

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

IN THE MATTER

**of an appeal under Clause 14 of
Schedule 1 of the Resource
Management Act 1991**

BETWEEN

**Royal Forest and Bird Protection
Society of New Zealand Inc
Appellant**

AND

**Otago Regional Council
Respondent**

NOTICE OF APPEAL BY THE ROYAL FOREST AND

BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED

Dated 14 May 2024

**To: The Registrar
Environment Court
Christchurch**

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird or the Society**) appeals against the decision of the Otago Regional Council ('**ORC or Council**) in respect of the non-freshwater planning instrument parts Proposed Otago Regional Policy Statement 2021 (**PORPS**).
2. Forest & Bird made a submission and further submission on the PORPS.
3. Forest & Bird is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. The decision was publicly notified on 30 March 2024.
5. The decision was made by the Otago Regional Council which adopted the recommendations in the report of the Hearings Panel appointed by the Council on the non-freshwater parts of the PORPS.
6. Forest & Bird is willing to participate in alternative dispute resolution.
7. The parts of the decision that Forest & Bird is appealing are provisions relating to definitions, integrated management, the coastal environment, land and freshwater, land and soil, ecosystems and indigenous biodiversity, energy, infrastructure, transport, hazards, natural features and landscapes, urban form and development.

The reasons for appeal, and relief sought

8. In addition to the reasons set out in Table 1 below, the general reasons for Forest & Bird's appeal are that the provisions appealed against:
 - a. do not give effect to the New Zealand Coastal Policy Statement (**NZCPS**);
 - b. do not give effect to the National Policy Statement on Fresh water management (**NPSFM**);
 - c. do not give effect the National Policy Statement for Indigenous Biodiversity (**NPSIB**). In some instances, large portions of the NPSIB have been cut and paste into the PORPS. In this process, some key protective elements from the NPSIB have been omitted and need to be carried through for the provisions to work and ultimately for the PORPS to give effect to the NPSIB.
 - d. are not consistent with Part 2 of the Resource Management Act (**the Act or RMA**);
 - e. do not implement the Council's functions under s 30 of the Act;

- f. do not represent the most appropriate way to achieve the objectives of the PORPS in accordance with s 32 of the RMA;
 - g. do not represent best resource management practice.
- 9. The parts of the decision appealed, reasons for the appeal and relief sought are set out in Table 1 below. Where specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons for its appeal. Forest & Bird also seeks any consequential changes made necessary by the relief sought below.
- 10. Forest & Bird has also filed an appeal to the High Court on the Freshwater Planning Instrument parts of the PORPS. In particular, on Objective LF-FW-09 “Wetlands”, Policy LF-FW-P10A “Managing wetlands”, and Policy LF-LS-P21 “Land use and freshwater”. Forest & Bird accordingly seeks any consequential amendments to any related provisions in the non-freshwater parts of the PORPS that may arise from any changes resulting from the High Court’s determination.

TABLE 1: ADDITIONAL REASONS FOR APPEAL AND RELIEF SOUGHT TO THE PROPOSED OTAGO REGIONAL POLICY STATEMENT

Specific provisions to the matters appealed	Reasons for appeal (in addition to those set out in paragraph 8, 9, and 10 above)	Relief (Forest & Bird changes are shown in <u>underline</u> and strike through to the decision version of PC9)
Definition of terms		
Commercial port activity	<p>NZCPS Policy 9 concerns safe ports per se and does not extend to such matters as the operation of commercial ships.</p> <p>This definition is connected to EIT-TRAN-P23 and has the effect of broadening EIT-TRAN-P23 beyond the safe and efficient operation of existing ports to broader matters beyond the scope of Policy 9.</p>	Delete the definition of “commercial port activity” or confine to include activities specifically related to the safe operation of the existing ports.
Highly valued natural features and landscapes	The deletion of this definition is inappropriate and results in the RPS no longer achieving important direction in Part 2 of the RMA.	Reinstate the definition of “highly valued natural features and landscapes”.
Regionally significant infrastructure	The definition captures too many activities which are not of regional significance. Not only is this inappropriate, it creates uncertainty for related provisions which results in some no longer giving effect to the NZCPS, the NPSFM and ultimately lack of protection for indigenous biodiversity under s6(c) of the RMA.	<p>Delete (2A), (8A), (11A), (13).</p> <p>Amend clause 2 as follows:</p> <p>electricity sub-transmission infrastructure <u>of the National Grid or local distribution network</u>,</p> <p>Amend clause 4 as follows:</p> <p>telecommunication and radiocommunication facilities <u>as respectively defined in section 5 of the Telecommunications Act 2001 and in section 2 of the Radiocommunications Act 1989</u>,</p>
Rural area	Forest & Bird is concerned that the default approach to all areas being considered a rural area if it is not an urban area would capture reserves, national parks, the coastal	Include a definition of rural area that either clearly includes or excludes areas where primary production

	<p>environment or other areas where rural activities may not be appropriate or may not be appropriate as the primary activity.</p> <p>If rural production is the focus of rural areas, then national parks and land held for other purposes should not be considered “rural area”.</p> <p>The relationship between “urban area”, “urban environment” and “rural area” is unclear particularly as to whether there are any other areas beyond this considered in the RPS.</p>	<p>activities are not appropriate such as in national parks. Ensure that provisions for rural activities, production activities or residential activities do not override protection of natural values.</p>
IM – Integrated management		
IM-O4-Climate change	<p>This should be strengthened to recognise mitigation action could be stronger than required by national direction.</p>	<p>Amend clause 1 as follows:</p> <p>(1) are at least aligned with, or stronger than, national level climate change responses,</p>
IM-P10-Climate change adaptation and mitigation	<p>Clause 2 of the notified version was to “prioritise avoiding the establishment of new activities in areas subject to risk from the effects of climate change, unless those activities reduce, or are resilient to, those risks.” The NZCPS, including Policy 25, discourages infrastructure in areas subject to natural hazards, accordingly, clause 2 of the notified version should be reinstated.</p>	<p>Reinstate clause 2.</p>
IM-P12-Contravening limits for climate change mitigation and climate change adaptation	<p>IM-P12 needs to be carefully constrained to ensure it does not result in perverse outcomes, in particular, ecologically irresponsible consent applications presented as “climate change mitigation” and “climate change adaptation”.</p> <p>The extent of offsetting and compensation allowed provides few limits on how they can be used and would result in continued loss of important and significant values in the region.</p> <p>Further, IM-P12 fails to give effect to environmental bottom lines and limits contained within the various national policy statements. The provision for offsetting and compensation in clause 3 results in IM-P12 failing to give effect to NZCPS and undermines other provisions already contained in the PORPS.</p>	<p>Amend the chapeau as follows:</p> <p>If a proposed activity demonstrates it provides or will provide enduring regionally or nationally significant climate change mitigation or climate change adaptation with commensurate benefits for the well-being of people and communities and the wider environment, decision makers may allow non-compliance with limits set in, or resulting from, any policy or method of this RPS only if they are satisfied that:</p> <p>Delete clause 3 in its entirety.</p>

		<p>Reinstate clause 4.</p> <p>Amend clause 5 as follows:</p> <p>(5) the activity will not contravene a national policy statement or national environmental standard <u>including any relevant limits, policies, or ecological bottom lines.</u></p> <p>Include the following clause:</p> <p>(x) there is no alternative location, site, or method for the activity</p>
CE- Coastal environment		
CE-O1A-Te Mauri o te Moana	Water in the coastal environment may include fresh water and coastal water ¹ (including brackish and saline). The chapeau therefore should reference “water in the coastal environment” rather than the narrow subset of “coastal water”.	<p>Amend the chapeau as follows:</p> <p>The health of Otago’s coastal water <u>water in the coastal environment</u> is:</p>
CE-O1- Safeguarding the coastal environment (Te Hauora o Te Tai o Arai te Uru)	CE-O1 fails to capture protection of indigenous biodiversity generally, which is a broad concept including as set out under Policy 11 and Objective 1 of the NZCPS. These provisions are not limited to protecting only significant indigenous biodiversity.	<p>Amend clause 4 as follows:</p> <p>(4) the diversity of indigenous coastal flora and fauna is maintained, and areas of significant indigenous biodiversity <u>are is</u> protected</p>

¹ S2, RMA: water—

(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

CE-O3-Natural character	CE-O3 does not give effect to the NZCPS, in particular Objective 2, Policies 13, 14, and 15.	<p>Replace CE-O3 with the following:</p> <p><u>Areas of natural character, natural features, landscapes and seascapes within the coastal environment are protected, and rehabilitation efforts are restoring areas of the coastal environment where degradation has occurred</u></p>
CE-O5 – Activities in the coastal environment	CE-O5 does not give effect to NZCPS Policy 6, including Policy 6(2)(d): “recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there.” It also does not give effect to the NZCPS provisions concerning water quality including Objective 1 and Policy 21.	<p>Amend clause 1 as follows:</p> <p>(1) make efficient use of space occupied <u>and have a functional need to locate</u> in the coastal marine area</p> <p>Add a new clause:</p> <p><u>(x) maintain and improve the quality of water in waterbodies and coastal water</u></p>
CE-P2- Identification	CE-P2 fails to implement key directives from the NZCPS. For example, the removal of regionally significant surf breaks does not give effect to Policy 13 and 14. CE-P2 also fails to implement Policy 20 concerning vehicle access.	<p>Amend clause 5 to reinstate reference to “regionally significant surf breaks.”</p> <p>Include the following additional clauses:</p> <p><u>(x) Significant natural areas in accordance with Policy ECO-P2,</u> <u>(x) Areas where preserving natural character requires objectives, policies and rules, and include those provisions,</u> <u>(x) Coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects,</u> <u>(x) Areas and opportunities for restoration or rehabilitation of natural character,</u></p>

		<u>(x) Areas and times where vehicle access is appropriate and where vehicles are otherwise restricted on beaches, foreshore and seabed and adjacent land.</u>
CE-P3- Coastal water quality	<p>The NZCPS seeks to improve the quality of both coastal and fresh water.</p> <p>Further amendments are required to CE-P3 before it can be said to give effect to the NZCPS. NZCPS Policies 21(d) and 22(2) have recently been described by the Supreme Court as directive policies “very specific as to subject matter and concrete as to intended effect”.²</p>	<p>Include additional clauses:</p> <p><u>(x) requiring that stock are excluded from the coastal marine area, adjoining intertidal areas and other water bodies and riparian margins in the coastal environment, within a prescribed time frame</u></p> <p><u>(x) Require that development will not result in a significant increase in sedimentation in the coastal marine area</u></p>
CE-P7-Surf breaks	CE-P7 does not give effect to NZCPS Policy 13 and does not achieve Part 2 of the Act.	<p>Reinstate reference to regionally significant surf breaks in both the chapeau and clause 2.</p> <p>Add the following clause:</p> <p><u>(x) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on surf breaks</u></p>
CE-P8- Walking access	<p>Bird breeding and roosting areas can change and may not be captured within a recognised SNA. Restrictions may also be temporary in nature.</p> <p>Policy direction is needed for consideration of long-term availability for access including for future generations.</p> <p>Beaches, foreshore, and seabed can be significantly affected by vehicles and the RPS fails to give effect to NZCPS Policy 20. Vehicle access is restrictive under the NZCPS</p>	<p>Amend as follows:</p> <p>Manage public walking and vehicle access to, along and adjacent to the coastal marine area by:</p> <p>(1A) maintaining or enhancing public walking access, (1B) controlling vehicle access, and (1C) restricting public walking and vehicle access where necessary:</p>

² *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Authority* [2024] NZSC 26, at [103].

	<p>Policy 20 and should not be confused with provisions for walking access. Bylaws are not sufficient for Territorial Authorities. Transfer of powers may be appropriate for integrated management purposes as different restrictions from mean high water springs may not be effective or efficient.</p>	<p>(a) to protect public health and safety, (b) to protect areas of significant natural areas indigenous vegetation and significant habitats of indigenous fauna, <u>including during bird breeding and roosting,</u> (c) to protect dunes, estuaries and other sensitive natural areas or habitats, (d) to protect places or areas of special or outstanding containing historic heritage of regional or national significance, (e) to protect places or areas of significance to takata mana whenua, including wāhi tapu, and wāhi tupuna and wāhi taoka, (f) for defence purposes in accordance with the Defence Act 1990, (g) for temporary activities or special events, or (h) to ensure a level of security consistent with the operational requirements of a lawfully established activity.</p> <p><u>Apart from emergency vehicles, vehicle access and use on beaches, foreshore and seabed, is only provided:</u></p> <p>(1) <u>at identified locations required for boat launching, as the only practicable means of access to private property or public facilities, or for the operation of existing commercial activities.</u></p> <p>(2) <u>For local authority activities, including law enforcement, or activities carried out by or on behalf of the Department of Conservation</u></p>
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		Make further amendments to CE-P8 or add another policy to capture considerations for long term availability of access including for future generations.
CE-P9- Activities on land within the coastal environment	<p>CE-P9 contains provisions which do not give effect to Policy 6 of the NZCPS. Clause (2A) is overbroad and does not reflect direction in NZCPS Policy 6(2)(c) and (d).</p> <p>Clause 4 is unduly narrow and contains inappropriate qualification which does reflect NZCPS Policies, including Policies 13, 14, 21, 22.</p>	<p>Amend clause (2A) as follows:</p> <p>recognising <u>there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places and providing for the functional needs and operational needs of infrastructure</u></p> <p>Amend clause 4 as follows:</p> <p>(4) requiring development to be set back from the coastal marine area, <u>adjoining intertidal areas and other water bodies and riparian margins in the coastal environment,</u> and other coastal water where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment,</p>
CE-P10- Activities within the coastal marine area.	As per the reasons relating to changes sought to CE-O5, the reference to “operational need” in clause 3 of CE-P10 must be removed as it does not give effect to the NZCPS.	<p>Amend clause 3 as follows:</p> <p>(3) have a functional need or operational need to be located in the coastal marine area, or</p>
CE-M3- Regional plans	Further clauses are required to capture amendments sought to CE policies (CE-P8) addressed above.	<p>Reinstate reference to regionally significant surf breaks in clause 2 and 5(b).</p> <p>Amend clause 3 as follows:</p>

		<p>(3) require development to be set back from the coastal marine area, <u>adjoining intertidal areas and other water bodies and riparian margins in the coastal environment</u>, and other coastal water where practicable and reasonable,</p> <p>Add the following clauses:</p> <p><u>(x) include other mapping as set out in the CE Policies</u> <u>(x) control, permit or otherwise restrict vehicle access to beaches, foreshore and the seabed</u></p>
CE-M4-District plans	As above, noting that clause 8 requires broadening to reflect the terminology in NZCPS Policy 20.	<p>Reinstate reference to regionally significant surf breaks in clause 10.</p> <p>Add the following clauses:</p> <p><u>(x) include other mapping as set out in the CE Policies</u></p> <p>Amend 8 as follows:</p> <p>(8) control, <u>permit or otherwise restrict</u> vehicle access, along and adjacent to beaches, and the coastal marine area in accordance with Policy 20 of the NZCPS</p>
CE-AER1	The outcome is uncertain and does not reflect the protection of indigenous biodiversity directed under the NZCPS and s 6(c).	<p>Amend as follows:</p> <p>The values of the coastal environment are <u>safeguarded and preserved for future generations</u> not adversely affected or lost because of</p>

		inappropriate uses of the natural and physical resources in the coastal environment.
LF - Land and freshwater		
LF-FW-P13- Preserving natural character and instream values	<p>LF-FW-P13 does not give effect to the NPSFM, in particular, Policy 5. In order to meet LF-WAI-O1 and LF-WAI-P1, and the NPSFM Objective, decision-makers should use the naturalised waterbody as a starting point for assessing decisions against.</p> <p>Economic considerations are encompassed in the direction “the greatest extent practicable” and can always be relied on to bypass restoration or improvement. The terms “where possible” does not suffer this flaw and enables LF-WAI-P3 to give effect to the NPSFM.</p>	<p>Amend clause 1 as follows:</p> <p>(1) Sustains and, to the greatest extent practicable where possible, restores or improves:</p> <p>Include an additional clause:</p> <p><u>(x) Considers effects against the naturalised flow and natural state of a waterbody when making decisions on flow, allocation, standards for water quality, and activities which may affect the health, well-being, and resilience of water bodies and freshwater ecosystems</u></p>
LF-FW-P13 – Preserving natural character and instream values	LF-FW-P13 contains terminology that results in directive policies from the NPSFM being unduly diluted, for example, reference to “to the extent practicable”.	<p>Replace reference to “to the extent practicable” in clause 4 with “wherever possible”.</p> <p>Remove reference to “permanently” in clause 7.</p>
LF-FW-P14 – Restoring natural character and instream values	Introduction of the terms “where practicable” is inappropriate and does reflect direction in the NPSFM.	Remove reference to “where practicable” from the chapeau.
LF-LS-Land and Soil		

<p>LF-LS-P16A – Managing pests</p>	<p>Wilding conifers have a well-known impact on indigenous species and habitats as well as an adverse impact on landscape values. It is inappropriate for plantation forests of any exotics to be established or established in SNAs or in buffer zones to protect SNAs. This is counter to the purpose of SNAs. Additionally, wilding conifers should not be able to be planted in areas of high value or where there is a risk to spread into such areas that would adversely affect indigenous biodiversity and ecosystem health. The goal should be to eliminate wilding conifers otherwise efforts to control and reduce their spread become difficult to sustain.</p>	<p>Reduce the impact of pests, including wilding conifers, by:</p> <p>(1) avoiding afforestation and replanting of plantation forests with wilding conifer species listed in APP5 within:</p> <p>(a) areas identified as outstanding natural features, outstanding natural landscapes, or significant natural areas, and</p> <p>(b) buffer zones adjacent to the areas listed in (a) where it is necessary to protect those areas,</p> <p>(2) outside plantation forests, avoiding the planting of wilding conifer species listed in APP5 and any other pests in a way that is consistent with the Otago Regional Pest Management Plan 2019-2029,</p> <p><u>(x) avoiding afforestation and replanting of plantation forests with wilding conifer species listed in APP5 within:</u></p> <p><u>(a) areas identified in a district plan as being of high amenity values;</u></p> <p><u>(b) outstanding natural features and landscapes;</u></p> <p><u>and</u></p> <p><u>(c) the coastal environment;</u></p> <p><u>(d) within other areas, including prevailing upwind of such areas, where wilding spread would have adverse effects on indigenous biodiversity, ecosystem health, or restoration where degraded;</u></p> <p><u>and</u></p> <p>(3) enabling the control of pests on land, and</p>
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		(4) supporting initiative to control and eliminate pests and limit or eliminate their further spread.
LF-LS-M12-District plans	The reference to “minimising” in LF-LS-M12(1)(b) provides weak direction and does not achieve the purpose of the RMA.	Replace reference to “minimising” in (1)(b) with “avoiding”.
ECO – Ecosystems and indigenous biodiversity		
ECO-O1 – Indigenous biodiversity	<p>The reference to “overall decline” ECO-O1 is contrary to s 6(c) of the RMA and results in the objective failing to give effect to:</p> <ol style="list-style-type: none"> elements of the National Policy Statement for Indigenous Biodiversity. Objective 1 and Policy 11 of the New Zealand Coastal Policy Statement. Policies 6, 8, 9 of the National Policy Statement for Freshwater Management. 	<p>Reinstate ECO-O1 as notified:</p> <p><u>Otago’s indigenous biodiversity is healthy and thriving and any decline in quality, quantity and diversity is halted</u></p>
ECO-O2- Restoring or enhancing	<p>Objective O2 appears to address the decline in biodiversity which Objective O1 was intended to at least halt. The relationship between the objectives is uncertain; and indigenous biodiversity encompasses more than just extent.</p> <p>The term enhancement is subjective and may allow for adverse effects or loss so long as the outcome is considered an enhancement. The term “improve” provides a more certain and measurable direction to achieve gains without further loss.</p>	<p>Amend ECO-O2:</p> <p>Restoration and enhancement <u>improvement</u> activities result in an overall increase in the extent, <u>quality, quantity, diversity,</u> and occupancy of Otago’s indigenous biodiversity.</p>
ECO-P3- Protecting significant natural areas and taoka	<p>The policy lacks proactive direction for protection and amendments are required so that ECO-P3 gives effect to clause 3.10 of the NPSIB. Waiting until an adverse effect results in any reduction or loss is too late, the wording should reflect a precautionary approach.</p> <p>ECO-P3 must also give way to the NPSFM where it is engaged, per NPSFM 1.4(3).</p>	<p>Amend the chapeau as follows:</p> <p>Outside the coastal environment <u>and where the NPSFM does not apply,</u> and except as provided for by ECO-P4 and ECO-P5A, protect significant natural areas and indigenous species and ecosystems that are taoka by</p> <p>Amend clause 1 of ECO-P3:</p>

		<p>(1) First avoiding the following adverse effects that result in:</p> <p>Include the following additional clause:</p> <p><u>(x) including provision for identification of significant natural areas in accordance with APP2 in consenting processes where adverse effects on indigenous biodiversity have potential to be more than minor</u></p>
<p>ECO-P4- Provision for new activities</p>	<p>The heading of ECO-P4 suggest that it provides direction on new activities, however the provision deals with development of specified activities.</p> <p>Specified highly mobile fauna may become affected by the listed activities. Some of such fauna may be afforded protection under other legislation including the NZCPS, as they spend part of their life cycle in the coastal environment. ECO-P4 suggests adverse effects on specified highly mobile fauna is acceptable.</p> <p>Even where “no net loss” and “no loss of rare or vulnerable species” is achieved, offsetting can still result in the loss of significant values and may not ensure that biodiversity is maintained in all cases (unless a like for like offset is achieved). As such it should not be generally available for just any activity. This must be clearly set out in the RPS so that the matters and purposes for which offsetting is specifically available to be considered is only those that would provide for significant benefits to the wellbeing of communities. If the policy cannot be clearly worded to address these concerns it should be deleted and direct cross-reference to the NPSIB included.</p>	<p>Amend the heading and chapeau as follows:</p> <p>ECO-P4-Provision for new activities <u>specified new use or development</u></p> <p>Outside of the coastal environment, <u>and where the NPSFM does not apply,</u> 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 <u>but are not specified highly mobile fauna:</u></p> <p>Amend clauses (1), (1A), (1B), (1C) to accurately reflect NPSIB clause 3.11 and require there be both:</p> <ul style="list-style-type: none"> • a functional need or operational need for the new subdivision, use or development to be in that particular location; and

		<ul style="list-style-type: none"> there are no practicable alternative locations for the new subdivision, use or development.
ECO-P5A – Managing adverse effects of established activities on significant natural areas	<p>A definition of “established activity” is required as ECO-P5A is open to misuse.</p> <p>For some activities determining existing and new activities is dictated by higher order documents and regulation, including the NPSFM in relation to “improved pasture” under the definition of natural wetland.</p>	<p>Amend the chapeau as follows:</p> <p>Outside of the coastal environment, <u>where the NPSFM does not apply</u>, 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</p> <p>Include a definition as follows:</p> <p><u>established activity means an activity (including maintenance, operation, and upgrade) that:</u></p> <p><u>(a) is in, or affects, an SNA; and</u></p> <p><u>(b) is not a new subdivision, use, or development</u></p>
ECO-P6- Maintaining indigenous biodiversity	<p>ECO-P6 must give way to the NPSFM where it is engaged, per NPSFM 1.4(3).</p>	<p>Amend the chapeau as follows:</p> <p>Outside the coastal environment and excluding areas <u>covered by the NPSFM or</u> protected under ECO-P3, manage Otago’s indigenous biodiversity by:</p>
ECO-P8- Restoration and enhancement	<p>Per the relief sought on ECO-O2 above, ECO-P8 should enable improvement to quality, quantity and diversity of indigenous biodiversity.</p> <p>The term enhancement is subjective and may allow for adverse effects or loss so long as the outcome is considered an enhancement. The term “improve” provides a more certain and measurable direction to achieve gains without further loss.</p>	<p>Amend the chapeau as follows:</p> <p>The extent, quality, quantity, diversity, occupancy, and condition of Otago’s indigenous biodiversity is increased by:</p>

		Replace the terms “enhancement” and “enhancing” with “improvement” and “improving” across ECO-P8.
ECO-P10 – Integrated approach	<p>The reference to ECO-O1 in ECO-P10 is too broad and uncertain to direct appropriate permitted or controlled activity rules. ECO-P3(1) provides more certainty that adverse effects will be appropriately managed for consistency with the NPSIB.</p> <p>Permitted or controlled activity status may only be appropriate for maintenance and operation of lawfully established activities, for health and safety reasons, or to establish fencing to protect significant natural areas. Where permitted or controlled activity status is concerned, effects of such activities should be no more than minor.</p>	<p>Amend clause 1 as follows:</p> <p>(1) ensuring any permitted or controlled activity in a regional plan or district plan rule does not compromise the achievement of ECO-O1 <u>ECO-P3(1)</u></p>
ECO-P11 – Resilience to climate change	<p>The decision version largely reproduces clause 3.6 of the NPSIB. This is not opposed. However, further amendments are required to ensure consistency with the terms used in broader parts of the RPS and to ensure enhancement or improvement activities are captured rather than solely “restoration” activities.</p>	<p>Amend clause 2 as follows</p> <p>(2) Considering the effects of climate change when making decisions on:</p> <p>(a) Restoration proposals <u>relating to the restoration, enhancement or improvement of indigenous biodiversity</u>, and</p> <p>...</p> <p>(3) maintaining and promoting the <u>restoration, enhancement, or improvement</u> of the connectivity between ecosystems, and between existing and potential <i>habitats</i>, to enable migrations so that species can continue to find viable niches as the climate changes,</p>
ECO-M2- Identification	<p>The requirement to provide ecological assessments must not cease once significant natural areas are identified and mapped. Biodiversity is not stagnant, and it is</p>	<p>Amend clause 4 as follows:</p>

<p>of significant natural areas</p>	<p>important to ensure ECO-M2 provides for new information to confirm the presence of indigenous biodiversity.</p> <p>There needs to be an on-going process for identifying and protecting SNAs. The obligation in section 6(c) of the RMA is not limited to areas of significant indigenous vegetation a local authority has been able to identify at discrete point in time. The mapping or identification of some areas as significant natural areas does not absolve the duty to consider any remaining areas or to address changing circumstances. This was recognised by the Environment Court in <i>Weston Lea Ltd v Hamilton City Council</i> [2020] NZEnvC 189.</p>	<p>(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</p> <p>Add a new clause:</p> <p><u>(X) provide for the identification of other areas meeting the criteria in APP2 through consenting processes;</u></p> <p>Or, in the alternative to new clause (x), amend clause 6 to refer to the regional council, regional functions and plans, as opposed to solely the territorial authorities.</p>
<p>ECO-M4-Regional plans</p>	<p>There may be other considerations as to whether such activities are appropriate in certain locations and circumstances. For example, under the CE provisions which must give effect to the NZCPS or NPSFM, and to avoid inconsistency with restrictions under freshwater regulations.</p>	<p>Amend clause 1 as follows:</p> <p>(1) if the requirements of ECO-P3 and ECO-P6 can be <u>are</u> met, provide for the use of lakes and rivers and their beds <u>in appropriate location and circumstances,</u> including:</p> <p>Add the following clause:</p> <p><u>(x) in all cases consider whether it may be appropriate for consent to be declined due to locational circumstances and to achieve other policy and objectives of the RPS</u></p>

ECO-M5- District plans	As above.	<p>Amend clause 1 as follows:</p> <p>(1) if the requirements of ECO-P3 and ECO-P6 are met, provide for the use of land the surface of water bodies <u>in appropriate location and circumstances</u>, including:</p> <p>Add the following clause:</p> <p><u>(x) in all cases consider whether it may be appropriate for consent to be declined due to locational circumstances and to achieve other policy and objectives of the RPS</u></p> <p>Reinstate clause 6:</p> <p><u>prohibit the planting of wilding conifer species listed in APP5 within areas identified as significant natural areas.</u></p>
ECO-E1- Explanation	The explanation appears to confuse the management of activities with responsibilities and functions for the protection and maintenance of indigenous biodiversity.	<p>Amend the last sentence in the first paragraph as follows:</p> <p>The provisions in this chapter seek to address this loss and pressure through providing direction on how <u>land use, development, subdivision activities are indigenous biodiversity is to be</u> managed.</p>
<p>EIT – Energy, infrastructure and transport</p> <p>Infrastructure</p>		

EIT-INF-O4- Provision of infrastructure	The reference to “within environmental limits” must be reinstated. Unconstrained growth is not anticipated by Part 2 of the RMA, nor the various national policy statements. “Environmental limits” are akin to environmental bottom lines which are contained in various national policy statements. For example, NZCPS Policies 11, 13 and 15, and NPSFM Policies 6 and 11.	Amend as follows: 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, <u>within environmental limits.</u>
EIT-INF-O5- Integration	Unconstrained development of infrastructure is not envisaged by various national policy statements which contain environmental bottom lines and EIT-INF-O5 fails to reflect this. In some cases, adverse effects must be avoided rather than minimised in accordance with national direction. For example, Policy 11 of the NZCPS. EIT-INF-O5 also needs to be confined to nationally significant infrastructure and regionally significant infrastructure. Avoiding these effects is therefore necessary to meet the statutory obligations in s 6(c) and ss 30 and 31 RMA, and to safeguard life-supporting capacity of ecosystems which is required to achieve sustainable management in accordance with s 5(2) RMA.	Amend as follows: Development of <u>nationally significant infrastructure and regionally significant</u> infrastructure, as well as land use change, occurs in a co-ordinated manner to <u>avoid, or</u> minimise <u>where appropriate,</u> adverse effects on the environment and increase efficiency in the delivery, operation and use of the infrastructure.
EIT-INF-P12 – Upgrades and development	Any provisions which would provide for or enable, must be in the context of also protecting, maintaining and restoring indigenous biodiversity.	Add the following clause to EIT-INF-P12 <u>(x) adverse effects on indigenous biodiversity are managed in accordance with the respective ECO, CE, NFL, or LF chapters.</u>
EIT-INF-P13 Locating and managing effects of infrastructure, nationally significant infrastructure	EIT-INF-P13 fails to give effect to NPSFM Policies 6, 7, and 8. Clauses 3.22 and 3.24 of the NPSFM are clear that certain types of infrastructure may only occur in wetlands and rivers where there is a functional need to occur in such, and EIT-INF-P13 does not reflect this. The ability for a broad range of new infrastructure to access the less stringent environmental standards in clause 2 is inappropriate and therefore the reference to “operational need” should be deleted. “Functional need” captures necessity which is appropriate if environmental bottom lines may become breached.	Reinstate “(e) areas of high or outstanding natural character” and “(h) areas of high recreational and high amenity value” under clause 1. Add rivers under the list in clause 1. Amend clause 2 as follows:

<p>and regionally significant infrastructure outside the coastal environment</p>	<p>The “river extent and values” can encompass “areas of high or outstanding natural character” or “areas of high recreational and high amenity value”. Accordingly, original wording from the notified version of EIT-INF-P13 must be reinstated and further amendments are required. Both the NPSIB and NPSFM prescribe a sequenced approach to the effects management hierarchy which EIT-INF-P13 fails to follow.</p>	<p>(2) if it is not reasonably practicable possible 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:</p> <p>(a) for nationally or regionally significant infrastructure:</p> <ul style="list-style-type: none"> (i) in significant natural areas, in accordance with ECO-P4 and ECO-P6 (ii) in wetlands or rivers, in accordance with the relevant provisions in the NESF or NPSFM (iii) in outstanding water bodies, in accordance with LF-FW-P12 (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 <u>avoided to the extent possible, and then:</u> <ul style="list-style-type: none"> (I) remedied or mitigated to the extent practicable possible (II) where they <u>more than minor residual adverse effects cannot be avoided, practicably</u> remedied or mitigated, regard shall be had to
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		<p>offsetting and/or compensation of more than minor residual adverse effects.</p> <p><u>offsetting is provided where possible; then</u></p> <p>(III) <u>if aquatic offsetting of more than minor residual adverse effects is not possible, compensation is provided; then</u></p> <p>(IV) <u>if aquatic compensation is not appropriate, the activity itself is avoided</u></p>
EIT-EN - Energy		
EIT-EN-O2- Renewable electricity generation	Forest & Bird does not oppose the development of renewable energy generation provided it is done in an ecological responsible way that abides environmental bottom lines.	Amend clause 1 as follows: (1) is protected and maintained and, where appropriate, increased <u>while maintaining and restoring ecosystem health</u>
EIT-EN-P1 – Operation, maintenance and upgrade	EIT-EN-P1 fails to give effect to the NPSFM. The effects management hierarchy in clause 3.21 of the NPSFM, prescribed in 3.22 and 3.24, specifically states “adverse effects are avoided where practicable”.	Amend as follows. 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 <u>within environmental limits, which may include those referred in Policies CE-P3 to CE-P12, 3.22 and 3.24 of the National Policy Statement for Freshwater Management.</u>

EIT-EN-P2 – Recognising renewable electricity generation activities in decision making	EIT-EN-P2 fails to recognise that allocation for renewable electricity generation is a third order priority under the NPSFM. The terminology used also suggests that the three listed considerations are the only matters which decision-makers are to consider.	Amend clause 2 as follows: 2) take into account the need to benefits of at least maintaining <u>ing</u> current renewable electricity generation capacity, and Delete clause (3).
EIT-EN-P4 Identifying new sites or resources	EIT-EN-P4 as notified contained direction on site selection which has since been removed. To provide more certainty, and to give effect to higher order policy direction, it is important that the RPS signal the importance of ensuring investigation, identification, and assessment of potential sites occurs within environmental limits.	Provide for activities associated with the investigation, identification and assessment of potential sites and energy sources for renewable electricity generation and, <u>when selecting a site for new renewable electricity generation, prioritise those where adverse effects on high value natural and physical resources and mana whenua values can be avoided.</u>
EIT-EN-P5 Non- renewable energy generation	The reference to “where practicable” enables economic considerations to be factored into decision-making and essentially can be used to stall the transition to renewables. The range of exceptions included in EIT-EN-P5 mean the policy intent, the transition from non-renewables to renewables, is lost. The exceptions must be removed, otherwise EIT-EN-P5 is superfluous.	Amend as follows: 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 Delete clause 2.
EIT-EN-M1 – Regional Plans	EIT-EN-M1 as notified contained direction on site selection which has since been removed. To provide more certainty, and to give effect to higher order policy direction, it is important that the RPS signal the importance of ensuring investigation, identification, and assessment of potential sites occurs within environmental limits. Include a new clause encouraging the transition to renewables to achieve EIT-EN-P5.	Include the following clauses: (x) <u>require the prioritisation of sites for new renewable electricity generation activities where adverse effects on highly valued</u>

		<p><u>natural and physical resources and mana whenua values can be avoided</u></p> <p>(x) <u>restrict the development or replacement of non-renewable energy generation activities in Otago and facilitate change from non-renewable energy sources, including the use of fossil fuels, in energy generation.</u></p>
EIT-EN-M2 – District plans	As above.	<p>Include the following clauses:</p> <p>(x) <u>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</u></p> <p>(x) <u>restrict the development or replacement of non-renewable energy generation activities in Otago and facilitate change from non-renewable energy sources, including the use of fossil fuels, in energy generation.</u></p>
TRAN – Transport		
EIT-TRAN-O10 – Commercial port activities	The safe and efficient operation of commercial port activities is not unconstrained. In some instances, it will require adverse effects on listed values under the NZCPS to be avoided, and therefore reference to “within environmental limits” should be reinstated.	Reinstate reference to “ <u>within environmental limits</u> ”.
EIT-TRAN-P23 – Commercial port activities	EIT-TRAN-P23 does not give effect to the NZCPS and does not reflect key findings of the Supreme Court in <i>Port Otago Limit v Environmental Defence Society Inc</i> [2023] NZSC 112. In particular, EIT-TRAN-P23:	Reinstate reference to “ <u>the commercial port activities associated with the ports at Port Chalmers</u> ”.

	<ul style="list-style-type: none"> • is overbroad and needs to be pared back to already established ports.³ • Does not reflect the structured analysis prescribed by the Supreme Court⁴ which requires a decision-maker to be satisfied a port-related project is required to ensure the “safe and efficient operation of the ports in question (and not merely desirable)”.⁵ • Does not reflect that “always favouring the ports policy over the avoidance policies or vice versa would not align with the fact that both the ports policy and the avoidance policies are directive”.⁶ <p>The definition of “commercial port activities” is broad and may also capture activities beyond merely safe and efficient operation, capturing matters that are merely desirable. Both the definition and EIT-TRAN-P23 require amendment in order for these provisions to give effect to the NZCPS including Policy 9.</p>	<p>and Dunedin (respectively)” in the chapeau of EIT-TRAN-P23.</p> <p>Include the terms “<u>within environmental limits and in accordance with other requirements as set out in Policies CE-P3 to CE-P12</u>” in clauses (1) and (2).</p> <p>Amend clause 4 as follows:</p> <p>if any of policies CE-P3 to CE-P12 cannot be achieved while providing for because the safe and efficient operation or development of commercial port activities may cause adverse effects on the values that contribute to the significant or outstanding values identified in CE-P5, CE-P6 or CE-P7, then resource consent for such activities may be sought where:</p> <p>(a) the proposed work is required for the safe and efficient operation of commercial port activities, and</p> <p>(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.</p> <p>Add a new clause:</p>
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³ *Port Otago Limit v Environmental Defence Society Inc* [2023] NZSC 112, at [70] The ports policy in the NZCPS must also be interpreted in light of **the existence of an already established ports network**, including those operated by Port Otago, and the need to maintain the safe and efficient operation of the ports in that network.

⁴ *Port Otago Limit v Environmental Defence Society Inc* [2023] NZSC 112 at [76].

⁵ *Port Otago Limit v Environmental Defence Society Inc* [2023] NZSC 112 at [76](a).

⁶ *Port Otago Limit v Environmental Defence Society Inc* [2023] NZSC 112 at [77].

		<u>(x) recognise that in some instances, the importance or rarity of values under CE-P5, CE-P6 or CE-P7 will require consent to be declined.</u>
EIT-TRAN-M7 – Regional plans	As above, amendments are needed to EIT-TRAN-M7 to reflect that commercial port activities are not unconstrained.	Reinstate reference to “ <u>within environmental limits</u> ” in clause 3.
HAZ – Hazards and risks		
HAZ-NH-O1 – Natural hazards	HAZ-NH-O1 fails to give to the NZCPS Policies 24-27. It fails to recognise that hazards may cause environmental harm. For example, displacement or reduction of indigenous species. Sea level rise may reduce the available habitat of threatened species like hoiho and provision for natural or managed retreat for these species needs to be provided for when managing the risks.	Amend as follows: Risks Levels of risk to <u>ecosystem health, indigenous biodiversity</u> , people, communities and property from natural hazards within Otago are maintained where they are acceptable, and managed to ensure they do not exceed a tolerable level.
HAZ-NH-O2-Adaptation	As above.	Otago’s <u>ecosystem health, indigenous biodiversity</u> , people, communities, and property are prepared for and able to adapt to the effects of natural hazards, including natural hazard risks that are exacerbated by climate change
HAZ-NH-P1 Identifying areas subject to natural hazards	As above.	Amend the chapeau as follows: For hazards not identified in accordance with HAZ-NH-P1A, using the best available information, identify areas where natural hazards may adversely affect Otago’s <u>ecosystem health, indigenous biodiversity</u> , people, communities and property, by assessing:
HAZ-NH-P6 – Protecting features and systems that provide	Introduction of the terms “the ability of” in HAZ-HN-P6 dilute the direction to protect natural features and systems, such as sand dunes which are recognised as natural defences that protect coastal land uses, or sites of significant biodiversity, cultural or historic heritage or geological value, from coastal hazards under NZCPS Policy 26.	Amend as follows: Protect the ability of natural or modified features and systems to mitigate the effects of natural hazards and climate change

hazard mitigation		
HAZ-NH-P7 – Mitigating natural hazards	HAZ-NH-P7 does not reflect direction under the NZCPS recognising that hazards may cause environmental harm and effects on indigenous biodiversity.	Amend clause (1A)(b) as follows: (b) hard protection structures would not result in a more than minor increase in risk to ecosystem health, indigenous biodiversity , people, communities and property, including displacement of risk off-site
HAZ-CL – Contaminated land		
HAZ-CL-P18 – Waste facilities and services	The policy direction to “minimise” adverse effects on the environment, especially only “to the extent reasonably practicable” may not give effect to policy direction in the NPSFM, NPSIB and NZCPS. It inappropriately presupposes that waste facilities and services may be located anywhere, without constraint.	Amend clause 2 as follows: to the extent reasonably practicable minimise avoid the potential for adverse effects on the environment to occur.
NFL – Natural features and landscapes		
NFL-O1- Outstanding and highly valued natural features and landscapes	NFL-O1 contains amendments, including the removal of reference to “highly valued natural features and landscapes” which result in it no longer achieving the purpose of the RMA. In some instances, highly valued natural features will comprise section 6(a) matters which also require protection.	Reinstate the notified version of NFL-O1.
NFL-P2- Protection of outstanding natural features and landscapes	Clause 3 is superfluous as NFL-P2 must be read alongside other policies that may be engaged (including EIT-INF-P13), depending on the circumstances.	Delete clause 3.
NFL-P4- Restoration	The removal of NFL-P4-Restoration does not achieve the purpose of the RMA, and conflicts with the existing Policies (i.e. NFL-P2) which direct the protection of natural features and landscapes.	Reinstate NFL-P4-Restoration

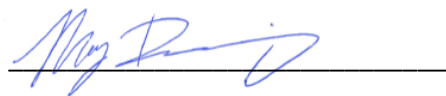
UFD- Urban form and development		
UFD-O4 – development in rural areas	The Objective does not recognise the need to safeguard the life-supporting capacity of air, water, soil, and ecosystems per s5 of the RMA, and it is not clear what it is intended to achieve.	Amend the objective to capture the viability or life supporting capacity of natural resources including air, water, soil, and ecosystems.
UFD-P7 – Rural areas	The management of rural areas and in particular enabling primary production on this basis fails to provide for the maintenance and protection of indigenous biodiversity. It is not entirely clear what the important features and values of rural areas are as necessary to implement policy UFD–P7	Include the following clause under UFD-P7: <u>(x) maintains and protects indigenous biodiversity.</u>

Attachments

11. The following documents are attached to this notice of appeal:
 - a. A copy of the of Council's decision (Appendix A);
 - b. A copy of the Hearing Panel's recommendation report (Appendix B)
 - c. A list of names and addresses of persons to be served with a copy of this notice (Appendix C); and
 - d. A copy of Forest & Bird's submission (Appendix D).
 - e. A copy of Forest & Bird's further submission (Appendix E).

12. Parties served with a copy of this notice of appeal will not be served with the attachments and may obtain a copy from the Appellant on request.

Dated: 14 May 2024



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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

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

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

***How to obtain copies of documents relating to appeal**

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

Advice

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

- Schedule 1 form 7 heading: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 June 2006, by [regulation 10\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).