# Agenda Item 4: Proposed Otago Regional Policy Statement

## Purpose

1. The purpose of this paper is to:
   1. Provide an update on appeals to the proposed Otago Regional Policy Statement 2024 (pORPS); and
   2. Outline the implications of the decisions version of the pORPS on the draft Land and Water Regional Plan (LWRP).

## Appeals update

### Overview

1. The pORPS is currently in the early stages of the appeals process. Key dates and milestones are shown below:

|  |  |
| --- | --- |
| **Date** | **Milestone** |
| 22 April | High Court appeals filed |
| 7 May | Deadline for other parties to join High Court appeals (s301 parties) |
| 14 May | Environment Court appeals filed |
| 5 June | Deadline for other parties to join Environment Court appeals (s274 parties) |

### High Court appeals

1. Council accepted all of the recommendations from the freshwater hearing panel. This means that Freshwater Planning Instrument (FPI) provisions in the pORPS can only be appealed to the High Court and only on points of law. Five such appeals have been filed by:
   1. Forest and Bird,
   2. Kāi Tahu,
   3. Queenstown-Lakes District Council,
   4. OceanaGold, and
   5. Fish and Game – Otago and Central South Island.
2. Section 301 of the RMA allows other parties to join appeals that have been filed with the High Court. Parties must file multiple notices if they wish to join multiple appeals. A summary of the High Court appeals is attached as **Attachment 1.**
3. The next step is for the High Court to hold a case management conference, where it will consider and give directions on how the appeals will run. This includes directions on filing documents (including legal submissions on behalf of each party), the estimated time required for the hearing, and the issues on appeal. This provides an opportunity to confirm whether any of the appeals will be heard together. There may also be an opportunity for formal or informal settlement discussions prior to a hearing/s being scheduled.
4. The Chief Executive has delegation from the Council for High Court matters and will therefore be instructing counsel on ORC’s involvement in the appeals.

### Environment Court appeals

1. At the time of writing, the period for filing Environment Court appeals had not closed. A verbal update will be provided at the workshop, to the extent that this is possible. A further update will be provided on Environment Court appeals in due course.
2. Once the period for filing appeals has closed, and depending on the number and extent of the appeals, the Environment Court will generally make initial case management directions. The Court will usually seek advice from the parties (usually initiated by the council) on any preliminary or jurisdictional issues raised, whether the appeals should be heard separately or as groups, and usually includes a requirement for appeals to be referred to mediation. If there are a large number of appeals and/or parties, this step can often include scheduling a pre-hearing conference where the Court will consider and give directions on the conduct for the hearing/s of the appeals.

## Implications for the LWRP

### Overview

1. In March, Council accepted all of the hearing panel’s recommendations on the pORPS. The ‘decisions version’ of the pORPS now replaces the notified version, which affects both plan-making and consent decision-making.
2. Since notification of the pORPS in June 2021, there has been considerable effort on the part of submitters and staff and counsel for ORC to discuss and resolve issues outside the hearing process. In many cases, staff recommendations came as the result of either pre-hearing conferencing or informal discussions with submitters. As a result, the panel recommended accepting most staff recommendations and there are a limited number of cases where they recommended alternative relief.
3. Staff preparing the draft LWRP have kept abreast of the recommendations being made by staff reporting officers on the pORPS. As a result, and given the alignment between staff and panel recommendations, the potential for the draft LWRP to be ‘out of step’ with the pORPS is significantly reduced.
4. This part of the paper:
   1. Provides an overview of key panel recommendations that were not consistent with staff advice, and
   2. Outlines the legal tests for implementing the pORPS,
   3. Provides an overview of the implications of the decisions version of the pORPS for the LWRP.

### Panel’s recommendations

1. The panel’s reports comprise 500 pages of detailed analysis and recommendations. This paper does not address all of the recommendations by the panel or their implications. Rather, it focuses on key parts of the recommendations where the panel did not agree with recommendations proposed by staff and counsel on behalf of ORC. There are two key topics of note for the LWRP:
   1. Part 2 of the RMA, and
   2. Renewable electricity generation.
2. Another topic where the hearing panel significantly differed from staff and counsel recommendations on behalf of ORC is the management of wetlands. This will be discussed at the 28 May workshop and is therefore not discussed covered in this paper.

#### Part 2 of the RMA

1. One of the key issues addressed by the panel was regarding the approach taken in the pORPS to applying the various requirements of Part 2 of the RMA.[[1]](#footnote-2)

##### Approach at notification

1. When it was notified, the approach in the pORPS was (broadly) that, so long as environmental bottom lines set to achieve sustainable management of natural resources were met, human activities involving the use and development of resources were implicitly enabled. Two key provisions set out this approach. As notified, they read:

***IM–P1 – Integrated approach***

*The objectives and policies in this RPS form an integrated package, in which:*

*(1) all activities are carried out within the environmental constraints of this RPS,*

*(2) all provisions relevant to an issue or decision must be considered,*

*(3) if multiple provisions are relevant, they must be considered together and applied according to the terms in which they are expressed, and*

*(4) notwithstanding the above, all provisions must be interpreted and applied to achieve the integrated management objectives IM–O1 to IM–O4.*

***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. The section 32 report stated that the approach in IM-P2 was based on the hierarchy of obligations in the NPSFM.[[2]](#footnote-3) There were many submissions on the approach taken by the pORPS, both in support and opposition. The panel summarises the main argument in opposition as follows:

*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.*

*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.*

*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*.[[3]](#footnote-4)

1. These submitters argued that the approach taken was inconsistent with the Supreme Court’s decision in *King Salmon*.

##### Changes during the hearing

1. Following submissions being lodged, the panel directed ORC to prepare a hearing report summarising and analysing the submissions received and recommending any amendments to the provisions as a result. In the hearing report, staff agreed with many of the points raised by submitters, including that:
   1. Policy IM-P1 could not override the ordinary principles of interpretation (i.e. that all relevant provisions must be read together on their terms),
   2. It was not appropriate to apply the hierarchy of obligations from the NPSFM to the management of all resources in IM-P2, and
   3. Use and development of resources is part of sustainable management and greater recognition of this was required across the pORPS.
2. Significant amendments were recommended by staff to the IM provisions, and throughout the pORPS, to better recognise the importance of using and developing resources for the health and well-being of people and communities.
3. However, staff and counsel for ORC maintained that protection of natural and physical resources was part of sustainable management and this was consistent with the Court’s findings in *King Salmon*. This continued to be supported by some parties and opposed by others.

##### Final recommendations on behalf of ORC

1. After the hearing concluded and staff had prepared final reports in reply to the evidence presented at the hearing, the Supreme Court released its decision in *Port Otago.* That decision traversed, in detail, how provisions must be applied and how conflicts between directive policies must be reconciled. The panel directed ORC and submitters to file legal submissions and any other evidence necessary on the implications of that decision on the pORPS.
2. Counsel for ORC filed legal submissions recommending changes to the IM provisions to reflect the Court’s methodology for resolving conflicts, replacing the previous direction to prioritise the life-supporting capacity and mauri of air, water, soil, and ecosystems in the event of a conflict.

##### Panel’s view

1. The panel addresses the arguments both ways in detail in its report.[[4]](#footnote-5) Ultimately, while the panel agreed with many of the changes to provisions recommended by staff to better recognise the importance of the use and development of resources, the panel did not agree with the overall argument put forward on behalf of ORC in relation to IM-P1 and the requirement to prioritise the natural environment in the event of a conflict between provisions. The panel considered that the *King Salmon* decision means that ‘prioritising protection’ can only occur in particular areas in order to achieve sustainable management, not as a general approach to resource management. In addition to accepting most staff recommendations, the panel made some additional amendments across the pORPS to better reflect the language in Part 2 of the RMA and changes to embed its recommendations.[[5]](#footnote-6)
2. The panel recognised, however, that the NPSFM does introduce a hierarchy in the management of fresh water that is not overridden by their findings on IM-P1:

*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 [wording omitted].* [[6]](#footnote-7)

1. The panel agreed with staff recommendations to retain this hierarchy in the LF chapter (LF-WAI-P1).
2. Despite disagreeing with the argument put forward in the IM chapter on behalf of ORC, the panel considered that the final amendments recommended by counsel for ORC to the IM provisions in response to the *Port Otago* decision were appropriate and essentially removed the prioritisation that the panel considered to be unlawful. In summary, although it disagreed with the argument put forward on behalf of ORC, the panel did recommend accepting the amendments recommended on behalf of ORC.

##### Implications

1. The panel’s findings and recommendations are relevant for the draft LWRP, although there is a difference in the focus and level of detail in an RPS compared to a regional plan. An RPS is providing high-level, region-wide direction whereas a regional plan is addressing the specific management of a series of activities and the way resources are allocated and used. Addressing tensions between policy outcomes can sometimes be more straightforward in a regional plan context because of the finer level of detail – the provisions are specific rather than general.
2. The draft LWRP is focused on the management of land and water. There is a prioritisation in decision-making for these resources which is set out in the hierarchy of obligations in the NPSFM. The panel acknowledged that this was an exception to its more general findings. The draft LWRP has been prepared to give effect to the NPSFM, including this prioritisation, which is not affected by the panel’s recommendations.

#### Renewable electricity generation

1. Renewable electricity generation (REG) is predominantly managed in the EIT – Energy, infrastructure and transport chapter of the pORPS, however there are also relevant provisions in the IM – Integrated management and LF – Land and freshwater chapters. Some of the LF provisions are subject to High Court appeals, but most are non-freshwater provisions and may still be challenged through Environment Court appeals.
2. A number of companies generating renewable electricity submitted on the pORPS seeking a range of changes. In part, the submitters did not consider that the pORPS gave effect to the National Policy Statement for Renewable Electricity Generation 2011 (NPSREG). Alongside this, submitters outlined the Government’s targets for REG and the role of REG in meeting emissions reductions targets. Very broadly, they sought a range of amendments:
   1. A specific and less restrictive effects management hierarchy for managing the effects of REG activities,
   2. Better recognition and prioritisation of REG in the management of land and fresh water,
   3. Better recognition of the role of REG in climate change mitigation.
3. In response to the legal issues arising from the implementation of the NPSREG, staff and counsel on behalf of ORC outlined the relevant legal tests from *King Salmon*:
   1. Policies are to be read and applied in accordance with their terms (i.e. the language used).
   2. Some policies are more specific and directive, while others are less prescriptive.
   3. Policies in more directive terms carry greater weight than those in less directive terms. A policy may be in such directive terms that a decision-maker has no option but to implement it. While there may infrequently be instances where policies “pull in different directions”, it may be that that an apparent conflict will dissolve if close attention is paid to the way in which the policies are expressed.
4. The panel agreed that the pORPS must give effect to both the NPSREG and the NPSFM, and that any tensions between the two must be resolved by reading the policies and applying them as they are written. In doing so, directive wording will prevail over less directive wording. The panel stated (emphasis added):

***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****.[[7]](#footnote-8)*

1. Staff and counsel on behalf of ORC opposed the introduction of a separate effects management hierarchy for REG, but did propose amendments to relevant EIT provisions to better reflect the NPSREG. The panel agreed that a separate approach was not required, but did recommend additional amendments to the key policy managing the effects of infrastructure (EIT-INF-P13). As recommended by staff, that policy required:
   1. As a first priority, avoiding locating within significant areas, then
   2. If avoidance is not practicable for nationally or regionally significant infrastructure, either:
      1. manage adverse effects in specific ways for some significant areas, or
      2. where there is no specific approach, minimising adverse effects on the values of the area, and
   3. If avoidance is not practicable for other infrastructure, avoid adverse effects on the values of the area.
2. The panel recommended retaining (a) and (b)(i) above with minor amendments, but recommended amending (b)(ii) to require that effects are remedied or mitigated to the extent practicable and that regard is had to offsetting or compensation for more than minor residual adverse effects.
3. Staff agreed that greater recognition of the nationally and regionally significant REG schemes in the LF chapter was appropriate and recommended amendments to the long-term visions accordingly. The panel agreed with these amendments but also recommended additional changes to provide for further development of REG in the Clutha Mata-au FMU and Taiari FMUs. These additional recommendations have been appealed to the High Court by Kāi Tahu ki Otago.
4. Staff did not consider that specific reference to REG was necessary in the IM provisions as the focus is on the effects of climate change more generally, however the panel disagreed and recommended amendments to a number of provisions to highlight the role of REG in mitigating climate change.
5. The panel’s recommendations are relevant to the draft LWRP, however as they do not significantly alter the direction in the pORPS, the impacts on the draft LWRP are limited. Staff have been responding to clause 3 feedback from REG companies and technical advice on providing for small-scale hydro-electricity generation. As discussed with councillors at previous workshops, amendments are being made to:
   1. include a new straightforward consent pathway for ongoing maintenance and operation of the region’s nationally and regionally significant REG schemes,
   2. clarify the existing approach to managing REG, which already included provision for new REG,
   3. improve the practical application of rules applying to small-scale hydro-electricity generation.
6. Overall, staff consider the draft LWRP gives effect to the pORPS.

### Legal tests

1. The implications of the decisions version of the pORPS are different for plan-making and consent decision-making:
   1. For plan-making, the regional plan must give effect to (i.e. implement) an operative RPS (i.e. the Otago RPS 2019) and have regard to (i.e. give genuine thought and attention to) a proposed RPS (i.e. the pORPS 2021).
   2. For consenting, the decision-maker must have regard to both the operative and proposed RPSs.
2. For plan-making, proposed and operative RPSs have different tests – the ORPS 2019 must be given effect to and the pORPS must be given regard by regional plans. ‘Give effect to’ is a stronger legal test. ‘Having regard to’ the provisions of the pORPS 2021 will look different in different situations. Although the legal test does not change until provisions are made operative, there will be provisions that have not been appealed and are therefore beyond challenge – the procedural step of making them operative will not alter their content in any way and so greater weight can be placed on them (essentially giving effect to them). Others may be subject to appeals and therefore potentially some change. Less weight would be given to those provisions when preparing a regional plan.
3. For consenting, unlike in plan-making, the same legal test (“have regard to”) applies to both RPSs meaning the starting point is that both the ORPS 2019 and the pORPS are considered equally in decision-making. However, both documents address the same topics, requiring a decision-maker to ‘weight’ provisions in the two documents – essentially to decide which one should be given more weight over the other one. Weighting is a matter for the decision-maker on a consent application and can be different depending on the circumstances of each application.
4. Generally, the closer the pORPS gets to being operative, the more weight it will be given. Having Council decisions on the pORPS is a significant ‘step forward’ for the weight the pORPS can be given in consent decision-making. Once the pORPS becomes operative the ORPS 2019 will be inoperative/revoked. When this happens, the LWRP will be required to give effect to the pORPS. This reinforces the need for the LWRP to seek to give effect to the pORPS insofar as that is possible at this stage, despite the legal test currently being only to ‘have regard to’ its content.

### Summary of LWRP review

1. A full review of the draft LWRP in light of the pORPS decisions has been undertaken and a summary is included as **Attachment 2**. There are some parts of the pORPS that do not have legal weight in decision-making for regional plans or consenting, including:
   1. Introductory material (such as the foreword, purpose, and description of the region),
   2. Explanations and principal reasons, and
   3. Anticipated environmental outcomes.
2. Because these do not directly affect the LWRP, and they generally reflect the content of the objectives, policies, and methods that do affect the LWRP, these parts of the pORPS have not been assessed in detail.
3. Work to amend the LWRP in light of the pORPS decisions and in response to clause 3 feedback is still underway, and further direction from councillors is required to confirm the approach taken to managing some activities in the LWRP. At two workshops in May, the remaining policy issues to resolve will be presented and discussed with councillors:
   1. **15 May:** forestry, and consent duration.
   2. **28 May:** environmental outcomes, primary production (including intensification, intensive winter grazing, and stock exclusion), and wetlands.
4. The direction provided by Council at these workshops will allow the LWRP to be finalised for clause 4A consultation, due to commence on 15 July.

# Attachment 1: Summary of High Court appeals on FPI provisions

| **Provision** | **Appeal?** | **Appellant(s)** |
| --- | --- | --- |
| **Definitions** |  |  |
| Certified freshwater farm plan, drinking water, greywater, National Objectives Framework, natural hazard works, over-allocation, specified rivers and lakes, wetland, wetland utility structure | 🗶 |  |
| **SRMR – Significant resource management issues for the region** |  |  |
| SRMR-I5, SRMR-I6, SRMR-I9 | 🗶 |  |
| **RMIA – Resource management issues of significance to iwi authorities in the region** |  |  |
| RMIA-WAI-I1, RMIA-WAI-I3 | 🗶 |  |
| **LF-WAI** |  |  |
| LF-WAI-O1 – Te Mana o te Wai | ✓ | OceanaGold |
| LF-WAI-P1 – Prioritisation | ✓ | QLDC, OceanaGold |
| LF-WAI-PR1 – Principal reasons (para 1) | 🗶 |  |
| LF-WAI-AER2 | 🗶 |  |
| **LF-FW – Fresh water** |  |  |
| LF-FW-O1A – Vision set for each FMU and rohe | ✓ | Fish and Game |
| LF-VM-O2 – Clutha Mata-au FMU vision | ✓ | Kāi Tahu, Fish and Game |
| LF-VM-O3 – North Otago FMU vision | ✓ | Fish and Game |
| LF-VM-O4 – Taiari FMU vision | ✓ | Kāi Tahu, Fish and Game |
| LF-VM-O5 – Dunedin & Coast FMU vision | ✓ | Fish and Game |
| LF-VM-O6 – Catlins FMU vision | ✓ | Fish and Game |
| LF-FW-O8 – Fresh water | ✓ | Fish and Game |
| LF-FW-O9 – Wetlands | ✓ | Forest and Bird |
| LF-FW-O10 – Natural character | 🗶 |  |
| LF-VM-P5 – FMUs and rohe | 🗶 |  |
| LF-VM-P6 – Relationship between FMUs and rohe | 🗶 |  |
| LF-FW-P7 – Fresh water | 🗶 |  |
| LF-FW-P7A – Water allocation and use | 🗶 |  |
| LF-FW-P10A – Managing wetlands | ✓ | Forest and Bird, Kāi Tahu, OceanaGold |
| LF-FW-P15 – Stormwater discharges | 🗶 |  |
| LF-FW-P16 – Discharges containing animal effluent, sewage, greywater and industrial and trade waste | ✓ | QLDC, OceanaGold |
| LF-FW-M6 – Regional plans | ✓ | OceanaGold |
| LF-FW-M7 – District plans | ✓ | OceanaGold |
| LF-FW-M8 – Action plans | 🗶 |  |
| LF-FW-M8A – Identifying and managing species interactions between trout and salmon and indigenous species | 🗶 |  |
| LF-FW-M8AA – Integrated catchment management | 🗶 |  |
| LF-VM-E2 – Explanation (paras 2, 3, 5) | 🗶 |  |
| LF-VM-PR2 – Principal reasons (paras 2, 3) | 🗶 |  |
| LF-FW-AER4 to LF-FW-AER11A | 🗶 |  |
| **LF-LS – Land and soil** |  |  |
| LF-LS-P18 – Soil erosion | 🗶 |  |
| LF-LS-P21 – Land use and fresh water | ✓ | Forest and Bird, Kāi Tahu, OceanaGold |
| LF-LS-M11 – Regional plans | 🗶 |  |
| LF-LS-AER14 | 🗶 |  |
| **Other** |  |  |
| FPI identification (wetlands provisions) | 🗶 | Forest and Bird |

# Attachment 2: Overview of changes to the pORPS and impacts on draft LWRP

| **Row** | **Topic** | **Staff recommendations** | **Panel recommendations** | **Impacts on LWRP** |
| --- | --- | --- | --- | --- |
| **Whole RPS** | | | | |
| 1 | Philosophy of the RPS | As notified, parts of the pORPS sought to set out ‘minimum standards’ for ensuring the health of the natural environment, above which any use or development could be undertaken.  Through the hearing, staff recommended including significantly more direction on providing for and/or enabling use and development of resources. | Disagreed that the ‘minimum standards’ approach was lawful, and agreed with most staff recommendations on amendments to provisions to better recognise the use and development of resources. | **Limited.** All provisions have been reviewed and minor amendments made as required, however overall the draft LWRP provisions were already considered to implement the decisions version approach. |
| 2 | Rural land | Some submissions considered the pORPS should contain a chapter on rural land. Staff did not recommend including a separate chapter, but did recommend moving provisions on use and development of rural land from UFD – Urban form and development to LF-LS – Land and soils so that the suite of provisions managing rural land all sat together. | Agreed with staff recommendations. | **Limited**. Many of the provisions managing rural land are primarily relevant to district councils (for example, managing highly productive land and urban encroachment). Draft LWRP already contains policies on the aspects relevant to ORC’s functions – for example, soil conservation and the impacts of land uses on water. |
| 3 | Mauri | In the LF and CE provisions, some references to restoring or protecting mauri of resources were either included at notification or recommended to be included by staff in objectives, mainly in response to submissions by Kāi Tahu. Some submitters were concerned that because mauri has a spiritual element, achievement of these objectives could only be determined by Kāi Tahu. Those submitters generally sought to delete references to mauri. | Panel agreed with submitters that there were practical difficulties with the way mauri had been used in some provisions, but agreed with staff that those references should not be deleted. Panel had amendments to these provisions so that mauri is restored or protected by implementing the actions required by the relevant policies – i.e. it is an outcome of applying a particular management approach, rather than an outcome in and of itself. | **Moderate**. All references to mauri in the draft LWRP have been reviewed and amended to align with the pORPS direction. |
| **Definitions** | | | | |
| 4 | Food and fibre production | Not recommended for inclusion. | Recommended including definition of this term. | **None**. LWRP uses either ‘primary production’ (as required by the Planning Standards) or ‘land-based primary production (as defined in the NPS for Highly Productive Land) as they are from higher order documents and more certain/appropriate for LWRP provisions. |
| 5 | Greywater | Term was not used in any provision and so the Planning Standards definition was not recommended for inclusion. | Recommended including reference to ‘greywater’ in one policy and therefore also the definition of this term from the Planning Standards. | **None**. LWRP has always addressed greywater and used the definition from the Planning Standards (which is now also in the pORPS). |
| 6 | Regionally significant infrastructure | Recommended including:  Significant electricity distribution infrastructure,  Airports servicing planes capable of carrying 30+ passengers,  Established community-scale irrigation and stock water infrastructure,  Oil terminals, bulk fuel storage and supply infrastructure and ancillary pipelines at Port Chalmers and Dunedin,  Landfills and associated solid waste sorting and transfer facilities owned or operated by a local authority,  Ski area infrastructure. | Agreed with staff recommendations, except:  Excluding airports servicing planes capable of carrying 30+ passengers,  Including roads which provide a lifeline connection for a community. | **Limited**. LWRP was prepared with staff recommendations on the pORPS in mind. A review of provisions has been carried out to ensure that references to regionally significant infrastructure appropriately provide for the additional types of infrastructure accepted by the panel. As a result of legislative changes, changes to the policy on consent duration are proposed which, in part, provide clearer links to infrastructure considered regionally significant. |
| **MW – Mana whenua** | | | | |
| 7 | Māori land | Recommended including a definition of Māori land to assist with clarifying how MW provisions enabling use of Māori land applied. | Agreed with most staff recommendations, except:  Panel considered some of the areas listed in the definition were very broad and so chose to make additional amendments to the definition of papakāika. | **Limited**. The definition and its associated policies are mostly relevant to district plans as they relate to the use of land. ‘Māori land’ is only used once in the draft LWRP in a context section, not provisions. |
| 8 | Managing effects | Recommended removing the notified effects management hierarchy for managing effects arising from the use and development of Native Reserves and Māori Land. | Disagreed with staff recommendation to delete. | **None**. Management of Native Reserves and Māori Land is primarily a district council function. |
| **SRMR – Significant resource management issues for the region** | | | | |
| 9 | New issue statement | Include one new issue statement on the tension between the importance of using and developing resources for community well-being and the impacts of that use and development on the resources. | Agreed with staff recommendations. | **None.** Issues are mostly relevant for setting up the RPS objectives and policies. Staff preparing the draft LWRP have been aware of the staff recommendations on the pORPS and these have informed the development of LWRP provisions and no specific changes are required. |
| 10 | References to primary production | Some additional references to primary production. | Agreed with inclusions recommended by staff and also included additional references to underscore the importance of this industry in Otago. |
| **RMIA – Resource management issues of significant to iwi authorities in the region** | | | | |
| 11 | Whole chapter | Recommended a range of minor amendments in response to Kāi Tahu submissions. | Agreed with staff recommendations. | **None.** Issues are mostly relevant for setting up the RPS objectives and policies. Staff preparing the draft LWRP have been aware of the staff recommendations on the pORPS and these have informed the development of LWRP provisions, but no specific changes are required. |
| **IM – Integrated management** | | | | |
| 12 | Decision-making (IM-P1) | As notified, the policy required prioritising the health of the natural environment in any cases where a conflict between policies arose. Final staff recommendation was to adopt the method for resolving conflicts between differing policy direction set out in the Supreme’s Court’s decision in *Port Otago*. | Agreed with staff recommendations, although for different reasons. | **Limited**. The NPSFM requires decision-making affecting fresh water to follow the hierarchy of obligations, which is likely to resolve most perceived conflicts between policies. The draft LWRP has been prepared in accordance with the NPSFM. |
| 13 | Renewable electricity generation (REG) | No specific references to REG recommended. | Included new content in objectives (that Otago has a highly renewable energy system – IM-O4) and policies (that climate change adaptation and mitigation methods protect Otago’s existing REG facilities and provides for the development of new REG – IM-P10). | **Limited**. Provisions for REG in the LF, DAM, and EFL chapters have been reviewed and are being amended to implement the direction in the pORPS more clearly. This is not a significant shift as the draft LWRP already provided for REG activities, however clause 3 feedback has highlighted that the approach was not very clear to some parties. Additional provisions are being amended to better provide for the development of small-scale REG. |
| 14 | Contravening limits (IM-P12) | IM-P12 allows limits (other than those in national direction) to be breached for projects responding to climate change. Staff recommended removing some entry criteria but retaining the focus only on projects that provide climate change mitigation (i.e. projects that assist with reducing greenhouse gas emissions). | Agreed with most staff recommendations but considered policy should also be available for climate change adaptation projects (i.e. those assisting with adapting to the effects of climate change). | **Limited**. Relevant for LWRP provisions managing flood protection and drainage infrastructure that is important for adapting to the effects of climate change, however the most relevant limits on those activities are in the NPSFM and NESF and cannot be overridden. |
| **AIR – Air** | | | | |
| 15 | All | Recommended a range of minor/technical amendments in response to submissions, including:  Stronger direction for ‘noxious or dangerous’ effects than ‘offensive or objectionable’ effects,  More clarity on when discharges to air should be provided for. | Agreed with most staff recommendations. Made additional amendments to provide more discretion for decision-makers when managing discharges to air and to strengthen direction on managing reserve sensitivity. | **None**. The LWRP does not manage air discharges. |
| **CE – Coastal environment** | | | | |
| 16 | Whole chapter | Recommended a range of amendments, including:  Better recognition of Kāi Tahu values and their relationship with the coastal environment,  More closely aligning provisions with the NZCPS, and  Clarifying how the CE chapter works with other RPS chapters. | Agreed with most staff recommendations, except:  Removed the notified framework for identifying and managing regionally significant surf breaks. | **Limited.** Most of the coastal environment is managed under the Regional Plan: Coast for Otago. The most relevant parts of the CE chapter for the LWRP are closely aligned with the NZCPS, which the draft LWRP has been drafted on the basis of implementing. |
| 17 | Protection | Recommended, in some cases, that parts of the coastal environment are protected. | Disagreed with some recommendations and made amendments to clarify that the protection is from inappropriate subdivision, use, and development, not ‘absolute protection.’ |
| **LF – Land and freshwater** | | | | |
| **LF-WAI – Te Mana o te Wai** | | | | |
| 18 | Te Mana o te Wai  (LF-WAI-O1, LF-WAI-P1, LF-WAI-P2, LF-WAI-P3) | Recommended retaining the hierarchy of obligations as notified, which clarified that the second priority (human health needs) are limited to those arising from ingestion and immersion, rather than indirectly (i.e. REG, food production).  Did not agree with submitters who considered that the concept of ‘balance’ in Te Mana o te Wai meant that the hierarchy was a “weighting” exercise rather than a “prioritisation”. | Agreed with staff recommendations. One minor amendment to LF-WAI-O1 (the Otago expression of Te Mana o te Wai) to clarify that the restoration of mauri occurs as a result of implementing Te Mana o te Wai, rather than being an outcome in its own right. | **Limited**. Draft LWRP was prepared in accordance with the notified RPS provisions which were largely confirmed by the panel. Where ‘mauri’ has been used in provisions, staff have checked and, in limited cases, amended provisions to ensure the same approach is adopted (i.e. restoring mauri is an outcome of freshwater management, not an outcome in its own right). Minor changes have been made to policies in the EFL chapter to ensure that the distinction between priorities two and three are in accordance with the pORPS.  ***LF-WAI-O1 and LF-WAI-P1 have been appealed to the High Court.*** |
| 19 | Integrated catchment management | Submitters sought an additional policy requiring integrated catchment management to be used to implement the NPSFM as part of the concept of Te Mana o te Wai. Staff did not consider this was lawful but recommended including a method on the use of integrated catchment management as one of the ways to achieve the more general outcomes in the LF-FW section, including long-term visions. | Agreed with staff recommendations. | **Limited.** Council’s approach to, and use of, integrated catchment management sits outside the LWRP and therefore does not directly affect its content. There are references in the plan to use of community groups which may or may not be integrated catchment management groups (for example, water user groups). These are considered to give effect to the pORPS. |
| **LF-FW – Fresh water** | | | | |
| 20 | FMU and rohe boundaries  (LF-VM-P5, MAP1) | Recommended:  moving the Puerua catchment from the Catlins FMU to Lower Clutha rohe,  moving the Waikōuaiti catchment from North Otago FMU to Dunedin and Coast,  clarifying coastal boundaries.  None of the proposed amendments were opposed by any submitters. | Agreed with staff recommendations. | **Moderate**. FMU and rohe maps updated to align with RPS and relevant provisions (e.g. environmental outcomes, TAS) moved.  ***Relevant provisions (LF-VM-P5 and MAP1) have not been appealed.*** |
| 21 | Long-term visions  (LF-FW-O1A, LF-VM-O2, LF-VM-O3, LF-VM-O4, LF-VM-O5, LF-VM-O6) | Recommended many changes, including:  A region-wide vision picking up the common aspects of all FMU visions,  Amendments to recognise the modified nature of many water bodies,  Recognising the importance of human connections with water,  Recognising the importance of adopting sustainable land and water management practices to support food and fibre production,  Extending the Catlins FMU timeframe from 2030 to 2035 and the Lower Clutha rohe timeframe from 2045 to 2050. | Agreed with most staff recommendations, except:  Strengthened the practicability test for achieving natural character, form and function outcomes (to reflect the modified nature of many of Otago’s water bodies)  Included ensuring communities are appropriately serviced by three waters infrastructure,  Included provision for new REG in Clutha Mata-au and Taiari FMUs. | **Moderate**. Environmental outcomes reviewed and amended for consistency with the long-term visions. Target attribute states and interim target attribute states (and associated timeframes) reviewed and amended for consistency with revised vision timeframes. Additional policy direction on REG has been included which more clearly reflects the panel’s recommendations, particularly on providing for the development of new REG. A new controlled activity rule has been included to provide a straightforward consenting pathway for the ongoing maintenance of nationally and regionally significant hydro-electricity generation schemes.  ***Region-wide and FMU visions have been appealed to the High Court on limited matters:***  ***Provision for new REG in Clutha Mata-au and Taiari FMUs.***  ***Provision for trout and salmon habitats in all visions.*** |
| 22 | Transitions over time | Recommended including a new policy recognising that transitions in land and water use will need to occur over time in order for the impacts to be sustainably managed. | Agreed with staff recommendations. | **Limited**. The strategic direction in the draft LWRP already incorporated this concept. Provisions managing over-allocation and transitions in resource more generally have been reviewed across the draft LWRP and are considered to give effect to this policy. |
|  | Water allocation and use | Recommended including a new policy providing more direction on the allocation and use of water, including efficiency. | Agreed with staff recommendations. | **Limited**. The EFL provisions in the draft LWRP have been reviewed and are considered to give effect to this policy. Some minor amendments are being considered to ensure the EFL provisions more clearly link back to the RPS direction, particularly in relation to REG. |
| 23 | Wetlands  (LF-FW-O9, LF-FW-P10A) | Recommended:  Applying NPSFM direction to natural inland wetlands,  Managing natural wetlands that are not natural inland wetlands to maintain their values, including by implementing the NZCPS for coastal wetlands. | Disagreed with staff recommendations. Significant revision of provisions to:  Expand mapping requirements to all wetlands,  Apply the NPSFM direction for natural inland wetlands to all types of wetlands. | **Significant**. WET chapter in the draft LWRP does not implement the RPS provisions as amended by the panel. Further information on this issue and the options available for the LWRP will be provided to councillors as part of the workshop on 28 May.  ***Relevant provisions (LF-FW-O9, LF-FW-P10A) have been appealed to the High Court.*** |
| 24 | Natural character and instream values  (LF-FW-P13, LF-FW-P14) | Recommended a range of minor amendments to improve clarity and practicality, including that outcomes are achieved ‘to the greatest extent practicable’. | Agreed with staff recommendations, except that ‘to the greatest extent practicable’ replaced with ‘to the extent practicable’. | **Limited**. Minor amendments made to draft LWRP policies addressing natural character and instream values to align with RPS. |
| 25 | Stormwater  (LF-FW-P15) | Recommended:  Requiring integrated catchment management plans for stormwater in urban areas,  separating direction for wastewater and industrial and trade waste into a new policy (LF-FW-P16), and  a range of minor amendments to improve clarity and practicality. | Agreed with staff recommendations. | **None**. Draft LWRP provisions have been reviewed and are considered to implement the RPS direction.  ***Relevant provision has not been appealed.*** |
| 26 | Animal effluent, sewage, greywater, industrial and trade waste  (LF-FW-P16) | Recommended:  Removing the ability for new discharges directly water and  Phasing out existing discharges directly to water ‘to the greatest extent practicable’. | Agreed with staff recommendations, except that ‘to the greatest extent practicable’ replaced with ‘to the extent practicable’. | **Limited**. Draft LWRP provisions have been reviewed and minor amendments have been made to align with the RPS direction, particularly to distinguish between ‘wastewater’ and ‘sewage’.  ***Relevant provision has been appealed to the High Court.*** |
| 27 | Outstanding water bodies  (LF-FW-P11, LF-FW-P12, APP1) | Recommended:  Removing the requirement for any water body in an outstanding natural landscape or feature to be identified as an OWB,  Amendments to identification criteria to clarify the threshold for being ‘outstanding’, and  Amendments to ensure that effects of infrastructure on OWBs are managed by applying the mandatory NPSFM direction on managing effects on rivers and wetlands (i.e. no higher threshold applied). | Agreed with most staff recommendations, except:  Minor amendments to identification criteria to further clarify the thresholds,  Requiring effects of infrastructure to be managed to protect the values of OWBs. | **Moderate**. Technical advice has been sought by consultants engaged to identify OWBs about the impact (if any) of the panel’s amendments on the OWB identification that has occurred. Amendments made to OWB provisions to align with RPS direction. |
| 28 | Species interaction (LF-FW-M8AA) | Following discussions with Kāi Tahu, DOC, and Fish and Game, staff recommended a jointly-drafted method to address species interactions between indigenous species and trout and salmon. | Agreed with staff recommendations. | **Limited**. The new method relates to the preparation of the mandatory fish passage action plan required under the NPSFM and is therefore not directly relevant to the draft LWRP. However, relevant provisions are currently being reviewed to ensure they are consistent with the approach outlined in the method. |
| **LF-LS – Land and soil** | | | | |
| 28 | Pests (LF-LS-P16A, LF-LS-M11) | Recommended removing specific direction on managing wilding conifers from the CO and NFL chapters and including that direction in a broader policy on managing pests and their impacts on land in the LF-LS section. | Agreed with staff recommendations. | **Limited**. Provisions in the draft LWRP have been prepared to enable discharges for pest control as much as possible. The additional direction in the pORPS helpfully supports the approach already being taken in the LWRP. |
| 30 | Soil erosion  (LF-LS-P18) | Recommended minor amendments to improve implementation. | Agreed with most staff recommendations, softened the language in one clause of policy to provide greater flexibility for decision-makers. | **None**. Draft LWRP provisions have been reviewed and are considered to implement this direction.  ***Relevant provision has not been appealed.*** |
| 31 | Highly productive land (HPL) | Recommended a range of changes to implement the NPSHPL. The NPS contains an interim definition of HPL based on Land Use Capability classes which applies until the mandatory identification of HPL has been completed (based on a wider set of criteria than just LUC). Staff recommended including interim protection for land valued for horticulture and viticulture, until long-term identification of HPL has occurred. | Agreed with most staff recommendations, except:  Interim protection for horticulture and viticulture land. | **None**. Management of HPL is a district council function. |
| **ECO – Ecosystems and indigenous biodiversity** | | | | |
| 32 | Significant natural areas (SNAs) | Recommended a range of changes to give effect to the NPSIB including:  adopting the criteria for identifying SNAs with one Otago-specific addition (fauna habitat),  aligning policies on protection of SNAs and management of activities within SNAs,  reducing stringency of notified provisions for maintaining indigenous biodiversity and aligning with the NPSIB,  adopting the offsetting and compensation appendices from the NPSIB. | Agreed with most staff recommendations. | **Unknown.** Government has indicated it will pause implementation of SNAs but legislation has not yet been introduced. It is unclear what impact this will have on the ECO chapter.  Panel’s report does not discuss whether this chapter was intended to apply to freshwater biodiversity or not. Some provisions clearly apply to ORC, while others (for example, the definition of SNA) are restricted to district councils. Appeals are expected on these provisions. |
| **EIT – Energy, infrastructure and transport** | | | | |
| 33 | Structure | Recommended reordering the three sub-sections as follows: infrastructure, energy, transport. | Agreed with staff recommendations. | **None**. |
| 34 | Managing effects from infrastructure (EIT-INF-P13) | EIT-INF-P13 is the key policy setting out how effects from infrastructure are managed. Some submitters sought industry-specific approaches for different types of infrastructure. Staff recommended:  Retaining the policy and its application to all types of infrastructure,  Require avoiding locating in high value/sensitive areas, and if that is not practicable, manage nationally and regionally significant infrastructure by either:   * + Managing effects in specific ways set out in the policy (generally reflecting national direction for these areas, for example within an SNA), **or**   + For areas without a specific approach, by avoiding effects on the area’s values.   Requiring infrastructure that is not nationally or regionally significant to avoid effects on the area’s values. | Agreed with staff recommendations, except:  For nationally and regionally significant infrastructure in areas without a specific approach, instead of avoiding adverse effects:   * + Remedy or mitigate to the extent practicable, then   + Have regard to offsetting or compensating for more than minor residual adverse effects. | **Limited**. The effects of infrastructure are predominantly managed by mandatory policies in the NPSFM for rivers and wetlands, which are reflected in EIT-INF-P13 already. Some amendments to existing policies in the strategic direction have been made in order to reflect the amendments recommended by the panel with regard to OWBs. |
| 35 | REG | Submitters sought to have a standalone chapter on REG with a separate approach to managing effect than described above. Staff did not recommend adopting this approach, but did recommend a range of amendments | Agreed with staff recommendation. | **None**. |
| 36 | Non-renewable energy (EIT-EN-P5) | Recommended amendments to:  Implement direction in the NPS for Greenhouse Gas Emissions from Industrial Process Heat, and  Avoid establishment of new non-renewable energy sources. | Agreed with staff recommendations, except:  ‘restrict’ rather than ‘avoid’ new non-renewable energy sources, to recognise that some industries do not have non-renewable sources available (particularly for back-up supplies). | **None**. NPS manages air discharges which are not managed by the draft LWRP. Development of non-renewable energy sources (insofar as that is relevant to ORC’s functions) is not a prohibited activity under the draft LWRP, which implements the RPS direction. |
| 37 | Commercial port activities | Recommended amendments to align with Supreme Court decision in *Port Otago*. | Agreed with staff recommendations. | **None.** Port activities are managed under the Regional Plan: Coast for Otago. |
| **HAZ – Hazards and risks** | | | | |
| 38 | Natural hazards | Recommended a range of amendments, including:  Clarifying the provisions for identifying and assessing risks,  Better aligning timeframes and responsibilities between councils with ORC’s natural hazards work programme,  Better recognising Kāi Tahu rakatirataka. | Agreed with staff recommendations. | **Moderate**. The RPS provisions are not dissimilar to the operative RPS provisions for natural hazards and are consistent with ORC’s hazards work programme. The draft LWRP has been prepared on the assumption that key natural hazard projects listed in ORC’s Long Term Plan would be completed on time (end of 2023-24 financial year). Some amendments may be required if the outputs from these projects are not available on those timeframes.  Discussions are ongoing with the Engineering team about how to better provide for the maintenance, upgrade, replacement and construction of flood protection and drainage infrastructure that forms part of ORC’s natural hazard management works. |
| 39 | Contaminated land | Recommended some minor/technical amendments to clarify provisions as well as an amendment to require closed landfills and contaminated land at risk from the effects of climate change to be identified. | Agreed with staff recommendations. | **Limited**. The Contaminated Land chapter is a new addition to the LWRP and combines provisions from EARTH and WASTE which were prepared in accordance with the notified pORPS provisions. The provisions were reviewed and are considered to implement the RPS. |
| **HCV – Historical and cultural values** | | | | |
| 40 | Wāhi tūpuna | Recommended some minor/technical amendments to clarify provisions. | Agreed with staff recommendations. | **Limited**. The draft LWRP includes an environmental outcome for wāhi tūpuna in all FMUs and rohe which was prepared with mana whenua and is consistent with the pORPS. The LWRP also contains an appendix with the freshwater outcomes sought by mana whenua, including for wāhi tūpuna, which is used in consent decision-making to enable an assessment of the extent to which a proposal supports the outcomes sought by mana whenua. Management of wāhi tūpuna affects land and is therefore partly implemented by district councils as well as ORC. |
| 41 | Historic heritage | Recommended retaining operative RPS approach of managing ‘two tiers’ of historic heritage: outstanding and special. | Disagreed with staff recommendations, recommended removing ‘second tier’ (special) historic heritage framework. Also recommended amendments to emphases the ongoing use and adaptive re-use of historic heritage. | **None**. Historic heritage is primarily managed by district councils. Draft LWRP has been reviewed and is considered to implement these provisions to the extent they are relevant. |
| **NFL – Natural features and landscapes** | | | | |
| 42 | Identification criteria | The criteria for identifying outstanding natural features and landscapes were adopted from the operative RPS. Staff recommended some amendments to align them with the latest practice guidelines, *Te Tangi a te Manu*. | Agreed with staff, but considered the full set of criteria should be replaced by reference to *Te Tangi a te Manu*. | **None**. Provisions implemented by district councils. |
| 43 | Two tier approach | Recommended retaining operative RPS approach of managing ‘two tiers’ of natural features and landscapes: outstanding and highly valued. | Disagreed with staff recommendations, recommended removing mandatory ‘second tier’ (highly valued) framework and leaving this as optional for district councils. |
| 44 | Landscape capacity | Recommended amendments to provisions requiring the identification of the capacity of landscapes to absorb change, which then informed decision-making about activities within these landscapes. | Agreed with staff recommendations, except:  Removed requirement to identify capacity. |
| **UFD – Urban form and development** | | | | |
| 45 | Redraft | Significant amendments were sought to the whole UFD chapter, particularly from DCC and QLDC. Staff agreed that the chapter would benefit from redrafting to refine the provisions, better align with the NPSUD, and remove duplication with other chapters. | Agreed with most staff recommendations. | **None**. Provisions mostly implemented by district councils. Draft LWRP has been reviewed and is considered to implement these provisions to the extent they are relevant. |
| 46 | Intensification/expansion | Recommended amendments to provide more flexibility for districts to use a mixture of intensification and expansion to meet housing demand. | Agreed with most staff recommendations. |

1. Including section 5 (purpose of the RMA), section 6 (matters of national importance), section 7 (other matters) and, to a lesser extent section 8 (Treaty of Waitangi). [↑](#footnote-ref-2)
2. Section 32 Evaluation Report for the pORPS, p.72 [↑](#footnote-ref-3)
3. Paras 10-12 of Appendix One, pORPS Hearing Panel Report [↑](#footnote-ref-4)
4. Appendix One of the pORPS Hearing Panel Report, paras 9-79. [↑](#footnote-ref-5)
5. For example, the panel recommended an amendment to CE-P5 to clarify that the policy requires protection “from inappropriate activities”, not absolute protection. [↑](#footnote-ref-6)
6. Para 46 of Appendix One, pORPS Hearing Panel Report [↑](#footnote-ref-7)
7. Appendix One of the pORPS Hearing Panel Report, para 69. [↑](#footnote-ref-8)