

IN THE MATTER OF

the Resource Management
Act 1991

AND

IN THE MATTER OF

Proposed Regional Policy
Statement for Otago

FOR SUBMITTER

Port Otago Limited,
Submitter 0301

STATEMENT OF EVIDENCE OF

Mary Elizabeth O'Callahan

FOR

Port Otago Limited

Dated 23 November 2022

STATEMENT OF EVIDENCE OF MARY O'CALLAHAN FOR PORT OTAGO LIMITED

INTRODUCTION

1. My full name is Mary Elizabeth O'Callahan. I hold the position of Technical Director (Planning) employed with GHD Ltd, based in Wellington. I have a Bachelor of Science degree from Victoria University and a Bachelor of Planning degree from Auckland University. I am a full member of the New Zealand Planning Institute (NZPI) and an accredited RMA hearing commissioner.
2. I have 28 years of experience in planning and resource management and have worked as a planning consultant with GHD for over 17 years. Prior to joining GHD, I worked as a planner for local authorities in New Zealand and overseas.
3. I have been involved in a range of planning work for Port Otago Limited (Port Otago) since 2010 including plan review work and preparing resource consents for coastal and land-based projects associated with the ongoing maintenance and operation of the Port. I assisted Port Otago with the preparation of its submissions on the current Proposed Regional Policy Statement and with submissions and expert evidence at the Council and Environment Court hearings for the previous Regional Policy Statement process.
4. I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Notes. I agree to comply with that Code of Conduct. My evidence has been prepared in compliance with that Code. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

SCOPE OF EVIDENCE

5. This evidence provides a planning assessment of the Proposed Regional Policy Statement for Otago (Proposed RPS) and the submission and further submissions made by Port Otago.
6. In preparing this evidence I have reviewed:
 - The Partly Operative Regional Policy Statement, 2019 (Partially Operative RPS)
 - The Proposed RPS
 - Port Otago's submission and further submissions on the Proposed RPS
 - The Council officer's Section 42A report
 - Supplementary Evidence Reports
 - The Resource Management Act (RMA) 1991
 - The New Zealand Coastal Policy Statement 2010 (NZCPS); and
 - Advice provided by Mr Len Andersen, KC explaining the policy options before the Supreme Court, arising from the Port Otago appeal on the Partially Operative RPS.

KEY SUBMISSION POINTS

7. This evidence is focused on the main submission points which Port Otago raised within its submission and its further submissions on the Proposed RPS. This includes the following key issues:
- The appropriateness of directive policies which require the avoidance of all effects on environmental values and how well these are integrated with other competing policies, in particular those that give effect to the Policy 9 of the NZCPS requirement to provide in regional policy statements and in plans for the efficient and safe operation of ports and the development of their capacity for shipping, and their connections with other transport modes – this issue is directly related to a current appeal by Port Otago before the Supreme Court.
 - The duplication of direction through separate provisions in different chapters within the Proposed RPS and the subsequent conflicting policy direction when considering infrastructure within the coastal environment.
 - The use of the term ‘limits’ in enabling policies throughout the Proposed RPS without a clear qualitative or quantitative limit provided.
 - The direction provided in the Proposed RPS to recognise and protect ‘Regionally Significant Surf Breaks’ and ‘Highly Valued Natural Features and Landscapes’ which are considered to be largely undefined and are inconsistent with the requirements of the NZCPS.
8. My evidence focuses on those matters which are not accepted by the S42A reporting officers. In several cases, the Port Otago submission points have been adopted by the S42A reporting officers. Where there is alignment between the Port Otago submission, my own planning evaluation and the S42A recommendations, I have not addressed the submission point in this evidence in the interest of keeping my evidence as succinct as possible.

PORT OTAGO CONTEXT

9. Port Otago owns the land based commercial port infrastructure at both Dunedin and Port Chalmers and has occupancy rights to the coastal marine area at and adjacent to its berths and commercial port area. Port Otago also maintains the commercial shipping channels, berths and swinging area within Otago Harbour.
10. Port Otago is a nationally significant primary export port for New Zealand and both the Port Chalmers and Dunedin port areas are a fundamentally important part of the import/export supply chain for the lower South Island area of New Zealand, and for tourism, with cruise ship operations underway again following disruption due to Covid.
11. My evidence is predominantly focused on Proposed RPS content relevant to the coastal environment, responding to my brief from Port Otago to focus on matters of relevant to its activities within and around the Otago Harbour. My evidence firstly addresses the following key matters of relevance to provision for port activities within the Proposed RPS:
- The Port Otago appeal on the previous Partially Operative RPS

- Amendment options for key port policy EIT-TRAN-P23 that reflect expected decision outcome options arising from the Supreme Court hearing
12. The balance of my evidence addresses matters that are largely unrelated to the Supreme Court case. These are generally addressed in the order that provisions occur within the Proposed RPS and cover:
- Definitions
 - Integrated management
 - 'Within limits' qualifier
 - Natural features and landscapes
 - Identifying landscape, natural character and biodiversity areas
 - Regionally significant surf breaks
 - Ecosystems in the coastal environment
 - Energy, infrastructure and transport
 - Natural hazards
13. Appendix 1 contains full details (in strike out and underline form) of the changes recommended throughout my statement of evidence.

EXISTING PORT OTAGO APPEAL ON 2019 PARTIALLY OPERATIVE REGIONAL POLICY STATEMENT

14. Port Otago was involved as both a submitting party and an appellant on the now Partially Operative RPS. The status of the 2019 regional policy statement is 'partially operative' because provisions relating to port activities are still under appeal by Port Otago.
15. Port Otago are awaiting the outcome of its appeal to the Supreme Court on the Partially Operative RPS, following a hearing in May 2022. The outcome from this appeal is in my view of relevance to the Proposed RPS, as the appeal is in relation to policy direction in the previous regional policy statement on port activities required to give effect to direction in the NZCPS.
16. Under Policy 9 of the NZCPS a regional policy statement is required to recognise and provide for port activities. However, the Partially Operative RPS lacked a clear approach with some policies requiring the avoidance of effects and other policies enabling port activities, with conflict arising between the proposed policy direction within the document but no ability to manage conflicting direction. The concern for Port Otago is that port infrastructure could conflict with future mapped areas of significance. The risk associated with this concern is exacerbated by a lack of mapping in the Proposed RPS which was the same situation with the Partially Operative RPS, despite mapping already being in progress by the Otago Regional Council and/or the Dunedin City Council.
17. The draft mapping of significant areas that I was aware of in 2018 was collated onto a map, along with key Port Otago operational areas, by one of my GHD colleagues for use in an earlier hearing on this matter. This map is reproduced in Appendix B for information. I have not sought to determine whether any further mapping work has been done which might mean that this information is now out of date. However, I'm unaware of any such mapping being formally adopted into a planning

document relevant to the coastal marine area since that time. What the map shows is overlap, or 'conflict', between the values which I understand are likely to be sought to be protected by 'avoid' policies in a future review of the regional coastal plan for it to align with both the Partially Operative RPS and the Proposed RPS. Strict interpretation of 'avoid' policies could result in certain existing activities being prohibited if their location or effects conflict with the avoid policies.

18. The hearing panel will be aware of the earlier Supreme Court decision concerning the King Salmon case¹. That decision fundamentally changed the understanding of the NZCPS and the ability to use the broad overall judgement approach when considering conflict between enabling and avoid policies. As a result of the King Salmon decision, planning practice has been that any enabling policy cannot be considered where there is a directive 'avoid' policy, with the 'avoid' policy taking precedence.
19. The King Salmon case considered the potential conflict between the NZCPS 'avoid' policies and Policy 8 concerning aquaculture. In that case, the Supreme Court found (in summary):
 - Avoid means to "not allow" and the higher the environmental value the more likely development would be inappropriate.
 - No conflict between the 'avoid' policies and Policy 8 concerning aquaculture was found in that case –i.e., aquaculture should be provided for but can't be done everywhere.
 - The previous 'broad judgement' approach was set aside in preference to making a thorough attempt to find a way to reconcile them.
20. The present Port Otago Supreme Court appeal considers the conflict between the NZCPS 'avoid' policies and an actual conflict that arises in the Otago Harbour situation with Policy 9 relating to enabling ports and their development, as is illustrated in the map included in Appendix 2 of my evidence.
21. The key history to the Port Otago appeals on the Partially Operative RPS is summarised below:
 - The (now) Partially Operative RPS was notified in May 2015. There was no port specific policy included in the notified version of this document and this remained the case in the Council's decision on submissions and evidence presented on behalf of Port Otago at the Council hearing. Port activities were however included in the definition of infrastructure and this version of the now Partially Operative RPS included policies in relation to infrastructure activities under 'Objective 4.3: Infrastructure is managed and developed in a sustainable way'.
 - Port Otago appealed the Council decision to the Environment Court, who heard the case in 2018, following several mediation options that were developed in conjunction with parties to the appeal prior to this. The Environment Court's decision was in favour of Port Otago, recommending that the ports policy in Partially Operative RPS be expanded to allow Port Otago to operate safely in a way that potentially had adverse effects in areas where these effects should otherwise be avoided.
 - The Environmental Defence Society appealed the Environment Court decision to the High Court in 2019. That decision was in favour of the Environmental Defence Society and

¹ Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2014] NZSC 38 [2014] 1 NZLR 593, [2014] NZRMA 195, (2014) 17 ELRNZ 442

concluded that ports must comply with the avoidance policies and avoidance policies can result in prohibited activities. Also, that adaptive management cannot be used to 'avoid' effects and minor and transitory effects must be avoided.

- While Port Otago next applied for leave to have the matter determined directly by the Supreme Court following the High Court decision, this was rejected. Port Otago then appealed to the Court of Appeal. It was heard by the Court of Appeal in 2021. While the Port Otago case was dismissed by the Court of Appeal, this was by a 2:1 majority decision confirming that the port policy was subordinate to 'avoid' policies in the NZCPS. Some positive outcomes arose with this decision for enabling port activities in that the Court of Appeal decision confirmed that minor and transitory effects were possible under an 'avoid' directive, and adaptive management was found to be a legitimate way to 'avoid' effects.
- The minority Court of Appeal finding essentially endorsed the earlier Environment Court's finding, that the NZCPS Policy 9 situation was different to the King Salmon aquaculture situation and that it is both lawful and prudent to provide for the possibility that the two cannot be fully reconciled.
- Port Otago then appealed the Court of Appeal decision to the Supreme Court. The hearing was held in May 2022. A range of differing submissions were put forward by the parties involved and a decision from the Supreme Court is currently pending.

AMENDMENT OPTIONS FOR EIT-TRAN-P23

22. Looking now at how the appeals on the Partially Operative RPS are relevant to the current hearing, I note the issues are essentially the same in the Proposed RPS as for the previous document, so it is important that the hearing panel are aware of and consider the planning implications of the pending Supreme Court decision. Ideally this decision will be issued prior to the Proposed RPS hearing. If this does not occur, it is my understanding that the decision is expected to either confirm or change current case law relevant to prioritising between Policy 9 of the NZCPS and the key 'avoid' policies that are also relevant to port activities in the Otago Harbour, specifically:
 - Policy 11 - indigenous biodiversity
 - Policy 13 - preservation of natural character
 - Policy 15 - natural features and landscapes
 - Policy 16 – surf breaks of national significance
23. The Partially Operative RPS provided a policy which gives effect to Policy 9 of the NZCPS through the recognition and provision of activities at Port Chalmers and Dunedin. However, this policy is still subject to the avoid policy direction in other relevant policies, albeit the established case law permits less than minor or temporary effects in respect of values where effects otherwise need to be avoided.
24. If the Port Otago appeal on the Partially Operative RPS is not successful for Port Otago, then I would expect a clause similar to the below would be added to the relevant 'enabling ports' policy in the Partially Operative RPS:

Activities essential for the efficient and safe operation of these ports and effective connections with other transport modes that are contrary to other policies in this plan are only permitted if the adverse effects on the protected values that are the subject of the policies are less than minor or temporary.

25. It is important that this clause is added because, although it is simply confirming the legal position in relation to the policies, it makes it clear that any rule giving effect to those policies cannot create a prohibited activity if the effects on the protected values are less than minor or temporary.

26. However, Port Otago's appeal contends that the strength of avoidance policies should be dependent on the circumstances and efficient and safe operation of ports, which may in certain circumstances prevail over directive avoid policies. If the appeal by Port Otago is upheld, an additional clause in relation to the port provision similar to the following is expected to be included in the Partially Operative RPS:

If the operation or development of Port Otago may cause adverse effects on values that are not permitted under this plan then such activities may be permitted following a resource consent process that considered those effects and whether they are caused by safety considerations, which are paramount, or by transport efficiency considerations and, if resource consent is given, ensuring that such adverse effects are avoided as much as possible and are otherwise remedied or mitigated (through adaptive management or otherwise).

27. This clause would then allow for the appropriateness of port related activities to be balanced against the directive avoid policies in the policy document.

28. Irrespective of the outcome of the Port Otago appeal on the Partially Operative RPS, the Proposed RPS should in my opinion be amended to reflect the two possible appeal outcomes summarised above. This will either need to be in the form of a policy clause that identifies that if commercial port activities are found to be in conflict with an avoid policy, they could only be found to be consistent with the Proposed RPS if they have less than minor or transitory adverse effects, reflecting the existing understanding of case law. Alternatively, a clause will need to be included that provides for a broad judgement approach when considering port activities that are not compliant with directive avoid policies.

29. I have considered where an additional clause, like the options described above for the Partially Operative RPS, should sit within the Proposed RPS. In my opinion, policy EIT-TRAN-P23 aligns with Policy 9 of the NZCPS and is the most relevant policy in the Proposed RPS that provides for port activities. I consider that this policy is the most suitable location for a new sub-clause that reflects one or other of the expected outcomes of the Supreme Court case.

30. I have provided two alternative track change versions of EIT-TRAN-P23 in Appendix 1 of this evidence, which I believe are appropriate amendments which should be made considering the Supreme Court appeal outcome.

31. If no such clause is added to the Proposed RPS, then conflict between the enabling and avoid policies within the Proposed RPS will continue to be uncertain and the document will not give full effect to Policy 9 of the NZCPS (i.e., to the extent possible by virtue of case law).

32. Turning to other matters related to policy EIT-TRAN-P23, I note the S42A reporting officers recommended amendment to the related linkage policy CE-P1 whereby clause (2) now expressly refers to the defined term 'commercial port activities' rather than just port activities. This is supported. Furthermore, the integration link in CE-P1 in the S42A report now appropriately refers

to these activities being managed in accordance with EIT-TRAN-P23, rather than the transport section generally. This is also suitable, subject to my proposed amendment options outlined above to align EIT-TRAN-P23 with the relevant outcome from the Supreme Court case.

33. I am however concerned about the additions at clause (4) of CE-P1 as these appear to apply to commercial port activities specifically, due to the 'and' between clauses (2) and (4). This addition makes the policy document unclear and complicated. In my view it is preferable to remove clause (4) entirely and let the clauses in the referenced chapters standalone. I.e., the referenced chapters will either be relevant or not, so the cross references in (4) seem to undermine the benefit offered by clause (2) for commercial port activities. The list is not sensible as it includes the HAZ chapter, which is already covered in clause (1) of CE-P1. The list includes provisions such as the NFL chapter which have been amended to not apply to the coastal environment in the S42A amendments. On this basis, I think the policy statement would be best amended by deleting clause (4) from policy CE-P1, as per the notified structure of this clause, as set out in my Appendix 1.

DEFINITIONS

34. The Proposed RPS contains several definitions which relate to infrastructure and which I consider Port Otago's activities fall within. This includes a definition for Commercial Port Activities, which includes a comprehensive list of operations associated the port facilities of the Otago Harbour. This is a definition which Port Otago supported in the formal submission.
35. I note that the definition for Commercial Port Activity has been amended in response to a Ravensdown submission to include Ravensbourne Wharf but not the operational activities at Ravensbourne. I believe this amendment to the definition is acceptable as it reflects the infrastructure that is owned and maintained by Port Otago, but not third-party assets. This amendment recognises the nationally significant port facilities and activities.
36. Under the notified version of the Proposed RPS there were five additional definitions in relation to infrastructure that are inclusive of port related activity and noted in the Port Otago submission, including:
- Infrastructure
 - Nationally Significant Infrastructure
 - Regionally Significant Infrastructure
 - Specified Infrastructure
 - Lifeline Utilities
37. The Port Otago submission highlighted the proliferation of definitions along with a lack of clarity and consistency over whether the port facilities at Dunedin were considered through these definitions, as none of the definitions themselves contained direct mention of local port facilities or locations, instead referencing port facilities referred to in item 6 of Part A of Schedule 1 of the Civil Defence Emergency Management Act 2002 and section 2(1) of the Port Companies Act 1988 was also referred to in one definition.
38. I note that the Council officers S42A reporting did not accept Port Otago's amendments and any rationalisation to the definitions. For the Nationally Significant Infrastructure definition, this was on

the basis that the definition has the same meaning as the definition within the National Policy Statement for Urban Development². Amendments sought to the definition of infrastructure were also not supported based on the definition having the same meaning as in Section 2 of the RMA³. Amendments sought to changes to the definition of Lifeline Utilities were rejected on the basis that this is a legislative definition⁴, albeit I note for a different purpose.

39. It is important that all the Port Otago infrastructure facilities are adequately recognised within these definitions given the implication in relation to policy application based on definition, however as worded they are somewhat ambiguous.
40. Since assisting with preparation of the Port Otago submission, I have considered the scope of the above definitions in more depth. The definitions for Nationally Significant Infrastructure and the Lifeline Utilities refer to 'port facilities' and 'utilities' listed in Schedule 1 of the Civil Defence Emergency Management Act 2002. Of relevance for Port Otago is Clause 6 of Part A of Schedule 1, as shown below:
- The port company (as defined in section 2(1) of the Port Companies Act 1988) that carries out port-related commercial activities at Auckland, Bluff, Port Chalmers, Gisborne, Lyttelton, Napier, Nelson, Picton, Port Taranaki, Tauranga, Timaru, Wellington, Westport, or Whangarei.*
41. Under this clause Port Otago is recognised as the port company that carries out port related commercial activities at Port Chalmers. Therefore, Port Otago is a recognised entity that meets the definition of Nationally Significant Infrastructure and Lifeline Utilities under the Proposed RPS. Albeit the reference just to Port Chalmers is slightly misleading as it does not mention all locations where Port Otago has port related infrastructure, including Dunedin, Ravensbourne and other locations throughout the Otago Harbour. However, the definition refers to the facilities of a port company that operates at Port Chalmers. The definition is not actually limited to the Port Chalmers location, nor is it location specific. Rather it refers to the activities of a company, in this case, Port Otago Ltd.
42. Based on this understanding, all of Port Otago's core infrastructure and lifeline utilities such as the bulk fuel facilities at its Dunedin location (which are critical facilities, particularly in an emergency) are in my view nationally significant under the Proposed RPS definition which is "*the port facilities (but not the facilities of any ancillary commercial activities) of each port company referred to in item 6 of Part A of Schedule 1 of the Civil Defence Emergency*". Port Otago's 'utilities' also meet the definition for Lifeline Utilities in the Proposed RPS.
43. It would be helpful if the S42A reporting officer and/or the hearing panel were able to confirm my understanding of the above definitions for Port Otago to be satisfied that its activities are adequately recognised in the Proposed RPS as Nationally Significant Infrastructure and a Lifeline Utility.
44. Furthermore, through the S42A officer's amendments to the Regionally Significant Infrastructure definition, all Nationally Significant Infrastructure is also proposed to be Regionally Significant

² S42A Chapter 11 paras 489-511

³ S42A Chapter 11 paras 477-488.

⁴ S42A Chapter 3 Para 47

Infrastructure. I support this amendment to the definition of Regionally Significant Infrastructure as its logical that nationally significant matters are also of significance at a regional level.

45. Port Otago made a submission on the definition of Specified Infrastructure. As this includes nationally and regionally significant infrastructure, I consider that the Port's core operations are covered by the definition of Specified Infrastructure also.
46. Overall, I believe that the definitions as drafted (including the S42A amendment for Regionally Significant Infrastructure noted), while numerous and somewhat repetitive, are adequate in their recognition of the importance of the essential port facilities within the Otago Harbour.

INTEGRATED MANAGEMENT

47. The Proposed RPS contains four Integrated Management Objectives and 15 Integrated Management Policies. Whilst I support the approach of the Proposed RPS in including direction on an integrated approach to achieving outcomes which addresses potential conflict between provisions, I consider that there are some issues with the Integrated Management Objectives and Policies and their relationship with the direction in Section 5 of the RMA.
48. IM-O1 directs the outcome sought through the management of natural and physical resources but does not provide consideration of Section 5 of the RMA which allows for the use and development of natural and physical resources. The wording of IM-O1 does not clearly align with Section 5 of the RMA, as it does not expressly recognise the need to use and develop natural and physical resources. Similarly, I consider that Policy IM-P1 (which has been rewritten post-notification and has had IM-P2 amalgamated), does not align with section 5 as it does not include specific consideration of development. It appears to loosely, but not directly, follow the Te Mana o Te Wai hierarchy from the National Policy Statement for Freshwater (NPSFM) yet has application region wide beyond freshwater. In my view, applying Te Mana o Te Wai in non-freshwater contexts is not aligned with higher order national direction or Section 5 of the RMA.
49. I note that the reporting officers S42A response to Port Otago's submission on IM-O1 did not propose an amendment in response to the submission due to the absence of any revised wording provided by Port Otago. To address this, a proposed wording amendment that simply adds 'safety' to the priority clause would resolve the risk for essential port operations that exists with the current drafting. This has been included in the amendments table in Appendix 1 to my evidence. In my opinion this simple amended wording provides a clearer link with Section 5 of the RMA whilst still retaining the intent and form of the objective.
50. I consider that the use of the term 'preserve' in the notified IM-O3 was also not aligned with section 5 of the RMA, and the use of this term was unclear, however I note that the term preserve has been deleted from the objective in the S42A reporting and has been replaced with 'support or restore', an amendment that is necessary in my opinion.
51. I have provided an alternative wording to the provisions noted here in Appendix 1, which I believe ensures the Integrated Management Objectives and Policies give effect to Section 5 of the RMA.

‘WITHIN LIMITS’ QUALIFIER

52. The submission by Port Otago raised concerns on how the term environmental limits had been applied through the plan, without any clear definition of the term. I note that the S42A response included the addition of a definition to environmental limits, which focused on biophysical state and maximum permitted stress or harm⁵. However, this definition has subsequently been deleted from the Proposed RPS through the S42A supplementary evidence.
53. I note the reporting officers reasoning for this deletion of the definition is that the proposed definition was not appropriate based on the definition being too narrow in its application of the term ‘biophysical limit’ with subsequent effects on the use of the term in various provisions in the Proposed RPS⁶. The reporting officer goes on to state that the use of limit, within the term environmental limit, was intended to refer to the general meaning of the word, but that the use of the word environmental has introduced uncertainty.
54. As such, the position of the reporting officer is now that the definition for environmental limit recommended in the initial S42A report is rescinded, and the term “environmental limit” should be changed to just “limit”, with limit having its normal dictionary meaning (i.e., no definition) unless applying to the Land and Freshwater chapter, where the meaning of limit is defined in the Proposed RPS, as per the NPSFM.
55. I consider that the broad use of the undefined term ‘limit’ throughout the non-freshwater parts of the Proposed RPS requires a clearer approach. I note that no definition exists for limit (excluding freshwater), but that the reporting officer anticipates that the term has its normal dictionary meaning, being:
- “Any of the fixed points between which the possible or permitted extent, amount, duration, range of action, or variation of anything is confined; a bound which may not be passed, or beyond which something ceases to be possible or allowable”.*
56. The definition quoted by the reporting officer provides no clarity in an RMA setting and does not align with the language in Section 6 of the RMA, nor the NZCPS. Higher order direction for specific values uses words such as ‘avoiding’ certain effects, ‘maintain’, etc and are not limits as such.
57. My view is the term limit should not be used in a generalised sense throughout the plan without a definition. A general definition that works throughout the document would be challenging to draft. As currently drafted in the Proposed RPS, the use of limits applies to a number of ‘recognising’ and ‘enabling policies’. However, due to the uncertainty around the use of this term, the affected policies, as well as methods, remain unclear.
58. For example, Objective EIT-TRAN-O10 is written as such:
- Commercial port activities operate safely and efficiently, and within limits.*
- Whilst I support the intention of this objective to ensure commercial port activities operate safely and efficiently, the use of the term “within limits” results in a distinct lack of clarity on how this objective applies. Without a setting of a specific parameter which would apply as a limit, there is no valuable use of this term within the context of the objective.

⁶ Supplementary Evidence 01 Para 18

59. I note that a different approach has been undertaken under EIT-TRAN-P23, where the efficient and safe operation of the port, and the development of the ports capacity, is provided for “within limits as set out in Policies CE-P3 to CE-P12”. Whilst I believe this more helpful than its use in EIT-TRAN-O10 as there are specific policy references which are referenced as being the intended ‘limit’ content, there is still no quantified threshold which could easily be interpreted as the maximum applicable limit.
60. Furthermore, as the coastal environment policies already apply to port activities in the coastal environment, it seems redundant to require these policies to be met whilst enabling activities through EIT-TRAN-O10, as such policies would apply regardless.
61. Whilst the changes made by the reporting officer to terminology in relation to limits, thresholds and bottom lines⁷ have improved the use of terminology within the policy statement with regards to limits in the freshwater context, I believe that the underlying issue of how the term is used within other contexts has not been addressed.
62. In essence, I disagree with the approach taken by the policy statement and S42A reporting to caveat enabling objectives and policies with undefined limits which causes uncertainty over how the objectives and policies apply. I recommend that the term ‘limit’ is removed from the key relevant port objective EIT-TRAN-O10 and policy EIT-TRAN-P23, as detailed in Appendix 1. This is because this qualifier is redundant and introduces uncertainty. Furthermore, as detailed previously, either of the integration policies recommended for EIT-TRAN-P23 will serve the same purpose and is expected to align with one of the possible outcomes from the Port Otago appeal to the Supreme Court on the Partially Operative PRS.

NATURAL FEATURES AND LANDSCAPES

63. The Proposed RPS directs at policy NFL-P1 that highly valued natural features and landscapes are identified using criteria provided in Appendix 9. Highly valued natural features and landscapes are defined under the plan as “*which contain attributes and values of significance under Sections 7(c) and 7(f) of the RMA*”.
64. In my opinion the Proposed RPS is lacking both a reason for needing to map these, and a clear definition of highly valued natural features and landscapes. The current definition simply links to section 7(c) and 7(f) and does not provide an actual definition of what constitutes a highly valued natural feature or landscape, versus moderate landscape values, or outstanding values. There is no methodology for their rating.
65. The criteria contained within Appendix 9 are broad and apply to not only highly valued natural features and landscapes but to outstanding natural features and landscapes also, which is confusing as outstanding and highly valued are not considered the same in any higher order direction, with outstanding natural features and landscapes being a Section 6 matter. I note that in the S42A response it is stated that there is no national guidance on the differentiation between identifying outstanding and highly valued features and landscapes, and that this should be best

⁷ Section 1.6.3,

addressed at the time of assessment and by a suitably qualified person⁸. The officer's approach creates a risk of inconsistency.

66. I note that the reporting officer has made changes to the criteria within Appendix 9, with reasoning provided that the criteria now capture the intent of the New Zealand Te Tangi a te Manu – Aotearoa New Zealand Landscape Assessment guidelines⁹. It's not apparent that this document provides guidance as to what constitutes 'highly valued' landscapes, only outstanding¹⁰.
67. I agree that the Proposed RPS needs to give effect to the NZCPS requirements concerning landscape values. In my experience this has not included a mandatory regional policy requirement to map highly valued areas in other regions – as the policy test from the NZCPS is to avoid significant adverse effects on 'other landscapes' i.e., ones that are less than outstanding. The locations outside of 'outstanding' do not need to be mapped for this policy to be effective, as whenever there is a project with potentially material effects on landscape values, evaluation is carried out at a consent stage alongside an understanding of the planned change or impact. Furthermore, Policy 15(d) of the NZCPS directs mapping or identification of areas where landscape objectives policies and rules are intended to apply – the key policy direction in the NZCPS for 'other landscapes' i.e., those less than outstanding, is to avoid significant effect and avoid, remedy or mitigate lessor effects. This lessor test applies everywhere outside of 'outstanding' areas, irrespective of its existing value rating.
68. If mapping of 'highly valued' landscapes is to be retained in the Proposed RPS, it would benefit from clearer criteria for what highly valued natural features and landscapes are, and there should be a clear distinction between what gets classed as outstanding, what is classed as highly valued and what is classified as less than highly valued.
69. It is likely that utilising the current ambiguous approach to the identification of these features will not result in positive planning outcomes and could lead to a variety of differing approaches to identification at a District Plan, Regional Plan and Regional Coastal Plan level, particularly when the plan review processes to do this will necessarily involve iwi and community engagement, as well as cost to parties interested in this issue associated with a formal public submissions process. Stronger guidance through the Proposed RPS would provide for a more robust approach and clearer interpretation at the objective and policy level, or alternatively the Proposed RPS should fulfil its requirements without specifying the need for mapping, other than mapping of 'outstanding' areas.
70. A further suitable option would be for the Proposed RPS to identify these areas across the region within the policy document itself, instead of providing direction for this to be done at the plan level. This would provide clear direction on what areas are highly valued natural features and landscapes across the region and secure a consistent approach. Mapping at the policy statement level would avoid litigating this at a regional plan and district level and the costs of this on stakeholders and councils.
71. I also note that CE-O3 is not consistent with the NZCPS, but CE-P6 is generally aligned with the NZCPS. CE-O3 is not aligned with the NZCPS in that the S42A drafting of this objective requires

⁸ S42A Chapter 14 para 151

⁹ S42A Chapter 14 para 30

¹⁰ Based on checking an online version of the guidelines document which I found here:

[210505 Te Tangi a te Manu Revised Final Draft as approved 5 May 2021.pdf \(nzila.co.nz\)](https://nzila.co.nz/210505_Te_Tangi_a_te_Manu_Revised_Final_Draft_as_approved_5_May_2021.pdf)

preservation of all natural character in the region and the protection of all natural features and landscapes in the region, irrespective of their value. I have provided wording in Appendix 1 to fix the drafting of CE-O3.

72. THE NFL chapter has mostly been amended in the S42A reporting to avoid duplication with similar provisions which apply to the coastal environment. However, policy NFL-P6 states that natural features and landscapes in the coastal environment are managed by CE-P6, which contributes to achieving NFL-O6. Subject to my earlier recommendation for NFL-O1, this is the one remaining duplicative anomaly between the CE and NFL chapters. I consider this policy, purporting to provide guidance for managing how natural features and landscapes apply to the coastal environment, is muddled, and is lacking any specific policy direction. I recommend that, as this policy has no specific policy direction, it should be deleted as indicated in Appendix 1 or changed to an advice note, as it is simply there to provide clarification.
73. CE-M2 requires local authorities to work collaboratively to prioritise the identification of areas and values of high and outstanding natural character, areas and values of outstanding natural features and landscapes, and areas and values of indigenous biodiversity. To guide the identification process, a table is included which lists areas that should be prioritised for identification as they are stated to likely contain significant values.
74. The Section 32 report for the Proposed RPS details that the areas in Table 2 are the same areas included in Schedule 2 of the existing Regional Coastal Plan as Coastal Protection Areas¹¹, but these areas have not been identified by boundary on the planning maps. I note that this table from the notified Proposed RPS has been and replaced with a more extensive version. The revised table features locations considered under a recent coastal study as identified areas as holding medium-high, high and outstanding values¹². Medium-high does not align to the policy direction of the Proposed RPS or the reporting officer's recommendation to retain a policy requiring mapping of 'high' rated areas in plans.
75. I believe the approach of this policy is inappropriate through its specification of certain areas where identification should be prioritised. These areas have not been through a robust identification and mapping exercise, and the direction of identification in these areas could lead to the absence of outstanding values being identified in other areas.
76. Whilst I support the identification of these areas and values as it is directed through the relevant higher order direction of the NZCPS, the approach to the Proposed RPS should be altered to either propose a variation to map such areas in the Proposed RPS now, or remove this table of specific areas and the method should be defined, so it can be applied consistently across the region.

REGIONALLY SIGNIFICANT SURF BREAKS

77. The Proposed RPS contains number of objectives and policies that relate to Regionally Significant Surf Breaks. This includes the direction to identify and map Regionally Significant Surf Breaks through CE-P2 and CE-M3, and that the values of and access to Regionally Significant Surf Breaks are maintained under CE-P7.

¹¹ Section 32 report para 331

¹² S42A Chapter 8 para 150

78. I do not support the direction provided in the Proposed RPS for Regionally Significant Surf Breaks. The Proposed RPS does not provide any direction on how Regionally Significant Surf Breaks should be identified, only that they must be identified. Whilst I note that the reporting officer acknowledges that research has been undertaken to develop a methodology to identify these surf breaks¹³, this methodology has not been included within the Proposed RPS.
79. Policy 16 of the NZCPS directs that surf breaks of national significance are protected and includes a Schedule of Nationally Significant Surf Breaks. As such, the Proposed RPS approach to nationally significant surf breaks is appropriate based on this policy direction. However, there is no direction within the NZCPS on identifying or managing Regionally Significant Surf Breaks. I note that the reporting officer has also acknowledged that there is no higher order direction in relation to Regionally Significant Surf Breaks.
80. I do however agree with the reporting officer that Policy 13 of the NZCPS directs the preservation of natural character, and that surf breaks are part of the attributes which may contribute to natural character. However, this does not align with any requirement to map or separately protect regionally significant surf breaks. Indeed, the approach by the reporting officer for recommending retaining this policy requirement amounts to double counting the value of a surf break. The Proposed Plan already requires the mapping of all outstanding and high natural character areas, consistent with the NZCPS, so surf breaks of regional significance where that significance relates to natural character, will be incorporated within and managed as a mapped area in any case.
81. The primary issue I have with the approach to Regionally Significant Surf Breaks is the lack of guidance that is provided in relation to how these are to be identified or where they might be located. Port Otago undertakes activities that have the potential to affect surf breaks, but without a clear understanding of what constitutes a Regionally Significant Surf Break, how they will be identified or where they might be located, the impact on the operation of the nationally significant port activities in Otago Harbour, in particular the disposal of dredged material associated with maintenance of the shipping channel, means there is no information available as to how port activities could be affected by the Proposed RPS provisions relating to Regionally Significant Surf Breaks.
82. In the absence of a clear methodology, I recommend the removal of Regionally Significant Surf Breaks from the Proposed RPS and retaining focus on the higher order direction concerning the defined list of surf breaks in the NZCPS.
83. Alternatively, Regionally Significant Surf Breaks would need to be clearly defined for these to be justified in the Proposed RPS, or CE-P2 and CE-M3 amended to set out how Regionally Significant Surf Breaks are to be identified and mapped, with a clear methodology – which in my opinion could only relate to amenity / recreation values, to avoid double counting their contribution to natural character. In its current state the Proposed RPS does not provide appropriate policy direction in relation to Regionally Significant Surf Breaks and introduces significant uncertainty for necessary activities undertaken within the coastal marine area by Port Otago including maintaining harbour structures, dredging of the shipping channel and disposal of dredged material to name a few.

¹³ S42A Chapter 8 Para 291

ECOSYSTEMS IN THE COASTAL ENVIRONMENT

84. The notified version of the Proposed RPS was unclear in its approach to managing Ecosystems and Indigenous Biodiversity in the Coastal Environment, with a lack of clarity on how the provisions within these chapters would apply to activities which may be affected by both the ECO and CE biodiversity provisions, which is a relevant concern for the activities undertaken by Port Otago.
85. I note that a rewrite has occurred to Policy ECO-P7, I consider that the rewrite has provided greater clarification and addressed some of the confusion surrounding the application of this chapter within the coastal environment. The policy now specifically states that ECO-P3, ECO-P4, ECO-P5, and ECO-P6 do not apply to the management of indigenous biodiversity and taoka species and ecosystems in the coastal environment. I note that the rewording of this policy was developed through mediation.
86. There is one concern which appears to have arisen from the restructure of the provisions and/or in response to other submissions that is not consistent with the NZCPS and is a particular risk to port activities in the coastal environment. Amendments are recommended by the S42A officer in CE-P5 which introduce two new ecological criteria where biodiversity is to be subject to the strict NZCPS avoid policy, i.e., resulting from Policy 11(a) of the NZCPS. These are:
- (g) significant natural areas identified in accordance with APP2, and 729*
- (h) indigenous species and ecosystems identified as taoka in accordance with ECO-M3, and*
87. My concern with these additions is firstly, they are not consistent with the higher order direction from the NZCPS. Secondly, I expect it will introduce considerable plan interpretation uncertainty as the same values are likely to fall within this list, as well as the list under CE-P5(2), being the criteria for biodiversity values from Policy 11(b) of the NZCPS which are subject to the 'avoid significant adverse effects and avoid, remedy or mitigate other effects' test. As evidence of this concern, I note the guidance in APP2 at 'Ecological Context' refers to "*an area that is important for indigenous fauna during some part of their life cycle*", which is essentially the same as clause (c) of subsection (2) of CE-P5. There are numerous examples of overlap between the APP2 criteria and those in CE-P5(2).
88. In terms of new clause (h), it is expected that the process for identifying taoka with mana whenua will result in duplication between flora and fauna already falling within one or other of the Policy 11(a) and/or (b) criteria, thereby running the risk of interpretation uncertainty also. It would be more suitable if taoka had already been determined, then bespoke policies could be crafted to avoid uncertainty arising while taoka lists are developed. Further, it is expected that taoka identification will be an iterative process across the region, and it does not appear that these are intended to necessarily be included in district or regional plans, so may not be subject to the RMA Schedule 1 submission process. This is further evidence that such a list would more appropriately sit under clause (2) of Policy CE-P5. I have included suggested rewording to this effect in Appendix 1 of my evidence.

ENERGY, INFRASTRUCTURE AND TRANSPORT

89. I comment next on the qualification of "within limits" within objective EIT-INF-O4, which is like the ones I discussed previously in the core port provisions of EIT-TRAN-O10 and EIT-TRAN-P23. If the intent is for the RPS to be read as a whole, and all provisions are to be considered, then the

enabling provisions shouldn't be qualified, just like the protection provisions do not have references to other key policies. Furthermore, different tests apply to activities within the coastal environment versus those outside the coastal environment, and the reference to "within limits" doesn't reflect these nuances. Accordingly, I recommend the reference to "within limits" with the EIT-INF-O4 should be removed, as set out in my Appendix 1.

90. The Port Otago submission sought that the RPS include definitions to distinguish between the activities that have differing policy tests in the RPS, namely "operation and maintenance of infrastructure", "upgrades and development of existing infrastructure" and "new infrastructure".
91. This issue is discussed at paragraphs 554-556 of Chapter 11 of the S42A report. The author disagrees with the Port Otago submission and considers *"that these terms can stand on their own and rely on their natural meaning for the purpose of the pORPS, and if requiring definition, they can be defined at a district or regional plan level, depending on the circumstance"*.
92. Policy EIT-INF-P12 provides for upgrades to existing infrastructure and development of new infrastructure. Whereas Policy EIT-INF-P11 relates to operation and maintenance of nationally and regionally significant infrastructure. As detailed in the Port Otago submission, the approach of this policy is unclear in what constitutes "operation and maintenance", "upgrades and development", and "new infrastructure". I disagree that leaving the defining of these terms to a District Plan and Regional Plan level is appropriate, as this could lead to the defining of these at the lower plan level that does not appropriately align with the intent of this policy direction here and inconsistent approaches within the Otago Region. Indeed, an infrastructure proposal could be maintenance and operation in a district plan and an upgrade in a regional plan, noting that often both district and regional consents are required for infrastructure works. This is very ineffective and inefficient for infrastructure providers and could result in both the maintenance and upgrade Proposed RPS policies applying to a single proposal.
93. Instead, as these terms are used within the Proposed RPS, they should be clearly defined in the Proposed RPS itself and then these definitions can cascade down to the plans that give effect to the Proposed RPS. Whilst it could be argued that the natural definitions could be relied upon, greater clarity in the Proposed RPS would result in a more robust policy approach through definition inclusion. I have drafted definitions for each of these terms to assist the hearings panel and included these in Appendix 1.
94. Turning to the drafting of policy EIT-INF-P11, the effect of including this policy as currently drafted in the Proposed RPS is "another" environmental effects test for infrastructure beyond that in the CE and ECO chapters for biodiversity. The "except as provided for by ECO-P4" in the main stem of EIT-INF-P11 essentially makes EIT-INF-P11 redundant, as the ECO policy takes precedence.
95. This duplicative nature of the EIT-INF provisions has been addressed in the case of the coastal environment with recommended new provision EIT-INF-P13A that recognises infrastructure matters in coastal areas need to be managed in accordance with the CE chapter. I am comfortable with this, as it removes duplication in the coastal environment situation.
96. I note that direction in the CE chapter at CE-P1 directs plan users back to the EIT chapter in the case of commercial port activities, specifically EIT-TRAN-P23. While seemingly circular, it does provide adequate guidance on the priority provision for the port situation, subject to my recommendation to remove redundant content in CE-P1 noted earlier.

97. To provide clarity to the applicable policies for infrastructure outside of the coastal environment, I recommend deleting the reference to 'except as provided for by ECO-P4' within the stem of EIT-INF-P11 to fix the current drafting which makes it a redundant policy. Tracked changes are included in my Appendix 1.
98. Port Otago supported the submission points from Z Energy Limited, BP Oil NZ Limited, and Mobil Oil NZ Limited, that EIT-INF-P14(2) should be deleted. I disagree with the reporting officer recommendation to reject this amendment on the basis that this clause will only apply to substantial upgrades, and that the clause will help address cumulative effects.
99. The approach of the current policy wording is likely to be a disincentive to upgrade infrastructure due to the inappropriate requirement under this clause that upgrades are required to address existing adverse effects from established infrastructure. The trigger for when this policy applies is also unclear as there is no definition included in the Proposed RPS for "substantial upgrade", which links with my point above in relation to a lack of definitions in relation to infrastructure maintenance versus upgrade or new infrastructure, resulting in potential confusion on how the various policies would be applied.
100. If the intent of this policy clause is to address potential cumulative effects, as the reporting officer response suggests, then I contend that this should be dealt with through a more appropriate wording that relates to the opportunity that upgrades or new infrastructure might provide to remedy existing adverse effects, rather than essentially requiring existing infrastructure effects be redressed. This approach would be less of a disincentive to the development and upgrading of infrastructure, i.e., it would be useful for the Proposed RPS recognised the benefits that upgrades, and new infrastructure can provide, rather than requiring this be achieved in every situation. Recommended amendments are included in Appendix 1 that address the definition issue and ensure EIT-INF-P14 provides a positive recognition opportunity rather than a requirement to be achieved in all cases.
101. In terms of the Port Otago submission on EIT-TRAN-M7, amendments are included in Appendix 1 which reflect my earlier comments on the policies which include the 'within limits' qualifier. In this context, the qualifier is very unhelpful as it implies that the matters which the Proposed RPS directs be mapped in the regional plan somehow need to have the effects of the listed activities revisited. This is at odds with the specificity incorporated into the mapping directed here. Accordingly, I have set out a minor amendment to rectify this in Appendix 1.

NATURAL HAZARDS

102. I note that under the notified version of the Proposed RPS, that there was a degree of uncertainty over how HAZ-NH-P2 was to be applied to the coastal environment, with a duplication between policies in this chapter with similar policies in the CE chapter (e.g., CE-P2) that created duplicative and not aligned hazard policy tests applying to Port Otago infrastructure.
103. I support the inclusion of new policy HAZ-NH-P1A requiring identification of natural hazards in the coastal environment in the primary hazards chapter and the reference to this in the coastal

environment chapter at CE-P2(d)¹⁴, as this provides a degree of consolidation in the approach to natural hazards.

104. Through mediation the wording of the policies has been improved within this chapter to provide clarification on which policies apply to the coastal environment and which do not, however, I note that the adoption of a symbology approach in this instance would improve plan useability and ensure clarity when considering relevant provisions, as per the Port Otago submission seeking coastal icons or similar for provisions applying within the coastal environment.
105. It is my understanding that under the currently drafted hazards chapter that the policies relating to coastal hazards specifically are HAZ-NH-P1A and HAZ-NH-P10, as well as CE-P2 and CE-P9 in the coastal chapter. Whilst HAZ-NH-P1 which relates to 'other natural hazards' specifically excludes coastal hazards, both the natural hazard definition and the HAZ-NH-P1A policy cover tsunami risk. Coastal hazard areas are known to be subject to flooding and inundation also. So, there is considerable duplication of mapped areas expected.
106. HAZ-NH-P2, HAZ-NH-P3, HAZ-NH-P4 and HAZ-NH-P5 are intended by the S42A recommendations to be applied in relation to natural hazards and not coastal hazards but overlap and duplication will arise despite this by virtue of the predicted duplicative mapping. HAZ-NH-P10 is the key policy direction applied to management of coastal hazards, but CE-P9, which is less directive, also applies.
107. In my reading of the natural hazard policies, if an area is subject to both coastal hazards and natural hazards, then all policy requirements would apply to that location and any activities within it. I consider this is an unnecessarily complicated, as well as being a costly and inefficient approach to manage a range of hazards likely to be present adjacent to the coast.
108. This duplication is exacerbated by policies directing a high bar for existing activities, particularly HAZ-NH-P4, requiring existing natural hazard risk to be reduced to a tolerable or acceptable level and HAZ-NH-P7 which requires any hard protection structure to have 'no' increase in risk. I have been involved in hazard protection projects that are widely supported by communities. In my experience the 'no increase in offsite hazard risk' test in HAZ-NH-P7 is unrealistic and not consistent with other planning documents. It may indeed frustrate hazard adaptation projects like Port Otago's recent Te Rauone Beach Enhancement Scheme. There will invariably be a very minor level of localised adverse hazard risk somewhere generated in order to achieve substantial hazard reduction benefits for wider communities. Accordingly, I recommend the 'no increase in risk' test is changed to 'a more than minor increase in risk' in HAS-NH-P7.
109. The duplicative policy approach of general natural hazard policies and coastal hazard policies means that wherever overlapping natural hazard and coastal hazard identification occurs, different policy direction could apply to the same geographical areas. I have recommended that the coastal hazard provisions assume precedence in this situation to avoid duplication and differing policy tests. I have suggested drafting to achieve this.
110. The application of HAZ-NH-P3 and HAZ-NH-P4 set tests that I believe are not necessary or reasonable, particularly for existing activities. In practice, it can also be very difficult to move through to tolerable and acceptable even for hazard mitigation projects and inevitably, hazard improvements in one location often need to be balanced against some deterioration in other less

¹⁴ Supplementary Evidence 12 para 13


important locations. Accordingly, I believe this policy needs to be reworded to slightly temper the high policy tests for existing activities.

111. Amendments addressing the concerns I've outlined with respect to the hazards chapter are included in Appendix 1 to my evidence.

CONCLUSION

112. The Proposed RPS has an important role to play in providing a legislatively sound and concise direction for resource management in the Otago region. Some amendments are needed to ensure that the Proposed RPS provides clear direction in my opinion, especially in relation to port activities within the coastal environment.
113. Whilst I acknowledge that this is somewhat reflective of the relatively conflicting direction contained within higher order documents which the Proposed RPS is required to give effect to, this conflict has not necessarily been clarified through the Proposed RPS in a way that is suitable to the Otago context. This is of particular importance to port activities in Otago. Port Otago need to be able to continue operating and undertake necessary maintenance and upgrade works to ensure port infrastructure is safe and resilient and continues to meet international shipping requirements in the future.
114. A key issue throughout the Proposed PRS is its reliance on the use of sometimes complicated wording carve outs within policies to try and provide direction on where and how certain policies are to be considered in light of other similar provisions and/or higher order direction. I maintain that a much simpler and user-friendly approach can be achieved through the use of symbology to identify which policies apply within the coastal environment specifically. This recommendation is illustrated in Appendix 1 also.
115. Notwithstanding the above, the outcome of the Port Otago appeal on the Partially Operative RPS will be critically important to confirm an approach that the Proposed RPS will need to take in relation to the inevitable conflict in the Otago Harbour situation between the enabling policies that give effect to Policy 9 related to ports in the NZCPS and the directive avoid policies in the NZCPS.

Appendix 1 – Recommended amendments to the Proposed RPS

Proposed RPS Section	Objective or Policy	Sought Amendment	Track Changes
Entire Proposed RPS	N/A	As identified throughout this evidence, there is duplication between the CE chapter provisions and others throughout the RPS and a lack of clarity. Clarity can be achieved through a simple coding system, e.g., through use of “coastal icons” and explanatory text, like the icons used within the Proposed Natural Resources Regional Plan for Wellington.	Include coastal icons for all provisions applicable to the coastal environment. See example icon below: 
Definitions	N/A	Provide definitions for the following terms: <ul style="list-style-type: none"> - Operation and maintenance of infrastructure - Upgrades and development of existing infrastructure 	<p><u>Operation and maintenance – in relation to <i>infrastructure</i>, use and development where the effects of the activity are the same or similar in character, intensity and scale as the existing structure and activity.</u></p> <p><u>Upgrades – in relation to <i>infrastructure</i>, use and development to bring existing structures or facilities up to current standards or to improve the functional characteristics of structures or facilities, provided the upgrading itself does not give rise to any significant adverse effects on the environment.</u></p> <p><u>New infrastructure – in relation to <i>infrastructure</i>, use and development that does not meet the definition for operation and maintenance or upgrades.</u></p>
Definition - Highly valued natural features and landscapes	Definition	Delete definition for highly valued natural features and landscapes	highly valued natural features, and landscapes (including seascapes) are areas which contain attributes and values of significance under Sections 7(c) and 7(f) of the RMA, which have been identified

			in accordance with APP9, and for the purposes of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 they are visual amenity landscapes.
Highly valued natural features and landscapes – other references through document	Various	Delete reference to highly valued natural features and landscapes throughout the policy statement	Amendments not shown for brevity.
Integrated Management	IM-O1 – Long Term Vision	Reflect the direction in Section 5 of the RMA in the Integrated Management Policies	The management, <u>use, and development</u> of natural and physical resources by and for the people of Otago, in partnership with Kāi Tahu, achieves a healthy, and resilient natural environment, including the ecosystem services it provides, and supports the well-being of present and future generations, (mō tātou, ā, mō kā uri ā muri ake nei)
Integrated Management	IM-P1 – Integrated Approach	Amend IM-P1 to provide recognition of the physical environment and better align with section 5 direction.	Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise: <ul style="list-style-type: none"> (1) the life-supporting capacity and mauri of the natural environment and the health <u>and safety</u> needs of people, and then (2) the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
Coastal Environment	CE-O3 - Natural character, features and landscapes	Amend wording to align with P13 and P15 of the NZCPS in terms of direction relating to only outstanding natural features and landscapes.	CE-O3 – Natural character, features and landscapes Areas of <u>outstanding</u> natural character are preserved, <u>and outstanding</u> natural features, and landscapes

			(including seascapes) within the coastal environment are protected from inappropriate activities, <u>significant adverse effects on other areas of natural character, natural features and landscapes are avoided</u> , and restoration is encouraged <u>for areas</u> where the values of these areas have been compromised.
Coastal Environment	CE-P1 – Links with other chapters	Retain S42A wording in clause (2) Delete clause (4) as indicated	(4) where relevant, the provisions within the following chapters of this RPS also apply within the coastal environment, unless expressly excluded: (a) IM – Integrated management, (aa) MW – Mana-whenua, (b) AIR – Air, (c) LF – Land and freshwater, (d) ECO – Ecosystems and indigenous biodiversity, (e) EIT – Energy, infrastructure and transport, (f) HAZ – Hazards and risks, (g) HCV – Heritage and historical values, (h) NFL – Natural features and landscapes, and (i) UFD – Urban form and development.
Coastal Environment	CE-P2 – Identification Identify the following in the coastal environment:	Remove reference to Regionally Significant Surf Breaks under clause (5)	CE-P2 – Identification Identify the following in the coastal environment: ... (5) the nationally significant surf breaks at Karitane, Papatowai, The Spit, and Whareakeake and any regionally significant surf breaks.
Coastal Environment	CE-P5 – Coastal indigenous biodiversity	Move new clauses (g) and (h) from subclause (1) to (2) or otherwise amend so they are not subject to the strict avoid policy directive.	CE-P5 – Coastal indigenous biodiversity Protect indigenous biodiversity in the coastal environment by: (1) identifying and avoiding adverse effects on the following ecosystems, vegetation types and areas: ...

		Alternatively draft a new policy to capture these and make subject to the effects management hierarchy.	<p>(g) significant natural areas identified in accordance with APP2, and (h) indigenous species and ecosystems identified as taoka in accordance with ECO-M3, and</p> <p>(2) identifying and avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects on the following ecosystems, vegetation types and areas:</p> <p>...</p> <p><u>(h) significant natural areas identified in accordance with APP2, and</u> <u>(i) indigenous species and ecosystems identified as taoka in accordance with ECO-M3.</u></p>
Coastal Environment	CE-P7 – Surf breaks	Remove reference to Regionally Significant Surf Breaks under clause (2)	<p>CE-P7 – Surf breaks</p> <p>Manage Otago’s nationally and regionally significant surf breaks so that:</p> <p>(1) nationally significant surf breaks are protected by avoiding adverse effects on the surf breaks, including on access to and use and enjoyment of them, and (2) the values of and access to regionally significant surf breaks are maintained.</p>
Coastal Environment	CE-M2 - Identifying other areas	Remove the list of locations identified within this method.	<p>Table 2</p> <p>...</p> <p>[delete Table 2 in full]</p>
Coastal Environment	CE-M3 – Regional Plans	Remove requirement under clause (2) to map Regionally Significant Surf Breaks OR provide defined criteria within the Proposed RPS to guide the identification of regionally significant surf breaks.	<p>CE-M3 – Regional plans</p> <p>Otago Regional Council must prepare or amend and maintain its regional plans no later than 31 December 2028 to:</p> <p>...</p>

			<p>(2) map the areas and characteristics of, and access to, surf breaks of national significance and regionally significant surf breaks,</p> <p>...</p> <p>(5) (b) manage Otago's surf breaks of national significance and regionally significant surf breaks in accordance with CE-P7,</p>
Energy, Infrastructure and Transport	EIT-INF-O4 – Provision of infrastructure	Remove the reference to within “limits” from the objective.	<p>EIT-INF-O4 – Provision of infrastructure</p> <p>Effective, efficient and resilient infrastructure, nationally significant infrastructure and regionally significant infrastructure enables the people and communities of Otago to provide for their social and cultural well-being, their health and safety, and supports sustainable economic development and growth in the region, within limits.</p>
Energy, Infrastructure and Transport	EIT-INF-P11 – Operation and maintenance	Delete content that makes this policy redundant.	<p>EIT-INF-P11 – Operation and maintenance</p> <p>Except as provided for by ECO – P4, allow for the operation and maintenance of existing nationally significant infrastructure and regionally significant infrastructure while:</p> <p>(1) avoiding, as the first priority, significant adverse effects on the environment, and</p> <p>(2) if avoidance is not practicable, and for other adverse effects, minimising adverse effects.</p>
Energy, Infrastructure and Transport	EIT-INF-P14 – Decision making considerations	Amend to align with plan terminology elsewhere and recommended defined terms. Amend to ensure this is an opportunity rather than an obligation for infrastructure providers.	<p>EIT-INF-P14 – Decision making considerations</p> <p>When considering proposals to develop or <u>for new infrastructure or upgrades</u> to infrastructure:</p> <p>(1) require consideration of alternative sites, methods and designs if adverse effects are potentially significant or irreversible, and</p> <p>(2) utilise the opportunity of substantial upgrades of infrastructure to recognise any <u>reduced</u> adverse</p>

			effects that result from the <u>associated with</u> existing infrastructure, including on sensitive activities.
Energy, Infrastructure and Transport	EIT-TRAN-O10 – Commercial port activities	Remove the term “limit” from the objective.	EIT-TRAN-O10 – Commercial port activities <i>Commercial port activities</i> operate safely and efficiently, and within limits.
Energy, Infrastructure and Transport	EIT-TRAN-P23 – Commercial port activities	Amend Policy to reflect outcome of Port Otago’s appeal on the 2019 RPS in relation to the enablement of port activities as required by Policy 9 of the NZCPS, and the directive avoid policies within the Proposed RPS. Remove the term “limit” from this policy.	Option 1 – Port Otago loses Supreme Court Appeal and existing case law is retained unamended: EIT-TRAN-P23 – Commercial port activities Recognise the national and regional significance of <i>commercial port activities</i> by: <ol style="list-style-type: none"> (1) within limits as set out in Policies CE-P3 to CE-P12, P<u>providing</u> for the efficient and safe operation of the ports and efficient connections with other transport modes, (2) within the limits set out in Policies CE-P3 to CE-P12, P<u>providing</u> for the development of the ports’ capacity for national and international shipping in and adjacent to existing port activities, and (3) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes. (4) <u>Only permitting activities that are contrary to other policies in this policy statement where the activities:</u> <u>(a) are essential for the efficient and safe operation of these ports; or</u>

			<p><u>(b) are essential for effective connections with other transport modes; and</u></p> <p><u>(c) have a minor or temporary adverse effects on the protected values.</u></p> <p>Option 2 – Port Otago appeal is successful</p> <p>EIT-TRAN-P23 – Commercial port activities Recognise the national and regional significance of <i>commercial port activities</i> by:</p> <ol style="list-style-type: none"> (1) within limits as set out in Policies CE-P3 to CE-P12, P<u>providing</u> for the efficient and safe operation of the ports and efficient connections with other transport modes, (2) within the limits set out in Policies CE-P3 to CE-P12, P<u>providing</u> for the development of the ports' capacity for national and international shipping in and adjacent to existing port activities, and (3) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes. (4) <u>If the operation or development of Port Otago may cause adverse effects on values that are protected by this policy statement then such activities may be evaluated following a resource consent process that considers those effects and whether they are caused by safety considerations, which are paramount, or by transport efficiency considerations and, if resource consent is to</u>
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			<u>be granted, ensuring that such adverse effects are avoided as much as possible and are otherwise remedied or mitigated (through adaptive management or otherwise).</u>
Energy, Infrastructure and Transport	EIT-TRAN-M7 – Regional plans	Remove the term “within limits” from within this method.	EIT-TRAN-M7 – Regional plans within limits , facilitate the safe and efficient operation and development of <i>commercial port</i> activities including previously approved <i>resource consents</i> for the following activities in the coastal development area mapped in MAP2
Hazards	HAZ-NH-P2 Risk assessments	Amend policy to not apply to areas also subject to coastal hazards where managed by HAZ-NH-P1A and HAZ-NH-P10.	HAZ-NH-P2 – Risk assessments Within areas identified under HAZ-NH-P1 as being subject to natural hazards, assess natural hazard risk by determining a range of natural hazard event scenarios and their potential consequences in accordance with the criteria set out within APP6. <u>This policy does not apply to an area also subject to coastal hazard risk, which is to be managed by HAZ-NH-P1A and HAZ-NH-P10.</u>
Hazard	HAZ-NH-P3 – New activities	Amend policy to not apply to areas also subject to coastal hazards where managed by HAZ-NH-P1A and HAZ-NH-P10.	HAZ-NH-P3 – New activities Once the level of natural hazard risk associated with an activity has been determined in accordance with HAZ-NH-P2, manage new activities to achieve the following outcomes: (1) when the natural hazard risk is significant, the activity is avoided, (2) when the natural hazard risk is tolerable, manage the level of risk so that it does not exceed tolerable, and

			<p>(3) when the natural hazard risk is acceptable, maintain the level of risk (in relation to natural hazards).</p> <p><u>This policy does not apply to any area also subject to coastal hazard risk, which is to be managed by HAZ-NH-P1A and HAZ-NH-P10.</u></p>
Hazards	HAZ-NH-P4 – Existing activities	<p>Amend policy to not apply to areas also subject to coastal hazards where managed by HAZ-NH-P1A and HAZ-NH-P10.</p> <p>Amend the requirement to achieve a tolerable or acceptable level of risk to enable consideration of whether this is practicable in the context.</p>	<p>HAZ-NH-P4 –Existing activities</p> <p>In areas identified under HAZ-NH-P1 as subject to natural hazards, reduce existing natural hazard risk to a tolerable or acceptable level <u>as far as practicable</u> by:</p> <p>(1) encouraging activities that reduce risk (in relation to natural hazards), or reduce community vulnerability,</p> <p>(3) managing existing activities within areas of significant risk (in relation to natural hazards) to people, communities and property,</p> <p>(4) encouraging design that facilitates:</p> <p>(b) relocation to areas of acceptable risk (in relation to natural hazards), or</p> <p>(c) reduction of risk (in relation to natural hazards),</p> <p>(5) relocating lifeline utilities, and facilities for essential and emergency services, away from areas of significant risk (in relation to natural hazards), where appropriate and practicable, and</p> <p>(6) enabling development, upgrade, maintenance and operation of lifeline utilities and facilities for essential and emergency services.</p> <p><u>This policy does not apply to any area also subject to coastal hazards which is to be managed by HAZ-NH-P1A and HAZ-NH-P10.</u></p>

Hazard	HAZ-NH-P7 – Mitigating natural hazards	Amend policy to reflect agreed outcome through mediation.	<p>HAZ-NH-P7 – Mitigating natural hazards</p> <p>Prioritise risk (<i>in relation to natural hazards</i>) management approaches that reduce the need for <i>hard protection structures</i> or similar engineering interventions, and provide for <i>hard protection structures</i> only when:</p> <p>(1A) the following apply:</p> <ul style="list-style-type: none"> (a) there are no reasonable alternatives that result in reducing the risk (in relation to natural hazards) exposure, (b) hard protection structures would not result in a <u>more than minor</u> increase in risk (in relation to natural hazards) to people, communities and property, including displacement of risk (in relation to natural hazards) off-site, (c) the adverse effects of the hard protection structures can be adequately managed, and (d) the mitigation is viable in the reasonably foreseeable long term or provides time for future adaptation methods to be implemented, or <p>(2) the hard protection structure protects a lifeline utility, or a facility for essential or emergency services.</p>
NFL – Natural features and landscapes	NFL-O1 – Outstanding and highly valued natural features and landscapes	Add exclusion for coastal environment to this clause, as per others in this chapter where S42A officer has recommended an addition to this effect.	<p>NFL-O1 – Outstanding and highly valued natural features and landscapes</p> <p>The areas and values of Otago’s outstanding and highly valued natural features and landscapes <u>outside the coastal environment</u> are identified, and the use and development of Otago’s natural and physical resources results in: (1) the protection of outstanding natural features and landscapes, and</p>

			<p>(2) the maintenance or enhancement of highly valued natural features and landscapes</p> <p>(3) the restoration of outstanding and highly valued natural features and landscapes.</p>
NFL – Natural features and landscapes	NFL-P6 – Coastal features and landscapes	Delete policy as it is a cross reference only.	<p>NFL-P6 – Coastal features and landscapes Natural features and landscapes located within the coastal environment are managed by CE-P6 and implementation of CE-P6 also contributes to achieving NFL-O1.</p>
APP9	APP9 – Identification criteria for outstanding and highly valued natural features and landscapes (including seascapes)	Delete reference to ‘highly valued’	<p>APP9 – Identification criteria for outstanding and highly valued natural features, and landscapes and (including seascapes)</p> <p>The areas and the values of outstanding and highly valued natural features, and landscapes (including seascapes) are identified using the following attributes:</p> <p>...</p>

Appendix 2 – current potential mapping of sites of significance in Otago Harbour relevant to Port Otago's operational areas

