



Proposed Otago Regional Policy Statement 2021

**Report and recommendations of the Non-Freshwater and
Freshwater Hearings Panels to the Otago Regional Council**

MARCH 2024

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Prologue for the Non-Freshwater and Freshwater reports

1. This Prologue is the same for each of the two reports as to the non-freshwater process termed Appendix One, and the freshwater planning instrument (FPI) which is Appendix Two.
2. The Prologue is intended to provide a procedural background. It is also intended to serve as an explanatory statement as to why and how the two reports were prepared, and how the two reports' recommendations are to be combined together to achieve one integrated regional policy statement (ORPS).
3. It also explains how the various Appendices work in with each other to enable a reader to track outcomes of submissions.

1. Background

4. The proposed Otago Regional Policy Statement 2021 (pORPS) is a critical document for the management of natural and physical resources in Otago underpinning the planning framework across the region.
5. The Non-Freshwater Parts of the Proposed Otago Regional Policy Statement 2021 along with the Freshwater Parts will replace the partially operative Otago Regional Policy Statement 2019 (RPS 2019). The RPS 2019 provided an overarching policy framework for the region and will become fully operative in March 2024. The Otago Regional Council notified a reviewed Regional Policy Statement on 26 June 2021.
6. The pORPS is a document that directs and informs the content of both regional and district level plans as well as other types of plans and strategies, for example the Regional Land Transport Plan. The structure of the pORPS is significantly different to the RPS 2019, because it aligns with the National Planning Standards introduced in April 2019. The National Planning Standards outline a mandatory structure and format for regional policy statements. Implementing these standards required revisiting many of the provisions and separating parts into different chapters.

2. Preliminary Integration Issues

2.1 Statutory background

7. Every regional council is required by the Resource Management Act 1991 (RMA) to prepare and adopt a regional policy statement.

s.60(1) provides:

60. (1) There shall at all times be for each region 1 regional policy statement prepared by the regional council in the manner set out in Schedule 1.

8. Prior to 2020 that was a straightforward process with Schedule 1 requiring readily understood processes involving opportunities for community input through consultation, submission, and further submission processes. Those processes were followed by a standard hearing process, and a straightforward single appeal process utilising one jurisdiction, with all appeals to be by way of re-hearing before the Environment Court.

9. The result of that straightforward process was to be an integrated document. Section 59 provides that the sole purpose of the regional policy statement is for it to provide an integrated overview of the issues for a region:

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.

10. That integrated procedural process in Part 5 of the RMA all changed from 1 July, 2020 with the introduction into the RMA of Sub-part 4 of Part 5 which introduced a new provision s.80A. It provides in sub-section 1 that:

80A Freshwater planning process

The purpose of this subpart is to require all freshwater planning instruments prepared by a regional council to undergo the freshwater planning process.

11. The same 2020 amendment Act introduced a new freshwater planning process into the RMA which provided for hearings by specifically appointed Freshwater Hearing Panels to hear submissions on ‘freshwater instruments’.

12. What resulted in Otago over the next two years was that the previous procedural process of straightforward integration for regional policy statements, became a complicated, expensive process bearing more hallmarks of dis-integration rather than integration.

2.2 Otago Regional Council initial processes

13. That outcome was no fault at all of the Otago Regional Council (ORC). The ORC just happened to be the first regional council off the block throughout the country required to apply these new mandatory provisions which central government had laid down that it must follow.

14. The confusion arose because a regional policy statement must address all resources of a region, including physical and ecological resources including water resources. The ORC was very cognisant that the new definition of ‘freshwater instrument’ in s.80A (2) included, at the very least, critical parts of the proposed regional policy statement, such as the objectives.

15. ORC did not wish to separate out freshwater aspects of what had been prepared as one integrated document, as the RMA required. It believed it was enabled by the new provisions to treat the whole of the regional policy statement as a freshwater instrument. ORC notified the whole of its new Proposed Otago Regional Policy Statement (PORPS) for submissions as an integrated freshwater planning instrument, intending submissions on it would be heard by a freshwater planning panel under the new freshwater planning process.

2.3 High Court declaratory proceedings

16. Because of questions being raised by some submitters about the freshwater planning process being applied to the whole of the regional policy statement, the Otago Regional Council out of understandable caution applied for a declaratory judgment from the High Court. It sought declarations confirming the validity of the course it had adopted in order to achieve the integrated document it was required to prepare.

17. However, the subsequent High Court decision in *ORC v. Royal Forest & Bird Protection Society of New Zealand Incorporated* (2022) NZHC 1777 made it plain that the new legislation did not allow that integrated procedural approach to be followed in respect of the whole of the PORPS.
18. The outcome was the making of declarations by the High Court that the ORC had to differentiate between provisions directly relating to the quantity and quality of water, and the other ‘non-freshwater’ aspects of the PORPS.
19. The High Court judgment required that ORC identify the freshwater instrument parts of the PORPS and re-notify those provisions as a freshwater planning instrument. That would require submitters who wished to submit under that freshwater planning process having to file fresh submissions to be heard by a Freshwater Planning Panel. The ORC carried out that separation of freshwater provisions, and their re-notification, by shading those freshwater parts of the PORPS in blue. The non-freshwater aspects then constituted the greater part of the PORPS.
20. The High Court endeavoured as far as it could to be pragmatic, by allowing the submissions in respect of the non-freshwater parts of the regional policy statement to be able to proceed utilising the existing submissions on those non-freshwater submission points.

2.4 Processes of the Two Hearing Panels

21. Initially four commissioners were then appointed by the ORC to constitute the Non-Freshwater Hearing Panel - those members being R.D.Crosby (Chair), and RMA Commissioners R. Kirikiri, A. Cubitt and B. Sullivan.
22. Those hearings proceeded in the first half of 2023. The non-freshwater hearing Panel adjourned those proceedings at the end of hearings in May, 2023 to enable completion of the Freshwater hearing process in the hope that some form of integration of the two processes would be possible once the freshwater hearings had been completed.
23. In late 2022 and while the non-freshwater hearings were proceeding in the first half of 2023, the freshwater parts of the PORPS were notified, and submissions and further submissions lodged. The Chief Freshwater Commissioner then pragmatically appointed the same personnel to be the members of a Freshwater Planning Panel, and those freshwater hearings were conducted in August and September, 2023.

2.5 Reporting challenges for the two hearing panels

24. So the Alice in Wonderland legal situation we now find ourselves in, is that we must embark on preparation of two separate reports making recommendations to ORC in respect of two entirely separate procedural processes – but in respect of one integrated document, the PORPS. Pursuant to s. 59 of the RMA the purpose of that one document is “...to *achieve integrated management* of the natural and physical resources of the whole region.” (Panel’s emphasis)
25. In summary, in procedural terms we are required to make one set of recommendations which are subject to the non-freshwater hearing process, only on those aspects of the PORPS not shaded blue; and at the same time, we have to make another separate report of recommendations in respect of the freshwater parts, which are shaded in blue.

26. However, the overall outcome is required by s. 60 of the RMA to be one regional policy statement document. Section 59 of the RMA requires that one document has the purpose of achieving integrated management of the region's resources.
27. During some of the various hearings we have had urged upon us at various times in the two different processes a range of submissions as to the process we must observe. Those submissions have included inter alia that:
- a. We must not take into account evidence or submissions proffered to us in the other process;
 - b. We cannot recommend changes in the different process that we have noticed require amendment in the other process;
 - c. The non-freshwater process is the 'senior' process and that the freshwater process must be co-ordinated with it;
- and even that, (before we were appointed to common membership of both panels);
- d. the two panels could not confer to achieve an integrated outcome as they each could only properly take into account material heard in their process;
- and finally by ORC in closing on the freshwater hearing process
- e. that an elaborate process of further hearings should be timetabled to enable all submitters and ORC to call evidence and submit as to the impact of freshwater recommendations on the 'non-freshwater planning instrument parts of the RPS', i.e. involving by necessary implication a proposition that the freshwater report preceded the non-freshwater report.
28. We cannot see that there is any express statutory guidance providing a 'priority' or 'seniority' of any nature to the non-freshwater process as has been suggested directly, or by implication, in submissions. The sequential timing of non-freshwater and freshwater hearings that has occurred in this Otago setting has come about solely as a practical matter as a result of the High Court directions as to re-notification of the freshwater planning instrument. In our view neither report containing recommendations has any greater legal weight or priority than the other.
29. Most aspects of those non-integration approaches that were urged upon us are necessarily resolved by the pragmatic consequence of common membership of the two hearing panels. Each member of the two separate hearing panels has only the one brain – we necessarily have been informed by both processes.
30. However, despite the best efforts of the High Court, ORC and the Chief Freshwater Commissioner to be pragmatic and enable us to achieve an integrated document, we still face some arguable jurisdictional procedural challenges as to our ability to make recommendations in one or other process. Moreover, we are keenly aware of the differing appeal rights that arise depending upon which process we make a recommendation in, and what that recommendation is – once again these disjuncts in appeal processes have occurred because of central government statutory direction.
31. The differences in appeal rights appear to be:

- a. In respect of the non-freshwater recommendations appeal rights lie to the Environment Court in the normal way, i.e by way of full re-hearing.
 - b. In respect of the freshwater recommendations where ORC accepts our recommendations or accepts our recommendations for alternative relief outside the submission relief sought, appeal rights lie to the High Court, but are restricted to points of law.
 - c. In respect of the freshwater recommendations where ORC does not accept our recommendations or does not accept our alternative recommended relief outside the scope of submissions, appeal rights lie to the Environment Court, but do not seem to be restricted to points of law.
32. We observe in passing, without having the temerity to express any views on the point, that it is not at all easy to see how the High Court and Environment Court, (and for that matter any higher courts on further appeal where again rights of appeal appear to differ), are to liaise on the different processes to be able to achieve one integrated document. There does not appear to be any clear procedural process provided by the RMA for any co-ordination to occur between the Environment Court and the High Court in respect of appeals relating to the same document but being heard in two different jurisdictions.
33. We must also grapple with the probably inevitable problem that some changes we consider are necessary in the PORPS provisions have been raised in or by a freshwater submission, but relate to unshaded non-freshwater provisions, and vice versa, i.e. a non-freshwater submission either expressly, or by implication, or by necessary consequence, affects a freshwater provision.
34. In respect of those latter matters we have decided the best we can do is to make the recommendation which best meets the s.59 imperative as to the single purpose of regional policy statements - which we repeat is to provide:
- ... 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.*
35. That being the sole purpose of regional policy statements expressed in the RMA, we do not consider that procedural difficulties imposed by inadequate central legislation as to how the two processes are to be melded into the one regional policy statement should stand in the way of people and resources in Otago being able to have one regional policy statement which is intended to achieve integrated management of resources. That is the vital planning base in the RMA upon which regional and district plans are to be prepared.
36. Our recommendations will endeavour to identify which recommendations relate to which process, but our overall focus is to achieve one integrated document which works in managing the resources of the region.

2.6 Process and format adopted to enable integration of two separate Reports of Recommendations into one planning document

37. Since a 2017 amendment the provisions of the RMA now include some overall procedural principles in s.18A. We interpret those principles as being of particular relevance to a situation such as this where a clear procedural lacuna exists. We are required to achieve one integrated planning document, but are required to do that using two entirely different processes which have different appeal rights. The lacuna lies in the fact that there is no statutory procedural guidance as to how we are to integrate the recommendations we make in two separate reports to achieve that one planning document.

38. We consider that section 18A provides some helpful guidance:

18A Procedural principles

Every person exercising powers and performing functions under this Act must take all practicable steps to—

- a. *use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised; and*
- b. *ensure that policy statements and plans—*
 - i. *include only those matters relevant to the purpose of this Act; and*
 - ii. *are worded in a way that is clear and concise; and*
- c.

39. Those provisions of s.18A must also be read and applied in conjunction with the hearings procedure provision s.39 (1) RMA relating to non-freshwater hearing processes. It concludes that a hearing panel in a non-freshwater process “*shall establish a procedure that is appropriate and fair in the circumstances.*” In Schedule 1 Part 4 a similar direction is found in clause 48 (1) which provides that a freshwater hearings panel must “*regulate its own proceedings in a manner that is appropriate and fair in the circumstances;...*”

40. Bearing those various directives in mind we have endeavoured to exercise our recommendatory powers to achieve an efficient and cost-effective process which ensures the purpose of the Act is met. We have sought to do that by ensuring sustainable management of Otago’s resources is provided for in one regional policy statement that provides for the integrated management of Otago’s resources – which is what s.60 of the RMA requires.

41. Accordingly we have decided that each set of separate recommendations will have attached to it one final recommended regional policy statement, which will have the same blue shading as was required for the separate hearing processes to mark out the freshwater instrument provisions from the non-freshwater provisions.

42. We have also decided that in practical terms we should prepare this Introductory section, which would have been exactly the same for each of our recommendatory reports for each process. It would be contrary to common sense, and unnecessarily repetitive, expensive and pointless to do that.

43. Instead we intend to formally record that this introductory part of the report is able to be read and applied in both processes.

44. A report by the non-freshwater hearings panel containing recommendations for Otago Regional Council is contained in **Appendix One**.
45. A report by the freshwater hearings panel containing recommendations for Otago Regional Council is contained in **Appendix Two**.
46. **Appendix Three** is the recommended final form of the one PORPS required by s.60 of the RMA - again with blue shading for the freshwater instrument provisions.
47. **Appendix Four** is a tracked change version of the original notified version of the PORPS. It is intended to enable submitters to follow the directions we address below under the sub heading of Part Two as to the structure of the reports and recommended PORPS Appendices One, Two and Three. That structure description explains how submitters can determine the reasoning and source of any recommended changes.
48. Because of the greater scope to make recommendations outside of relief requested in submissions in the freshwater process, on limited occasions where we encountered such problems we used that process to make recommendations for change. In respect of the non-freshwater text in the PORPS, where we have seen such changes as being necessary, we have recommended them as consequential changes.

3. General Observations

49. This whole separate hearing process laid down by central government has been required by the RMA to be funded by ORC as the regional council.
50. The separation of hearing and decision-making functions has involved a process we consider to be more akin to 'disintegration' rather than 'integration' as required by the RMA for regional policy statements. That 'disintegrating' procedural effect will have added significant extra cost to ORC, and probably will still involve major ongoing extra cost and uncertainty in trying to align any appeal processes.
51. We appreciate the following views are outside of our jurisdiction.
52. Nonetheless as the closest body informed as a result of having to operate under this system, we felt we should express the view we hold that Central government may wish to consider assisting ORC in meeting the extra cost incurred by it.
53. That extra cost burden hopefully will not be faced by other councils, who are fortuitously later in the process than the ORC, given the amendments made belatedly in August 2023 to s.80A of the Resource Management Act by s. 805 (4) of the Natural and Built Environment Act 2023 in an attempt to resolve some of the worst deficiencies in the process. (This whole area has become even more complex in that since drafting of our reports has commenced there has been a change of government and the Natural and Built Environment Act 2023 has already been repealed.)
54. It seems wrong that simply being at the front of the queue should result in ORC having to carry such an extra cost burden, that other later regional councils will not have to bear.

4. Structure of Recommendations


55. It is important that the topic decisions supporting recommendations in each of Appendices One and Two are read as a whole together with the tracked change version of the PORPS in Appendix Four. The decision on each topic contains the reasons for the Panel's recommendations. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report, or the replies by s.42A report writers to evidence, or a specific reasoning by the Panel.
56. The tracked change version of the relevant PORPS provisions in Appendix Four forms an integral part of the decisions leading to the recommendations in Appendices One and Two. The source of any change that was dealt with is clearly identified in the track changes version of the PORPS. This records all amendments (additions and deletions) to the notified PORPS provisions recommended to be made by the respective Panels.
57. In an effort to avoid repetition and to be able to produce reasonably timely and concise reports, the Panels have relied upon the submission point identification numbers in the section 42A reports to link submitters to particular issues. All chapters will therefore deal with issues without necessarily repeating the particular submission point or identifying the submitter in respect of the submission giving rise to that consideration.
58. Where the PORPS provisions **remain as notified**, it is because:
- a. The Panel involved has decided to recommend retention of the provision as notified for reasons set out in the relevant subject decision in Appendix One or Two; or
 - b. The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence by the s.42A report writer; or
 - c. The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.
59. Where there is a **change to a provision** within the PORPS it is because:
- a. The relevant hearing Panel has amended a provision for reasons set out in the relevant subject decision in Appendix One or Two in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or
 - b. The relevant hearing Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence by the s.42A report writer; or
 - c. The relevant hearing Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report; or
 - d. A consequential change has been necessary following on from a decision in either a), b) or c); or
 - e. The Freshwater Panel made a decision on its own volition outside the scope of any particular submission for the reasons set out in Appendix Two.

60. Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the relevant hearing Panel decision in Appendix One or Two specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.
61. There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision in Appendix One or Two clearly sets out the nature of the change and the reason for the change.
62. Finally, there are limited circumstances where the relevant hearing Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision in Appendix One. As stated above in Appendix Two on some limited occasions alternative relief has been recommended which is beyond the scope of any submission.

5. Requirements of Section 32AA of the RMA

63. In relation to the requirements of s.32AA of the RMA the Panel has had regard to all the matters required to be considered in terms of s.32 as it has made its assessments of submissions, the s.42A responses and the evidence and submissions it has received.
64. In deciding how to report in a manner which meets the obligations in both the freshwater and non-freshwater processes, it has taken into account particularly the requirements of s.18A of the RMA. That section requires that:
- Every person exercising powers and performing functions under the Act must take all practicable steps to:*
- (a) *use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised;*
65. To endeavour to slavishly repeat the thought process of a s.32 analysis in respect of each decision on each submission would fly in the face of that requirement of practicable steps being taken. It would involve a massively costly and time consuming repetitive process serving no useful purpose.
66. Instead the Panel has decided this statement of general compliance with the s.32AA process should be recorded. The Panel in particular wishes to record that it believes the decisions it has made on each submission are the most appropriate way to achieve the purpose of the Act in the most efficient, effective and reasonably practicable manner open to it, in each case where it has recommended changes to the PORPS.

For the Hearing Panels:

A rectangular box containing a handwritten signature in dark ink. The signature is stylized and appears to read 'Ron Crosby'.

Ron Crosby

Chair

Proposed Otago Regional Policy Statement Hearings Panel, and Freshwater Hearings Panel

Dated 21 March 2024

Appendix One: Report by the Non-Freshwater Hearings Panel

Section 1: Legal Issues

1. Introduction

1. The Proposed Otago Regional Policy Statement (PORPS) initially gave rise to 1463 submissions involving a very large number of submission points in respect of non-freshwater issues which this report must address, with many of those being impacted by a range of legal issues which have been raised.
2. The principal legal issues underlying the majority of those submission points arise out of a limited number of major concerns, as follows:
 - a. The assertion that the overall drafting of the PORPS has adopted an overly protective 'avoid adverse effects' approach, akin to that utilised in the National Policy Statement on Freshwater Management (NPSFM)
 - b. A consequent assertion that such an 'avoidance' approach with only very limited qualifications inhibits, or possibly even prevents, the operation, maintenance and development of the following existing or new significant infrastructure and activities, by leaving them without a practicable consent pathway:
 - i. Lifeline infrastructure including - renewable electricity generation; the transmission of electricity through the National Grid; the distribution of electricity; telecommunications networks; water distribution, whether for irrigation or drinking water; roading infrastructure; port and airport operations
 - ii. Mining & quarrying (particularly for aggregate)
 - iii. Ski-field operations
 - iv. Aquaculture (particularly for off-shore salmon farming)
3. After the closing of the periods for submissions and further submissions, some caucusing and more informal discussions were conducted by the s.42A report writers in respect of many of those issues. Those pre-hearing processes led to a level of amended recommendations being made by report writers as each chapter of the PORPS was considered by the Hearing Panel ('Panel').
4. Persuasive cases were then presented by submitters to the Hearing Panel ('Panel') in respect of all those issues.
5. A positive feature of this five month long hearing process then occurred. That was demonstrated by the degree to which those major concerns of submitters were listened to and responded to by the s.42A report writers. In the reply reports they provided, many of their earlier recommendations were further amended to address or ameliorate to a greater or lesser extent the major concerns underlying the submission points.
6. Doubtless many submitters will still feel a level of disquiet that it was necessary to undertake the hearing process of preparing detailed legal submissions and providing expert and lay evidence to achieve those amended outcomes. In the Panel's view the outcome on many of the issues of concern is a sound one, which has been tested and resolved in an effective manner by the hearing process, rather than having to await an imposed outcome from this recommendatory report.
7. However, some issues have not been resolved by that process, and do require the Panel to make a decision as to the recommendations it makes.

8. The first of those is the major issue of prioritisation of protection which many submitters asserted underpinned the whole of the PORPS. As will be seen right up until the very last document filed in this proceeding ORC held to its position on this point. Given that fact, despite the very late major change in position by ORC we still consider it necessary to canvass the contrasting positions we had presented to us throughout the hearings.

2. Part 2 RMA – Prioritisation: a protective or enabling approach – or both?

9. In legal terms the fundamental difference in views, and perceptions, of the PORPS related in large part to the issue of how the various aspects of Part 2 of the RMA were to be applied in the PORPS.
10. Various activity groups, including the infrastructure providers and operators, the rural sector, the mining and quarrying and skifield operators, and aquaculture developers in particular, from their varying viewpoints were saying that the PORPS philosophical approach was not ‘enabling’ as they asserted Part 2 intended.
11. Rather they complained that the PORPS approach was too prescriptive, adopting a default base for all activities that required ‘avoidance’ of effects in a manner that was too strictly proscribed. The common thread of these submitters’ cases was that their particular activity area had either not been recognised or provided for, either at all or adequately, in the identification of regional issues of significance, or that the activity chapters did not contain any, or an adequate, practical consent pathway for their desired activities.
12. The common concomitant approach taken by most of these submitters was that the NPSFM prioritisation hierarchy had effectively been adopted and applied to the broader region-wide natural environment, which resulted in an elevation of protection of every aspect of ecology and the natural environment above human needs and activities.
13. That approach was said to be contrary to the guidance provided by the Supreme Court in the *NZ King Salmon* litigation. (As these Panel considerations develop we will address later on the Supreme Court’s more recent decision in *Port Otago Limited v Environmental Defence Society Incorporated (2023) NZSC 112* as a result of which the major change in position by ORC eventuated.)
14. The Kāi Tahu and related mana whenua submitters’ approach under Part 2 was more nuanced. They did not level the same degree of concerns about the prioritisation hierarchy of protection of the natural environment, as Kāi Tahu and its associated submitters sought a high level of such protection of the natural environment. Rather their focus was that in some respects the PORPS avoidance of effects approach did not properly give full effect to the Treaty obligations to enable mana whenua to exercise tino rangatiratanga in respect of their own takiwa resources, and to exercise kaitiakitaka obligations in respect of that takiwa.
15. To the Panel’s mind, those two bases of criticism stem from a common assertion that differing aspects of Part 2 of the RMA were not being properly applied in the overarching PORPS approaches. The Treaty related issue is such a discrete issue that it is best left for a later discussion on the mana whenua chapter provisions in the PORPS.
16. We turn now, then, to address the fundamental difference in approach between ‘enabling’ or ‘protecting’ arguments as to what is required for the PORPS to meet the Part 2 objectives of the RMA.
17. The initial ORC response reflected in the s.42A reports was in essence that rather than adopting a prescriptive approach to activities, the approach of the PORPS was to ensure, in accordance with Part 2, that the environment was protected as a first priority by use of priorities, effects

management hierarchies, and the setting of some limits. Ecological limits were a prime example. So long as the environmental bottom lines set to achieve a sustainable level of protection were not transgressed, this approach argued that the outcome would protect the natural environment and enable human activities to be conducted. In short, human activities involving resource use and development were enabled, but only so long as their effects did not breach limits, and for that reason protection of those limits was set as the first priority.

18. When looked at in that light it was said that the combination of the prioritisation hierarchy, limits and detailed effects management hierarchies provided the base protection mechanisms required by Part 2 for the natural environment, while enabling use and development of resources to occur without further restriction.
19. In the Panel's perception what these differing arguments boil down to is a consideration of how and when 'enabling' and 'effects management' regimes envisaged by Part 2 are to be addressed in a regional policy setting.
20. Obviously, the startpoint for that consideration must be the guidance provided by the highest court in the land, the Supreme Court in the *NZ King Salmon* litigation¹. That case provides clear direction on the knotty potential for conflict between the protectionist language found variously in Part 2 in the ss. 5, 6 & 7 provisions, and the enabling terminology found in s.5 itself. The latter includes phrases such as 'enables people and communities to provide for their social, economic, and cultural well-being' and 'use and development' of resources. The protectionist language by way of contrast in ss.5,6 & 7 includes words such as 'sustaining', 'safeguarding', 'preserve', 'protect', 'maintain', 'manage' in relation to various aspects of the environment, and 'avoid', 'remedy', 'mitigate' and 'enhancement' as to effects.
21. The submitters supporting the 'enabling' approach understandably stressed the former 'enabling' phrases, while the ORC s.42A reports initially, and other submitters supportive of their protective approach, stressed the latter. In each case the opposing arguments were buttressed by concessionary assertions. On the one hand in support of the 'enabling' approach assertions were made that effects management hierarchies and/or limits were not opposed per se, but they were to the extent that they were so restrictive they did not provide real or practicable consent pathways. On the other hand those supportive of the 'protective' approach asserted that they were not opposed to use and development of resources, but only to the extent that the effects of use and development were in breach of limits.
22. In both the notified version and in the final s.42A recommended change version of the PORPS a priority was adopted in relation to the integrated management of resources within the Otago region. Policy IM-P2 for example in the notified version used a heading **IM-P2 – Decision priorities**. As notified it provided:

IM-P2 – Decision priorities

Unless expressly stated otherwise, all decision making under this RPS shall:

- (1) firstly, secure the long-term life-supporting capacity and mauri of the natural environment,
- (2) secondly, promote the health needs of people, and
- (3) thirdly, safeguard the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

¹ *EDS v. NZ King Salmon Co Ltd (2014) NZSC 38*

23. In the final recommended version dated 15 September 2023, IM-P1 and IM-P2 were consolidated into the following form as IM-P1:

IM-P1 – Integrated approach to decision-making

Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, **prioritise:**

(1) the life-supporting capacity and mauri of air, water, soil, and ecosystems, and then

(2) the health and safety of people and communities, and their ability to provide for their social, economic, and cultural well-being, now and in the future.

(Panel’s emphasis)

24. The key issue then is whether or not an approach which expressly prioritises protection of the natural environment on a broad region-wide basis is in accordance with Part 2 of the RMA.
25. That issue is also critical to the more indirect criticisms of the PORPS by user submitters. They asserted that even if protection was not expressly stated in other provisions, then by omission of express provisions relating to the recognition of, provision for, and enabling of a raft of significant activities, but by contrast expressly protecting the natural environment, the PORPS was in effect prioritising protection over use and development of resources.
26. The Integrated Management chapter of the PORPS will be addressed in more detail later in this report in relation to the particular submission points that require addressing in detail, but the overall issue of how integrated management should be achieved in accordance with the law needs to be addressed first as a major discrete issue.
27. So what did the Supreme Court have to say in NZ King Salmon about this issue of prioritisation?

2.1 NZ King Salmon case

28. The decision of the Supreme Court in *EDS v. NZ King Salmon* (hereafter simply ‘*King Salmon*’) is by now nearly ten years old, but it remains the leading authority on how the purpose and objectives of the Act are to be achieved and how Part 2 is to be interpreted.
29. In the decade since that decision, aspects of its application have been reviewed by other courts on occasion. Most relevantly for the Otago region, such a potential reconsideration was live during our hearings in the Supreme Court itself, in a case involving Port Otago Limited. That case was heard in May, 2022, but the decision *Port Otago Limited v. EDS (2023) NZSC 112* only issued on 24 August, 2023, after the non-freshwater hearings were concluded but left open to resume if the Supreme Court’s decision was received later in the year. When that happened we duly allowed submissions to be lodged as to the implications of that decision.
30. The *Port Otago* case involved the relationship between what was termed the ‘Port’ Policy 9 of the NZCPS and the ‘avoid policies’ of Policies 11,13,15 and 16 of the NZCPS. Policy 9 of the NZCPS is the policy which recognises the need nationally and internationally for an efficient port system, whereas Policy 11 protects indigenous biological diversity, Policy 13 protects natural character, Policy 15 protects natural features and landscapes, and Policy 16 protects nationally significant surfbreaks.

31. We will return to address the *Port Otago* case later but commence with a review of the *NZ King Salmon* case.
32. The principal passages of relevance to the priority issue being addressed at this stage of this report are found at paragraph 24 of the *King Salmon* case relating to the definition of ‘sustainable management’ which is the s.5 purpose of the Act:

24. (a)...

(b) ...

(c) *Third, there has been some controversy concerning the effect of the word “while” in the definition. The definition is sometimes viewed as having two distinct parts linked by the word “while”. That may offer some analytical assistance but it carries the risk that the first part of the definition will be seen as addressing one set of interests (essentially developmental interests) and the second part another set (essentially intergenerational and environmental interests). We do not consider that the definition should be read in that way. **Rather, it should be read as an integrated whole.** This reflects the fact that elements of the intergenerational and environmental interests referred to in sub-paras (a), (b) and (c) appear in the opening part of the definition as well (that is, the part preceding “while”). That part talks of managing the use, development and protection of natural and physical resources so as to meet the stated interests – social, economic and cultural well-being as well as health and safety. The use of the word “protection” links particularly to sub-para (c). In addition, the opening part uses the words “in a way, or at a rate”. These words link particularly to the intergenerational interests in sub-paras (a) and (b). **As we see it, the use of the word “while” before sub-paras (a), (b) and (c) means that those paragraphs must be observed in the course of the management referred to in the opening part of the definition. That is, “while” means “at the same time as”.***

(Panel’s emphasis)

33. In broad terms what the Supreme Court termed as ‘developmental interests’ includes what we have termed as supporters of the ‘enabling approach’, and what it termed as ‘intergenerational and environmental interests’ we have termed the ‘protectionist approach’. Regardless of the labels applied, those conclusions we have emphasised in *King Salmon* make it plain that the outcome has to be the same – an integrated approach is required for both sets of interests, or on both approaches, to meet the sole purpose of the Act of sustainable management. Each of the elements in s.5(2) must be observed contemporaneously. In terms of a regional policy statement that requires each element to be observed or provided for in the same document. As the Court stressed at paragraph 64 that of course is what s.59 of the RMA requires “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.”
34. On their face, and if only taken that far, those conclusions would mean prioritisation could never be applied. However, the Supreme Court continued in its decision to make it plain that the statutory regime in Part 2 is far more complex than that.
35. It then addressed the provisions found in s.5(2) and observed, still in paragraph 24:
- (d). *Fourth, the use of the word “protection” in the phrase “use, development and protection of natural and physical resources” and the use of the word “avoiding” in sub-para (c) indicate **that s.5(2) contemplates that particular environments may need to be protected from the adverse effects of activities in order to***

implement the policy of sustainable management; that is, sustainable management of natural and physical resources involves protection of the environment as well as its use and development. The definition indicates that environmental protection is a core element of sustainable management, **so that a policy of preventing the adverse effects of development on particular areas is consistent with sustainable management.** This accords with what was said in the explanatory note when the Resource Management Bill was introduced:

The central concept of sustainable management in this Bill encompasses the themes of use, development and protection

(Panel's emphasis)

36. Later in its decision after analysing the terms or concepts of 'avoidance', 'protection' and 'inappropriate' and 'appropriate' use and development, the Court then went further in making the crucial decision for the purposes of that case as to what approach was required to observe Part 2 in the interpretation of the NZCPS policies.
37. Was it the 'overall judgment' approach, which would enable the 'balancing' of a wide range of statutory planning objectives and policies? Or the 'environmental bottom line' approach, which would operate more akin to a 'rules'-based approach? In relation to that issue the Court came down strongly in favour of the 'environmental bottom line' approach, holding at Paragraph 131 and at the start of paragraph 132 as follows:

*[131] A danger of the "overall judgment" approach is that decision-makers may conclude too readily that there is a conflict between particular policies and prefer one over another, **rather than making a thoroughgoing attempt to find a way to reconcile them.** In the present case, we do not see any insurmountable conflict between policy 8 on the one hand and policies 13(1)(a) and 15(a) on the other. Policies 13(1)(a) and 15(a) provide **protections against adverse effects of development in particular limited areas of the coastal region – areas of outstanding natural character, of outstanding natural features and of outstanding natural landscapes (which, as the use of the word "outstanding" indicates, will not be the norm).** Policy 8 recognises the need for sufficient provision for salmon farming in areas suitable for salmon farming, but this is against the background that salmon farming **cannot occur in one of the outstanding areas if it will have an adverse effect on the outstanding qualities of the area.** So interpreted, the policies do not conflict.*

*[132] Policies 13(1)(a) and (b) and 15(a) and (b) do, in our view, **provide something in the nature of a bottom line.** We consider that this is consistent with the definition of sustainable management in s 5(2), which, as we have said, **contemplates protection as well as use and development.***

(Panel's emphasis)

38. The fundamental recurring feature in the Supreme Court's reasoning for a bottom lines approach keeps coming back to the s.6 distinction of particular protection of particular areas or aspects of the environment. Thus the Court emphasised that in s.6 outstanding areas were provided with the possibility of an elevated level of protection as compared to s.7 matters. The analysis at paragraphs 26 and 28 makes that distinction plain:

[26] Section 5 sets out the core purpose of the RMA – the promotion of sustainable management of natural and physical resources. Sections 6, 7 and 8 supplement that by stating the particular obligations of those administering the RMA in relation to the various matters identified. **As between ss 6 and 7, the stronger direction is given by s 6 – decision-makers “shall recognise and provide for” what are described as “matters of national importance”, whereas s 7 requires decision-makers to “have particular regard to” the specified matters.** The matters set out in s 6 fall naturally within the concept of sustainable management in a New Zealand context. The requirement to “recognise and provide for” the specified matters as “matters of national importance” **identifies the nature of the obligation that decision-makers have in relation to those matters when implementing the principle of sustainable management.** The matters referred to in s 7 tend to be more abstract and more evaluative than the matters set out in s 6. This may explain why the requirement in s 7 is to “have particular regard to” them (rather than being in similar terms to s 6).

27. ...

[28] It is significant that three of the seven matters of national importance identified in s 6 relate to the preservation or protection **of certain areas**, either absolutely or from “inappropriate” subdivision, use and development (that is, ss 6(a), (b) and (c)). Like the use of the words “protection” and “avoiding” in s 5, **the language of ss 6(a), (b) and (c) suggests that, within the concept of sustainable management, the RMA envisages that there will be areas the natural characteristics or natural features of which require protection from the adverse effects of development.** In this way, s 6 underscores the point made earlier that protection of the environment is a core element of sustainable management.

(Panel’s emphasis)

39. On the Panel’s understanding of the current legal position, the Supreme Court was not directing that Part 2 of the RMA required protection of the natural environment to be prioritised above use and development on a broad-brush basis across a region. Instead, as it repetitively said, “*the RMA envisages that **there will be areas the natural characteristics or natural features of which require protection from the adverse effects of development.***” It seems plain to the Panel that the Supreme Court approach envisaged the identification of particular aspects or areas of the natural environment which needed protection for particular reasons, before the bottom-line approach of language like ‘avoids’ could be applied in objectives and policies.

40. This was made plain by way of repetition at paragraphs 148 and 149 of the decision:

[148] *At the risk of repetition, s5(2) defines sustainable management in a way that makes it clear that **protecting the environment from the adverse effects of use or development is an aspect of sustainable management – not the only aspect, of course, but an aspect.** Through ss 6(a) and (b), those implementing the RMA are directed, “in relation to managing the use, development, and protection of natural and physical resources”, to provide for the preservation of the natural character of the coastal environment and its protection, as well as the protection of outstanding natural features and landscapes, from inappropriate development, these being two of seven matters of national importance. They are directed to make such provision in the context of “achieving the purpose of [the RMA]”. We see this language as underscoring the point that **preservation and protection of the environment is an element of sustainable***

management of natural and physical resources. Sections 6(a) and (b) are intended to make it clear that those implementing the RMA must take steps to implement that protective element of sustainable management.

[149] **Section 6 does not, we agree, give primacy to preservation or protection; it simply means that provision must be made for preservation and protection as part of the concept of sustainable management.** The fact that ss 6(a) and (b) do not give primacy to preservation or protection within the concept of sustainable management does not mean, however, that a particular planning document may not give primacy to preservation or protection **in particular circumstances.** This is what policies 13(1)(a) and 15(a) in the NZCPS do. Those policies are, as we have interpreted them, entirely consistent with the principle of sustainable management as expressed in s 5(2) and elaborated in s 6.

(Panel's emphasis)

41. And similarly at paragraph 152 in relation to the NZCPs where the Court stated:

[152] *The NZCPS is an instrument at the top of the hierarchy... Given that environmental protection is an element of the concept of sustainable management, we consider that the Minister was fully entitled to require in the NZCPS that **particular parts** of the coastal environment **be protected** from the adverse effects of development. That is what she did in policies 13(1)(a) and 15(a), **in relation to coastal areas with features designated as "outstanding"**. As we have said, no party challenged the validity of the NZCPS.*

(Panel's emphasis)

42. In the notified version of the PORPS, IM-P2 did not endeavour to identify particular aspects or areas of the natural environment requiring protection for particular reasons – instead it stated on an all-encompassing basis:

IM-P2 – Decision priorities

Unless expressly stated otherwise, all decision making under this RPS shall: firstly, **secure** the long-term life-supporting capacity and mauri **of the natural environment, ...**

(Panel's emphasis)

43. Whilst the reply form of the PORPS dated 15 September 2023 recommended a more moderated approach in the consolidated IM-P1, nonetheless it still took a broad brush approach to the natural environment by prioritisation of protection:

IM-P1 – Integrated approach to decision-making

Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, **prioritise:**

- 1) the life-supporting capacity and mauri of **air, water, soil, and ecosystems,** and then
- 2) ...

(Panel's emphasis)

44. The Panel’s conclusion is that the both the notified and the recommended reply version of the PORPS had erred in adopting a broad prioritisation approach to include protection of all of the natural environment. ORC had adopted that approach both in the notified version and in the recommended reply version. The first priority accorded was of the whole of the air, water, soil, and ecosystems. (The definition of ‘environment’ in the RMA, which is replicated exactly in the PORPS, includes ‘ecosystems and their constituent parts, including people and communities’ – so it is all encompassing.)
45. By way of contrast the protective absolute ‘avoid’ approach in the NZCPS was focussed on outstanding natural character (Policy 13 (1)(a)), outstanding natural features and outstanding natural landscapes (Policy 15 (1)(a)). In Policy 11(a) as to indigenous biodiversity the absolute ‘avoid’ approach was limited to at risk, rare and threatened species, or species and indigenous biodiversity which are nationally significant.
46. Similarly, by way of contrast the NPSFM has been issued against a background of a welter of reports that the states of the quality and/or quantity of many of New Zealand’s freshwater bodies are so degraded or reduced that they are particularly sensitive to certain existing or ongoing levels of adverse effects from the use of water. Those are particular aspects of environmental concern as to the sensitivity of a particular aspect of the natural environment in freshwater bodies. As a consequence, in its expression of the concept of Te Mana o Te Wai at cl.1.3 the NPSFM provides a hierarchy of obligations expressed as follows:
- (5) There is a hierarchy of obligations in Te Mana o te Wai that prioritises:*
- (a) first, the health and well-being of water bodies and freshwater ecosystems*
- (b) second, the health needs of people (such as drinking water)*
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future*
47. We observe in passing that the similarity between that NPSFM hierarchy and the prioritisation in the notified IM-P2 and the reply version IM-P1 is obvious. Each is based to an extent on aspects of the wording in s.5(2) of the RMA.
48. There is no such particularisation in the PORPS warranting its application of a prioritisation for protection purposes of all of ‘*the life-supporting capacity and mauri of **air, water, soil, and ecosystems***’. Nor is there any region wide identification in the s.32 report of risk to all of those natural environment aspects or areas warranting such an all-encompassing protection approach reflected in the prioritisation of protection.
49. Absent such particularisation of aspects or areas needing protection, then in the Panel’s view the *King Salmon* decision makes it plain that for an integrated regional policy statement like PORPS to be in accordance with Part 2 of the RMA it must apply subclauses (a), (b) and (c) of section 5(2) as an integrated whole. Those sub-clauses “**must be observed in the course of the management referred to in the opening part of the definition. That is, “while” means “at the same time as”**”. In short there is to be no general prioritisation of protection above the enabling function of the RPS.
50. We consider that conclusion is supported by the statements made at paragraphs 129 and 130 of the *King Salmon* decision which are very relevant to the more nuanced manner in which the reply version of the consolidated IM-P1 is worded, so that it only applies in situations of conflict of policies:

[129] When dealing with a plan change application, the decision-maker must first identify those policies that are relevant, paying careful attention to the way in which they are expressed. Those expressed in more directive terms will carry greater weight than those expressed in less directive terms. Moreover, it may be that a policy is stated in such directive terms that the decision-maker has no option but to implement it. So, “avoid” is a stronger direction than “take account of”. That said however, we accept that there may be instances where particular policies in the NZCPS “pull in different directions”. But we consider that this is likely to occur infrequently, given the way that the various policies are expressed and the conclusions that can be drawn from those differences in wording. **It may be that an apparent conflict between particular policies will dissolve if close attention is paid to the way in which the policies are expressed.**

[130] **Only if the conflict remains after this analysis has been undertaken is there any justification for reaching a determination which has one policy prevailing over another. The area of conflict should be kept as narrow as possible.** The necessary analysis should be undertaken on the basis of the NZCPS, albeit informed by s 5. As we have said, s 5 should not be treated as the primary operative decision-making provision.

(Panel’s emphasis)

51. An objective for an integrated RPS to meet the s.59 imperative of the RMA should be to ensure that as far as possible there are not irreconcilable provisions. A broad sweeping prioritisation involving a protectionist approach over an enabling one in the PORPS, either expressly or indirectly, does not in our view accord with Part 2.

2.2 Port Otago case

52. The next point to consider is just how, if at all, the *Port Otago* decision of the Supreme Court can be said to have varied, developed or further clarified the *NZ King Salmon* guidance. The Supreme Court itself expressed the view that nothing it said in *Port Otago* changed the concepts laid down in the *NZ King Salmon* case.
53. The first point to note about this decision was that the Supreme Court in *Port Otago* did not depart at all from the general principles established in three of its earlier decisions – those being:
- (i) the *NZ King Salmon* case itself in 2014 about the interpretation approach to be adopted to the directive nature of policies in the NZCPS
 - (ii) the related *Sustain our Sounds* case² also in 2014 particularly as to application of adaptive management techniques to reduce or avoid adverse effects; and finally,
 - (iii) the *Trans-Tasman*³ decision in 2021, which in relation to different related legislation introduced a concept of ‘material harm’ into the assessment of adverse effects under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.
54. In *Port Otago* all of those principles were adopted and applied in various ways. At paragraph 81 the Court particularly stressed that the ‘structured analysis’ approach it concluded would be necessary in resolving conflicting policies was not the same as the “overall judgment” approach it rejected in the *King Salmon* case. In relation to the *Trans-Tasman* case the Supreme Court noted (at para 65) that:

² (2014) NZSC 40

³ (2021) NZSC 127

the standard was protection from material harm, albeit recognising that temporary harm can be material. Although in a different context, the comments are nonetheless applicable to the NZCPS. It is clear from Trans-Tasman that the concepts of mitigation and remedy may serve to meet the “avoid” standard by bringing the level of harm down so that material harm is avoided.

55. At paragraph 68 of the Port Otago decision the Supreme Court provided a summary of the application of those principles as follows:

All of the above means that the avoidance policies in the NZCPS must be interpreted in light of what is sought to be protected including the relevant values and areas and, when considering any development, whether measures can be put in place to avoid material harm to those values and areas.

56. The Court’s analysis then shifted to address the issue of how the conflicting directive policies in the NZCPS were to be addressed – in that case being the conflict between the directive policy enabling port development which it termed the ‘ports’ policy and the avoidance policies which were also directive.

57. Most importantly, at paragraph 72 the Court held that the resolution of such conflicts did need to be addressed “at the regional policy statement and plan level as far as possible.” The Supreme Court’s rationale for that approach was so that those considering particular projects would have guidance on what matters would be the focus of decision-making on any applications for consents where such conflicts in policies arose, and could weigh whether it was worth applying. Importantly, too, the Court observed that “decision-makers at the consent level will have as much guidance as possible on methods for addressing conflicts between policies.”

58. It is of interest and significance to observe, however, that having made that decision as to process, the Supreme Court immediately found itself in the same predicament this Panel faces. That is that it simply did not have enough contextual factual material before it to provide other than high level guidance in the proposed policy it went on to suggest to reconcile the differences in the policies. At paragraph 75 it stated:

As there is not sufficient information before us to attempt any detailed reconciliation between the ports policy and the avoidance policies, we provide only general guidance as to how a decision-maker at the resource consent level might approach the reconciliation between the ports policy and the avoidance policies.

59. That general guidance was then described in paragraph 76 in terms that the decision-maker would have to be satisfied that:

(a) the project is required to ensure the safe and efficient operation of the ports in question (and not merely desirable);

(b) assuming the project is required, all options to deal with the safety or efficiency needs of the ports have been considered and evaluated. Where possible, the option chosen should be one that will not breach the relevant avoidance policies. Whether the avoidance policies will be breached must be considered in light of the discussion above on what is meant by “avoidance”; including whether conditions can be imposed that avoid material harm; and

(c) if a breach of the avoidance policies cannot be averted, any conflict between the policies has been kept as narrow as possible so that any breach of any of the avoidance

policies is only to the extent required to provide for the safe and efficient operation of the ports.

60. Importantly for the consideration of the policy approach in the PORPS the Court also held at paragraph 77 that *“There can be no presumption that one directive policy will always prevail over another.”* That is a very clear direction from the Supreme Court that rules out a general prioritisation approach of avoidance policies above other directive policies.

61. At paragraphs 78 and 79 the Supreme Court stressed that the assessment of which policy prevails will depend upon *“the particular circumstances of the case.”* And further that in the structured analysis approach it had laid down that decision-makers will need to assess what it is which is being directed to be provided for, and the *“importance and rarity of the environmental values at issue in the particular circumstances”* and the intrinsic worth of the protected environmental values.” The Court concluded at paragraph 82 on these issues that:

Resolution of any conflict, through a structured analysis, will have to occur at resource consent level with regard to particular projects.

62. The Court stressed at paragraph 81 that the ‘structured analysis’ required was not a ‘loose overall’ evaluation but:

Rather they are disciplined, through the analytical framework we have provided, to focus on how to identify and resolve potential conflicts among the NZCPS directive policies.

The Court at paragraph 84 then continued to observe that:

...all relevant factors would have to be considered in a structured analysis, designed to decide which of the directive policies should prevail, or the extent to which a policy should prevail, in the particular case.

2.2.1 ORC response to Port Otago decision

63. Given that guidance by the Supreme Court, it did not come as too much of a surprise when a significantly amended form of the provisions of the consolidated IM-P1 was finally presented by ORC’s counsel in a version dated 10 October 2023 which encompassed all of the ORC recommended changes advanced by the s.42A report writers and its counsel. That final recommended form of IM-P1 in the 10 October version provides:

IM-P1 – Integrated approach to decision-making

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

(1) consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and

(2) if after (1) there is an irreconcilable conflict between provisions in this RPS which apply to an activity, only consider the activity if:

(a) the activity is necessary to give effect to a policy in this RPS 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 policy of this RPS, and
- (d) if (c) is not possible, any breach is only to the extent required to give effect to the policy 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 should prevail, or the extent to which a policy should prevail, and

(4) in the structured analysis under (3), assess the nature of the activity against the values inherent in the conflicting policies in this RPS in the particular circumstances.

64. The major point to be noted about that change is that the previously recommended ORC position that in the event of a conflict between relevant provisions there was to be prioritisation of the protection of all of *'the life-supporting capacity and mauri of air, water, soil, and ecosystems'* has disappeared. Instead a complex sequence of provisions provides a consent pathway in the form of a 'structured analysis'. The manner in which that change came about is enlightening. It arose as late as 29 September 2023 in a 'Memorandum of submissions by ORC's counsel in response to submitters on the implications of the Supreme Court judgment in Port Otago Limited v Environmental Defence Society Incorporated.' Paragraph 26 of that submission which tendered the recommended version of IM-P1 merely said that amendment of that provision was "appropriate". We agree.

65. This prioritisation issue of protection objectives and policies as a rigid concept was the major issue in all of the submissions and presentations we read and heard over nearly twelve months. Until the very last week or so of that whole hearings process ORC's position had not changed that that prioritisation was the appropriate legal stance upon which the PORPS was to be based. The change was plainly a result of the Supreme Court decision, yet even then at paragraph 28 of the submission by ORC's counsel the following was stated:

28. It is proposed to adopt the Court's methodology not because the Court's judgment requires it, rather because it is a suitable policy response to resolve any conflict which (despite best efforts) remains in the PORPS, so as to achieve integrated management.

66. We consider this very late change and modification of position to be inevitable in the light of the two Supreme Court decisions. That Court had made it crystal clear in both decisions that the type of broad prioritisation of Part 2 RMA protection provisions previously recommended by ORC was not appropriate at all in the absence of clear statutory direction. In the event of conflict of provisions, prioritisation was only warranted when particular circumstances or particular features or areas warranted protection policies being given priority over enabling provisions.

67. In our view the outcome now finally recommended is much more in keeping with both Supreme Court decisions and provides a consent pathway through a structured analysis approach as was recognised by the Supreme Court in the Port Otago case was apposite in those limited situations where conflicting provisions could not be reconciled.

68. This more nuanced approach to situations where potential conflicts may arise between provisions will need to inform the Panel's consideration of other prioritisation positions for protective provisions in other parts of the PORPS as they are examined in detail. In our view the message to be taken from the Supreme Court's decisions is that every attempt is to be made to reconcile

provisions and in the very limited cases where that cannot be achieved a structured analysis approach is to be utilised to ensure in the confined factual context involved that an appropriate weighting is given in the final decision-making one way or the other.

69. The NPSFM provides a clear example of where a statutory prioritisation for protection is expressly made. Its effects management hierarchy based on that prioritisation is not apposite to be applied on a broad-brush approach to general Part 2 matters. However, it is also important to record that the death-knell sounded by the Supreme Court's guidance to general provisions of Part 2 matters in our view cuts both ways. In the absence of express statutory prioritisation of enabling provisions ahead of protection provisions so-called 'bespoke' priority provision for REG or electricity transmission infrastructure, or for any other activities, similarly is not appropriate.
70. Our consideration as to how the detailed submission points on the Integrated Management chapter, and other relevant chapters, are affected by this conclusion will be addressed in the topic chapters which follow in this report. In particular, the Supreme Court's guidance will need to be considered later by the Panel in its consideration of the effects management hierarchy wording recommended in the s.42A reports in this non-freshwater process.
71. However, at this stage it is also appropriate to continue to consider the final recommended form of IM-P1. It has been set out above but for convenience is repeated here:

IM-P1 – Integrated approach to decision-making

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

- (1) consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and
- (2) if after (1) there is an irreconcilable conflict between provisions in this RPS which apply to an activity, only consider the activity if:
 - (a) the activity is necessary to give effect to a policy in this RPS 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 policy of this RPS, and
 - (d) if (c) is not possible, any breach is only to the extent required to give effect to the policy 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 should prevail, or the extent to which a policy should prevail, and
- (4) in the structured analysis under (3), assess the nature of the activity against the values inherent in the conflicting policies in this RPS in the particular circumstances.

72. The base framework for this recommended new form of IM-P1 is found in the Supreme Court's own suggested format for a policy in the previous 2019 version of the Otago RPS at the paragraph 87 of its decision. It provides for a cascade approach to avoidance of effects but still concludes with opportunity for resource consent to be sought where the adverse effects are shown to be the minimum necessary to achieve the "*efficient and safe operation of the port or ports.*" That resource consent process would necessarily have to be carried out using the 'structured analysis' approach referred to in paragraph 84 of the Supreme Court's decision which means:

... all relevant factors would have to be considered in a structured analysis, designed to decide which of the directive policies should prevail, or the extent to which a policy should prevail, in the particular case

73. The problem we perceive with the ORC recommended wording for IM-P1 is that the opening words of the new provision and the opening words of sub-clause (2) would restrict the resource consent pathway which is opened up to only apply where there is irreconcilable conflict “*between provisions in this RPS*”. That restriction is too restrictive.
74. The Port Otago case itself is an example of where the conflict did not exist between the proposed RPS provisions, (because it provided for a prioritisation of avoidance policies), but rather between two differing types of provisions in the NZCPS. There has now been a proliferation of such national policy statements, which to some degree or other in particular factual settings may well have the potential to be irreconcilably in conflict with each other or internally within each document. That may also occur in some other settings as between RMA’s own provisions, or as between PORPS provisions. In other words at each level in the RMA schema there is potential for such conflict to arise in particular factual settings.
75. We also have one final observation to make about the Supreme Court’s structured analysis approach. It is addressing primarily situations where an apparent irreconcilable conflict has arisen between relevant statutory provisions – usually in objective or policy form akin to a rule in effect. While we move on below to recommend some amendments to the ORC suggested adoption of the Supreme Court structured analysis approach, we wish to make the important observation that in some limited situations activities will be proposed which are not expressly provided for by a particular relevant objective or policy but which may appear contrary to another relevant policy. Yet in overall RMA terms the proposed activity may have limited if any real adverse effects. In those situations the structured analysis wording suggested by the Supreme Court requiring a necessity to ‘give effect to’ a relevant statutory provision may not be open. In our view that situation can be met, however, under sub-clause (1) of the proposed ORC response with sub-clauses (2) and (3) only applying where there is a clear potential for apparent irreconcilable conflict between statutory provisions. If a broad purposive analysis of policies or other statutory provisions is made under subclause (1) of the proposed ORC response, then for the majority of activities with a beneficial environmental outcome and limited effects, even if no express or specific policy or statutory provision identifying the activity exists, a consenting path will still be available.
76. What this highlights for the drafting of plans is the necessity to ensure that enabling policies are relatively broadly worded to ensure that protection policies do not unreasonably inhibit what might be in more general section 5 terms be beneficial activities for the community and the environment.
77. As a consequence the wording of IM-P1 must be amended to be less restrictive as it is not possible at this stage to be aware of all the potential contextual settings where an irreconcilable conflict may arise giving rise to the need for a resource consent to be able to be considered in a structured analysis, or where an express relevant policy or statutory provision may not be available for a proposed activity.
78. In our view the following changes are needed:

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), (2) or 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.

79. Before the report moves onto the topic chapters, we will also address the Supreme Court's guidance in *King Salmon* and the *Port Otago* cases on the interpretation of some other fundamentally important words or phrases, prior to addressing a range of other discrete legal issues which have arisen in the submissions or during the hearings. However, before addressing those legal matters of interpretation or definition we need to address two other discrete and significant Part 2 issues raised in submissions and presentations at the hearings.

3. Lack of provision of a rural chapter & the National Planning Standards 2019

80. One of those issues was related in part to the prioritisation issue, in that rural user submitters, such as OWRUG, NZ Beef and Lamb and Horticulture NZ in particular, had been critical of the lack of any specific rural chapter in the PORPS.

81. However, the omission of such a chapter has its own legal complications in that since 2019 the combination of s. 58I of the RMA and the National Planning Standards ('NPS') has meant that regional councils have certain statutory obligations that must be observed as a mandatory matter in the manner in which proposed regional policy statements are prepared.

82. Standard 2 of the NPS contains the mandatory requirements for regional policy statements and commences at clauses 1-5 by saying:

1. All parts and their titles in table 2 must be included, in the order shown. Additional parts must not be included.

2. Chapters and sections that are black in table 2 must be included, in the order shown.

3. Unless otherwise specified, chapters and sections that are grey in table 2 must be included if relevant to the regional policy statement, in the order shown.

4. If a chapter in table 2 is included, its associated heading must also be included.

5. Local authorities must add sections and subsections within chapters where appropriate to organise related provisions.

83. The only words under the heading Domains and Topics that are coloured black and grey in Table 2 are as follows (Those in black are bold in Table 2 and all the other words are coloured grey):

PART 3 – DOMAINS AND TOPICS

DOMAINS

Chapters: Air
Coastal environment Section: Coastal marine area
Geothermal
Land and freshwater

TOPICS

Chapters: Ecosystems and indigenous biodiversity
Energy, infrastructure and transport
Hazards and risks
Historical and cultural values
Natural character
Natural features and landscapes
Urban form and development

84. Table 2 of the NPS, therefore, did not require a rural chapter – strange though that might seem for a country most of which comprises rural land. It is even more odd when Table 19 of the NPS contains specific colours for planning maps specifically for General Rural, Rural Production and Rural lifestyle zones. Moreover, Table 16 of the NPS provides acronyms by way of a Table 16 for what is described as ‘zone framework’ which include the following:

RURZ – Rural zones
GRUZ – General rural zone
RPROZ – Rural production zone
RLZ – Rural lifestyle zone

85. The NPS clearly therefore anticipates the likelihood or necessity in plans for Rural zones, but makes no express mandatory provision for Rural Chapters in an RPS to address the objectives and policies in plans for such zones.
86. ORC faced the problem, therefore, that in preparation of the PORPS Table 2 of the NPS did not make a provision for rural related issues as a Topic. Some rural related issues were included in the Urban form and development (UFD) chapter in the PORPS. Those issues related to aspects of UFD principally in respect of reverse sensitivity issues and control of the urban/rural interface for subdivision and development.
87. Strong bodies of evidence were provided by the interested submitters described above seeking that a rural chapter be incorporated to provide enabling provisions for their activities. The later chapters of this report relating to the UFD and Land and freshwater (LF) chapters will address the

Panel's views on the substantive merits of those requests, but the first question that requires to be addressed is whether that is legally possible given the mandatory nature of s.58I and the NPS 2019 Table 2 provisions.

88. The Panel sought specific submissions on that issue from Counsel for OWRUG and NZ Beef and Lamb and it was addressed by Horticulture NZ both in submissions and in the evidence of Lynette Wharfe the expert planning witness for Horticulture NZ.

89. Mr Page for OWRUG submitted that clause 10 of Standard 2 (which he termed Direction 10) provided a mandatory answer to the issue. It provides:

*10. Any other matter addressed by the regional policy statement not covered by the structure in table 2 must be included as a new chapter, inserted alphabetically under the Topics heading in Part 3. **Additional chapters must not be synonyms or subsets of the chapters in table 2.***

(Panel's emphasis)

90. Mr Page submitted that because of the phrase 'Any other matter addressed by the regional policy statement not covered by the structure in table 2 must be included as a new chapter' cl.10 imposes a mandatory duty on a regional council to import different chapters.

91. We do not agree with Mr Page. The first use of the word 'must' in this clause is in our view only mandatory as to process i.e. if a regional council decides to add a new chapter, then clause 10 directs how that must be formatted - "*alphabetically under the Topics heading*", and where - "*in Part 3*".

92. However, clause 10 importantly does contain one direction as to substance and that is in the last sentence which we have highlighted in bold which plainly enables some additional chapter consideration. The words 'synonym' and 'subset' are not defined in the NPS, and their use is unhelpful. A synonym is defined in the Oxford Dictionary as being:

A word or phrase that means exactly or nearly the same as another word or phrase in the same language.

93. It is hardly a word that is useful when comparing two or more full potential chapters of an RPS.

94. The word 'subset' is not much better in that broad type of comparative context. Its Oxford Dictionary meaning is:

A smaller group of people or things formed from the members of a larger group.

95. Neither word is of much relevance to a broad comparison of potential chapters in an RPS addressing objectives, policies, methods, principal reasons and anticipated environmental results.

96. The basic approach to interpretation of enactments under the Legislation Act 2019 in s.10 is that the meaning must be ascertained from 'its text and in the light of its purpose and its context.

97. Applying that approach in this situation the purpose of the last sentence of clause 10 of Standard 2 appears to be to avoid repetition of chapter content by requiring that an additional chapter contains nothing which is similar in nature to the matters in one of the named chapters in Table 2.

98. Such a decision necessarily involves a consideration of the substance of the context of the possible rural chapter and a comparison with other chapter content in the UFD and LF chapters.

99. If that comparison finds similarities or subsets in a proposed rural chapter with the other two chapters, then any attempt to frame a separate chapter may well run a risk of not complying with clause 10 of Standard 2. However, at this point we do observe that as Mr. Page stressed in his submissions an example for formatting of a separate chapter not contained in Table 2 is provided for in clause 18 of Standard 10. Interestingly, the example provided is where a mining chapter may be included – that appears in the right hand column of clause 18 Standard 10.
100. Further important considerations must be whether the form of the proposed draft new rural chapter was advanced with sufficient detail in the submission process enabling scope for the Panel to consider its inclusion; or, whether any lack of its inclusion in the consultation/submission process limits the ability to include it now.
101. Furthermore, one of the critical s.32A considerations may prove to be that the costs of uncertainty of potential litigation over the enforceability of such a chapter when it has not been a part of the consultation process, and/or to whether it accords with clause 10 of Standard 2 in the NPS, and the concomitant duration, uncertainty and cost of such litigation, may well outweigh the benefits of achieving certainty by adding provisions to either the UFD or LF chapters.
102. All of those considerations will need to be taken into account in the detailed substantive consideration of the UFD and LF chapters which follow.
103. As part of that consideration we also point out that the complaints listed in Mr Page’s submissions at paragraph 29 that a rural activity at the moment will have to be considered under many different chapters depending on whether the effects produced affect indigenous biodiversity, transport issues, historic values, or natural features, may not be solved by insertion of a rural chapter. That is because the NPS requires at Standard 2 clause 9 (a) and (b) as follows:

9. Provisions (excluding the provisions in Part 2) that:

a. apply predominantly to only one topic must be located in the relevant chapter under the Topics heading

b. apply to more than one topic must be located in the relevant chapters under the Domains heading

104. In short the NPS does not pave a ready path for the substantive inclusion by way of submission of a new rural chapter – illogical as that may seem in a region which is 99% non-urban. There is, however, potential jurisdiction under the NPS for the inclusion of such a chapter so long as it can meet some vaguely worded concepts that require that they are not ‘*synonyms or subsets of the chapters in table 2.*’

4. Mana Whenua Part 2 Issues & papakāika and Māori land definitions

105. The last of the major Part 2 issues was summarised in the s.42A report in the following way:

The request by Kāi Tahu related submitters (‘Kāi Tahu’) to see that the PORPS enabled them to exercise tino rangatiratanga in respect of their own “ancestral lands, water, sites, waahi tapu, and other taonga” (s.6 (e) RMA), according to their own tikanga, thus enabling them to exercise their kaitiakitanga (s.7(a) RMA) responsibilities. They asserted that was required by the s.8 obligation to “take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)”.

106. The evidence we received as to the relationship between ORC and its s.42A report writer Mr Adams and Kāi Tahu related submitters showed a refreshing willingness by ORC in the PORPS

to acknowledge and give effect to the s.6(e), s.7(a) and s.8 statutory encouragements to ensure the RPS provided for Otago's Māori community. We say 'refreshing' because all members of the Panel at various times over the span of the RMA have heard tangata whenua Māori complaint about the challenging attitude of some councils that have adopted the legally technical position that the Crown is the Treaty partner, and that as local authorities are not strictly Treaty partners the Treaty principles need only be taken into account and are not required to be observed. Another common experience is to hear Māori complaints that the s.6(e) and s.7(a) imperatives and s.8 obligations have effectively only received lip service.

107. That has definitely not been the case in either respect with this PORPS. In the notified version a very proactive commitment was made by the ORC right at the start of the PORPS to the Part 2 approach it was to adopt with the statement at page 3:

...Developing this new Regional Policy Statement (RPS) has provided an opportunity for renewed partnership between Kāi Tahu in Otago and Southland, and the ORC. We present this foreword to the notified version together, in recognition of that partnership and in anticipation of the work to come.

108. Moreover, Kāi Tahu submitters all described how the ORC had made major efforts to engage on the proposed terms of the PORPS right down to and during the hearings process. That volunteered partnership approach was reflected also in the s.42A report writer's willingness to accept many of the requests made in the Kāi Tahu related submissions and to seek out submitters for pre-hearing discussions. It was plain from the extensive changes that were recommended by the s.42A reports to the mana whenua provisions throughout the PORPS at the request of various mana whenua submitters, that the wishes of the latter were listened to, and where considered appropriate, were recommended to be accepted.
109. Limited areas where no agreement was reached will be traversed in the later MW chapter which consider the submissions on mana whenua provisions throughout the PORPS. Some other issues where agreement was reached, or reached only in part, and where the Panel considers it also needs to discuss some of those issues in detail, will also feature in that later chapter. (One of those will be the very preference by Kāi Tahu interests for use of the term 'mana whenua' rather than 'takata or tangata whenua'.)
110. At this point of the report, however, we need to address two significant practical issues which arise from the consideration of Part 2 of the RMA, where the agreement on wording proposed by mana whenua was finally accepted by the s.42A report writer and recommended to be accepted by the Panel. That aspect of Part 2 relates to the effect of the combination of the definitions agreed upon for the phrase 'Māori land', when coupled with the definition of the word 'papakāika'.
111. The background to that agreed recommendation lies in large part in the issue as to what is the appropriate approach to be taken to the Part 2 considerations in respect of the 'enabling' within the PORPS of the tino rakatirataka rights and kaitiakitaka obligations which mana whenua sought.
112. In essence Kāi Tahu witnesses gave strong evidence, reinforced by submissions by their counsel Mr. Cameron and their expert planning witnesses, which emphasised the frustrations that have arisen historically for Kāi Tahu in the Otago region as a result of nearly all-encompassing land loss in breach of the Treaty. That land loss has been exacerbated in their view by the application of early planning and later RMA controls, in which they have in the past had little input. The result was described as being an outcome where Kāi Tahu had commonly been left only poorer quality lands, often near the coastline, where it was difficult for them to even grow sufficient food without removing native growth or affecting landscapes, or where infrastructure services were not available to enable development, let alone provide sources of employment and income.

113. The Treaty breaches that resulted in massive land loss of over 34 million acres for Kāi Tahu have been exhaustively detailed by the Waitangi Tribunal in the Ngāi Tahu Report WAI 27 on their historic ‘nine tall trees’ claims. Those breaches are a matter of public record. Minimal lands remained in Māori customary ownership in Otago. The consequence has been a Treaty settlement for Kāi Tahu recorded in the Ngāi Tahu Claims Settlement Act 1998 which, as with all Treaty settlements, provided amongst other recompense a monetary level of compensation. While that was significant on its face, it was a tiny percentage of the then current land value lost through historic Treaty breach. Those settlement funds have been particularly well husbanded and developed by Kāi Tahu, but the hard reality for Kāi Tahu people on the ground in Otago was that the settlement did not provide any significant land resource for Otago Kāi Tahu to occupy and use. Of the small amounts of poorer quality reserve lands that were set aside for Kāi Tahu’s continued occupation we were told by Mr. Edward Ellison that only 50% remains in Māori ownership.
114. In the meantime before the Treaty settlement, repetitive planning legislation had vested planning control of all of their ancestral lands, water, sites, wāhi tapu, and other taonga, including any customary rights in respect of water or coastal waters, in the Crown, local authorities or Crown owned entities. So, too with fisheries, but as that has been the subject of the Fisheries Settlement legislation, Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, we cannot address that further, other than as background to Kāi Tahu historical concerns. Similarly so with aquaculture claims, where another national settlement has occurred in the Māori Commercial Aquaculture Claims Settlement Act 2005, although an aspect of the consequence of that process will be considered later in the Coastal chapter of this report.
115. Those planning controls were described in the evidence as adding to the harsh outcomes for the Otago Kāi Tahu community, by imposing such restrictions and controls that they faced major costly legal hurdles in trying to develop their lands to support themselves. They described that they had suffered the experience of local authorities taking over by statutory authority control and management of all water and coastal water and fisheries, thus excluding them even further from control of use of their own resources or taonga through the exercise of kaitiakitaka responsibilities. Yet the outcome, they asserted, was to find those resources often degraded, pillaged, or adversely affected in a manner which was not acceptable to their own kawa and tikaka.
116. Their response to all that background was to strongly submit, as identified in the issue above, that the PORPS must recognise their needs and enable them to exercise tino rakatiratata in respect of their own “ancestral lands, water, sites, waahi tapu, and other taonga” (s.6(e) RMA), according to their own tikaka, thus enabling them to exercise their “kaitiakitanga” (s.7(a) RMA) responsibilities.
117. The overall approach of Kāi Tahu was succinctly summarised by their counsel Mr. A. Cameron in the following manner in the Coastal environments hearing week:
- 1. Integrated management sits at the heart of a regional policy statement. It is core to the purpose of the PORPS, its function and its significance. From a Kāi Tahu perspective, integrated management is central to the concepts of “ki uta, ki tai”, and the interconnected nature of whenua, wai, and moana.*⁴
118. Counsel for Kāi Tahu and planning experts relied upon the major advances in recognition of Treaty rights and obligations as a result of three streams of jurisprudence over recent decades. The first was the much more developed recognition in the general Courts of tikanga as a source of law in New Zealand, particularly where referred to in legislation, and of certain Treaty principles as

⁴ Submission on Integrated Management chapter A. Cameron counsel for Kāi Tahu 8 February, 2023

identified in the NZ Maori Council litigation from the 1980s; the second was the strong body of Waitangi Tribunal jurisprudence identifying a number of relevant Treaty principles; and thirdly, the Environment Court's increasing recognition of the weight of Treaty principles under s.8 of the RMA.

119. Much was made of these issues in support of requests for relief that very broad definitions be applied to Māori lands and customary concepts such as papakāika, so as to leave control of development and use of those lands in the hands of Kāi Tahu according to their tikaka. In general terms their counsel Mr Cameron described the current situation in the following terms:

58 ...The PORPS represents a significant opportunity to unlock native reserves and Māori land for Kāi Tahu whānau. As discussed in the evidence of Evelyn Cook, the Catlins area is a good example of such land, where recognition of Kāi Tahu rakatirataka would enable whānau to better use and develop their own land.⁵

120. The recommended definitions for the two terms at issue included the following aspects, (which have been highlighted below by the Panel), in respect of those parts that may be described as being the 'high-points' of that enabling approach:

Māori Land for the purposes of this RPS, means land within the region that is:

- (1) owned by Te Rūnanga o Ngāi Tahu or its constituent papatipu rūnaka and to be used for the purpose of:**
 - (a) Locating papakāika development away from land that is either at risk from natural hazards, including climate change effects such as sea level rise, or is otherwise unsuitable for papakāika development,**
 - (b) extending the area of an existing papakāika development.**
- (2) Māori communal *land* gazetted as Māori reservation under s338 Te Ture Whenua Māori Act 1993;
- (3) Māori customary *land* and Māori freehold *land* as defined in s4 and s129 Te Ture Whenua Māori Act 1993;
- (4) former *Māori land* or general land owned by Māori (as those terms are defined in Te Ture Whenua Māori Act 1993) that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Kāi Tahu owners or their successors and remains in their ownership;
- (5) general *land* owned by Māori (as defined in Te Ture Whenua Māori Act 1993) that was previously Māori freehold *land*, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967 on or after 1 April 1968, that is in the ownership of Kāi Tahu whānui;
- (6) vested in a Trust or Māori incorporation under Te Ture Whenua Māori Act 1993;
- (7) held or claimed (whether as an entitlement, part of an ancillary claim, or because it was transferred or vested) either:
 - (a) as part of redress for the settlement of Treaty of Waitangi claims; or
 - (b) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020);
- (8) owned by a person or persons with documentary evidence of Kāi Tahu whakapapa connection to the land, where that evidence is provided by either the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit.**

...

⁵ Submission on MW chapter A. Cameron counsel for Kāi Tahu 8 February, 2023

Papakāika or papakāinga

means *subdivision, use and development by mana whenua, either on their own or in conjunction with other parties, of Māori Land and associated resources to provide for themselves in general accordance with tikanga Māori, which may include residential activities and non-residential activities* for cultural, social, educational,¹⁵¹ recreational, environmental, **or commercial purposes.**

121. A challenge was raised for Transpower as to whether there was proper scope for the broader 'Māori land' definition sought to be inserted when the PORPS did not have a definition of 'Māori land' originally. We have looked at the references in the Kāi Tahu submissions that Mr. Cameron provided in his 8 February 2023 response which were repeated by Mr. Anderson for ORC in closing, and we accept they do indeed provide sufficient scope. The very term 'ancestral lands' used in the submissions Mr. Anderson took us through, in our view includes all of the lands in the Otago region which fell within the takiwā of Kāi Tahu. So any submission which made reference to those ancestral lands and sought definition of them in the PORPS was broad enough to cover what has been recommended to us by way of a definition.
122. The larger issue is what the consequence of that definition is when coupled with the definition of 'papakāika'.
123. One matter raised by the Panel during the hearings was that under clause 8 of the recommended definition of 'Māori land' all that was needed was whakapapa proof of connection to land, when the likelihood was that any Kāi Tahu with Otago whakapapa would be likely to be able to establish such a connection with ancestral land they were likely to acquire in Otago. Another related concern with the definition of 'papakāika' was that it arguably opened the door for possible joint venturers with no whakapapa linkages to the land to become involved in 'non-residential activities for ... commercial puposes' which would be within such a broad definition of 'papakāika'. That could include the non-customary entities, such as any major trading company operated by Kāi Tahu commercial interests, but could also include general commercial entities with no whakapapa linkages at all, whether direct or indirect.
124. The original s.42A report had recommended that the phrase 'commercial purposes' in the papakāika definition be prefaced with the word 'limited', but Kāi Tahu submitters strongly argued for the removal of the word 'limited', so that it would apply to any 'commercial purposes'. That request was made on the basis that it was asserted that tikaka could be relied upon to ensure that was not abused with major industrial or commercial developments, or large residential subdivisions being commenced under the guise of being papakāika.
125. That broader wording change sought by Kāi Tahu, and the general effect of the combination of the two definitions, were particularly challenged in evidence by the Dunedin City Council planner Mr. Freeland. The basis of the challenge was that, if granted, the relief sought by Kāi Tahu would mean that on change of ownership of any land in Otago into the ownership of anyone with Kāi Tahu whakapapa, an effective zoning change could occur by virtue of the combination of the very broad definitions of 'Māori land' and 'papakāika'. That could result in an enabling of a raft of uncontrolled industrial or commercial activities, or major residential developments on rural land with inadequate services. The DCC concern was that such an outcome would be in breach of legitimate expectations of natural justice under the RMA that such major changes in adjoining land use could not occur without undergoing a plan change or gaining a resource consent, involving a thorough assessment of effects of development in either pathway.
126. Another concern expressed by Mr Freeland was that there would be a real uncertainty as to what land might fall within the definition of 'Māori land' meaning the exposure to effects on adjoining

property owners was real with their having no opportunity for input on those effects. If needed he sought mapping of 'Māori land'.

127. The s.42A response to that assertion was to say that it was time some trust was placed by the general community in the Treaty partner to be able to control activities so they would not breach tikaka through the exercise of rakatirataka involving the responsibilities of kaitiakitaka, which should ensure adverse effects were controlled on Māori land by Māori, rather than by local authority controls.
128. Mr Cameron, counsel for Kāi Tahu, particularly addressed these issues in some further submissions in response on 9 February 2023. As to the uncertainty issue he responded:

29. The Panel can rely on the evidence already before it as to the nature and extent of Kāi Tahu landholdings, to find that the changes, while momentous to Kāi Tahu as those most likely to benefit from them, are unlikely to be all that significant to the public at large.

30. That is consistent with s 32(1)(c), which requires a level of detail that corresponds to the scale and significance of effects that are anticipated from the implementation of the proposal – here, in our submission, few to none.... here the principal aim is to enable Kāi Tahu to develop their landholdings and take the lead in the management of any adverse effects. That is unlikely to pose many, if any, problems for other private landowners.

129. That submission might be argued to be correct if current land holdings by Kāi Tahu people could somehow be fixed in time, and limited to cultural or traditional uses. However, that is not the position, and is particularly not the position if the definition remains as recommended.
130. We do not see any real benefit, however in trying to impose restrictions in a planning context related to ownership issues. Section 6(e) requires that the PORPS 'recognise and provide' for the 'relationship of Maori and their culture and traditions with their ancestral lands.' Given that effectively all land in Otago falls within the historic purview of ancestral lands for Kāi Tahu one might reasonably question what purpose a detailed definition provides. But given that the link with papakāika must in the end be based on whakapapa we can see benefit if clause 8 is utilised, but in a slightly amended form. The key to what happens in terms of controls on the use of such land should not rest on ownership, but rather the potential effects of activities on that land.
131. For example, if the definitions remain as recommended, then if major commercial opportunities were to be identified in future anywhere in Otago, a Kāi Tahu person with whakapapa links could be utilised and funded as owner by a commercial operator and be able to acquire the land. The land could then be used under the papakāika definition by being leased by the funder and developed, and after development acquired by that funder/developer and probably on-sold. We do not regard that scenario as being beyond possibility, or impractical, or unrealistic. It is the way of the world for commercial operators to look for and take advantage of such opportunities. Their drivers are returns of income or capital, not culture or traditions. It is the latter we understand Kāi Tahu to be seeking to enable under their tikaka and not the former.
132. The real concern arises out of that potential for commercial opportunity, as contrasted with a need for recognition of cultural and traditional relationships with ancestral lands, and that requires to be addressed.
133. Mr Cameron's response for Kāi Tahu in his 9 February 2023 submission on that issue was that a failure to adopt the recommended definition package would bring into play s.32 considerations:

31. It is also consistent with s 32(2)(c), which requires an assessment of the risk of acting or not acting where there is uncertainty about the subject matter of any provisions. In this case, failing to act on the proposed definition due to a lack of information as to its location would exclude from future consideration land that is subsequently acquired by Kāi Tahu, whether to substitute or supplement other landholdings, which might also benefit from the same enabling approach that applies to land in categories (2) to (6). Doing so would create a real risk of perverse outcomes and arbitrary barriers to the expression of *rakatirataka, kaitiakitaka, and mana whenua*.

134. For the reasons outlined above as to the positive development of attitudes to Part 2 matters affecting *mana whenua* of any area, which has been increasingly enforced by the Environment Court and the general courts, we do not think the risk of “*perverse outcomes and arbitrary barriers to the expression of rakatirataka, kaitiakitaka, and mana whenua*” is real into the future - certainly not at law. Local authorities are now well aware of the changing RMA atmosphere, and that has been significantly reinforced at a national and regional level by the recognition of the concept of Te Mana o Te Wai and other strong provisions as to *mātauranga* and *mahika kai* in the NPSFM. In Otago it has also been demonstrated by the PORPS approach to ‘partnership’ with *mana whenua*.
135. However, we are also cognisant of the history of past bad planning practice outlined by Kāi Tahu traversed earlier in this discussion, and the inhibitions they have experienced through poor, overly restrictive planning controls on use and development of their lands.
136. In our view a balanced view of how to meet the Part 2 imperatives without handing a planning ‘free pass’ entirely to Kāi Tahu can be achieved through a tightening of the *papakāika* definition. We do not think the insertion of the word ‘limited’ before the concept of ‘commercial purposes’ assists much if at all. After all, how would ‘limited’ be interpreted and applied? Is it to be a measure of size of physical footprint of development in area, height, width or length? Or is it to relate somehow to production levels, or gross or net income, and how are those to be fixed, monitored and enforced?
137. In such a context it is always best to consider the nature of the ‘problem’ or issue being addressed to assess what is the purpose sought to be achieved by a provision. In this case the problem is a perceived inability of Kāi Tahu people to have the freedom to construct *papakāika* to meet their cultural and traditional practices as well as housing and some income needs. Housing provision readily falls into a definition for *papakāika*. The more vexed issue is what income purposes *papakāika* are intended to serve. The issue of commercial activities may be met to the extent warranted by s.6(e) if those purposes can be reasonably closely defined.
138. In Kai Tahu’s submission at para 3.6 what was sought was referred to as provisions enabling Kāi Tahu to be able to use land for ‘*papakāika, marae or associated activities*’. We do not consider that any adjoining person could reasonably challenge that *papakāika* can meet the test for 6(e) of providing for the relationship of *mana whenua* with their ancestral lands when those lands are used for ‘*activities for cultural, social, educational, recreational, environmental, ... purposes.*’ All of those purposes to some extent or other involve cultural or traditional aspects of use.
139. The problem arises when the word ‘commercial’ is inserted in that list. Immediately its insertion introduces potential adverse effects which do not need to have a cultural or traditional perspective at all, which is as far as s.6(e) goes. We do not believe that not enabling that freedom of commercial activity at whatever scale impacts on Kāi Tahu people’s relationship with their ancestral lands. We anticipate that Kāi Tahu may feel a home-related occupation should be included. We can accept that such an inclusion would also enable what might be described on the evidence we heard of a common usage that might well be expected to occur in a *papakāika*.

140. We are satisfied that on the evidence we have heard that papakāika are most likely to be constructed adjacent to or in close proximity to marae, or locations of substantial Māori occupation. We also accept that tikaka will play a major role in where, and to what extent, that sort of papakāika development might occur. We do not consider it reasonable to seek to limit Kāi Tahu as to where any new such development may occur. Practicalities such as land availability and services availability will also have a natural limitation on their development.

4.1 Recommendation

141. For those reasons we accept the definition of 'Māori land' as recommended in clause 8 but amend the wording of the Māori land and papakāika definitions to read:

Māori land	<p>for the purposes of this RPS, means land within the region that is:</p> <p><u>(1) owned by Te Rūnanga o Ngāi Tahu or its constituent papatipu rūnaka and to be used for the purpose of:</u></p> <p><u>(a) Locating papakāika development away from land that is either at risk from natural hazards, including climate change effects such as sea level rise, or is otherwise unsuitable for papakāika development,</u></p> <p><u>(b) extending the area of an existing papakāika development,</u></p> <p><u>(2) Māori communal land gazetted as Māori reservation under s338 Te Ture Whenua Māori Act 1993,</u></p> <p><u>(3) Māori customary land and Māori freehold land as defined in s4 and s129 Te Ture Whenua Māori Act 1993,</u></p> <p><u>(4) former Māori land or general land owned by Māori (as those terms are defined in Te Ture Whenua Māori Act 1993) that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Kāi Tahu owners or their successors and remains in their ownership,</u></p> <p><u>(5) general land owned by Māori (as defined in Te Ture Whenua Māori Act 1993) that was previously Māori freehold land, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967 on or after 1 April 1968, that is in the ownership of Kāi Tahu whānui,</u></p> <p><u>(6) vested in a Trust or Māori incorporation under Te Ture Whenua Māori Act 1993,</u></p> <p><u>(7) held or claimed (whether as an entitlement, part of an ancillary claim, or because it was transferred or vested) either:</u></p> <p><u>(a) as part of redress for the settlement of Treaty of Waitangi claims, or</u></p> <p><u>(b) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020), or</u></p> <p><u>(c) as SILNA lands,</u></p> <p><u>(8) owned by a person or persons with documentary evidence of Kāi Tahu whakapapa connection to the land, where that evidence is provided by either the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit.</u></p>
Papakāika or papakāinga	<p>means <u>subdivision</u>, use and development by <u>mana whenua</u> of <u>Māori land</u> ancestral or tribal lands and associated resources to <u>provide for sustain</u> themselves in <u>general</u> accordance with <u>tikaka tikanga</u> Māori <u>for their cultural and traditional purposes</u>, which may include residential activities and non-residential activities for cultural, social, <u>housing, educational</u>, recreational, environmental, or <u>home occupation</u> limited commercial purposes.</p>

5. Interpretation of other terms in the RMA

142. In the course of reaching its 'bottom line' approach decision the Supreme Court in *King Salmon* provided other guidance on the interpretation of the words or phrases such as 'avoid', 'adverse effects' and the concepts of 'protection' and 'inappropriate use and development' - all of which are terms found throughout the PORPS.

143. The most important of those to be considered is the use of the word 'avoid'.

5.1 Avoid

144. The interpretation of this word was addressed quite succinctly in the *King Salmon* decision from paragraphs 92-97 which were summarised at paragraph 24(b) in discussing the meaning of 'sustainable management':

[24] We make four points about the definition of "sustainable management":

(a) First, ...

(b) Second, as we explain in more detail at [92] to [97] below, in the sequence "avoiding, remedying, or mitigating" in sub-para (c), "avoiding" has its ordinary meaning of "not allowing" or "preventing the occurrence of". The words "remedying" and "mitigating" indicate that the framers contemplated that developments might have adverse effects on particular sites, which could be permitted if they were mitigated and/or remedied (assuming, of course, they were not avoided).

(Panel's emphasis)

145. The consequence in practical terms, as many submitters stressed to us, is that the use of the word 'avoid' has a preventive effect, particularly if it is coupled with a requirement that 'activities' themselves are avoided rather than the 'adverse effects' of those activities.

5.2 Adverse effects

146. Even though the Supreme Court in the *King Salmon* case held that a bottom lines approach was available under Part 2 for the protection of some aspects or particular areas of the environment, which required certain activities with adverse effects to be avoided, nonetheless the Court held that a correct application of Part 2 did not require prohibited activity status rules to be applied to rule out all effects which were transitory or minor in nature, stating:

*[145] The definition of "effect" in s 3 is broad. It applies "unless the context otherwise requires". So the question becomes, what is meant by the words "avoid adverse effects" in policies 13(1)(a) and 15(a)? This must be assessed against the opening words of each policy. Taking policy 13 by way of example, its opening words are: "To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development". Policy 13(1)(a) ("avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character") relates back to the overall policy stated in the opening words. **It is improbable that it would be necessary to prohibit an activity that has a minor or transitory adverse effect in order to preserve the natural character of the coastal environment, even where that natural character is outstanding.** Moreover, some uses or developments may enhance the natural character of an area*

(Panel's emphasis)

147. What is minor or transitory was not at issue in the *King Salmon* case and the interpretation of those words remain open for consideration in any particular factual context. It would be a bold approach, however, to accept that a type of activity or effect was not required to be avoided by a provision in the PORPS because it was argued to be minor or transitory. As to the latter, the issue of return frequency or intensity, (as of sound for example), may impact the outcome; and the amount of litigation over the meaning of ‘minor effects’ in the RMA provisions as to non-notification is indicative as to how vexed that consideration of what is ‘minor’ can prove to be.
148. However, some further guidance is now available from the Supreme Court decision in the *Port Otago* case which discussed the concept of avoiding effects from ‘material harm’. At paragraph 66 of that decision the Supreme Court described the significance of that phrase:

[66] In summary, the Court in Trans-Tasman said that decision-makers must either be satisfied there will be no material harm or alternatively be satisfied that conditions can be imposed that mean:

(i) material harm will be avoided;

(ii) any harm will be mitigated so that the harm is no longer material; or

(iii) any harm will be remedied within a reasonable timeframe so that, taking into account the whole period harm subsists, overall the harm is not material...

(Panel’s emphasis)

149. In short as with much of the terminology in this RMA area, the particular contextual factual setting both as to the nature of the effects and as to the mitigation measures available will have a significant influence as to the outcome of the consideration.

5.3 ‘Inappropriate use and development’

150. A similarly vexed issue of what is ‘inappropriate’ was squarely before the Supreme Court in the *King Salmon* case. On this issue it made the following opening observation:

*[98] Both pt 2 of the RMA and provisions in the NZCPS refer to protecting areas such as outstanding natural landscapes from “inappropriate” development – **they do not refer to protecting them from any development.** This suggests that the framers contemplated that there might be “appropriate” developments in such areas, and raises the question of the standard against which “inappropriateness” is to be assessed.*

(Panel’s emphasis)

151. The Court also conducted a deeper analysis:

[29] The use of the phrase “inappropriate subdivision, use or development” in s 6 raises three points:

(a) First, s 6(a) replaced s 3(c) of the Town and Country Planning Act, which made “the preservation of the natural character of the coastal environment, and the margins of lakes and rivers, and the protection of them from unnecessary subdivision and development” a matter of national importance. In s 6(a), the word “inappropriate” replaced the word “unnecessary”. There is a question of the significance of this change in wording, to which we will return.

(b) Second, a protection against “inappropriate” development is not necessarily a protection against any development. Rather, it allows for the possibility that there may be some forms of “appropriate” development.

(c) Third, there is an issue as to the precise meaning of “inappropriate” in this context, in particular whether it is to be assessed against the particular features of the environment that require protection or preservation or against some other standard. This is also an issue to which we will return.

152. That later consideration appears at paragraphs 100 to 105 relevant portions of which stated:

[100] The scope of the words “appropriate” and “inappropriate” is, of course, heavily affected by context. ...

*[101] We consider that where the term “inappropriate” is used in the context of protecting areas from inappropriate subdivision, use or development, **the natural meaning is that “inappropriateness” should be assessed by reference to what it is that is sought to be protected.** It will be recalled that s 6(b) of the RMA provides:*

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:

...

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

... A planning instrument which provides that any subdivision, use or development that adversely affects an area of outstanding natural attributes is inappropriate is consistent with this provision.

...

[105] We consider that “inappropriate” should be interpreted in s 6(a), (b) and (f) against the backdrop of what is sought to be protected or preserved. That is, in our view, the natural meaning. The same applies to objective 2 and policies 13 and 15 in the NZCPS. Again, however, that does not resolve the fundamental issue in the case, namely whether the “overall judgment” approach adopted by the Board is the correct approach. We now turn to that.

(Panel’s emphasis)

153. It is plain from the *King Salmon* decision that where that phrase ‘inappropriate use and development’ is used in the sense of ‘protection’ it is a qualifier of the absolute protection level which might otherwise have been seen as warranted to accord with the word ‘avoid’.

154. That will become particularly relevant in the Ecology chapter of this report because while ss.6(a) and (b) contain that qualifier, s.6(c) does not. By contrast, in the Heritage chapter where the qualifier does apply the discussion in the Heritage topic in this report will address the complex issue of what is, or is not, inappropriate where Heritage structures have deteriorated. For that reason, this chapter of the report addressing legal issues will return later to address what effect that difference should make in the PORPS to the issue of the protection level of indigenous biodiversity or not.

5.4 'Protection' & 'Maintaining'

155. The word 'protection' also featured significantly in the reasoning in *King Salmon* with the Court stressing at paragraph 149, (cited earlier), that primacy was not given to protection by ss.6(a) and (b) of the RMA, but that in particular circumstances such protection may be required. In the context of a discussion considering the interpretation of the word 'protect' that consideration by the Court bears repetition:

*[149] Section 6 does not, we agree, give primacy to preservation or protection; it simply means that provision must be made for preservation and protection as part of the concept of sustainable management. The fact that ss 6(a) and (b) do not give primacy to preservation or protection within the concept of sustainable management does not mean, however, that a particular planning document may not give primacy to preservation or protection **in particular circumstances**. This is what policies 13(1)(a) and 15(a) in the NZCPS do. Those policies are, as we have interpreted them, entirely consistent with the principle of sustainable management as expressed in s 5(2) and elaborated in s 6.*

(Panel's emphasis)

156. Earlier at paragraph 24 (d) (cited earlier) the Court had also observed:

*(d) Fourth, the use of the word "protection" in the phrase "use, development and protection of natural and physical resources" and the use of the word "avoiding" in sub-para (c) indicate **that s 5(2) contemplates that particular environments may need to be protected from the adverse effects of activities in order to implement the policy of sustainable management; that is, sustainable management of natural and physical resources involves protection of the environment as well as its use and development.** The definition indicates that environmental protection is a core element of sustainable management, **so that a policy of preventing the adverse effects of development on particular areas is consistent with sustainable management.** This accords with what was said in the explanatory note when the Resource Management Bill was introduced:*

The central concept of sustainable management in this Bill encompasses the themes of use, development and protection.

(Panel's emphasis)

157. Then at paragraphs 62 and 90 the Court provided descriptions of the varying levels of protection envisaged by the RMA and the NZCPS in the coastal marine area:

*[62] The overall purpose of these directions is to preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use and development (policy 13) or to protect the natural features and natural landscapes (including seascapes) from inappropriate subdivision, use and development (policy 15). **Accordingly, then, the local authority's obligations vary depending on the nature of the area at issue. Areas which are "outstanding" receive the greatest protection: the requirement is to "avoid adverse effects". Areas that are not "outstanding" receive less protection: the requirement is to avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects.** In this context, "avoid" appears to mean "not allow" or "prevent the occurrence of", but that is an issue to which we return at [92] below.*

...

[90] ... s 5(2)(c) of the RMA talks about “avoiding, remedying or mitigating any adverse effects of activities on the environment” and s 6(a) identifies “the preservation of the natural character of the coastal environment (including the coastal marine area) ... and the protection of [it] from inappropriate subdivision, use and development” as a matter of national importance to be recognised and provided for. The NZCPS builds on those principles, particularly in policies 13 and 15. **Those two policies provide a graduated scheme of protection and preservation based on the features of particular coastal localities, requiring avoidance of adverse effects in outstanding areas but allowing for avoidance, mitigation or remedying in others.**

(Panel’s emphasis)

158. The graduated approach we have highlighted above, which has been taken in the NZCPS, has also been adopted either in the notified or amended reply versions in some provisions of the PORPS. As the consideration of the following domain and topic chapters will make plain, the significance of the varying levels of protection required in s.6 terms for differing contexts will dictate the wording we recommend for the PORPS.
159. The potential differences in treatment levels of the concept of ‘protection’ arose as to the context in which it is used in respect of areas of significant indigenous vegetation and significant habitats of indigenous fauna in s.6(c) RMA, where the word ‘protection’ is used, as contrasted to the regional function provisions in s.30(1)(ga). In the latter context the word ‘maintaining’ is used in respect of ‘maintaining indigenous biological diversity’.
160. The question that gives rise to is whether that difference in wording between ‘protection’ in s6(c) of the Resource Management Act 1991 (‘RMA’) and ‘maintaining’ in s 30(1)(ga) RMA, has any legal significance; and if so, how should that difference manifest itself or be reflected in the PORPS?
161. This issue was canvassed in various ways by a number of counsel with a number of those seeking an enabling approach asserting that the difference in protective levels between s.6(c) and s.30(1)(ga) had been overlooked in the PORPS, particularly because of what was asserted to be a very high level of protection provided in the ECO chapter for indigenous biodiversity. During the ECO chapter hearings the Panel posed that statutory difference and the weight to be given to it to counsel for DOC Ms Warnock, to which she responded in Supplementary submissions dated 9 May 2023.
162. In those submissions she advanced the argument that ‘protection’ being a noun suggested a standard to be achieved, but in recognition of the *King Salmon* discussion in para 24(d) quoted above she submitted “*you achieve protection of something (e.g., particular values) from something else (e.g., inappropriate uses, adverse effects)*”. The lack of an activity qualifier in s.6(c) such as ‘inappropriate’ activity against which protection is required she submitted meant that s.6(c) was requiring decision-makers to provide for protection against “**all threats**” including direct, indirect and naturally occurring threats. As counsel for DOC, therefore, she advocated that what was required of PORPS was to provide objectives, policies and methods which protected against all such threats.
163. By way of general authority for the discussion of s.6(a) to (c) Ms Warnock cited paragraph 28 of *King Salmon*. However as can be seen below, that paragraph does not refer to ‘threats’. The introduction of that word is a rather new concept we do not favour when RMA terminology usually addresses adverse ‘effects’ of activities rather than any ‘threat’ which an activity itself might be said to constitute. Paragraph 28 of *King Salmon* only referred to adverse effects:

[28] *It is significant that three of the seven matters of national importance identified in s 6 relate to the preservation or protection of certain areas, either absolutely or from*

“inappropriate” subdivision, use and development (that is, ss 6(a), (b) and (c)). Like the use of the words “protection” and “avoiding” in s 5, the language of ss 6(a), (b) and (c) suggests that, within the concept of sustainable management, the RMA envisages that there will be areas the natural characteristics or natural features of which require protection from the adverse effects of development. In this way, s 6 underscores the point made earlier that protection of the environment is a core element of sustainable management.

(Panel’s emphasis)

164. Ms Warnock had earlier submitted:

16. In relation to the risk from direct human-made threats (subdivisions, use and development), case law states that protection is not metonymic with ‘prevention’ or ‘prohibition’ of all activities. However, in a planning sense, protection is commonly achieved by ‘avoid adverse effects’ policies ...

165. In relation to s.30(1)(ga) Ms Warnock commenced with the observation that it is a function setting provision which uses the verb form of ‘maintaining’ suggesting action or measures, as can be expected in a function setting provision. She then cited the Environment Court in *Oceana Gold (New Zealand) Ltd v Otago Regional Council* [2019] NZEnvC 41 (63) where the Court stated that s 30(1)(ga) (and s 30(1)(c)(iia)) required ‘the maintenance of an existing level or quality’ of biological diversity. That conclusion was reached on the basis that if a substantive standard was not being set a neutral verb such as ‘managing’ rather than ‘maintaining’ would have been used. The Court went on to hold what that meant was a standard whereby the quality of an indigenous resource on a region-wide basis “does not get worse”.

166. However, at paragraph 22 of her submissions, counsel for DOC went a little further in our view by submitting:

*22. Accordingly, in the context of regional council functions, ‘maintaining’ biodiversity encompasses a broad range of actions, across temporal dimensions, that includes, for example: maintaining as far as possible at present level, restoring to some previous level, repairing, **enhancing, improving, expanding** etc.*

(Panel’s emphasis)

167. We do not regard ‘*enhancing, improving, expanding*’ as being metonymic with the phrase ‘*does not get worse.*’ Each of those concepts involve a measure of improvement rather than maintenance. To some extent, though, we can accept that restoration or repair of degraded biodiversity may be said to result in maintaining of region-wide biodiversity at a level which meant it did not get worse.

168. In conclusion Ms Warnock submitted:

*25. Accordingly, ‘maintaining’ indigenous biodiversity is not metonymic for protection but it can include protection, i.e., **protection is a subset of maintenance.***

(Panel’s emphasis)

169. Maintenance can include a form of protection, but protection in the sense used by the Supreme Court in *King Salmon* in our view is set at a higher level of protection for particular areas or aspects of significance than is provided by the word ‘maintaining’, which relates at a broader regional

level to all biodiversity. That difference between the two levels was really acknowledged in the DOC submissions at paragraph 24 where it was said:

24. Section 30(1)(ga) includes all indigenous biodiversity and so encompasses significant areas of biodiversity (i.e. s.6(c) matters).

170. However, while from a slightly different approach, we nonetheless accept as generally accurate the final paragraphs of the submissions for DOC on this issue when Ms Warnock said:

26. In 'maintaining' indigenous biodiversity, use and development leading to negative change will be tolerated if that change can be ameliorated in some way, minimised, remedied, offset or compensated, and actions can be quite interventionist in this sense.

...

28. In summary therefore, the core difference between 'protection' and 'maintaining' is that 'protection' of specific areas in s.6(c) is, of necessity, (ex) ante or pro-active. Whereas, 'maintaining' in s 30(1) (ga) is at the region-wide level and can be achieved using a range of actions, including ex post facto actions.

171. In the Panel's view an appropriate wording for a system of sustainable management that accords with the RMA would require replacing the phrase 'will be tolerated' with 'may be acceptable' in paragraph 26 of those submissions.

172. In summary then our view of the effect of the different wording in s.6(c) and s.30(1)(ga) is that the latter provision requires as a function of the regional council that it maintains the regionwide values of indigenous biodiversity- i.e. that it ensures through the PORPS provisions that the regionwide state of indigenous biodiversity is not made worse. That is a very broad function and of itself did not rule out or prevent the enabling of a degree of activity which in some locations may adversely affect indigenous biodiversity, so long as on a region-wide basis the state of indigenous biodiversity was not made worse. A good example would be the activity of pastoral farming involving grazing of tussocks which are present throughout the region. However, the advent of the NPS-IB with its specific provisions as to a limited consent pathway such as in sub-clauses 3.10(3) and 3.16(1) will affect the cascading assessment involved in the effects management hierarchy under that NPS.

173. Within that broad span of maintaining indigenous biodiversity throughout the region section 6(c) enables indigenous biodiversity to be specifically protected in areas or circumstances where it has a level of significance warranting protection that marks it apart from the general indigenous biodiversity. Obvious examples will be where a species is nationally or regionally under threat.

174. The challenge is to apply those approaches and the NPS-IB provisions to the Ecological chapter which will be addressed later in this report.

175. What also needs addressing first as a general matter is whether off-setting and compensation are available only as consent pathways for provisions imposed as part of the broader s 30(1)(ga) function, or whether they should also be available in respect of provisions protecting significant indigenous biodiversity under s.6(c). In respect of those aspects now covered by the NPS-IB its provisions will of course provide the direction to be taken.

6. Environmental Offsetting and Compensation

176. An argument raised strongly by Mr. S. Christensen as counsel for Oceana Gold Limited was that the PORPS did not properly address the provisions of s.104(1)(ab) which, as relevant, provides:

104 Consideration of applications

*(1) When considering an application for a resource consent and any submissions received, the consent authority **must, subject to Part 2 and section 77M, have regard to–***

(a) ...

(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and

(Panel's emphasis)

177. As we understood his argument Mr Christensen submitted that since 2017 (the year when that provision was inserted in the RMA), it was mandatory for regard to be had as to any methods of offsetting or compensation provided for by that subsection in a resource consent application, that meant in turn that a methodology had to be provided for and that required an appropriate consent pathway in the PORPS. He noted that the notification date for the partially operative 2019 ORPS pre-dated the commencement date of the amendment so it could not be considered in that RPS.

178. Mr Christensen refined his arguments down to these propositions⁶:

42. The position in the notified pORPS is therefore in error:

a. Section 104(1)(ab) is clear that all offset and compensation proposals are to be had regard to.

b. The biodiversity and compensation principles in the NPSFM and exposure draft NPSIB post-date the enactment of section 104(1)(ab) and do not conflict with it by providing principles as to what proposals should and should not achieve that are able to be applied to guide the assessment of any proposal an applicant advances.

c. The partially operative RPS 2019 provisions regarding biodiversity offsetting and compensation could not consider section 104(1)(ab) and are in conflict with it by purporting to proscribe the circumstances when decision makers can consider a biodiversity offsetting and compensation proposals.

d. The PORPS largely repeats the provisions of the partially operative RPS 2019 as if section 104(1)(ab) does not exist, but the Otago Regional Council's own evidence on the matter acknowledges section 104(1)(ab) and notes that proposals that do not confirm to the PORPS 2021 will still be considered and may be accepted.

43. The result is that the provisions of APP3 and 4 as notified must be changed to read as considerations and not as presumptive limits. The revisions recommended by Oceana Gold's experts express matters as they must be expressed and should be adopted.

⁶ *Opening Submissions on Behalf Of Oceana Gold (New Zealand) Limited –17 April 2023*

179. In response to those submissions Ms Warnock counsel for DOC in her submissions on the ECO chapter⁷ said:

33. Oceania Gold submits that – as a matter of law – s 104(1)(ab) RMA provides a veto (or, as a corollary, a mandatory rule) that an RPS cannot contain a threshold at all for when offsetting will/won't be considered. This submission is incorrect. The wording in s 104(1) RMA, requires consent authorities to 'have regard to' the list of matters in s 104(1)(a)(c). 'Have regard to' means give genuine attention and thought to; it does not mean that it must be achieved or actioned.

180. Both submissions in our view carry some weight.

181. Ms Warnock is strictly quite correct in her submission, but her paragraph probably underplays the weight that the wording of 'have regard to' plays in RMA language. In the context of a regional policy statement, which has the statutory purpose under s.59 of achieving "integrated management of the natural and physical resources of the region", a statutory provision under s.104 as to a methodology to which regard must be had on any resource consent application, must have some relevance under the Part 2 consideration of sustainable management.

182. However, we do not accept the inherent suggestion in Mr Christensen's argument that there is some mandatory aspect as to the need to provide a consent pathway involving the s.104(1)(ab) methodology of offsetting or compensation. 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.

183. We do, nonetheless, consider that the introduction of a mandatory requirement for consideration on a resource consent application of such a methodology is something which should be given considerable weight at the regional policy statement stage. The corollary of that view is that provisions which might have the effect at a regional policy stage of preventing such a consideration as part of a consent pathway, should be very carefully considered before being approved.

7. Terminology of 'limits', 'environmental limits', 'tipping points' and 'thresholds'

184. At various times in the PORPS as notified and as recommended to be amended in the s.42A report processes and evidence these various terms have come up for consideration.

185. A limited submission response addressed the terms listed above, as well as other similar terms such as 'constraints', 'bottom lines' or 'environmental bottom lines'. Fish & Game supported the use of the term 'environmental limits' as better addressing this type of descriptor or terminology. Other submitters as described in the original s.42A report (at paras 123- 130) sought a range of differing terms or definitions.

186. In her 22 October, 2022 brief of Supplementary Evidence as to the Introduction and General Themes section, Ms. Felicity Boyd set out as an Appendix locations where the word 'limit' was used in the PORPS or the s.42A reports. That brief recommended that the Panel utilise two different definitions for the word 'limit' depending upon whether the provision was being used in the freshwater or non-freshwater parts of the PORPS. (Previously in her original s.42A report on Introduction and General Themes on this issue Ms. Boyd had sought to achieve a broader context

⁷ Submissions for the Director-General of Conservation on Ecosystems and Indigenous Biodiversity Chapter ('ECO') 19 April 2023

for 'limits' than purely biophysical limits by recommending use of a new definition for a phrase 'environmental limits'.)

187. The reason for the differentiation recommended finally by her was that the NPSFM provided a definition for the term 'limits' which was restricted to biophysical limits, whereas the general or natural meaning of the word 'limit' by the Oxford dictionary definition she quoted was broader in its application than just to biophysical limits. That Oxford definition 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.

188. The NZCPS uses the term 'limits' in that broader sense. That appears at Objective 6 as to enabling use and development in "...appropriate places and forms, and within appropriate limits;". The words 'limits' and 'thresholds' are also used in that broader context at Policy 7 (2) where the following appears:

"...Where practicable, in plans, set thresholds (including zones, standards or targets), or specify acceptable limits to change, to assist in determining when activities causing cumulative effects are to be avoided."

189. By contrast the NPSFM definition of 'limit' is used in a more limited biophysical sense:

limit means either a limit on resource use or a take limit

limit on resource use means the maximum amount of resource use that is permissible while still achieving a relevant target attribute state or a nutrient outcome needed to achieve a target attribute state (see clauses 3.12 and 3.14)

190. The use of the phrase 'tipping point' and the word 'threshold' is much more limited in the PORPS. The only use of the phrase 'tipping point' is in SRMR – I11 where it used in a context of either cumulative effects or gradual climate change resulting in a tipping point being reached.

191. The word 'threshold' is sparingly used in the PORPS. It appears at SRMR – I11 in the Environmental section discussion, but otherwise mainly appears in various locations in the IM chapter and on one or two occasions in the CE, HCV-HH and HAZ chapters. Generally, we are satisfied with the s.42A recommendations to retain the notified use of those terms on the basis that in SRMR – I11 what is being addressed are the outcome of usually gradual or incremental effects which take effects beyond limits that are sustainable. They may have the potential to be catastrophic in some settings but only once a tipping point has been passed. In the other contexts the use of the term 'threshold' we consider is appropriate as thresholds need to be identified or limits set for more identifiable effects to maintain a sustainable environment.

192. The only s.42A recommendation as to their use which we differ from is at the Environmental section discussion following on at SRMR – I11. The relevant notified part of that discussion read:

At the same time a resilience approach is needed that identifies thresholds and sets limits on the use of natural resources to avoid permanent and potentially catastrophic changes occurring, as would occur if a tipping point is reached.

193. The s.42A report writer Ms. Boyd recommended in her 22 October, 2022 Appendix the deletion of the word 'threshold' but gave no particular reason for doing so other than that the newly defined 'limits' sufficed. We only differ slightly from her view on one aspect.

7.1 Recommendation

194. We are in agreement with the practical recommendation by Ms. Todd that the term ‘limit’ for freshwater purposes must accord with the NPSFM definition approach. That can be best achieved by her suggestion of a definition for freshwater purposes in the LF chapter, together with a separate definition of the word for all other purposes in the PORPS. At paragraph 21 of her brief her recommendation, with which we agree, was:

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.

195. We see no need to delete the word ‘threshold’ in that discussion section of SRMR I11 and recommend the wording remains as notified, other than to change the word ‘and’ to ‘or’ to align with the wording used in Policy 7 (2) of the NZCPS which refers to them as alternatives. Therefore, we recommend the passage to read:

At the same time a resilience approach is needed that identifies thresholds ~~and~~ or sets limits on the use of natural resources to avoid permanent and potentially catastrophic changes occurring, as would occur if a tipping point is reached.

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 Maclennan. 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 Maclennan 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-O1, which we consider reflects well the direction outlined above. ECO-O1 was notified as follows:

ECO-O1 – 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-O1 which reads:

ECO-O1 – 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-O1 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 Maclennan 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 MacLennan 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 MacLennan 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 MacLennan’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)	<u>means an approach to managing the adverse effects of an activity on <i>indigenous biodiversity</i> that requires that:</u> <u>(a) adverse effects are avoided where practicable; then</u> <u>(b) where adverse effects cannot be avoided, they are minimised where practicable; then</u>
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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 Maclennan’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 MacLennan 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 MacLennan'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 *papakāika*, 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~~ Makarora, 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 ~~E~~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-P15~~ IM-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, ~~z~~
- (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-O2 – Restoring or enhancing and ECO-P8 – Enhancement

72. ECO-O2 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–O2 – 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-O2 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-O1. We note that the final recommended version of ECO-O1 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-O1 uses the term ‘overall decline’ while ECO-O2 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-O2 to ensure consistency with the NPSIB and ECO-O1. 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-O2 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-O2 be amended as follows:

ECO-O2 – 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-O3 – Kaitiakitaka stewardship and ECO-P1 - Kaitiakitanga

88. ECO-O3 and ECO-P1 were notified as follows:

ECO–O3 – *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-O3 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 MacLennan. 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 MacLennan. 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-O1.

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-LS chapter which also incorporates NFL-P5. We accepted this recommendation and discuss the new policy and associated changes in the LF-LS 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–O1,
- (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 Maclennan that the chapeau of ECO-P10 should be amended to reflect the broader scope of clause 3.4.
107. Similarly, Mr Maclennan 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-O1,
- (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 Maclennan 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 Maclennan 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, ~~Ōamaru~~ Ōamaru,
~~Taiari, 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. QLDC 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-O2 – 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 ~~(e)~~ 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 tūpuna*, ~~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~~ 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.

Interpretation

Definitions

Term	Definition
Active transport	<p>has the same meaning as in clause 1.3 of the National Policy Statement on Urban Development 2020 (as set out in the box below)</p> <div data-bbox="592 557 1374 669" style="border: 1px solid black; padding: 5px;"> <p>means forms of transport that involve physical exercise, such as walking or cycling, and includes transport that may use a mobility aid such as a wheelchair</p> </div>
Additional infrastructure	<p>has the same meaning as in clause 1.3 of the National Policy Statement on Urban Development 2020 (as set out in the box below)</p> <div data-bbox="592 775 1382 1312" style="border: 1px solid black; padding: 5px;"> <p>means:</p> <ul style="list-style-type: none"> (a) public open space (b) community infrastructure as defined in section 197 of the Local Government Act 2002 (c) land transport (as defined in the Land Transport Management Act 2003) that is not controlled by local authorities (d) social infrastructure, such as schools and healthcare facilities (e) a network operated for the purpose of telecommunications (as defined in section 5 of the Telecommunications Act 2001) (f) a network operated for the purpose of transmitting or distributing electricity or gas </div>
Airshed	<p>has the same meaning as in regulation 3 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (as set out in the box below)</p> <div data-bbox="592 1453 1382 1677" style="border: 1px solid black; padding: 5px;"> <p>means—</p> <ul style="list-style-type: none"> (a) the region of a regional council excluding any area specified in a notice under paragraph (b): (b) a part of the region of a regional council specified by the Minister by notice in the Gazette to be a separate airshed </div>

Term	Definition
Afforestation	<p>has the same meaning as in regulation 3 of the Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017 (as set out in the box below)</p> <div data-bbox="592 365 1382 600" style="border: 1px solid black; padding: 5px;"> <p>(a) means planting and growing plantation forestry trees on land where there is no plantation forestry and where plantation forestry harvesting has not occurred within the last 5 years; but</p> <p>(b) does not include vegetation clearance from the land before planting</p> </div>
Ambient air quality standards	<p>has the same meaning as in regulation 3 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (as set out in the box below)</p> <div data-bbox="592 741 1382 779" style="border: 1px solid black; padding: 5px;"> <p>means the standard prescribed by regulation 13(1)</p> </div>
Amenity values	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 891 1382 1003" style="border: 1px solid black; padding: 5px;"> <p>means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes</p> </div>
Ancillary activity	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 1111 1315 1184" style="border: 1px solid black; padding: 5px;"> <p>means an activity that supports and is subsidiary to a primary activity</p> </div>
Aquaculture activities	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 1301 1382 1957" style="border: 1px solid black; padding: 5px;"> <p>(a) means any activity described in section 12 done for the purpose of the breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest if the breeding, hatching, cultivating, rearing, or ongrowing involves the occupation of a coastal marine area; and</p> <p>(b) includes the taking of harvestable spat if the taking involves the occupation of a coastal marine area; but</p> <p>(c) does not include an activity specified in paragraph (a) if the fish, aquatic life, or seaweed—</p> <p style="margin-left: 20px;">(i) are not in the exclusive and continuous possession or control of the person undertaking the activity; or</p> <p style="margin-left: 20px;">(ii) cannot be distinguished or kept separate from naturally occurring fish, aquatic life, or seaweed; and</p> <p>(d) does not include an activity specified in paragraph (a) or (b) if the activity is carried out solely for the purpose of monitoring the environment</p> </div>

Term	Definition
Aquatic compensation	<p>has the same meaning as in clause 3.21(1) of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="587 331 1374 512" style="border: 1px solid black; padding: 5px;"> <p>means a conservation outcome resulting from actions that are intended to compensate for any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, remediation, and aquatic offset measures have been sequentially applied</p> </div>
Aquatic offset	<p>has the same meaning as in clause 3.21(1) of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="587 669 1362 1202" style="border: 1px solid black; padding: 5px;"> <p>means a measurable conservation outcome resulting from actions that are intended to:</p> <p>(a) redress any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, and remediation, measures have been sequentially applied; and</p> <p>(b) achieve no net loss, and preferably a net gain, in the extent and values of the wetland or river, where:</p> <p>(i) no net loss means that the measurable positive effects of actions match any loss of extent or values over space and time, taking into account the type and location of the wetland or river, and</p> <p>(ii) net gain means that the measurable positive effects of actions exceed the point of no net loss</p> </div>
Archaeological site	<p>Has the same meaning as in section 6 of the Heritage New Zealand Pouhere Taonga Act 2014 (as set out in the box below)</p> <div data-bbox="587 1305 1378 1776" style="border: 1px solid black; padding: 5px;"> <p>means</p> <p>(a) any place in New Zealand, including any building or structure (or part of a building or structure), that—</p> <p>(i) was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and</p> <p>(ii) provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand; and</p> <p>(b) includes a site for which a declaration is made under section 43(1) of the Heritage New Zealand Pouhere Taonga Act 2014.</p> </div>
Attribute (in relation to freshwater)	<p>has the same meaning as in clause 1.4 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="587 1870 1366 1980" style="border: 1px solid black; padding: 5px;"> <p>means a measurable characteristic (numeric, narrative, or both) that can be used to assess the extent to which a particular value is provided for</p> </div>

Term	Definition
Bed	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 331 1382 1290" style="border: 1px solid black; padding: 5px;"> <p>means,—</p> <p>(a) in relation to any river—</p> <p style="padding-left: 20px;">(i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the river cover at its annual fullest flow without overtopping its banks:</p> <p style="padding-left: 20px;">(ii) in all other cases, the space of land which the waters of the river cover at its fullest flow without overtopping its banks; and</p> <p>(b) in relation to any lake, except a lake controlled by artificial means,—</p> <p style="padding-left: 20px;">(i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the lake cover at its annual highest level without exceeding its margin:</p> <p style="padding-left: 20px;">(ii) in all other cases, the space of land which the waters of the lake cover at its highest level without exceeding its margin; and</p> <p>(c) in relation to any lake controlled by artificial means, the space of land which the waters of the lake cover at its maximum permitted operating level; and</p> <p>(d) in relation to the sea, the submarine areas covered by the internal waters and the territorial sea</p> </div>
Biodiversity	see <i>biological diversity</i>
Biological diversity	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 1447 1374 1559" style="border: 1px solid black; padding: 5px;"> <p>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</p> </div>
Biodiversity compensation	<p>has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below)</p> <div data-bbox="592 1648 1374 1865" style="border: 1px solid black; padding: 5px;"> <p>means a conservation outcome that meets the requirements in Appendix 4 and results from actions that are intended to compensate for any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, remediation, and biodiversity offsetting measures have been sequentially applied</p> </div>

Term	Definition
Biodiversity offset	<p>has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below)</p> <div data-bbox="592 322 1374 667" style="border: 1px solid black; padding: 5px;"> <p>means a measurable conservation outcome that meets the requirements in Appendix 3 and results from actions that are intended to:</p> <ul style="list-style-type: none"> (a) redress any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied; and (b) achieve a net gain in type, amount, and condition of indigenous biodiversity compared to that lost. </div>
Building	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 752 1374 999" style="border: 1px solid black; padding: 5px;"> <p>means a temporary or permanent movable or immovable physical construction that is:</p> <ul style="list-style-type: none"> (a) partially or fully roofed; and (b) fixed or located on or in land; <p>but excludes any motorised vehicle or other mode of transport that could be moved under its own power</p> </div>
Business land	<p>has the same meaning as in clause 1.3 of the National Policy Statement on Urban Development 2020 (as set out in the box below)</p> <div data-bbox="592 1102 1374 1525" style="border: 1px solid black; padding: 5px;"> <p>means land that is zoned, or identified in an FDS or similar strategy or plan, for business uses in urban environments, including but not limited to land in the following:</p> <ul style="list-style-type: none"> (a) any industrial zone (b) the commercial zone (c) the large format retail zone (d) any centre zone, to the extent it allows business uses (e) the mixed use zone, to the extent it allows business uses (f) any special purpose zone, to the extent it allows business uses </div>
Cascading hazards	<p>means where the occurrence of one natural hazard is likely to trigger another natural hazard event e.g. an earthquake triggering a landslide which dams a river causing flooding.</p>
Certified freshwater farm plan	<p>has the same meaning as section 217B of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 1733 1374 1809" style="border: 1px solid black; padding: 5px;"> <p>means a freshwater farm plan certified under section 217G, as amended from time to time in accordance with section 217E(2) or (3)</p> </div>

Term	Definition
Climate change	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 331 1382 479" style="border: 1px solid black; padding: 5px;"> <p>means a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods</p> </div>
Climate change adaptation	<p>means the process of adjustment to actual or expected climate and its effects</p>
Climate change mitigation	<p>means a human intervention to reduce the sources of, or enhance the sinks of <i>greenhouse gases</i></p>
Coastal hazard	<p>means a subset of <i>natural hazards</i> covering tidal or coastal storm inundation, rising sea level, tsunami or meteorological tsunami inundation, coastal erosion (shorelines or cliffs), rise in <i>groundwater</i> levels from storm tides and sea-level rise (plus associated liquefaction), and salinisation of surface <i>fresh waters</i> and <i>groundwater</i> aquifers</p>
Coastal marine area	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 931 1382 1361" style="border: 1px solid black; padding: 5px;"> <p>means the foreshore, seabed, and coastal water, and the air space above the water—</p> <p>(a) of which the seaward boundary is the outer limits of the territorial sea:</p> <p>(b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—</p> <p style="padding-left: 20px;">(i) 1 kilometre upstream from the mouth of the river; or</p> <p style="padding-left: 20px;">(ii) the point upstream that is calculated by multiplying the width of the river mouth by 5</p> </div>
Coastal water	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 1469 1382 1653" style="border: 1px solid black; padding: 5px;"> <p>means seawater within the outer limits of the territorial sea and includes—</p> <p>(a) seawater with a substantial fresh water component; and</p> <p>(b) seawater in estuaries, fiords, inlets, harbours, or embayments</p> </div>
Commercial activity	<p>has the same meaning as in the Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 1762 1382 1877" style="border: 1px solid black; padding: 5px;"> <p>means any activity trading in goods, equipment or services. It includes any ancillary activity to the commercial activity (for example administrative or head offices)</p> </div>

Term	Definition
Commercial port activity	<p>means commercial shipping operations associated with the Otago Harbour and the activities carried out at the ports at Port Chalmers and Dunedin, (including the wharf at Ravensbourne) which include:</p> <ul style="list-style-type: none"> (a) Operation of commercial ships in Otago Harbour; (b) Loading and unloading of goods and passengers carried by sea (except for loading and unloading of passengers at Ravensbourne); (c) Facilities for the storage of goods carried by sea (except at Ravensbourne); (d) Buildings, installations, other structures or equipment at or adjacent to a port and used in connection with the ports' operation or administration (except at Ravensbourne); (e) Structures, facilities and pipelines for fuel storage, and refuelling of ships; (f) Provision, maintenance and development of shipping channels and swing basins; (g) Disposal of dredged materials at A0 Heyward Point, Aramoana and Shelly Beach referred to at MAP2; (h) Installation and maintenance of beacons and markers for navigation safety; and (i) Provision and maintenance of the mole at Aramoana.
Competitiveness margin	<p>has the same meaning as in clause 3.22 of the National Policy Statement on Urban Development 2020 (as set out in the box below)</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>means a margin of development capacity, over and above the expected demand that tier 1 and tier 2 local authorities are required to provide, that is required in order to support choice and competitiveness in housing and business land markets</p> </div>
Contaminant	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>includes any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat—</p> <ul style="list-style-type: none"> (a) when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or (b) when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged </div>
Contaminated land	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>means land that has a hazardous substance in or on it that—</p> <ul style="list-style-type: none"> (a) has significant adverse effects on the environment; or (b) is reasonably likely to have significant adverse effects on the environment </div>

Term	Definition
Critical buildings	<p>for the purposes of the consequence table within APP6, these are buildings which have a post-disaster function. These include:</p> <ul style="list-style-type: none"> (a) Buildings and facilities designed as essential facilities; (b) Buildings and facilities with special post-disaster function; (c) Medical emergency or surgical facilities; (d) Emergency service facilities such as fire and police stations; (e) Designated emergency shelters; (f) Designated emergency centres and ancillary facilities; and (g) Buildings and facilities containing hazardous materials capable of causing hazardous conditions that extends beyond the property boundaries.
Degraded (in relation to freshwater)	<p>where it is used in the <i>LF – Land and freshwater</i> chapter, has the same meaning as in clause 1.4 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div style="border: 1px solid black; padding: 5px;"> <p>in relation to an FMU or part of an FMU, means that as a result of something other than a naturally occurring process:</p> <ul style="list-style-type: none"> (a) a site or sites in the FMU or part of the FMU to which a target attribute state applies: <ul style="list-style-type: none"> (i) is below a national bottom line; or (ii) is not achieving or is not likely to achieve a target attribute state; or (b) the FMU or part of the FMU is not achieving or is not likely to achieve an environmental flow and level set for it; or (c) the FMU or part of the FMU is less able (when compared to 7 September 2017) to provide for any value described in Appendix 1A or any other value identified for it under the NOF </div>
Depositional landform	<p>has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below);</p> <div style="border: 1px solid black; padding: 5px;"> <p>means a landform that is alluvial (matter deposited by water, (eg, fans, river flats, and terraces), colluvial (matter deposited by gravity at the base of hillslopes, (eg, talus), or glacial (matter deposited by glaciers, (eg, moraines and outwash).</p> </div>
Development capacity	<p>has the same meaning as in clause 1.4 of the National Policy Statement for Urban Development 2020 (as set out in the box below)</p> <div style="border: 1px solid black; padding: 5px;"> <p>means the capacity of the land to be developed for housing or for business use, based on:</p> <ul style="list-style-type: none"> (a) the zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and (b) the provision of adequate development infrastructure to support the development of land for housing or business use </div>

Term	Definition
Development infrastructure	<p>has the same meaning as in clause 1.4 of the National Policy Statement for Urban Development 2020 (as set out in the box below)</p> <div data-bbox="588 331 1382 622" style="border: 1px solid black; padding: 5px;"> <p>means the following, to the extent that they are controlled by a local authority or council controlled organisation (as defined in section 6 of the Local Government Act 2002):</p> <ul style="list-style-type: none"> (a) network infrastructure for water supply, wastewater, or stormwater (b) land transport (as defined in section 5 of the Land Transport Management Act 2003) </div>
Discharge	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="588 725 1382 770" style="border: 1px solid black; padding: 5px;"> <p>includes emit, deposit, and allow to escape</p> </div>
Distribution network	<p>has the same meaning as in regulation 3 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (as set out in the box below)</p> <div data-bbox="588 909 1382 1111" style="border: 1px solid black; padding: 5px;"> <ul style="list-style-type: none"> (a) means lines and associated equipment that are used for conveying electricity and are operated by a business engaged in the distribution of electricity; but (b) does not include lines and associated equipment that are part of the national grid </div>
District plan	<p>has the same meaning as in section 43AA of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="588 1211 1382 1375" style="border: 1px solid black; padding: 5px;"> <ul style="list-style-type: none"> (a) means an operative plan approved by a territorial authority under Schedule 1; and (b) includes all operative changes to the plan (whether arising from a review or otherwise) </div>
Drinking water	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="588 1491 1382 1603" style="border: 1px solid black; padding: 5px;"> <p>means water intended to be used for human consumption; and includes water intended to be used for food preparation, utensil washing, and oral or other personal hygiene</p> </div>
Dwelling	<p>has the same meaning as that given for dwellinghouse in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="588 1715 1382 1895" style="border: 1px solid black; padding: 5px;"> <p>means any building, whether permanent or temporary, that is occupied, in whole or in part, as a residence; and includes any structure or outdoor living area that is accessory to, and used wholly or principally for the purposes of, the residence; but does not include the land upon which the residence is sited</p> </div>

Term	Definition
Earthworks	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 331 1380 510" style="border: 1px solid black; padding: 5px;"> <p>means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of land for the installation of fence posts</p> </div>
Ecological district	<p>has the same meaning as in the Interpretation section of the National Policy Statement for Indigenous Biodiversity 2023, adapted to apply to the Otago context (as set out in the box below):</p> <div data-bbox="592 658 1380 768" style="border: 1px solid black; padding: 5px;"> <p>means: the ecological districts as shown in McEwen, W Mary (ed), 1987. <i>Ecological regions and districts of New Zealand</i>. Wellington: Department of Conservation.</p> </div>
Ecosystem function	<p>has the same meaning as in the Interpretation section of the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):</p> <div data-bbox="592 880 1380 949" style="border: 1px solid black; padding: 5px;"> <p>means the abiotic (physical) and biotic (ecological and biological) flows that are properties of an ecosystem</p> </div>
Effect	<p>has the same meaning as in section 3 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 1059 1380 1615" style="border: 1px solid black; padding: 5px;"> <p>In this Act, unless the context otherwise requires, the term effect includes—</p> <ul style="list-style-type: none"> (a) any positive or adverse effect; and (b) any temporary or permanent effect; and (c) any past, present, or future effect; and (d) any cumulative effect which arises over time or in combination with other effects— <p>regardless of the scale, intensity, duration, or frequency of the effect, and also includes—</p> <ul style="list-style-type: none"> (e) any potential effect of high probability; and (f) any potential effect of low probability which has a high potential impact </div>
Effects management hierarchy (in relation to natural inland wetlands and rivers)	<p>has the same meaning as in clause 3.21 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="592 1715 1380 1995" style="border: 1px solid black; padding: 5px;"> <p>in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that:</p> <ul style="list-style-type: none"> (a) adverse effects are avoided where practicable, (b) where adverse effects cannot be avoided, they are minimised where practicable, </div>

Term	Definition
	<ul style="list-style-type: none"> (c) where adverse effects cannot be minimised, they are remedied where practicable, (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided, and (e) if aquatic compensation is not appropriate, the activity itself is avoided
Effects management hierarchy (in relation to indigenous biodiversity)	<p>means an approach to managing the adverse effects of an activity of <i>indigenous biodiversity</i> that requires that:</p> <div style="border: 1px solid black; padding: 10px;"> <ul style="list-style-type: none"> (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, <i>biodiversity offsetting</i> is provided where possible; then (e) where <i>biodiversity offsetting</i> of more than minor residual adverse effects is not possible, <i>biodiversity compensation</i> is provided; then (f) if <i>biodiversity compensation</i> is not appropriate, the activity itself is avoided, unless the activity is <i>regionally significant infrastructure</i> and <i>nationally significant infrastructure</i> that is either <i>renewable electricity generation</i> or the <i>National Grid</i> then: (g) if compensation is not appropriate to address any residual adverse effects: <ul style="list-style-type: none"> (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. </div>
Electricity sub-transmission infrastructure	<p>means electricity infrastructure which conveys electricity between energy generation sources, the National Grid and zone substations and between zone substations.</p>

Term	Definition
Environment	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="587 331 1382 692" style="border: 1px solid black; padding: 5px;"> <p>includes—</p> <ul style="list-style-type: none"> (a) ecosystems and their constituent parts, including people and communities; and (b) all natural and physical resources; and (c) amenity values; and (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters </div>
Environmental outcome	<p>has the same meaning as in clause 1.4 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="587 790 1382 902" style="border: 1px solid black; padding: 5px;"> <p>means, in relation to a value that applies to an FMU or part of an FMU, a desired outcome that a regional council identifies and then includes as an objective in its regional plan(s)</p> </div>
Esplanade reserve	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="587 999 1366 1368" style="border: 1px solid black; padding: 5px;"> <p>means a reserve within the meaning of the Reserves Act 1977—</p> <ul style="list-style-type: none"> (a) which is either— <ul style="list-style-type: none"> (i) a local purpose reserve within the meaning of section 23 of that Act, if vested in the territorial authority under section 239; or (ii) a reserve vested in the Crown or a regional council under section 237D; and (b) which is vested in the territorial authority, regional council, or the Crown for a purpose or purposes set out in section 229 </div>
Esplanade strip	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="587 1473 1382 1585" style="border: 1px solid black; padding: 5px;"> <p>means a strip of land created by the registration of an instrument in accordance with section 232 for a purpose or purposes set out in section 229</p> </div>
Exceedance	<p>has the same meaning as in regulation 13 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (as set out in the box below)</p> <div data-bbox="587 1731 1382 1809" style="border: 1px solid black; padding: 5px;"> <p>for a contaminant, means an instance where the contaminant exceeds its threshold concentration in an airshed</p> </div>
Existing, for a heat device (for the interpretation of EIT-EN-P5)	<p>has the same meaning as in section 3 of the Resource Management (National Environment Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023 (as set out in the box below)</p> <div data-bbox="587 1951 1382 2018" style="border: 1px solid black; padding: 5px;"> <p>(a) means a device that, before 27 July 2023, is installed and operational, or able to be operated, at a site; and</p> </div>

Term	Definition
	<p>(b) includes a device described in paragraph (a) after it is upgraded or improved; but</p> <p>(c) does not include a device that, on or after 27 July 2023, is installed in replacement of a device described in paragraph (a)</p>
Exotic pasture species	<p>has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below)</p> <div data-bbox="592 528 1382 607" style="border: 1px solid black; padding: 5px;"> <p>means a pasture species identified in the National List of Exotic Pasture Species (see clause 1.8)</p> </div>
Food and fibre production	<p>means the primary sector production industries (other than mining) including Arable, Dairy, Forestry and Wood Processing, Horticulture (including vegetables, viticulture and winemaking), Pork, Poultry, Bees, Red Meat and Wool (Sheep, Beef and Deer), Seafood and Cross-Sector and the related processing industries.</p> <p>Note: This definition is intended to describe the suite of activities that occur throughout Otago from a rural land use perspective and is not intended to prioritise one primary sector production industry over another.</p>
Fossil fuel	<p>has the same meaning as in section 3 of the Resource Management (National Environment Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023 (as set out in the box below)</p> <div data-bbox="592 1066 1374 1431" style="border: 1px solid black; padding: 5px;"> <p>(a) means any carbon-based fuel sourced from fossil hydrocarbon deposits; and</p> <p>(b) includes—</p> <p style="margin-left: 20px;">(i) coal, coke, diesel, liquid petroleum gas, natural gas, oil, peat, plastics, and used oil; and</p> <p style="margin-left: 20px;">(ii) any fuel wholly or partly derived from a fuel described in paragraph (a), including tyres used as fuel; but</p> <p>(c) does not include biomass or biogas</p> </div>
Freshwater or fresh water	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 1525 1382 1570" style="border: 1px solid black; padding: 5px;"> <p>means all water except coastal water and geothermal water</p> </div>
Freshwater management unit or FMU	<p>has the same meaning as in clause 1.4 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="592 1671 1382 1883" style="border: 1px solid black; padding: 5px;"> <p>means all or any part of a water body or water bodies, and their related catchments, that a regional council determines under clause 3.8 is an appropriate unit for freshwater management and accounting purposes; and part of an FMU means any part of an FMU including, but not limited to, a specific site, river reach, water body, or part of a water body</p> </div>

Term	Definition
Functional need	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="587 331 1382 443" style="border: 1px solid black; padding: 5px;"> <p>means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment</p> </div>
Future development strategy	<p>has the same meaning as in the National Policy Statement for Urban Development 2020 (as set out in the box below)</p> <div data-bbox="587 546 1382 622" style="border: 1px solid black; padding: 5px;"> <p>means the Future Development Strategy required by subpart 4 of Part 3</p> </div>
Greenhouse gas	<p>has the same meaning as in section 4(1) of the Climate Change Response Act 2002 (as set in in the box below)</p> <div data-bbox="587 725 1366 1043" style="border: 1px solid black; padding: 5px;"> <p>means—</p> <ul style="list-style-type: none"> (a) carbon dioxide (CO₂): (b) methane (CH₄): (c) nitrous oxide (N₂O): (d) any hydrofluorocarbon: (e) any perfluorocarbon: (f) sulphur hexafluoride (SF₆) </div>
Greywater	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="587 1151 1366 1258" style="border: 1px solid black; padding: 5px;"> <p>means liquid waste from domestic sources including sinks, basins, baths, showers and similar fixtures, but does not include <i>sewage</i>, or <i>industrial and trade waste</i>.</p> </div>
Groundwater	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="587 1361 1366 1438" style="border: 1px solid black; padding: 5px;"> <p>means water occupying openings, cavities, or spaces in soils or rocks beneath the surface of the ground</p> </div>
Habitat (in relation to indigenous biodiversity)	<p>has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below);</p> <div data-bbox="587 1550 1366 1724" style="border: 1px solid black; padding: 5px;"> <p>means the area or environment where an organism or ecological community lives or occurs naturally for some or all of its life cycle, or as part of its seasonal feeding or breeding pattern; but does not include built structures or an area or environment where an organism is present only fleetingly.</p> </div>

Term	Definition
Hard protection structure	<p>within the coastal environment, has the same meaning as in the Glossary of the New Zealand Coastal Policy Statement 2010 (as set out in the box below)</p> <div data-bbox="592 365 1377 510" style="border: 1px solid black; padding: 5px;"> <p>includes a seawall, rock revetment, groyne, breakwater, stop bank, retaining wall or comparable structure or modification to the seabed, foreshore or coastal land that has the primary purpose or effect of protecting an activity from a coastal hazard, including erosion</p> </div> <p>and</p> <p>outside the coastal environment, means any kind of structure which is specifically established for the purpose of natural hazard risk mitigation, including dams, weirs, stopbanks, carriageways, groynes, reservoirs and rip rap.</p>
Heat device	<p>has the same meaning as in section 3 of the Resource Management (National Environment Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023 (as set out in the box below)</p> <div data-bbox="592 846 1382 1223" style="border: 1px solid black; padding: 5px;"> <p>(a) means a device that produces <i>industrial process heat</i> (for example, a boiler, furnace, engine, or other combustion device); but</p> <p>(b) does not include a device used for the primary purpose of—</p> <p style="padding-left: 20px;">(i) generating electricity, including a generator used for back-up electricity or for maintaining the electricity network; or</p> <p style="padding-left: 20px;">(ii) transmitting electricity, including in mobile and fixed substations</p> </div>
Highly mobile fauna area	<p>has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below)</p> <div data-bbox="592 1323 1382 1397" style="border: 1px solid black; padding: 5px;"> <p>means an area outside an <i>SNA</i> that is an area used intermittently by <i>specified highly mobile fauna</i></p> </div>
Highly productive land	<p>has the same meaning as in clause 1.3 of the National Policy Statement for Highly Productive Land (as set out in the box below)</p> <div data-bbox="592 1514 1382 1727" style="border: 1px solid black; padding: 5px;"> <p>means <i>land</i> that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when <i>land</i> is rezoned and therefore ceases to be highly productive land</p> </div>

Term	Definition
Historic heritage	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 331 1382 1066" style="border: 1px solid black; padding: 5px;"> <p>(a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:</p> <ul style="list-style-type: none"> (i) archaeological: (ii) architectural: (iii) cultural: (iv) historic: (v) scientific: (vi) technological; and <p>(b) includes—</p> <ul style="list-style-type: none"> (i) historic sites, structures, places, and areas; and (ii) archaeological sites; and (iii) sites of significance to Māori, including wāhi tapu; and (iv) surroundings associated with the natural and physical resources </div>
Housing and Business Development Capacity Assessment	<p>has the same meaning as in the National Policy Statement for Urban Development Capacity 2020 (as set out in the box below)</p> <div data-bbox="592 1160 1366 1238" style="border: 1px solid black; padding: 5px;"> <p>means the Housing and Business Development Capacity Assessment (HBA) required by subpart 5 of Part 3</p> </div>
Identified for future urban development	<p>has the same meaning as in clause 1.3 of the National Policy Statement for Highly Productive Land (as set out in the box below)</p> <div data-bbox="592 1350 1382 1727" style="border: 1px solid black; padding: 5px;"> <p>(a) identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or</p> <p>(b) identified:</p> <ul style="list-style-type: none"> (i) in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and (ii) at a level of detail that makes the boundaries of the area identifiable in practice </div>
Improved pasture	<p>has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):</p> <div data-bbox="592 1821 1366 1962" style="border: 1px solid black; padding: 5px;"> <p>means an area of land where exotic pasture species have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed for livestock grazing.</p> </div>

Term	Definition
Indigenous biodiversity	<p>has the same meaning as in the Interpretation section of the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below)</p> <div data-bbox="592 331 1366 443" style="border: 1px solid black; padding: 5px;"> <p>means the living organisms that occur naturally in New Zealand, and the ecological complexes of which they are part, including all forms of indigenous flora, fauna, and fungi, and their <i>habitats</i>.</p> </div>
Indigenous vegetation	<p>means vascular and non-vascular plants that, in relation to a particular area, are native to the ecological district⁷ or freshwater or marine bioregion in which that area is located</p>
Indigenous species (in relation to the ECO chapter)	<p>means species that occur naturally in Otago.</p>
Industrial activities	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 723 1374 869" style="border: 1px solid black; padding: 5px;"> <p>means an activity that manufactures, fabricates, processes, packages, distributes, repairs, stores, or disposes of materials (including raw, processed, or partly processed materials) or goods. It includes any ancillary activity to the industrial activity</p> </div>
Industrial and trade waste	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 981 1382 1126" style="border: 1px solid black; padding: 5px;"> <p>means liquid <i>waste</i>, with or without matter in suspension, from the receipt, manufacture or processing of materials as part of a commercial, industrial or trade process, but excludes <i>sewage</i> and greywater.</p> </div>
Industrial process heat	<p>has the same meaning as in section 3 of the Resource Management (National Environment Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023 (as set out in the box below)</p> <div data-bbox="592 1272 1382 1615" style="border: 1px solid black; padding: 5px;"> <p>(a) means thermal energy that is used—</p> <ul style="list-style-type: none"> (i) in industrial processes, including in manufacturing and in the processing of raw materials; or (ii) to grow plants or other photosynthesising organisms indoors; but <p>(b) does not include thermal energy used in the warming of spaces for people’s comfort (for example, heating of commercial offices)</p> </div>

⁷ McEwen, W Medium (ed), 1987. Ecological regions and districts of New Zealand. Wellington: Department of Conservation

Term	Definition
Infrastructure	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div style="border: 1px solid black; padding: 10px;"> <p>means—</p> <ul style="list-style-type: none"> (a) pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy: (b) a network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001: (c) a network for the purpose of radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989: (d) facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person— <ul style="list-style-type: none"> (i) uses them in connection with the generation of electricity for the person’s use; and (ii) does not use them to generate any electricity for supply to any other person: (e) a water supply distribution system, including a system for irrigation: (f) a drainage or sewerage system: (g) structures for transport on land by cycleways, rail, roads, walkways, or any other means: (h) facilities for the loading or unloading of cargo or passengers transported on land by any means: (i) an airport as defined in section 2 of the Airport Authorities Act 1966: (j) a navigation installation as defined in section 2 of the Civil Aviation Act 1990: (k) facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988: (l) anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166 </div>

Term	Definition
Intrinsic values	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 331 1382 584" style="border: 1px solid black; padding: 5px;"> <p>In relation to ecosystems, means those aspects of ecosystems and their constituent parts which have value in their own right, including –</p> <ul style="list-style-type: none"> (a) their biological and genetic diversity; and (b) the essential characteristics that determine an ecosystem’s integrity, form, functioning and resilience </div>
Kāika	means a settlement of Kāi Tahu or their tūpuna.
Kaitiakitanga or kaitiakitaka	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 725 1366 853" style="border: 1px solid black; padding: 5px;"> <p>means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship</p> </div>
Lake	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 958 1382 1039" style="border: 1px solid black; padding: 5px;"> <p>means a body of fresh water which is entirely or nearly surrounded by land</p> </div>
Land	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 1144 1382 1464" style="border: 1px solid black; padding: 5px;"> <ul style="list-style-type: none"> (a) includes land covered by water and the airspace above land; and (b) in a national environmental standard dealing with a regional council function under section 30 or a regional rule, does not include the bed of a lake or river; and (c) in a national environmental standard dealing with a territorial authority function under section 31 or a district rule, includes the surface of water in a lake or river </div>
Land-based primary production	<p>has the same meaning as in clause 1.3 of the National Policy Statement for Highly Productive Land 2022 (as set out in the box below)</p> <div data-bbox="592 1570 1382 1644" style="border: 1px solid black; padding: 5px;"> <p>means production, from agricultural, pastoral, horticulture, or forestry activities, that is reliant on the soil resource of the <i>land</i></p> </div>
Landfill	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 1742 1382 1816" style="border: 1px solid black; padding: 5px;"> <p>means an area used for, or previously used for, the disposal of solid waste. It excludes cleanfill areas</p> </div>
Lifeline utilities	means utilities provided by those entities listed in Schedule 1 of the Civil Defence Emergency Management Act 2002
Limit	In the LF – Land and Freshwater chapter, has the same meaning defined in the NPSFM, and elsewhere, “limit” has its natural and ordinary meaning

Term	Definition
Limit (in relation to freshwater)	<p>has the same meaning as in clause 1.4(1) of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="592 331 1382 371" style="border: 1px solid black; padding: 2px;"> <p>means either a limit on resource use or a take limit</p> </div>
Local authority	<p>has the same meaning as in section 5 of the Local Government Act 2002 (as set out in the box below)</p> <div data-bbox="592 488 1382 528" style="border: 1px solid black; padding: 2px;"> <p>means a regional council or <i>territorial authority</i></p> </div>
LUC 1, 2, or 3 land	<p>has the same meaning as in clause 1.3 of the National Policy Statement for Highly Productive Land (as set out in the box below)</p> <div data-bbox="592 645 1382 752" style="border: 1px solid black; padding: 2px;"> <p>means <i>land</i> identified as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory or by any more detailed mapping that uses the Land Use Capability classification</p> </div>
Mahika kai	<p>means gathering of food and natural materials by Kāi Tahu whānui in accordance with tikaka, the places where those resources are gathered, and the work, methods and cultural activities involved in obtaining them</p>
Maintenance of improved pasture	<p>has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):</p> <div data-bbox="592 1025 1382 1200" style="border: 1px solid black; padding: 2px;"> <p>includes the removal of indigenous vegetation for the purpose of maintaining the improved pasture, whether the removal is by way of cutting, crushing, applying chemicals, draining, burning, cultivating, over-planting, applying seed of exotic pasture species, mob stocking, or making changes to soils, hydrology, or landforms.</p> </div>
Maintenance of indigenous biodiversity	<p>has the same meaning as in the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below):</p> <div data-bbox="592 1317 1382 1989" style="border: 1px solid black; padding: 2px;"> <p>means:</p> <ul style="list-style-type: none"> (a) the maintenance and at least no overall reduction of all the following: <ul style="list-style-type: none"> (i) the size of populations of <i>indigenous</i> species: (ii) indigenous species occupancy across their natural range: (iii) the properties and function of ecosystems and <i>habitats</i> used or occupied by <i>indigenous biodiversity</i>: (iv) the full range and extent of ecosystems and <i>habitats</i> used or occupied by <i>indigenous biodiversity</i>: (v) connectivity between, and buffering around, ecosystems used or occupied by <i>indigenous biodiversity</i>: (vi) the resilience and adaptability of ecosystems; and (b) where necessary, the restoration and enhancement of ecosystems and <i>habitats</i>. </div>

Term	Definition
Māori land	<p>for the purposes of this RPS, means land within the region that is:</p> <ol style="list-style-type: none"> (1) owned by Te Rūnanga o Ngāi Tahu or its constituent papatipu rūnaka and to be used for the purpose of: <ol style="list-style-type: none"> (a) locating papakāika development away from land that is either at risk from natural hazards, including climate change effects such as sea level rise, or is otherwise unsuitable for papakāika development, (b) extending the area of an existing papakāika development, (2) Māori communal land gazetted as Māori reservation under s338 Te Ture Whenua Māori Act 1993, (3) Māori customary land and Māori freehold land as defined in s4 and s129 Te Ture Whenua Māori Act 1993, (4) former Māori land or general land owned by Māori (as those terms are defined in Te Ture Whenua Māori Act 1993) that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Kāi Tahu owners or their successors and remains in their ownership, (5) general land owned by Māori (as defined in Te Ture Whenua Māori Act 1993) that was previously Māori freehold land, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967 on or after 1 April 1968, that is in the ownership of Kāi Tahu whānui, (6) vested in a Trust or Māori incorporation under Te Ture Whenua Māori Act 1993, (7) held or claimed (whether as an entitlement, part of an ancillary claim, or because it was transferred or vested) either, <ol style="list-style-type: none"> (a) as part of redress for the settlement of Treaty of Waitangi claims, or (b) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020), or (c) as SILNA lands, (8) owned by a person or persons with documentary evidence of Kāi Tahu whakapapa connection to the land, where that evidence is provided by either the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit.
Mana whenua	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below) and in this RPS also refers to the people who hold customary authority</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>means customary authority exercised by an iwi or hapu in an identified area</p> </div>

Term	Definition
Mineral	<p>has the same meaning as in section 2(1) of the Crown Minerals Act 1991 (as set out in the box below)</p> <div data-bbox="592 331 1382 510" style="border: 1px solid black; padding: 5px;"> <p>means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water; and includes all metallic minerals, non-metallic minerals, fuel minerals, precious stones, industrial rocks and building stones, and a prescribed substance within the meaning of the Atomic Energy Act 1945</p> </div>
Mixing zone	<p>has the same meaning as in the Glossary of the New Zealand Coastal Policy Statement 2010 (as set out in the box below)</p> <div data-bbox="592 618 1382 730" style="border: 1px solid black; padding: 5px;"> <p>the area within which 'reasonable mixing' of contaminants from discharges occurs in receiving waters and within which the relevant water quality standards do not apply</p> </div>
National grid	<p>has the same meaning as in the Interpretation section of the National Policy Statement on Electricity Transmission 2008 (as set out in the box below)</p> <div data-bbox="592 842 1382 887" style="border: 1px solid black; padding: 5px;"> <p>means the assets used or owned by Transpower New Zealand</p> </div>
National Objectives Framework	<p>has the same meaning as in clause 1.4 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="592 1021 1382 1088" style="border: 1px solid black; padding: 5px;"> <p>means the framework for managing freshwater as described in subpart 2 of Part 3</p> </div>
Nationally significant infrastructure	<p>has, to the extent applicable to the Otago Region, the same meaning as in clause 1.4(1) of the National Policy Statement for Urban Development 2020 (as set out in the box below):</p> <div data-bbox="592 1234 1382 2007" style="border: 1px solid black; padding: 5px;"> <p>means all of the following:</p> <ul style="list-style-type: none"> (a) State highways (b) the national grid electricity transmission network (c) renewable electricity generation facilities that connect with the national grid (d) the high-pressure gas transmission pipeline network operating in the North Island (e) the refinery pipeline between Marsden Point and Wiri (f) the New Zealand rail network (including light rail) (g) rapid transit services (as defined in this clause) (h) any airport (but not its ancillary commercial activities) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers (i) the port facilities (but not the facilities of any ancillary commercial activities) of each port company referred to in item 6 of Part A of Schedule 1 of the Civil Defence Emergency Management Act 2002 </div>

Term	Definition
Natural and physical resources	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 331 1382 443" style="border: 1px solid black; padding: 5px;"> <p>includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures</p> </div>
Natural hazard	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 544 1382 723" style="border: 1px solid black; padding: 5px;"> <p>means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment</p> </div>
Natural hazard works	<p>has the same meaning as in regulation 51(1) of the National Environmental Standard for Freshwater 2020 (as set out in the box below)</p> <div data-bbox="592 864 1382 1077" style="border: 1px solid black; padding: 5px;"> <p>means works for the purpose of removing material, such as trees, debris, and sediment, that—</p> <ul style="list-style-type: none"> (a) is deposited as the result of a natural hazard, and (b) is causing, or is likely to cause, an immediate hazard to people or property </div>
Naturally rare	<p>has the same meaning as in the Glossary of the New Zealand Coastal Policy Statement 2010 (as set out in the box below)</p> <div data-bbox="592 1182 1382 1227" style="border: 1px solid black; padding: 5px;"> <p>originally rare: Rare before the arrival of humans in New Zealand</p> </div>
New, for a heat device (for the interpretation of EIT-EN-P5)	<p>has the same meaning as in section 3 of the Resource Management (National Environment Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023 (as set out in the box below)</p> <div data-bbox="592 1361 1382 1406" style="border: 1px solid black; padding: 5px;"> <p>means not <i>existing</i></p> </div>
Nohoaka or nohoanga	<p>means a site occupied by Kāi Tahu on a seasonal and temporary basis for mahika kai or other customary purposes.</p>
Occupancy	<p>means, in relation to measuring indigenous biodiversity, the number of units per area occupied by a species or taxa</p>
Operational need	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 1688 1382 1800" style="border: 1px solid black; padding: 5px;"> <p>means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints</p> </div>
Outstanding water body	<p>has the same meaning as in clause 1.4 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="592 1912 1382 2024" style="border: 1px solid black; padding: 5px;"> <p>means a water body, or part of a water body, identified in a regional policy statement, a regional plan, or a water conservation order as having one or more outstanding values</p> </div>

Term	Definition
Over-allocation, or over-allocated	<p>has the same meaning as in clause 1.4 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="592 331 1382 638" style="border: 1px solid black; padding: 5px;"> <p>in relation to both the quantity and quality of freshwater, means the situation where:</p> <ul style="list-style-type: none"> (a) resource use exceeds a limit; (b) if limits have not been set, an FMU or part of an FMU is degraded or degrading; or (c) an FMU or part of an FMU is not achieving an environmental flow or level set for it under clause 3.16 </div>
Papakāika	<p>means <i>subdivision</i>, use and development by <i>mana whenua</i> of <i>Māori land</i> and associated resources to provide for themselves in general accordance with tikaka Māori for their cultural and traditional purposes, which may include cultural, social, housing, educational, recreational, environmental or home occupation purposes.</p>
Pest	<p>has the same meaning as in section 2 of the Biosecurity Act 1993 (as set out in the box below)</p> <div data-bbox="592 902 1382 947" style="border: 1px solid black; padding: 5px;"> <p>means an organism specified as a pest in a pest management plan</p> </div>
Plantation forestry	<p>has the same meaning as in regulation 3 of the Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017 (as set out in the box below)</p> <div data-bbox="592 1084 1382 1854" style="border: 1px solid black; padding: 5px;"> <p>means a forest deliberately established for commercial purposes, being—</p> <ul style="list-style-type: none"> (a) at least 1 ha of continuous forest cover of forest species that has been planted and has or will be harvested or replanted; and (b) includes all associated forestry infrastructure; but (c) does not include— <ul style="list-style-type: none"> (i) a shelter belt of forest species, where the tree crown cover has, or is likely to have, an average width of less than 30 m; or (ii) forest species in urban areas; or (iii) nurseries and seed orchards; or (iv) trees grown for fruit or nuts; or (v) long-term ecological restoration planting of forest species; or (vi) willows and poplars space planted for soil conservation purposes </div>

Term	Definition
PM₁₀	<p>has the same meaning as in regulation 3 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (as set out in the box below)</p> <div data-bbox="588 362 1382 651" style="border: 1px solid black; padding: 5px;"> <p>means particulate matter that is—</p> <ul style="list-style-type: none"> (a) less than 10 micrometres in aerodynamic diameter; and (b) measured in accordance with the United States Code of Federal Regulations, Title 40—Protection of Environment, Volume 2, Part 50, Appendix J — Reference method for the determination of particulate matter as PM₁₀ in the atmosphere </div>
PM_{2.5}	<p>means particulate matter that is less than 2.5 micrometres in aerodynamic diameter.</p>
Polluted airshed	<p>has the same meaning as in regulation 17(4) of the National Environmental Standards for Air Quality 2004 (as set out in the box below)</p> <div data-bbox="588 842 1382 1290" style="border: 1px solid black; padding: 5px;"> <ul style="list-style-type: none"> (a) an airshed becomes a polluted airshed on and from 1 September 2012 or any later day if, for the immediately prior 5-year period— <ul style="list-style-type: none"> (i) the airshed has meaningful PM₁₀ data for at least a 12-month period; and (ii) the airshed’s average exceedances of PM₁₀ (as calculated under regulation 16D) was more than 1 per year; and (b) an airshed stops being a polluted airshed on and from any day if the PM₁₀ standard was not breached in the airshed in the immediately prior 5-year period </div>
Primary production	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="588 1395 1382 1830" style="border: 1px solid black; padding: 5px;"> <p>means:</p> <ul style="list-style-type: none"> (a) an aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities; and (b) includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a); (c) includes any land and buildings used for the production of the commodities from a) and used for the initial processing of the commodities in b); but (d) excludes further processing of those commodities into a different product </div>

Term	Definition
Productive capacity	<p>has the same meaning as in clause 1.3 of the National Policy Statement for Highly Productive Land (as set out in the box below)</p> <div data-bbox="592 331 1382 674" style="border: 1px solid black; padding: 5px;"> <p>in relation to <i>land</i>, means the ability of the <i>land</i> to support land-based <i>primary production</i> over the long term, based on an assessment of:</p> <ul style="list-style-type: none"> (a) physical characteristics (such as soil type, properties, and versatility); and (b) legal constraints (such as consent notices, <i>local authority</i> covenants, and easements); and (c) the size and shape of existing and proposed <i>land</i> parcels </div>
Public transport	<p>has the same meaning as in clause 1.4 of the National Policy Statement for Urban Development 2020 (as set out in the box below)</p> <div data-bbox="592 775 1382 1077" style="border: 1px solid black; padding: 5px;"> <p>means any existing or planned service for the carriage of passengers (other than an aeroplane) that is available to the public generally by means of:</p> <ul style="list-style-type: none"> (a) a vehicle designed or adapted to carry more than 12 persons (including the driver), or (b) a rail vehicle, or (c) a ferry </div>
Receiving environment (in relation to <i>freshwater and the coastal marine area</i>)	<p>has the same meaning as in in clause 1.4 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <div data-bbox="592 1178 1382 1256" style="border: 1px solid black; padding: 5px;"> <p>includes, but is not limited to, any water body (such as a river, lake, wetland or aquifer) and the coastal marine area (including estuaries)</p> </div>
Reclamation	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 1357 1382 1637" style="border: 1px solid black; padding: 5px;"> <p>means the manmade formation of permanent dry land by the positioning of material into or onto any part of a waterbody, bed of a lake or river or the coastal marine area, and:</p> <ul style="list-style-type: none"> (a) includes the construction of any causeway; but (b) excludes the construction of natural hazard protection structures such as seawalls, breakwaters or groynes except where the purpose of those structures is to form dry land </div>
Regional plan	<p>has the same meaning as in section 43AA of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 1744 1382 1912" style="border: 1px solid black; padding: 5px;"> <ul style="list-style-type: none"> (a) means an operative plan approved by a regional council under Schedule 1 (including all operative changes to the plan (whether arising from a review or otherwise)); and (b) includes a regional coastal plan </div>
Regionally significant infrastructure	<p>means:</p> <ul style="list-style-type: none"> (1) roads which provide a lifeline connection for a community OR roads classified as being of regional importance in accordance with the

Term	Definition
	<p>One Network Framework,</p> <p>(2) electricity sub-transmission infrastructure,</p> <p>(2A) significant electricity distribution infrastructure,</p> <p>(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,</p> <p>(4) telecommunication and radiocommunication networks,</p> <p>(5) public transport, terminals and stations,</p> <p>(6) the following airports: Dunedin, Queenstown, Wānaka, Alexandra, Balclutha, Cromwell, Ōamaru, Taiari.</p> <p>(7) navigation infrastructure associated with airports and commercial ports which are nationally or regionally significant,</p> <p>(8) defence facilities for defence purposes in accordance with the Defence Act 1990,</p> <p>(8A) established community-scale irrigation and stockwater <i>infrastructure</i>,</p> <p>(9) community drinking water abstraction, supply treatment and distribution <i>infrastructure</i> 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 <i>infrastructure</i> (excluding delivery systems or infrastructure primarily deployed for the delivery of water for irrigation of land or rural agricultural drinking-water supplies),</p> <p>(10) community stormwater <i>infrastructure</i>,</p> <p>(11) wastewater and sewage collection, treatment and disposal infrastructure serving no fewer than 25 households,</p> <p>(11A) oil terminals, bulk fuel storage and supply infrastructure, and ancillary pipelines at Port Chalmers and Dunedin,</p> <p>(12) Otago Regional Council’s hazard mitigation works including flood protection infrastructure and drainage schemes,</p> <p>(13) landfills and associated solid waste sorting and transfer facilities which are designated by, or are owned or operated by a local authority,</p> <p>(14) <i>ski area infrastructure</i>, and</p> <p>(15) any <i>infrastructure</i> identified as <i>nationally significant infrastructure</i>.</p>
<p>Renewable electricity generation</p>	<p>has the same meaning as in the Interpretation section of the National Policy Statement for Renewable Electricity Generation 2011 (as set out in the box below)</p> <div data-bbox="592 1563 1382 1641" style="border: 1px solid black; padding: 5px;"> <p>means generation of electricity from solar, wind, hydroelectricity, geothermal, biomass, tidal, wave, or ocean current energy sources</p> </div>
<p>Renewable electricity generation activities</p>	<p>has the same meaning as in the Interpretation section of the National Policy Statement for Renewable Electricity Generation 2011 (as set out in the box below)</p> <div data-bbox="592 1792 1382 2002" style="border: 1px solid black; padding: 5px;"> <p>means the construction, operation and maintenance of structures associated with renewable electricity generation. This includes small and community-scale distributed renewable generation activities and the system of electricity conveyance required to convey electricity to the distribution network and/or the national grid and electricity storage technologies associated with renewable electricity</p> </div>

Term	Definition
Replanting	<p>has the same meaning as in regulation 3 of the Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017 (as set out in the box below)</p> <div data-bbox="592 365 1382 439" style="border: 1px solid black; padding: 5px;"> <p>means the planting and growing of plantation forestry trees on land less than 5 years after plantation forestry harvesting has occurred</p> </div>
Resilient or resilience	<p>means the capacity and ability to withstand or recover quickly from adverse conditions.</p>
Resource consent	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 636 1382 710" style="border: 1px solid black; padding: 5px;"> <p>has the meaning set out in section 87; and includes all conditions to which the consent is subject</p> </div>
Restoration (in relation to indigenous biodiversity)	<p>has the same meaning as in the Interpretation section of the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below)</p> <div data-bbox="592 833 1382 1012" style="border: 1px solid black; padding: 5px;"> <p>means the active intervention and management of modified or degraded <i>habitats</i>, ecosystems, landforms, and landscapes in order to maintain or reinstate indigenous natural character, ecological and physical processes, and cultural and visual qualities, and may include enhancement activities</p> </div>
Reverse sensitivity	<p>means 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 effects of the established activity.</p>
Riprap	<p>a permanent layer or large, angular rocks, concrete or boulders typically used to armour, stabilize and protect the <i>land</i> surface and margins of <i>water bodies</i> against erosion and scour in areas of concentrated <i>water</i> flow or wave energy</p>
Risk (in relation to natural hazards)	<p>has the same meaning as in the Glossary in the New Zealand Coastal Policy Statement 2010 (as set out in the box below)</p> <div data-bbox="592 1413 1382 1561" style="border: 1px solid black; padding: 5px;"> <p>Risk is often expressed in terms of a combination of the consequences of an event (including changes in circumstances) and the associated likelihood of occurrence (AS/NZS ISO 31000:2009 <i>Risk management – Principles and guidelines</i>, November 2009)</p> </div>
River	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 1671 1382 1850" style="border: 1px solid black; padding: 5px;"> <p>means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)</p> </div>
Rural area	<p>means any area of land that is not an <i>urban area</i></p>

Term	Definition
Rural industry	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 331 1382 405" style="border: 1px solid black; padding: 5px;"> <p>means an industry or business undertaken in a rural <i>environment</i> that directly supports, services, or is dependant on <i>primary production</i></p> </div>
Sensitive activities	<p>has the same meaning as in the Interpretation section of the National Policy Statement on Electricity Transmission 2008 (as set out in the box below)</p> <div data-bbox="592 555 1382 591" style="border: 1px solid black; padding: 5px;"> <p>includes schools, residential buildings and hospitals</p> </div>
Sewage	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 703 1382 741" style="border: 1px solid black; padding: 5px;"> <p>means human excrement and urine</p> </div>
Ship	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 891 1382 965" style="border: 1px solid black; padding: 5px;"> <p>has the same meaning as in section 2(1) of the Maritime Transport Act 1994</p> </div>
Significant electricity distribution infrastructure	<p>means electricity infrastructure identified in a district plan which supplies:</p> <ul style="list-style-type: none"> (a) essential public services (such as hospitals and lifeline facilities); (b) other regionally significant infrastructure or individual consumers requiring supply of 1MW or more; (c) 700 or more consumers; or (d) communities that are isolated and which do not have an alternative supply in the event the line or cable is compromised and where the assets are difficult to replace in the event of failure.
Significant natural area	<p>has the same meaning as in the Interpretation section of the National Policy Statement for Indigenous Biodiversity 2023 (except that a reference to Appendix 2 rather than Appendix 1) as set out below:</p> <div data-bbox="592 1496 1382 1953" style="border: 1px solid black; padding: 5px;"> <p>means:</p> <ul style="list-style-type: none"> (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 an 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. </div>

Term	Definition
Ski area infrastructure	<p>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)</p> <div data-bbox="592 331 1378 546" style="border: 1px solid black; padding: 5px;"> <p><i>infrastructure</i> 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 <i>water</i>, sewerage, electricity, and gas; communications networks; and snowmaking and snow safety systems</p> </div>
Small and community scale distributed electricity generation	<p>has the same meaning as in the Interpretation section of the National Policy Statement for Renewable Electricity Generation 2011 (as set out in the box below)</p> <div data-bbox="592 678 1378 790" style="border: 1px solid black; padding: 5px;"> <p>means renewable electricity generation for the purpose of using electricity on a particular site, or supplying an immediate community, or connecting into the distribution network</p> </div>
Social and cultural buildings	<p>For the purposes of the consequence table within APP6, these are buildings that are of social and cultural importance. These include:</p> <ul style="list-style-type: none"> (a) Places of worship; (b) Museums; (c) Art galleries; (d) Marae; and (e) Educational facilities
Solid fuel	<p>has the same meaning as in regulation 3 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (as set out in the box below)</p> <div data-bbox="592 1155 1378 1234" style="border: 1px solid black; padding: 5px;"> <p>means a solid substance that releases useable energy when burnt (for example, wood and coal)</p> </div>
Specified highly mobile fauna	<p>has the same meaning as in the Interpretation in the National Policy Statement for Indigenous Biodiversity 2023, except that reference to Appendix 2 is amended to APP12 (as set out in the box below):</p> <div data-bbox="592 1373 1378 1451" style="border: 1px solid black; padding: 5px;"> <p>means the <i>Threatened or At Risk species</i> of highly mobile fauna that are identified in APP12.</p> </div>
Specified infrastructure (in relation to indigenous biodiversity)	<p>has the same meaning as in the Interpretation section of the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below)</p> <div data-bbox="592 1547 1378 2020" style="border: 1px solid black; padding: 5px;"> <p>means any of the following:</p> <ul style="list-style-type: none"> (a) <i>infrastructure</i> 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) <i>infrastructure</i> 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 </div>

Term	Definition
	<p>Development 2020):</p> <p>(d) any public flood control, flood protection, or drainage works carried out:</p> <p>(i) by or on behalf of local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or</p> <p>(ii) for the purpose of drainage, by drainage districts under the Land Drainage Act 1908:</p> <p>(e) defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990.</p>
Specified rivers and lakes	<p>has the same meaning as in Appendix 3 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)</p> <p>means:</p> <p>(a) rivers that are fourth order or greater, using the methods outlined in the River Environment Classification System, National Institute of Water and Atmospheric Research, Version 1, and</p> <p>(b) lakes with a perimeter of 1.5km or more</p>
Stormwater	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <p>means run-off that has been intercepted, channelled, diverted, intensified or accelerated by human modification of a land surface, or run-off from the surface of any structure, as a result of precipitation and includes any contaminants contained within</p>
Structure	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <p>means any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft</p>
Structure plan	<p>means a framework to prescribe development of an area, including land use patterns, infrastructure, linkages and other key features and constraints that affect the development.</p>

Term	Definition
Subdivision	<p>has the same meaning as “subdivision of land” in section 218(1) of the Resource Management Act 1991 (as set out in the box below)</p> <div style="border: 1px solid black; padding: 5px;"> <p>means—</p> <p>(a) the division of an allotment—</p> <p style="padding-left: 20px;">(i) by an application to the Registrar-General of Land for the issue of a separate record of title for any part of the allotment; or</p> <p style="padding-left: 20px;">(ii) by the disposition by way of sale or offer for sale of the fee simple to part of the allotment; or</p> <p style="padding-left: 20px;">(iii) by a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or</p> <p style="padding-left: 20px;">(iv) by the grant of a company lease or cross lease in respect of any part of the allotment; or</p> <p style="padding-left: 20px;">(v) by the deposit of a unit plan, or an application to the Registrar-General of Land for the issue of a separate record of title for any part of a unit on a unit plan; or</p> <p>(b) an application to the Registrar-General of Land for the issue of a separate record of title in circumstances where the issue of that record of title is prohibited by section 226,—</p> <p>and the term subdivide land has a corresponding meaning</p> </div>
Surf break	<p>has the same meaning as in the Glossary in the New Zealand Coastal Policy Statement 2010 (as set out in the box below)</p> <div style="border: 1px solid black; padding: 5px;"> <p>A natural feature that is comprised of swell, currents, water levels, seabed morphology, and wind. The hydrodynamic character of the ocean (swell, currents and water levels) combines with seabed morphology and winds to give rise to a ‘surfable wave’. A surf break includes the ‘swell corridor’ through which the swell travels, and the morphology of the seabed of that wave corridor, through to the point where waves created by the swell dissipate and become non-surfable. ‘Swell corridor’ means the region offshore of a surf break where ocean swell travels and transforms to a ‘surfable wave’.</p> <p>‘Surfable wave’ means a wave that can be caught and ridden by a surfer. Surfable waves have a wave breaking point that peels along the unbroken wave crest so that the surfer is propelled laterally along the wave crest</p> </div>
Takata whenua or tangata whenua	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div style="border: 1px solid black; padding: 5px;"> <p>in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area</p> </div>

Term	Definition
Taxa	<p>has the same meaning as in the Glossary of the New Zealand Coastal Policy Statement 2010 (as set out in the box below)</p> <div data-bbox="587 331 1378 407" style="border: 1px solid black; padding: 5px;"> <p>Named biological classification units assigned to individuals or sets of species (eg species, subspecies, genus, order, variety)</p> </div>
Te Mana o te Wai	<p>has the same meaning as in clause 1.3 of the National Policy Statement for Freshwater Management 2020</p>
Territorial authority	<p>has the same meaning as in section 5 of the Local Government Act 2002 (as set out in the box below)</p> <div data-bbox="587 600 1378 676" style="border: 1px solid black; padding: 5px;"> <p>means a city council or a district council named in Part 2 of Schedule 2</p> </div>
Threatened or At Risk, and Threatened or At Risk (declining)	<p>has the same meaning as in the Interpretation section of the National Policy Statement for Indigenous Biodiversity 2023 (as set out in the box below);</p> <div data-bbox="587 779 1378 1025" style="border: 1px solid black; padding: 5px;"> <p>have, at any time, the meanings given in the New Zealand Threat Classification System Manual (Andrew J Townsend, Peter J de Lange, Clinton A J Duffy, Colin Miskelly, Janice Molloy and David A Norton, 2008. Science & Technical Publishing, Department of Conservation, Wellington), available at: https://www.doc.govt.nz/globalassets/documents/science-andtechnical/sap244.pdf, or its current successor publication</p> </div>
Urban area	<p>means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that is, or is intended to be, predominantly urban in character. This includes but is not limited to any land identified in District Plans as being within any urban growth boundary or equivalent however described, any residential zone, commercial and mixed use zone, industrial zone and future urban zone as listed in the National Planning Standards or its present District Plan zone equivalent. <i>Urban environments</i> are a subset of <i>urban areas</i>.</p>
Urban environment	<p>has the same meaning as in clause 1.4 of the National Policy Statement on Urban Development 2020 (as set out in the box below)</p> <div data-bbox="587 1395 1378 1641" style="border: 1px solid black; padding: 5px;"> <p>means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:</p> <ul style="list-style-type: none"> (a) is, or is intended to be, predominantly urban in character; and (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people </div>
Vulnerability	<p>means the conditions determined by physical, social, economic and environmental factors or processes which increase the susceptibility of an individual, a community, assets or systems to the impacts of hazards.</p>
Wāhi tūpuna	<p>means landscapes and places that embody the relationship of manawhenua and their culture and traditions with their ancestral lands, water, sites. wāhi tapu and other taoka.</p>

Term	Definition
Waste	<p>has the same meaning as in the Waste Minimisation Act 2008 (as set out in the box below)</p> <div data-bbox="592 331 1380 618" style="border: 1px solid black; padding: 5px;"> <ul style="list-style-type: none"> (a) means any thing disposed of or discarded; and (b) includes a type of <i>waste</i> that is defined by its composition or source (for example, <i>organic waste</i>, <i>electronic waste</i>, or <i>construction and demolition waste</i>); and (c) to avoid doubt, includes any component or element of diverted material, if the component or element is disposed of or discarded </div>
Wastewater	<p>has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)</p> <div data-bbox="592 712 1380 797" style="border: 1px solid black; padding: 5px;"> <p>means any combination of two or more the following wastes: sewage, greywater or industrial and trade waste</p> </div>
Water	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 898 1380 1122" style="border: 1px solid black; padding: 5px;"> <ul style="list-style-type: none"> (a) means water in all its physical forms whether flowing or not and whether over or under the ground: (b) includes fresh water, coastal water, and geothermal water: (c) does not include water in any form while in any pipe, tank, or cistern </div>
Water body	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 1227 1380 1346" style="border: 1px solid black; padding: 5px;"> <p>means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area</p> </div>
Well-functioning urban environments	<p>has the same meaning as in Policy 1 of the National Policy Statement on Urban Development 2020 (as set out in the box below)</p> <div data-bbox="592 1440 1380 2007" style="border: 1px solid black; padding: 5px;"> <p>well-functioning urban environments are urban environments that, as a minimum:</p> <ul style="list-style-type: none"> (a) Have or enable a variety of homes that: <ul style="list-style-type: none"> (i) meet the needs, in terms of type, price, and location, of different households; and (ii) enable Māori to express their cultural traditions and norms; and (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and (d) support, and limit as much as possible adverse impacts on, </div>

Term	Definition
	<p>the competitive operation of land and development markets; and</p> <p>(e) support reductions in greenhouse gas emissions; and</p> <p>(f) are resilient to the likely current and future effects of climate change</p>
Wetland	<p>has the same meaning as in section 2 of the Resource Management Act 1991 (as set out in the box below)</p> <div data-bbox="592 551 1378 658" style="border: 1px solid black; padding: 5px;"> <p>includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions</p> </div>
Wetland utility structure	<p>has the same meaning as in regulation 3 of the National Environmental Standard for Freshwater 2020 (as set out in the box below)</p> <div data-bbox="592 763 1369 1296" style="border: 1px solid black; padding: 5px;"> <p>(a) means a structure placed in or adjacent to a wetland whose purpose, in relation to the wetland, is recreation, education, conservation, restoration, or monitoring, and</p> <p>(b) for example, includes the following structures that are placed in or adjacent to a wetland for a purpose described in paragraph (a):</p> <ul style="list-style-type: none"> (i) jetties (ii) boardwalks and bridges connecting them, (iii) walking tracks and bridges connecting them, (iv) signs, (v) bird-watching hides, (vi) monitoring devices, (vii) maimai </div>
Wilding conifer	<p>has the same meaning as in regulation 3 of the Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017 (as set out in the box below)</p> <div data-bbox="592 1440 1378 1547" style="border: 1px solid black; padding: 5px;"> <p>means a self-established conifer species tree resulting from seed spread from plantation forestry, shelter belts, amenity planting, or an already established wilding conifer species tree population</p> </div>

Abbreviations

Abbreviation	Full Terms
Air Plan	Regional Plan: Air for Otago
CDC	Clutha District Council
CODC	Central Otago District Council
DCC	Dunedin City Council
FMU	Freshwater Management Unit
NESAQ	National Environmental Standards for Air Quality 2004
NESCS	National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011
NESETA	National Environmental Standard for Electricity Transmission Activities 2009
NESF	National Environmental Standards for Freshwater 2020
NESPF	National Environmental Standards for Plantation Forestry 2017
NESTF	National Environmental Standards for Telecommunication Facilities 2016
NOF	National Objectives Framework
NPS	National Policy Statement
NPSET	National Policy Statement on Electricity Transmission 2008
NPSFM	National Policy Statement for Freshwater Management 2020
NPSHPL	National Policy Statement for Highly Productive Land 2022
NPSREG	National Policy Statement for Renewable Electricity Generation 2011
NPSUD	National Policy Statement on Urban Development 2020
NTCSA	Ngāi Tahu Claims Settlement Act 1998
NZCPS	New Zealand Coastal Policy Statement 2010
ORC	Otago Regional Council
QLDC	Queenstown Lakes District Council
RPS	Regional Policy Statement
RMA	Resource Management Act 1991
SNA	Significant Natural Area
Waste Plan	Regional Plan: Waste for Otago
Water Plan	Regional Plan: Water for Otago
WDC	Waitaki District Council

National direction instruments

National policy statements and New Zealand Coastal Policy Statement

National Policy Statements	
<p>National policy statements (NPSs) and the New Zealand Coastal Policy Statement (NZCPS) form part of the Resource Management Act's policy framework and are prepared by central government. NPSs and the NZCPS contain objectives, policies and methods that must be given effect to by policy statements and plans. NPSs and the NZCPS must also be given regard to by consent authorities when making decisions on <i>resource consent</i> applications, alongside other considerations.</p> <p>The following table provides an overview of whether any relevant review/s of the Otago Regional Policy Statement has been undertaken in relation to NPSs and the NZCPS.</p>	
National Policy Statement on Electricity Transmission 2008	The policy statement has been reviewed in May 2021
New Zealand Coastal Policy Statement 2010	The policy statement has been reviewed in May 2021
National Policy Statement for Renewable Electricity Generation 2011	The policy statement has been reviewed in May 2021
National Policy Statement for Freshwater Management 2020	The policy statement has been reviewed in May 2021
National Policy Statement on Urban Development (2020)	The policy statement has been reviewed in May 2021

National environmental standards

National Environmental Standards
<p>National environmental standards (NESs) are prepared by central government and can prescribe technical standards, methods (including rules) and/or other requirements for environmental matters throughout the whole country or specific areas. If an activity doesn't comply with an NES, it is likely to require a <i>resource consent</i>. NESs must be observed and enforced by <i>local authorities</i>. The following relevant NESs are currently in force:</p> <ul style="list-style-type: none"> • Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (amended 2011) • Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 • Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 • Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 • Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016

- [Resource Management \(National Environmental Standard for Commercial Forestry\) Regulations 2017](#)
- [Resource Management \(National Environmental Standards for Freshwater\) Regulations 2020](#)
- [Resource Management \(National Environmental Standards for Marine Aquaculture\) Regulations 2020](#)

Regulations

Regulations

The regulations included in this chapter come under the Resource Management Act 1991 (excluding the national environmental standards listed above). These regulations are:

- [Resource Management \(Transitional, Fees, Rents, and Royalties\) Regulations 1991](#)
- [Resource Management \(Exemption\) Regulations 1996](#)
- [Resource Management \(Marine Pollution\) Regulations 1998](#)
- [Resource Management \(Infringement Offences\) Regulations 1999](#)
- [Resource Management \(Forms, Fees, and Procedure\) Regulations 2003](#)
- [Resource Management \(Discount on Administrative Charges\) Regulations 2010](#)
- [Resource Management \(Measurement and Reporting of Water Takes\) Regulations 2010](#)
- [Resource Management \(Network Utility Operations\) Regulations 2016](#)
- [Resource Management \(Exemption\) Regulations 2017.](#)
- [Resource Management \(Stock Exclusion\) Regulations 2020](#)

Water conservation orders

Water Conservation Orders

Regional policy statements, *regional plans* and *district plans* cannot be inconsistent with the provisions of a water conservation order. A water conservation order can prohibit or restrict a regional council issuing new water and discharge permits, although it cannot affect existing permits.

The following table provides an overview of whether any relevant review/s of the Otago Regional Policy Statement have been undertaken in relation to relevant water conservation orders.

Water Conservation (Kawarau) Order 1997	The policy statement has been reviewed in May 2021
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TOPICS

ECO – Ecosystems and indigenous *biodiversity*

Objectives

ECO–O1 – Indigenous *biodiversity*

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

ECO–O2 – Restoring and enhancing

Restoration and enhancement activities result in an overall increase in the extent and *occupancy* of Otago's *indigenous biodiversity*.

ECO–O3 – *Kaitiakitaka* and stewardship

Mana whenua exercise their role 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).

Policies

ECO–P1 – *Kaitiakitaka*

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

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

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
- (2) where appropriate, indigenous species and ecosystems that are taoka, including those identified by *mana whenua* as requiring protection, in accordance with ECO-M3.

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

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

- (1) first avoiding adverse *effects* that result in:
 - (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,
 - (b) any loss of taoka values identified by *mana whenua* as requiring protection under ECO-P2(2), and
- (2) after (1), applying the *effects management hierarchy (in relation to indigenous biodiversity)* 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-P6(2).

ECO-P4 – Provision for new activities

Outside of the coastal environment, maintain Otago’s indigenous *biodiversity* by following the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)* 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* 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* to enable *mana whenua* to maintain their connection to their whenua and enhance social, cultural or economic well-being,
- (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,
- (5) activities that are for the purpose of addressing a severe 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.

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*.

ECO-P6 – Maintaining indigenous *biodiversity*

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

- (1) applying the *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.

ECO–P7 – Coastal indigenous *biodiversity*

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.

ECO–P8 – Restoration and 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, ecosystem function, and *intrinsic values*,
- (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*.

ECO–P10 – Integrated approach

Manage *indigenous biodiversity* and the *effects* on it from subdivision, use and development in an integrated way, which means:

- (1) ensuring any permitted or controlled activity in a *regional plan* or *district plan* rule does not compromise the achievement of ECO-O1,
- (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,
- (4) working towards aligning strategies and other planning tools required or provided for in legislation that are relevant to *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.

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.

Methods

ECO-M1 – Statement of responsibilities

In accordance with section 62(1)(i)(iii) of the RMA 1991, the *local authorities* responsible for the control of *land* use to maintain *indigenous biological diversity* are:

- (1) the Regional Council and *territorial authorities* are responsible for specifying objectives, policies and methods in *regional* and *district plans* for managing the margins of *wetlands, rivers* and *lakes*,
- (2) the Regional Council is responsible for specifying objectives, policies and methods in *regional plans*:
 - (a) in the *coastal marine area*,
 - (b) in *wetlands, lakes* and *rivers*, and
 - (c) in, on or under the *beds* of *rivers* and *lakes*,
- (3) in addition to (1), *territorial authorities* are responsible for specifying objectives, policies and methods in *district plans* outside of the areas listed in (2) above if they are not managed by the

Regional Council under (4), and

- (4) the Regional Council may be responsible for specifying objectives, policies and methods in *regional plans* outside of the areas listed (1) above if:
 - (a) the Regional Council reaches agreement with the relevant *territorial authority* or *territorial authorities*, and
 - (b) if applicable, a transfer of powers in accordance with section 33 of the RMA 1991 occurs from the relevant *territorial authority* or *territorial authorities* to the Regional Council.

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,
- (3A) 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 plans* and *district plans*, and
- (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)
 - (a) intermontane basins that contain *indigenous* vegetation and habitats,
 - (b) areas of dryland shrubs,
 - (c) braided *rivers*, including the Makarore, 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.

ECO–M3 – Identification of taoka

Local authorities must:

- (1) work together with *mana whenua* to agree a process for:
 - (a) identifying indigenous species and ecosystems that are taoka, including those identified by *mana whenua* as requiring protection, and how they are values with reference to mātauraka Māori,

- (b) describing the taoka identified in (1)(a),
 - (c) mapping or describing the location of the taoka identified in (1)(a), and
 - (d) describing the values of each taoka identified in (1)(a), and
- (2) notwithstanding (1), recognise that *mana whenua* have the right to choose not to identify taoka and to choose the level of detail at which identified taoka, or their location or values, are described, and
 - (3) to the extent agreed by *mana whenua*, amend their *regional* and *district plans* to include matters (1)(b) to (1)(d) above, and
 - (4) recognise that the possible adverse *effects* on identified *taoka* include *effects* on:
 - (a) the mauri of the *taoka*,
 - (b) the values of the *taoka* as identified by *mana whenua*
 - (c) the historical, cultural, and spiritual relationship of the tangata whenua with the *taoka*, as identified by *mana whenua*, and
 - (5) notify the relevant landowner of the present of the *taoka* prior to identifying acknowledged *taoka* in a proposed *district plan*.

ECO–M4 – Regional plans

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

- (1) if the requirements of ECO–P3 to ECO–P6 can be met, provide for the use of *lakes* and *rivers* and their *beds*, including:
 - (a) activities undertaken for the purposes of pest control or maintaining or enhancing the habitats of indigenous fauna, and
 - (b) the maintenance and use of existing *structures* that are lawfully established (including *infrastructure*), and
 - (c) *infrastructure* that has a *functional need* or *operational need* to be sited or operated in a particular location,
- (1A) manage the clearance or modification of *indigenous vegetation*, while allowing for *mahika kai* and kaimoana (seafood) activities (including through the development, in partnership with *mana whenua*, of provisions for *mahika kai* and kaimoana activities that may provide an alternative approach to effects management than the policies in this ECO chapter,
- (2) require:
 - (a) resource consent applications to include information that demonstrates that the sequential steps in the effects management hierarchy (*in relation to indigenous biodiversity*) have been followed, and
 - (b) that consents are not granted if the sequential steps in the effects management hierarchy (*in relation to indigenous biodiversity*) in ECO–P6 have not been followed, and
- (3) provide for activities undertaken for the purpose of restoring or enhancing the habitats of indigenous fauna.

ECO – M4A – Increasing indigenous vegetation cover

Otago Regional Council must:

- (1) assess the percentage of indigenous vegetation cover in
 - (a) each of its urban environments; and
 - (b) its non-urban environments
- (2) the assessment may be done by a desktop analysis, by ground truthing, or both, and must be done in collaboration with relevant territorial authorities, and *mana whenua* (to the extent they wish to be involved),
- (3) set a target of at least 10% indigenous vegetation cover for any urban or non-urban environment that has less than 10% cover of indigenous vegetation, and
 - (a) consider, in consultation with *mana whenua* and territorial authorities, setting higher targets for urban and non-urban environments that already have at least 10% coverage of indigenous vegetation, and
 - (b) include any indigenous vegetation cover targets in their regional policy statements.

Local authorities must:

- (4) promote the increase of indigenous vegetation cover in their regions and districts through objectives, policies, and methods in their policy statements and plans:
 - (a) having regard to any targets set under ECO-M4A(3); and
 - (b) giving priority to all the following:
 - i. areas referred to in ECO-P8(4):
 - ii. ensuring *indigenous species* richness appropriate to the ecosystem:
 - iii. *restoration* at a landscape scale across the region; and
 - iv. using species, and seed from species, that are local to the area.

ECO – M4B – Specified highly mobile fauna

Local authorities must:

- (1) include objectives, policies, or methods in their policy statements and plans for managing the adverse effects of new subdivision, use, and development on highly mobile fauna areas, in order to maintain viable populations of specified highly mobile fauna across their natural range.
- (2) provide information to their communities about:
 - (a) highly mobile fauna and their *habitats*; and
 - (b) best practice techniques for managing adverse effects on any specified highly mobile fauna and their *habitats* in their regions and districts.

ECO – M4C – Maintenance of improved pasture for farming

Local authorities must:

- (1) allow the *maintenance of improved pasture* to continue if:

- (a) there is adequate evidence to demonstrate that the *maintenance of improved pasture* is part of a regular cycle of periodic maintenance of that pasture; and
- (b) any adverse effects of the *maintenance of improved pasture* on a *significant natural area* are no greater in intensity, scale, or character than the effects of activities previously undertaken as part of the regular cycle of periodic maintenance of that pasture; and
- (c) the *improved pasture* has not itself become an *significant natural area*; and
- (d) the land is not an uncultivated *Depositional landform*; and
- (e) the maintenance of *improved pasture* will not adversely affect a *Threatened or At Risk (declining) species*.

ECO – M4D – Native reserves and Māori land

Local authorities must:

- (1) work in partnership (which includes acting in good faith) with *mana whenua* and owners of native reserves and Māori land to develop, and include in *district plans* and *regional plans* objectives, policies, and methods that may include providing an alternative approach to effects management for indigenous biodiversity than the policies in this ECO chapter (excluding CE-P5). These objectives, policies and methods will seek, to the extent practicable to,:
 - (a) maintain and restore indigenous biodiversity on native reserves and Māori land, and
 - (b) protect *significant natural areas* and identified *taoka* on native reserves and Māori land, and
- (2) ensure that objectives, policies, and methods developed under (6):
 - (a) enable new occupation, use, and development of nature reserves and Māori land to support the social, cultural, and economic wellbeing of *mana whenua*, and
 - (b) enable the provision of new *papakāika*, marae and ancillary community facilities, dwellings, and associated infrastructure, and
 - (c) enable alternative approaches to, or locations for, new occupation, use and development that avoid, minimise, or remedy adverse *effects* on *significant natural areas* and identified *taoka* on native reserves and Māori land, and enable options for offsetting and compensation, and
 - (d) recognise and be responsible to the fact there may be no or limited alternative location for *mana whenua* to occupy, use, and develop their lands, and
 - (e) recognise that there are circumstances where development will prevail over *indigenous biodiversity*, and
 - (f) recognise and be responsive to any recognised historical barriers *mana whenua* have faced in occupying, using, and developing their ancestral lands.

ECO–M5 – District plans

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

- (1) if the requirements of ECO–P3 to ECO–P6 are met, provide for the use of *land* and the surface of *water bodies* including:

- (a) activities undertaken for the purposes of pest control or maintaining or enhancing the habitats of indigenous fauna, and
 - (b) the maintenance and use of existing *structures* (including *infrastructure*), and
 - (c) *infrastructure* that has a *functional* or *operational need* to be sited or operated in a particular location,
- (2) manage the clearance or modification of indigenous vegetation, while allowing for *mahika kai* activities (including through the development, in partnership with *mana whenua*, of provisions for *mahika kai* activities that may provide an alternative approach to effects management than the policies in this ECO chapter),
- (3) promote the establishment of *esplanade reserves* and *esplanade strips*, particularly where they would support ecological corridors, buffering or connectivity between *significant natural areas*, or access to *mahika kai*,
- (4) require:
- (a) resource consent applications to include information that demonstrates that the sequential steps in the effects management hierarchy (*in relation to indigenous biodiversity*) have been followed, and
 - (b) that consents are not granted if the sequential steps in the effects management hierarchy (*in relation to indigenous biodiversity*) have not been followed, and
- (5) provide for activities undertaken for the purpose of restoring or enhancing the habitats of indigenous fauna, and
- (7) require buffer zones adjacent to *significant natural areas* where it is necessary to protect the *significant natural area*.

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*.

ECO – M7A – Kāi Tahu kaitiakitaka

Local authorities must partner with Kāi Tahu in the management of *indigenous biodiversity* to the extent desired by *mana whenua*, including by:

- (1) ensuring that engagement with *mana whenua* is early, meaningful, and in accordance with tikanga Māori,
- (2) actively supporting the role of *mana whenua* as kaitiaki,

- (3) facilitating opportunities for *mana whenua* to be involved in resource management (including decision-making),
- (4) enabling the *mahika kai* practices of *mana whenua* in accordance with tikaka, including the customary use of identified taoka,
- (5) supporting *mana whenua* initiatives that contribute to restoring or enhancing te hauora o te kaiora (the health of *indigenous biodiversity*),
- (6) where appropriate, incorporating Kāi Tahu mātauraka and tikaka in *indigenous biodiversity* management and monitoring, and
- (7) providing relevant information to *mana whenua* for the purposes of *indigenous biodiversity* management and monitoring.

ECO – M7B – Information requirements

Local authorities must:

- (1) require that, in relation to an application for a resource consent for an activity that would have more than minor adverse effects on *indigenous biodiversity*, the application is not considered unless it includes a report that:
 - (a) is prepared by a suitably qualified ecologist and, as required, any other person with suitable expertise, such as someone with expertise in mātauraka Māori; and
 - (b) complies with subclause (2); and
 - (c) is commensurate with the scale and significance (to *indigenous biodiversity*) of the proposal.
- (2) the report required within ECO-M2(4A) above must:
 - (a) include a description of the existing ecological features and values of the site; and
 - (b) include a description of the adverse effects of the proposal on *indigenous biodiversity* and how those effects will be managed; and
 - (c) identify any effects on identified taoka; and
 - (d) identify the ecosystem services associated with *indigenous biodiversity* at the site; and
 - (e) include an assessment of the ecological integrity and connectivity within and beyond the site; and
 - (f) include mātauraka Māori and tikaka Māori assessment methodology, where relevant; and
 - (g) if *biodiversity offsetting* is proposed, set out:
 - (i) a detailed plan of what is proposed, including a quantified loss and gain calculation, the currency used in the calculation, and the data that informs the calculation and plan; and
 - (ii) a description of how the relevant principles in APP4 have been addressed; and
 - (iii) an assessment of the likely success of the plan in achieving a net gain in biodiversity values; and

- (h) if *biodiversity compensation* is proposed, set out:
- (i) a detailed plan of what is proposed; and
 - (ii) a description of how the relevant principles in Appendix 4 of this National Policy Statement have been addressed; and
 - (iii) an assessment of the likely success of the plan in achieving its outcomes.

ECO–M7 – Monitoring

Local authorities will:

- (1) establish long-term monitoring programmes for areas identified under ECO-P2 that measure the net loss and gain of indigenous *biodiversity*,
- (2) record information (including data) over time about the state of species, vegetation types and ecosystems, including *mahika kai* species and ecosystems,
- (3) to the extent possible, use mātauraka Māori and tikaka Māori monitoring methods, as well as scientific monitoring methods, and
- (4) regularly report on matters in (1) and (2) and publish these reports.

ECO–M8 – Other incentives and mechanisms

Local authorities are encouraged to consider the use of other mechanisms or incentives to assist in achieving Policies ECO–P1 to ECO–P10, including:

- (1) providing information and guidance on the maintenance, restoration and enhancement of indigenous ecosystems, habitats, taoka and *mahika kai* species and ecosystems,
- (2) funding assistance for restoration projects (for example, through Otago Regional Council’s ECO Fund),
- (3) supporting the control of pest plants and animals, including through the provision of advice and education and implementing regulatory programmes such as the Regional Pest Management Plan,
- (4) financial incentives,
- (5) covenants to protect areas of indigenous *biodiversity*, including through the QEII National Trust,
- (6) advocating for a collaborative approach between central and local government to fund indigenous *biodiversity* maintenance and enhancement, and
- (7) gathering information on indigenous ecosystems, habitats, and taoka and *mahika kai* species and ecosystems, including outside *significant natural areas*.

ECO – M9 – Regional Biodiversity Strategy

The Regional Council must initiate preparation of a regional biodiversity strategy that complies with Appendix 5 of the National Policy Statement for Indigenous Biodiversity 2023.

Explanation

ECO–E1 – Explanation

The first policy in this chapter outlines how the kaitiaki role of Kāi Tahu will be recognised in Otago. The policies which follow then set out a management regime for identifying *significant natural areas* and indigenous species and ecosystems that are taoka and protecting them by avoiding particular adverse effects on them. The policies recognise that these restrictions may be unduly restrictive for some activities within *significant natural areas*, including existing activities already established. To maintain ecosystems and indigenous *biodiversity*, the policies set out mandatory and sequential steps in an effects management hierarchy to be implemented through decision making, including providing for *biodiversity* offsetting and compensation if certain criteria are met.

Although the objectives of this chapter apply within the coastal environment, the specific management approach for *biodiversity* is contained in the CE – Coastal environment chapter. Given the *biodiversity* loss that has occurred in Otago historically, restoration or enhancement will play a part in achieving the objectives of this chapter and these activities are promoted.

The policies recognise that managing ecosystems and indigenous *biodiversity* requires co-ordination across different areas and types of resources, as well as across organisations, communities and individual landowners. This articulates the stewardship role of all people and communities in Otago in respect of indigenous *biodiversity*.

Principal reasons

ECO–PR1 – Principal reasons

The health of New Zealand’s *indigenous biodiversity* has declined significantly since the arrival of humans and remains under significant pressure. *Mahika kai* and taoka species, including their abundance, have been damaged or lost through resource use, *land* use change and development in Otago. The provisions in this chapter seek to address this loss and pressure through providing direction on how *indigenous biodiversity* is to be managed.

The provisions in this chapter assist in maintaining, protecting and restoring *indigenous biodiversity* by:

- stating the outcomes sought for ecosystems and *indigenous biodiversity* in Otago,
- requiring identification and protection of *significant natural areas* and indigenous species and ecosystems that are taoka, and
- directing how *indigenous biodiversity* is to be maintained.

This chapter will assist with achieving the outcomes sought by *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*. Implementation of the provisions in this chapter will occur primarily through *regional plan* and *district plan* provisions, however *local authorities* may also choose to adopt additional non-regulatory methods to support the achievement of the objectives.

Anticipated environmental results

ECO–AER1

There is no further decline in the condition, quantity or diversity of Otago’s indigenous *biodiversity*.

ECO–AER2

The condition, 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*.

EIT – Energy, infrastructure and transport

Note to reader: This Chapter of the PORPS has been re-ordered compared to the Notified version under clause 16(2), Schedule 1, RMA.

EIT-INF – Infrastructure

Objectives

EIT-INF-04 – Provision of *infrastructure*

Effective, efficient, safe and resilient *infrastructure*, *nationally significant infrastructure* and *regionally significant infrastructure* enables the people and communities to provide for their social and cultural well-being, their health and safety, and supports sustainable economic development and growth in the region.

EIT-INF-05 – Integration

Development of *infrastructure*, as well as *land* use change, occurs in a co-ordinated manner to minimise adverse *effects* on the *environment* and increase efficiency in the delivery, operation and use of the *infrastructure*.

Policies

EIT-INF-P10 – Recognising resource requirements

Decision making on the allocation or use of *natural and physical resources* must take into account the *functional needs* and *operational needs* of *nationally significant infrastructure* and *regionally significant infrastructure*.

EIT-INF-P12 – Upgrades and development

Provide for upgrades to existing, and development of new, *nationally significant infrastructure* or *regionally significant infrastructure* while ensuring that:

- (1) it is designed and located, as far as practicable, to maintain functionality during and after *natural hazard* events,
- (2) it is, as far as practicable, co-ordinated with long-term *land* use planning, and
- (3) its delivery, operation or use is efficient.

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) *wetlands*,
 - (d) *outstanding water bodies*,
 - (f) areas or places of significant or outstanding *historic heritage*, and
 - (g) *wāhi tupuna*, and
- (2) if it is not 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* or *regionally significant infrastructure*:
 - (i) in *significant natural areas*, in accordance with ECO-P4, and ECO-P6,
 - (ii) in *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, the adverse *effects* of the *infrastructure* on the values that contribute to the area's importance 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-P13A – Managing the effects of *infrastructure*, *nationally significant infrastructure* and *regionally significant infrastructure* within the coastal environment

When managing the *effects* of *infrastructure*, *nationally significant infrastructure* and *regionally significant infrastructure* within the coastal environment the provisions of the CE – Coastal environment chapter apply.

EIT-INF-P14 – Decision making considerations

When considering proposals to develop or upgrade *infrastructure*:

- (1) require consideration of alternative sites, methods and designs if adverse *effects* are potentially significant or irreversible, and
- (2) utilise the opportunity of substantial upgrades of *infrastructure* to reduce adverse *effects* that result from the existing *infrastructure*, including on *sensitive activities*, where appropriate.

EIT-INF-P15 – Protecting *nationally significant infrastructure* and *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-INF-P17 – Urban growth and *infrastructure*

Provide for *development infrastructure* and *additional infrastructure* required to service existing, planned and expected urban growth demands in the short, medium and long term, taking in account UFD-P1 to UFD-P10.

Methods

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

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 *infrastructure*, *nationally significant infrastructure* or *regionally significant infrastructure*,
- (4) manage the *subdivision*, use and development of *land* to ensure *infrastructure*, *nationally significant infrastructure* or *regionally significant infrastructure* can develop to meet increased demand,
- (5) manage the adverse *effects* of developing, operating, maintaining, or upgrading *infrastructure*, *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 adequately served with *infrastructure*,

EIT-INF-M6 – Advocacy

Local authorities should work proactively with *infrastructure* providers to co-ordinate the upgrading or development of *nationally significant infrastructure* or *regionally significant infrastructure* to support co-location or concurrent construction to reduce adverse *effects*.

Explanation

EIT-INF-E2 – Explanation

The policies in this section recognise the critical importance of *infrastructure* to communities and provide for the continued operation of existing *infrastructure* and the development of upgraded or new *infrastructure* where adverse *effects* are managed. As many assets rely on particular resource requirements or specific locations, decisions on allocating *natural and physical resources* shall make provision for the *functional needs* or *operational needs* of *nationally significant infrastructure* and *regionally significant infrastructure*. For *infrastructure* in the coastal environment, the provisions of the CE – Coastal environment chapter are also applicable to ensure the NZCPS is given effect.

Given the potential magnitude of adverse *effects* associated with this *infrastructure*, consideration is required of the ability to remedy or mitigate unavoidable adverse *effects*, alternative options and offsetting or compensation.

To ensure *infrastructure* is planned for, and used efficiently, the provisions require that the benefits of existing *nationally significant infrastructure* and *regionally significant infrastructure* are maximised, and *infrastructure* provision is undertaken in a co-ordinated manner. The policies also seek to manage the potential adverse *effects* of other activities on *nationally significant infrastructure* and *regionally significant infrastructure* to ensure the ability to operate these assets is not compromised.

Principal reasons

EIT-INF-PR2 – Principal reasons

Infrastructure is fundamental to the health and safety of communities, and their social and economic well-being and functioning. The nature of *infrastructure* means there are typically operational and functional constraints which dictate where and how these activities operate to properly serve local communities. These types of assets also tend to require significant investment, although some have at times been subject to under-investment.

The scale and type of activities involved in the development, operation, maintenance, and upgrading of *infrastructure* are such that adverse *effects* on the *environment* are likely and, at times, significant. Efforts are required to reduce impacts from *infrastructure*, by avoiding its location in areas that are important to Otago, where this is practicable, particularly where alternatives are available. If it is necessary to locate in those areas, then it is necessary that the values that make those areas important are protected. There are instances however, when residual *effects* cannot be avoided, in which case *effects* should be remedied or mitigated and offsetting or compensation may be necessary if it meets any criteria set. Given the potential

for adverse *effects*, it is important that *local authorities* monitor and enforce the standards set in plans and on *resource consents* and designations.

The policies in this chapter give effect to the NPSREG, NPSET, NPSFM and NPSUD and recognise *infrastructure* that has benefits for the wider Otago region and nationally. Implementation of the provisions will occur through the *regional* and *district plan* provisions.

Anticipated environmental results

- | | |
|---------------------|---|
| EIT-INF-AER5 | <i>Infrastructure</i> provides safe, effective and efficient services to the Otago community and beyond. |
| EIT-INF-AER6 | The provision of <i>infrastructure</i> is co-ordinated and integrated to service growth efficiently. |
| EIT-INF-AER7 | <i>Nationally</i> and <i>regionally significant infrastructure</i> is protected from adverse effects, including reverse sensitivity <i>effects</i> caused by incompatible activities. |
| EIT-INF-AER8 | The adverse <i>effects</i> associated with <i>infrastructure</i> are avoided to the extent practicable or are minimised. |

EIT-EN – Energy

Note to readers: As a result of recommendations made by the reporting officer through supplementary evidence, some provisions in this chapter have been re-ordered and others have been moved from other chapters. The notified numbering has been retained as an interim measure while the hearing on these provisions occurs so that it is easier for submission points to be read alongside the chapter. The numbering of this chapter will be made chronological following a final decision by Council.

Objectives

EIT-EN-O1 – Energy and social and economic well-being

The health and wellbeing of Otago’s communities and economy are supported by renewable energy generation within the region that is safe, secure, and *resilient*.

EIT-EN-O3 – Energy use

Development is located and designed to facilitate the efficient use of energy and to reduce demand if possible, minimising the contribution that Otago makes to total *greenhouse gas* emissions.

EIT-EN-O2A – Greenhouse gas emissions and renewable energy targets

Otago’s renewable energy generation supports the overall reduction in New Zealand greenhouse gas emissions and achieving the national target for emissions reduction.

EIT-EN-O2 – Renewable electricity generation

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

- (1) is protected and maintained and, where appropriate, increased, and
- (2) contributes to meeting New Zealand’s national target for *renewable electricity generation*.

EIT-INF-O6 – Long-term planning for the National Grid and distribution infrastructure

Long-term investment in, and planning for, electricity transmission *infrastructure*, and its integration with *land* use, is sustained.

Policies

EIT-EN-P1 – Operation, maintenance and upgrade

The operation, maintenance, and upgrade of existing *renewable electricity generation activities* is provided for including the maintenance of generation output and protection of operational capacity.

EIT-EN-P2 – Recognising renewable electricity generation activities in decision making

Decisions on the allocation and use of *natural and physical resources*, including the use of *fresh water* and development of *land*:

- (1) recognise the national significance of *renewable electricity generation activities*, including the national, regional and local benefits of *renewable electricity generation activities*,

- (2) have particular regard to the maintenance of current *renewable electricity generation* capacity, and
- (3) recognise that the attainment of increases in *renewable electricity generation* capacity will require significant development of *renewable electricity generation activities*.

EIT-EN-P3 –The security of renewable electricity generation 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*.

EIT-EN-P5 – Non-renewable energy generation

In relation to non-renewable energy generation:

- (1) except as provided for in (2) below, 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.

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 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-P7 – Reverse sensitivity

Activities that may result in reverse sensitivity *effects* on consented or existing *renewable electricity generation activities* or compromise the operation or maintenance of *renewable electricity generation activities* are, as the first priority, prevented from establishing and only if that is not reasonably practicable, managed so that reverse sensitivity *effects* are minimised.

EIT-EN-P8 – Small and community scale distributed electricity generation

Provide for *small and community scale distributed electricity generation activities* that increase the local community's *resilience* and security of energy supply.

EIT-EN-P9 – Energy conservation and efficiency

Development supports energy conservation and efficiency by designing subdivisions to maximise solar access, and locating subdivision development to minimise, as far as practicable, transportation costs, car dependency and *greenhouse gas* emissions.

EIT-EN-P16 – Providing for 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 *National Grid* in its management,
- (4) enabling the reasonable operation, maintenance and minor upgrade requirements of established *National Grid* assets, and
- (5) minimising the adverse *effects* of the *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.

EIT-EN-P9A – Providing for electricity distribution

Recognise and provide for electricity distribution infrastructure, by all of the following:

- (1) recognising the functional needs of electricity distribution activities;
- (2) restricting the establishment of activities that may result in reverse sensitivity effects;
- (3) avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure;
- (4) minimising adverse effects of new and upgraded electricity distribution infrastructure on existing land uses;
- (5) identifying significant electricity distribution infrastructure and managing effects of potentially incompatible activities through methods such as corridors.

Methods

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*,
- (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, and
- (5) restrict the establishment of activities that may adversely affect the efficient functioning of *renewable electricity generation activities* (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*,
- (3) manage the adverse *effects* of developing or upgrading *renewable electricity generation activities* and *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), and
- (6) require the design of *subdivision* development to optimise solar gain, including through roading, lot size, dimensions, layout and orientation.

EIT-EN-M3 – Education and information

- (1) *Local authorities* must provide education and information to improve energy efficiency and provide for the adoption of renewable energy sources, including:
 - (a) ways to increase energy efficiency and energy conservation, and
 - (b) opportunities for *small and community scale distributed electricity generation*.
- (2) *Territorial authorities* must provide information on design techniques to optimise solar gain, including through roading, lot size, dimensions, layout, and orientation.

Explanation

EIT-EN-E1 – Explanation

The policies in this section are designed to set a clear preference for *renewable electricity generation activities* contributing to meeting New Zealand’s national target for *renewable electricity generation*. *Renewable electricity generation* is a matter of national importance and a key component in responding to climate change and energy demands. Increasing energy security will assist with ensuring that communities have options for clean heat and electricity for health and wellbeing services.

Renewable electricity generation activities are promoted by providing for the investigation, operation and maintenance of these sites and ensuring that decisions on allocating natural resources and the use of *land*, for example, recognise the benefits of *renewable electricity generation activities* arising from maintaining or increasing generation capacity. It is noted that *renewable electricity generation activities* will come within the definition of *infrastructure*, and that provisions relating to *infrastructure* also apply.

The potential magnitude of adverse *effects* and *functional needs* and *operational needs* associated with *renewable electricity generation activities* is recognised by requiring consideration of those needs, and the extent to which unavoidable *effects* can be remedied or mitigated. Where significant residual adverse *effects* remain, consideration is given to proposals to offset these, or compensate for them. Increasing energy security will assist with ensuring that communities have options for clean heat.

To ensure the on-going functionality of *renewable electricity generation* assets and to maximise their benefits, reverse sensitivity *effects* or activities that may compromise the operation or maintenance of *renewable electricity generation activities* are to be avoided or their impacts minimised.

The policies seek that energy use is efficient and energy waste is reduced, which will have consequential *effects* on minimising Otago’s contribution to the nation’s *greenhouse gas* emissions.

In addition, the policies also contain relevant considerations for the transmission of electricity, both in terms of the *National Grid, significant electricity distribution infrastructure* and other electricity transmission and distribution activities.

Principal reasons

EIT-EN-PR1 – Principal reasons

Energy is a basic requirement of life in Otago. It enables communities to provide for their well-being, and health and safety, and is essential to the regional economy. Everyday life is significantly affected when energy supply is disrupted. Therefore, ensuring the security of energy supplies that meet demand is crucial. The ability of existing energy generation activities to continue operating is dependent on access to resources such as *water* in hydro *lakes* and the operator's ability to maintain existing *infrastructure*.

Otago is fortunate to have several existing *renewable electricity generation* sites and potential to increase *renewable electricity generation*. The benefits of *renewable electricity generation* include reducing *greenhouse gas* emissions, dependence on imported energy and greater supply security. These benefits are afforded to Otago communities and nationally as exported energy is significant for other regions. Because of this, providing for new *renewable electricity generation* opportunities to meet increasing energy demand is necessary. Additionally, addressing inefficiencies in energy use can ensure that existing *infrastructure* is better utilised to reduce the need for new generation sites.

Renewable electricity generation facilities can cause significant adverse *effects* on the environment because of their *functional need* to locate in particular areas. These areas are where resources are available, for example *water* for hydro-electricity generation, but they may also contain other significant values such as outstanding natural features or landscapes, significant *indigenous vegetation* or sites of significance to *mana whenua* values. In some situations, it may not be possible to avoid adverse *effects* on these significant values after considering alternative sites or design options. In these circumstances the *effects* should be remedied or mitigated, and consideration should be given to whether those *effects* that cannot be avoided are offset or compensated.

In relation to the *National Grid* and *significant electricity distribution infrastructure* (which are both a subset of infrastructure), specific provision is made which recognises some of the operational and functional constraints for conveying electricity, as well as addressing matters that are required to be given effect to by the NPSET.

The provisions in this chapter assist in giving effect to the NPSREG, NPSET and NPSFM and implementing section 7(j) of the RMA 1991. Implementation of the provisions will occur primarily through *regional plans* and *district plan* provisions but regional, city and district councils also have a role in providing education and information to the community.

Anticipated environmental results

- | | |
|--------------------|---|
| EIT-EN-AER1 | The proportion of electricity generated by <i>renewable energy generation activities</i> (including <i>small and community scale distributed electricity generation</i>) in Otago increases over time. |
| EIT-EN-AER2 | Energy use in Otago becomes more efficient over time and security of supply is maintained. |
| EIT-EN-AER3 | The adverse <i>effects</i> associated with <i>renewable energy generation activities</i> are avoided, remedied or mitigated, or where appropriate, offset or compensated |

EIT-EN-AER4

for.

The proportion of *greenhouse gas* emissions per capita from energy generation reduces over time.

EIT-TRAN – Transport

Objectives

EIT-TRAN-07 – Effective, efficient, and safe transport

Otago has an integrated air, *land* and water-based transport network that:

- (1) is effective, efficient and safe,
- (2) connects communities and their activities within Otago, with other regions, and internationally, and
- (3) is *resilient* to *natural hazards* and the effects of climate change, and the changing needs of communities.

EIT-TRAN-08 – Transport system

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-09 – Effects of the transport system

The contribution of transport to Otago's *greenhouse gas* emissions is reduced and communities are less reliant on fossil fuels for transportation.

EIT-TRAN-010 – Commercial port activities

Commercial port activities operate safely and efficiently.

Policies

EIT-TRAN-P18 – Integration of the transport system

The transport system contributes to the social, cultural and economic well-being of the people and communities of Otago through:

- (1) integration with *land* use activities and across transport modes, and
- (2) provision of transport *infrastructure* that enables safe and efficient service delivery in response to demand.

EIT-TRAN-P19 – Transport system design

Resilience and adaptability of the transport system supports efficient networks for the transport of people and goods that are sustained, improved, and responsive to growth by:

- (1) promoting a consolidated urban form that integrates *land* use activities with the transport system,
- (2) placing a high priority on *active transport* and *public transport* and their integration into the design of development and transport networks, and
- (3) encouraging regional connectivity, including to key visitor destinations, and improved access to public spaces, including the *coastal marine area*, *lakes* and *rivers*.

EIT–TRAN–P20 – Public transport

Maintenance and development of the transport system enhances the uptake of *public transport* by:

- (1) promoting safe and reliable alternatives to low occupancy private vehicle use,
- (2) including measures to ensure pedestrian and cyclist safety and amenity, and
- (3) taking into consideration the accessibility needs of the community.

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.

EIT–TRAN–P22 – Sustainable transportation

Enable the development of sustainable transport networks that enhance the uptake of new technologies and reduce reliance on fossil fuels throughout Otago.

EIT–TRAN–P23 – Commercial port activities

Recognise the national and regional significance of *commercial port activities* by:

- (1) providing for the efficient and safe operation of the ports and efficient connections with other transport modes,
- (2) providing for the development of the ports' capacity for national and international shipping in and adjacent to existing port activities,
- (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*.

Methods

EIT–TRAN–M7 – Regional plans

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

- (1) provide for the development, operation, maintenance, or upgrade of the transport system that:
 - (a) is within the *beds of lakes and rivers* or the *coastal marine area*, or
 - (b) involves the taking, use, damming or diversion of *water* and *discharge of water* and *contaminants*,
- (2) include policies and methods that provide for the *commercial port activities*, and
- (3) facilitate the safe and efficient operation and development of *commercial port activities* including previously approved *resource consents* for the following activities in the coastal development area mapped in MAP2:
 - (a) dredging of Otago lower harbour (to 17.5m for entrance channel, and 14.5m through to Port Chalmers),
 - (b) dredging of Otago upper harbour to 10.5m,
 - (c) management of upper and lower harbour navigation beacons,
 - (d) *discharge* of dredging spoil to the disposal grounds at Heyward Point, Aramoana, Shelley Beach, and A0, and
 - (e) placement and use of scientific buoys.

EIT–TRAN–M8 – District plans

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

- (1) require a strategic approach to the integration of the transport system with *land* uses and between modes,
- (2) require high trip generating activities to be integrated with public transport services where sufficient public transport services exist or are planned and provide for safe pedestrian and cycling access, where this is practicable,
- (3) include *subdivision* and *infrastructure* design standards to facilitate the use of travel modes other than private vehicles, enable public transport networks to operate where this is practicable, provide access for emergency services, and recognise the accessibility needs of the community, including the mobility impaired, the elderly and children,
- (3A) require the design of transport *infrastructure* to provide 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.
- (4) restrict or prevent the establishment or expansion of activities adjacent to transport *infrastructure* that may compromise the operation or safety of the transport system,
- (5) provide for the establishment of transport *infrastructure* that supports modes of transport that are not reliant on fossil fuels, and
- (6) include policies and methods that provide for *commercial port* activities and avoid encroachment

of activities which give rise to reverse sensitivity *effects*.

- (7) require the design of transport *infrastructure* to provide 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.

EIT–TRAN–M9 – Regional Land Transport Plan

Otago Regional Council will take into account the objectives, provisions and methods of this chapter in preparing its Regional Land Transport Plan and Regional Public Transport Plan.

Explanation

EIT–TRAN–E3 – Explanation

The policies in this section seek to ensure that transport *infrastructure* is well designed and functions effectively, including providing for accessibility for different modes and purposes. This includes managing potential *effects* of other activities on the transport system and ensuring strategic decision making in the provision of transport *infrastructure* to best provide for connectivity. The policies also recognise the contribution of the transport system to emissions and provide for networks that seek to adopt technologies which reduce the adverse *effects* on the *environment* arising from fuel usage. In relation to *commercial port activities* taking place within the coastal environment, the provisions of the CE – Coastal Environment chapter also apply.

Principal reasons

EIT–TRAN–PR3 – Principal reasons

The transport system is critical for connecting people and communities and transporting goods, the effective functioning of Otago’s economy and the well-being of Otago’s community. The transport network can, however, have adverse *effects* on the *environment* and impact on community well-being. If there is sufficient demand, integration and the necessary *infrastructure*, modal choices can be provided and by giving preference to modes with lower environmental *effects*, the adverse impacts of the transport system can be reduced. However, as large parts of the Otago region are rural, reliance on private vehicles will remain the preferred, or the only practical, transport option for many people. This should not exclude the potential for improvements in modal choice or accessibility for a range of abilities and sectors of the community. Planning for transport *infrastructure* should be co-ordinated with urban and commercial growth and development to enable the transport system to effectively serve local communities and avoid reducing the efficiency of existing *infrastructure*.

Anticipated environmental results

EIT–TRAN–AER9	Structure planning and <i>district plans</i> make explicit provision for all modes of transport.
EIT–TRAN–AER10	The number of people participating in active transport increases.
EIT–TRAN–AER11	The number of dwellings per hectare in areas accessible to <i>public transport</i> increases over the life of this RPS.
EIT–TRAN–AER12	<i>Public transport</i> patronage increases over the life of this RPS.

EIT-TRAN-AER13

Greenhouse gas emissions arising from the transport system reduce over time from increased active transport, shared travel and *public transport* patronage, increased use of rail for freight, and reduced reliance on fossil fuels.

EIT-TRAN-AER14

The transport of people, goods and services within Otago is achieved in a timely manner and at costs comparable to other regions.

Submitter Name	Submitter + Submission point number	Chapter	Specific Provision	Position	Summary of Decision Requested	Further Submissions S-Support O-Oppose	Recommendation	Reason
New Zealand Incorporated					maintain and restore ecosystem health and indigenous biodiversity') unless it is clear that there is a specific environmental limit which cannot be breached for that particular objective policy or method.	S Transpower New Zealand Limited FS00314.008 S Waka Kotahi NZ Transport Agency FS00305.002		
Sole Matthew	00508.005	GEN – General Submission	Terminology	Amend	Replace 'improve', 'maintain' or 'enhance' with 'protect and restore' along with a definition for 'restoration'.	O Otago Water Resource Users FS00235.039	Reject	The main recommendations report addresses these issues and makes appropriate amendments in relevant provisions
Sole Matthew	00508.006	GEN – General Submission	Terminology	Amend	Replace 'bottom lines' and 'environmental constraints' with 'environmental limits' for consistency.	Otago Water Resource Users FS00235.044 (neutral) Otago Water Resource Users FS00235.044 (neutral)	Reject	The main recommendations report addresses these issues and makes appropriate amendments in relevant provisions
Trojan Holdings Limited (Trojan)	00206.004	GEN – General Submission	Terminology	Amend	Replace the following words with other words which have a practical or clearer/explicit meaning: 'Significant', 'Sustainable' / 'sustainable development' / 'sustained', 'Environmental limit', 'Bottom line', 'Environments', and Statements including or like "important features and values identified by this RPS"	S Port Otago LTD FS00301.035+ S Otago Fish and Game Council FS00609.195 O Otago Water Resource Users FS00235.040	Reject	The main recommendations report addresses these issues and makes appropriate amendments in relevant provisions
Trojan Holdings Limited (Trojan)	00206.005	GEN – General Submission	Terminology	Amend	Insert "natural" before landscape every time there is reference to "outstanding natural features or landscapes" and "highly valued natural features or landscapes".		Reject	Unnecessary
Trustpower Limited	00311.001	GEN – General Submission	Terminology	Amend	Amend as follows Throughout the document replace the word 'energy' with the word ' electricity ' wherever there are references to renewables.	S Meridian Energy Limited FS00306.001 O Mercury FS00605.059	Accept	The amendment sought is logical.

Submitter Name	Submission point number	Specific Provision	Position	Summary of Decision Requested	Further Submissions	Recommendation	Reason
				<p>indigenous species or ecosystems that are taoka, and</p> <p>(2) the adverse effects <u>of the maintenance and continuing operation</u> of an existing activity are no greater in character, spatial extent, intensity or scale than they were before this RPS became operative. <u>and</u></p> <p>(3) the activity is not within 10m of a <u>freshwater body or within the coastal environment.</u>”</p>	Otago Water Resource Users FS00235.420 (neutral)		
Trojan Holdings Limited (Trojan)	00206.044	ECO – P5	Amend	<p>Amend as follows:</p> <p>Except as provided for by ECO–P4, provide for existing activities <u>and land uses</u> within <i>significant natural areas</i> and that may adversely affect indigenous species and ecosystems that are taoka, if:</p> <p>(1) the continuation <u>or expansion</u> of an existing <u>or anticipated activity/land use</u> will not lead to the loss (including through cumulative loss) of extent or <i>degradation</i> of the ecological integrity of any <i>significant natural area</i> or indigenous species or ecosystems that are taoka, and</p> <p>(2) the adverse <i>effects</i> of an existing activity/ <u>land use</u> are no greater in character, <u>overall</u> spatial extent, intensity or scale than they were before this RPS became operative.</p>	O/ Kāi Tahu ki Otago FS00226.514	Reject	Substantial amendments are recommended to ensure consistency with the NPSIB. We adopt the recommendations and reasons set out in the NPSIB reply report
Trustpower Limited	00311.023	ECO – P5	Amend	<p>Amend as follows:</p> <p>“Except as provided for by ECO – P4, provide for existing activities within significant natural areas and that may adversely affect indigenous species and ecosystems that are taoka, if:</p> <p>(1) the continuation <u>and minor upgrading</u> of an existing activity will not lead to the loss (including through cumulative loss) of extent or degradation of the ecological integrity of any significant natural area or indigenous species or ecosystems that are taoka, and</p> <p>(2) the adverse effects of an existing activity <u>and any minor upgrades</u> are no greater <u>the</u></p>	<p>S/ The Fuel Companies FS00510.034</p> <p>O/ Kāi Tahu ki Otago FS00226.521</p>	Reject	Substantial amendments are recommended to ensure consistency with the NPSIB. We adopt the recommendations and reasons set out in the NPSIB reply report

Submitter Name	Submission point number	Specific Provision	Position	Summary of Decision Requested	Further Submissions	Recommendation	Reason
				same or similar in character, spatial extent, intensity or scale than they were before this RPS became operative.”			
Waitaki District Council	00140.028	ECO – P5	Amend	<ul style="list-style-type: none"> - [Specific changes not identified] The PRPS is not any stronger on existing activities than s10 of the RMA - Provide for existing activities within SNA’s. 	<p>S/ Meridian Energy Limited FS00306.064</p> <p>Otago Water Resource Users FS00235.421 (neutral)</p> <p>Otago Water Resource Users FS00235.421 (neutral)</p>	Reject	Substantial amendments are recommended to ensure consistency with the NPSIB. We adopt the recommendations and reasons set out in the NPSIB reply report
Waka Kotahi NZ Transport Agency	00305.027	ECO – P5	Amend	<p>Amend as follows:</p> <p>Include similar wording to ECO-P4 (1) which provides for the operational and functional needs of infrastructure.</p>		Reject	Substantial amendments are recommended to ensure consistency with the NPSIB. We adopt the recommendations and reasons set out in the NPSIB reply report
Wayfare Group Ltd	00411.056	ECO – P5	Amend	<p>Amend as follows:</p> <p>Except as provided for by ECO – P4, provide for existing activities <u>and land uses</u> within <i>significant natural areas</i> and that may adversely affect indigenous species and ecosystems that are taoka, if:</p> <p>(1) the continuation <u>or expansion</u> of an existing <u>or anticipated</u> activity/<u>land use</u> will not lead to the loss (including through cumulative loss) of extent or <i>degradation</i> of the ecological integrity of any <i>significant natural area</i> or indigenous species or ecosystems that are taoka, and</p> <p>(2) the adverse <i>effects</i> of an existing activity/<u>land use</u> are no greater in character, <u>overall</u> spatial extent, intensity or scale than they were before this RPS became operative.</p>	O/ Kāi Tahu ki Otago FS00226.578	Reject	Substantial amendments are recommended to ensure consistency with the NPSIB. We adopt the recommendations and reasons set out in the NPSIB reply report
Sanford Ltd.	00122.027	ECO – P6	Support	Retain as notified		Reject	Substantial amendments are recommended to ensure consistency with the NPSIB. We adopt the recommendations and reasons set out in the NPSIB reply report
Federated Farmers of New Zealand	00239.104	ECO – P6	Oppose	Delete ECO – P6	S/ Rayonier Matariki Forests FS00020.028	Reject	Substantial amendments are recommended to ensure consistency with the NPSIB. We

Submitter Name	Submission point number	Specific Provision	Position	Summary of Decision Requested	Further Submissions	Recommendation	Reason
				<p>(2) where adverse effects demonstrably cannot be completely avoided, they are remedied,</p> <p>(3) where adverse effects demonstrably cannot be completely avoided or remedied, they are mitigated, <u>and</u></p> <p>(4) <u>beyond the coastal environment</u> where there are residual adverse effects after avoidance, remediation, and mitigation, then the residual adverse effects are offset in accordance with APP3, and</p> <p>(5) <u>beyond the coastal environment</u> if biodiversity offsetting of residual adverse effects is not possible <u>in accordance with APP3</u>, then:</p> <p>(a) the residual adverse effects are compensated for in accordance with APP4, and</p> <p>(b) if the residual adverse effects cannot be compensated for in accordance with APP4, the activity is avoided.”</p> <ul style="list-style-type: none"> - Amend other policy throughout the plan relating to natural wetlands, natural inland wetlands and rivers and activities within and within 10 metres of them to ensure that the effects management hierarchy is applied and that offsetting and compensation under ECO – P6 is not available to activities beyond those provided for under the NPSFM and NES for Freshwater. 			
Trustpower Limited	00311.024	ECO – P6	Amend	<p>Amend as follows:</p> <p>Amend to <u>significant</u> adverse effects rather than all adverse effects.</p>	O/ Queenstown Lakes District Council FS00138.120	Reject	We adopt the recommendations and reasons set out in the NPSIB reply report to reflect the direction of the NPSIB.
Waka Kotahi NZ Transport Agency	00305.028	ECO – P6	Amend	<p>Amend as follows:</p> <p>Include recognition of the functional and operational needs for infrastructure, and to replace ‘avoid’ with ‘minimise’ or similar.</p>		Reject	We adopt the recommendations and reasons set out in the NPSIB reply report to reflect the direction of the NPSIB.

Submitter Name	Submission point number	Specific Provision	Summary of Decision Requested	Further Submission S – Support O – Oppose	Recommendation	Reason
			Policy only to apply to managing the effects of new renewable electricity generation activities.			
Trustpower Limited	00311.037	EIT – EN – P6	Amend as follows: “Manage the adverse effects of <u>new or upgraded</u> : renewable electricity generation activities by (1) applying EIT – INF – P13, (2) (1) having regard to: (a) the functional, <u>technical and geographic</u> need to locate renewable electricity generation activities where resources are available, and (b) the operational need to locate where it is possible to connect to the National Grid or electricity sub – transmission infrastructure, and (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 residual adverse effects are offset or compensated for; and (2) requiring consideration of alternative sites, methods and designs, and: (a) <u>avoiding, remedying or mitigating significant adverse effects on any identified values that contribute to the area’s importance, and</u> (b) offsetting or compensation measures (in accordance with any specific requirements for their use in this RPS), where adverse effects are potentially significant or irreversible cannot be avoided, remedied or mitigated” ”	S – Mercury FS00605.066	Reject	We adopt the recommendations and reasons set out in the s42A Report.
Contact Energy Limited	00318.030	EIT – EN – P7	Retain as notified.	S – Mercury FS00605.128		
Queenstown Lakes District Council	00138.110	EIT – EN – P7	Retain as notified		Reject	We adopt the recommendations and reasons set out in the s42A Report.
Dunedin City Council	00139.152	EIT – EN – P7	Amend the policy test as shown against EIT – EN – P1 and combine into P1		Reject	We adopt the recommendations and reasons set out in the s42A Report.

Submitter Name	Submission point number	Specific Provision	Summary of Decision Requested	Further Submission S – Support O – Oppose	Recommendation	Reason
Federated Farmers of New Zealand	00239.119	EIT – EN – P7	Amend as follows: “... maintenance of <u>consenting and on existing</u> renewable electricity generation activities“		Accept	We adopt the recommendations and reasons set out in the s42A Report.
Meridian Energy Limited	00306.058	EIT – EN – P7	Amend as follows: “Activities that may result in reverse sensitivity effects <u>on renewable electricity generation activities</u> , or compromise the operation or maintenance of renewable electricity generation activities, are, as the first priority , prevented from establishing, and only if that is not reasonably practicable, <u>are</u> managed so that reverse sensitivity effects are minimised”	S – Mercury FS00605.037	Accept	We adopt the recommendations and reasons set out in the s42A Report.
New Zealand Infrastructure Commission	00321.048	EIT – EN – P7	Amend as follows: “Activities that may result in reverse sensitivity effects or compromise the operation or maintenance of renewable electricity generation activities are, as the first priority, prevented from establishing and only if that is not reasonably practicable, managed so that reverse sensitivity effects are minimised <u>and effects on the operation or maintenance of renewable electricity generation are avoided.</u> ”	S – Mercury FS00605.147	Reject	We adopt the recommendations and reasons set out in the s42A Report.
Trustpower Limited	00311.038	EIT – EN – P7	Amend as follows: “ <u>Avoid the establishment or operation of</u> A activities, <u>including the abstraction of water</u> , that may result in reverse sensitivity effects or compromise the operation or maintenance of renewable electricity generation activities are , as the first priority , prevented from establishing and only if that is not reasonably practicable, managed so that reverse sensitivity effects are minimised.”	S – Mercury FS00605.067 ` O – Federated Farmers FS00239.263 O – Horticulture NZ FS00236.086	Reject	We adopt the recommendations and reasons set out in the s42A Report.
Central Otago District Council (CODC)	00201.027	EIT – EN – P8	Support in principle provision for small community scale electricity generation activities.	S – Mercury FS00605.018	Accept	We adopt the recommendations and reasons set out in the s42A Report.
Cosy Homes Charitable Trust	00242.009	EIT – EN – P8	Retain as notified		Accept	We adopt the recommendations and reasons set out in the s42A Report.