgrade of renewable electricity generation activities

The security of renewable electricity supply is maintained or improved in Otago through appropriate provision for the development or upgrading of *renewable electricity generation activities* and diversification of the type or location of *renewable electricity generation activities*.

EIT-EN-P4 – Identifying new sites or resources

Provide for activities associated with the investigation, identification and assessment of potential sites and energy sources for *renewable electricity generation* and, when selecting a site for new *renewable electricity generation*, prioritise those where adverse *effects* on highly valued *natural and physical resources* and *mana whenua* values can be avoided or, at the very least, minimised.

36. Similar submissions have been made on EIT-EN-P3 but the s42A report author advised that the focus of this policy is on security and diversification, which is consistent with Policy A(a) of the NPSREG. While we accept that, we do agree with submitters that EIT-EN-P1 (and EIT-EN-02) require amendment to better reflect the NPSREG around the maintenance and increase of electricity generation capacity. We have commented numerous times throughout our recommendation reports on the importance of REGs in addressing the climate issue. As a consequence, we agree with the REG submitters that the policy framework should not only provide for the protection of generation capacity but also for its increase where appropriate.

37. We also accept the DCC's submission that these provisions do not need to address effects management as that is dealt with in EIT-EN-P6 and P13. In the same context, we agree with the REG submitters who sought to remove the 'prioritisation' requirements of EIT-EN-P4 and other similar provisions. As the Contact Energy submission noted, *"it is not clear whether this policy is targeted towards resource developers, district and regional plan developers or decision makers."* The Panel is also unsure how the policy will be implemented and who will be responsible for that prioritisation. We agree with Contact that it would not be appropriate for the RPS (or any other local authority for that matter) to have a role in site selection given the range of locational, operational, environmental, commercial, and economic considerations involved in that process. We also agree that the second part of the policy is a duplication and is not necessary given the requirements of EIT-EN-P6 and P13.
38. In relation to EIT-EN-P6, Meridian Energy request a number of amendments that we consider appropriate. However, we do not agree that alternatives should not at least be considered when there are potentially significant or irreversible effects. A consequential amendment is required to the third paragraph of EIT-EN-E1 to change 'residual adverse effects' to 'significant residual adverse effects'.
39. A number of submitters also sought the deletion or clarification of this requirement in EIT-INF-M4 and M5 of the INF sub-chapter (for example, the DCC, Jim Hopkins, Trojan, and Wayfare) for similar reasons. We also agree that is not necessary in these provisions given they already contain provisions to manage effects of infrastructure.
40. We also take the opportunity at this point to discuss EIT-INF-M5(6) which was essentially opposed by the DCC, in particular the 'avoid' approach which they say could be read as requiring a plan to prohibit any development that cannot connect to infrastructure. They also questioned the broad definition of 'infrastructure' and its use in this clause, presumably because not all development will need all types of infrastructure. They also highlight the fact that there are various ways infrastructure is funded, including by the developer. Kai Tahu also opposed this clause given that marae and whanau housing is often located in unreticulated areas. They requested that this provision be deleted.
41. The s42A report author disagreed with both Kai Tahu and the DCC submission as in his view the clause does not preclude the use of private on-site provision of infrastructure and nor does it determine methods of funding. However, the Panel shares the concern of both the Kai Tahu and the DCC given this provision is broadly worded to apply to all development and uses the 'avoid' directive. We do not consider that appropriate in the context of what is largely a rural region, but more importantly as we discussed in the Legal section of the Introduction to this report, such a broad-sweeping prioritisation does not accord with Supreme Court decisions. The Panel also notes that the provisions of both the UFD and LF chapters contain provisions that address the servicing of development with infrastructure and EIT-INF-P17 directly refers to the relevant UFD policies in this regard.
42. In our view, EIT-INF-M5(6) merely needs to ensure that development is adequately served with infrastructure. We have recommended such a change accordingly.
43. The Panel also notes that QLDC sought amendment to EIT-EN-2(7) so that it is not a requirement in all instances, rather it is required when there is an opportunity to connect with an existing transport infrastructure network. The DCC seek clarification on what is being 'required'. We agree with the approach proposed by QLDC. It is highly unlikely that it will be possible to provide multi-nodal transport options in rural lifestyle areas.

44. QIDC also request that EIT-EN-2(7) be located to either the infrastructure or transport sub-sections. We are of the view that it should be relocated to EIT-TRAN-M8 in the transport sub-section.

5.2. Recommendation

45. As a consequence of the foregoing, the Panel recommends the following amendments to the REG provisions:

EIT-EN-02 – Renewable electricity generation

The generation capacity of *renewable electricity generation activities* in Otago:

- (1) is protected and maintained, and, if ~~practicable~~ maximised, within environmental limits, where appropriate, increased, and
- (2) contributes to meeting New Zealand's national target for *renewable electricity generation*.

EIT-EN-P1 – Operation, and maintenance and upgrade

The operation, ~~and maintenance, and upgrade~~ of existing *renewable electricity generation activities* is provided for including the maintenance of generation output and protection of operational capacity while minimising its adverse effects.

EIT-EN-P3 – Development and upgrade of The security of renewable electricity generation activities supply

The security and installed capacity of renewable electricity supply is maintained or improved in Otago through appropriate provision for the development or upgrading of *renewable electricity generation activities* and diversification of the type or location of renewable electricity generation activities.

EIT-EN-P4 – Identifying new sites or resources

Provide for activities associated with the investigation, identification and assessment of potential sites and energy sources for *renewable electricity generation*, ~~and, when selecting a site for new renewable electricity generation, prioritise those where adverse effects on highly valued natural and physical resources and mana whenua values can be avoided or, at the very least, minimised.~~

EIT-EN-P6 – Managing effects

Manage the adverse *effects* of *renewable electricity generation activities* by:

- (1) applying EIT-INF-P13,
- (2) having particular regard to:
 - (a) the *functional need* to locate *renewable electricity generation activities* where resources are available,

(b) the *operational need* to locate where it is possible to connect to the *National Grid* or *electricity sub-transmission infrastructure*, and

- (3) having regard to (c) the extent and magnitude of adverse *effects* on the *environment* and the degree to which unavoidable adverse *effects* can be remedied or mitigated, or significant residual adverse *effects* are offset or compensated for; and
- (4) requiring consideration of alternative sites, methods and designs, and offsetting or compensation measures (in accordance with any specific requirements for their use in this RPS), where adverse *effects* are potentially significant or irreversible.

EIT-EN-M1 – Regional plans

Otago Regional Council must prepare or amend and maintain its *regional plans* to:

- (1) provide for activities associated with the investigation, identification and assessment of potential sites and energy sources for *renewable electricity generation*,
- (2) ~~require the prioritisation of sites for new *renewable electricity generation activities* where adverse *effects* on highly valued *natural and physical resources* and *mana whenua* values can be avoided or, at the very least, minimised,~~
- (3) manage the adverse *effects* of developing or upgrading *renewable electricity generation activities*, including identifying activities that qualify as minor upgrades, that:
 - (a) are within the *beds of lakes* and *rivers* and the *coastal marine area*, or
 - (b) involve the taking, use, damming or diversion of *water* and *discharge* of *water* or *contaminants*,
- (4) provide for the operation and maintenance of existing *renewable electricity generation activities*, including their *natural and physical resource* requirements, along with opportunities to increase the installed capacity of renewable electricity generation assets within the environmental limits, and
- (5) restrict the establishment of activities that may adversely affect the efficient functioning of *renewable electricity generation activities infrastructure* (including impacts on generation capacity).

EIT-EN-M2 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* to:

- (1) provide for activities associated with the investigation, identification and assessment of potential sites and energy sources for *renewable electricity generation*,
- (2) ~~require the prioritisation of sites for new *renewable electricity generation activities* where adverse *effects* on highly valued *natural and physical resources* and *mana whenua* values can be avoided or, at the very least, minimised,~~

- (3) manage the adverse *effects* of developing or upgrading *renewable electricity generation activities and electricity transmission National Grid infrastructure*, including identifying activities that qualify as minor upgrades, that:
 - (a) are on the surface of *rivers and lakes* and on *land* outside the *coastal marine area*, or
 - (b) the *beds of lakes and rivers*,
- (4) provide for the continued operation and maintenance of *renewable electricity generation activities* on the surface of *rivers and lakes* and on *land* outside the *coastal marine area* and the *beds of lakes and rivers*,
- (5) restrict the establishment or occurrence of activities that may adversely affect the efficient functioning of *renewable electricity generation infrastructure*,
- (5A) enable planning for *National Grid*,
- (5B) map the *National Grid*, and identify a buffer corridor within which *sensitive activities* shall generally not be allowed,
- (5C) map *significant electricity distribution infrastructure* and, where necessary, provide controls on activities to ensure that the *functional needs* of the *significant electricity distribution infrastructure* are not compromised,
- (5D) where necessary, establishing controls for *buildings, structures* and other activities adjacent to electricity *infrastructure*, to ensure the *functional needs* of that *infrastructure* are not compromised based on NZECP34:2001 Electrical Code of Practice for Electrical Safe Distances and the Electricity (Hazards from Trees) Regulations 2003 (prepared under the Electricity Act 1992),
- (6) require the design of *subdivision* development to optimise solar gain, including through roading, lot size, dimensions, layout and orientation, and

46. And amend EIT-EN-M2(7) as follows and relocate it to EIT-TRAN-M8:

- (7) require the design of transport infrastructure to that provides for multi-modal transport options in urban areas, and in rural lifestyle locations where there is a practical opportunity to connect with an existing transport infrastructure network and rural residential locations.

EIT-INF-M4 – Regional plans

Otago Regional Council must prepare or amend and maintain its *regional plans* to:

- (1) manage the adverse *effects* of *infrastructure* activities, including, where appropriate, identifying activities that qualify as minor upgrades, that:
 - (a) are in the *beds of lakes and rivers*, or
 - (b) are in the *coastal marine area*, or
 - (c) involve the taking, use, damming or diversion of *water* or,
 - (d) involve the *discharge* of *water* or *contaminants*, and

~~(2) — require the prioritisation of sites for *infrastructure* where adverse effects on highly valued *natural and physical resources* and *mana whenua* values can be avoided or, at the very least, minimised.~~

EIT-INF-M5 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* to:

(1) require a strategic approach to the integration of *land* use and *nationally significant infrastructure* or *regionally significant infrastructure*,

~~(2) — enable planning for the electricity transmission network and *National Grid* to achieve efficient distribution of electricity,~~

~~(3) — map the electricity transmission network, and in relation to the *National Grid*, identify a buffer corridor within which *sensitive activities* shall generally not be allowed, and~~

(4) manage the *subdivision*, use and development of *land* to ensure *nationally significant infrastructure* or *regionally significant infrastructure* can develop to meet increased demand,

(5) manage the adverse effects of developing, operating, maintaining, or upgrading *nationally significant infrastructure* or *regionally significant infrastructure*, including, where appropriate, identifying activities that qualify as minor upgrades, that are on:

(a) the surface of *rivers* and *lakes* and on *land* outside the *coastal marine area*, and

(b) the *beds* of *lakes* and *rivers*,

(6) ensure that development is avoided where:

(a) — it cannot be adequately served with *infrastructure*,

(b) — it utilises *infrastructure* capacity for other planned development, or

(c) — the required upgrading of *infrastructure* is not funded, and

~~(7) — require the prioritisation of sites where adverse effects on highly valued *natural and physical resources* and *mana whenua* values can be avoided or, at the very least, minimised.~~

6. Structure of EIT-INF-P13 and the application of the effects management regime, and EIT-INF-P16

6.1. Discussion

47. Proposed policy EIT-INF-P13 relates to the development of new infrastructure, regardless of its type or significance. As notified, it requires avoidance of sensitive environments as a first priority. If avoidance is not possible because of the functional or operational needs of nationally or regionally significant infrastructure, then the effects management hierarchies in

other policies for particular resources (for example, indigenous biodiversity) apply. Where these do not exist, adverse effects on the values that contribute to the area's significance are to be minimised. For all other infrastructure, where it has a functional or operational need to locate within the areas specified, the direction is to avoid adverse effects on the values that contribute to the area's significance.

48. The provision attracted a large number of submissions from a wide range of organisations. Nearly all submitters seek amendment to, or exclusion from, this policy, including through the provision of bespoke effects management provisions for particular types of infrastructure such as for REG, the electricity distribution network, and the National Grid (although acknowledging that Ms McLeod for Transpower had a preference for amendment of EIT-INF-P13 and P13A). These submitters all sought effects be managed following an effects management hierarchy, but that the process is not "bookended" with an "avoid the activity" approach if significant residual adverse effects remain.
49. The basis of many of the infrastructure providers' submissions was that a more flexible approach was necessary given the importance of certain infrastructure activities in achieving climate targets. We have accepted this throughout our recommendations on the various provisions of the PORPS, in particular in relation to new renewable electricity generation and infrastructure. However, we do not think there is anything to be gained by providing a separate effects management hierarchy for each type of infrastructure. We now have a situation where there are National Policy Statements for indigenous biodiversity and freshwater, each with their own mandatory effects management hierarchy. We cannot override or amend their impact in any way.
50. We are also conscious of the fact that draft national policy statements on REGs and the National Grid have been released for consultation. While we do not know when (or if) these will be gazetted, both propose an effects management hierarchy where adverse effects on areas with significant environmental values are managed according to an effects management hierarchy, similar to what is required in the other NPSs referred to in this policy. The drafts also note that if there is a conflict between the NPSFM and NZCPS, then those documents shall prevail. As with other NPSs, changes will be required to lower order documents without using the Schedule 1 process. Hence, we agree with Mr Langman that there is little point in trying to predetermine the outcome of the NPSs or provide separate effects management hierarchies for these activities now, given that the changes can be made directly to the planning instrument.
51. In relation to the sensitive environments listed in the policy that do not already have an NPS effects management hierarchy, these are the section 6 matters where protection is qualified by the phrase "from inappropriate subdivision, use and development". In these environments, we prefer the effects management hierarchy approach proposed by Manawa Energy, Meridian, Contact Energy, and other submitters (including Forest and Bird). Manawa and Contact Energy both opposed EIT-INF-P13 and promoted alternatives that adopted the 'avoid, remedy or mitigate' approach rather than the use of 'minimise'. An activity may be considered appropriate in such locations, when all other policies are considered, but not be able to minimise effects i.e. to reduce those effects to the lowest possible level.
52. We do agree with the report writers that it is not appropriate to limit the 'avoid as a first priority' approach to scheduled areas only. While lower order documents will be required to identify and map these areas, that may take some time. If an area meets the criteria for significance, it should be treated as such regardless of whether it is scheduled in a plan or not.

53. A number of submitters were concerned about the use of the word ‘possible’ in clause 2 as it is always “possible” to avoid locating within those areas by not undertaking development of the infrastructure. The New Zealand Infrastructure Commission requested the use of ‘reasonably practicable’ in its place while Queenstown Airport requested just the use of ‘practicably’.
54. Mr Langman recommended the phrase “demonstrably practicable” on the basis that it “provides a high test to be met before infrastructure locates within one of these areas, but enables an evaluative process to take place (which should include assessment of the route, method or site selection process)” and that it “clearly outlines that the providers are able to demonstrate that infrastructure cannot practicably be located in an area outside of those resources listed.”
55. The Panel does not favour the use of ‘demonstrably’, which is not a phrase commonly used in RMA plans. The ‘reasonably practicable’ test, as requested by New Zealand Infrastructure Commission, also requires the proponent of a project to demonstrate that infrastructure cannot practicably be located to avoid a sensitive environment. The use of ‘demonstrably’ is largely superfluous in this context.
56. Mr Langman also addressed the inclusion of areas of “high recreational value” alongside high amenity value in EIT-INF-P13(1)(h). Manawa Energy sought that this clause be deleted while Mr Barr for QLDC recommended it be replaced with “highly valued natural features and landscapes”⁵⁰. Mr Langman accepted Mr Barr’s assessment as set out in his evidence and recommended that phrase. However, the Panel has recommended deletion of ‘amenity landscapes’ from the NFL chapter for a number of reasons, including that it is not a significant regional issue. We specifically acknowledged the difficulty identifying such landscapes will have for the REG development necessary to address the climate change issue.
57. Manawa and Queenstown Airport Corporation also sought the removal of high’ natural character from clause 1(e) for similar reasons. We agree as a ‘high’ natural character landscape is also an amenity landscape issues, and its use here has only been adopted to address the NPSET, which does not apply to all infrastructure. That reference should be included in EIT-INFP16, which applies to the National Grid. Transpower sought an amendment to that effect when promoting a new policy specifically for the National Grid.
58. The reference to areas of ‘high recreation value and amenity’ is also recommended to be relocated to EIT-INFP16 to reflect Policy 8 of the NPSET, again as requested by Transpower. Because Policy 8 only ‘seeks’ to avoid, we think it appropriate that the management of effects is addressed by the application of EIT-INF-P13(2)(a)(vi) as recommended below.
59. The reference to outstanding natural character has also been deleted from EIT-INF-P13 as a consequential amendment because it is already reflected in clause 1(b).
56. We also note that Mr Stafford has recommended the inclusion of “areas of significance to mana whenua such as wāhi tupuna” to clause (5) of this policy in response to a submission from Kai Tahu. This is not needed as this matter is addressed in EIT-INF-P13(1) (g), which applies in both an urban and rural setting whereas EIT-EN-P16(5) only applies in an urban setting.

6.2. Recommendation

57. Amend EIT-INF-P13 and EIT-INF-P16 as follows:

EIT-INF-P13 – Locating and managing effects of infrastructure, *nationally significant infrastructure* and *regionally significant infrastructure* outside the coastal environment

When providing for new *infrastructure, nationally significant infrastructure and regionally significant infrastructure* outside the coastal environment:

- (1) avoid, as the first priority, locating *infrastructure* in all of the following:
 - (a) *significant natural areas*,
 - (b) outstanding natural features and landscapes,
 - (c) *natural wetlands*,
 - (d) *outstanding water bodies*,
 - (e) areas of high or outstanding natural character,
 - (f) areas or places of significant or outstanding *historic heritage*, and
 - (g) *wāhi tupuna*, *wāhi tapu*, *wāhi taoka*, and areas with protected customary rights, and
 - (h) areas of high recreational and high amenity value, and
- (2) if it is not possible reasonably practicable to avoid locating in the areas listed in (1) above because of the *functional needs* or *operational needs* of the *infrastructure, nationally significant infrastructure and regionally significant infrastructure* manage adverse effects as follows:
 - (a) for *nationally significant infrastructure* or *regionally significant infrastructure*:
 - (i) in *significant natural areas*, in accordance with ECO-P4 and ECO-P6,
 - (ii) in *natural wetlands*, in accordance with the relevant provisions in the NESF,
 - (iii) in *outstanding water bodies*, in accordance with LF-FW-P12,
 - (iiia) in relation to *wāhi tūpuna*, in accordance with HCV-WT-P2,
 - (iv) in other areas listed in EIT-INF-P13(1) above, ~~minimise the adverse effects of the infrastructure on the values that contribute to the area's importance, and shall be:~~
 - (I) remedied or mitigated to the extent practicable,
 - (II) where they cannot be practicably remedied or mitigated, regard shall be had to offsetting and/or compensation of more than minor residual adverse effects.

- (b) for all *infrastructure* that is not *nationally significant infrastructure* or *regionally significant infrastructure*, avoid adverse effects on the values that contribute to the area's outstanding nature or significance except in relation to historic heritage, which is not significant or outstanding, then HCV-HH-P5(3) will apply.

EIT-INF-P16 – Providing for electricity transmission and the *National Grid*

Maintain a secure and sustainable electricity supply in Otago by:

- (1) providing for the effective operation, maintenance, upgrading and development of the *National Grid* development of, and upgrades to, the electricity transmission network and requiring, as far as reasonably practicable, its integration with *land use*,
- (2) considering the requirements of and constraints associated with the functional and operational needs of the electricity transmission network *National Grid* in its management,
- (3) providing for the efficient and effective development, operation, maintenance, and upgrading of the *National Grid*,
- (4) enabling the reasonable operation, maintenance and minor upgrade requirements of established electricity transmission *National Grid* assets, and
- (5) minimising the adverse effects of the electricity transmission network *National Grid* on urban amenity, and avoiding adverse effects on town centres, areas of high amenity or recreational value and existing sensitive activities,
- (6) in rural areas, seek to avoid adverse effects in areas of high natural character and areas of high recreation value and amenity, and, where this is not practicable, apply EIT-INF-P13(2)(a)(iv), and
- (7) in addition to clause (6), apply EIT-INF-P13 where relevant.

7. Application of EIT-INF-P5 relating to non-renewable energy generation activities

7.1. Discussion

58. As notified, EIT-EN-P5 was reads:

EIT-EN-P5 – Non-renewable energy generation

Avoid the development of non-renewable energy generation activities in Otago and facilitate the replacement of non-renewable energy sources, including the use of fossil fuels, in energy generation.

59. As Mr Langman noted in his reply report, a number of submitters raise concerns regarding the approach in EIT-EN-P5 to avoiding development of non-renewable energy generation

activities. This concern mainly centred around the lack of recognition of backup sources required for lifeline services, or where alternatives are not available for industrial processes. Submitters requested that more flexibility be provided where power resilience is required, with some submitters requesting the ‘avoid’ approach be subject to a test of practicality.

60. Mr Langman acknowledged in his reply that “the wording is very tight and directive, and given the examples provided by the submitters in evidence and at the hearing, that there are likely to be necessary exceptions.” To address the issue, he recommended including the words “unless no other renewable energy options exist” as in his opinion this still provides a pathway for new non-renewable energy generation, but the circumstances are very restricted.
61. The Panel agrees with submitters that an ‘avoid’ policy in these circumstances is too onerous and does not reflect reality. We do not think the wording proposed by Mr Langman assists in addressing the issues raised by submitters. That is because the example given by submitters illustrate that there is generally likely to be a renewable energy source existing at a site. Most, if not all, sites are connected to the national grid. The issue the EDSs illustrated is the need for resilience in a system when that connection fails. Ms Dowd, for Aurora, advised that in Glenorchy, for example, a generator running on non-renewable fuel is often required when this occurs. Ms Taylor, on behalf of Ravensdown, gave an example of how non-renewable energy is required as part of an industrial process, for which no alternative has yet been found even though a renewable energy source does exist at a site (i.e. they are connected to the national grid).
62. Hence, we favour an amended version of the approach proposed by Ravensdown in their submission. We have moved the ‘where practicable’ phrase to relate to the restriction on developing non-renewable energy. It is not needed in relation to the second part of the policy, which is about facilitating the replacement of non-renewable. That does not direct replacement but indicates the regulatory path to achieve it will be made easier.
63. We also note that this policy has been amended to reflect a new NPS and NES on Greenhouse Gases from Industrial Process Heat, as recommended by Mr Langman in the memorandum received on this matter dated 16 August 2023.

7.2. Recommendation

64. Our final recommended amendments to the notified version of the pORPS are:

- a. The following amendments to Policy EIT-EN-P5:

EIT-EN-P5 – Non-renewable energy generation

In relation to non-renewable energy generation:

(1) except as provided for in (2) below, Avoid restrict the development of non-renewable energy generation activities in Otago, where practicable, and facilitate the replacement of non-renewable energy sources, including the use of fossil fuels, in energy generation, and

(2) in relation to new heat devices for industrial process heat:

(a) avoid discharges from new heat devices that burn coal and deliver heat at or above 300 degrees Celsius, unless there is no technically feasible and financially viable lower emissions alternative,

(b) avoid discharges from new heat devices that burn coal and deliver heat below 300 degrees Celsius, and

(c) avoid discharges from new heat devices that burn any fossil fuel other than coal, unless there are no technically feasible and financially viable lower emissions alternative, and

(3) in relation to existing heat devices for industrial process heat:

(a) restrict discharges from existing heat devices that burn coal and deliver heat at or above 300 degrees Celsius,

(b) restrict and phase out discharges from existing heat devices that burn coal and deliver heat below 300 degrees Celsius, and

(c) restrict discharges from existing heat devices that burn any fossil fuel other than coal.

b. Adding the following new definitions to the Interpretation section as defined in the National Environmental Standards for Greenhouse Gas Emissions from Industrial Process Heat to assist with the interpretation of Policy EIT-EN-P5:

- Existing, for a heat device (for the interpretation of EIT-EN-P5)
- Fossil fuel
- Heat device
- Industrial process heat
- New, for a heat device (for the interpretation of EIT-EN-P5)

8. Reverse sensitivity effects on infrastructure

8.1. Discussion

65. As notified, EIT-INF-P15 reads as follows:

‘Seek to avoid the establishment of activities that may result in reverse sensitivity effects on nationally or regionally significant infrastructure, and/or where they may compromise the functional or operational needs of nationally or regionally significant infrastructure’.

66. As a consequence of changes proposed in response to a submission from Queenstown Airport, EIT-INF-P15 was recommended by the s42A report authors to read as follows:¹

EIT-INF-P15 – Protecting nationally significant infrastructure or and regionally significant infrastructure

Seek to avoid the establishment of activities that may result in reverse sensitivity effects on ~~nationally or regionally significant infrastructure~~, and/or where they

¹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

~~may compromise the functional or operational needs of nationally or regionally significant infrastructure.~~

Protect the efficient and effective operation of nationally significant infrastructure and regionally significant infrastructure by:

- (1) avoiding activities that may give rise to an adverse effect on the functional needs or operational needs of nationally significant infrastructure or regionally significant infrastructure,
- (2) avoiding activities that may result in reverse sensitivity effects on nationally significant infrastructure or regionally significant infrastructure, and
- (3) avoiding activities and development that foreclose an opportunity to adapt, upgrade or develop nationally significant infrastructure or regionally significant infrastructure to meet future demand.

67. A number of submitters raised concern with the recommended provision, with Ms Wharfe for Horticulture NZ considering the wording to be tighter than that provided for under the NPSET. She offered alternative wording along with amendments to the chapeau. For Kai Tahu, Ms McIntyre raised concerns that the amendments could create an uncertain ‘sterilisation’ of areas where there may be the possibility of infrastructure being developed in the future.² DCC seeks amendments to the reverse sensitivity provisions in EIT-TRAN-P21, which addresses reverse sensitivity effects on the transport system, by seeking to remove the use of ‘avoid’, and replacing it with “mitigate” or “minimise as far as practicable”. No evidence was provided to support this change. QLDC also sought amendments, including the replacement of “protecting” with an alternative. Mr Barr, for QLDC, was concerned that the addition of clause (3) in the policy could stifle residential expansion promoted by a local authority to give effect to the NPSUD, and that the level of protection is disproportionate given that the majority of NSI and RSI operators are requiring authorities and can designate for future development.³
68. In his response to the submitters, while not accepting all the submission points, Mr Langman did consider the policy too directive in nature. He recommended amendments to clause (1) and (2) to incorporate the concept of “avoiding activities to the extent reasonably possible”. He also noted that this also aligns with Policy 7 of the proposed NPSREG and proposed NPSET which both seek that reverse sensitivity effects on REG and electricity transmission are avoided or mitigated where practicable.
69. However, he did not agree with Ms Wharfe’s recommendation to change “protect” to “recognising and providing” as the policy is about protecting the efficient and effective operation of NSI and RSI. Nor did he agree with Mr Barr that protecting existing infrastructure, and possible future extensions to it, would be inconsistent with the NPSUD.
70. The Panel agrees with Mr Langman for the most part but notes that the policy applies all *nationally significant infrastructure* and *regionally significant infrastructure*, not just those provided for by an NPS. Having said that, we note that current Policy 10 of the NPSET only uses the phrase “avoiding activities to the extent reasonably possible” in relation to reverse sensitivity. We prefer the use of the word ‘practicable’ in clause (2) given it applies to all such infrastructure.

² Sandra McIntyre for Kāi Tahu ki Otago, para [127]

³ Craig Barr for QLDC, para [5.41]-[5.44]

71. We also note that the remainder of Policy 10 of the NPSET addresses the “operation, maintenance, upgrading, and development of the electricity transmission” and only requires local authorities to ensure those things are not “compromised”. Hence, we consider the ‘avoid’ approach in clause (3) to be more restrictive than the NPSET and nor is it appropriate in respect to other infrastructure not covered by the NPSET. We consider a better phrase here is to use “avoid or minimise the effects of activities and development so that the opportunity ...to meet future demand is not compromised”. This gives better effect to Policy 10 of the NPSET and should address to a degree at least, the concerns raised by both Ms McIntyre and Mr Barr.
72. In relation to the first clause (1) of the policy, we again recommend that ‘possible’ be replaced with ‘practicable’. With respect to the NPSET, we note that this clause is not addressing reverse sensitivity as such so there is no inconsistency with the NPSET.
73. In relation to EIT-TRAN-P21, Mr Langman noted that the transport system is wider than just NSI and RSI, so accepted the DCC submission to make similar changes to this provision. We agree with that, but we prefer the wording we have recommended for EIT-INF-P15 for the reasons we outlined in relation to that provision.
74. EIT-EN-P7 addresses reverse sensitivity in the context of REGs. Mr Langman considers the final amended form of that policy gives effect to the NPSREG and does not recommend any changes. We agree.

8.2. Recommendation

75. The Panel recommends the following amendments of EIT-INF-P15 and EIT-TRAN-P21:

EIT-INF-P15 – Protecting nationally significant infrastructure or and regionally significant infrastructure

~~Seek to avoid the establishment of activities that may result in reverse sensitivity effects on nationally or regionally significant infrastructure, and/or where they may compromise the functional or operational needs of nationally or regionally significant infrastructure.~~

Protect the efficient and effective operation of *nationally significant infrastructure* and *regionally significant infrastructure* by:

- (1) avoiding activities, to the extent reasonably practicable, that may give rise to an adverse effect on the *functional needs or operational needs of nationally significant infrastructure* or *regionally significant infrastructure*,
- (2) avoiding activities, to the extent reasonably practicable, that may result in *reverse sensitivity effects on nationally significant infrastructure* or *regionally significant infrastructure*, and
- (3) avoid or minimise the effects of activities and development so that the *opportunity to adapt, upgrade or extend existing nationally significant infrastructure* or *regionally significant infrastructure* to meet future demand is not compromised.

EIT-TRAN-P21 – Operation of the transport system

The efficient and effective operation of the transport system is maintained by:

- (1) avoiding or mitigating adverse *effects* of activities on the functioning of the transport system,
- (2) avoiding the impacts of incompatible activities, to the extent reasonably practicable, including those that may result in *reverse sensitivity effects*,
- (3) avoiding or minimising the effects of activities and development so that the opportunity to adapt, upgrade or develop the transport system to meet future transport demand, is not compromised,
- (4) promoting the development and use of transport hubs that enable an efficient transfer of goods for transport and distribution across different freight and people transport modes,
- (5) promoting methods that provide more efficient use of, or reduce reliance on, private motor vehicles, including ridesharing, park and ride facilities, bus hubs, bicycle facilities, demand management and alternative transport modes, and
- (6) encouraging a shift to using renewable energy sources.

9. Consideration of provisions related to Commercial Port Activities

9.1. Discussion

76. In his reply report, Mr Langman addressed a number of concerns raised by Mr Brass for DOC, Ms O’Callahan for Port Otago, and Ms Taylor for Ravensdown. He recommended accepting the submissions to remove limits and Ms Taylor’s request for consequential changes to EIT-TRAN-M8.
77. He also recommended adopting one of Ms O’Callahan’s two drafting options to provide a pathway for activities essential to the efficient and safe operation of the port. The option chosen would depend on the outcome of the Supreme Court decision regarding Port Otago’s appeal on the ORPS 2019, which had not been decided at the time of the preparation of Mr Langman’s reply evidence.
78. However, the Port Otago decision was released prior to the close of the hearings and addressed how the NZCPS should be reconciled where there are potential conflicts between the ports policy, and the avoidance policies of the NZCPS. Ms O’Callahan and Mr Langman considered the implications of that decision and produced a joint witness statement that provided agreed amendments to EIT-TRAN-O10 and EIT-TRAN-P23. Counsel for the Port, Mr Garbett, advised that *“the wording has adopted the wording recommended by the Supreme Court as closely as possible, while incorporating it into the current framework of the proposed RPS.”*
79. The Panel has reviewed the proposed wording and is comfortable with what has been recommended. We consider that it fits well with the amendments we have made to ‘IM-P1 – Integrated approach to decision-making’ to reflect the Port Otago case, and with our amended ‘IM-P6 Managing uncertainties’, which introduces the ‘adaptive management’ concept.

9.2. Recommendation

80. The Panel recommends that EIT-TRAN-O10, EIT-TRAN-P23, and EIT-TRAN-M8 be amended as follows:

EIT-TRAN-O10 – Commercial port activities

Commercial port activities operate safely and efficiently, ~~and within environmental limits.~~

EIT-TRAN-P23 – Commercial port activities

Recognise the national and regional significance of ~~the~~ *commercial port activities* associated with the ports at Port Chalmers and Dunedin (respectively) by:

- (1) ~~within environmental limits as set out in Policies CE-P3 to CE-P12,~~ providing for the efficient and safe operation of these the ports and efficient connections with other transport modes,
- (2) ~~within the environmental limits set out in Policies CE-P3 to CE-P12,~~ providing for the development of the ports' capacity for national and international shipping in and adjacent to existing port activities, and
- (3) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes., and
- (4) if any of policies CE-P3 to CE-P12 cannot be achieved while providing for the safe and efficient operation or development of *commercial port activities*, then resource consent for such activities may be sought where:
 - (a) the proposed work is required for the safe and efficient operation of commercial port activities, and
 - (b) the adverse effects from the operation or development are established to be the minimum necessary to achieve the safe and efficient operation of the commercial port activities.

EIT-TRAN-M8 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* to:

- (1) ...
- ...
- (6) include policies and methods that provide for *commercial port activities* ~~associated with the operations at Otago Harbour and the ports at Port Chalmers and Dunedin~~ and avoid encroachment of activities which give rise to reverse sensitivity effects.