

**BEFORE THE COMMISSIONERS APPOINTED ON BEHALF OF THE
OTAGO REGIONAL COUNCIL**

UNDER the Resource Management Act 1991
(the **Act/RMA**)

**IN THE
MATTER** of an original submission on the
Proposed Regional Policy Statement
for Otago 2021 (**PRPS**)

BETWEEN **OTAGO WATER RESOURCE USER
GROUP (OWRUG)**

Submitter OS00235 and FS00235

FEDERATED FARMERS NZ INC

Submitter OS00239 and FS00239

DAIRYNZ

Submitter FS00601

AND **OTAGO REGIONAL COUNCIL**

Local Authority

FURTHER LEGAL SUBMISSIONS OF COUNSEL

DATED 9 MAY 2023



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FURTHER LEGAL SUBMISSIONS OF COUNSEL

May it please the Panel:

1. On 4 May 2023 the Panel directed Counsel to file legal submissions addressing whether the National Planning Standards 2019 (**NPS 2019**) allow a rural chapter to be inserted into the PRPS.
2. In our submission a rural chapter can be added under the 'TOPICS' heading in the regional policy statement structure, as shown in **Appendix 1**.

Summary

3. Given the weight of evidence provided to the Panel, it is our submission that rural matters justify a chapter being inserted alphabetically under the Topics heading in Part 3.
4. We submit that inserting a rural chapter as a new 'Topic chapter' would be consistent with the NPS 2019. Rural matters are not presently included within the table 2 structure of the NPS 2019 national guidance. This is unsurprising as rural issues are regionally significant to Otago. They are also not 'covered' within the current PRPS. A new rural chapter would not be a subset nor synonymous with existing chapters.
5. In the alternative, a rural chapter could be added as a 'section' of the existing Land and Freshwater domain chapter.

The NPS 2019

6. The NPS 2019 is New Zealand's first National Planning Standards, published in accordance with ss 58B-58J of the RMA.
7. The self-described purpose of the NPS 2019 is to improve the efficiency and effectiveness of the planning system by providing nationally consistent structure, format, definitions and so on.¹

¹ NPS 2019, 1. Foundation Standard, 'Purpose'.

8. Table 1 of the NPS 2019 explains which standards are relevant to each type of planning document. A policy statement or plan must be compliant with the relevant planning standards.²

Regional policy statements

9. The relevant standards for regional policy statements are 2, 6, 10, 11, 13, 14, 16 and 17.³
10. Only standard 2 is relevant to the question of whether a new rural chapter can be inserted. The following analysis focuses on that standard.

The structure of the PRPS – where could the rural provisions be located?

Which part of the PRPS?

11. Standard 2 of the NPS 2019 is the Regional Policy Statement Structure Standard. It works in accordance with Table 2 to provide a reasonably prescriptive structure for regional policy statements.
12. The Standard provides that all five parts of a regional policy statement and their titles as shown in the table must be included. These parts are: Introduction and General Provisions; Resource Management Overview; Domains and Topics; Evaluation and Monitoring; and Appendices and Maps.
13. We focus on 'Part 3 – Domains and Topics', which is where the focused content of an RPS is located and would contain a rural chapter should there be one.

New chapter or section of an existing chapter?

14. Section 58I provides for local authority recognition of the NPS 2019.
15. Sections 58(2) and (3) provide that if a national planning standard makes a direction to include specific provisions or to ensure that the document is consistent with any constraint or limit placed on the

² NPS 2019, 17. Implementation Standard.

³ NPS 2019, at Table 1.

content of the document through s 58C(2)(a) to (c), then the local authority must amend the document accordingly.

16. Any such amendment must be made without using any of the processes set out in Schedule 1 and be done so to include the provisions as directed. It must also include any consequential amendments to any document as necessary to avoid duplication or conflict with the amendments.⁴

17. Direction 10 of the NPS 2019 provides:
 10. Any other matter addressed by the regional policy statement not covered by the structure in table 2 must be included as a new chapter, inserted alphabetically under the Topics heading in Part 3. Additional chapters must not be synonyms or subsets of the chapters in table 2.

[emphasis added]

18. This is a mandatory direction for the Council to include a new chapter where a matter is not covered by the structure in table 2 of the NPS 2019. The provision begs the questions as to what those matters might be. It is submitted that direction as to these matters must be taken from the Act and in particular section 59 which sets out the purpose of a Regional Policy Statement and section 30 which sets out the functions of Regional Councils.

19. Section 59 states that *“the purpose 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 natural and physical resources of the whole region.”*

20. Section 30 requires the Regional Council to achieve integrated management and control the use of natural resources (land, water coastal marine area and air). The councils are specifically required to manage the actual and potential effects of the use, development or protection of land that are of regional significance.

⁴ RMA, ss 58l (2) and (3).

21. As identified in the Description of the Otago Region in the PRPS⁵, approximately 99% of Otago's land area is non-urban, or put it another way - Rural. It seems almost trite to say that rural land and the activities it supports and is affected by are regionally significant in that context.
22. In our submission, the evidence has demonstrated that the rural sector and use of rural land is a matter of regional significance that is not adequately addressed by the provisions of the PRPS. As outlined in opening submissions if this is not rectified the PRPS is at risk of failing to achieve the purpose of the Act and setting up the lower order documents to do the same.
23. Because the Council's functions require it to address matters of regional significance, of which the use of rural land is one, it must insert a new Topic into the PRPS pursuant to Direction 10 because the mandatory chapters in Table 2 of the NPS do not address this issue. Such a chapter would also provide a home for provisions related to other activities such as mining and quarrying that also predominantly occur within a rural environment. Therefore, providing a common place for the issues agreed in the two joint witness statements to be addressed.
24. The present domain and topic chapters included with the PRPS are:

DOMAINS

AIR -	Air
CE -	Coastal environment
LF -	<i>Land and freshwater</i>

TOPICS

ECO -	Ecosystems and indigenous biodiversity
EIT -	Energy, infrastructure and transport

⁵ Proposed Otago Regional Policy Statement 2021 at page 8.

HAZ -	Hazards and risks
HCV -	Historical and cultural values
NFL -	Natural features and landscapes
UFD -	Urban form and development

Are rural matters 'covered' by the domain chapters?

25. Rural matters engage with all three domain chapters currently within the PRPS. Rural activities can affect air quality, much of Otago's coastal environment is also rural and rural activities are intertwined with land and freshwater. Rural matters do not fit comfortably within just one of the existing domain chapters, nor are they a subset of the Domains which are focussed on the natural resources to be managed.
26. It is submitted that the Domains are effectively the building blocks upon which the various values, activities and/or physical resources addressed in the Topics rely.

Are rural matters covered by the topic chapters?

27. Rural provisions are also not adequately 'covered' by any of the PRPS/NPS 2019 topic chapters.
28. Rural environments are dispersed across the Otago region and rural proposals can engage with many if not all topic chapters depending on location and subject.
29. By way of example, a proposal for a new poultry facility adjacent to a state highway might need to engage with the ECO chapter if there is important biodiversity nearby, EIT if the proposal sits adjacent to a dangerous turn off, HCV if there are wāhi tapu areas nearby and NFL if there is to be a high degree of built form. There might also be UFD issues if the proposed site were proximate to urban areas. The need for rural activities to engage with multiple domains and topics is similar to urban activities which benefit from a specific topic.
30. We reiterate that the weight of evidence provided to the Panel by the Submitters demonstrates that greater recognition of rural matters is

required in the PRPS and a discrete rural chapter would provide the best opportunity to integrate the policy response in relation to this matter in a similar way to Urban Form and Development.

31. Rural matters do not fit comfortably within the existing topics chapters. This leads to the existing lack of recognition, direction and integration. Therefore, a new chapter is necessary.

Would a rural chapter be a synonym or subset of any of the existing chapters?

32. The short answer is 'no'. While there is some significant cross over with matters in the Land and Freshwater chapter it is not the only Domain or topic where this is the case. Rural land and activities have an important role to play in relation to the other domains and topics also.
33. Similarly, rural matters are not a synonym nor subset of any of the topic chapters in either the PRPS or the NPS 2019. They stand alone in a similar way to Urban form and Development which also necessitates integration of urban activities across multiple aspects.

Does it need to be one of the suggested chapters outlined in table 16?

34. Table 16 of the NPS 2019 provides a unique identifier table for chapters, sections, and zones. 10. Format standard at direction 16 provides that:

16. All chapters and sections must use the titles provided in table 16.

35. However, this is qualified by direction 18:

Mandatory directions ...	Examples ...
18. Additional chapters, excluding chapters in the <i>Introduction and general provisions, Evaluation and monitoring, and Appendices and maps</i> parts, must be identified with a unique identifier consisting of the key two to five letters of the chapter title in capital letters, a space, an en-dash, a space, and the chapter title.	'MIN – Mining' when a chapter on mining is included

36. This standard demonstrates that new chapters can be added with a unique identifier. The example given is Mining denoted by 'MIN', which

is not an example included within table 16. This direction therefore confirms that entirely new chapters can be added.

37. If a chapter on mining is directly contemplated by these standards, it follows that a rural chapter could also be consistent with the directions and standards of the NPS 2019.

A new chapter

38. If the Panel agrees that matters are not covered by the existing PRPS/NPS 2019 structure and are not synonymous or a subset of any existing chapters, it follows that a new chapter should be added.
39. In accordance with direction 10, such a chapter would therefore be inserted alphabetically in the Topics chapters, as shown in **Appendix 1**.
40. Further assistance is given by direction 21 of Standard 10:
21. If a local authority inserts an additional chapter or section, the key two to five letters must be unique and not duplicate any unique identifier specified in table 16.
41. So for rural a unique identifier might be 'RUR'.
42. This is how the chapter might look like within the Contents of the PRPS:

Contents

...

PART 3 – DOMAINS AND TOPICS

DOMAINS

...

TOPICS

...

NFL – Natural Features and Landscapes

RUR – Rural

RUR-O1 and RUR-O2 [objectives]

RUR-P1 to RUR-P3 [policies]

RUR-R1 to RUR-R27 [rules]

UFD – Urban form and development ...

[emphasis added]

If the Panel is not minded to follow this approach

43. In the alternative, if the Panel is not minded to follow this approach, it could provide for Rural matters as a section of the Land and Freshwater domain chapter.
44. A 'Section' is a sub-grouping of provisions within a chapter. It is shown in the planning standards as text below or to the right of a 'Sections:' identifier.⁶
45. In the absence of a chapter, local authorities must add sections and subsections within chapters where appropriate to organise related provisions.⁷
46. A rural section could be denoted by:

LF – RUR – Rural

in accordance with 10. Format Standard, Direction 19. The Objectives section would then be denoted by *LF-RUR-O1* for example.

Consistency with legislation and national regulations

47. We note that s 58C of the Act provides that national planning standards must give effect to national policy statements; and be consistent with national environmental standards; and regulations made under the Act; and water conservation orders.
48. One of the purposes of the national planning standards is to assist in achieving the purpose of the Act.⁸
49. Therefore, if an interpretation of the NPS 2019 does not assist in achieving the purpose of the Act; or does not give effect to any national policy statement; or is inconsistent with a national environmental

⁶ 1. Foundation Standard, Direction 8.

⁷ 2. Regional Policy Statement Structure Standard, Direction 5.

⁸ Resource Management Act 1991, s 58B(a).

standard, regulation made under the Act or water conservation order, then it would be open to the Panel, in our submission, to favour an alternative interpretation.

50. We submit that including a rural chapter under the topics heading (or as a section of the land and freshwater chapter) would assist in achieving the purpose of the Act.

Conclusion

51. In our submission, a new rural chapter should be added under the Topics heading.
52. In the alternative a rural 'chapter' could be added as a section of the existing Land and Freshwater domain chapter.

Climate change SRMR-I2: scope issue

53. At the hearing the Panel sought clarity as to whether paragraph 96 of Counsel's legal submission was within scope of relief that could be sought. Whilst Counsel verbally informed the Panel that it may not be, we have since reviewed the submissions in greater detail and consider that scope is available for the relief proposed in legal submissions as follows:

- (a) Federated Farmers initial submission⁹ and in particular:
- (i) *Rainfall and temperature change may result in drier soils and changes to river flow (low flow and floods)...[page 23, Reason]; and*
 - (ii) *Some of the responses to mitigate climate change ...lead to other risks, such as further drying out of catchments [page 24, Reason].*
- (b) OWRUG's initial submission¹⁰ and in particular:
- (i) *As such it is important to not create barriers to climate change adaptation and/or mitigation and enable long-term*

⁹ 0239, pages 23-24.

¹⁰ 0235, at pages 15-18.

climate change adaptation and/or mitigation, though [sic] projects such as water storage and provisions which enable growing areas to move between regions. [page 16, Reason]; and

(ii) *Such changes are also reliant on certainty with respect to water access. Hence the need to take a long-term and integrated approach to support adaptation and transition. [page 17, Reason]; and*

(iii) ... through changes in crop intensification, or water harvesting and storage practices. [page 17, Decision Sought].

(c) OWRUG also filed a further submission in opposition to an amendment sought by Fish and Game¹¹. At page 17 of OWRUG's Further Submission (page 11 of the Relief Table) it sought to ensure that positive effects of climate change adaption were addressed in the provision.

54. Whilst we acknowledge that the specific wording sought at paragraph 96 of Counsel's legal submissions was not set out in the original or further submissions, we submit that the proposed relief is simply another way of expressing the sentiment and in a manner that has appropriate regard to the National Adaptation Plan which was not available when the submissions were originally drafted.

¹¹ 0231 at Page 21.

Dated 9 May 2023

A handwritten signature in blue ink, appearing to be 'Gus Griffin', with a small dot at the end.

Phil Page / Gus Griffin

Counsel for Otago Water Resource User Group, Federated Farmers New Zealand Incorporated and DairyNZ

Appendix 1 – How a rural chapter fits within the National Planning Standards

PART 1- INTRODUCTION AND GENERAL PROVISIONS	
INTRODUCTION	
Chapters:	Foreword or mihi
	Contents
	Purpose
	Description of the region
HOW THE POLICY STATEMENT WORKS	
Chapters:	Statutory context
	General approach
	Cross boundary matters
INTERPRETATION	
Chapters:	Definitions
	Abbreviations
	Glossary
NATIONAL DIRECTION INSTRUMENTS	
Chapters:	National policy statements and New Zealand Coastal Policy Statement
	National environmental standards
	Regulations
	Water conservation orders
[TANGATA WHENUA/MANA WHENUA]	
Chapter:	[Tangata whenua/mana whenua]

PART 2 – RESOURCE MANAGEMENT OVERVIEW		
Chapters:	Significant resource management issues for the region	
	Resource management issues of significance to iwi authorities in the region	
	Integrated management	
PART 3 – DOMAINS AND TOPICS		
DOMAINS		
Chapters:	Air	
	Coastal environment	Section: Coastal marine area
	Geothermal	
	Land and Freshwater	
TOPICS		
Chapters:	Ecosystems and indigenous biodiversity	
	Energy, infrastructure and transport	
	Hazards and risks	
	Historical and cultural values	
	Natural character	
	Natural features and landscapes	
	Rural	
	Urban form and development	
PART 4 – EVALUATION AND MONITORING		

Chapters:	Monitoring the efficiency and effectiveness of the policy statement
PART 5 – [APPENDICES AND MAPS]	
Chapters	Appendices
	Maps