

BEFORE THE HEARING COMMISSIONERS

DUNEDIN

IN THE MATTER of the Resource Management Act 1991
(**RMA** or **the Act**)

AND

IN THE MATTER of the Proposed Otago Regional Policy
Statement (Non- Freshwater parts)

**STATEMENT OF EVIDENCE OF LYNETTE WHARFE (PLANNING) ON
BEHALF OF HORTICULTURE NEW ZEALAND**

23 November 2022



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EXECUTIVE SUMMARY

1. This evidence addresses submissions and further submissions that Horticulture New Zealand (**HortNZ**) made in five chapters of the proposed Otago Regional Policy Statement (**pORPS**):
 - (a) Air;
 - (b) Land and soils – particularly highly productive land;
 - (c) Energy, Infrastructure and Transpower;
 - (d) Hazards and risks; and
 - (e) Urban form and development.

Air

2. The provisions in the Air Chapter do not have a clear objective framework for providing for activities which discharge to air. I seek a framework that better provides for such activities.
3. I also seek inclusion of a new policy for location and spatial separation of activities that may be sensitive to discharges to air. Such a policy would direct district plans to consider such separation in land use planning and assist in achieving the objective of ensuring there are not significant adverse effects on human health.

Land and Soils, particularly highly productive land

4. The National Policy Statement for Highly Productive Land (**NPSHPL**) has recently been gazetted and the Otago Regional Council (**Council**) has provided Supplementary s42A Reports with recommendations as to how the NPSHPL may be given effect to within the scope of submissions on the pORPS.
5. My analysis identifies that there is a significant policy gap in the recommended provisions relating to land that is not LUC 1, 2 or 3 and which may be highly productive land.
6. Under the NPSHPL and the recommended provisions such land is afforded no protection until such time as identification and mapping of highly productive land has been undertaken and included in the regional policy statement.
7. In the context of Central Otago this is a significant issue. I seek inclusion of an interim framework that enables such land to have an assessment undertaken based on criteria that were included in the pORPS, to ensure that such land is not lost to

primary production prior to the mapping exercise required by the NPSHPL.

Energy, Infrastructure and Transport

8. This evidence addresses nationally significant and regionally significant infrastructure, the National Grid, Renewable Electricity Generation and electricity distribution.
9. In particular I seek to ensure that the provisions that rely on national direction are consistent with that direction and nationally significant and regionally significant infrastructure are appropriately provided for.
10. I support the recommended inclusion of specific provisions for electricity distribution, based on the provisions in the Partially Operative Regional Policy Statement 2019.

Hazards and Risks

11. The Hazard and Risks chapter includes contaminated land.
12. I concur with most of the relevant s42A Report recommendations in respect of natural hazards, except for HAZ-NH-M2 where I consider there should be direction as to the timeframes in which natural hazard risk tables are to be developed.
13. In the Contaminated Land section I seek changes to the objective to better describe the outcomes sought and related policies.
14. I also seek inclusion of reference to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NESCS**) to ensure that it is clear that this is the framework that district councils will use to manage contaminated land.

Urban Form and Development

15. The Urban Form and Development (**UFD**) chapter includes provisions for the rural area throughout the chapter, which does not lead to a clear set of provisions for the rural area.
16. I support the separation of provisions for the rural area into a separate chapter, as provided for within the National Planning Standards Regional Policy Statement Structure Standard Directions 9 and 10.

17. Key issues that I seek to be included within the UFD chapter relate to enabling primary production, reverse sensitivity, the rural urban interface and highly productive land.
18. Changes are sought to a range of provisions to better provide for primary production in rural areas.

INTRODUCTION

Qualifications and experience

1. My name is Lynette Pearl Wharfe. I am a planning consultant with The AgriBusiness Group. I have a BA in Social Sciences and post graduate papers in Environmental Studies, including Environmental Law, Resource Economics and Resource Management.
2. I am an accredited commissioner under the Making Good Decisions programme with Ministry for the Environment.
3. I have been a consultant with The AgriBusiness Group since 2002. The Agribusiness Group was established in 2001 to help build business capability in the primary sector.
4. I have spent over 20 years as a consultant, primarily to the agricultural industry and rural sector, specialising in resource management, environmental issues, and environmental education and facilitation, including 20 years of providing advice to Horticulture New Zealand (**HortNZ**) and its precursor organisations, NZ Vegetable and Potato Growers Federation, NZ Fruitgrowers Federation.
5. As part of providing advice to HortNZ for submissions and plans across the country I have been involved in development of Regional Policy Statements, Regional Plans and District Plans and so am familiar with the range of matters addressed in the proposed Otago Regional Policy Statement (**pORPS**). I was also involved in the hearings and mediations on the Partially Operative Otago Regional Policy Statement 2019.
6. I have been involved as a consultant to HortNZ contributing to submissions and further submissions on the pORPS.

Code of Conduct

7. I have been provided with a copy of the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note dated 1 December 2014. I have read and agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. 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

8. This evidence addresses submissions and further submissions that HortNZ made in five chapters of the pORPS:
 - a) Air;
 - b) Land and soils – particularly highly productive land;
 - c) Energy, Infrastructure and Transport;
 - d) Hazards and risks; and
 - e) Urban form and development.
9. I outline the key issues for HortNZ at the start of each section of this evidence and set out the changes sought as a result of my assessment.
10. The specific submission points and interests are set out in the respective sections of this evidence.
11. A compilation of changes sought in this evidence is included in **Appendix 1**.
12. Other parts of the HortNZ submission are addressed in planning evidence by Vance Hodgson.
13. I rely on the technical assessments provided by:
 - a) Vance Hodgson (planning); and
 - b) Stuart Ford (economic);
 and the industry evidence provided by:
 - c) Leanne Roberts.
14. This evidence refers to the s42A Reports, Supplementary Statements and Briefs of evidence from the Council staff and consultants. The relevant reports are identified at the start of each section of evidence.

AIR

15. HortNZ made a number of submissions relating to the Air topic.
16. Growers discharge substances to air, such as agrichemicals and fertiliser, and can also be adversely affected by discharges to air, such as dust or smoke on fruit prior to harvest. Greenhouses also use heating sources for their facilities, some

of which will result in discharges to air. Therefore the interest in the air topic is both as a user and a potentially affected party.

17. I have considered the submissions made on the air topic and the s42A Report and Supplementary Evidence of Ms Goslin.¹
18. I participated in the pre-hearing discussions on this topic.
19. The regional policy statement (**RPS**) sets the overall framework for resource management issues in the region and while air is a separate topic it is closely related to land use activities so the approach should be to ensure that there is integrated management across the RPS to both provide a balance for discharges to air while also ensuring the health and safety of people and ecosystems from the adverse effects of discharges to air.
20. There are a range of activities that society relies on which discharge to air and these need to be provided for within parameters. In my opinion, the balance in the pORPS does not adequately reflect that need and so I seek changes to address this issue.
21. While there are a number of proposed policies that provide for some discharges to air there is no clear objective that these policies are implementing.
22. The RPS will provide direction for the Regional Air Plan but also must be given effect to in district plans. Therefore if there are land use planning matters relating to air quality and discharges that need to be incorporated into district plans these should be included within the RPS framework, not left to the Regional Air Plan.
23. Therefore the approach I take in this evidence is to ensure that there is provision for those activities which seek to discharge to air while ensuring people and communities are not adversely affected.

Definition Ambient air

24. HortNZ sought a definition be added for 'ambient air'.²

¹ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Chapter 7 AIR – Air, dated 27 April 2022. Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Supplementary Evidence 07 AIR – Air, dated 11 October 2022.

² Summary of Decisions Requested, dated 30 October 2021, submission number 00236.012.

25. The s42A Report rejects this submission on the basis that the term ambient air quality is a well understood term that refers to outdoor air quality so a definition is not necessary.³
26. I consider that definitions are useful in providing clarity and certainty in a plan, especially where a term is used in setting the policy framework for a plan.
27. While the writer may not consider it necessary, in my opinion, inclusion of a definition that provides greater certainty and clarity should be supported. I don't see any disadvantages of including a definition for ambient air.
28. Therefore I seek that a definition is included for ambient air:

Ambient air is air outside buildings and structures. It does not include indoor air, air in a workplace or contaminated air discharged from a source.

Air-O2 Discharges to air

29. AIR-O2 as proposed is:
- Human health and amenity and mana whenua values and the life-supporting capacity of ecosystems are protected from the adverse effects of discharges to air.*
30. HortNZ sought that AIR-O2 be amended as follows:⁴
- Provide for the discharges of contaminants into air where there are no significant localised adverse effects on human health, amenity and mana whenua values and the life supporting capacity of ecosystems.*
31. A number of other submitters also sought that the objective be amended. The s42A Report rejects such submissions.
32. The s42A Report states that:⁵
- While the ability to discharge contaminants into air needs to be provided for, it is important that these discharges do not cause significant adverse effects on human health or other values.*
33. I agree with that statement, however the current wording of AIR-O2 does not clearly articulate that position. The writer considers that retaining an unqualified 'protection' as an

³ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Chapter 7 AIR – Air, dated 27 April 2022, at [23].

⁴ Above n2, submission number 00236.042.

⁵ Above n3, at [42].

outcome provides the ability for policies to establish the level of adverse effects that are acceptable.

34. I do not agree. The objective sets the outcome sought, which is implemented in the policies. Therefore if an objective of 'protection' is set then the policies need to implement that outcome, not establish a level of adverse effects that are acceptable.
35. I agree that the policies should set the level of effects that are acceptable, but the objective needs to provide the framework for that to occur.
36. To achieve that framework AIR-O2 needs to be amended to better reflect the intent of providing for discharges to air which are not causing significant adverse effects on human health and other values.
37. Therefore I support changes as sought by HortNZ to AIR-O2:
- Provide for the discharges of contaminants into air where there are no significant localised adverse effects on human health, amenity and mana whenua values and the life supporting capacity of ecosystems.*
38. This objective provides a framework for providing for discharges to air and focuses on 'no significant localised adverse effects' to a range of values.
39. This objective will then be implemented through Policies AIR-P3, AIR-P4 and AIR-P5 which provide for discharges to air. This objective will also provide the framework for the Regional Air Plan to manage discharges to air.

AIR-P3 Providing for discharges to air

40. HortNZ sought that AIR-P3 be retained as it specifically provides for discharges to air.⁶
41. I consider that AIR-P3 would implement the proposed objective that I have sought for AIR-O2.
42. The s42A Report is recommending that AIR-P3 be retained subject to minor changes and I concur with that recommendation.

⁶ Above n2, submission number 00236.043.

AIR-P4 Avoiding certain discharges

43. HortNZ made a submission that sought that offensive, objectionable, noxious or dangerous effects be described or defined, or delete AIR-P4.⁷
44. The s42A Report considers that it is preferred that the criteria used to determine whether a discharge is offensive, objectionable, noxious or dangerous be left to the Regional Air Plan.⁸
45. I disagree. There is no certainty as to the criteria and how they may be applied, especially given the subjective nature of the terms which have been subject to changing case law.
46. A number of submitters sought changes to the direction of 'avoid' in policy AIR-P4 as being too absolute. I concur with that position given the uncertainty as to how the terms will be defined, described and implemented in the Regional Air Plan.
47. The s42A Report recommends that the policy be amended to 'Generally avoid..' to provide a more nuanced approach.⁹
48. The Supplementary statement by Ms Goslin rescinds that recommendation and recommends an alternative provision that splits the effects:¹⁰
- Avoid discharges to air that cause noxious or dangerous effects and avoid, as the first priority, discharges to air that cause offensive or objectionable effects.*
49. In my opinion, it would be preferable for the policy to be deleted and that the Regional Air Plan develop the framework to implement the direction of the RPS, including how offensive, objectionable, noxious or dangerous adverse effects are described and managed.
50. Such an approach would enable the matters to be addressed in totality within the Regional Air Plan, rather than splitting between the pORPS and Regional Air Plan.
51. Inclusion of offensive, objectionable, noxious or dangerous effects in the Regional Air Plan is not contingent on inclusion

⁷ Above n2, submission number 00236.044.

⁸ Above n3, at, at [91].

⁹ Above n3, at, at [92].

¹⁰ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Supplementary Evidence 07 AIR – Air, dated 11 October 2022, at [19].

in the pORPS, as the Air objectives provide the scope and direction for inclusion of such effects in the Regional Air Plan.

52. Therefore I support the deletion of AIR-P4.

AIR-P5 Managing certain discharges

53. HortNZ sought changes to AIR-P5 to amend terminology.¹¹

54. The s42A Report recommends that the changes be made and I concur with that recommendation.¹²

AIR-P6 Impacts on mana whenua values

55. HortNZ sought that AIR-P6 be deleted as mana whenua values are included in AIR-O1, AIR-O2 and AIR-P3.¹³

56. The s42A Report rejects the submission but does not provide a specific reason, rather, focusing the discussion on the use of the word 'avoid' and changes sought by Kai Tahu ki Otago to add specific areas of significance to mana whenua.

57. In the absence of a reason for retaining the policy, and given the inclusion of mana whenua values in the other objectives and policies, it is difficult to respond to the s42A Report.

58. In my opinion, it is important that there is not duplication between policies. Therefore, if mana whenua values are to be retained in AIR-O1, AIR-O2 and AIR-P3, policy AIR-P6 should be deleted.

New policy - Sensitive activities

59. HortNZ sought that a new policy be included in the Air chapter:¹⁴

Avoid locating new sensitive activities near existing activities which are permitted or consented to discharge to air.

60. The policy was sought because it is considered that there needs to be clear direction in the pORPS that the location of activities is an important consideration in terms of likely adverse effects on people from discharges to air and that new sensitive activities locating in proximity to existing

¹¹ Above n2, submission number 00236.045.

¹² Above n10, at [104].

¹³ Above n2, submission number 00236.046.

¹⁴ Above n2, submission number 00236.047.

consented or permitted discharges to air is likely to lead to reverse sensitivity effects.

61. The s42A Report rejects the submission:¹⁵

I consider the specifics of addressing reverse sensitivity matters are too detailed for the pORPS and will be a key component of the future Regional Air Plan

62. I consider that there is value in having a policy relating to the relationship between land use and air discharges in the RPS. A district plan needs 'to give effect to' the RPS, but only 'have regard to' a regional plan. Therefore, if the effect of discharges to air is to be considered in the land use planning for district plans it needs to be directed by the RPS.
63. The s42A Report considers that the policy is about reverse sensitivity effects. However, in my opinion, it is more than addressing reverse sensitivity. It is about location of sensitive activities so that adverse effects are avoided which is the outcome the objective is seeking to achieve.
64. Location and separation of activities are key mechanisms for managing potential adverse effects, including reverse sensitivity effects, from discharges to air. There is no specific requirement in the UFD chapter for location of discharges to air to be taken into account when considering the location of a new development in either urban or rural areas.
65. AIR-AER2 seeks that Otago has an urban form that takes into account the effects of activities and any discharges to air they create, on Otago's air quality.
66. AIR-AER4 seeks a decrease in complaints about offensive, objectionable, noxious or dangerous discharges to air.
67. However, there does not currently appear to be a policy that would lead to the outcome sought in AIR-AER2.
68. Both the anticipated environmental results would be assisted by a policy that provides for consideration of locations and separation distances between sensitive activities and activities that discharge to air.

¹⁵

Above n3, at [11]-[15].

69. I consider that the lack of a policy regarding location of activities is a policy gap in the pORPS and the submission of HortNZ provides the scope to address the gap.

70. Therefore, I support the inclusion of a new policy relating to location and separation from discharges to air:

Avoid locating new sensitive activities near existing activities which are permitted or consented to discharge to air.

AIR-M2 Regional plans

71. AIR-M2 sets out the methods by which the Council will implement the air chapter of the RPS.

72. HortNZ made a submission that seeks changes to and deletions to clause 1 and 5.¹⁶ The s42A Report rejects the submissions and recommends the addition of a new clause regarding mana whenua values.¹⁷

73. Clause 1 relates to offensive, objectionable, noxious and dangerous discharges which I have addressed in respect of AIR-P4.

74. The Supplementary Statement of Ms Goslin recommends that AIR-M2 (1) be amended consistent with recommended changes to AIR-P4.¹⁸

75. I have sought that AIR-P4 be deleted and the matters addressed in the Regional Air Plan, so also support the deletion of AIR-M2 (1).

76. Clause 5 relates to giving effect to the Air Quality Strategy for Otago and any subsequent amendments or updates.

77. The Air Quality Strategy for Otago currently on the website appears to be undated so it would not be clear if there are any subsequent amendments or updates.

78. The RMA requires that councils 'have regard to' such strategies and plans, not 'give effect to'. Therefore the directive of 'give effect to' is inappropriate.

¹⁶ Above n2, submission number 00236.048.

¹⁷ Above n3, at [138].

¹⁸ Above n10, at [20].

79. While the Air Strategy for Otago may assist with the development of the Regional Air Plan Council needs to be cognisant of its status as a non-statutory document.
80. Best practice for inclusion of reference to external documents under the RMA is that the specific dated document is referred to so that there is clarity and certainty as to what document is being referred to. AIR-M2 (5) does not provide that certainty, given that amendments and updates should also be given effect to.
81. Therefore I support changes to AIR-M2 as follows:

Delete AIR-M2 (1)

Amend AIR-M2 (5): have regard to the Air Quality Strategy for Otago and insert a date for the document on the website.

AIR-M3 Territorial authorities

82. AIR-M3 sets out the methods for territorial authorities to implement the air chapter of the RPS.
83. HortNZ seeks a method linked to the new policy for the location of activities:¹⁹
- Ensure that there is spatial separation between location of new sensitive activities and existing activities that are consented or permitted to discharge contaminants to air.*
84. The s42A Report rejects this submission as it seeks recognition of reverse sensitivity matters that may be better suited in the urban chapters of the pORPS.²⁰
85. As set out above in respect to a new policy regarding location of activities, the matter is more than reverse sensitivity effects. It is about ensuring use of appropriate mechanisms to avoid adverse effects from discharges to air.
86. I support the inclusion of the method to support the new policy that I seek be added to the air chapter.

¹⁹ Above n2, submission number 00236.049.

²⁰ Above n3, at [151].

AIR-M5 Incentives and other mechanisms

87. HortNZ sought that New Zealand Standards and codes of practice that support achieving air quality objectives be included as an 'other mechanism' in AIR-M5.²¹
88. The s42A Report recommends that the submission be rejected as there is no value in referencing these at an RPS level and more appropriate at a regional plan level.²²
89. AIR-M5 sets out a range of methods that could be used to assist achieving the air quality objectives and it could equally be argued that they could all be more appropriate at the regional plan level. I am unclear as to why reference to New Zealand Standards or codes of practice is distinctly different to the methods set out in AIR-M5, in that they all seek the outcome of assisting in achieving air quality objectives. New Zealand Standards and codes of practice are another tool in the toolbox of mechanisms available and should be included as such.
90. Therefore I support the addition of NZ Standards and codes of practice to AIR-M5.

AIR-E1 Explanation

91. HortNZ sought that reference be included in the Explanation as a consequence of the new policy sought regarding spatial location in district plans to reduce potential for adverse effects from discharges to air.²³
92. The s42A Report recommends that the submission be rejected as it would not provide any additional value to AIR-E1 and that it may be more useful as a method.²⁴
93. Yet the same report rejects a similar submission point seeking a method in AIR-M2.
94. Inclusion in the explanation is contingent on decisions about the addition of the new policy that I have sought above. I support the inclusion of the additional text as explanation for the new policy.

²¹ Above n2, submission number 00236.050.

²² Above n3, at [167].

²³ Above n2, submission number 00236.051.

²⁴ Above n3, at [177].

AIR-AER2

95. HortNZ sought the addition of a new anticipated environmental outcome as a consequence of the new policy regarding spatial location in district plans to reduce potential for adverse effects from discharges to air.²⁵
96. The s42A Report rejects the submission as it is not an anticipated environmental result and may be more appropriately placed in a provision.²⁶
97. HortNZ sought that such a provision be included, but this is also rejected in the s42A Report.
98. The S42A Report also suggests that acceptable urban form could come through the regional air plan. As stated above the district plan needs to give effect to the RPS, but not a regional plan. Therefore it is important that such spatial and locational matters are addressed at the RPS level.
99. Inclusion of a new AER is contingent on decisions about the addition of the new policy that I have sought above. I support the inclusion of an additional AER to support the new policy.
100. Collectively this evidence supports changes to provisions in the Air Chapter of the pORPS which will assist in achieving the objectives for air quality and provide direction to the development of a new Regional Air Plan and district plans.
101. Changes I support to the provisions for Air in the pORPS are set out in Appendix 1.

LAND AND SOILS

102. HortNZ made a number of submissions on the provisions relating to Land and Soils with the main focus on highly productive land.

Highly productive land

103. Since the pORPS was notified the National Policy Statement for Highly Productive Land (**NPSHPL**) has been gazetted and came into effect on 17 October 2022.
104. Ms Boyd has provided a Second Supplementary Statement of Evidence dated 21 October 2022 (**Second Supplementary**

²⁵ Above n2, submission number 00236.052.

²⁶ Above n3, at [195].

s42A Report)²⁷ considering highly productive land and sets out a description of the NPSHPL and council's obligations to implement the NPS.

105. Also relevant to this topic, and referred to in my evidence on this topic, are:
- a) the s42A Report for LF-LS Land And Soils dated 4 May 2022 (**s42A Report**);²⁸ and
 - b) the Supplementary s42A Report for Land and Freshwater dated 11 October 2022 (**Supplementary s42A Report**).²⁹
106. A number of submitters made submissions in anticipation of the NPSHPL and sought that the pORPS include provisions for highly productive land.
107. While the final content of the NPSHPL was not known at the time of submissions there is considerable alignment between the decisions sought by submitters and the gazetted NPSHPL.
108. Such submissions provide scope for changes to be made in the pORPS to give effect, or partial effect to the NPSHPL.
109. In particular, HortNZ made submissions that sought provisions for highly productive land:
- a) General submission:³⁰

HortNZ seek that the outcome related to the protection of HPL is focused on protecting the productive capacity of highly productive land from inappropriate subdivision, use and development and seeks an amendment so that the Act (Plan) promotes the use of highly productive land for food production, both for domestic and export.
 - b) Include a definition for highly productive land:³¹
 - a) *Land that has been identified as highly productive land using LF-LS-P19; OR*

²⁷ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Second Supplementary Evidence (HPL) 09 LF – Land and Freshwater (Highly Productive Land), dated 21 October 2022.

²⁸ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Chapter 9 LF – Land and Freshwater, dated 4 May 2022 (updated 7 October 2022).

²⁹ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Supplementary Evidence 09 LF – Land and Freshwater, dated 11 October 2022.

³⁰ Above n2, submission number 00236.0005.

³¹ Above n2, submission number 00236.13.

- b) *Where identification has not occurred as in a), land in the rural area that is classified as LUC 1,2 or 3 as mapped by the NZ Land Resource Inventory or by more detailed site mapping.*
- c) Retain LF-LS-O11;³²
- d) Amend LF-LS-P19 to include UFD-O4 and a definition of highly productive land;³³
- e) Amend LF-LS-M12;³⁴
- To include identified highly productive land in district plans and avoid urban or rural residential development on such land.*
- f) Retain LF-LS-AER13;³⁵
- g) Changes were also sought in the UFD chapter to implement provisions for highly productive land.
110. HortNZ also made further submissions:
- a) Supporting Beef and Land NZ and Deer Industry NZ who sought provisions for provide for the NPSHPL;³⁶
- b) Opposing Transpower NZ regarding the hierarchy in LF-LS-P19;³⁷ and
- c) Opposing Infinity Investment Group Holdings Ltd seeking changes to LF-LS-P19.³⁸
111. In the LF-LS Land and Soil chapter the relevant provisions for highly productive land are:
- a) New objective LF-LS-O11A recommended in the Supplementary s42A Report;
- b) LF-LS-P19 Highly productive land recommended to be amended in the Second Supplementary s42A Report;
- c) New Method LF-LS-M11A recommended in the Second Supplementary s42A Report;

³² Above n2, submission number 00236.067.

³³ Above n2, submission number 00236.072.

³⁴ Above n2, submission number 00236.075.

³⁵ Above n2, submission number 00236.076.

³⁶ Above n2, submission number 00235.045.

³⁷ Above n2, submission number 00314.027.

³⁸ Above n2, submission number 00414.002.

- d) Method LF-LS-M12 recommended to be amended in the Second Supplementary s42A Report;
- e) Definitions:
 - i. Food and fibre production;
 - ii. Land-based primary production;
 - iii. Highly productive land; and
 - iv. Productive capacity; and
- f) Other changes recommended to UFD provisions.

Definition highly productive land

112. The s42A Report recommends that a definition for highly productive land be included and is inserted into the 7 October 2022 version on the pORPS:³⁹

Highly productive land means:

- a) *land that has been identified in accordance with LF-LS-P19; or*
- b) *Where the identification in a) has not occurred, land in the rural area that is classified as LUC 1, 2 or 3 as mapped by the NZ Land Resource Inventory or by more detailed site specific research.*

113. The Second Supplementary s42A Report for HPL recommends an alternate definition based on the NPSHPL, rather than referring to LF-LS-P19:⁴⁰

Highly productive land has the same meaning as in clause 1.3 of the National Policy Statement for Highly Productive Land (as set out in the box below)

Means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land.

114. Clauses 3.4 and 3.5 of the NPSHPL provide the directions for the mapping and identification of highly productive land, which is required to be notified in a proposed regional policy statement by October 2025.

³⁹ Above n28, at [1425].

⁴⁰ Above n27, at [37] – [42].

115. Until such a mapping process is undertaken clause 3.5(7) of the NPSHPL provides for LUC 1, 2 or 3 land to be classed as highly productive land if:
- a) The land is zoned general rural or rural production; and
 - b) It is not identified for future urban development; or
 - c) Not included in a notified plan change to rezone to urban or rural lifestyle.
116. Therefore a council can apply the NPSHPL prior to the mapping in an operative regional policy statement, where the land is LUC 1, 2 or 3 and meets the criteria set out.
117. The NPSHPL in 3.4 (3) provides for land that is not LUC 1, 2 or 3 to be included as highly productive land through the mapping process, having regard to the soil type, physical characteristics of the land and soil and climate of the area.
118. However the definition of highly productive land in the NPSHPL does not provide for consideration of land as provided for in 3.4 (3) of the NPSHPL prior to mapping being included in a regional policy statement.
119. The consequence is that land which may be deemed highly productive through a mapping process has no protection in the interim until mapping has occurred and included in a regional policy statement.
120. This is particularly relevant in the Otago context given the extent of land that is used for high value orchard production, such as summerfruit crops - cherries and apricots that is not LUC 1, 2 or 3.
121. The evidence of Mr Ford for HortNZ identifies that the vast majority of horticultural development within Central Otago is on Class 4 or 5 land, due to a myriad of factors and are therefore highly productive within the context of Central Otago.⁴¹
122. However, as currently recommended in the pORPS, such land could not be classed as highly productive until the Council has undertaken identification and mapping and included it in a regional policy statement.

⁴¹ Statement of Evidence of Stuart Ford, on behalf of Horticulture New Zealand, at [35] –[39].

123. I consider that this is a policy gap which should be addressed in the pORPS, and that there is scope with submissions on the pORPS to do so by amending the definition of highly productive land and included criteria in LF-LS-P19 (1) from the notified RPS as interim criteria and amending the methods to incorporate these changes.
124. The notified pORPS includes LF-LS-P19 (1) that sets out criteria for identifying highly productive land which is not limited to LUC classes and provides the framework to identify highly productive land without having the land mapped in the regional policy statement.
125. The recommended definition of highly productive land in the s42A Report includes land identified in accordance with LF-LS-P19, thereby providing a pathway for land other than LUC 1, 2 or 3 to be identified as highly productive land. The application of the definition of highly productive land from the NPSHPL removes the ability for that land to be identified as highly productive until mapping has occurred.
126. The Second Supplementary s42A Report states:⁴²
- The NPSHPL interim definition of highly productive land is largely consistent with the definition recommended in the s42A Report, utilising LUC classes and zoning, and acknowledging any future urban development already identified.*
127. In my opinion, the definitions are not largely consistent as the interim NPSHPL definition does not provide for land other than LUC 1, 2 or 3 to be identified, whereas the definition recommended in the s42A Report does provide for such identification.
128. In addition, the recommended objective LF-LS-O11A seeks that highly productive land is maintained 'now and for future generations'.
129. If the objective of 'now' is to be achieved there needs to be a mechanism that identifies highly productive land sooner than the three years provided for the Council to identify and map land other than LUC 1, 2 or 3.
130. This is particularly relevant where there may be private plan changes or development proposals for land that may be

⁴²

Above n27, at [41].

identified as highly productive prior to inclusion of mapping in the regional policy statement.

131. In my opinion, the pORPS needs to include a definition for highly productive land that provides the ability to identify highly productive land, regardless of LUC class, prior to mapping and inclusion in a RPS.
132. There appear to be two mechanisms that could be used to address this issue:
- a) Retain the definition of highly productive land recommended in the s42A Report until the mapping and identification according to the NPSHPL has occurred; OR
 - b) Include the definition of highly productive land from the NPSHPL with an additional interim provision included with reference to LF-LS-P19 (4) as sought elsewhere in this evidence.

New objective LF-LS-O11A

133. The Supplementary s42A Report recommends that LF-LS-O11 be split into two objectives with LF-LS-O11A being specific to highly productive land:⁴³

The availability and productive capacity of highly productive land for food and fibre production is maintained now and for future generations.

134. The objective of the NPSHPL is:

Highly productive land is protected for use in land-based primary production, both now and for future generations.

135. The objectives are similar – but different, particularly because of the use of ‘protect’ or ‘maintain’.
136. The Second Supplementary s42A Report considers that there is not a significant difference between maintaining and protecting and there is no submission that seeks the stringency of the NPSHPL objective.⁴⁴
137. In my opinion, there is a distinct difference between protection and maintenance, with protection providing a

⁴³ Above n29, at [34].

⁴⁴ Above n27, at [46].

higher level of policy direction than simply maintaining or retaining.

138. For instance: provisions in section 6 of the RMA that provide for 'protection' are usually reflected in policies that seek to 'avoid' adverse effects. Whereas provisions in section 7 which provide for 'maintenance' are usually reflected in policy frameworks which seek to 'avoid, remedy or mitigate' adverse effects.
139. Such frameworks encompass a hierarchy and differentiation in terms on management.
140. I note that the submission of HortNZ sought an outcome for the protection of highly productive land focused on protecting the productive capacity of highly productive land from inappropriate subdivision, use and development.⁴⁵
141. In my opinion, this submission point provides the scope to include an objective of 'protection' as opposed to 'maintenance'.
142. While the submission point was not specifically on LF-LS-O11 it relates to providing for highly productive land and seeks an outcome (objective) for protection of highly productive land. LF-LS-O11 is an appropriate provision to provide for that outcome.
143. I support an amendment to LF-LS-O11A:

LF-LS-O11A Highly productive land

The availability and productive capacity of highly productive land for land based primary production is protected now and for future generations.

Productive capacity

144. The Second Supplementary s42A Report also considers the term 'productive capacity' and refers to a submission by HortNZ that seeks to recognise the natural and physical factors that contribute to the productive capacity of the land.⁴⁶
145. The NPSHPL includes a definition of productive capacity:

⁴⁵ Above n2, submission number 00236.005.

⁴⁶ Above n2, submission number 00236.004.

In relation of land, means the ability of the land to support land-based primary production over the long term, based on an assessment of:

- a) *Physical characteristics (such as soil type, properties and versatility); and*
- b) *Legal constraints (such as consent notices, local authority covenants and easements); and*
- c) *The size and shape of existing and proposed land parcels.*

146. The Second Supplementary s42A Report considers that the definition is consistent with criteria set out in LF-LS-P19 (1), but notes that the definition is specific to land-based primary production.⁴⁷
147. However the use of 'productive capacity' in the pORPS is not limited to highly productive land or land-based primary production. For example productive capacity is included in UFD-O4(4) and UFD-P7 (2), which are not specific to highly productive land.
148. The Second Supplementary s42A Report recommends that a definition for 'productive capacity' be included as in the NPSHPL and apply to all uses of productive capacity in the pORPS.⁴⁸
149. I do not support that recommendation because productive capacity is also relevant to primary production activities that are not 'land-based primary production'. For instance greenhouses or pig farming may fall outside that definition, yet productive capacity is still a relevant consideration to such activities.
150. If the NPSHPL definition of 'productive capacity' is to be used in the pORPS then it should only relate to land-based primary production on highly productive land.
151. I seek that the recommended amendment to include a definition of productive capacity be amended:

Productive capacity in respect of highly productive land

Has the same meaning as in clause 1.3 of the National Policy Statement for Highly Productive Land (as set out in the box below).

⁴⁷ Above n27, at [50].

⁴⁸ Above n27, at [53].

LF-LS-P19

152. The s42A Report made recommendations for changes to LF-LS-P19 Highly productive land, but these recommendations have been amended in the Second Supplementary s42A Report, which addresses the three clauses separately.
153. LF-LS-P19 (1) as notified set out the criteria for identifying highly productive land, including that LUC is not the only way to classify highly productive land.
154. Under the notified pORPS district councils could apply the criteria in LF-LS-P19 (1) a-c) to an assessment of land to determine whether it is highly productive and apply policies UFD- P4, UFD-P7 or UFD-P8 accordingly.
155. However, as set out above, the ability to determine land other than LUC 1, 2 or 3 as highly productive is now constrained by the NPSHPL definition of highly productive land and can only be included once the mapping has been included in a regional policy statement.
156. The Second Supplementary Report s42A notes that changes were recommended in the s42A Report to acknowledge that LUC is only one way to classify highly productive land:⁴⁹
- I consider that this flexibility would enable the identification of land that is not classified as 'traditionally' productive (such as land suited to growing stone fruit).*
157. The Second Supplementary Report s42A compares LF-LS-P19 (1) criteria with 3.4 of the NPSHPL and considers that the NPSHPL criteria are consistent with changes sought by submitters to use both LUC and other factors.⁵⁰
158. The Second Supplementary Report s42A then states that it is desirable to follow the directions in the NPSHPL and that submissions provide scope to do so.⁵¹
159. Amendments are recommended to LF-LS-P19 (1) for criteria for identifying highly productive land, based on the NPSHPL.
160. The recommend Clause (e) (iii) provides for the identification of land as highly productive that isn't LUC 1, 2 or 3 but has

⁴⁹ Above n27, at [58].

⁵⁰ Above n27, at [63].

⁵¹ Above n27, at [65].

potential to be highly productive based on soil type, the physical characteristics of the land and soil and the climate.

161. However as identified above, this will only be applied once the mapping is undertaken.
162. As set out above, an approach relying entirely on the NPSHPL definition removes the ability to identify land other than LUC 1, 2 or 3 as highly productive land until mapping has occurred. This is contrary to the intent of the s42A Report quoted above.
163. While I support the intent of including criteria from the NPSHPL I seek that provision is retained, as per the notified pORPS, to provide for land other than LUC 1, 2, or 3 to be identified as highly productive land until such time as the mapping has been undertaken.
164. While this may be more stringent than the NPSHPL there is nothing in the NPSHPL that limits such an approach and was part of a notified planning instrument prior to the gazetting of the NPSHPL.
165. In the interim I seek that the following clause is retained in LF-LS-P19 as clause (4) which is referenced in the amendments sought to the definition of highly productive land:
- 4) *Until such time as mapping of highly productive land has been undertaken and included in the regional policy statement, assess land other than LUC 1, 2 or 3 using the following criteria:*
- a) *the capability and versatility of the land to support land-based production primary production*
- b) *the suitability of the climate for land-based primary production particularly crop production, and*
- c) *the size and cohesiveness of the area of land for use for land based primary production.*
166. I seek that new method LF-LS-P19 M11A be amended to provide for application of this policy until such time as mapping has been undertaken.
- Until such time as mapping has been undertaken and included in the regional policy statement district councils may assess land using LF-LS-P19 4) to determine value as highly productive land.*
167. LF-LS-P19 (2) provides for prioritising the use of highly productive land. The s42A Report recommended that reference be made to EIT-INF-P12 and EIT-INF-P16, responding to a submission by Transpower.

168. In the Second Supplementary s42A Report the recommendation is amended to delete reference to EIT-INF-P12 and EIT-INF-P16 as the NPSHPL 3.9 establishes the framework for use of highly productive land, including for 'specified infrastructure'. As such, the inclusion of specific references in LF-LS-P19 (2) is not necessary as the NPSHPL already addresses that issue.
169. I support the recommendation to remove references to EIT-INF-P12 and EIT-INF-P16 in LF-LS-P19 (2).
170. LF-LS-P19 (3) as notified seeks to:
- Maintain the availability and productive capacity of highly productive land by:*
- 3) *managing urban development in rural areas, including rural lifestyle and rural residential areas, in accordance with UFD-P4, UFD-P7 and UFD-P8.*
171. The s42A Report recommends that LF-LS-P19 (3) be applied more generally and that the reference to *rural lifestyle and rural residential areas* be deleted as they are referenced in the UFD policies.⁵²
172. The Second Supplementary s42A Report considers that this amendment is consistent with the NPSHPL because Policies 5 and 6 of the NPSHPL are reflected in the UFD provisions for Urban expansion (UFD-P4), Rural areas (UFD-P7) and Rural Lifestyle (UFD-P8). No additional amendments are recommended.
173. I do not support that recommendation.
174. As recommended in the s42A Report the policy states:
- Managing urban development in rural areas in accordance with UFD-P4, UFD-P7 and UFD-P8.*
175. The policies that are referred to in LF-LS-P19 (3) do not just relate to urban development but include 'rural areas' and 'rural lifestyle' which are not 'urban development' as they occur in rural areas, as defined in the pORPS.
176. In my opinion, the policy should apply to 'development in rural areas' – not just 'urban development'. Such an approach would be consistent with the NPSHPL as it seeks to avoid

⁵²

Above n28, at [1507] – [1529].

development of highly productive land as rural lifestyle, urban rezoning or subdivision, except in specific situations.

177. In addition, Policy LF-LS-P19 (3) has a directive to 'manage' development. The NPSHPL provides for a stronger policy direction such as 'avoid' (Policies 5, 6 and 7).
178. Silver Fern Farms made a submission on LF-LS-P19 3) that seeks the clause be amended to 'restricting' urban development in rural areas.⁵³
179. The s42A Report recommends that the submission be rejected, but this has not been re-evaluated in light of the NPSHPL which introduces policies of 'avoid'.
180. Also relevant are the directions in UFD-O4, UFD-P4, UFD-P7 and UFD-P8 which are to 'avoid' or 'prioritise' highly productive land, so a direction in LF-LS-P19 (3) of 'restricting' is consistent with this approach.
181. In my opinion, the Silver Fern Farms submission provides scope for LF-LS-P19 (3) to be amended more in line with the NPSHPL by using the direction of 'restricting'.
182. I support an amendment to LF-LS-P19 (3) as follows:

Restricting development in rural areas in accordance with UFD-P4, UFD-P7 and UFD-P8.

New Method LF-LS-M11A

183. The Second Supplementary s42A Report recommends that a new method be included as LF-LS-M11A Identification of highly productive land.
184. The recommended method sets out how identification of highly productive land will occur, given the direction in the NPSHPL.
185. I support the inclusion of an additional method for identification of highly productive land.
186. It is noted in the recommended provision LF-LS-M11A (1) that there is to be collaboration with territorial authorities and in consultation with tangata whenua, as required by the NPSHPL.

⁵³ Above n2, submission number 00221.009.

187. However the process to include maps in the Regional Policy Statement is a Schedule 1 process under the RMA (NPSHPL 3.5 1)) so participation is not limited to the specified parties.
188. For completeness it would assist that it is clear that consultation with stakeholders and other parties will also occur as part of the mapping process.
189. The NPSHPL also provides for sequenced identification. This approach would enable identification to be undertaken in areas of greatest pressure at an earlier stage. A reference to sequencing would provide for such an approach.
190. I seek an amendment to the Recommended LF-LS-M11A Identification of highly productive land:
- (1) In collaboration with territorial authorities and in consultation with tangata whenua, Otago Regional Council must identify highly productive land in Otago in accordance with LF-LS-P19(1), and*
 - (2) Otago Regional Council must, using a process in Schedule 1 of the RMA which includes consultation with stakeholders and other parties, include maps of the highly productive land identified in accordance with (1) in the Regional Policy Statement by 17 October 2025, or earlier if sequenced identification is undertaken.*
 - (3) Until such time as mapping has been undertaken and included in the regional policy statement district councils may assess land using LF-LS-P19 4) to determine value as highly productive land.*

Method LF-LS-M12

191. Method LF-LS-M12 directs district councils to amend district plans no later than 31 December 2026.
192. The s42A Report recommends that a new clause (4) be added to the method for highly productive land:⁵⁴
- Maintain the availability and productive capacity of highly productive land in accordance with LF-LS-P19.*

193. The Second Supplementary s42A Report recommends that the method be further amended:⁵⁵

Maintain the availability and productive capacity of highly productive land identified and mapped under LF-LS-M11A in accordance with LF-LS-P19.

194. HortNZ made a submission on LF-LS-M12 that sought:

Include identified highly productive land in district plans and avoid urban or rural residential development on such land.

195. The s42A Report did not accept this wording. However given the stronger policy direction in the NPSHPL and recommended changes to LF-LS-P19 and UFD policies it would be appropriate that the method reflected the stronger direction as sought in the submission on HortNZ.

196. Waitaki District Council sought that the words 'prioritise the use of highly productive land' be used in the method.

197. Given these submissions I consider that there is scope to strengthen the method to align more with the NPSHPL and preceding policies.

198. I also seek the deletion of reference to LF-LS-M11A due to changes sought to LF-LS-P19.

199. I support the following amendment to LF-LS-M12:

~~Prioritise~~ ~~maintain~~ the availability and productive capacity of highly productive land ~~identified and mapped under LF-LS-M11A~~ in accordance with LF-LS-P19.

UFD changes

200. The Second Supplementary s42A Report recommends that a number of changes be made to provisions in the UFD chapter to better align with LF-LS provisions particularly Policy 19.

201. These include:

- a) UFD-O4 (2) to delete reference to LF-LS-P19;
- b) UFD-P4 (6) to delete reference to LF-LS-P19;
- c) UFD-P7 (3) to delete reference to LF-LS-P19; and
- d) UFD-P8 (4) to delete reference to LF-LS-P19.

⁵⁵

Above n27, at [84].

202. The intent of these deletions is that reference to the policy suggests that HPL only applies to land identified in the regional policy statement.
203. I consider that the addition of LF-LS-P19 (4) that I seek means that reference to the policy can apply, because there is an interim policy framework until such time as mapping of highly productive land has been undertaken.
204. Therefore in my opinion the references to LF-LS-P19 in the UFD provisions can be retained.

Additional definitions

205. The Second Supplementary s42A Report recommends that a number of additional definitions from NPSHPL are included in the pORPS. These include:
- a) Land based primary production;
 - b) Identified for future urban development; and
 - c) LUC 1, 2 or 3 land.
206. These definitions support the changes to achieve consistency with the NPSHPL so are supported.
207. I have collated the changes sought in this evidence regarding highly productive land and include in **Appendix 1**.
208. Collectively these changes provide for the NPSHPL to be given effect to within the scope of submissions on the pORPS and also provide an interim framework for assessment of land other than LUC 1, 2 or 3 as highly productive land prior to the identification and mapping process and inclusion in the regional policy statement.

ENERGY INFRASTRUCTURE AND TRANSPORT

209. HortNZ made a number of submissions and further submissions on the Energy, Infrastructure and Transport chapter, particularly regarding electricity provisions to ensure that growers activities are not adversely affected by such provisions.

210. The s42A Report by Mr Peter Stafford recommends a number of changes to the provisions.⁵⁶
211. Further changes are recommended in a Brief of Evidence by Marcus Langman, including a restructure of the chapter and moving provisions between the infrastructure and energy sections.⁵⁷
212. The key issues for HortNZ relate to:
- a) Nationally significant infrastructure and regionally significant infrastructure;
 - b) The National Grid;
 - c) Renewable electricity generation;
 - d) Electricity distribution;
 - e) NZECP34:2001 Electrical code of practices for electrical safe distances; and
 - f) Consideration of highly productive land in the policy framework for infrastructure and energy.

Overall framework for infrastructure

213. The key provisions which establish the framework for infrastructure in the pORPS are the objectives EIT-INF-O4 and EIT-INF-O5.
214. EIT-INF-O4 Provision of infrastructure provides an overarching objective for effective, efficient and resilient infrastructure in the region to enable people and communities to provide for their wellbeing and supporting sustainable economic development in the region.
215. Growers are users of infrastructure and their activities contribute to the economic development and growth in the region so this is an important objective for growers who are dependent on infrastructure for their businesses.
216. EIT-INF-O5 recognises that development of nationally and regionally significant infrastructure and land use change occur in a coordinated manner to minimise adverse effects

⁵⁶ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Chapter 11 EIT - Energy, Infrastructure and Transport, dated 4 May 2022.

⁵⁷ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Supplementary Evidence 11 EIT - Energy, Infrastructure and Transport, dated 11 October 2022.

on the environment and increase efficiency in delivery of infrastructure.

217. I support the approach in these objectives which seeks that infrastructure is integrated in the region to support economic activity and growth and peoples wellbeing.
218. Therefore the approach I seek in responding to specific submission points on infrastructure is that there is a balance to recognise the key contribution of infrastructure but also recognise the ability of others to undertake their activities for the wellbeing of society.
219. This is particularly relevant to submissions which seek to limit activities for reverse sensitivity or potential incompatibilities with infrastructure. Much lineal infrastructure is located in rural areas and passes through growers properties therefore the impacts on production can occur.

Nationally significant infrastructure and regionally significant infrastructure

220. HortNZ made a number of submissions and further submissions regarding the status of nationally significant infrastructure and regionally significant infrastructure, in particular EIT-INF-P15, which is recommended to be amended in the s42A Report.
221. Submissions were also made regarding the definitions of nationally significant infrastructure and regionally significant infrastructure.
222. There are no recommendations to amend the definition of nationally significant infrastructure and the recommended changes to regionally significant infrastructure are supported for clarity and certainty.
223. Queenstown Airport Corp made submissions on EIT-INF-P15 Protecting nationally significant infrastructure and regionally significant infrastructure seeking that the policy be strengthened in respect of reverse sensitivity and seek to replace the whole policy.
224. HortNZ made a further submission opposing the submission, particularly the inclusion of 'protect'.⁵⁸

58

Above n2, submission number 00236.79.

225. The s42A Report is recommending that EIT-INF-P15 is substantially amended so that Policy 10 and Policy 11 of the National Policy Statement for Electricity Transmission (**NPSET**) are more effectively addressed. The report considers that the NPSET considerations can apply equally to other nationally significant infrastructure and regionally significant infrastructure, not just to the National Grid.⁵⁹
226. This has the consequence that the NPSET is used as the benchmark for all nationally significant infrastructure and regionally significant infrastructure, regardless of not being part of the consideration in the development of the NPSET.
227. I consider that such an approach is an inappropriate use of the NPSET.
228. In addition, the NPSET does not provide for 'protection', rather it is that the National Grid is 'recognised and provided' for as a matter of national significance.
229. If the NPSET is to be applied then the policy should be to 'recognise and provide for' nationally significant infrastructure and regionally significant infrastructure.
230. The scope and extent of the policy and the activities to be 'avoided' will mean that there are considerable constraints on other activities without an assessment being undertaken as to the effects of such constraints.
231. The NPSET Policy 10 does not have an absolute 'avoid'. Rather it is that 'decision makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects'.
232. There is no consideration of 'to the extent reasonably possible' within the recommended wording on EIT-INF-P15.
233. The proposed wording of the policy was 'Seek to avoid the establishment of activities that may result in reverse sensitivity effects'. As such it was not an absolute 'avoid'.
234. I consider that the recommended changes to EIT-INF-P15 are inconsistent with EIT-INF-O4 and based on an inappropriate application of the NPSET.

⁵⁹

Above n56, at [614].

235. Based on the proposed EIT-INF-P15 I would support the following policy:

Recognise and provide for the efficient and effective operation of nationally significant infrastructure and regionally significant infrastructure by:

- a) Ensuring that sensitive activities that may give rise to reverse sensitivity effects are avoided to the extent reasonably possible*
- b) Ensuring that activities do not compromise the functional or operational needs of nationally significant infrastructure and regionally significant infrastructure,*

National Grid

236. EIT-INF-P16 – Providing for electricity transmission and the National Grid - is the main policy providing for the National Grid and to give effect to the NPSET.
237. HortNZ made a submission and also supported in part a submission by Transpower that sought changes to the policy.⁶⁰
238. The policy is to provide for electricity transmission and the National Grid. Electricity transmission is not defined in the pORPS but is defined in the NPSET:
- Mean parts of the national grid of transmission lines and cables (aerial, underground and undersea, including the high voltage direct current link) stations and substations and other works used to connect grid injection points and grid exist points to convey electricity throughout the North and South Islands of New Zealand.*
239. The NPSET also defines the National Grid as the assets used or owned by Transpower NZ Ltd and this definition is also included in the pORPS.
240. In my opinion, electricity transmission means the National Grid, it is confusing for the pORPS to include both terms in EIT-INF-P16. It implies that electricity transmission is something different to the National Grid.
241. The submissions sought that the terminology be clarified.
242. The s42A Report considers that the policy is specific to the electricity transmission network as defined in the NPSET but does not recommend deletion of the reference to electricity

⁶⁰

Above n2, submission number 00236.80.

transmission as it provides clarity and consistency with the NPSET.⁶¹

243. I do not agree with that assessment. In my opinion, removal of the words 'electricity transmission' will not weaken the policy or reduce clarity as it is clear from inclusion of the definition of National Grid what the policy is referring to. National Grid is the commonly used term and is well understood.
244. I note that in EIT-EN-M2 (5A) the recommended method only refers to the National Grid and deletes reference to electricity transmission and EIT-EN-M2 (5B) only refers to the National Grid.
245. I support the removal of the term 'electricity transmission' from EIT-INF-P16 and replacing all uses of the term with National Grid.
246. EIT-INF-M5 District plans includes a method for the National Grid but it is recommended to be moved to EIT-EN-M2.
247. The method requires district plans to:
- Map the National Grid and identify a buffer corridor within which sensitive activities shall generally not be allowed.*
248. This method is consistent with the NPSET Policy 11 and I support it.

Renewable electricity generation

249. EIT-EN-O2 Renewable electricity generation is an objective to provide for renewable electricity generation activities in Otago by maintaining and if practicable maximised within limits.
250. The submission of Contact Energy sought that the objective be amended to:⁶²
- The generation capacity of renewable electricity generation activities in Otago*
- 1. Is protected and maintained and, where appropriate, increased.*
251. Trustpower sought a similar change.
252. HortNZ opposed the submission because the National Policy Statement for Renewable Electricity Generation (**NPSREG**)

⁶¹ Above n56, at [628] and [635].

⁶² Above n2, submission number 00318.024.

does not seek to 'protect' renewable electricity generation activities' but rather to 'recognise and provide for' the activities. The Objective in the NPSREG is:

To recognise the national significance of renewable electricity generation activities by providing for the development, operation and upgrading of new and existing renewable electricity generation activities.

253. Policy B of the NPSREG requires decision makers to have particular regard to a number of matters including:

a) maintenance of the generation output of existing renewable electricity generation activities can require protection of the assets, operational capacity and continue availability of the renewable energy resource

254. While the policy uses the word 'protection' it should be taken in the context of the policy and not applied in a broader sense of protecting renewable electricity generation.

255. In my opinion the direction of the objective in the NPSREG should provide the framework for the pORPS objective by 'recognising and providing for' renewable electricity generation activities.

256. Contact Energy sought a similar change to include 'protect' in EIT-EN -P1 Operation and maintenance but the s42A Report does not recommend that the submission be accepted and I concur with that recommendation.⁶³

257. Similar changes were also sought to EIT-EN-P2 Recognising renewable electricity generation activities in decision making. The s42A Report is recommending changes that recognise the national significance of renewable electricity generation activities and to have particular regard to the maintenance of the current renewable electricity generation capacity.

258. I support those recommendations in the s42A Report.

259. EIT-EN-P7 provides for reverse sensitivity in relation to renewable electricity generation activities and I support the intent of the policy. The s42A Report supports the retention of the policy and that recommendation is supported.

⁶³

Above n56, at [92].

Electricity distribution

260. Electricity distribution is the lines and equipment used to convey electricity but does not include the National Grid.
261. The pORPS has a definition for distribution network that is relevant to electricity distribution.
262. A number of the electricity distribution providers made submissions seeking the addition of policies and provisions for electricity distribution infrastructure including:
- a) Electricity distribution be classed as regionally significant infrastructure
 - b) Changing references to electricity transmission network to distribution network
 - c) Including significant electricity distribution infrastructure as regionally significant infrastructure.
263. The provisions in the pORPS are confusing for electricity distribution networks with it being unclear how the activity was to be provided for. So the changes sought by the providers were seeking to address that gap.
264. HortNZ opposed submissions by the electricity distribution providers (Aurora Energy, Network Waitaki, PowerNet Ltd) on the pORPS on the basis that the issues had recently been resolved through the ORPS 2019 and were now being implemented through district plans based on those provisions.
265. The status of electricity distribution was a vexed question during the development of the ORPS 2019.
266. The matter was resolved through amendments to the policy for electricity distribution (4.4.5) and inclusion of a definition and policy for 'significant electricity distribution infrastructure' (**SEDI**) and a method for district plans (4.1.19) to identify significant electricity distribution infrastructure.
267. The evidence of Mr Langman recommends introducing a new policy - EIT-EN-P10 Providing for electricity distribution.
268. The evidence of Mr Langman recommends introducing that a suite of provisions similar to the Partially Operative ORPS be

included for electricity distribution infrastructure. These include:⁶⁴

- a) Inclusion of EIT-EN-P10 Providing for electricity distribution;
- b) Inclusion of a method in EIT-EN-M2 (5C) to map significant electricity distribution infrastructure in district plans and where necessary provide controls to ensure that the SEDI is not compromised; and
- c) Inclusion of a definition for significant electricity distribution infrastructure.

269. I support the recommended suite of provisions and consider that they address the issues identified by the electricity distribution providers of the policy gap in the pORPS and will ensure consistency with the rollout of the provisions in district plans across the region.

NZECP34:2001 Electrical code of practice for electrical safe distances

270. The evidence of Mr Langman recommends introducing a new clause in EIT-EN-M2 (5D) which references NZECP34:2001 Electrical code of practice for electrical safe distances as being the basis for any controls for buildings, structures and any other activities adjacent to electricity infrastructure.

271. This method is included in the ORPS 2019.

272. NZECP34:2001 sets out best practice for activities near electricity lines and provides an appropriate framework for managing such activities.

273. Therefore, I support the recommendation to include EIT-EN-M2 (5D) in the pORPS.

Highly productive land

274. A number of submissions sought inclusion of highly productive land in the policies relating to infrastructure when important values are listed. These include:

- a) EIT-INF-P13;
- b) EIT-INF-P16; and

⁶⁴

Above n57, at [30] – [35].

- c) EIT-EN-P4 Identifying new sites or resources.
275. Now that the NPSHPL has been gazetted it would be appropriate that highly productive land is recognised in the pORPS infrastructure provisions.
276. The NPSHPL includes specific provisions for infrastructure that should be reflected in the pORPS.
277. I seek that highly productive land be added to the following policies:
- a) EIT-INF-P13 (1);
- b) EIT-INF-P16 (5); and
- c) EIT-EN-P4.

HAZARD AND RISKS

278. HortNZ made a number of submissions relating to hazards and risks, including provisions on natural hazards and contaminated land.
279. The s42A Report on Hazards and Risks⁶⁵ is recommending a number of changes which address some of the HortNZ submission points:
- a) HAZ-NH-P2 – the recommended change at 115 clarifies the policy as sought by HortNZ;⁶⁶
- b) HAZ-NH-P9 – the reasons given at 232 are accepted as addressing the HortNZ submission;⁶⁷
- c) HAZ-NH-P11 – HortNZ sought that the policy be amended but the recommendation at 254 is to delete the whole policy;⁶⁸
- d) HAZ-NH-M3 – changes are recommended which address the HortNZ submission;⁶⁹ and
- e) HAZ-NH-M4 - changes are recommended which address the HortNZ submission.⁷⁰

⁶⁵ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Chapter 12 HAZ - Hazards and Risks, dated 27 April 2022.

⁶⁶ Above n65, at [115]. See also Above n2, submission number 00236.85.

⁶⁷ Above n65, at [232]. See also Above n2, submission number 00236.86.

⁶⁸ Above n2, submission number 00236.87. See also Above n65, at [254].

⁶⁹ Above n2, submission number 00236.89.

⁷⁰ Above n2, submission number 00236.90.

280. The outstanding submission point on natural hazards relates to HAZ-NH-M2 Local Authorities.⁷¹
281. The HortNZ submission sought that a timeframe be added to the method to ensure that the required assessment is undertaken in a timely manner.
282. The s42A Report recommends that the submission point be rejected as a timeframe is not appropriate.⁷²
283. Method HAZ-NH-M2 requires a local authority to develop a natural hazard risk table for the community. Where a natural hazard risk table has not been developed there are requirements for resource consents or plan changes to undertake such work in HAZ-NH-M3 (7) and HAZ-NH-M4 (7).
284. The recommended addition of HAZ-NH-M2 (8) and HAZ-NH-M3 (8) reinforces the situation where a natural hazard risk assessment will be required if a natural hazard risk table has not been completed as in HAZ-NH-M2 (1).
285. It is for the benefit of the community that the natural hazard risk table is developed as it would provide certainty to applicants and reduce potential costs of undertaking a specific assessment.
286. There are other methods in the pORPS that set timeframes for a work programme to be undertaken and the same principle should apply to the natural hazards risk table so there is some certainty as to when the work will be undertaken.
287. The HortNZ submission sought that the date of December 2022 be included in HAZ-NH-M2 (1) but it may be more appropriate to include a timeframe within which the work will commence, such as: *Within five years of the RPS being made operative local authorities must work collaboratively to...*
288. Such a provision does not stipulate a date but provides a reasonable timeframe for the various councils to co-ordinate and develop a work programme and budget for the work.
289. Such an approach would assist to achieve HAZ-NH-O1 which seeks to ensure that risks to people and communities from natural hazards are maintained where they are acceptable

⁷¹ Above n2, submission number 00236.88.

⁷² Above n65, at [311].

and managed to ensure they do not exceed a tolerable level and also implement HAZ-NH-P1 and HAZ-NH-P2.

290. I therefore seek an amendment to HAZ-NH-M2 by adding:

Within five years of the RPS being made operative local authorities must work collaboratively to:..

Contaminated land

291. HortNZ made a number of submissions as they relate to contaminated land to ensure that the provisions are clear and that land is not unintentionally included as contaminated land.

292. HAZ-CL-O3 is the objective for contaminated land and HortNZ sought that it be re-worded as in the partially operative ORPS 2019:

Contaminated land and waste material do not harm human health, mana whenua values and the environment in Otago.

293. The s42A Report recommends that the submission be rejected as the use of the word 'protect' is consistent with the NES for Assessing and Managing Contaminants to Soil to Protect Human Health (**NESCS**).⁷³

294. I agree that the NESCS uses the word 'protect' in relation to human health but the objective relates to more than human health.

295. HAZ-CL-P14 (2) seeks to 'protect' human health, which is appropriate given that the clause specifically pertains to human health.

296. However where the objective is for a range of values then the direction should be appropriate for all such values.

297. HAZ-CL-P14 does not seek 'protection' of other values – rather that activities are 'managed so they do not pose an unacceptable risk to people and the environment'.

298. In my opinion, HAZ-CL-O3 should reflect that there are a number of ways to provide for managing contaminated land.

299. The appeals on the ORPS 2019 addressed this issue and resolved it by the wording sought in the HortNZ submission.

⁷³

Above n65, at [495].

300. I consider that the wording is appropriate and that the policies provide more specific actions to ensure that harm is not caused, including by protecting human health, which is an 'active outcome directing management' as sought by the s42A Report.
301. Therefore I support amending HAZ-CL-O3 to:
- Contaminated land and waste material do not harm human health, mana whenua values and the environment in Otago.*
302. HAZ-CL-P14 is the policy for Managing Contaminated Land. The policy is linked to HAZ-CL-P13 in that contaminated land is to be identified where it has significant adverse effects on the environment or reasonably likely to have significant adverse effects on the environment.
303. HortNZ sought that there is a clear link to the land that is contaminated and not just land that has a hazardous substance in or on it and that the threshold of 'significant adverse effects' from the definition of contaminated land is used in the policy.⁷⁴
304. The s42A Report refers to the submission point but the analysis does not specifically address the point.⁷⁵
305. Other submissions sought that clause 3 be deleted or amended but no changes are recommended.
306. The policy is meant to implement the objective, which is dependent on the definition of contaminated land.
307. In my opinion the threshold for HAZ-CL-P14 should be that 'significant adverse effects are managed', whereas the policy seeks to avoid 'adverse effects'.
308. The submission point of HortNZ addresses this matter as it seeks to determine if significant adverse effects will result from the activity, which is an important part of determining appropriate management.
309. Therefore I seek that HAZ-CL-P14 (3) be amended to include:
- Determine whether significant adverse effects on the environment will result from the hazardous substance in or on the land.*

⁷⁴ Above n2, submission number 00239.92.

⁷⁵ Above n65, at [507] and [513].

310. HAZ-CL-M6 is the method for Regional Plans.
311. The s42A Report recommends that the submission of HortNZ⁷⁶ to amend the method be accepted and I concur with that recommendation.
312. HAZ-CL-M7 is the method for District Plans.
313. HortNZ sought that there be specific reference to the NESCS in the method as the district councils have the jurisdiction to implement the NESCS.
314. The s42A Report rejects the submission as the responsibility for implementation of the NESCS is set out in the NES itself so an additional method is not required in the pORPS.⁷⁷
315. HAZ-CL-PR2 Principal Reasons explains the role of the NESCS but there is no statement that it is the district councils which implement the NESCS, or any mention of the NESCS in the preceding provisions.
316. For clarity for plan users it should be clear that one of the main mechanisms to achieve the objective in the plan and HAZ-CL-P14 (2) is through the NESCS administered by district councils.
317. I consider that this is a gap in the policy framework for contaminated land and should be addressed by reference to the NESCS as a means to achieve the objectives and policies in the pORPS by district councils implementing the NESCS.

URBAN FORM AND DEVELOPMENT

318. The Urban Form and Development chapter (**UFD chapter**) includes provisions for the rural area.
319. HortNZ made a number of submissions and further submissions on the UFD chapter, particularly as it pertains to the rural area.
320. Some of the matters in the HortNZ submission relate to highly productive land and are addressed in the evidence above on Land and Soils, however there are other submission points regarding highly productive land that are included in the UFD chapter.
321. Submissions on UFD provisions are addressed in a number of s42A Reports:

⁷⁶ Above n2, submission number 00236.93.

⁷⁷ Above n65, at [547].

- a) S42A Report dated 27 April 2022 by Mr Balderston (**s42A Report**);⁷⁸
 - b) Supplementary s42A Report dated 11 October 2022 by Ms White (**Supplementary s42A Report**);⁷⁹
 - c) Second Supplementary s42A Report (HPL) by Ms White dated 21 October 2022;⁸⁰ and
 - d) Second Supplementary s42A Report (HPL) by Ms Boyd dated 21 October 2022.⁸¹
322. The focus in this evidence on the UFD chapter is on matters that affect primary production, including reverse sensitivity, the rural urban interface and enabling primary production activities to occur.

Rural area in urban chapter

323. A number of submitters, including HortNZ⁸² have identified concerns about having rural matters addressed in the Urban form and development chapter.
324. The issue has arisen largely because of the plan structure in the National Planning Standards.
325. The s42A Report addresses this issue at 15.8.3 and recommends that the submissions for a separate chapter for rural area be rejected.⁸³
326. The reasons for this recommendation are:
- a) The submissions are based on a narrow reading of the chapter's title;
 - b) The National Planning Standards are relatively non-definitive about the content of particular chapters;

⁷⁸ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Chapter 15 UFD - Urban Form and Development, dated 27 April 2022.

⁷⁹ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Supplementary Evidence 15 UFD – Urban form and development, dated 11 October 2022.

⁸⁰ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Second Supplementary Evidence (HPL) 15 UFD - Urban form and development (Highly Productive Land), dated 21 October 2022.

⁸¹ Otago Regional Council (2021) Section 42A Report, Proposed Otago Regional Policy Statement, Second Supplementary Evidence (HPL) 09 LF – Land and Freshwater (Highly Productive Land), dated 21 October 2022.

⁸² Above n2, submission number 00236.96.

⁸³ Above n78, at [210] – [220].

- c) The urban form and development topic provides an overarching guide for more specific considerations of zoning and land use at the district level;
 - d) The National Planning Standards do not include a rural - specific chapter but note that a rural chapter could be added if required;
 - e) An integrated management approach is taken across the RPS;
 - f) Urban form and development has been taken to include anything relating to urban form and issues of development generally, including in rural areas, that do not sit comfortably in other domain or topic chapters;
 - g) Urban areas are not islands but are interconnected with surrounding rural areas;
 - h) The NPSFM is also relevant to co-ordinate and sequence regional and urban growth;
 - i) Rural residential and lifestyle development is a specific form of development that has been identified in the SRMR chapter as requiring particular management;
 - j) Rural lifestyle and rural residential development are primarily a residential activity largely driven by amenity; and
 - k) The UFD chapter provides a desired outcome for urban and rural form, function and development.
327. I do not support the conclusion reached in the s42A Report for a number of reasons.
328. The National Planning Standards Regional Policy Statement Structure Standard includes Directions 9 and 10:
- 9. *Provisions (excluding provisions in Part 2) that:*
 - a) *Apply predominantly to only one topic must be located in the relevant chapter under the Topics heading*
 - b) *Apply to more than one topic must be located in the relevant chapters under the Domains heading.*
 - 10. *Any other matter addressed by the regional policy statement not covered by the structure in Table 2 must be included as a new chapter, inserted alphabetically under the Topics heading in Part 3. Additional chapters must not be synonyms or subsets of chapters in table 2.*

329. The rural matter is not addressed in the structure in Table 2 so if the RPS is to address this matter the NPS directs that it must be included as a new chapter.
330. I consider that this is a clear direction as to how 'other matters' are to be addressed.
331. While it is recognised that 'many issues around urban growth play against a rural environment' it is considered that the rural area is distinct from urban form and development because:
- a) There is no NPS to guide the provisions for the rural area;
 - b) The urban form and development chapter is where regional councils will usually give effect to the NPSUD – which is a specifically urban issue and focuses on the built environment;
 - c) The issues facing rural areas are distinctly different to urban areas;
 - d) The range of activities undertaken in rural areas are predominantly non-urban in nature;
 - e) The rural provisions are given effect to in entirely different sections of a district plan to the urban provisions;
 - f) The rural area makes up 99% of the land area in the region and 5% of the population while the urban area is 1% of the land area and 95% of the population so the drivers and issues in each of the areas are quite different;
 - g) The descriptor for rural lifestyle in the National Planning Standards provides for primary production activities to be undertaken in the Rural Lifestyle zones – it is not just residential or amenity focussed and so Rural Lifestyle is clearly part of the rural area;
 - h) SRMR14 addresses poorly managed urban and residential growth which affects productive land, treasured natural assets, infrastructure and community wellbeing. There is no specific SRMR for rural lifestyle or rural areas;
 - i) Interface issues can be managed through appropriate policies in either urban or rural chapters; and
 - j) The title of the chapter 'Urban form and development' has no recognition of the rural area.
332. Therefore, in my opinion, the issues relating to the rural area are distinctly different to the urban area and the National

Planning Standards provide the scope for the rural matter to be a specific chapter and topic in Part 3. Such a chapter would focus on the key issues for the rural area rather than being buried in a chapter on urban form and development which is designed to meet the requirements on the NPS-UD.

333. Therefore I support the HortNZ submission that the rural matters in the UFD chapter are separated into a specific chapter for the rural area.

SRMR-14

334. The Significant resource management issue of the region SRMR 14 is:

Poorly managed urban and residential growth affects productive land, treasured natural assets, infrastructure and community wellbeing.

335. HortNZ sought a number of changes to the issue to better describe the context for productive land and rural areas.⁸⁴

336. The s42A Report agrees with parts of the HortNZ submission and includes additions to the issue.

337. Many of the changes are acceptable and better describe the issue in relation to rural areas and primary production.

338. However there is no reference in the recommended changes to highly productive land.

339. Given that the NPSHPL has now been gazetted it would be appropriate that reference to highly productive land is included in the description of the issue for rural areas.

340. HortNZ sought the addition of highly productive land in the Context and Environmental sections:

Otago has areas of highly productive land which are particularly valuable for food production.

Urban or rural lifestyle expansion onto highly productive land removes the land resource from production, including production of food.

341. In my opinion it would be appropriate that highly productive land is included in the issue.

⁸⁴

Above n2, submission number 00236.25.

342. I seek that the above references to highly productive land be included in SRMR 14 Context and Environmental sections.

UFD-O2 Development of urban areas

343. UFD-O2 sets out the framework for development of urban areas.

344. HortNZ made a submission seeking that UFD-O2 (6) be amended to specifically identify the rural -urban interface:⁸⁵

Minimises conflict between incompatible activities within the urban area and at the rural -urban interface.

345. The s42A Report (150) considers that:

The existing wording is considered to capture reverse sensitivity as well as other potential impacts between all activities, in all places and times in the region.

346. I disagree with this statement. The objective is focused on the development and change of Otago's urban areas (as defined in the pORPS). As such it would not be reasonably anticipated that the incompatible activities also include cross boundary incompatibilities.

347. The issue of the rural-urban boundary interface is a matter that needs to be considered in planning frameworks and identification in the objective will ensure that it is taken into account.

348. The HortNZ submission point seeks to clarify that the potential for conflict can be within the urban areas and cross-boundary and provides a level of clarity to the objective.

349. Therefore I support the addition to UFD-O2 (6) to clarify where the potential conflicts may arise:

Minimises conflict between incompatible activities within the urban area and at the rural -urban interface.

UFD-O3 Strategic planning

350. UFD-O3 sets out the approach to strategic planning for development of urban areas.

351. UFD-O3 (2) indicates areas where development may occur.

⁸⁵

Above n2, submission number 00236.97.

352. HortNZ sought that highly productive land be included in UFD-O3 (2) as being relevant to the strategic planning of significant development, expansion or redevelopment of urban areas.⁸⁶
353. The s42A Report rejects the submission as unnecessary.⁸⁷
354. In addition, the Supplementary s42A Report by Ms White recommends that the clause is deleted in its entirety.⁸⁸
355. I support the recommendation to delete the clause but note that the matter of highly productive land has not been specifically considered.
356. Since the s42A Report was prepared the NPSHPL has been gazetted.
357. Council has prepared Supplementary s42A Reports to address issues regarding highly productive land, however the submission point on UFD-O3 is not considered in those reports.
358. The NPSHPL is directive in terms of identification and management of highly productive land, that it is undertaken in an integrated manner, and that urban rezoning avoid such land, unless specifically provided for in the NPS.
359. Location of highly productive land is a matter that will need to be addressed when considering urban development.
360. Therefore I consider that it would be appropriate to specifically include direction in UFD-O3 so that strategic planning is cognisant of, and takes into account, highly productive land.
361. I seek that an additional clause is added to UFD-O3 Strategic planning:
- Avoids to the extent possible urban rezoning of highly productive land.*

UFD-O4 Development in rural areas

362. UFD-O4 is the objective specific to development in rural areas and sets out a number of priorities.
363. HortNZ made a number of submissions (236.99) on UFD-O4.⁸⁹

⁸⁶ Above n2, submission number 00236.98.

⁸⁷ Above n78, at [175].

⁸⁸ Above n79, at [10].

⁸⁹ Above n2, submission number 00236.99.

364. UFD-O4 is recommended to be amended in a number of s42A Reports.
365. My understanding is that UFD-O4 is now recommended to be as follows:
- Development in Otago's rural areas occurs in a way that:*
1. *Avoids as the first priority highly productive land⁹⁰*
 2. *Only provides for urban expansion and rural lifestyle development and the establishment of activities that are sensitive to primary production and rural industry in locations identified through strategic planning or zoned within district plans as suitable for such development.⁹¹*
 3. *Outside of areas identified in (2) provides for the ongoing use of rural areas for primary production, supported by rural industry in appropriate locations and ensures that other activities do not compromise the natural and physical resources that support the productive capacity, rural character and long term viability of the rural sector and rural communities; and⁹²*
 4. *Provides for the use and development of land in rural areas by Kai Tahu for papakaika, kaika, nohoaka, marae, and marae related activities.⁹³*
366. Many of the HortNZ submission points on UFD-O4 are addressed through the recommended changes as set out above.
367. HortNZ sought that reverse sensitivity be specifically referred to in clause 3 – now clause 2. This does not appear to have been addressed in the s42A Report.⁹⁴
368. In addition, the change which deletes reference to the defined term 'sensitive activities' as recommended by Ms White means that specific linkages to reverse sensitivity are reduced, as it is not clear how *activities that are sensitive to primary production* would be assessed.⁹⁵

⁹⁰ Above n81, at [95].

⁹¹ Above n79, at [29].

⁹² Above n79, at [19].

⁹³ Above n81, at [95].

⁹⁴ Above n78, at [225].

⁹⁵ Above n79, at [29].

369. I consider that addition of reverse sensitivity effects would guide the strategic planning and zoning in district plans and so seek an addition to clause 2:

Only provides for urban expansion and rural lifestyle development and the establishment of activities that are sensitive to primary production and rural industry in locations identified through strategic planning or zoned within district plans as suitable for such development where the potential for reverse sensitivity effects will not compromise primary production.

370. Ms White is recommending that Clause 4 (now clause 3) be amended to refer more generically to rural areas and how non-rural activities in rural areas are to be managed at the RPS level.
371. This issue identifies a tension that exists in the format of the pORPS which includes all land that is outside of an urban area as rural, even though the activities vary from rural production through to open space and recreation.
372. I am also cognisant of the National Planning Standards Zone Framework Standard which provide clear guidance as to what is anticipated in 'rural zones', with a focus on primary production activities, or other activities that require a rural location.
373. 'Requiring a rural location' would mean that there is a functional or operational need to locate in an area. However reference to functional or operational need is recommended to be deleted from the objective.
374. Replacing 'functional or operational need' with 'ensuring that activities do not compromise' does not implement the National Planning Standards direction for the rural zones.
375. Ensuring that activities do not compromise rural activities could lead to an outcome that inappropriate activities are located in rural areas, as long as they don't compromise the natural and physical resources that support the productive capacity, rural character and long term viability of the rural sector and rural communities.
376. In my opinion the objective should provide guidance as to what are appropriate activities in the rural area. The recommendation in the s42A Report recognised that

including a limitation of functional or operational need provided such guidance.⁹⁶

377. Therefore I do not support the recommended change to UFD-O4 3) as set out above and seek that it be amended as follows:

Outside of areas identified in (2) provides for the ongoing use of rural areas for primary production, supported by rural industry in appropriate locations and ensure that other activities that have an operational or functional need to locate in a rural area do not compromise the natural and physical resources that support the productive capacity, rural character and long term viability of the rural sector and rural communities;

UFD-P1 Strategic planning

378. UFD-P1 Strategic planning sets out the process for strategic planning to precede urban growth and development.
379. HortNZ sought that highly productive land be included as part of the considerations of such planning.⁹⁷
380. The s42A Report recommends the addition of a new clause to address concerns regarding incompatible activities but does not specifically include reference to highly productive land.
381. Since the s42A Report was prepared the NPSHPL has been gazetted.
382. Council has prepared Supplementary s42A Reports to address issues regarding highly productive land, however the submission point on UFD-P1 is not considered in those reports.
383. The NPSHPL is directive in terms of identification and management of highly productive land, that it is undertaken in an integrated manner, and that urban rezoning avoid such land, unless specifically provided for in the NPS.
384. Location of highly productive land will be a matter that will need to be considered when considering urban development.
385. Therefore I consider that it would be appropriate to specifically include direction in UFD-P1 so that strategic

⁹⁶ Above n78, at [226].

⁹⁷ Above n2, submission number 00236.100.

planning is cognisant of, and takes into account, highly productive land.

386. I seek that an additional clause is added to UFD-P1 Strategic planning:

Avoids to the extent possible urban rezoning of highly productive land

UFD-P4 Urban expansion

387. UFD-P4 sets out the framework for considering urban expansion, including into rural areas.
388. HortNZ sought that UFD P4 be retained as notified as the policy provides for well-functioning urban environments that avoids highly productive land and are appropriately designed and managed with rural urban interface and defensible boundaries such as a road or feature.⁹⁸
389. The various s42A Reports are recommending amendments which do not significantly change the intent of the Policy.
390. The inclusion of new Clause 1A regarding strategic planning is supported and reinforces the need to include highly productive land within the strategic planning framework.
391. A recommendation to amend clause 7 by Ms White in the Supplementary s42A Report to refer to 'existing activities' provides clarity in respect of the new urban.⁹⁹ The rural zone boundary interface, so is supported.
392. The Second Supplementary s42A Report by Ms White on highly productive land accepts a recommendation by Ms Boyd to delete the reference to LF-LS-P19 in UFD-P4 (6).¹⁰⁰
393. However, as set out in respect of provisions for highly productive land I consider that the reference can be retained if the recommended changes I am seeking for highly productive land are adopted.

⁹⁸ Above n2, submission number 00236.101.

⁹⁹ Above n79, at [19].

¹⁰⁰ Above n80, at [8].

UFD-P7 Rural areas

394. UFD-P7 provides the main policy for management of rural areas and provides important directions for the future of the areas.
395. HortNZ made a submission supporting UFD-P7 as it provides for the management of rural areas, with a priority on primary production and related services.¹⁰¹
396. A change was sought to clause 4 to change 'facilitates' to 'provides for' rural industry and activities which support rural production.
397. Other submitters also sought that 'facilitates' be replaced but the s42A Report does not specifically address these submission points.¹⁰²
398. The discussion refers to 'providing for primary production' in clause 4 but does not recommend the use of the word 'provide' as the direction in the policy.
399. Given the direction in the National Planning Standards regarding the predominance for primary production activities in rural zones I consider the word 'provide' gives clearer direction than 'facilitates', which is more a direction of 'assisting'.
400. I consider that UFD-P7 (4) should be reworded as:
Provides for primary production, rural industry and supporting activities.
401. The Supplementary s42A Report of Ms White recommends that UFD-P7 (7) be deleted as the specified activities should not require an operational or functional need and other matters are already sufficiently covered in UFD-P7 (6).¹⁰³
402. Given the recommended changes to UFD-P7 (6) I concur that clause (7) is not required and can be deleted.

UFD-P8 Rural lifestyle and rural residential areas

403. UFD-P8 provides the framework for the development or expansion of rural lifestyle zones.

¹⁰¹ Above n2, submission number 00236.102.

¹⁰² Above n78, at [316].

¹⁰³ Above n79, at [17].

404. As notified the policy also included 'rural residential' zones. HortNZ sought the deletion of references to rural residential areas as there is no provision for rural residential in the National Planning Standards Zone framework Standard.
405. Ms White in the Supplementary s42A Report recommends that all references to 'rural residential' are removed and I concur with that recommendation.¹⁰⁴
406. HortNZ made a submission seeking changes to clause (3) regarding impacts on rural production from 'minimise' to 'avoids, and where avoidance is not possible, mitigate to the least possible extent' and include reference to primary production activities in adjoining rural zones.¹⁰⁵
407. The s42A Report does not address the submission points that seek that the direction in UFD-P8 (3) be changed, but does recommend some changes to clarify the link with rural production zones.¹⁰⁶
408. Reverse sensitivity from rural lifestyle areas is a key concern for growers as there can be different expectations of amenity in rural areas. Therefore clearer direction that potential impacts will be considered and measures adopted to avoid reverse sensitivity with the establishment or development of rural lifestyle areas are sought to ensure that primary production activities can continue without reverse sensitivity effects.
409. The submission of Fulton Hogan seeks that the clause is split and 'minimise' apply to activities, but avoid is applied to reverse sensitivity.
410. I consider that such an approach would clearly focus on the need to avoid reverse sensitivity effects.
411. The clause would be:
- Minimises impacts on existing primary production, rural industry and other rural activities and avoids the potential for reverse sensitivity effects to arise in adjoining rural production zones.*
412. This change would assist in achieving UFD-O4 to ensure that other activities do not compromise productive capacity and the long term viability of the rural sector.

¹⁰⁴ Above n79, at [27].

¹⁰⁵ Above n2, submission number 00236.103.

¹⁰⁶ Above n78, at [383].

UFD-M2 District plans

413. UFD-M1 is the method for district council to implement through district plans.
414. HortNZ sought that clause (3)(e) be amended to include recognition of both the boundary of urban areas and the rural urban interface.¹⁰⁷
415. The s42A Report recommends that this submission be accepted and amends the clause accordingly.¹⁰⁸
416. This is supported.

UFD-PR1 Principal reasons

417. HortNZ sought that the wording of the principal reasons describing the rural areas be amended to better reflect the nature of rural areas.¹⁰⁹
418. The s42A Report states that the amendments sought highlight the importance of rural areas for rural activities but no amendments are recommended as it is considered that the principal reasons already capture this.¹¹⁰
419. I disagree.
420. The section on rural areas starts with:
- Rural areas are attractive as residential living areas and for other non – rural activities.*
421. This immediately places the focus on these activities rather than the activities that are predominant in the rural areas, which is the focus of the policy framework.
422. The reason why provisions have been included for rural areas is to ensure that rural activities are adequately provided for and not adversely affected by non-rural activities.
423. Therefore I support the wording sought by HortNZ to replace the first sentence:

The rural areas are important to Otago for the primary production activities that are undertaken within those areas. There is pressure from non – rural activities, such as residential living and lifestyle to

¹⁰⁷ Above n2, submission number 00236.104.

¹⁰⁸ Above n78, at [458].

¹⁰⁹ Above n2, submission number 00236.106.

¹¹⁰ Above n78, at [488].

locate within the rural area. However, such activities can adversely affect rural production and are incompatible with primary production activities.

UFD-AER11

424. HortNZ sought changes to AER11 regarding the rural area.¹¹¹
425. While it is recommended that AER11 is retained additional AER are recommended to be included which establish outcomes sought for the rural areas.
426. I support the proposed additions to the AER.

CONCLUSIONS AND RECOMENDATIONS

427. This evidence sets out my planning assessment of provisions in the pORPS in respect of:
- a) Air;
 - b) Land and Soils, particularly highly productive land;
 - c) Energy, Infrastructure and Transport;
 - d) Hazards and risks; and
 - e) Urban Form and Development, including rural areas.
428. I have included in each section changes that I seek as being appropriate to ensure that the pORPS addresses key issues for the region, in particular for the rural area and rural production so that primary production activities will enable the economic social and cultural wellbeing of the community
429. I consider that such changes are appropriate and will implement section 5 of the RMA to achieve sustainable management of natural and physical resources.

Lynette Wharfe

23 November 2022

¹¹¹ Above n2, submission number 00236.107.

APPENDIX 1 CHANGES SOUGHT IN THIS EVIDENCE

1. Air

- a) Definition of ambient air:

Ambient air is air outside buildings and structures. It does not include indoor air, air in a workplace or contaminated air discharged from a source.

- b) Amend AIR-O2:

Provide for the discharges of contaminants into air where there are no significant localised adverse effects on human health, amenity and mana whenua values and the life supporting capacity of ecosystems.

- c) Retain AIR-P3;

- d) Delete AIR-P4;

- e) Accept s42A Report recommendations to amend AIR-P5;

- f) Delete AIR-P6;

- g) Include a new policy relating to location and separation from discharges to air:

Avoid locating new sensitive activities near existing activities which are permitted or consented to discharge to air.

- h) Amend AIR-M2 as follows:

Delete AIR-M2 (1)

Amend AIRM2 (5) as follows: Have regard to the Air Quality Strategy for Otago and insert a date for the document on the website

- i) Include a new method in AIR-M3:

Ensure that there is spatial separation between location of new sensitive activities and existing activities that are consented or permitted to discharge contaminants to air.

- j) Include New Zealand Standards and codes of practice in AIR-M5;

- k) Include in AIR-E1 explanation to support new policy for sensitive activities:

Territorial authorities will include provisions in district plans for spatial distribution and separation from activities that discharge to air.

- l) Include a new AIR-AER linked to the new policy for sensitive activities:

Spatial separation and location of activities will assist in reducing potential adverse effects arising from discharges to air.

2. **Highly productive land**

Definition highly productive land

EITHER

Retain the definition of highly productive land recommended in the s42A Report until the mapping and identification according to the NPSHPL has occurred.

Highly productive land means

- a. *land that has been identified in accordance with LF-LS-P19; or*
- b. *Where the identification in a) has not occurred, land in the rural area that is classified as LUC 1, 2 or 3 as mapped by the NZ Land Resource Inventory or by more detailed site specific research.*

OR

Include the definition of highly productive land from the NPSHPL with an additional interim provision included with reference to LF-LS-P19 (4) as sought elsewhere in this evidence.

Highly productive land has the same meaning as in clause 1.3 of the National Policy Statement for Highly productive Plan (as set out in the box below)

Means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land.

AND

Prior to identification and mapping of highly productive land as required by the NPSHPL has been undertaken and included in the regional policy statement highly productive land includes land that has been identified in accordance with LF-LS-P19 (4).

Definition productive capacity

Productive capacity in respect of highly productive land

Has the same meaning as in clause 1.3 of the National Policy Statement for Highly Productive Land (as set out in the box below).

In relation to land, means the ability of the land to support land-based primary production over the long term, based on an assessment of:

- (a) physical characteristics (such as soil type, properties, and versatility); and*
- (b) legal constraints (such as consent notices, local authority covenants, and easements); and*
- (c) the size and shape of existing and proposed land parcels*

LF-LS-O11A Highly productive land

The availability and productive capacity of highly productive land for land based primary production is protected ~~maintained~~ now and for future generations.

LF-LS-P19

Maintain the availability and productive capacity of highly productive land by:

- 1. identifying highly productive land based on the following criteria:*
 - a. land must be identified as highly productive land if:*
 - i. it is in a general rural zone or rural production zone, and*
 - ii. it is predominantly LUC 1, 2, or 3 land, and*
 - iii. it forms a large and geographically cohesive area,*
 - b. land may be identified as highly productive land if:*
 - i. it is in a general rural zone or rural*

- production zone, and
 - ii. it is not LUC 1, 2, or 3 land, and
 - iii. it is or has the potential to be highly productive for land-based primary production in Otago, having regard to the soil type, the physical characteristics of the land and soil, and the climate, and
 - c. land must not be identified as highly productive land if it was identified for future urban development on or before 17 October 2022, and³³
2. prioritising the use of highly productive land for land-based primary production
 3. ~~managing urban~~ restricting development in rural areas in accordance with UFD-P4, UFD-P7 and UFD-P8.
 4. Until such time as mapping of highly productive land has been undertaken and included in the regional policy statement assess land other than LUC 1, 2 or 3 using the following criteria:
 - a. the capability and versatility of the land to support land-based production primary production
 - b. the suitability of the climate for land-based primary production particularly crop production, and
 - c. the size and cohesiveness of the area of land for use for land based primary production

LF-LS-M11A

- (4) In collaboration with territorial authorities and in consultation with tangata whenua, Otago Regional Council must identify highly productive land in Otago in accordance with LF-LS-P19(1), and
- (5) Otago Regional Council must, using a process in Schedule 1 of the RMA which includes consultation with stakeholders and other parties, include maps of the highly productive land identified in accordance with (1) in the Regional Policy Statement by 17 October 2025, or earlier if sequenced identification is undertaken.
- (6) Until such time as mapping has been undertaken and included in the regional policy statement

district councils may assess land using LF-LS-P19 4) to determine value as highly productive land.

LF-LS-M12:

~~Prioritise maintain~~ the availability and productive capacity of highly productive land ~~identified and mapped under LF-LS-M11A~~ in accordance with LF-LS-P19.

UFD chapter

Retain references to LF-LS-P19 in UFD-O4 (2), UFD-P4 (6), UFD-P7 (3), and UFD-P8 (4)

3. **Energy, Infrastructure and Transport**

Retain EN-INF-O4

Retain EIT-INF-O5

Amend EIT-INF-P15

Recognise and provide for the efficient and effective operation of nationally significant infrastructure and regionally significant infrastructure by:

- a) *Ensuring that sensitive activities that may give rise to reverse sensitivity effects are avoided to the extent reasonably possible*
- b) *Ensuring that activities do not compromise the functional or operational needs of nationally significant infrastructure and regionally significant infrastructure,*

Delete all references to 'electricity transmission' and replace with 'National Grid' including EIT-INF-P16.

Retain EIT-INF-M2.

Amend EIT-EN-O2 (1)

The generation capacity of renewable electricity generation activities in Otago:

1. *Is recognised and provided for, and if practicable maximised within limits*

Retain EIT-EN-P1

Retain EIT-EN-P2 as in the s42A Report.

Retain EIT-EN-P7 as in the s42A Report.

Include provisions for electricity distribution as set out in evidence of Mr Langman

- a) Inclusion of EIT-EN-P10 Providing for electricity distribution;
- b) Inclusion of a method in EIT-EN-M2 (5C) to map significant electricity distribution infrastructure in district plans and where necessary provide controls to ensure that the SEDI is not compromised; and
- c) Inclusion of a definition for significant electricity distribution infrastructure.
- d) Inclusion of a method in EIT-EN-M2 (5D) to refer to NZECP34:2001 Electrical code of Practice for Electrical Safe distances

Include reference to highly productive land be added to the following policies:

- a. EIT-INF-P13 (1);
- b. EIT-INF-P16 (5); and
- c. EIT-EN-P4.

Hazards and Risks

Amend HAZ-NH-M2 (1):

Within five years of the RPS being made operative local authorities must work collaboratively to:...

Amend HAZ-CL-O3 to:

Contaminated land and waste material do not harm human health, mana whenua values and the environment in Otago.

Amend HAZ-CL-P14 (3):

Determine whether significant adverse effects on the environment will result from the hazardous substance in or on the land.

Amend HAZ-CL-M7 by adding:

Territorial authorities are responsible for implementing the National Environmental Standards for Assessing and Managing contaminants in Soil to Protect Human Health (NESCS) when land use change, subdivision or earthworks are undertaken.

Urban Form and Development

Include a new chapter – RU- Rural Areas and move following provisions to the new chapter.

- UFD-O4
- UFD-P7
- UFD-P8
- UFD-M2 (9)
- UFD -PR1 6th para
- UFD-AER 11, 12 and 13

Amend SRMR I4 Context and Environment sections:

Otago has areas of highly productive land which are particularly valuable for food production.

Urban or rural lifestyle expansion onto highly productive land removes the land resource from production, including production of food.

Amend UFD-O2 (6)

Minimises conflict between incompatible activities within the urban area and at the rural -urban interface

Amend UFD-O3 by adding:

Avoids to the extent possible urban rezoning of highly productive land.

Amend UFD -O4 (2)

Only provides for urban expansion and rural lifestyle development and the establishment of activities that are sensitive to primary production and rural industry in locations identified through strategic planning or zoned within district plans as suitable for such development where the potential for reverse sensitivity effects will not compromise primary production.

Amend UFD-O4 (3)

Outside of areas identified in (2) provides for the ongoing use of rural areas for primary production, supported by rural industry in appropriate locations and ensure that other activities that have an operational or functional need to locate in a rural area do not compromise the natural and physical resources that support the productive capacity, rural character and long term viability of the rural sector and rural communities;

Amend UFD-P1

Avoids to the extent possible urban rezoning of highly productive land.

UFD-P4 – retain UFD-P4 (6)

Avoids, as the first priority, highly productive land identified in accordance with LF-LS-P19.

Amend UFD-P7 (4)

Provides for ~~facilitates~~ primary production, rural industry and supporting activities.

Amend UFD-P8 (3)

Minimises impacts on existing primary production, rural industry and other rural activities ~~rural production potential, amenity values~~ and avoids the potential for reverse sensitivity effects to arise in adjoining rural production zones.

Amend UFD-PR1

~~Rural areas are attractive as residential living areas and for other non – rural activities.~~

The rural areas are important to Otago for the primary production activities that are undertaken within those areas. There is pressure from non – rural activities, such as residential living and lifestyle to locate within the rural area. However, such activities can adversely affect rural production and are incompatible with primary production activities.