

**Before the Hearing Commissioners  
In Dunedin**

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Under the Resource Management Act 1991 (the Act)

In the matter of Submissions on the Proposed Otago Regional Policy Statement  
2021 (Non-freshwater parts)

Between **Otago Regional Council**  
Local Authority

And **Waka Kotahi NZ Transport Agency**  
Submitter 305

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**Evidence in chief of Helen Elizabeth Dempster for Waka Kotahi NZ  
Transport Agency on Chapter 11 – Energy, Infrastructure and  
Transport (Planning)**

Dated 23 November 2022

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# STATEMENT OF EVIDENCE OF HELEN ELIZABETH DEMPSTER

## 1 Introduction

- 1.1 My full name is **Helen Elizabeth Dempster**.
- 1.2 I work for Waka Kotahi NZ Transport Agency (Waka Kotahi) as a Senior Planner, based in the Dunedin office. My responsibilities include the provision of planning advice on Waka Kotahi projects and RMA planning documents with a focus on the Otago Region.
- 1.3 I assisted with preparation of the Waka Kotahi submission, and further submission, on the Proposed Otago Regional Policy Statement 2021 (pORPS). I attended the pre-hearing meetings for the Transport chapter on 20 June 2022 and the Infrastructure chapter on 4 July 2022.
- 1.4 My evidence relates to the Waka Kotahi submission points on the Energy, Infrastructure and Transport (EIT) chapter of the pORPS (Non-freshwater parts).

## 2 Qualifications and Experience

- 2.1 I have a Bachelor of Science (Honours; majoring in Physical Geography) from the University of Otago.
- 2.2 I have been practising as a Senior Planner for just over 2 years in my current role with Waka Kotahi and have over 17 years of planning experience, working in both resource consent processing, and compliance and enforcement roles, in local government within New Zealand and the United Kingdom.

## 3 Code of Conduct

- 3.1 While I am employed by Waka Kotahi, I am giving certain parts of my evidence in the capacity of an independent expert and Waka Kotahi has authorised me to do so. I understand that this requires me to give these parts of my evidence from an independent view and not as an advocate for Waka Kotahi.
- 3.2 While these proceedings are not before the Environment Court, I confirm that I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court's Consolidated Practice Note 2014. I have complied with the Practice Note when preparing my written statement of evidence, and I will do so when I give oral evidence before the Hearings Panel.
- 3.3 Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## 4 Scope of evidence

- 4.1 My evidence relates to the Waka Kotahi submission points on provisions in Chapter 11 (Energy, Infrastructure and Transport) of the pORPS, as well as a submission point on LF-FW-P12 which cross-references, and has implications for the implementation of, EIT-INF-

P13. My evidence also addresses a new provision suggested in the Section 42A report for Chapter 11, as well as new text suggested in the Supplementary Evidence for Chapter 11.

4.2 Waka Kotahi had 36 submission points, and 9 further submission points, on provisions in Chapter 11. Of these 45 submission points, I either accept or support the Section 42A Report recommendations on 36 of the points and will not be commenting on them further in evidence; these 36 submission points are listed in Tables 1 and 2 contained in **Appendix 1**.

4.3 My evidence addresses the following matters:

- a Higher order documents
- b Relevance of Chapter 11 to Waka Kotahi;
- c Recognition and provision for 'safe' transport infrastructure;
- d Use of 'limits' in EIT-INF-O4;
- e Use of the term 'avoid' in EIT-INF-P11, EIT-INF-P13 and EIT-INF-PR2;
- f Relationship between EIT-INF-P13 and LF-FW-P12;
- g Interpretation of new provision suggested in Section 42A report, EIT-INF-P13A;
- h Requiring a reduction in adverse effects in EIT-INF-P14;
- i Strong direction to avoid reverse sensitivity in EIT-INF-P15;
- j Terminology and prioritisation in EIT-INF-M4 and EIT-INF-M5;
- k New text suggested in Supplementary Evidence for Chapter 11.

## **5 Executive summary**

5.1 I support many of the provisions in the Energy, Infrastructure and Transport (EIT) chapter of the pORPS. However, I consider the following amendments are required in order to ensure a comprehensive, consistent and integrated approach to infrastructure and transport systems:

- a Inclusion of an advice note that explains the relationship between the TRAN and INF provisions;
- b Better recognition of the importance of safety in EIT-TRAN-P18 and EIT-INF-O4;
- c Removal of the use of 'limits' referenced in EIT-INF-O4 until there is national-level direction on the use of 'limits';
- d Insertion of the word "reasonably" before "practicable" in EIT-INF-P11;
- e Amendments to EIT-INF-P13 and EIT-INF-PR2 regards the use of "avoid" terminology;
- f Amendment to EIT-INF-P13 to better manage the effects of infrastructure in outstanding water bodies;
- g Clarification of the interpretation of EIT-INF-P13A; and

h Amendments to the terminology and prioritisation in EIT-INF-M4 and EIT-INF-M5;

## 6 Higher order documents

In preparing my evidence, I have considered higher order policy direction, including the National Policy Statement for Freshwater management ('**NPS-FM**'), the New Zealand Coastal Policy Statement ('**NZCPS**'), and the National Policy Statement on Urban Development ('**NPS-UD**'). I recognise that the Council has to give effect to the objectives and policies of these national policy documents in preparing the provisions of the pORPS. It is my view that it is possible to give effect to these higher order policy documents while also recognising and providing for infrastructure. I consider that the amendments I suggest in my evidence to specified provisions balance the need to give effect to those higher order policy documents while providing for the operation, maintenance, upgrade and development of the State highway assets of Waka Kotahi, and also recognising the cost and efficiency implications for infrastructure providers like Waka Kotahi.

## 7 Relevance of Chapter 11 to Waka Kotahi

- 7.1 The EIT chapter of the pORPS is critical to the performance of the statutory responsibilities of Waka Kotahi in Otago. The provisions in this chapter will establish the framework for district and regional plan regulation of transport activities, and support land use change which can reduce, or increase, demands on transport infrastructure.
- 7.2 As described in the Evidence in Chief of **Mr Peter Robinson**<sup>1</sup>, Waka Kotahi has statutory obligations under the Land Transport Management Act and Government Rounding Powers Act to manage and operate the state highway network. **Mr Robinson's** evidence describes the State highways that exist within the Otago region and the importance of the transport infrastructure in terms of the movement of people, goods and services.
- 7.3 As described by **Mr Robinson**, Waka Kotahi relies on provisions which allow it to effectively and efficiently manage its infrastructure in the Otago region, as well as upgrade and develop future transport assets where required. **Mr Robinson** also explains that Waka Kotahi relies on a range of resource consents for operation and maintenance activities, some of which are due to expire within 10 years and will consequently necessitate applications for new (replacement) consents that will be considered under the provisions of the pORPS.
- 7.4 The Infrastructure provisions in the pORPS include policies regarding the operation, maintenance, upgrading, and development of regionally significant infrastructure and nationally significant infrastructure, which are key activities undertaken by Waka Kotahi. These Infrastructure policies are crucial because the Transport provisions do not actually contain any policy support for the operation, maintenance, upgrading and development of the transport system. Specifically, while the Transport provisions provide support for transport infrastructure at the objective and method levels, as presently drafted, Waka Kotahi must rely on the Infrastructure provisions to provide the policy support for these activities. For example, while policy EIT-TRAN-P21 is titled 'Operation of the transport system', none of the clauses within that policy actually explicitly provide for the operation, maintenance, upgrade or development of the transport system. Instead, the clauses of this provision focus on the effects of activities on the functioning of the transport system, the

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<sup>1</sup> Evidence In Chief of Peter Bernard Robinson, dated 23 November 2022  
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impacts of incompatible activities on the transport system, the potential for development to foreclose improving the transport system, transport hubs, and means to reduce use of, and reliance on, private motor vehicles. In my view, the seeming lack of policy support for the operation, maintenance, upgrade or development of the transport system within the Transport provisions, when it is provided in TRAN objectives and methods, confuses the relationship between the INF and TRAN provisions.

- 7.5 The Council's Supplementary Evidence for this chapter proposes to restructure the order of the chapter from Energy, Infrastructure and Transport, to instead be Infrastructure, then Energy, then Transport. The explanation for this change notes that transport infrastructure is a subset of infrastructure, and that having the general infrastructure provisions first, followed by the more-specific provisions pertaining to transport later in the chapter, will improve the useability of the chapter<sup>2</sup>.
- 7.6 Despite the restructuring proposed in the Council's Supplementary Evidence, I consider the relationship between the Infrastructure and Transport provisions is still not particularly clear, and most people would expect all aspects of transport infrastructure to be covered by the Transport provisions, rather than relying on the more general Infrastructure provisions. I suggest that pORPS users would be assisted if the relationship between these provisions was explained explicitly in the document itself through the insertion of an advice note to plan users beneath the chapter title that explains the relationship between the INF and TRAN provisions.

## 8 Recognition and provision for 'safe' transport infrastructure

- 8.1 Waka Kotahi made a general submission point in both its submission and further submission<sup>3</sup> that it has a statutory objective to undertake its functions in a way that contributes to an effective, efficient and safe land transport system in the public interest.

### Policy support for safety

- 8.2 Objective EIT-TRAN-O7 recognises the importance of a safe transport network, as it seeks a transport network that is "...effective, efficient and safe". However, the safety aspect had not been carried down into any of the TRAN policies, as originally notified.
- 8.3 One of the recorded outcomes of the Transport pre-hearing meeting was that Otago Regional Council (the Council) agreed to amend EIT-TRAN-P18(2) to include the words "safe and" before "efficient", so that it would now read (suggested amendment coloured red and bold) as follows:

EIT-TRAN-P18 – Integration of the transport system

The transport system contributes to the social, cultural and economic well-being of the people and communities of Otago through:

- (1) integration with *land* use activities and across transport modes, and

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<sup>2</sup> Supplementary Evidence – Chapter 11, paras 14 to 16

<sup>3</sup> This part of original submission has not been assigned a 'submission point number' in the Summary of decisions requested report part A.

(2) provision of transport *infrastructure* that enables **safe and efficient** service delivery in response to demand as demand requires.

8.4 The Council’s Supplementary Evidence for the EIT chapter has recommended the inclusion of “safe and”, as discussed at the pre-Hearing meeting. I consider the additional wording proposed by the Council now adequately recognises and provides for a safe transport system at the policy level and provides a clearer linkage to objective EIT-TRAN-07.

### Support for safety at the objective level

- 8.5 Waka Kotahi, through a further submission on a submission by Christchurch International Airport Limited<sup>4</sup>, sought the amendment of objective EIT-INF-O4 to include the word “safe”, as this would better reflect the statutory objective of Waka Kotahi (as referenced in the general submission point above). The S42A report recommended this submission point be rejected on the basis that the existing reference to health and safety in the notified objective already addresses this point<sup>5</sup>, and the Council’s Supplementary Evidence for Chapter 11 has not suggested changes in response to this submission point.
- 8.6 In my opinion one of the stated outcomes of objective EIT-INF-O4 is for the provision of infrastructure to provide for the safety of Otago people and communities and a fundamental component to achieving this would be that infrastructure has to be designed and constructed to be safe. The provision, as notified, prefixes the reference to infrastructure with the words “Effective, efficient and resilient”, which, in my view, are intended to describe how the provision of infrastructure will enable the outcomes described in the latter half of the provision. The exclusion of the word ‘safe’ from the prefixes makes the need for the provision of *safe* infrastructure implicit at best, and in my view the intent of the provision would be improved by making the current inference to safe infrastructure explicit. To this end, I suggest the word “safe” be included after efficient in objective EIT-INF-O4 as follows (suggested amendment coloured red and bold):

EIT-INF-O4 – Provision of *infrastructure*

Effective, efficient, **safe** 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 ~~within~~ the region, within environmental limits.

## 9 Use of limits in EIT-INF-O4

9.1 Waka Kotahi, through further submissions<sup>6</sup>, supported the concerns of other infrastructure providers about the use of ‘environmental limits’ in EIT-INF-O4, which the Section 42A

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<sup>4</sup> CIAL 00307.015

<sup>5</sup> Section 42A report – Chapter 11, para 581

<sup>6</sup> Transpower New Zealand Ltd 00314.033; Aurora Energy Limited 00315.043; Contact Energy Limited 00318.031; Te Waihangā New Zealand Infrastructure Commission 00321.051; Queenstown Airport Corporation Ltd 00313.015; Port of Otago 00301.032; Chorus New Zealand Limited, Spark New Zealand Trading Limited, and Vodafone New Zealand 00310.004; Network Waitaki Limited 00320.023; PowerNet Limited 00511.023

Report did not recommend removing<sup>7</sup>. Rather, the Section 42A report recommended a definition of “environmental limits” to provide more clarity about what the term means<sup>8</sup>. The Council’s Supplementary Evidence for Chapter 1 rescinds the Section 42A report recommendation to incorporate a definition of “environmental limit” and now recommends<sup>9</sup> that, for objective EIT-INF-O4, the term “limit” will instead be used and that it will have its natural and ordinary meaning: “a bound which may not be passed, or beyond which something ceases to be possible or allowable”.

- 9.2 Other than within the **NPS-FM**, higher order planning instruments, including the RMA, do not use or impose ‘limits’. There is no criteria for how ‘limits’ are to be set through national policy. While I understand that the Natural and Built Environments Bill provides for ‘limits’ to be established, the Bill is not yet law and subject to change. The current pORPS has been developed under the RMA and will be implemented within the RMA context. The introduction of ‘limits’ in the pORPS introduces a framework that, with the **NPS-FM** excepted, does not yet exist and this creates some uncertainty and potential risk.
- 9.3 Objective EIT-INF-O4 intends to provide for infrastructure, within limits. It remains unclear how those limits will be set, what those limits will be, how those limits will be used and therefore how their use will affect the ability of Waka Kotahi to meet its statutory functions of providing a safe, efficient and effective transport network. My concern is that the limits could be impractical for Waka Kotahi in managing its existing infrastructure assets and also impede future upgrades and new infrastructure activities by Waka Kotahi, the latter often having a safety-improvement motivation. **Mr Robinson** sets out the types of activities undertaken by Waka Kotahi to maintain, operate, upgrade and develop new State Highway assets, as well as examples of the implications that could arise if these activities were subsequently subject to limits that were not able to be complied with.
- 9.4 Without a clear understanding of how the limits will be used, it is difficult to understand the outcomes that will arise from using such limits, and whether the use of limits is appropriate within the context of EIT-INF-O4. I recognise the merits of managing resource use and activities subject to limits, however, I think that it would be prudent for the Council to await national-level direction on the setting of such limits given their potentially far-reaching implications for infrastructure providers like Waka Kotahi and their need to appropriately balance multiple interests. I suggest that the use of ‘limits’ is removed from EIT-INF-O4 until there is national-level direction on the use of ‘limits’.

## 10 Use of the term ‘avoid’

- 10.1 The Waka Kotahi submission sought to replace ‘avoid’ with ‘minimise’ or similar in provisions EIT-INF-P11<sup>10</sup>, EIT-INF-P13<sup>11</sup> and EIT-INF-PR2<sup>12</sup>. The Section 42A Report recommended rejecting these points,<sup>13</sup> indicating that clause (2) of EIT-INF-P11 provides an alternative to avoid, and in regards to the two other provisions, that ‘avoid’ should be retained to meet the high bar set for all activities through aspects of section 6 of the RMA and the National Environmental Standard for Freshwater (such as the protection of significant indigenous vegetation and significant habitats of indigenous fauna).

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<sup>7</sup> Section 42A report – Chapter 11, paras 574 to 576

<sup>8</sup> Section 42A report – Chapter 11, paras 577 and 578.

<sup>9</sup> Supplementary Evidence, Chapter 1, paras 12- 25

<sup>10</sup> Waka Kotahi 305.040

<sup>11</sup> Waka Kotahi 305.042

<sup>12</sup> Waka Kotahi 305.059

<sup>13</sup> Section 42A report – Chapter 11, paras 671, 727, 893.

- 10.2 The directive use of 'avoid' as an absolute term may cause difficulties for Waka Kotahi, especially when applied to the operation and maintenance of existing infrastructure, as is the case in policy EIT-INF-P11. **Mr Robinson** sets out the practical difficulties associated with 'avoidance' in certain circumstances and gives examples of such practical difficulties. **Mr Robinson** also explains why less onerous wording such as 'minimise' or 'where practicable' is much more realistic when Waka Kotahi is undertaking maintenance and operation activities in relation to nationally and/or regionally significant infrastructure which is already in situ.
- 10.3 With respect to EIT-INF-P11, I accept the S42A report author's position to not replace the word 'avoid' in clause (1). However, the use of 'avoidance' in clause (2) is more problematic. In my opinion, it could be argued that avoidance is always practicable – simply by not undertaking, for example, a maintenance activity on the existing highway that would result in significant adverse effects on the environment. However, not undertaking maintenance on an existing highway could have safety or efficiency implications. Similarly, significant adverse effects on the environment arising from the operation of a state highway could also be practicably avoided – by disallowing road users from using the highway, essentially closing the road. While I do not consider that these extreme responses are the intention of this policy, the present wording does not preclude it. As such, I consider that this policy would be improved if 'reasonably' is inserted before 'practicable' in clause (2), as it would signal to infrastructure providers, like Waka Kotahi, that they must consider, of all practicable options, those options that are reasonable in the circumstances (suggested amendment coloured red and bold):

EIT-INF-P11 – Operation and maintenance

Except as provided for by ECO – P4, allow for the operation and maintenance of existing nationally significant infrastructure and regionally significant infrastructure while:

(1) avoiding, as the first priority, significant adverse effects on the environment, and

(2) if avoidance is not **reasonably** practicable, and for other adverse effects, minimising adverse effects.

- 10.4 Policy EIT-INF-P13, clause (1), as notified, requires avoiding, as a first priority, locating infrastructure in the areas described in (a) to (h), irrespective of the scale of the resultant environmental effects. I suggest that clause (1) should be rephrased to make management of effects the focus, rather than out-right avoidance of locating infrastructure in those areas. The focus on managing the effects of an activity, I consider, would better align with the approach of the RMA.
- 10.5 In addition, given the practical difficulties of absolute avoidance in some circumstances, I suggest that less onerous language should be used in clause (1), such as 'seek to avoid' or something similar. For example (suggested text in clause (1) coloured red and bold):



EIT-INF-P13 – Locating and managing effects of infrastructure, nationally significant infrastructure and regionally significant infrastructure<sup>14</sup> outside the coastal environment<sup>15</sup>

When providing for new infrastructure, nationally significant infrastructure and regionally significant infrastructure<sup>16</sup> outside the coastal environment

(1) **seek to avoid adverse effects on the values which contribute to the importance of the following areas:** ~~avoid, as the first priority, locating infrastructure in all of the following:~~

(a) significant natural areas,

...

10.6 In regard to clause (1)(h) of policy EIT-INF-P13, I note that the provision would require avoiding locating infrastructure in areas of high recreational and high amenity value. The Section 42A report states that the inclusion of these areas and values originates from Policy 8 of the National Policy Statement on Electricity Transmission and there is no reason why this should not apply to other infrastructure types<sup>17</sup>. The Council's Supplementary Evidence does not recommend any changes to EIT-INF-P13(1)(h). I suggest that this clause be deleted because there is no higher order direction regarding this in relation to transport infrastructure. For instance, section 7 of the RMA requires regard to be had to (c) the maintenance and enhancement of amenity values, but does not preclude activities occurring in locations of high recreational value and high amenity value. In some cases transport infrastructure is required in locations of high recreational value and high amenity value in order to provide access to those places.

10.7 In regard to Principal Reason EIT-INF-PR2, the second paragraph refers to avoiding locating infrastructure in areas that are important to Otago, particularly where alternatives are available. In my opinion, it could be argued that it would almost always be possible to locate infrastructure outside of important areas, thereby avoiding those areas. However, transport infrastructure may have an operational need or functional need to locate in those areas, such as to provide access to those areas. Also, locating infrastructure in alternative locations may be prohibitively expensive and/or result in undesirable efficiency implications.

10.8 I suggest the following changes be made to EIT-INF-PR2 to make it less focussed on absolute avoidance of locating infrastructure in important areas and more enabling of infrastructure to be located in important areas in appropriate circumstances (suggested amendment coloured red and bold):

“Efforts are required to reduce impacts from *infrastructure*, by **seeking to avoid**ing its location in areas that are important to Otago, particularly where **practicable** alternatives are available”

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<sup>14</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00313.020 Queenstown Airport

<sup>15</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.107 DOC, 00301.042 Port Otago, 00226.241 Kāi Tahu ki Otago, 00223.108 Ngāi Tahu ki Murihiku, 00301.040 Port Otago

<sup>16</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00313.020 Queenstown Airport

<sup>17</sup> S42A Report, Chapter 11, para 720d

## 11 Relationship between EIT-INF-P13 and LF-FW-P12

- 11.1 Policy EIT-INF-P13 clause (2)(a)(iii) provides that the adverse effects of new infrastructure, nationally significant infrastructure and regionally significant infrastructure in outstanding water bodies are managed in accordance with LF-FW-P12.
- 11.2 As explained in the Evidence In Chief of **Aileen Crow**<sup>18</sup>, the Section 42A report discusses the interpretation of “protect those values” and, in light of that interpretation, the amendments to policy LF-FW-P12 suggested by the Supplementary Evidence for Chapter 9 would require all adverse effects of infrastructure on outstanding water bodies to be avoided. I agree with the conclusions drawn by **Aileen Crow** regarding the interpretation of LF-FW-P12, as well as the amendments she suggests be made to LF-FW-P12, which seek that the effects of infrastructure on outstanding water bodies are managed in accordance with EIT-INF-P13 and EIT-INF-P13A.
- 11.3 Notwithstanding the concerns I have raised in my evidence regarding EIT-INF-P13 (paragraphs 10.4 to 10.6) and EIT-INF-P13A (paragraphs 12.1 to 12.3), I suggest that the following amendment be made to EIT-INF-P13 clause (2)(a)(iii) to manage the effects of infrastructure on outstanding water bodies (suggested amendment coloured red and bold):

(2) if it is not possible demonstrably practicable to avoid locating in the areas listed in (1) above because of the functional needs or operational needs of the infrastructure, nationally significant infrastructure and regionally significant infrastructure manage adverse effects as follows:

(a) for nationally significant infrastructure or regionally significant infrastructure:

(i) in significant natural areas, in accordance with ECO-P4,

(ii) in natural wetlands, in accordance with the relevant provisions in the NESF,

(iii) in outstanding water bodies, **in accordance with LF-FW-P12, avoid, remedy or mitigate the adverse effects on the values that contribute to the water bodies outstanding nature or significance.**

(iiia) in relation to wāhi tūpuna, in accordance with HCV-WT-P2

(iv) in other areas listed in EIT-INF-P13(1) above, minimise the adverse effects of the infrastructure on the values that contribute to the area's importance,

(b) for all infrastructure that is not nationally significant infrastructure or regionally significant infrastructure, avoid adverse effects on the values that contribute to the area's outstanding nature or significance.

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<sup>18</sup> Evidence in Chief of Aileen Crow, dated 23 November 2022  
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## 12 Interpretation of new provision, EIT-INF-P13A

- 12.1 The Section 42A report for Chapter 11 recommended an entirely new provision, EIT-INF-P13A<sup>19</sup>. This policy states that, when managing the effects of infrastructure within the coastal environment, the provisions of the Coastal Environment chapter (Chapter 8) apply. The Council's Supplementary Evidence for chapter 11 does not suggest any further amendments to this provision.
- 12.2 In my view, having read the explanation for the new provision in the Section 42A report, it is not entirely clear whether the direction given in EIT-INF-P13A means that the provisions of the Coastal Environment chapter apply "as well as" or "instead of" the provisions in the Infrastructure chapter. I consider that the provisions of the Coastal Environment chapter should apply "as well as" the Infrastructure provisions, and that this should be made explicitly clear in the text of the pORPS.
- 12.3 The distinction between "as well as" or "instead of" is important because, if the effects of infrastructure within the coastal environment are to be managed solely through the Coastal Environment provisions, then it is important that the provisions of that chapter appropriately recognise and enable infrastructure. As explained in the Evidence in Chief of **Sarah Ho**<sup>20</sup>, a number of the provisions within the Coastal Environment chapter do not appropriately recognise and enable infrastructure. She has suggested changes to a number of Coastal Environment provisions, to better recognise and provide for infrastructure. I concur with the conclusions she has made and the amendments she has suggested.

## 13 Requiring a reduction in adverse effects

- 13.1 The Section 42A Report recommended rejecting<sup>21</sup> the Waka Kotahi submission point that a reduction in adverse effects (as part of an upgrading policy, EIT-INF-P14<sup>22</sup>) be encouraged, rather than required, as it was "less directive". The s42A report also did not provide clarification of the interpretation and application of the terms "develop", "upgrade" or "substantial upgrade" that are used within this policy, as sought in submission of Waka Kotahi. The Council's Supplementary Evidence for this chapter has not recommended any further amendments to this provision.
- 13.2 The requirement to reduce adverse effects that result from existing infrastructure does not align with the Resource Management Act. Rather, it goes beyond what the Resource Management Act requires.
- 13.3 Requiring a reduction in adverse effects from existing infrastructure as part of a substantial upgrade is a strong direction that would be difficult for Waka Kotahi to achieve in all instances due to the functional nature of its assets. **Mr Robinson** explains that it is impractical in some circumstances to reduce the adverse effects of existing infrastructure during a substantial upgrade and for this reason it is preferred that the pORPS provision enable some flexibility to be able to achieve this requirement where it is reasonably practicable to do so.
- 13.4 Less absolute wording, such as 'encourage', is more realistic when Waka Kotahi is undertaking upgrades of existing nationally and/or regionally significant infrastructure.

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<sup>19</sup> Section 42A report – chapter 11, para 446, 666, 732, 737, 738, 744

<sup>20</sup> Evidence In Chief of Sarah Ho, dated 23 November 2022.

<sup>21</sup> Section 42A report – Chapter 11, para 763

<sup>22</sup> Waka Kotahi 00305.043

Therefore, I suggest amending clause (2) to read as follows, or something of similar intent (suggested amendment coloured red and bold):

(2) **utilise encourage** the opportunity**ies** of substantial upgrades of infrastructure to reduce adverse effects that result from the existing infrastructure, including on sensitive activities.

- 13.5 I think it remains unclear what constitutes a “substantial upgrade”, as referenced in clause (2), and therefore when this policy would apply. I think it would be useful to plan users if the Council were to explain in the pORPS what measure(s) (for example, geographical scale, duration of works, cost of works) are in play for an upgrade to be considered ‘substantial’ and therefore subject to clause (2). I suggest this explanation could take the form of a definition for ‘substantial upgrade’.

#### **14 Strong direction to avoid reverse sensitivity**

- 14.1 Waka Kotahi sought to retain EIT-INF-P15<sup>23</sup> as notified. The Section 42A report recommended deleting the notified wording of policy EIT-INF-P15<sup>24</sup> and replacing it with more directive text requiring activities be avoided that may adversely affect nationally significant infrastructure and regionally significant infrastructure in the ways specified in clauses (1) to (3). The Council’s Supplementary Evidence for this chapter has not recommended any changes to the amended wording recommended in the Section 42A report.
- 14.2 I consider that the amendments to this policy recommended in the Section 42A report strengthen the protection of nationally and regionally significant infrastructure from the effects of other land use and development activities. I consider that the recommended amendments to this policy are appropriate.

#### **15 Terminology and prioritisation in EIT-INF-M4 and EIT-INF-M5**

##### **EIT-INF-M4**

- 15.1 The Section 42A report did not provide any analysis of the submission made by Waka Kotahi on method EIT-INF-M4<sup>25</sup>, which sought clarification of what constitutes a “highly valued” natural and physical resource, further consideration to the implications of the ‘prioritisation’ referred to in clause (2) to ensure a suitable balance between cost and effect is achieved, and for the term ‘avoid’ in clause (2) to be replaced with ‘minimise’ or similar.
- 15.2 The s42A report recommended no amendments to method EIT-INF-M4<sup>26</sup>. The Supplementary Evidence has recommended a change to clause (1), which I discuss in paragraph 16.3 of my evidence, however, the change does not address the concerns raised by Waka Kotahi in its submission. I accept the decision by Council to not replace the word ‘avoid’ with ‘minimise or similar’ in clause (2).
- 15.3 I think it remains unclear what “highly valued” in clause (2) of this method means. For instance, what variables or attributes make a natural or physical resource “highly valued”? This terminology is not defined within the Resource Management Act or the pORPS. How

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<sup>23</sup> Waka Kotahi 00305.044

<sup>24</sup> Section 42A report – Chapter 11, para 780

<sup>25</sup> Waka Kotahi 00305.052

<sup>26</sup> Section 42A report – Chapter 11, para 831

'highly valued' natural and physical resources are defined and applied by the Otago Regional Council under this method will directly determine the location and number of potential sites where infrastructure could be located. It is therefore important that this terminology is defined, so that it is clear to all plan users how this provision will be interpreted and implemented. I consider that it would assist plan users if the Council defined what it means by "highly valued" natural and physical resources.

- 15.4 If very conservative criteria are used to determine what constitutes a "highly valued" natural and physical resource, given the emphasis of this provision on avoiding, or at least minimising, all adverse effects on those resources, and not just significant adverse effects, this could potentially result in a very limited and/or disconnected number of sites being identified and prioritised for infrastructure development.
- 15.5 Some infrastructure, such as the State highway network, requires a lineal connection between sites to function. Some infrastructure may have an operational need or functional need to locate in a particular area. The prioritisation process set down in this method, with its emphasis on avoiding or minimising all adverse effects on highly valued natural and physical resources, may significantly restrict where transport infrastructure could be located. Transport infrastructure may be restricted to going 'the long way round', to avoid adverse effects on those "highly valued" resources and values, which has both cost and efficiency implications for the infrastructure providers and users of the State highway.
- 15.6 **Mr Robinson** explains the potential cost and efficiency implications for Waka Kotahi if it was required to avoid locating state highway infrastructure in certain locations.
- 15.7 I think the prioritisation process required in clause (2) needs to ensure an appropriate balance is achieved between the functional needs and operational needs of infrastructure versus the environmental benefits of this approach. I suggest the following amendments be made to the wording of clause (2) to incorporate this balance, or something similar (suggested amendment coloured red and bold):

(2) require the prioritisation of sites for infrastructure where adverse effects on highly valued natural and physical resources and mana whenua values can be avoided or, at the very least, minimised-, **while also taking into consideration the functional needs and operational needs of infrastructure to locate in certain areas.**

#### EIT-INF-M5

- 15.8 The Section 42A report rejected<sup>27</sup> the submission point made by Waka Kotahi on method EIT-INF-M5<sup>28</sup> that sought better clarity of this provision including that adverse effects are minimised as opposed to avoided, and to recognise and provide for nationally and regionally significant infrastructure, including its protection. Waka Kotahi also noted that this provision is open to interpretation around what constitutes a 'highly valued' natural and physical resource and the prioritisation proposed.
- 15.9 The Section 42A report recommended<sup>29</sup> the reference to "highly valued natural and physical resources...can be avoided or, at the very least, minimised" be deleted from

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<sup>27</sup> Section 42A report – Chapter 11, para 850

<sup>28</sup> Waka Kotahi 00305.053

<sup>29</sup> Section 42A report – Chapter 11, para 865

clause (7) of this method, thereby satisfactorily resolving the associated submission points by Waka Kotahi.

- 15.10 In place of the deleted text, the Section 42A report recommends<sup>30</sup> that district plans prioritise sites for infrastructure where the adverse effects of infrastructure on those matters are addressed by EIT-INF-P13 and EIT-INF-P13A. The Supplementary Evidence for Chapter 11 adds an additional word, 'are' to this clause, relying on Clause 16(2), Schedule 1 of the RMA, to address a minor typographical error.
- 15.11 It is not entirely clear to me what "those matters", as referred to in clause (7), actually are. Presumably "those matters" mean the areas, places and features listed in EIT-INF-P13(1)(a) to (h), as well as the coastal environment, being the only matter to which EIT-INF-P13A relates. I think it would assist Plan users if the Council identified more clearly what "those matters" are in EIT-INF-M5.
- 15.12 I would have a concern that prioritising the location of infrastructure based on the framework set out in EIT-INF-P13 and EIT-INF-P13A could significantly unduly restrict where transport infrastructure could be located, given that EIT-INF-P13(1) requires avoiding, as a first priority, locating infrastructure in those areas and places listed in (a) to (h) irrespective of the scale of effects that might arise, as previously discussed in my evidence at paragraphs 10.4 to 10.6. I discuss concerns with the interpretation of policy EIT-INF-P13A earlier in this evidence at paragraphs 12.1 to 12.3, in particular that some of the Coastal Environment provisions are considered to not appropriately recognise and enable infrastructure.
- 15.13 I suggest that the Council make a similar amendment to the wording of EIT-INF-M5(7) as that which I suggested for clause (2) of EIT-INF-M4 (paragraph 15.7), to ensure an appropriate balance is achieved between the functional and/or operational need for infrastructure to be located in certain areas versus the environmental benefits in prioritising sites for locating infrastructure. I suggest the following amendments be made to the wording of clause (7) to incorporate this balance (suggested amendment coloured red and bold):

(7) require the prioritisation of sites for infrastructure, nationally significant infrastructure and regionally significant infrastructure where adverse effects on those matters are addressed by EIT-INF-P13 and EIT-INF-P13A on highly valued natural and physical resources and mana whenua values can be avoided or, at the very least, minimised, **while also taking into consideration the functional needs and operational needs of infrastructure to locate in certain areas.**

## **16 New text suggested in Council's Supplementary Evidence for Chapter 11**

- 16.1 The Council has deleted the reference to 'nationally significant infrastructure' and 'regionally significant infrastructure' from policy EIT-INF-P12 and replaced with 'infrastructure', relying on clause 16(2) of Schedule 1 of the RMA to make this minor amendment. I support this amendment, recognising that the definition of 'infrastructure' includes structures for transport on land and network utility operations, such that the state highway system is still provided for under this policy.

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<sup>30</sup> Section 42A report – Chapter 11, para 865 and 866  
WAKA KOTAHI NZ TRANSPORT AGENCY

- 16.2 An amendment to the wording of EIT-INF-P13(2) has also been recommended in the Council's Supplementary Evidence<sup>31</sup>, which replaces the word 'possible' with 'demonstrably practicable', in response to concerns raised by other submitters that it is always 'possible' to avoid locating infrastructure in important areas by not undertaking development of the infrastructure. I support the amended wording, as it provides more clarity regarding how to implement this policy and the information required to demonstrate whether or not it is practicable to locate infrastructure in a particular location would already ordinarily be produced as part of an assessment of alternatives by infrastructure providers like Waka Kotahi.
- 16.3 The Council's Supplementary Evidence also recommends additional wording be added to clause (1) of method EIT-INF-M4 and clause (5) of method EIT-INF-M5 to identify infrastructure activities that qualify as minor upgrades<sup>32</sup>. The amended wording provides a pathway for minor infrastructure upgrades, that might otherwise be subject to the same consenting requirements as the development of new infrastructure, to be enabled through a more permissive plan provisions such as having a permitted or controlled activity status in regional and district plans. I consider it is appropriate for the pORPS to enable councils to tailor their plan provisions to allow a potentially more certain and less onerous pathway for the consideration and management of minor infrastructure upgrades. Based on my analysis above, I support the suggested amendment to these two methods, EIT-INF-M4 and EIT-INF-M5.
- 16.4 The Council's Supplementary Evidence also recommends amendments to the wording of EIT-TRAN-P20 and EIT-TRAN-M8. I have reviewed the changes recommended and suggest no further amendments.

## 17 Conclusions

- 17.1 Overall, the provisions of the EIT chapter are considered to be generally appropriate including suitable recognition of State highway infrastructure. It is recommended that the Hearing Panel give further consideration to:
- a Inclusion of an advice note that explains the relationship between the TRAN and INF provisions;
  - b Better recognition of the importance of safety in EIT-INF-O4;
  - c Removal of the use of 'limits' referenced in EIT-INF-O4 until there is national-level direction on the use of 'limits';
  - d Insertion of the word "reasonably" before "practicable" in EIT-INF-P11;
  - e Amendments to EIT-INF-P13 and EIT-INF-PR2 regards the use of "avoid" terminology;
  - f Amendment to EIT-INF-P13 to better manage the effects of infrastructure in outstanding water bodies;
  - g Clarification of the interpretation of EIT-INF-P13A; and
  - h Amendments to the terminology and prioritisation in EIT-INF-M4 and EIT-INF-M5;

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<sup>31</sup> Supplementary Evidence – Chapter 11, paras 42 to 44

<sup>32</sup> Supplementary Evidence – Chapter 11, paras 36 to 39

Helen Elizabeth Dempster

23 November 2022



**Appendix 1: Submission and further submission points where the section 42A report author position is supported or accepted**

Table 1: Waka Kotahi Submission points

Provision	Submission Point
EIT-EN-O3	00305.032
EIT-EN-P9	00305.038
EIT-EN-M2	00305.051
EIT-INF-O4	00305.033
EIT-INF-O5	00305.034
EIT-INF-P10	00305.039
EIT-INF-P12	00305.041
EIT-INF-P17	00305.045
EIT-INF-M6	00305.054
EIT-INF-AER7	00305.061
EIT-INF-AER8	00305.062
EIT-TRAN-O7	00305.035
EIT-TRAN-O8	00305.036
EIT-TRAN-O9	00305.037
EIT-TRAN-P18	00305.046
EIT-TRAN-P19	00305.047
EIT-TRAN-P20	00305.048
EIT-TRAN-P21	00305.049
EIT-TRAN-P22	00305.050
EIT-TRAN-M7	00305.055
EIT-TRAN-M8	00305.056
EIT-TRAN-M9	00305.057
EIT-TRAN-E3	00305.058
EIT-TRAN-PR3	00305.060
EIT-TRAN-AER9	00305.063
EIT-TRAN-AER10	00305.064
EIT-TRAN-AER11	00305.065
EIT-TRAN-AER12	00305.066
EIT-TRAN-AER13	00305.067

Table 2: Waka Kotahi Further Submission Points

Provision	Submission Point	Submitter
EIT-TRAN-O7	00118.050	Maryhill Ltd
EIT-TRAN-O8	00118.051	Maryhill Ltd

EIT-INF-P11	00230.129	Royal Forest & Bird
EIT-INF-P12	00128.118	QLDC
EIT-INF-P14	00138.120	
EIT-TRAN-P18	00118.052	Maryhill Ltd
EIT-TRAN-P19	00118.053	Maryhill Ltd
EIT-TRAN-M8	00139.187	DCC