

BEFORE THE HEARING COMMISSIONERS

UNDER The Resource Management Act 1991

AND

IN THE MATTER of the Proposed Otago Regional Policy Statement
2021

**SUBMISSIONS FOR HEARING
IM – INTEGRATED MANAGEMENT
CHAPTER 6**

Dated 8 February 2023

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**SUBMISSIONS FOR HEARING
IM – INTEGRATED MANAGEMENT
CHAPTER 6**

May it Please the Commissioners:

Introduction

- 1 IM – Integrated management is Chapter 6 of the proposed Otago Regional Policy Statement 2021 (“pORPS 21”).
- 2 The Section 42A Report author is Felicity Boyd, who produced her report on 27 April 2022. Ms Boyd also produced supplementary evidence on this chapter dated 11 October 2022.

National Planning Standards

- 3 A regional policy statement must be prepared in accordance with and give effect to the National Planning Standards¹.
- 4 The National Planning Standards require a nationally consistent structure².
- 5 In particular a regional policy statement must comply with Table 2 of the National Planning Standards³.
- 6 “*IM – Integrated management*” is a chapter required by the National Planning Standards 2019 only *if* it is relevant to the regional policy statement⁴.

Reasons for inclusion

- 7 The Otago Regional Council’s (“ORC”) position is that integrated management is not only relevant but pivotal to the pORPS 21.
- 8 The foreword or mihi states:

“This statement reflects that a healthy, flourishing environment is fundamental to our well-being. Integration is the central tenet, seeing the environment as a single connected system, ki uta ki tai, and weaving this in to the RPS fabric.”⁵

¹ Section 61(1)(da) and section 62(3) of the RMA
² National Planning Standards 2019, Foundation Standard, Purpose, page 5
³ National Planning Standards 2019, pages 8 to 10
⁴ See Standard 2, Regional Policy Statement Structure, Point 3
⁵ PORPS, page 5

- 9 The statutory functions of the ORC for the purpose of giving effect to the Resource Management Act 1991 (“RMA”) include the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region⁶ and the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance⁷.
- 10 The function of a Regional Policy Statement “*is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region*”⁸.
- 11 The National Planning Standards tend to create the appearance of subject matter silos with seemingly discrete treatment of individual topics. Including a “*IM - Integrated management*” chapter assists in negating the Planning Standards “*silo effect*”.
- 12 The chapter promotes integrated management by providing an overarching set of provisions that bring the discrete elements of the RPS together to make a coherent planning instrument.

IM-Integrated Management

- 13 The chapter also expresses the underlying philosophy of the RPS. Objective 1 is the long-term vision for the region:

“IM-O1 – Long term vision

The management of natural and physical resources in Otago, by and for the people of Otago, ~~including in partnership with~~ Kāi Tahu, and as expressed in all resource management plans and decision making, achieves a healthy, and resilient, ~~and safeguarded~~ natural systems environment, and ~~including~~ the ecosystem services they offer it provides, and supports the well-being of present and future generations; (mō tātou, ā, mō kā uri ā muri ake nei).”

- 14 Objective 2 embraces *ki uta ki tai*:

“IM-O2 – Ki uta ki tai

⁶ Section 30(1)(a) of the RMA

⁷ Section 30(1)(b) of the RMA

⁸ Section 59 of the RMA

~~The management of n~~Natural and physical resources ~~management~~ and ~~decision-making in Otago~~ embraces ki uta ki tai, recognising that the environment is an interconnected system, which depends on its connections to flourish, and must be ~~considered~~ managed as an interdependent whole.”

15 Objective 3 seeks sustainable use of resources for future generations:

“IM-O3 – ~~Environmentally-s~~Sustainable impact

Otago’s communities ~~carry out their activities in a way~~ provide for their social, economic, and cultural well-being in ways that support or restore ~~preserves~~ environmental integrity, form, function, and resilience, so that the life-supporting capacities of air, water, soil, and ecosystems are safeguarded, ~~and indigenous biodiversity endure~~ for future generations.”

16 IM - Integrated management contains 10 policies:

16.1 IM-P1 – Integrated approach to decision-making;

16.2 IM-P3 – Providing for mana whenua cultural values in achieving integrated management;

16.3 IM-P4 – Setting a strategic approach to ecosystem health;

16.4 IM-P5 – Managing environmental interconnections;

16.5 IM-P6 – Acting on best available information;

16.6 IM-P7 – Cross boundary management;

16.7 IM-P8 – Effects of climate change;

16.8 IM-P10 – Climate change adaptation and climate change mitigation;

16.9 IM-P12 – Contravening environmental limits for climate change mitigation; and

16.10 IM-P14 – Human impact.

17 IM-P1, IM-P4, IM-P5 and IM-P14 are the key provisions to achieve objectives IM-O1-IM-O3. IM-M1 and IM-M5 are the key methods to implement these policies.

Climate Change

18 The IM – Integrated management chapter also provides specific direction on climate change adaptation and mitigation.

19 Objective 4 sets outcomes for climate change:

“IM-O4 – Climate change

Otago’s communities, including Kāi Tahu, understand what climate change means for their future, and responses to climate change responses in the region, (including climate change adaptation and climate change mitigation actions,

(1) _____ are aligned with national level climate change responses,

(2) _____ assist with achieving the national target for emissions reduction, and

(3) _____ are recognised as integral to achieving the outcomes sought by this RPS.”

20 ORC must have particular regard to the effects of climate change⁹.

21 ORC must also have regard to:

21.1 any emissions reduction plan made in accordance with section 5ZI of the Climate Change Response Act 2002; and

21.2 any national adaption plan made in accordance with section 5ZS of the Climate Change Response Act 2002¹⁰.

22 IM-P8, IM-P10, IM-P5 and IM-P12 are the key provisions to achieve objectives IM-O4. IM-M1 and IM-M3 are the key methods to implanting these policies.

23 Together, the IM objectives set out the outcomes sought by the RPS¹¹.

Matters Raised by Submitters

24 Some submitters question the lawfulness of IM-P1 and IM-P2.

⁹ Section 7(i) of the RMA

¹⁰ Section 61(2)(d) to (e) RMA

¹¹ PORPS, page 121.

25 For Fonterra Limited, Susannah Tait states:

“The current wording of IM-P1 (specifically the incorporation of IM-P2) is inappropriate; this seeks to prioritise matters in decision-making that is inconsistent with the purpose of the Act and national direction”.¹²

26 For Oceana Gold (New Zealand) Limited, Claire Hunter states that IM-P1 and IM-P2:

“...reflect the prioritization set out in the National Policy Statement for Freshwater Management 2020 (NPSFM) to all resources, rather than just freshwater... and is inappropriate”.¹³

27 For Aurora Energy Limited, Network Waitaki Limited and Powernet Limited Megan Justice states that IM-P1 and IM-P2:

“...imposes a decision-making priority method that relates to freshwater management and applies this to the management of all natural and physical resources”.¹⁴

Discussion

28 Setting limits on the effects of activities is critical to achieving the first three objectives of the chapter.

29 Likewise, directions on the priorities between use and development of natural and physical resources on one hand and protection of the natural environment on the other is integral to achieving sustainable management.

30 There is nothing revolutionary nor unlawful about that. Limits are part of sustainable management. Section 5(2)(a), (b) and (c) and section 6 all contain limits.

31 In *King Salmon*¹⁵ the Supreme Court held the definition of “sustainable management” must be read and applied as an integrated whole¹⁶:

“[24] We make four points about the definition of “sustainable management”:

¹² Statement of Evidence Ms Susannah Tait at paragraph 3.5

¹³ Statement of Evidence of Claire Hunter Statement at paragraphs 8.1 to 8.5

¹⁴ Statement of Evidence of Megan Justice at paragraphs 9.1 to 9.2

¹⁵ *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593

¹⁶ Ibid at [24](c)

...

(c) Third, there has been some controversy concerning the effect of the word “while” in the definition. The definition is sometimes viewed as having two distinct parts linked by the word “while”. That may offer some analytical assistance but it carries the risk that the first part of the definition will be seen as addressing one set of interests (essentially developmental interests) and the second part another set (essentially intergenerational and environmental interests). We do not consider that the definition should be read in that way. Rather, it should be read as an integrated whole. This reflects the fact that elements of the intergenerational and environmental interests referred to in subparas (a), (b) and (c) appear in the opening part of the definition as well (that is, the part preceding “while”). That part talks of managing the use, development and protection of natural and physical resources so as to meet the stated interests – social, economic and cultural well-being as well as health and safety. The use of the word “protection” links particularly to subpara (c). In addition, the opening part uses the words “in a way, or at a rate”. These words link particularly to the intergenerational interests in subparas (a) and (b). As we see it, the use of the word “while” before subparas (a), (b) and (c) means that those paragraphs must be observed in the course of the management referred to in the opening part of the definition. That is, “while” means “at the same time as”.

- 32 The injunction at section 5(2)(a) is to sustain all natural resources (other than minerals) to meet the reasonably foreseeable needs of future generations. Likewise, the obligation in section 5(2)(b) is to safeguard the life-supporting capacity of air, soil and ecosystems as well as water. And in all cases, there is an obligation under section 5(2)(c) to avoid, remedy or mitigate adverse effects on the environment.
- 33 The prescription of specific limits on the effects of activities allows or enables activities to take place, but at the same time, achieves the outcomes required by the outcomes in sections 5(2)(a), (b) and (c).
- 34 Protection of the environment is a core element of sustainable management¹⁷. Section 5(2) contemplates environmental preservation and

¹⁷ Ibid at [28]

protection¹⁸, and defines sustainable management in a way that makes it clear that protecting the environment from the adverse effects of use or development is an aspect of it¹⁹.

35 The Supreme Court said “...the use of the word “protection” in the phrase “use, development and protection of natural and physical resources” and the use of the word “avoiding” in subpara (c) indicate that s 5(2) contemplates that particular environments may need to be protected from the adverse effects of activities in order to implement the policy of sustainable management; that is, sustainable management of natural and physical resources involves protection of the environment as well as its use and development. The definition indicates that environmental protection is a core element of sustainable management, so that a policy of preventing the adverse effects of development on particular areas is consistent with sustainable management”²⁰.

36 The Supreme Court observed that the policies of the NZCPS “provide something in the nature of a bottom line” and concluded “we consider that this is consistent with the definition of sustainable management in s 5(2), which, as we have said, contemplates protection as well as use and development”²¹.

37 King Salmon made clear a planning instrument may well provide for protection of natural and physical resources, in particular circumstances in preference to use or development²².

Te Mana o te Wai

38 There is not, in the proposed RPS, an improper co-option of the concept of Te Mana o te Wai from the NPSFM to the management of other natural resources. It is simply that the elaboration of sustainable management in a subordinate planning instrument such as the RPS, is likely to find parallels in other similar documents such as the NPSFM which are designed to elaborate and give effect to Part 2. In other words, it is no coincidence the NPSFM and the RPS take a similar, but legitimate approach to sustainable management. They are derived from the same statutory mandate.

¹⁸ Ibid at [146]

¹⁹ Ibid at [148]

²⁰ Ibid at [24](d)

²¹ Ibid at [132]

²² Ibid

Conflicts and National Instruments

- 39 Ben Farrell for Otago Fish and Game Council and Central Otago Fish and Game Council, Real Group Limited, and NZSki Limited states if the RPS does not reconcile conflicts between higher order documents, ORC is unlikely to have met its required functions under s 30²³.
- 40 Section 30 is **attached** to these submissions.
- 41 Section 30 does not support Mr Farrell's claim.
- 42 There is no obligation for a RPS to reconcile National Planning instruments. It is not what is required by the Act. In some circumstances, the RPS will need to include text which does attempt to give effect to National Planning instruments which on their face might pull in different directions.
- 43 Mr Farrell also says that IM-P1 "*does not give any direction on how to reconcile (or assert priority) where there are conflicts...*"²⁴.
- 44 The Supreme Court in *King Salmon* explained how the NZCPS is to be interpreted and set the approach to trying to make its provisions work together.
- 45 The Court emphasised the importance of the way in which its individual provisions are expressed. Close attention must be paid to the words chosen. "*The language of the relevant policies in the NZCPS is significant*"²⁵.
- 46 The Court found that apparent conflict between particular policies may dissolve if close attention is paid to the way in which they are expressed²⁶.
- 47 The Supreme Court urged "*a thoroughgoing attempt to find a way to reconcile*" apparently, conflicting policies²⁷.
- 48 In summary, the relationships between policies are governed by the language used. Policies are to be read and applied in their terms. More directive provisions prevail over less prescriptive policies. In particular, the

²³ Statement of Evidence of Ben Farrell at paragraphs 58

²⁴ Ibid at paragraph 59

²⁵ *King Salmon*, at [126]

²⁶ *King Salmon*, at [129]

²⁷ *King Salmon*, at [131]

avoidance policies take precedence over policies to “provide for”, “consider” or “recognise”²⁸.

- 49 The approach to interpretation set out in *King Salmon* can and should also be used to make national instruments work together as far as possible and if not, determine which prevails if they cannot be reconciled. The interpretation and interaction between national directions is a question of law. Their interpretation and effect have national significance and are not matters to be dealt with in a subordinate planning instrument.

Mr Farrell’s suggested amendments

- 50 Mr Farrell has suggested amendments to IM–P1 to accord priority to “sustainability, equity, and efficiency” and treaty principles²⁹.
- 51 The principles of Te Tiriti o Waitangi are already covered in the MW – Mana Whenua chapter³⁰ and the IM – Integrated Management chapter³¹.
- 52 “Sustainability” is an unhelpful word. “Equity” is not an RMA concept. “Efficiency” is relevant under s32 to determining what the RPS contains, not how it is applied and “efficiency” is a term with several means, even in economics. The “principles of sustainability, equity, and efficiency” is vague, uncertain, elastic and ambiguous language which must be avoided in a planning instrument.

ORC’s IM – Integrated management witness

- 53 The ORC calls the Section 42A Report writer, Ms Felicity Boyd.

Dated this 8th day of February 2023



.....
T M Sefton
Otago Regional Council

²⁸ *King Salmon*, at [126]-[132]

²⁹ *Ibid* at [55]

³⁰ Specifically (but not limited to): MW-O1, MW-P1, MW-P2, MW-M1, MW-M3, MW-M4

³¹ Specifically (but not limited to): IM-O1, IM-P3, IM-M1, IM-M2



New Zealand Legislation

Resource Management Act 1991

If you need more information about this Act, please contact the administering agency: **Ministry for the Environment**

- Warning: Some amendments have not yet been incorporated

Functions, powers, and duties of local authorities

30 Functions of regional councils under this Act

- (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
 - (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
 - (b) the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:
 - (ba) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to housing and business land to meet the expected demands of the region:
 - (c) the control of the use of land for the purpose of—
 - (i) soil conservation:
 - (ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:
 - (iii) the maintenance of the quantity of water in water bodies and coastal water:
 - (iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:
 - (iv) the avoidance or mitigation of natural hazards:
 - (v) *[Repealed]*
 - (ca) the investigation of land for the purposes of identifying and monitoring contaminated land:
 - (d) in respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
 - (i) land and associated natural and physical resources:
 - (ii) the occupation of space in, and the extraction of sand, shingle, shell, or other natural material from, the coastal marine area, to the extent that it is within the common marine and coastal area:
 - (iii) the taking, use, damming, and diversion of water:
 - (iv) discharges of contaminants into or onto land, air, or water and discharges of water into water:
 - (iva) the dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:
 - (v) any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards:
 - (vi) the emission of noise and the mitigation of the effects of noise:
 - (vii) activities in relation to the surface of water:
 - (e)

the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—

- (i) the setting of any maximum or minimum levels or flows of water:
 - (ii) the control of the range, or rate of change, of levels or flows of water:
 - (iii) the control of the taking or use of geothermal energy:
 - (f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:
 - (fa) if appropriate, the establishment of rules in a regional plan to allocate any of the following:
 - (i) the taking or use of water (other than open coastal water):
 - (ii) the taking or use of heat or energy from water (other than open coastal water):
 - (iii) the taking or use of heat or energy from the material surrounding geothermal water:
 - (iv) the capacity of air or water to assimilate a discharge of a contaminant:
 - (fb) if appropriate, and in conjunction with the Minister of Conservation,—
 - (i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
 - (ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:
 - (g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—
 - (i) soil conservation:
 - (ii) the maintenance and enhancement of the quality of water in that water body:
 - (iii) the maintenance of the quantity of water in that water body:
 - (iv) the avoidance or mitigation of natural hazards:
 - (ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:
 - (gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:
 - (h) any other functions specified in this Act.
- (2) A regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), and (vii) to control the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act 1996.
- (3) However, a regional council and the Minister of Conservation may perform the functions specified in subsection (1)(d) to control aquaculture activities for the purpose of avoiding, remedying, or mitigating the effects of aquaculture activities on fishing and fisheries resources.
- (4) A rule to allocate a natural resource established by a regional council in a plan under subsection (1)(fa) or (fb) may allocate the resource in any way, subject to the following:
- (a) the rule may not, during the term of an existing resource consent, allocate the amount of a resource that has already been allocated to the consent; and
 - (b) nothing in paragraph (a) affects section 68(7); and
 - (c) the rule may allocate the resource in anticipation of the expiry of existing consents; and
 - (d) in allocating the resource in anticipation of the expiry of existing consents, the rule may—
 - (i) allocate all of the resource used for an activity to the same type of activity; or
 - (ii) allocate some of the resource used for an activity to the same type of activity and the rest of the resource to any other type of activity or no type of activity; and
 - (e) the rule may allocate the resource among competing types of activities; and
 - (f) the rule may allocate water, or heat or energy from water, as long as the allocation does not affect the activities authorised by section 14(3)(b) to (e).
- (5) In this section and section 31,—

business land means land that is zoned for business use in an urban environment, including, for example, land in the following zones:

- (a) business and business parks:
- (b) centres, to the extent that this zone allows business uses:
- (c) commercial:
- (d) industrial:
- (e) mixed use, to the extent that this zone allows business uses:
- (f) retail

development capacity, in relation to housing and business land in urban areas, means the capacity of land for urban development, based on—

- (a) the zoning, objectives, policies, rules, and overlays that apply to the land under the relevant proposed and operative regional policy statements, regional plans, and district plans; and
- (b) the capacity required to meet—
 - (i) the expected short and medium term requirements; and
 - (ii) the long term requirements; and
- (c) the provision of adequate development infrastructure to support the development of the land

development infrastructure means the network infrastructure for—

- (a) water supply, wastewater, and storm water; and
- (b) to the extent that it is controlled by local authorities, land transport as defined in section 5(1) of the Land Transport Management Act 2003.

Section 30 heading: amended, on 20 August 1998, by section 9 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 30(1)(ba): inserted, on 19 April 2017, by section 12(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 30(1)(c)(iiia): inserted, on 1 August 2003, by section 9(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 30(1)(c)(v): repealed, on 19 April 2017, by section 12(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 30(1)(ca): inserted, on 10 August 2005, by section 11(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 30(1)(d)(ii): replaced, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 30(1)(d)(iva): inserted, on 20 August 1998, by section 9 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 30(1)(d)(v): amended, on 19 April 2017, by section 12(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 30(1)(fa): inserted, on 10 August 2005, by section 11(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 30(1)(fb): inserted, on 10 August 2005, by section 11(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 30(1)(ga): inserted, on 1 August 2003, by section 9(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 30(1)(gb): inserted, on 10 August 2005, by section 11(3) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 30(2): replaced, on 1 October 2011, by section 9 of the Resource Management Amendment Act (No 2) 2011 (2011 No 70).

Section 30(3): replaced, on 1 October 2011, by section 9 of the Resource Management Amendment Act (No 2) 2011 (2011 No 70).

Section 30(4): inserted, on 10 August 2005, by section 11(4) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 30(5): inserted, on 19 April 2017, by section 12(4) of the Resource Legislation Amendment Act 2017 (2017 No 15).