

BEFORE THE OTAGO REGIONAL COUNCIL

**AT DUNEDIN
KI ŌTEPOTI**

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of the proposed Otago Regional Policy Statement
2021 (excluding those parts determined to be a
Freshwater Planning Instrument)

**Evidence of Murray John Brass on behalf of
the Director-General of Conservation / *Tumuaki Ahurei*
dated 23rd November 2022.**

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PART 1 – INTRODUCTION AND GENERAL PROVISIONS

Summary of key points

1. My evidence generally supports the D-G's submissions, but with some changes and updates as a result of considering the s42A Report, supplementary evidence, and draft evidence of other witnesses for the D-G.
2. My over-riding concern with the proposed Otago Regional Policy Statement 2021 is a lack of integration across the various domains and issues covered. This is particularly an issue for biodiversity issues, which are addressed in different and disconnected ways across different chapters. It is also a significant issue for the Land and Soil section, which fails to provide any meaningful direction for managing activities on land.
3. I make various recommendations to address specific areas where there are disconnects and conflicts, but I am well aware that there will be many other instances. I encourage the Panel to take as broad and active of an approach to improving integration as it can.
4. Related to the lack of integration, I also have concern about a lack of quality control generally across the document. Again, I have addressed specific points that I have picked up, but encourage the Panel to do all it can to address this through the process.
5. I consider that the Exposure draft National Policy Statement for Indigenous Biodiversity is a relevant matter and I recommend that the pORPS 2021 be aligned with that document as much as possible. The Exposure draft represents the most up to date thinking on indigenous biodiversity at a national level – aligning the RPS with it will best give effect to the purpose of the Act and would improve the efficiency and effectiveness of provisions.
6. A significant part of the evidence for the D-G focusses on indigenous biodiversity. I consider that the pORPS 2021 represents an improvement on previous Otago RPS versions, but that significant changes are still required – particularly to objective ECO-O1, the effects management hierarchy and biodiversity significance criteria. I consider these changes would better reflect ecological science, and would improve the protection to biodiversity under the RPS and subsequent regional and district plans.

Introduction

1. My full name is Murray John Brass.
2. I have been asked by the Director-General of Conservation / *Tumuaki Ahurei* (D-G) to provide planning evidence on the proposed Otago Regional Policy Statement 2021 (pORPS 2021).
3. This evidence relates to the 'non-freshwater parts' of the pORPS 2021. For the sake of simplicity, all references to the pORPS 2021 should be taken as referring to the non-freshwater parts of the pORPS 2021, as that is what is before this hearing. Where I have needed to make reference to the 'freshwater planning instrument parts' of the pORPS 2021, this is specifically noted in those parts of my evidence.
4. I also note that the Otago Regional Council (ORC) has not provided complete s42A reports, and instead addressed the s42A requirements through a combination of chapter-based reports and "supplementary evidence". Given that these need to be read together to understand the views of the reports' authors, where I refer to "s42A report", this should be taken as encompassing any associated supplementary evidence.

Qualifications and experience

5. I am employed by the Department of Conservation (the Department, DOC) in Dunedin as a Senior RMA Planner. I have worked for DOC since 2019.
6. Prior to this I have over twenty years' experience in resource management, including senior and management roles in both consenting and plan development. This includes eight years as a Consents Officer and Senior Consents Officer at the Taranaki then Otago Regional Councils, nine years as Planning and Environment Manager at the Clutha District Council, and four years as Resource Planner / Policy Advisor at the University of Otago.
7. My experience relevant to the current process includes:
 - (a) Eight years' experience of processing the full range of permits for regional councils, including as reporting officer for non-notified and notified applications, and as senior officer at hearings. Of this experience, a total of four years was in the Otago region.
 - (b) Also during my time in regional councils, providing staff input into the development of those councils' regional policy statements and regional plans.

- (c) Nine years' experience managing the overall planning function for the Clutha District Council, including consent processing, plan changes, council processes, and monitoring and reporting.
 - (e) Providing input from a local government perspective to the Ministry for the Environment in the development of various national direction documents. Through Local Government New Zealand and the New Zealand Planning Institute I have also provided input into various Quality Planning guidance notes.
 - (f) In my role with DOC, providing planning input into policy statement, plan and consent processes around the country, including preparation of submissions, appearance at hearings, expert witness conferencing and mediation.
 - (g) Presenting planning evidence at Environment Court hearings, including on Plan Changes 7 and 8 to the Otago Regional Plan: Water, which along with the pORPS 2021 are part of ORC's moves to develop a 'fit for purpose' freshwater planning framework.
8. I hold a Bachelor of Science degree (Geology, 1984) and a Diploma for Graduates (Ecology / Environment, 1991), both from the University of Otago.
9. I am a Full Member of the New Zealand Planning Institute.

Code of Conduct

10. Although it is not strictly required at a Council hearing, I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court Practice Note 2014. I have complied with the Practice Note when preparing my written statement of evidence and will do so when I give oral evidence before the hearing.
11. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
12. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

13. I have been asked to provide evidence in relation to the notified pORPS 2021, the D-G's submission (submitter number 00137), the D-G's further submissions (FS00137), and further submissions lodged on the D-G's submission.

14. The first two sections of my evidence cover “all of proposal” matters, and should be read as relevant to the entire pORPS 2021 document:
 - Background
 - Statutory consideration
15. The remaining sections follow the chapter structure of the s42A Reports:
 - Introduction and general themes
 - Mana whenua
 - Resource management overview
 - Integrated management
 - Coastal environment
 - Land and freshwater
 - Ecosystems and indigenous biodiversity
 - Energy, infrastructure and transport
 - Hazards and risks
 - Historic and cultural values
 - Natural features and landscapes
 - Urban form and development
16. While that evidence is separated out for each chapter of the pORPS 2021 for hearing purposes, I note that there are many areas of overlap and interdependence across the pORPS 2021, such that no chapter can stand alone, so I consider my evidence should be treated as a whole.
17. The D-G’s submission and further submissions covered almost all elements of the pORPS 2021, across a large number of individual points. Given the need for evidence to be focussed and succinct, I have taken the following approach in my evidence:
 - For points which are minor or self-explanatory, I rely on the D-G’s written submissions;
 - For points which are of moderate conservation importance but supported by the s42A report, I rely on the D-G’s written submissions and the s42A report;

- For points which are of moderate conservation importance but which are not supported by the s42A report, I provide brief evidence;
 - For points which are of high conservation importance, I cover them in evidence whether or not they are supported by the s42A report.
18. For points which I do not specifically address in evidence, I am still available to answer any questions which the Panel may have on those points.

Material Considered

19. In preparing my evidence I have relied on the evidence of Mr Bruce McKinlay, Ms Cassie Mealey, Dr Marine Richarson and Dr Hendrik Schultz¹ within their areas of expertise.
20. I have read the following documents:
- Proposed Otago Regional Policy Statement 2021 ('pORPS 2021');
 - The s32 Evaluation Report dated May 2021;
 - The D-G's submission dated 3 September 2021;
 - The D-G's further submissions dated 12 November 2021;
 - Other submissions where they are referred to in my evidence
 - The s42A reports dated April-May 2022, with various corrections and shading updates to October 2022, and including "supplementary evidence" dated October 2022.

Background

21. The origins of the pORPS 2021 are covered in the s32 Report and summarised in the Chapter 1: Introduction and general themes s42A Report, so I rely on those documents and do not repeat them here.
22. However, I note that the pORPS 2021 has been prepared under significant scrutiny and time pressures. While I generally consider that ORC staff have done an admirable job to prepare the document under those circumstances, I consider that those pressures have affected the document through:

¹ Noting that Dr Schultz has been unable to finalise his evidence at the time this evidence is being filed.

- A lack of consultation – while there were some stakeholder groups and one round of statutory consultation under cl3 of Schedule 1 Resource Management Act 1991 ('the Act' or 'RMA') prior to notification, and a series of pre-hearing meetings after notification, the pORPS 2021 has not had the benefit of the ongoing engagement and iterative drafting processes which are usual for such documents.
 - A lack of integration – different sections have clearly been developed in isolation, without having been adequately linked and aligned. This is particularly an issue for biodiversity issues, which are addressed in different and disconnected ways in the Coastal Environment, Land and Freshwater, and Ecosystems and Indigenous Biodiversity sections.
 - A lack of review – the document has numerous errors, inconsistencies, typos and poor drafting, which indicate that it has not been adequately reviewed and revised. Much of this should be straightforward to address, so I rely on the D-G's submission without going any further in evidence. However, in some cases there would be serious implications, and I address these in the detail of my evidence.
23. Given those issues, I consider that care will be required to ensure that the final result is a cohesive and effective document, and this requires more than a simple 'point by point' or 'chapter by chapter' approach to submissions and evidence. I therefore encourage the Panel to take as much of an integrated approach as it can, and while my evidence is prepared on a chapter basis I will be happy to address questions from the Panel on any related matters that apply elsewhere in the pORPS 2021.

Statutory considerations

24. The s32 Report identifies the planning context, with the key section of the report in that regard being Section 6.
25. In general I consider that the s32 Report correctly identifies the relevant planning context, with two exceptions.
26. Firstly, the section on the National Policy Statement for Highly Productive Land (NPSHPL) refers to the proposed version, not the NPSHPL 2022 which has now been gazetted. This has now been addressed by ORC in supplementary evidence dated October 2022.
27. Secondly, the s32 Report's assessment of the proposed National Policy Statement for Indigenous Biodiversity (pNPSIB) is incomplete, stopping partway through a

sentence in para 797. The s32 report's assessment was based on the draft document released in 2019, but the Government has since released an Exposure Draft of the NPSIB in June 2022 which presents updated proposals.

28. It is my view that, while the Exposure draft does not have statutory effect, it is still a relevant document in that it sets out the most up to date thinking on indigenous biodiversity at a national level.
29. Regarding the applicability of higher order documents, the Supreme Court in *King Salmon* held that, when developing plans, there is generally no need to refer back to Part 2 of the RMA because higher order planning documents are assumed to already give substance to Part 2². However, the Court indicated three circumstances which would justify resort to Part 2:
 - an allegation of invalidity of the high-level document or its provisions;
 - incomplete coverage of “the field” by the planning document concerned where Part 2 may provide assistance in dealing with matters not covered; and
 - uncertainty as to the meaning of particular provisions where reference to Part 2 may well be justified to assist in a purposive interpretation.
30. In this case the only higher order documents are national directions. I do not consider that they are invalid or uncertain, but by their nature they cover specific domains or issues, so do not entirely cover the field. I therefore consider that Part 2 of the RMA can be referred to for matters which are not covered by national direction. I also consider there may be benefit in referring to Part 2 in cases where different national direction documents could lead to different outcomes and it is not possible to reconcile them in a way which fully gives effect to those directions.

Chapter 1 – Introduction and general themes

Definition of Effects Management Hierarchy

31. The notified version of the pORPS 2021 includes a definition of “effects management hierarchy” which applies to natural wetlands and rivers, and is based on the National Policy Statement for Freshwater Management 2020 (NPSFM 2020). The D-G’s submission sought changes either in this definition, or in Policy ECO-P6, to ensure consistency.

² *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 at [85] and [90] (*King Salmon*).

32. The ORC s42A reports have addressed the definition in two ways:
- Replacing the proposed definition with a definition which applies generally; and
 - Adding two new definitions of the effects management hierarchy which apply specifically to (i) natural wetlands and rivers and (ii) indigenous biodiversity; which refer readers to LF-FW-P13A and ECO-P6 respectively
33. I consider the proposed approach to the topic-specific definitions is workable, although having three definitions for the same term creates added complexity for the plan user.
34. I have significant concerns with the proposed general definition, which is:
“means an approach to managing the adverse effects of an activity”.
35. This does not provide any clarity or certainty, and does not involve any form of hierarchy. Indeed, on its face it reads as a definition of “effects management”, rather than “effects management hierarchy”.
36. I accept there is a difficulty in providing a universal version of the term, as the NPS-FM and the Exposure Draft NPS-IB contain slightly different versions, and each relies on definitions of offsetting and compensation which are also different. Those two definitions also explicitly exclude the coastal marine area.
37. However, my reading of the pORPS 2021 s42A version is that whenever the term “effects management hierarchy” is used it is qualified as either “(in relation to indigenous biodiversity)” or “(in relation to natural wetlands and rivers)”. I therefore consider that there is no need for a general purpose definition, and that the notified version should be replaced with the two specific definitions only.

Habitat of trout and salmon

38. The s42A supplementary evidence provided on this Chapter recommends new provisions relating to the habitat of trout and salmon, and management of species interactions (paras 26-37). I record that I was involved in the pre-hearing discussions on that topic, and support the new policy as proposed for the reasons set out in the supplementary evidence. I note that although a new method LF-FW-M8A is recommended in her evidence, it is not shown in the Proposed Amendments PORPS – S42A & Supplementary Evidence Version of the document, or identified in the Freshwater Planning Instrument components, but I am working on the basis that it is a relevant matter for this hearing.
39. Dr Richardson has provided comments on these provisions in her evidence, and recommends a number of changes:

- in section (2)(a), adding provisions towards managing the negative impacts of trout on indigenous biodiversity,
- removing provision (2)(c)(iv) as the current regulatory framework might change within the term of the RPS,
- ensuring the coordination of relevant agencies and stakeholders at all levels”.

40. I generally support the changes she recommends, but I suggest a slight change in the location of changes from a drafting point of view.

41. I therefore recommend the following changes to the drafting but, as this is a complex topic, I remain open to other wording which may be suggested:

“LF-FW-M8A – Identifying and managing species interactions between trout and salmon and indigenous species

(1) When making decisions that might affect the interactions between trout and salmon and indigenous species, local authorities will have particular regard to the recommendations of the Department of Conservation, the Fish and Game Council relevant to the area, Kāi Tahu, and the matters set out in LF-FW-M8A(2)(a) to (c), and

(2) Otago Regional Council will work with the Department of Conservation, the relevant Fish and Game Council and Kāi Tahu, to:

(a) identify areas where the protection of the habitat of trout and salmon, including fish passage, will be consistent with the protection of the habitat of indigenous species,

(b) identify areas where the protection of the habitat of trout and salmon will not be consistent with the protection of habitat of indigenous species, and

(c) for areas identified in (b), develop provisions for any relevant action plans(s) prepared under the NPSFM, including for fish passage, that will at minimum:

(i) determine information needs to manage the species,

(ii) set short-, medium- and long-term objectives,

(iii) identify appropriate management actions that will achieve objectives determined in (ii) and account for habitat needs, including measures to manage adverse effects of trout and salmon on indigenous biodiversity where appropriate, and

(iv) use tools available within the Conservation Act 1987 and the Freshwater Fisheries Regulations 1983, where appropriate”

Chapter 4 – Mana whenua

42. The D-G’s submission supported these provisions and sought their retention. The changes proposed in the s42A report are relatively minor, and respond to submissions from mana whenua, which is appropriate. I record that I support those changes.
43. I therefore provide no evidence on this chapter of the pORPS 2021, but I am available to answer any questions the hearing commissioners may have.

Chapter 5 – Resource management overview

SRMRI8 Otago’s coast

44. The s42A Report recommends a change to the Context section for consistency with the NZCPS, as sought in the D-G’s submission. I support that change.

RMIA-MBK-I5 Inconsistent approaches to biodiversity protection amongst regulatory authorities

45. Wayfare Group Ltd has sought an addition to the explanation for this issue, to recognise that DOC has responsibilities under the Wildlife Act 1953. The s42A Report recommends accepting that change. I also support that change, as it reflects the relevant legislation.

Chapter 6 – Integrated management

46. I have significant concerns about the approach to integrated management in the pORPS 2021.
47. It was obvious in the notified version that different sections of the document had been prepared by different people, with little coordination across the sections. This was apparent in definitions and provisions which were drafted with one section in mind, but which failed to work when applied elsewhere in the document. In terms of the D-G’s interests, this was particularly an issue for biodiversity (addressed variously in the Coastal environment, Land and freshwater, and Ecosystems and indigenous

- biodiversity chapters) and the coastal environment (partly addressed in the Coastal environment chapter, but with other relevant provisions across the entire document).
48. To a certain extent this has been addressed through improvements and corrections resulting out of the pre-hearing process and reflected in “supplementary evidence”.
 49. However, those improvements relied on the efforts of other parties, and were not driven by ORC itself. Since the pre-hearing process, I understand that there have been further changes in the ORC personnel involved in the pORPS 2021, and some provisions have been separated out into the separate Freshwater Planning Instrument process.
 50. As an example of a lack of consistency, the Coastal Environment s42A report (paras 113-115) recommends adding express links to nine other chapters, and the related supplementary evidence (paras 12-14) recommends adding a further link, whereas the Urban Form and Development supplementary evidence (para 10) recommends removing all links to other chapters, and the Land and Freshwater s42A Report (paras 220 and 690) opposes adding cross-reference to relevant ECO provisions. Despite representing opposite approaches, all of the changes recommended in those Reports have been incorporated into the ‘Proposed Amendments PORPS – s42A and Supplementary Evidence Version’. If those inconsistent approaches were carried through into the final version, it would create significant difficulties for interpretation.
 51. I therefore consider that there is still a critical need to ensure integration and consistency across the entire document, and I encourage the Panel to take whatever measures it considers necessary to address this.
 52. With regard to the express linkages discussed above, my view is that express linkages should be included consistently across the document, as that approach is both most certain in terms of plan effect, and clearest in terms of plan usability.

IM-P1 Integrated approach to decision-making

53. The D-G’s submission supported retention of the priorities in IM-P2, but the s42A Report recommends combining them into IM-P1 and restructuring the hierarchy. The result is that the long-term life-supporting capacity and mauri of the natural environment would be prioritised equally with the health needs of people, rather than ahead of those health needs.
54. I am unclear about the reasoning for this. The s42A report sets out significant evidence of the need to favour environmental caution (paras 199-201), but then goes on to recommend aligning the language more closely with section 5 of the RMA (para

203). I disagree with this approach – the purpose of the various layers of documents sitting under the RMA is to provide increased specificity for particular issues or locations, rather than to simply restate the broad provisions of the RMA itself. I also note that the NPSFM 2020 sits between the RMA and the pORPS 2021 in the Act’s hierarchy, and it prioritises the natural environment (“*health and wellbeing of water bodies and freshwater ecosystems*”) separately, and ahead of, the health needs of people (NPSFM 2020 1.3(5)).

55. The background reports provided by Wildlands (s32 Report Appendices 12, 13, 14 and 17) and the evidence of Mr McKinlay, Dr Richardson and Dr Schultz make it clear both that Otago has highly significant natural values, and that those values are suffering ongoing and unsustainable loss.
56. I therefore consider that it is entirely appropriate to prioritise the long-term life-supporting capacity and mauri of the natural environment ahead of the health needs of people. I recommend that the provisions be retained as notified, i.e.:

“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.”

IM-P13 Managing cumulative effects

57. The D-G’s submission sought that the intent of this provision be retained, but that it be amended to function as a policy rather than an outcome. The s42A report recommends that it be deleted in its entirety, on the basis that it is not necessary.

58. I accept that the policy is not strictly necessary, given that cumulative effects are part of the definition of effect in s3 of the RMA. However, in practice, cumulative effects are often not explicitly recognised or accounted for in planning decisions, particularly at the consent level. I consider that retaining the policy intent would be helpful to plan users by providing clarity, and would be more effective at managing effects than deleting the policy in its entirety.
59. I therefore recommend that the policy element of the notified version be retained, and suggest wording along the lines:
- “Recognise and explicitly account for cumulative effects in resource management decisions.”*

Chapter 8 – Coastal environment

CE-O1 Safeguarding the coastal environment

60. The D-G’s submission sought a number of changes to this objective. The s42A report has partly addressed those changes, and also responded to other submissions.
61. I consider that the drafting which is now recommended is a significant improvement on the notified version, and I generally support the changes.
62. However, the wording of the standards sought largely reflects drafting in the NZCPS 2010 - mauri is to be *protected, and restored where it is degraded*, natural biological and physical processes are to be *maintained or enhanced*, diversity is to be *maintained*, significant indigenous biodiversity is to be *protected*, surf breaks are to be *protected*, and the interconnectedness of wai Māori and wai tai, and the effects of activities, are to be *protected*.
63. I consider that this approach adds little to the requirements of the NZCPS 2010 and does not reflect the particular issues in Otago. The pORPS 2021 recognises that biodiversity has been lost or degraded (SRMR-I7) and that Otago’s coast is under threat from a range of terrestrial and marine activities (SRMR-I8). As well, when considering the resource management issues of significance to iwi authorities, the pORPS 2021 recognises that discharges into coastal waters and marine dumping of waste degrade māhika kai and the mauri of the waters (RMIA-CE-I2), and habitat disturbance and modification has contributed to decline in populations of indigenous marine species, including marine mammals (RMIA-CE-I4).

64. The evidence of Dr Schultz demonstrates that Otago's coast has significant biodiversity values (at regional, national and even international scales), but a low level of protection.
65. Given those existing issues within the coastal environment in Otago, I consider that a proactive response to addressing them is required in the pORPS 2021 – simply holding the line is not appropriate when it would allow those existing issues to persist.
66. Objective CE-O1 is the primary objective for the coastal environment (Objectives CE-O2 to CE-O5 deal with more specific parts of the coastal environment). I therefore support the D-G's proposed additions to place greater weight on enhancement within this Objective. Given the s42A changes which are now recommended, I suggest that the clauses which still require such an addition to the s42A drafting are as follows:
- "...(3) the dynamic and interdependent natural biological and physical processes in the coastal environment are maintained ~~or~~ and enhanced,*
- (4) the diversity of indigenous coastal flora and fauna is maintained and enhanced, and areas of significant indigenous biodiversity are protected, and..."*

CE-O3 Natural character, features and landscapes

67. Along similar lines to CE-O1, the D-G's submission sought greater emphasis on restoration. The s42A report did not adopt this change.
68. I consider that the term "restoration is encouraged" simply repeats the requirement of the NZCPS 2010, so does not adequately respond to the Otago context. Also, the wording, in my opinion, describes an action so is more appropriate for a policy or method (which set out ways of achieving objectives), whereas an objective should set out a desired result or outcome. I therefore consider it would be more appropriate to amend the s42A drafting as follows:
- "Areas of natural character are preserved, and natural features and landscapes (including seascapes) within the coastal environment are protected from inappropriate activities, and ~~restoration is encouraged~~ restored where the values of these areas have been compromised."*

CE-O5 Activities in the coastal environment

69. The D-G's submission sought that this provision be retained as notified. The s42A report recommends an addition, to recognise that public access may not always be appropriate for reasons of health and safety or ecological or cultural sensitivity.

70. I record that I support that change, as it better reflects Policies 19 and 20 of the NZCPS 2010.

CE-P1 Links with other chapters

71. In response to the D-G's submission, the s42A report recommends adding a new Clause (4), which expressly references other chapters which also apply to the coastal environment.
72. I support that approach, as it provides a comprehensive framework for plan users. The notified drafting selected only a few provisions, which could have left plan users unaware of other linkages, or mislead plan users into thinking that the provisions referred to have some greater weight or significance than the other parts of the pORPS 2021.
73. I have a concern (as noted above in para 47) that different s42A Report writers have taken different approaches to integration within the pORPS 2021. It is therefore unclear whether ORC's intention is to retain or remove express links such as these.
74. As discussed above (at para 52), I consider that these express linkages should be retained, and used consistently across the entire document. However, if the Panel concluded that such linkages should be removed, I consider that they should at least be retained for the Coastal Environment chapter. It is the only Chapter of the RPS which applies to a specific geographical area, and there is significant complexity in the drafting as some issues are addressed in a different way within the Coastal Environment chapter to elsewhere (e.g. where NZCPS 2010 'avoid' policies apply), so providing express links is the most certain and clear approach.

CE-P2 Identification

75. The D-G's submission sought the addition of another clause to this policy, to require identification of areas of significant indigenous taxa and ecosystems in order to give effect to NZCPS 2010 Policy 11.
76. The evidence of Dr Schultz demonstrates that Otago's coast contains significant biodiversity values, including taxa and ecosystems covered by Policy 11(a) (adverse effects are to be avoided), and other taxa and ecosystems covered by Policy 11(b) (significant adverse effects are to be avoided).
77. Dr Schultz has also outlined existing pressures on these coastal values, and the lack of good knowledge about their location and condition.

78. I consider that given the protection requirements of Policy 11, and the evidence on Otago's coastal values, identification of the areas with those values is a fundamental requirement to give effect to Policy 11 in Otago.
79. The s42A Report considered that a specific addition to Policy CE-P2 to address this was not necessary, on the basis that identification of areas of significant biodiversity was already addressed in Policy CE-P5.
80. The s42A Report also recommends additions to Policy CE-P5, requiring identification of, and avoidance of adverse effects on, "*significant natural areas identified in accordance with APP2*", and "*indigenous species and ecosystems identified as taoka in accordance with ECO-M3*".
81. I support those additions to Policy CE-P5, and consider that subject to them being accepted, the addition to Policy CE-P2 sought in the D-G's submission is not required.

CE-P3 Coastal water quality

82. The D-G's submission sought an addition to clause (1) to recognise indigenous vegetation and fauna in addition to ecosystems, for the sake of completeness. The S42A report did not respond to this.
83. I consider that the D-G's submission point has merit – vegetation and/or fauna can have value in their own right, not just as parts of ecosystems, and this is reflected by various references within NZCPS 2010 Policy 11 to 'taxa', 'species' and 'vegetation'.
84. I therefore support the proposed addition to clause (1) of Policy CE-P3, and consider that the Policy should be revised as follows:

"...coastal environment, indigenous vegetation and fauna, and the migratory patterns...."

CE-P5 Coastal indigenous biodiversity

85. As discussed above at paras 75-81, I support the proposed additions to this Policy to cover significant natural areas and taoka.
86. The other matter raised in the D-G's submission on this Policy was the need for enhancement, not just protection, of indigenous biodiversity in the coast. The s42A Report responded that this is now covered by the link to the ECO Chapter (particularly ECO-O2 and ECO-P8) which the s42A Report recommends be added to Policy CE-P1.

87. I broadly agree with that response but note that it highlights the important of clear linkages and integration across the document.

CE-P11 Aquaculture

88. The D-G's submission raised concern that this policy does not add anything to NZCPS 2010 Policy 8, and that given likely interest in aquaculture in Otago within the life of the RPS, the policy needs to provide more direction on what places may be appropriate or inappropriate for aquaculture.
89. The s42A Report has partly addressed this, by adding consideration of biosecurity risks and cultural values.
90. While I fully support the relevance of biosecurity risks and cultural values, I am concerned that the s42A version of the Policy is now somewhat unbalanced and could potentially be misconstrued. It still largely repeats NZCPS 2010 Policy 8, and adds only two relevant matters for determining which places may be appropriate or inappropriate for aquaculture. This could be taken as indicating that those two matters are the only relevant considerations, or have some priority over other considerations which are not specified in the Policy.
91. The s42A Report (para 359) states that these two matters are included because they specifically relate to aquaculture and are not considered within the broader pORPS 2021.
92. I disagree with the s42A report on this – cultural values are extensively considered throughout the pORPS 2021, and there are also many references to biosecurity risks and pests. Conversely, the lack of marine protected areas in Otago is also a particularly relevant matter when considering appropriate locations for aquaculture.
93. I therefore consider it would be clearer and more certain to include express reference to other matters, along the following lines:

“(1A) effects on other coastal values, including indigenous biodiversity, risks to biosecurity from disease or introduced pest species and ~~(1B)~~ the effects of aquaculture on cultural values, including effects on mahika kai and kaimoana practices, and customary fisheries, including mātaimai reserves and taiāpure”

Commercial Fishing

94. I note that various submission points from Harbour Fish, Southern Fantastic and Fantastic Holdings, and the Otago Rock Lobster Industry Association Inc sought to

add specific recognition of / provision for commercial fishing. These were opposed in further submissions by the D-G.

95. The s42A report has not adopted any of these submission points, or similar points from other submitters such as Southern Inshore Fisheries Management Company Ltd.
96. I record that I support the approach of the s42A report, that commercial fishing does not warrant special provision within the pORPS 2021. I consider that commercial fishing should be dealt with on the basis of its effects and the relevant objectives and policies, in the same way as applies to any other activity in the coastal environment.
97. In particular, I am concerned that those submissions are looking to undermine the effect of the Court of Appeal decision in *Attorney-General v Trustees of the Motiti Rohe Moana Trust & Ors*³. That decision confirmed (at [67]) that regional councils can control fishing and fisheries resources in the exercise of their s30 functions, including those listed in s30(1)(d), provided they do not do so to manage those resources for Fisheries Act purposes.
98. Dr Schultz's evidence outlines some effects that fishing can have on biodiversity. Given that, I consider that the combined effect of s6(c) of the RMA, Objective 1 and Policy 11 of the NZCPS 2010, and the *Motiti* decision, is that the pORPS 2021 should not constrain the ability of the Council to control fishing or fisheries resources if warranted.

Chapter 9 – Land and freshwater

Definition of “*Degraded*”

99. I consider that the revised approach outlined in the s42A report (section 9.4.1, recommendation at para 79) addressed the concerns raised in the D-G's submission.

LF-FW-P14 Restoring natural character and instream values

100. The evidence of Dr Richarson addresses the part of this provision relating to fish barriers, and recommends a change to the wording to provide a more targeted approach. I support that proposal, and recommend the following change:

...(3) increase the presence, resilience and abundance of indigenous flora and fauna, including by providing for fish passage within river systems and creating fish

³ *Attorney-General v Trustees of the Motiti Rohe Moana Trust & Ors* [2019] NZCA 532.

barriers to prevent ~~predation~~ incursions from undesirable species where necessary and appropriate...

LF-LS All objectives

101. The D-G's submission expressed concern that the proposed objectives fail to address terrestrial values and fail to recognise the potential consequential effects of land use activities on other domains. The submission sought the addition of two new objectives along the lines:

"Otago's land environments support healthy habitats for indigenous species and ecosystems"

"Land use activities in Otago are managed in a way which recognises and protects terrestrial, freshwater and coastal values which land use activities could affect either directly or indirectly."

102. The s42A Report rejected this submission point.

103. I consider that the new objectives sought would assist in providing a framework for the management of land, particularly for the development of regional and district plans. While there are other provisions in the pORPS 2021 which relate to habitats, ecosystems and other values, they do not directly relate this to the management of land, and these additions would provide that clarity.

LF-LS New Policy – Pest species

104. As discussed below (paras 170-172) Mr McKinlay's evidence raises concern that wilding conifers are not dealt with in an integrated manner, and I consider that a new policy in the LF-LS section is required to address effects of wilding conifers beyond indigenous biodiversity and natural features and landscapes. Mr McKinlay's evidence also raises similar concerns about other pest species, and I consider it would be useful to include other pest species in the same policy – this would assist to address SRMR-I3 and SRMR-I7 which currently have only very minor expression in policies. Such a policy would naturally follow from the second new objective proposed above (para 101).

105. I suggest that appropriate wording would be along the lines:

"LF-LS-PX Pest species

Reduce the impact of pest species (including wilding conifers and other pest species on land) on indigenous biodiversity, economic activities, landscapes and wahi tupuna by:

- (1) *avoiding the planting and replanting of plantation forests and permanent forests with wilding conifer species listed in APP5:*
- (a) *in accordance with ECO-P9 and NFL-P5, and*
- (b) *in locations where they would adversely affect economic activities or wahi tupuna, and*
- (2) *control of other pest species on land, and*
- (3) *supporting initiatives to control existing wilding conifers and pests and limit their further spread.”*

APP1 Criteria for identifying outstanding water bodies

106. This appendix operates under Policy LF-FW-P11 and is to be used for identification of outstanding water bodies which are outside outstanding natural features and landscapes.
107. The s42A Report recommended a complete rewrite of APP1, based on provisions used in the Hawke’s Bay.
108. In general, I support the revised approach – it provides more detail and clarity than the notified version and is likely to better support the identification of outstanding water bodies.
109. However, Otago’s freshwater environment is not the same as Hawke’s Bay’s, so I consider it is important that the criteria do reflect relevant characteristics of Otago water bodies.
110. The evidence of Dr Richardson recommends a number of changes to the criteria. I have reviewed that evidence, and support the recommended changes – I consider that they will improve the workability and effectiveness of the criteria.
111. I also note that there are some typos and inconsistencies in the drafting.
112. I therefore consider that the following changes from the s42A Report version are required:

“Habitat for aquatic birds (native and migratory) List A

- a. One of the highest regional populations of a native aquatic bird species which is endangered, threatened or distinctive.*
- b. One of the highest natural ~~diversity~~ diversities of aquatic birds (native and migratory) in the region, which includes endangered or threatened species....*

... Native fish habitat - Evidential sources

Waters of National Importance.

New Zealand Threat Classification System

Expert evidence...

...Native fish habitat List A

- a. A unique species or distinctive assemblage of native fish not found elsewhere in the region.*
- b. Native fish that are landlocked and not affected by presence of introduced species.*
- c. One of the highest diversities of native fish species in the region, which includes a threatened, endangered, or distinctive species.*
- d. An outstanding customary fishery*
- e. The water body is critical to the persistence of a threatened species or to the maintenance of a population with threatened status*

...Habitat for indigenous plant communities – Evidential sources

New Zealand Geopreservation Inventory.

New Zealand Threat Classification System

Protected Natural Area (PNA) surveys.

Expert evidence....

...Angling amenity List A

- a. Trophy trout (over 4kg in size)*
- b. High numbers of large trout (water body supports the highest number of large trout in the region).*
- ~~c. High number of trout (water body supports the highest trout numbers in the region or the highest trout biomass in the region)."~~*

Chapter 10 – Ecosystems and indigenous biodiversity

Exposure draft National Policy Statement for Indigenous Biodiversity

113. As mentioned above (para 28), I consider that the exposure draft of the National Policy Statement for Indigenous Biodiversity ('E draft NPSIB') is a relevant matter for the Panel to consider. The exposure draft was released in June 2022, seeking submissions which closed on 21 July 2022.
114. Although the E draft NPSIB has not been approved and gazetted and so does not yet have legal force under the RMA, I understand that it has been developed based on previous extensive public consultation, and input from leading ecological practitioners.
115. I also understand that the overall approach has largely been accepted and the submission process earlier this year was seeking feedback from practitioners, iwi/ Māori, stakeholders and those highly familiar with the exposure draft, to ensure its provisions are workable⁴. I do not see this as meaning that the approach or direction of the NPSIB remains unresolved. Rather, I understand it to mean that the approach of the exposure draft reflects the Government's intention, and it is the means of implementing and drafting the approach that is being confirmed.
116. I also note the evidence of Mr McKinlay, Ms Mealey, Dr Richarson and Dr Schultz, and that they each consider that the E draft NPSIB represents an appropriate approach for the matters within their areas of expertise.
117. I therefore consider that the E draft NPSIB has an evidential basis for being a relevant consideration, and represents the most up to date thinking on indigenous biodiversity at a national level, so provides relevant and useful direction for the Panel. In the absence of any strong evidential basis against the drafting in the E draft NPSIB, I consider it is likely to be more efficient and effective to align the pORPS 2021 with it than to not do so.

Te Mana o te Taiao - Aotearoa New Zealand Biodiversity Strategy 2020

118. I also consider it is relevant for the Panel to consider Te Mana o te Taiao - Aotearoa New Zealand Biodiversity Strategy 2020⁵. While this is not a statutory consideration under the RMA, it provides a Government-level national strategy for all elements of

⁴ Ministry for the Environment Manatū Mō Te Taiao website:
<https://consult.environment.govt.nz/biodiversity/npsib-exposure-draft/>

⁵ <https://www.doc.govt.nz/nature/biodiversity/aotearoa-new-zealand-biodiversity-strategy/>

biodiversity. The vision set in the document is that “*the life force of nature is vibrant and vigorous*” (Section 1.1).

119. Te Mana o te Taiao is intended to guide all those who work with or have an impact on biodiversity, which specifically includes local government (Section 2.2.1).

120. Sitting under Te Mana o te Taiao is an Implementation Plan⁶, which sets out actions and responsibilities. For regional councils, those responsibilities include a number which are relevant to how indigenous biodiversity is addressed in the pORPS 2021 (both within this chapter and elsewhere):

- *Regional Councils operate according to a landscape-scale view of biodiversity management across all tenures, rohe and agencies.*
- *Baseline information is being improved through landscape-scale projects, priority biodiversity site programmes and resource management plans.*
- *Ongoing research and regional-scale work on biodiversity pressures informs management plans and strategies.*
- *Ongoing work is being carried out on significant natural areas, identified priority biodiversity sites or management units, priority rare and threatened ecosystems management plans and some collaborative restorative initiatives that extend from the mountains to the sea.*
- *The identification, mapping and protection of coastal and marine ecosystems is underway through significant natural area marine frameworks, Coastcare programmes for multiple regional councils, the Coastal Restoration Trust and regional coastal plans.*
- *Regional councils use an ecosystem-based management approach to key priority sites. Policy statements and plans help to support and define this work.*
- *Nature-based solutions are integrated through council plans, strategies and policies.*

121. Given these clear directives, I consider that through the pORPS 2021 the Otago Regional Council needs to do more than simply meet the RMA statutory requirements for indigenous biodiversity, and in particular it cannot treat indigenous biodiversity as a discrete matter contained in one chapter of the pORPS 2021.

⁶ <https://www.doc.govt.nz/globalassets/documents/conservation/biodiversity/anzbs-implementation-plan-2022.pdf>

Instead, I consider that the Te Mana o to Taiao requires a proactive and integrated approach throughout the pORPS 2021.

Definitions of “Indigenous fauna” and “Indigenous flora”

122. The D-G’s submission sought that a definition be added for “indigenous fauna”, and that either a definition be added for “indigenous flora”, or the term indigenous vegetation be used in its place. The s42A Report opposed those requests, on the basis that the terms are well understood in resource management usage so do not need definition.
123. In this analysis, the s42A Report referred to an Appendix 10a, which was an email from Dr Kelvin Lloyd addressing ecology questions on the ECO chapter. Dr Lloyd also addressed these definitions in his Statement of Evidence dated 29 September 2022.
124. Somewhat surprisingly, Dr Lloyd’s email and evidence supported the proposals in the D-G’s submission, so I am unsure why the s42A Report author has relied on his responses in rejecting the submission points.
125. I also have concern with Dr Lloyd’s comment regarding flora in Appendix 10a, which states:
- “Indigenous vegetation is an assemblage of different plant species. Indigenous flora refers to the plant species themselves. So the two are not the same.”*
126. However, the common usage of flora in my understanding relates to an assemblage rather than individual plants or species. I note that the New Zealand Oxford Dictionary⁷ defines flora as: *“the plants of a particular region, region, geological period, or environment”*.
127. I therefore consider that it would be helpful to replace references to “indigenous flora” with “indigenous vegetation”, and to include a definition of “indigenous fauna” as proposed in the D-G’s submission:
- “means animals, including fish and invertebrates, that, in relation to a particular area, are native to the ecological district in which that area is located”*.

⁷ The New Zealand Oxford Dictionary, Ed. Tony Deverson and Graeme Kennedy, Oxford University Press, 2005

Definition of “Indigenous vegetation”

128. The definition in the pORPS 2021 reflected the Draft NPS for Indigenous Biodiversity. However, this meant that it would not work in the freshwater or marine domains, despite the fact that the term is used in pORPS 2021 provisions for those domains.
129. The s42A Report supplementary evidence (paras 5-8) accepts this, and proposes adding the words “*or freshwater or marine bioregion*” to the definition. While that is different to the wording proposed in the D-G’s submission, I consider that it will achieve the same effect and I support that addition.

Definition of “Naturally rare”

130. The proposed definition of this term is taken from the NZCPS 2010. The D-G’s submission sought that the definition be amended to ensure it is appropriate outside the coastal environment as well as within in it.
131. The s42A Report (para 37) notes that the term is used in Policy CE-P2 and APP4 Criteria for Biodiversity Compensation, and states that APP4 “excludes the coastal environment”. I note that APP4 itself does not exclude the coastal environment, so I assume that this was a reference to the notified version of Policy ECO-P6 which sets up the reference to APP4, which did exclude the coastal environment.
132. The s42A Report then recommends that the definition itself remain unchanged (presumably on the basis that the NZCPS 2010 definition must be suitable for use in the Coastal Environment Policy CE-P2), but that the term in APP4 be replaced with “naturally uncommon” (based on that term being more common in modern usage, and presumably reflecting that APP4 applies outside the coastal environment so that there is no issue with the use of a different term for the same meaning). I also note that the term “naturally uncommon” is used in the E Draft NPSIB.
133. However, this approach appears to have been arrived at independently of the supplementary evidence for the ECO Chapter, which recommends removing the exclusion of the coastal environment in Policy ECO-P6. The overall result, as set out in the consolidated s42A version of the pORPS 2021, is that the term “naturally rare” would be used in Policy CE-P2 for the coastal environment, while APP4 would use the term “naturally uncommon” and apply across all domains, including the coastal environment.
134. I would therefore suggest that “naturally rare” remain in Policy CE-P2, to align with the NZCPS 2010, and that the term “naturally uncommon” be used elsewhere in the pORPS 2021, but that to minimise confusion or inconsistency, a definition of “naturally uncommon” be added along the lines:

“Naturally uncommon has the same meaning as naturally rare”.

Definition of “Significant natural area”

135. The D-G’s submission raised concern about the exclusion of the coastal environment from this definition. The s42A report has agreed with the submission, and recommends removing that exclusion.

136. I agree with the concern raised in the D-G’s submission, and consider that excluding the coastal environment from this definition would be inconsistent with s6(c) of the Act, and with the NZCPS 2010. I therefore support the change as recommended in the s42A Report.

ECO-O1 Indigenous biodiversity

137. The D-G’s submission opposed the notified version of this objective, on the basis that it fails to address all relevant points and would fail to give effect to the Act. The submission sought that the following additional points be added to the objective:

- *“That there is no worsening of the threat classification of indigenous threatened species in Otago;*
- *In the term of the RPS the threat classification of threatened indigenous species in Otago will be improved;*
- *Areas of significant indigenous biodiversity will be mapped and protected; and*
- *Threatened ecosystems will be protected in Otago”*

138. The s42A Report recommends only two changes to the Objective – replacing the word “quality” with “condition” on the basis that it is more ecologically relevant, and providing for loss of biodiversity by only requiring that there be no “net” decline in biodiversity. The s42A Report opposes the D-G’s changes shown above, on the basis that they are already covered by the overall objective, and that threat classification is a nationwide assessment so may not always depend on what occurs within Otago. I address each of these points in turn below.

Replacing “quality” with “condition”.

139. On the basis that “condition” is ecologically relevant, I do not oppose this change.

“Net” decline in biodiversity

140. The stated reason for this (s42A Report para 105) is that *“it would allow the condition, quantity, and diversity of indigenous biodiversity to decline in some way, provided it is offset by an improvement in another way.”*

141. I am unclear as to what the authority is for allowing decline in condition, quantity and diversity of indigenous biodiversity, given that the relevant higher order provisions are much more directive in their approaches to biodiversity – s6(c) of the Act uses the term “protection”, and Objective 1 of the NZCPS 2010 uses the terms “safeguard”, “maintaining or enhancing” and “protecting”.
142. The approach would enable perverse outcomes whereby a consent applicant could justify loss of biodiversity arising directly from their actions on the basis that there have been unrelated improvements elsewhere. Indeed, it could allow a capped approach to biodiversity across Otago, whereby any biodiversity improvements undertaken at one location would simply create the opportunity to remove the equivalent condition, quantity or diversity of biodiversity elsewhere. The evidence of Dr Richardson (paras 149-152) provides further examples of how this approach would not work from an ecological point of view.
143. This approach is also inconsistent with the proposed approach to offsetting in APP3 (Criteria for Biodiversity Offsetting), where offsetting would not be available if an activity would result in “*the loss from an ecological district of any individuals of Threatened taxa, other than kanuka...*” (underline added), which is clearly an absolute rather than net requirement.
144. I conclude from this that the overall approach taken in the pORPS 2021 would be to allow biodiversity loss at a regional scale provided there is an offsetting improvement elsewhere in Otago (which need not have any connection with the activity causing the loss), while tightly restricting or preventing the use of targeted offsets at the scale of a consent application.
145. I consider this to be a direct reversal of the standard planning approach, and inconsistent with the effects management hierarchy whereby effects are to be first avoided, remedied or mitigated, and only where this is not available are any residual effects then able to be offset.
146. In my opinion, at the level of a regional objective the correct approach is to align with higher order documents and seek to outright avoid decline in biodiversity. The appropriate place for a “net” approach should be at the scale of a consent application, where the offsetting measures must be a direct response to the residual effects of the activity and are subject to appropriate criteria.
147. I therefore strongly oppose the proposed addition of the word “net” within Objective ECO-O1.

148. I note that although the proposed Objective ECO-O2 (Restoring and enhancing indigenous biodiversity) appears to reduce the risk of a ‘capped’ approach, that Objective does not set any quantum or scale for net enhancement, and only applies to extent and occupancy, not condition or diversity.

Reference to the New Zealand Threat Classification System (NZTCS)

149. I am unclear as to why the fact that the NZTCS is a national system would be a reason to not refer to it in this Objective. My understanding is that the NZTCS is a fundamental tool in biodiversity management within New Zealand, and in my experience, it is a key consideration in assessing environmental effects, understanding biodiversity risks, targeting non-regulatory effort, allocating biodiversity funding etc.

150. I note that the NZTCS is already directly relevant to an RPS through Policy 11(a)(i) of the NZCPS 2010, and the pORPS 2021 itself includes multiple references to the NZTCS or threat classifications under the NZTCS in other provisions (including the definition of “threatened species”, CE-P5(1), LF-FW-P8(2), APP1, APP2, APP3, APP4). Threat classifications are also used when describing environmental impacts under SRMR-17, where the pORPS 2021 records that “*Some 44% of Otago’s bird species are threatened or at risk; 88% of lizard species; and 72% of indigenous fish species*”.

151. The evidence of Mr McKinlay describes the structure and use of the NZTCS and illustrates that it is highly relevant to the matters addressed in the pORPS 2021. This is further supported by the evidence of Dr Richardson.

152. I do not consider that reference to the NZTCS in this Objective would lead to any inappropriate outcomes – for example, if the threats to a species were outside Otago (e.g. loss of international breeding habitat for a migratory bird species), then it would be impossible to require someone undertaking an activity in Otago to address those threats.

153. The national nature of the NZTCS could also lead to what I would consider are entirely appropriate outcomes – for example, if loss of fragmented populations outside Otago impacted on the threat classification of a non-migratory fish species, then that would clearly justify placing greater weight on protecting the populations left in Otago.

154. I therefore consider that the additions sought in the D-G’s submission are entirely appropriate – they are consistent with the higher order documents, and would provide a clear measure to ensure that the Objective achieves the purpose of the Act.

155. However, should the hearing commissioners consider that reference to the NZTCS is not required on the basis that the existing wording of ECO-O1 can already apply to threatened species, I would suggest that the proposed wording be added as a policy sitting under ECO-O1, to provide increased certainty and effectiveness to the implementation of the Objective.

Mapping and protecting significant areas

156. The s42A report considers that this proposed addition is not required, as it is addressed in Policy ECO-P2.

157. I note that the s42A Report also recommends changes to Policy ECO-P2 which improve its clarity and effectiveness. Subject to those changes, I am comfortable that the issues raised in this submission point are adequately addressed.

Protection of threatened ecosystems

158. The S42A report considers that this proposed addition is not required, on the basis that it would sit more comfortably in a policy.

159. I have therefore considered the proposed ECO policies, and accept that ECO-P3, in conjunction with APP2, would generally achieve the outcome sought in the D-G's submission. Noting that this is subject to the D-G's submission on APP2, which I discuss below.

Other clauses

160. Mr McKinlay's evidence also recommends a further two additions to this objective:

"That there is no further loss of LENZ environments that are threatened or At Risk (i.e. <30% of indigenous cover remains),

That there is no further loss of naturally rare ecosystems or ecosystems that have been heavily depleted."

161. I agree with his reasoning for these additions, and consider that they are appropriate objectives for biodiversity at the regional level.

ECO-P3 Protecting significant natural areas and taoka

162. The D-G's submission sought one change to this policy, to reflect that effects can arise both directly and indirectly. The s42A Report did not consider this request and did not adopt it. While I consider that the proposed addition would add clarity, given the broad nature of the Act's definition of "effect" I can accept that the change is not strictly necessary.

163. The s42A Report also recommends a range of other changes to this policy, some as a result of submissions specific to the policy, and some as a consequential result of other amendments. In general I support those other changes, with one exception.
164. One of those other changes would limit the application of clause (1)(a) to areas which have been “*identified and mapped under ECO-P2(1)*”. I have significant concern that this could have an unintended consequence, in that there would be no requirement to “first avoid adverse effects” under this policy for significant natural areas which are identified through a consent process (i.e. are not already mapped in a plan). In my experience it is standard planning practice to take a ‘belt and braces’ approach to protecting significant natural areas, so that protection applies whether they are already identified in a planning map or are identified through the use of criteria in the course of a consent application process. This reflects that it should be the values of the site which trigger protection, not the mapping itself (noting of course that s6(c) of the Act applies regardless of whether an area has been mapped).
165. I consider it is important to take such an approach in Otago, given that there has not been a comprehensive, region-wide process to identify and map significant natural areas, and it is likely to take some years before such a process would be complete. Even then, it is likely that there will remain some areas with site-specific values which are not picked up and mapped, so that both pathways to protection should remain available.
166. I therefore recommend that the reference to mapping in clause (1)(a) should be removed, so that (with the other proposed changes accepted) it reads:
- “any reduction of the area or indigenous biodiversity values identified ~~and mapped~~ under ECO-P2(1), (even if those values are not themselves significant but contribute to an area being identified as a significant natural area), and”*

ECO-P6 Maintaining indigenous biodiversity

167. This policy sets out an effects management hierarchy. Ms Mealey’s evidence addresses the current best practice for the use of the effects management hierarchy and recommends that the order be changed from avoid-remedy-mitigate to avoid-minimise-remedy. She outlines that this approach best manages the overall effects of an activity, and reduces the residual adverse effects which would then be addressed through offsetting and compensation.
168. I agree with her explanation on this matter, and I also note that the E draft NPSIB also takes an avoid-minimise-remedy approach. The D-G’s submission sought that either this policy, or the definition of ‘effects management hierarchy’ be altered to

ensure consistency. As discussed above (para 37) I consider that a generic definition of 'effects management hierarchy' is no longer required, and based on Ms Mealey's evidence I consider that the appropriate approach is to make the following changes to Policy ECO-P6:

"...(1) avoid adverse effects as the first priority,

(2) where adverse effects demonstrably cannot be completely avoided, they are ~~remedied~~ minimised,

(3) where adverse effects demonstrably cannot be completely avoided or ~~remedied~~ minimised, they are ~~mitigated~~ remedied..."

169. Ms Mealey has also suggested (as discussed below at paras 178-179), that there are some elements of APP3 and APP4 which would be better placed within a separate bottom lines policy. If the Panel was of a mind to take this approach, then I consider that ECO-P6 would be the appropriate place for that.

ECO-P9 Wilding conifers

170. Mr McKinlay's evidence raises concern that wilding conifers are not dealt with in an integrated manner. The pORPS 2021 recognises that wilding conifers affect a range of natural, economic and cultural values in SRMR-I3 and RMIA-WTU-I1, but policies only specifically address effects on indigenous biodiversity (ECO-P9 and ECO-M5) and natural features and landscapes (NFL-P5, NFL-M3 and NFL-M4).

171. I agree with Mr McKinlay on this point, and I note that this is consistent with the D-G's submission, which sought that the policy be relocated to the LF-LS section and broadened to cover all effects of wilding conifers.

172. Having reviewed this further, I consider that the existing ECO and NFL provisions are appropriate in dealing with those specific effects, but that a new policy in the LF-LS section is required to address other effects. I address this in paras 104-105 above.

ECO-M1 Statement of responsibilities

173. Method ECO-M1 sets out the responsibilities of the Regional Council vs territorial authorities with regard to indigenous biodiversity. It directly reflects the geographical split of functions, duties and powers in Part 4 of the Act, with the Regional Council responsible for the coastal marine area, wetlands, lakes and rivers, and territorial authorities responsible for all other land, and co-responsibility for the margins of wetlands, rivers and lakes.

174. The D-G's submission sought that an additional clause be added to the Regional Council's responsibilities, to enable it to specify objectives, policies and methods on land *"where those objectives, policies and methods are relevant to the overall Otago Region and/or provide a framework for territorial authority plans"*.
175. The s42A Report rejected this request on the basis that integrated management is provided for by reading the RPS as a whole.
176. I consider that the s42A Report has missed the point of the D-G's request. There may well be aspects of the management of land where implementation of the RPS would be improved by having plan objectives, policies or methods which apply across Otago. Examples which relate to the content of regional and district plans, not to how the RPS is read, would include:
- provision for customary harvest;
 - control of afforestation to protect freshwater habitat;
 - protection of biodiversity corridors and connections across domains and territorial authority boundaries; and
 - methods to encourage biodiversity enhancement.
177. I therefore consider that it would be helpful to specifically provide for such approaches, and I support the wording as proposed in the D-G's submission:
- "(2)(d) on land, where those objectives, policies and methods are relevant to the overall Otago Region and/or provide a framework for territorial authority plans."*
178. I note that ORC is currently undertaking consultation on a new Land and Water Regional Plan⁸, to be notified by the end of 2023. It would seem prudent to ensure that that Plan can address such issues on land, noting that if or how it does so would be subject to its own plan process.

APP2 Significant criteria for Indigenous biodiversity

179. The D-G's submission sought amendments to this Appendix for completeness, clarity and effectiveness. The s42A Report has adopted some changes and not adopted others.
180. Based on the evidence on this matter from DOC technical expert witnesses, my understanding of their opinions is that:

⁸ https://www.orc.govt.nz/plans-policies-reports/land-and-water-regional-plan?utm_source=homepage&utm_medium=website&utm_campaign=quicklinks

- (a) The approach taken in the pORPS 2021 and s42A Report is broadly appropriate and in line with good practice;
- (b) The changes proposed in the D-G's submission would retain the overall approach, but improve drafting and effectiveness, so are still supported;
- (c) The E draft NPSIB is also a relevant consideration, and further changes would be required to fully align APP2 with Appendix 1 of the E draft NPSIB.

181. I also understand that the Government intends gazetting the NPSIB in the near future. This could mean that it has effect prior to the hearing and/or decisions on the pORPS 2021.
182. I therefore recommend that the version of APP2 contained in the D-G's submission be adopted at this stage, but consider that this should be reviewed for alignment with the NPSIB if it is gazetted prior to decisions on the pORPS 2021.
183. I note that all of the DOC technical expert witnesses support the use of a single set of criteria which apply across all domains. I agree, and consider that such an approach is scientifically robust and would best meet the purpose of the Act by avoiding gaps or inconsistencies between domains. This means that if an NPSIB is gazetted prior to decisions on the pORPS 2021, I consider it would be highly preferable to review APP2 for alignment and retain the 'all domains' approach, rather than having separate NPSIB-derived criteria which only apply to terrestrial indigenous biodiversity.

APP3 Criteria for biodiversity offsetting and APP4 Criteria for biodiversity compensation

184. Ms Mealey has provided comprehensive evidence on these appendices. I have reviewed her evidence, and support it.
185. Ms Mealey recommends deletion of proposed clauses in APP3 which would make offsetting unavailable where an activity would result in the loss of an individual of Threatened taxa, or measurable loss to an At Risk - Declining taxa.
186. My experience is that offsetting can be appropriately used in such circumstances, on a case-by-case basis – and subject to the other criteria, especially the requirement for No Net Loss (or Net Gain). So although there will certainly be other cases where offsetting is not appropriate in such circumstances, I consider there is no justification for closing off the option.

187. I consider that deleting those clauses will support developments to meet the other criteria for offsetting, rather than dropping down the effects mitigation hierarchy to compensation, and that this will enable better environmental outcomes and so will better meet the purpose of the Act and achieve Objective ECO-O1.
188. Ms Mealey also recommends the addition of other limits to offsetting and compensation, reflecting her knowledge of best practice. I have reviewed those additions and agree that they are appropriate – I do not consider that they would unduly restrict access to offsetting and compensation, and they would avoid proposals that cannot be relied upon to achieve the intent of offsetting and compensation.
189. I note that there are a number of proposed criteria which Ms Mealey has included in her recommended amendments (Mealey Evidence in Chief Appendices A and B), but which she considers would be better placed within a separate bottom lines policy:
- the loss of an indigenous taxon or ecosystem type from the ecological district;
 - worsening the conservation status of indigenous biodiversity; and
 - removal or loss of viability of a naturally uncommon ecosystem type.
190. I consider that those provisions would generally still be workable within the Appendices, but agree that they function as policy drafting gates for the use of offsetting and compensation, rather than as criteria for the offsetting or compensation itself. If the Panel agrees with that and wishes to implement them through policy, I suggest that they would best be located as additional clauses in Policy ECO-P6.
191. Ms Mealey also recommends a number of drafting changes to APP3 and APP4 for clarity, and I record that I also support those changes as improving the usability and certainty of the criteria.

Chapter 11 – Energy, infrastructure and transport

Definition of “Regionally significant infrastructure”

192. The definition of “regionally significant infrastructure” has the potential to significantly influence environmental outcomes, given that such infrastructure is not bound by “avoid” policies in the NPSFM 2020 or the exposure draft NPSIB. It is also my experience that the term is being used or proposed for similar purposes in other provisions of plans (e.g. provisions relating to the coastal environment, outstanding

natural features and outstanding natural landscapes), and it is likely that this will also be the case for future Otago regional and district plans.

193. I therefore consider it is appropriate that the definition be restricted to specific infrastructure which has regional benefits which are so significant as to justify distinguishing it from most other structures and activities addressed in regional and district plans. Otherwise, the definition simply becomes a vehicle to subvert the intent and effect of general policies intended to protect the environment.
194. As outlined in the s42A report (paras 513 to 532), there were many submissions seeking changes to the definition, generally to add infrastructure relevant to the submitters' interests.
195. The s42A report however has recommended few changes, with the only type of infrastructure proposed to be added being oil facilities at Port Chalmers and Dunedin.
196. I agree that oil facilities should qualify as regionally significant infrastructure, but I support the recommendations of the s42A Report to reject other additions, for the reasons outlined above.

EIT-INF-O4 and EIT-INF-O5 Provision of infrastructure and Integration

197. The D-G's submission raised concern that the combined effect of these two policies was that only new infrastructure which is nationally or regionally significant is required to avoid adverse effects under EIT-INF-O5, whereas under EIT-INF-O4 all other infrastructure has no such requirement as long as effects are above limits. The submission considered that this approach was inconsistent with the RMA and higher order documents, and did not provide an adequate basis for Policies EIT-INF-P10 to P17.
198. The s42A Report rejected this submission point, on the basis that the proposed provisions provided an adequate framework for managing effects.
199. Having reviewed the proposed provisions, I partially agree with the s42A Report, in that EIT-INF-O5 is specifically directed at encouraging coordination of infrastructure and land use, so is not a general effects management policy.
200. However, I do have concern about the use of the term "limits" in EIT-INF-O4, as it does imply that development of infrastructure only needs to meet limits, not the more general requirement to avoid, remedy and mitigate effects under the Act.
201. I also note that there is no clarity or certainty as to what "limits" means in this context. The s42A Report recommended accepting in part submissions seeking clarification of the term "environmental limits" (the term used in the notified version of the provision)

on the basis that a definition for “environmental limits” would be added to the pORPS 2021. However, following supplementary evidence the ORC is now proposing to remove the word “environmental” from the term in EIT-INF-O4 and elsewhere, and the proposed definition of “limit” would only apply in relation to freshwater. The overall effect being that the reference to limits remains, with no clarification of what the term means.

202. I consider that such an approach fails to give effect to the purpose of Act as there is no requirement to avoid, remedy or mitigate effects, and even apart from that the use of the term “limits” in this context is so uncertain as to be of no practical use.
203. If the Panel consider that reference to countervailing considerations is still required in this policy, I suggest replacing the reference to limits with more accurate drafting such as “*while avoiding, remedying or mitigating any adverse effects in accordance with other provisions of this RPS*”. However, my preference would be to remove the reference to limits entirely, so that EIT-INF-O4 simply sets out a desired outcome for infrastructure and leaves other considerations to apply through the other provisions of the pORPS 2021.

EIT-TRAN-O10 Commercial port activities

204. I have the same concern with the use of the term “limits” in this objective as discussed for EIT-INF-O4 above, and my preference here would also be to remove the reference to limits entirely from the objective.

EIT-TRAN-P23 Commercial port activities

205. This policy also uses the term “limits”, but in this case attempts to define it by referring to “*limits as set out in policies CE-P3 to CE-P12*”.
206. However, this provides no clarity as to what elements of those provisions are limits – for example, in CE-P5(2), I can appreciate that “...avoiding significant adverse effects on... areas of predominantly indigenous vegetation...” could act as a limit, but I struggle to see how “...and avoiding, remedying or mitigating other adverse effects on... areas of predominantly indigenous vegetation...” could function as a limit.
207. I consider it is more correct to view policies CE-P3 to CE-P12 as requirements or provisions, rather than limits, and so recommend that either the references to limits in EIT-TRAN-P23 be removed, or that the provisions be reworded along the lines:
- “(1) ~~within limits as set out in Policies CE-P3 to CE-P12, providing for the efficient and safe operation of the ports and efficient connections with other transport modes, where this is consistent with the provisions in CE-P3 to CE-P12,~~*

(2) within the limits set out in Policies CE-P3 to CE-P12, providing for the development of the ports' capacity for national and international shipping in and adjacent to existing port activities, where this is consistent with the provisions in CE-P3 to CE-P12, and.."

Chapter 12 – Hazards and risks

208. In general the D-G's submission was supportive of the proposed approach in this Chapter of the pORPS 2021. I therefore support the retention of the proposed provisions, with one exception which is detailed below.

Policy HAZ-NH-P7

209. The D-G's submission sought that this provision be retained as notified. However, the s42A Report recommend deleting clause (1), which would provide for hard protection structures only when they:

"...are essential to manage risk to a level the community is able to tolerate".

210. The justification given for this (s42A report para 201) is that the intent of the clause can be achieved through clause (2):

"there are no reasonable alternatives that result in reducing the risk exposure".

211. However, clause (2) sets a significantly lower standard than clause (1). The degree of necessity drops from 'essential' to 'no reasonable alternatives', and the required benefit drops from 'manage risk to a level the community is able to tolerate' to 'reducing the risk exposure'. There is no quantitative or qualitative requirement for the reduction in risk exposure – any reduction at all would comply with this clause, no matter how slight, and no matter whether it makes any difference to the community's ability to tolerate the risk.

212. I consider that such an approach is not efficient, in that it could allow significant effects from hard structures for the sake of minor or immaterial decreases in risk exposure. It is also not effective, in that it could fail to meet a community's needs to reduce risk to a tolerable level.

213. I am also concerned that the wording limits the alternatives to other ways to reduce the risk exposure. There could be other realistic alternatives which are more about managing the risk exposure, such as managed retreat, 'do nothing', land use change, or Civil Defence Emergency Management activities.

214. I do agree there is a degree of overlap in clauses (1) and (2) as notified. However, given the concerns described above, I consider it would be more appropriate to retain elements of both clauses, to ensure that hard structures are only used where they provide worthwhile benefits.
215. I suggest that suitable wording would be:
- “there are no reasonable alternatives that ~~result in reducing~~ manage or reduce the risk exposure to a level the community is able to tolerate”*
216. I recognise that this is a complex issue, so I remain open to other approaches or drafting which would also ensure that hard structures must both achieve worthwhile benefits and be tested against alternatives.

Chapter 13 – Historic and cultural values

HVC-HH-P3 Recognising historic heritage

217. The D-G’s submission sought that this policy be amended to “recognise the Heritage New Zealand Pouhere Taonga Act, which is a directly relevant matter to historic heritage.”
218. The s42A report noted this submission (para 221) but did not address it in the analysis, or give any reasons for rejecting the submission point.
219. I consider that the point is valid, given that the Heritage New Zealand Pouhere Taonga Act 2014 is the primary legislation managing heritage values nationally, and includes provisions directly relating to the identification of historic heritage.
220. I therefore consider that the relief sought in the D-G’s submission is appropriate, and that a new clause should be added to policy HCV-HH-P3 along the lines:
- “(14) and includes any historic place within the meaning under Section 6 of the Heritage New Zealand Pouhere Taonga Act 2014.”*

HVC-HH-P4 Identifying historic heritage and HVC-HH-P45 Managing historic heritage

221. The D-G’s submission sought that these policies be amended to provide clear criteria for when heritage values are special or outstanding, and to provide appropriate levels of protection.
222. The s42A Report (supplementary evidence para 40-52) addresses this through amendments to Appendix 8 Identification criteria.

223. I confirm that I consider that the proposed changes to APP8 are of “like effect” and within scope of the relief sought in the D-G’s submission, and appropriately address the issue raised.
224. I also confirm that I support the proposed wording, and the link to the criteria in “Assessing Historic Places and Historic Areas for the New Zealand Heritage List/ Rārangī Kōrero (2019)”. This approach will provide clarity on what places or areas have special or outstanding values, and how they should be managed.

Chapter 14 – Natural features and landscapes

NFL-O1 Outstanding and highly valued NFLs

225. The D-G’s submission sought the retention of this provision as notified. However, following consideration of a submission by Kāi Tahu ki Otago, the s42A report (supplementary evidence paras 7-10) recommends an addition to the objective to include restoration of outstanding and highly valued natural features and landscapes.
226. Having considered that proposed change, I also support it. As outlined in the supplementary evidence, the change provides better alignment across the pORPS 2021, and responds to the fact that natural features and landscapes in Otago have already been modified and developed.

NFL-P1 to P3 - Relationship with CE Chapter

227. The D-G’s submission sought changes to NFL-P2 and NFL-P3 to place the focus on the natural features and landscapes themselves rather than just their values, for consistency with the approach taken in the Coastal Environment chapter.
228. The s42A report (supplementary evidence paras 11-17) takes a different approach, and instead recommends changes to these policies to be explicit that they do not apply in the coastal environment.
229. The result is that in the October 2022 consolidated version of the pORPS, CE-P6 would address adverse effects “on” the natural features and landscapes, whereas NFL-P2 and NFL-P3 would address adverse effects “on the values of” the natural features and landscapes.
230. The s42A report recognises that this was raised in the D-G’s submission (s42A report paras 123 and 141), but does not address the submission in the analysis that follows, so I am unsure why the submission was rejected, or why protection outside the coastal environment should be limited to the values of natural features and landscapes rather than the natural features and landscapes themselves.

231. Neither s6(b) of the RMA, nor Objective 2 or Policy 15 of the NZCPS 2010, refer to “values of” natural features and landscapes. I therefore consider that the drafting in the pORPS 2021 should both reflect the drafting in the RMA, and be consistent with the drafting in the NZCPS 2010, and so the wording “values of” should be removed in these three policies

NFL-P2 Outstanding NFLs

232. The D-G’s submission sought that, apart from addressing the issue discussed above, NFL-P2 be retained as notified.

233. However, the s42A report recommends an addition to this policy, such that the requirement to avoid adverse effects outside the coastal environment would be limited to where “*there is limited or no capacity to absorb use or development*”. Where that is not the case, a general requirement to avoid, remedy or mitigate other adverse effects would apply. The report states that this aligns with Policy NFL-P1 which would require identification of the capacity of natural features and landscapes to absorb use or development while protecting their values.

234. I have concern about this change, which would potentially leave natural features and landscapes open to adverse effects right up to the point where they can no longer absorb change without loss of values.

235. I consider such an approach is inconsistent with the requirement of s6(b) of the RMA to protect outstanding natural features and landscapes from inappropriate subdivision, use, and development. It is overly simplistic to assume that any subdivision, use or development is appropriate simply because the capacity of a natural feature or landscape to absorb change has not yet been exceeded.

236. My preference would therefore be to retain the wording from the notified version of NFL-P2, with the removal of reference to the “values of” natural features and landscapes as discussed above:

“...(1) avoiding adverse effects on the ~~values that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding, and...~~”

Chapter 15 – Urban form and development

Introduction

237. I note that there have been significant changes proposed within this section in response to the National Policy Statement for Highly Productive Land. I consider

these changes are generally appropriate, other than where I have concerns outlined below.

UFD-O1 Form and function of urban areas

238. The D-G's submission opposed the limitation of consideration of other values to only those that are "significant", especially as other terms are also used throughout the pORPS 2021 to signify high values.
239. The s42A report supplementary evidence has misinterpreted this submission, in my opinion, and recommends that the entire reference to "*the significant values and features identified in this RPS*" be removed, based on the D-G's submission and another submission by Kāi Tahu ki Otago.
240. My reading of the D-G's submission is that it seeks retention of that reference, and that the effect of the reference be broadened to include all values and features identifies elsewhere in the pORPS 2021.
241. I have significant concerns with removing this reference. The reason given for removing it is that all provisions in the document are intended to be read and considered together. However, the reality is that most RPS users will look to the immediately relevant sections, and not read the entire 2-300 pages looking for all relevant provisions. Making links explicit therefore has real advantages to RPS usability and effectiveness.
242. I also consider that it would not be appropriate for the form and functioning of urban areas to be primarily directed by this objective, and to rely on that direction then being modified as required where other provisions are found to be relevant. Rather, I consider that 'where and how' urban areas develop must be equally directed by those other considerations (indigenous biodiversity, natural hazards, mana whenua values etc) – i.e. they need to be considered together, so it is appropriate to include them as equals within this objective.
243. I support the D-G's submission that the limitation to "significant" other values and features is not appropriate. I consider there is a drafting issue with the use of the term "significant", as other terms are also used throughout the pORPS 2021 to indicate high values that are to be treated differently to other values. For example, these include "outstanding" natural features, "outstanding" natural landscapes, "outstanding" water bodies, "special or outstanding" historic heritage, "highly valued" natural features and landscape, and "specified" infrastructure.

244. I also consider there is an issue with the effect of limiting consideration to only “significant” features and values, regardless of how that significance is drafted. The pORPS 2021 includes a large number of relevant provisions which are not limited in that way but would be relevant to the form and functioning of urban areas (e.g. natural hazards, Te Mana o te Wai, climate change).

245. I therefore consider that the appropriate form of this objective is as per the notified version with the deletion of the word significant:

“...(2) maintains or enhances the ~~significant~~ values and features identified in this RPS, and the character and resources of each urban area.”

UFD-O2 Outstanding Development of urban areas

246. The D-G’s submission sought the addition of a further clause to this objective, to address effects on the wider environment.

247. While I would support that addition, I consider that the changes to UFD-O1 discussed above would address the same issue, and that UFD-O1 is probably the more appropriate place to recognise the wider values that must be considered along with strictly urban considerations.

UFD-O3 Strategic planning

248. The D-G’s submission also opposed the limitation in this objective of consideration of other features and values to only those that are “significant”. The s42A Report has not adopted this change.

249. As noted above for UFD-O1, I consider there is a drafting issue with the use of the term “significant”. I also consider there is a similar issue to UFD-O1 with limiting consideration to only “significant” features and values, given that the pORPS 2021 includes a large number of relevant provisions which are not limited in that way but would be relevant to strategic planning of urban areas.

250. I therefore consider that the appropriate form of this objective is as per the s42A version with the deletion of the word significant:

“...(2) development is located, designed and delivered in a way and at a rate that recognises and provides for ~~regionally significant~~ features and values identified by this RPS, and...”

UFD-O4 Development in rural areas

251. As with the above UFD objectives, the D-G's submission opposed the limitation of consideration of other features and values to only those that are "significant". The s42A report has not adopted this change.

252. My concerns described above are equally relevant to this objective. I therefore consider that the appropriate form of this objective is as per the notified version with the deletion of the word significant:

"...(1) avoids impacts on ~~significant~~ values and features identified in this RPS..."

A handwritten signature in blue ink, appearing to read 'Murray Brass', is positioned above the printed name.

Murray Brass

DATED this 23rd day of November 2022

Appendix 1 – Summary of changes recommended based on the D-G’s submission

This appendix summarises matters where I recommend changes to the wording of provisions where my opinion differs from what is proposed in the Section 42A Report incorporating Supplementary Evidence. The table outlines the D-G’s submission points and officer’s recommendations, and includes the text of my suggested changes. The table also provides references for the paragraphs of my evidence which address each point or recommendation.

Note: Where submission points from the D-G’s submission are recommended for acceptance in the s 42A Report incorporating Supplementary Evidence, and I concur with that recommendation, those submission points have not been included in this table.

Key to proposed changes to provisions

Text	Tracked Changes
Text from Proposed Amendments PORPS – S42A & Supplementary Evidence Version	Normal text
Text amendment proposed by D-G expert witnesses:	Strikethrough for deletions and <u>underline</u> for insertions

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
Definitions – ‘Effects management hierarchy’ 00137.009	Oppose – seeking consistency with ECO-P6	Revise to: “means an approach to managing the adverse effects of an activity”	Delete definition: Effects management hierarchy means an approach to managing the adverse effects of an activity	31-37

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
Definitions – 'Indigenous fauna' 00137.011	Provide definition	Amendment not adopted	<u>Definition of 'indigenous fauna'</u> <u>means animals, including fish and invertebrates, that, in relation to a particular area, are native to the ecological district in which that area is located.</u>	122-127
Definitions – 'Indigenous flora' 00137.012	Provide definition or replace with "indigenous vegetation"	Amendment not adopted	Throughout document: Indigenous flora <u>indigenous vegetation</u>	122-127
Definitions – 'Naturally rare' 00137.014	Amend to ensure definition is appropriate for use throughout document	Amendment not adopted	<u>Definition of 'naturally uncommon'</u> <u>has the same meaning as naturally rare</u>	130-134
IM-P1 00137.001	Retain as notified	Complete re-write	IM-P1 - Integrated approach to decision-making Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise: (1) the life-supporting capacity and mauri of the natural environment and the health needs of people, and then (2) the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.	53-56

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
			<p><u>The objectives and policies in this RPS form an integrated package, in which:</u></p> <p><u>(1) all activities are carried out within the environmental constraints of this RPS,</u></p> <p><u>(2) all provisions relevant to an issue or decision must be considered,</u></p> <p><u>(3) if multiple provisions are relevant, they must be considered together and applied according to the terms in which they are expressed, and</u></p> <p><u>(4) notwithstanding the above, all provisions must be interpreted and applied to achieve the integrated management objectives IM-O1 to IM-O4.</u></p>	
IM-P1 00137.001	Retain as notified	Delete	<p><u>IM-P2 – Decision priorities</u></p> <p><u>Unless expressly stated otherwise, all decision making under this RPS shall:</u></p> <p><u>(1) firstly, secure the long-term life-supporting capacity and mauri of the natural environment,</u></p> <p><u>(2) secondly, promote the health needs of people,</u> <u>and</u></p> <p><u>(3) thirdly, safeguard the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future</u></p>	53-56
IM-P13 00137.045	Retain intent but amend to function as a policy or action.	Delete	<p><u>IM-P13 – Managing cumulative effects</u></p>	57-59

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
			<u>Recognise and explicitly account for cumulative effects in resource management decisions.</u>	
CE-O1 00137.049	Amend to provide for enhancement	Amendments not adopted	CE-O1 – Safeguarding the coastal environment (Te Hauora o Te Tai o Arai-te-uru) ...(3) the dynamic and interdependent natural biological and physical processes in the coastal environment are maintained or <u>and enhanced</u> , (4) the diversity of indigenous coastal flora and fauna is maintained <u>and enhanced</u> , and areas of significant indigenous biodiversity are protected, and...	60-66
CE-O3 00137.051	Amend to provide sufficiently strong direction for restoration	Amendments not adopted	CE-O3 Natural character, features and landscapes Areas of natural character are preserved, and natural features and landscapes (including seascapes) within the coastal environment are protected from inappropriate activities, and restoration is encouraged <u>restored</u> where the values of these areas have been compromised.	67-68
CE-P3 00137.054	Amend to include indigenous vegetation and fauna, not just ecosystems	Amendments not adopted	CE-P3 Coastal water quality ...(1) maintaining or enhancing healthy coastal ecosystems, indigenous habitats provided by the coastal environment, <u>indigenous vegetation and</u>	82-84

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
			fauna, and the migratory patterns of indigenous coastal water species...	
CE-P11 00137.057	Amend to provide more direction on what places may be appropriate or inappropriate for aquaculture.	Amendments not adopted	CE-P11 - Aquaculture (1A) <u>effects on other coastal values, including indigenous biodiversity</u> , risks to biosecurity from disease or introduced pest species and (1B) the effects of aquaculture on cultural values, including effects on mahika kai and kaimoana practices, and customary fisheries, including mātaītai reserves and taiāpure....	88-93
LF-LW-P14 00137.001	Retain as notified	New wording added relating to fish barriers.	LF-FW-P14 Restoring natural character and instream values ...(3) increase the presence, resilience and abundance of indigenous flora and fauna, including by providing for fish passage within river systems and creating fish barriers to prevent predation <u>incursions from undesirable species</u> where necessary <u>and appropriate</u> ,...	100
LF-FW-M8A 00137.001	Retain as notified	Add new method to address species interactions between trout and salmon and indigenous species	LF-FW-M8A – Identifying and managing species interactions between trout and salmon and indigenous species (1) When making decisions that might affect the interactions between trout and salmon and	38-41

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
			<p>indigenous species, local authorities will have particular regard to the recommendations of the Department of Conservation, the Fish and Game Council relevant to the area, Kāi Tahu, and the matters set out in LF-FW-M8A(2)(a) to (c), and</p> <p>(2) Otago Regional Council will work with the Department of Conservation, the relevant Fish and Game Council and Kāi Tahu, to:</p> <p style="padding-left: 40px;">(a) identify areas where the protection of the habitat of trout and salmon, including fish passage, will be consistent with the protection of the habitat of indigenous species,</p> <p style="padding-left: 40px;">(b) identify areas where the protection of the habitat of trout and salmon will not be consistent with the protection of habitat of indigenous species, and</p> <p style="padding-left: 40px;">(c) for areas identified in (b), develop provisions for any relevant action plans(s) prepared under the NPSFM, including for fish passage, that will at minimum:</p> <p style="padding-left: 80px;">(i) determine information needs to manage the species,</p>	

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
			<p>(ii) set short-, medium- and long-term objectives,</p> <p>(iii) identify appropriate management actions that will achieve objectives determined in (ii) and account for habitat needs, <u>including measures to manage adverse effects of trout and salmon on indigenous biodiversity where appropriate,</u> and</p> <p>(iv) use tools available within the Conservation Act 1987 and the Freshwater Fisheries Regulations 1983, where appropriate</p>	
LF-LS 00137.076	Insert new objectives to address terrestrial values and consequential effects	Amendments not adopted	<p><u>LF-LS-OXX Habitats for indigenous species and ecosystems</u></p> <p><u>Otago's land environments support healthy habitats for indigenous species and ecosystems.</u></p> <p><u>LF-LS-OXX Consequential effects of land use activities</u></p> <p><u>Land use activities in Otago are managed in a way which recognises and protects terrestrial,</u></p>	101-103

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
			<p><u>freshwater and coastal values which land use activities could affect either directly or indirectly.</u></p>	
<p>LF-LS --137.076</p>	<p>Insert new objectives to address terrestrial values and consequential effects</p>	<p>Amendments not adopted</p>	<p><u>LF-LS-PX Pest species</u> <u>Reduce the impact of pest species (including wilding conifers and other pest species on land) on indigenous biodiversity, economic activities, landscapes and wahi tupuna by:</u></p> <ul style="list-style-type: none"> (1) <u>avoiding the planting and replanting of plantation forests and permanent forests with wilding conifer species listed in APP5:</u> <ul style="list-style-type: none"> (a) <u>in accordance with ECO-P9 and NFL-P5, and</u> (b) <u>in locations where they would adversely affect economic activities or wahi tupuna, and</u> (2) <u>control of other pest species on land, and</u> (3) <u>supporting initiatives to control existing wilding conifers and pests and limit their further spread.”</u> 	<p>104-105</p>

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
ECO-O1 00137.083	Inset new clauses to address all relevant points	Amendments not adopted	<p>ECO-O1 – Indigenous biodiversity</p> <p>Otago’s indigenous biodiversity is healthy and thriving and any net decline in condition, quantity and diversity is halted; <u>and</u></p> <p><u>There is no worsening of the threat classification of indigenous threatened species in Otago; and</u></p> <p><u>In the term of the RPS the threat classification of threatened indigenous species in Otago will be improved, and</u></p> <p><u>There is no further loss of LENZ environments that are threatened or At Risk (i.e. <30% of indigenous cover remains), and</u></p> <p><u>There is no further loss of naturally rare ecosystems or ecosystems that have been heavily depleted.</u></p>	137-161
ECO-P3 00137.086	Add recognition of direct and indirect effects	Amendments not adopted, and other changes and additions recommended	<p>ECO-P3 – Protecting significant natural areas and taoka</p> <p>...(1)(a) any reduction of the area or indigenous biodiversity values identified and mapped under ECO-P2(1), (even if those values are not themselves significant but contribute to an area being identified as a significant natural area), and...</p>	162-166
ECO-P6 00137.089	Amend for consistency with definition of ‘effects management hierarchy’	Amendment not adopted	<p>ECO-P6 Maintaining indigenous biodiversity</p> <p>“...(1) avoid adverse effects as the first priority,</p>	167-169

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
			(2) where adverse effects demonstrably cannot be completely avoided, they are remedied <u>minimised</u> , (3) where adverse effects demonstrably cannot be completely avoided or remedied <u>minimised</u> , they are mitigated <u>remedied</u> ...”	
ECO-M1 00137.094	Add new clause to support integrated management of land	Amendment not adopted	ECO-M1 – Statement of responsibilities ... <u>(2)(d) on land, where those objectives, policies and methods are relevant to the overall Otago Region and/or provide a framework for territorial authority plans</u>	173-178
EIT-INF-O4 00137.102	Amend to ensure that adverse effects are required to be minimised in all cases.	Amendment not adopted	EIT-INF-O4 – Provision of infrastructure Effective, efficient and resilient infrastructure, nationally significant infrastructure and regionally significant infrastructure enables the people and communities of Otago to provide for their social and cultural well-being, their health and safety, and supports sustainable economic development and growth in the region, within limits . OR (if the Panel consider that reference to countervailing considerations is still required): EIT-INF-O4 – Provision of infrastructure	197-203

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			Effective, efficient and resilient infrastructure, nationally significant infrastructure and regionally significant infrastructure enables the people and communities of Otago to provide for their social and cultural well-being, their health and safety, and supports sustainable economic development and growth in the region, within limits <u>while avoiding, remedying or mitigating any adverse effects in accordance with other provisions of this RPS.</u>	
EIT-TRAN-O10 00137.115	Amend for consistency with NZCPS 2010 and EIT-TRAN-P23	Amendment not adopted	EIT-TRAN-O10 Commercial port activities Commercial port activities operate safely and efficiently, and within limits .	204
EIT-TRAN-P23 00137.121	Amend to avoid references to provisions which are not limits	Amendments not adopted	EIT-TRAN-P23 Commercial port activities ... (1) within limits as set out in Policies CE-P3 to CE-P12, providing for the efficient and safe operation of the ports and efficient connections with other transport modes, (2) within the limits set out in Policies CE-P3 to CE-P12, providing for the development of the ports' capacity for national and international shipping in and adjacent to existing port activities, and.." OR (if the Panel consider that reference to countervailing considerations is still required):	205-207

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			<p>EIT-TRAN-P23 Commercial port activities ...(1) within limits as set out in Policies CE-P3 to CE-P12, providing for the efficient and safe operation of the ports and efficient connections with other transport modes, <u>where this is consistent with the provisions in CE-P3 to CE-P12.</u> (2) within the limits set out in Policies CE-P3 to CE-P12, providing for the development of the ports' capacity for national and international shipping in and adjacent to existing port activities, <u>where this is consistent with the provisions in CE-P3 to CE-P12.</u> and..</p>	
HAZ-NH-P7 00137.130	Retain as notified	Delete clause (1) on the basis it is covered by clause (2)	<p>HAZ-NH-P7 Mitigating natural hazards ...(1A)(a) there are no reasonable alternatives that result in reducing manage or reduce the risk (in relation to natural hazards) <u>exposure to a level the community is able to tolerate, ...</u></p>	209-216
HVC-HH-P3 00137.143	Add recognition of historic places under the Heritage New Zealand Pouhere Taonga Act 2014.	Amendment not adopted	<p>HVC-HH-P3 Recognising historic heritage ...(14) and includes any historic place <u>within the meaning under Section 6 of the Heritage New Zealand Pouhere Taonga Act 2014</u></p>	217-220

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NFL-P2 00137.147	Remove limitation of the policy to the “values of” natural features and landscapes	Amendment not adopted, and policy further limited to capacity to absorb use or development.	NFL-P2 - Protection of outstanding natural features and landscapes “...(1) avoiding adverse effects on the values of the natural features and landscapes where there is limited or no capacity to absorb use or development and ...	232-236
NFL-P3 00137.147	Remove limitation of the policy to the “values of” natural features and landscapes	Amendment not adopted.	NFL-P3 - Maintenance of highly valued natural features and landscapes “...(1) avoiding significant adverse effects on the values of the natural feature or landscape, and ...	232-236
UFD-O1 00137.151	Remove limitation to “significant” values and features.	Delete reference to values and features entirely.	UFD-O1 - Form and function of urban areas ...(2) maintains or enhances <u>the values and features identified in this RPS, and</u> the character and resources of each urban area.”	238-245
UFD-O3 00137.153	Remove limitation to “significant” features and values in clause (2).	Delete clause (2) entirely.	UFD-O3 – Strategic planning “...(2) <u>development is located, designed and delivered in a way and at a rate that recognises and provides for features and values identified by this RPS, and...</u> ”	248-250
UFD-O4 00137.154	Remove limitation to “significant” values and features in clause (1).	Delete clause (1) entirely.	UFD-O4 Development in rural areas ...(1) <u>avoids impacts on values and features identified in this RPS</u>	251-252

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APP1	Retain as notified	Complete re-write based on Hawkes Bay example	<p>Habitat for aquatic birds (native and migratory) List A</p> <ul style="list-style-type: none"> a. One of the highest regional populations of a native aquatic bird species which is endangered, threatened or distinctive. b. One of the highest natural diversity <u>diversities</u> of aquatic birds (native and migratory) in the region, which includes endangered or threatened species.... <p>... Native fish habitat - Evidential sources</p> <p>Waters of National Importance. <u>New Zealand Threat Classification System</u> Expert evidence...</p> <p>...Native fish habitat List A</p> <ul style="list-style-type: none"> a. A unique species or distinctive assemblage of native fish not found elsewhere in the region. b. Native fish that are landlocked and not affected by presence of introduced species. c. One of the highest diversities of native fish species in the region, which includes a 	106-112

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
			<p>threatened, endangered, or distinctive species.</p> <p>d. An outstanding customary fishery</p> <p>e. <u>The water body is critical to the persistence of a threatened species or to the maintenance of a population with threatened status</u></p> <p>...Habitat for indigenous plant communities – Evidential sources</p> <p>New Zealand Geopreservation Inventory. <u>New Zealand Threat Classification System</u> Protected Natural Area (PNA) surveys. Expert evidence....</p> <p>...Angling amenity List A</p> <p>a. Trophy trout (over 4kg in size)</p> <p>b. High numbers of large trout (water body supports the highest number of large trout in the region).</p> <p>c. High number of trout (water body supports the highest trout numbers in the region or the highest trout biomass in the region).</p>	

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APP2 – Significance criteria for indigenous biodiversity 00137.157	Amend criteria for completeness, clarity and effectiveness.	Partially adopted	Delete APP2 in full and replace with the full set of criteria from D-G’s submission Attachment 2, subject to any need to align with an NPSIB if gazetted	179-183
APP3 - Criteria for biodiversity offsetting 00137.158	Replace these criteria with new criteria to ensure provisions are reasonably achievable and incentivise positive measures, and to accord with the best scientific practice.	Partially adopted	<p>APP3 – Criteria for biodiversity offsetting</p> <p>(1) <i>Biodiversity</i> offsetting is not available for <u>an</u> activity that will result in <u>when</u>:</p> <p style="padding-left: 40px;">(a) the loss from an ecological district of any individuals of Threatened <i>taxa</i>, other than <i>kānuka</i> (<i>Kunzea robusta</i> and <i>Kunzea serotina</i>), under the New Zealand Threat Classification System (Townsend et al, 2008), or</p> <p style="padding-left: 40px;">(b) measurable loss within an ecological district to an At Risk – Declining <i>taxon</i>, other than <i>manuka</i> (<i>Leptospermum scoparium</i>), under the New Zealand Threat Classification System (Townsend et al, 2008), or</p> <p style="padding-left: 40px;">(c) the activity will result in the worsening of the conservation status of any indigenous biodiversity as listed under the New Zealand</p>	184-191

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			<p>Threat Classification System (Townsend et al, 2008), or</p> <p>(d) the removal or loss of viability of a naturally uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna, or</p> <p>(e)(b) the activity will result in the loss (including cumulative loss) of irreplaceable or vulnerable indigenous biodiversity.</p> <p><u>(c) the activity will result in the loss of an indigenous taxon or any ecosystem type from an ecological district; or</u></p> <p><u>(d) there are no technically feasible or socially acceptable options by which to secure gains within acceptable timeframes; or</u></p> <p><u>or</u></p> <p><u>(e) the effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse; or</u></p> <p><u>(f) the proposed activity may contradict anticipated environmental results ECO-AER1 to ECO-AER4; or</u></p>	

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			<p><u>(g) it cannot be reasonably demonstrated that the proposed management methods for the offset are likely to achieve the predicted outcome; or</u></p> <p><u>(h) the offset actions may displace activities harmful to indigenous biodiversity to other locations.</u></p> <p>(2) <i>Biodiversity</i> offsetting may be available if the following criteria are met:</p> <p>(a) the offset addresses residual adverse <i>effects</i> that remain after implementing the sequential steps required by ECO-P6(1) to (3),</p> <p>(b) the proposal demonstrates that the offset can reasonably achieve no net loss and preferably a net gain in indigenous <i>biodiversity</i>, as measured by type, amount and condition at both the impact and offset sites using an explicit, <u>quantitative</u> loss and gain calculation,</p>	

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			<p>(c) the offset is undertaken where it will result in the best ecological outcome, and is preferably</p> <ul style="list-style-type: none"> (i) close to the location of the activity, and (ii) within the same <i>ecological district</i>, <p>(d) the offset is applied so that the ecological values being achieved are the same or similar to those being lost,</p> <p>(e) the positive ecological outcomes of the offset endure at least as long as the impact of the activity and preferably in perpetuity,</p> <p>(f) the proposal demonstrates that the offset <u>will</u> achieves <i>biodiversity</i> outcomes that are clearly additional to those that would have occurred if the offset was not proposed, and are additional to any remediation or mitigation undertaken in relation to the adverse effects of the activity,</p> <p>(g) the time delay between the loss of <i>biodiversity</i> and the gain or maturation of the <i>biodiversity</i> outcomes of the offset is the least</p>	

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			<p>necessary to achieve the best possible outcome,</p> <p>(h) the outcome of the offset is achieved within the duration of the <i>resource consent</i>, and</p> <p>(i) any offset developed in advance of an application for <i>resource consent</i> must be shown to have been created or commenced in anticipation of the specific <i>effect</i> of the proposed activity and would not have occurred if that <i>effect</i> was not anticipated.</p> <p>(3) <i>Biodiversity</i> offsetting proposed in any application for resource consent, plan change or notice of requirement, must address all matters is APP3(2), and:</p> <p>(a) use objective counts and measures wherever possible, <u>Describe and measure biodiversity at the impact and offset sites using metrics that allow for biodiversity losses and gains to be quantified and balanced on a like for like basis,</u></p> <p>(b) include high value species or vegetation types as components,</p>	

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			<p>(cb) dissagrogate components of high value species and vegetation types, so that no trade-offs between them can occur. <u>Use a disaggregated accounting system for important and high value species and vegetation types to ensure they are transparently accounted for.</u></p> <p>(dc) evaluate the ecological context, including the interactions between species, habitats and ecosystems, spatial connections and ecosystem function at the impact site and offset site,</p> <p>(ed) include consideration of mātauraka Māori <u>where available</u>, and</p> <p>(e) <u>Provide opportunity for effective and early participation of stakeholders when planning a biodiversity offset.</u></p> <p>(f) Include a separate biodiversity offset management plan prepared in accordance with good practice and which incorporates a monitoring and evaluation regime <u>and detail regarding the transparent communication of the results to the public</u></p>	

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			<p><u>which is proportionate to the activity and its effects.</u></p>	
APP4 - Criteria for biodiversity compensation 00137.159	Replace these criteria with new criteria to ensure provisions are reasonably achievable and incentivise positive measures, and to accord with the best scientific practice.	Partially adopted	<p>(1) <i>Biodiversity</i> compensation is not available for an activity that will <u>when</u>:</p> <p>(a) <u>the activity will result in</u> the loss from an <i>ecological district</i> of an indigenous <i>taxon</i> (excluding freshwater fauna and flora) or of any ecosystem type,</p> <p>(b) removal or loss of viability of the habitat of a Threatened indigenous species of fauna or flora under the New Zealand Threat Classification System (Townsend et al, 2008),</p> <p>(c) removal or loss of health and resilience of a naturally uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna,</p> <p>(d)(b) <u>the activity will result in</u> worsening of the conservation status of any Threatened or At</p>	184-191

Sub Ref	D-G Submission	Recommendation in ORC planning evidence	Provision wording as recommended by M Brass	Evidence para ref
			<p>Risk indigenous biodiversity listed under the New Zealand Threat Classification System (Townsend et al, 2008), or</p> <p>(c) <u>(c) the activity will result in the loss (including through cumulative loss) of irreplaceable or vulnerable indigenous biodiversity.</u></p> <p><u>(d) there are no technically feasible or socially acceptable options by which to secure gains within acceptable timeframes; or</u></p> <p><u>(e) the effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse; or</u></p> <p><u>(f) the proposed activity may contradict anticipated environmental results ECO-AER1 to ECO-AER4, or</u></p>	

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			<p><u>(g) it cannot be reasonably demonstrated that the proposed compensation actions are likely to achieve the predicted positive outcome; or</u></p> <p><u>(h) the compensation may displace activities harmful to indigenous biodiversity to other locations</u></p> <p>(2) <i>Biodiversity</i> compensation may be available if the following criteria are met:</p> <p>(a) compensation addresses only residual adverse effects that remain after implementing the sequential steps required by ECO-P6(1) to (4),</p> <p>(b) compensation is undertaken where it will result in the best ecological outcome and preferably:</p>	

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			<p>(i) close to the location of the activity, 253.</p> <p>(ii) within the same <i>ecological district</i>, and</p> <p>(iii) delivers indigenous biodiversity gains on the ground,</p> <p>(ba) where criterion (2)(b)(iii) is not <u>cannot be</u> met any financial contributions considered must be directly linked to a specific indigenous biodiversity gain or benefit.</p> <p>(c) compensation achieves positive <i>biodiversity</i> outcomes that would not have occurred without that compensation, and are additional to any remediation, mitigation or offset undertaken in response to the adverse effects of the activity,</p> <p>(d) the positive <i>biodiversity</i> outcomes of the compensation are enduring, <u>lasting at least as</u></p>	

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			<p><u>long as the impacts and preferably in perpetuity, and are enough to outweigh the adverse effects on indigenous biodiversity commensurate with the biodiversity values lost,</u></p> <p>(e) the time delay between the loss of <i>biodiversity</i> at the impact site and the gain or maturation of the <i>biodiversity</i> outcomes from the compensation, is the least necessary to achieve the <u>compensation-best possible ecological</u> outcome,</p> <p>(f) the outcome of the compensation is achieved within the duration of the <i>resource consent</i>,</p> <p>(fa) when trading up forms part of biodiversity compensation, the proposal must demonstrate the indigenous biodiversity values gained are demonstrably of higher</p>	

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			<p>indigenous biodiversity value than those lost, or considered vulnerable or irreplaceable,</p> <p>(g) <i>biodiversity</i> compensation developed in advance of an application for <i>resource consent</i> must be shown to have been created or commenced in anticipation of the specific <i>effect</i> of the proposed activity and would not have occurred if that <i>effect</i> was not anticipated, and</p> <p>(h) the <i>biodiversity</i> compensation <u>outcome</u> is demonstrably achievable.</p> <p>(3) Biodiversity compensation proposed in any application for resource consent, plan change or notice of requirement, must address all matters is APP4 (2), and:</p> <p>(a) evaluate the ecological context, including the interactions between species,</p>	

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			<p>habitats and ecosystems, spatial connections and ecosystem function at the impact site and compensation site, <u>where applicable</u>,</p> <p>(b) include consideration of mātauraka Māori <u>where available</u>, and</p> <p>(c) <u>be informed by science</u>.</p> <p style="text-align: right;">254.</p> <p>(d) <u>Provide opportunity for effective and early participation of stakeholders when planning a biodiversity offset</u>, and</p> <p>(ee) include a separate biodiversity compensation management plan prepared in accordance with good practice and which incorporates a monitoring and evaluation regime <u>and detail regarding the transparent communication of the results to the public which is proportionate to the activity and its effects</u>.</p>	

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