

Reply Report

Proposed Otago Regional Policy Statement 2021

1: Introduction and general themes

Felicity Boyd

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1. Introduction

1. This report is the first of a suite of reports (known as the reply reports) that have been prepared to sit alongside and explain the “marked up” version of the final recommendations on the proposed Otago Regional Policy Statement (pORPS). For ease of reference, this suite of reply reports has been prepared following largely the same convention as the original section 42A reports – see Table 1 below. There are two differences from the suite of s42A reports: report 5 (which covered SRMR and RMIA) is now two separate reports and there is no report 16 (Evaluation and monitoring) because there are no further issues to address in relation to that part of the pORPS.

Table 1: Suite of reply reports

Report	Content	Maps and appendices
1	Introduction and general themes	-
2	Submissions on Part 1: Introduction and general provisions	-
3	Interpretation (Definitions and abbreviations)	-
4	MW – Mana whenua	
5a	SRMR – Significant resource management issues for the region	-
5b	RMIA – Resource management issues of significant to iwi authorities in the region	-
6	IM – Integrated management	-
7	AIR – Air	-
8	CE – Coastal environment	-
9	LF – Land and freshwater	APP1 MAP1
10	ECO – Ecosystems and indigenous biodiversity	APP2 to APP5
11	EIT – Energy, infrastructure, and transport	MAP2
12	HAZ – Hazards and risks	APP6
13	HCV – Historical and cultural values	APP7 APP8
14	NFL – Natural features and landscapes	APP9
15	UFD – Urban form and development	APP10

2. These reports respond to matters that have been raised in legal submissions and evidence as well as by submitters at the hearing, and where the matter either needs a direct response from Council officers, or results in a recommended change from the officers’ previous position. Essentially, these reports address the further changes from the earlier section 42A report recommendations and respond to some specific issues raised by the submitters and the Hearing Panel. In that sense, it is very much a “reply” document, and does not set out to restate the Regional Council’s earlier reports.

3. The associated "tracked changes" version of the pORPS (attached as Appendix A to the suite of reports) shows the final recommendations, as a complete whole. This includes all recommended changes from the notified version (including from s42A reports, supplementary evidence, and opening statements) but does not show their development through the various stages of the process. Where there is any discrepancy between that version and the recommendations in the reply reports, the tracked changes version should be treated as the 'correct' version of any provision.
4. Where a matter has been raised in legal submissions or evidence, and the submitter takes a different point of view to the Officers, but it does not result in an altered recommendation from Officers, these matters are often not specifically addressed. The original section 42A reports and supplementary statements of evidence address the majority of the issues raised by submitters at the hearing, and those assessments are not repeated here.
5. On this basis, if there is no further assessment in a reply report, it is not an indication that officers have not carefully considered the matters raised in evidence, but rather that officers have concluded that their assessment and conclusion in the original section 42A report, as modified by supplementary evidence, provide adequate analysis of the issue and continue to be the officers' analysis and recommendation.
6. These reports use the same abbreviations and submitters names as set out in section 1.2 of the section 42A report *Chapter 1: Introduction and general themes*.

2. Planning framework of the pORPS

2.1. Introduction

7. In my s42A report, I referred to the "philosophy" of the pORPS. During his oral submissions on the LF chapter, Mr Stephen Christensen for Oceana Gold criticised ORC for allowing its philosophy to override the legal framework for the pORPS. It was not my intention to suggest that the "philosophy" was something outside the relevant planning framework and so in this report I refer to the planning framework of the pORPS, which is the overall way the pORPS has implemented the RMA and the higher order documents.
8. The planning framework of the pORPS is that, at a very basic level, the use and development of natural and physical resources should occur within limits or constraints that sustain the health of the environment for future generations. I set out some contextual information for that understanding in my opening statement on the general themes across the pORPS.¹
9. Some submitters consider that the pORPS is too focused on environmental protection and does not adequately provide for the use and development of resources and the social, economic, and cultural well-being of people and communities.² A number of

¹ Opening Statement of Felicity Ann Boyd: Introduction and general themes, para [3]-[11]

² For example, 00237.074 Beef + Lamb and DINZ, 00239.201 Federated Farmers, 00115.037 Oceana Gold, 00026.003 Moutere Station, 00109.001 Peter Glaister, 00104.003 Gavan James Herlihy, 00032.001 Edgar Parcell, 00233.018 Fonterra

submitters state that the pORPS has applied the concept of Te Mana o te Wai inappropriately by adopting it to manage the wider environment, not only fresh water.³

10. This issue also underpins a number of related arguments by submitters that the pORPS does not adequately recognise the significance of or make provision for:
 - a. Rural sectors and land uses,⁴ including appropriate timeframes for transitioning to a new land and water management framework⁵ and whether there are gaps in the framework for managing rural areas,⁶
 - b. Mineral and aggregate extraction,⁷
 - c. Infrastructure, including renewable electricity generation,⁸ including the proposal by some generators⁹ for an Energy sub-chapter, the National Grid,¹⁰ and ports.
11. There are varying levels of support for and opposition to these arguments amongst other submitters. Generally, those in support are organisations with similar interests.
12. The relief sought in relation to these topics is sometimes consistent (for example, most seek greater recognition for their activities in the SRMR section through new issue statements and/or amendments to existing issue statements) and sometimes through bespoke provisions (for example, new provisions focused on the activities undertaken by the submitters).
13. In this section, I turn first to the high-level matter of the planning framework of the pORPS. I then discuss the four sub-themes that have arisen in the submissions and evidence.

2.2. The pORPS and sustainable management

14. I continue to maintain that it is appropriate and necessary for the pORPS to provide for the use and development of the region's resources within limits that safeguard their life-supporting capacity and sustain their potential to meet the needs of future generations. In my view, that is consistent with the definition of sustainable management in section 5(2) of the RMA. I accept that section 5(2) is structured differently from the planning framework of the pORPS, as I have expressed it, because it addresses the use of resources first, followed by direction on managing effects (my emphasis added):

³ For example, Ainsley McLeod for Transpower, paras [7.19]-[7.20], Stephanie Styles for Manawa Energy, paras [6.4]-[6.5], Claire Hunter for Oceana Gold, para [8.5], Mary O'Callahan for Port Otago, para [48]

⁴ Addressed in section 1.6.2 of s42A report *Chapter 1: Introduction and general themes* (4 May 2022).

⁵ See submissions and evidence from Fonterra, OWRUG, Federated Farmers, Dairy NZ

⁶ For example, Lynette Wharfe for Horticulture NZ para [15]-[18], James Taylor for DCC paras [45]-[49]

⁷ Addressed in Section 1.6.5 of s42A report *Chapter 1: Introduction and general themes* (4 May 2022) and the submissions and evidence of Oceana Gold, Graymont (NZ) Ltd, Ngāi Tahu ki Murihiku, and Kāi Tahu ki Otago.

⁸ Addressed in s42A report *Chapter 11: EIT – Energy, infrastructure, and transport* and the *Brief of evidence of Marcus Hayden Langman: Energy, Infrastructure and transport* dated 11 October 2022.

⁹ Contact Energy Ltd, Meridian Energy Ltd, Manawa Energy Ltd, and Mercury Energy Ltd.

¹⁰ Addressed in s42A report *Chapter 11: EIT – Energy, infrastructure, and transport*, the *Brief of evidence of Marcus Hayden Langman: Energy, Infrastructure and transport* dated 11 October 2022 and the submissions and evidence of Transpower Ltd.

*sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety **while**—*

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

15. Despite this, I do not consider this means there is a difference between the two concepts. The meaning and significance of the term “while” was traversed in the King Salmon decision:

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 sub-paras (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 sub-para (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 sub-paras (a) and (b). As we see it, the use of the word “while” before sub-paras (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”.

16. In my view, enabling the use and development of resources *ahead of* sustaining the potential of those resources for future generations and safeguarding their life-supporting capacity would not achieve the purpose of the RMA.

17. The issues in the SRMR outline the range of pressures felt by Otago’s natural and physical resources. In addition, the impacts on mana whenua are detailed in the suite of resource management issues of significance to iwi authorities (RMIA). I do not repeat them here, other than to note that there is no suggestion in section 62(1) of the RMA that the issues of significance to iwi authorities (RMIA) are to be afforded any less consideration than

the significant resource management issues for the region (SRMR). Both outline issues of significance.

18. There is evidence from ORC and submitters that some of the region’s resources have not been managed “in a way, or at a rate” that sustains their potential for future generations or safeguards their life-supporting capacity, including:
- a. The three Wildlands reports attached to the section 32 report:¹¹
 - i. Wildlands. (2020a). *Mapping of significant habitats for indigenous fauna in terrestrial, freshwater, and marine ecosystems in Otago region*. (Appendix 12)
 - ii. Wildlands. (2020b). *Mapping of potential natural ecosystems and current ecosystems in Otago region*. (Appendix 13)
 - iii. Wildlands (2021a). *An overview of the state of indigenous biodiversity in the Otago region*. (Appendix 14).
 - b. The evidence-in-chief of Mr Jayde Couper for Fish and Game on the general state of Otago’s aquatic ecosystems.¹²
 - c. The evidence-in-chief of Dr Jane Chrystal for Beef + Lamb and DINZ on the contaminants of concern for sheep and beef farms.¹³
 - d. The evidence-in-chief of Dr Marine Richarson for DOC on Otago’s freshwater indigenous biodiversity, and specifically on the freshwater values in Otago (including its populations of threatened indigenous fish species) that distinguish them from elsewhere in New Zealand.¹⁴
 - e. The evidence-in-chief of Dr Hendrik Schultz for DOC on the biodiversity values of Otago’s marine and coastal area.¹⁵
 - f. The evidence-in-chief of Mr Bruce McKinlay for DOC on Otago’s terrestrial indigenous biodiversity.¹⁶
19. Mr Couper has reviewed ORC’s latest water quality monitoring report¹⁷ and finds that “a large proportion of the region is showing signs of poor water quality” but that this is “not consistent geographically across the region.”¹⁸ He summarises this as follows:¹⁹
- a. Monitoring results suggest that water quality is lower in coastal Otago, particularly the Lower Clutha rohe, Dunedin & Coast FMU, and North Otago FMU.

¹¹ <https://www.orc.govt.nz/media/10012/section-32-report-v61-appendices.pdf>

¹² Jayde Couper for Fish and Game, para [7]-[15] and [16]-[86]

¹³ Jane Chrystal for Beef + Lamb and DINZ, para [64]-[81]

¹⁴ Marine Richarson for DOC, paras [38] – [44]

¹⁵ Hendrik Schultz for DOC, paras [21] – [25]

¹⁶ Bruce McKinlay for DOC, paras [35] – [62]

¹⁷ Ozanne, R. (n.d.). *State and trends of river and lake water quality in the Otago region 2000-2020*. Otago Regional Council, Dunedin. Available from <https://www.orc.govt.nz/media/9781/state-and-trends-of-lake-and-river-water-quality-in-the-otago-region-2000-to-2020.pdf>

¹⁸ Jayde Couper for Fish and Game, para [10]

¹⁹ Jayde Couper for Fish and Game, paras [11]-[14]

- b. In contrast, there are more issues with water quantity and abstraction in the Central Otago area, particularly the Manuherekia rohe, with the bulk of abstraction occurring in the Dunstan, Manuherekia and Roxburgh rohe and Taiari FMU.
 - c. There is strong evidence that a large proportion of Otago’s wetlands have been drained and that there is a high amount of physical alteration of Otago’s rivers and streams.
 - d. There are multiple stressors and pressures on freshwater ecosystems in Otago, including land use changes, climate change and introduced species.
20. I have reread the ORC report Mr Couper relies on (Ozanne, n.d.). That report shows that, overall, water quality is variable and ranges from excellent to poor. Of the 78 monitored sites, 46 do not meet the NOF bottom line for E.coli and 40 do not meet the bottom line for suspended fine sediment. For Dissolved Reactive Phosphorus (DRP), 14 sites were in the ‘D’ band (noting that the NPSFM does not specify a bottom line for DRP). There were 25 sites for total nitrogen (TN) and 23 sites for DRP that were elevated above the 20% exceedance criteria, which is the level at which there is some risk that the chlorophyll a response at some sites will exceed the desired chlorophyll a thresholds, even if the DRP or TN targets are achieved. No lakes in Otago meet the bottom lines for chlorophyll but only one (Lake Tuakitoto) does not meet the NOF bottom line for TN and total phosphorus (TP) (Ozanne, n.d., pp. 123-124).
21. In terms of trends, the 20-year trends were mostly degrading for all variables except ammoniacal nitrogen. Results were more variable for ten-year trends, with trends depending on the water quality variable. Broadly, there were degrading trends at some sites for dissolved oxygen, DRP, E.coli, MCI, nitrite-nitrate nitrogen (NNN), semi-quantitative macroinvertebrate community index, TN, TP and turbidity. However, there were also improving trends for ammoniacal nitrogen, dissolved oxygen, DRP, E.coli, NNN, TN, TP and turbidity (Ozanne, n.d., pp. 125-130).
22. Dr Jane Chrystal provides a detailed outline of the contaminants of concern for sheep and beef farms and the way these contaminants are transported to water, including identifying high risk farm practices. Consistent with Mr Couper’s evidence, Dr Chrystal states that:²⁰
- “Nutrient and contaminant management on farms is important because it can affect the quality of water in rivers, lakes, and streams, as well as groundwater reservoirs in relation to nitrogen. Farming practices can lead to an impact on the aquatic environment via nutrient and contaminant losses to water.”*
23. Dr Marine Richarson addresses freshwater ecosystems. In response to the suite of Wildlands reports, including those appended to Dr Lloyd’s supplementary evidence, Dr Richarson states that:²¹
- “While I noted some errors regarding identification of freshwater fish values present in the region – which are corrected in this evidence (see paragraphs 40-44)*

²⁰ Jane Chrystal for Beef + Lamb and DINZ, para [64]

²¹ Marine Richarson for DOC, para [87]

– I consider that most of Wildlands Consultants’ general methodology and results in identifying significant habitats for indigenous fish fauna in freshwater ecosystems stand, since those errors lie in misidentification of taxa which belong to the same taxonomic group of Threatened taxa (i.e., non-migratory galaxiids).”

24. To update the errors she identifies above, Dr Richardson outlines the current conservation status of the 32 indigenous fish species found in Otago:²²
- a. 15 (47%) are considered Threatened and have the highest risk of extinction, comprising:
 - i. Four that are Nationally Critical, meaning they are most severely threatened and facing an immediate high risk of extinction,
 - ii. Five are Nationally Endangered, meaning they are facing high risk of extinction in the short term,
 - iii. Six are Nationally Vulnerable, meaning they are facing high risk of extinction in the medium term, and
 - b. Nine²³ (28%) are considered At Risk, meaning they aren’t threatened but could quickly become so, comprising:
 - i. Seven are At Risk – Declining, meaning the population is declining but still moderately common,
 - ii. Two are At Risk – Naturally Uncommon, meaning they have a naturally small population and are therefore susceptible to harmful influences, and
 - c. Eight (25%) are Not Threatened.
25. Dr Richardson considers there is a gap in the Wildlands reports for identifying freshwater values related to aquatic macroinvertebrates and provides evidence on the state of these species in Otago currently. In summary, she states that there are 14 threatened freshwater invertebrates present in Otago, comprising eight that are Nationally Critical, two Nationally Vulnerable, and two At Risk – Declining, which represents 8% of the threatened invertebrate fauna of New Zealand.²⁴ Put simply, almost half of Otago’s indigenous fish species face extinction in the immediate to medium term. Another quarter could quickly follow suit if the pressures they face (including land use changes, climate change, and introduced species, as identified by Mr Couper) are not managed. Macroinvertebrates are similarly threatened.
26. In relation to marine and coastal ecosystems, Dr Hendrik Schultz considers the suite of Wildlands reports provides “a good overview of values that are present in Otago without going into extensive detail.”²⁵ He goes on to describe the general character of the coastal environment and the biodiversity values it has, setting out in detail the types of

²² Marine Richardson for DOC, pp. [12]-[13]

²³ Dr Richardson states at para 44 of her evidence that 10 are assessed as ‘At Risk’ however there are only nine species listed in the ‘At Risk’ categories in Table 1 of her evidence. I have relied on the latter source.

²⁴ Marine Richardson for DOC, para [71].

²⁵ Hendrik Schultz for DOC, para [44]

biodiversity present in Otago in relation to the content of Policy 11 of the NZCPS. I note that, again, there are many species either Threatened or At Risk.²⁶

27. Tables 2 to 6 of his evidence describe a range of indigenous ecosystems and vegetation types, indigenous community types, habitat types, and ecosystem types as well as their significance, pressures, and occurrence in Otago. There is a large degree of consistency in the pressures faced: water quality issues (including sedimentation and contaminants), eutrophication, physical damage from human activities (such as trawling and dredging), invasive species, ocean warming and/or acidification. Given that the coastal marine area is the ultimate receiving environment for fresh water, it is not surprising that many of these pressures are the same, or very similar, to the pressures outlined by Mr Couper in relation to freshwater ecosystems.
28. In relation to terrestrial indigenous biodiversity, Mr Bruce McKinlay outlines his consideration of the Wildlands reports²⁷ and, overall, considers that the reports commissioned by the ORC to inform the pORPS set out the indigenous faunal values present in Otago and a clear justification for their management in the pORPS.²⁸ He identifies a gap in the reports in relation to the particular values and attributes of the Upper Taiari and the Paerau Wetland Scroll Plain complexes, and provides detailed evidence on these. Further, Mr McKinlay identifies the threat status of a range of birds, lizards, and plants.²⁹ There are many that are Threatened or At Risk.
29. Dr Vaughan Keesing for Contact describes the impacts of climate change on New Zealand's indigenous biodiversity. In his opinion, "climate change ... will lead to a fundamental exacerbation of the current rate of loss of indigenous biodiversity ... through both direct and indirect impacts."³⁰
30. The technical evidence presented is not unchallenged:
 - a. Dr Vaughan Keesing for Contact and Manawa Energy states that the rate of indigenous vegetation cover loss has significantly reduced since 2012. He goes on to state that he does not see the evidence of continuing serious indigenous biodiversity decline.³¹ In his view, the pORPS does not need to take a precautionary and restrictive approach in respect of ecology.
 - b. Dr Thorsen for OGL considers the primary causes of biodiversity loss in Otago are habitat and ecosystem effects (such as the impacts of browsers, weeds, vegetation clearance, diseases, and impacts from a changing climate) and effects on species (such as impacts of predators, weeds, browsers, declining habitat quality, diseases, and impacts from a changing climate). He considers that the provisions of the

²⁶ Summarised from Table 1 of EIC of Dr Hendrik Schultz for DOC, pp. 9-10.

²⁷ Bruce McKinlay for DOC, paras [35]-[62]

²⁸ Bruce McKinlay for DOC, para [23]

²⁹ See Tables 1, 2, and 3 of EIC of Bruce McKinlay for DOC, pp. 24-29.

³⁰ Vaughan Keesing for Contact, para [12.13]

³¹ Vaughan Keesing for Contact, para [7.8]

pORPS are skewed from the primary causes of biodiversity loss and do not consider the positive gains that can be achieved from use of resources.³²

- c. Many of the ecological experts disagree on the wording of provisions in the ECO chapter and particularly the criteria for identifying significant natural areas (APP2), using biodiversity offsetting (APP3), and using biodiversity compensation (APP4).
31. Apart from Dr Keesing, there does not appear to have been any significant challenge to the evidence presented by the technical experts that outlines the current state of Otago's indigenous biodiversity or the pressures it faces. There are differences among the experts about how those pressures should be managed and the specific expression of the provisions in the pORPS. However, overall, I consider that the evidence summarised above demonstrates that the life-supporting capacity of water and ecosystems has not been safeguarded in some parts of Otago and that the management of adverse effects has not been sufficient to prevent this from occurring. This is important context to inform decisions about the extent to which the use and development of resources should be enabled.
32. I also draw attention to the cultural evidence of Kāi Tahu:
- a. Mr Edward Ellison's evidence on the cultural context for environmental management in Otago from a mana whenua perspective, including the ongoing cultural harm to Kāi Tahu whānui from historic management,
 - b. Mr Brendon Flack's evidence on mana whenua relationships with the coastal environment and the impacts of degradation,
 - c. Mr David Higgins' evidence on the relationship of his whānau with the lands, coasts, and waters within their takiwā, as well as the degradation of mahika kai and Kāi Tahu relationships with wāhi tūpuna,
 - d. Ms Evelyn Cook's evidence on the challenge of exercising kaitiaki responsibilities,
 - e. Mr Justin Tipa's evidence on the Kāi Tahu relationship with wai, reliance on mahika kai, Papatipu Rūnanga aspirations for reconnecting whānau to the whenua, and expectations for the Treaty Partnership in environmental management, and
 - f. Mr Matapura Ellison's evidence on the impacts of previous resource management decision-making by local authorities on Kāi Tahu whānau across generations.
33. These statements provide 'real life' examples of the issues of significance to iwi authorities in the region set out in the pORPS. In my opinion, the evidence of Kāi Tahu demonstrates that degradation of the region's natural and physical resources has significantly impacted their ability to exercise kaitiaki and pass on mātauraka to future generations, especially in relation to mahika kai. Based on this evidence, I do not consider that Otago's resource management framework has managed the use, development, and protection of natural and physical resources in a way, or at a rate, that has enabled Kāi

³² Mike Thorsen for OGL, para [17]
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Tahu to provide for their cultural well-being. As Ms Cook states, “[Kāi Tahu] are not separate from the community in Otago.”³³

34. This is inextricably linked to the extent to which the potential of resources has been (or will be) sustained to meet the needs of future generations (including cultural needs), the extent to which the life-sustaining capacity of those resources has been safeguarded, and the management of adverse effects. As stated in the *Kāi Tahu values* section of the MW chapter of the pORPS:

The resources in any given area are a taoka; they are a source of prestige for mana whenua of that area and are a statement of their identity. Traditionally, the abundance or lack of resources directly determines the welfare of every hapū, and so affects their mana.

35. In my view, given the evidence presented on the state of Otago’s terrestrial, freshwater, and marine biodiversity, there is good reason to be cautious about the extent to which the use and development of resources should be enabled. Some of Otago’s most threatened indigenous biodiversity occurs in its water bodies, which are affected by a range of activities, including those occurring on land. Effects on freshwater bodies are then also felt further down catchments in the coastal marine area, as receiving environment. These aspects of the environment are all connected and a policy framework promoting sustainable management must, in my view, consider these in an integrated way. To promote sustainable management, *all* parts of section 5(2) must be considered together.
36. In the following sections, I address the particular arguments put forward by submitters in relation to rural sectors and land uses, mining and other extractive industries, and renewable electricity generation and the National Grid.

2.3. Rural sectors and land uses

2.3.1. Introduction

37. Usually as a subset of the wider concerns about the pORPS’s general approach to resource management, there were many submissions made on the lack of recognition in the pORPS of the rural sector and land uses and their importance for the social, economic, and cultural wellbeing of Otago’s communities. Since those submissions were made, the NPSHPL has come into effect and amendments have been recommended in order to give effect to its provisions insofar as the scope of submissions provides. This has addressed some submitters’ concerns, although some remain (see *Reply report 9: LF – Land and freshwater* for a more fulsome discussion of highly productive land).
38. The arguments advanced by Horticulture NZ, OWRUG, Federated Farmers, DairyNZ, and Beef + Lamb and DINZ consolidated during the hearing of the LF chapter into a common request for the introduction of a rural chapter. There has been no drafting provided by those submitters and it has been unclear to me what the scope and content is for the rural chapter sought by these submitters, and whether that is consistent across the

³³ Evelyn Cook for Ngāi Tahu ki Murihiku, para [10]
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submitters. For this reason, I begin my analysis of this topic by setting out the history of the relief sought by the parties and its evolution through the process.

39. I then turn to proposal for a rural chapter and discuss my views on whether there is value in including one as sought by submitters. In summary, although I consider there is a considerable amount of policy direction on managing rural areas already, I accept that the scope of the LF-LS chapter is very narrow and could address land and soil resources more broadly than it currently does. Section 51 discusses the amendments I recommend in response to the submissions, including to provisions, and I conclude with an assessment in accordance with section 32AA.

2.3.2. Submissions and evidence

40. The submissions of Horticulture NZ, OWRUG, Federated Farmers, DairyNZ, Beef + Lamb and DINZ seek the following:
- a. Horticulture NZ's general submissions highlight the need to promote and consider food production, food supply, and food security alongside other uses essential for human health, not create barriers to climate change adaptation and/or mitigation, and to protect the productive capacity of highly productive land from inappropriate subdivision, use, and development.³⁴ At the time, the submitter sought to retain most of the LF-LS provisions as notified but, in relation to the UFD chapter, sought to introduce a new rural chapter and to move UFD-O4, UFD-P7, and UFD-P8 into that chapter.³⁵
 - b. OWRUG's general submission seeks that the pORPS be amended to provide stronger recognition of the importance of primary production land and the economic uses of soil.³⁶ This is accompanied by a range of specific amendments sought throughout the pORPS provisions to better recognise the food and fibre sector, which did not include the introduction of a rural chapter.
 - c. Federated Farmers' general submission seeks greater recognition of the importance of the primary sector in general, and food production in particular, from the introduction across remaining provisions, and a broader acknowledgement towards (and recognition of) the roles resource users fulfil in meeting the positive outcomes sought under the pORPS.³⁷ Specific relief is sought on provisions throughout the pORPS including, in relation to the UFD chapter, a statement that "the rural area should be treated as distinct from the urban area and should be provided as a standalone chapter."³⁸
 - d. DairyNZ is a further submitter and supported the general relief sought by OWRUG for greater recognition of the importance of primary production.

³⁴ 00236.002 – 004 Horticulture NZ

³⁵ 00236.096 Horticulture NZ

³⁶ OWRUG submission, para 17.

³⁷ Federated Farmers submission, para 2.23 and 00239.197 Federated Farmers

³⁸ Federated Farmers submission, p.102

- e. The general relief sought by Beef + Lamb and DINZ is for better recognition of rural land and primary sectors and their value to the region for social economic, and environmental purposes.³⁹ The submitter opposed the LF-LS section in its entirety on the basis that it should be redrafted following the NSPHPL being made operative.⁴⁰ In relation to the UFD chapter, the submitter stated that the topic required re-writing and should recognise, provide for, and protect versatile soils and productive land use and avoid adverse effects on versatile soils and productive land use (including reverse sensitivity).⁴¹
41. The submitters have provided a suite of evidence on the primary sector, including from economists, industry advisors, industry organisations, and farmers and growers. Two planning witnesses provided evidence:
- a. Ms Lynette Wharfe for Horticulture NZ – evidence in chief and rebuttal evidence, and
 - b. Dr Mike Freeman for OWRUG, Federated Farmers, and DairyNZ (collectively) – evidence in chief.
42. Ms Wharfe addresses the rural provisions in the UFD chapter in her evidence-in-chief and disagrees with the s42A recommendation to retain the rural provisions in the UFD chapter. Broadly, Ms Wharfe considers that the issues relating to the rural area are distinctly different to the urban area and supports the relief sought by Horticulture NZ to include the rural matters from the UFD chapter into a specific chapter for the rural area. Appendix 1 clarifies that the provisions Ms Wharfe seeks to include in a rural chapter are UFD-O4, UFD-P7, UFD-P8, UFD-M2(9), UFD-PR1 (6th para), and UFD-AER11 – AER13.
43. Dr Freeman discusses the lack of recognition in the pORPS for the primary sector⁴² and of the positive effects of the use and development of land.⁴³ He supports specific amendments to the IM and LF chapters but does not address or propose drafting for a rural chapter and does not comment in any detail on the UFD provisions managing the rural environment.
44. At the LF hearing, Mr Page made legal submissions which contained, in Appendix 2, three tables setting out the relief sought by the submitters. Table 1 sets out the high-level relief sought and, in summary, seeks:
- a. Amendments to the SRMR section to better reflect the significance of food and fibre production, including adopting the new issue statement for resource use set out in the second SRMR joint witness statement.
 - b. Provision for the establishment of a rural advisory panel, requiring a memorandum of understanding between ORC and the panel, and requiring the panel to be involved in advising ORC on the timing and transition of change necessary to meet the planning framework established under the pORPS and LWRP. Panel members

³⁹ 00237.074 Beef + Lamb and DINZ

⁴⁰ 00237.045 Beef + Lamb and DINZ

⁴¹ 00237.063 Beef + Lamb and DINZ

⁴² Mike Freeman for OWRUG, Federated Farmers, and DairyNZ, para [16](e).

⁴³ *Ibid*, para 21.

would be representative of farming systems in Otago and nominated through a fair process.

- c. Amendments to the IM chapter to provide for decision-making at a catchment and sub-catchment level.
- d. A definition of food and fibre production.
- e. A method for continuing to assess the impact of land use on water quality to ensure that the policy framework is solving a problem.
- f. The adoption of a rural chapter which has policies, objectives, and methods that are fit for purpose in Otago.

45. I have some concerns about the scope for this relief. I do not consider there is scope for the relief sought in paragraphs (b), (c), or (e) above. In relation to (b), I note that ORC convened an Industry Advisory Group (IAG) in October 2021 as a joint initiative with rural sector industry groups to develop ORC's Economic Work Programme⁴⁴ to support the development of the LWRP (Otago Regional Council, 2022). In December 2022, the IAG produced its first report: *Farmers and Growers in Otago* (Moran, 2022). The group continues to work collaboratively to deliver the next phase of the work programme, with the *Catchment Stories* workstream nearing completion currently. I will canvas this work programme and its outputs in more detail in the FPI process, but I consider this goes some way in addressing the process sought by OWRUG, Federated Farmers, and DairyNZ for a rural advisory panel to be established.
46. Table 2 of Appendix 2 to Mr Page's submissions sets out a series of specific amendments sought to the pORPS in relation to the definition of regionally significant infrastructure, SRMR-I2, and SRMR-I7. Mr Page's additional legal submissions clarified what he considered to be the scope in his parties' submissions for the amendments sought to SRMR-I2. It appears the remainder of the relief sought in Table 2 is from the submission of Federated Farmers. Table 3 of Appendix 2 replicates the amendments sought in Dr Freeman's evidence-in-chief but has not been updated to respond to the s42A recommendations and does not appear to canvas all of the 'high level' relief set out in Table 1. Some of the amendments set out in Dr Freeman's appear to be outside the scope of the submissions of the three parties.
47. It is clear from the Horticulture NZ submission and Ms Wharfe's evidence that the scope of the rural chapter sought by that submitter is limited to the provisions in the UFD chapter that relate to rural areas. It is not clear from the submissions or legal submissions of OWRUG, Federated Farmers, or DairyNZ, or the evidence of Dr Freeman, what the content of a proposed rural chapter would be. In particular, it is unclear whether these submitters are seeking the same relief as Horticulture NZ or something different.
48. Given the more general submissions made by these submitters seeking better recognition of the food and fibre sector, and the submitters' focus on the content of the LF chapter, I have assumed that these submitters seek something 'more' than Horticulture NZ – a

⁴⁴ An overview of the Economic Work Programme can be found here:

<https://www.orc.govt.nz/media/12003/otago-regional-council-economic-work-programme-16-march2022.pdf>

rural chapter which includes new direction not currently in the pORPS that the submitters feel is absent. Presumably there is no opposition to also including and enhancing the existing provisions managing the rural environment in this chapter, though this is not confirmed by the submitters.

2.3.3. Should the pORPS include a rural chapter?

49. I consider there are two main options for addressing the concerns of submitters:

- a. Including a new rural chapter, or
- b. Reconsidering the scope of existing chapters.

50. As I have discussed previously, it is unclear what the content would be of the rural chapter proposed by OWRUG, Federated Farmers, and DairyNZ. For the purposes of this analysis, I have assumed it would contain relevant provisions from the LF-LS and UFD chapters as well as provisions recognising the role of rural activities in enabling people to provide for their social, economic, and cultural well-being.

51. I consider there is also a risk that moving the rural-focused provisions from the LF-LS section detaches their management from water in a way that makes it difficult to adopt an integrated approach, ki uta ki tai, as required by clause 3.5 of the NPSFM. I understand the intent of requiring an LF chapter in the National Planning Standards was to encourage this type of integration.

52. In my opening statement to the LF hearing, I acknowledged that the LF-LS section had a relatively narrow scope and that I was not fundamentally opposed to broadening it. As well as the primary sector parties seeking a rural chapter, other submitters seek to introduce new provisions to the LF-LS section which would broaden its scope: Fulton Hogan and OceanaGold seek to include provisions to enable the use of resources for primary production (including mineral and aggregate extraction) and DOC seeks to manage land environments more broadly. In my view, broadening the scope of the LF-LS chapter is preferable to incorporating a separate rural chapter.

2.3.4. A revised LF-LS section

53. As it stands, the objectives of the LF-LS section address:

- a. Soil resources (LF-LS-O11),
- b. Highly productive land (LF-LS-O11A), and
- c. Land and freshwater (LF-LS-O12).

54. The UFD chapter contains UFD-O4 as redrafted by Ms White. Its location in the UFD chapter means that objective is focused on the outcome sought from any development, including urban development, occurring in rural areas.

55. Submitters seek the following additions:

- a. The availability of rural land for primary production (Fulton Hogan),

- b. Recognition of the role of resource use and development in the region and its contribution to enabling people and communities to provide for their social, economic, and cultural well-being (Oceana Gold),
- c. Land environments support healthy habitats for indigenous species and ecosystems (DOC), and
- d. Manage land use activities to recognise and protect terrestrial, freshwater, and coastal values which may be affected by these activities (DOC).

56. These submissions provide scope for expanding the focus of this chapter to incorporate additional matters. However, I consider that re-drafting the suite of objectives to address these matters in a more integrated way is preferable to simply inserting a range of additional objectives. What has been apparent during the hearing is the range of tensions that arise from the use and development of land. In my view, listing a series of separate objectives does not assist with attempting to address that tension and runs the risk of ‘trading off’ objectives against one another. For that reason, I have considered the content of the existing LF-LS objectives alongside the new objectives sought by submitters, and now propose to revise the existing objectives in a way which I consider retains their original content and addresses all of these matters. I also recommend including UFD-O4 as redrafted by Ms White.

57. The objectives as I recommend them read:

LF-LS-O11 – Land and soil

~~The life-supporting capacity of Otago’s soil resources is safeguarded and the availability and productive capacity of highly productive land for primary production is maintained now and for future generations.~~

Otago’s land and soil resources support healthy habitats for indigenous species and ecosystems.

LF-LS-O12 – Use, development, and protection of land

~~The use of land in Otago maintains soil quality and contributes to achieving environmental outcomes for fresh water.~~

The use, development, and protection of land and soil:

- (1) safeguards the life-supporting capacity of soil,
- (2) contributes to achieving environmental outcomes for fresh water, and
- (3) recognises the role of these resources in providing for the social, economic, and cultural well-being of Otago’s people and communities.

UFD-O4 – Development in rural areas⁴⁵

Development in Otago’s rural areas occurs in a way that:

- ~~(1) avoids impacts on significant values and features identified in this RPS,⁴⁶~~

⁴⁵ 00236.096 Horticulture NZ, 00237.063 Beef + Lamb and DINZ

⁴⁶ 00137.154 DOC, 00226.310 Kāi Tahu ki Otago

- ~~(2) — avoids as the first priority, land and soils identified as highly productive by LF-LS-P19 unless there is an *operational need* for the development to be located in *rural areas*,⁴⁷~~
- ~~(3) — only provides for urban expansion, rural lifestyle and rural residential development and the establishment of *sensitive activities*, in locations identified through strategic planning or zoned within *district plans* as suitable for such development; and⁴⁸~~
- ~~(4) outside of areas identified in (3),⁴⁹ maintains and enhances provides for the ongoing use of *rural areas* for *primary production* and *rural industry*, and⁵⁰~~
- ~~(4A) does not compromise the *natural and physical resources* that support the⁵¹ productive capacity,⁵² rural character,⁵³ and long-term viability of *primary production* the rural sector⁵⁴ and rural communities.~~

58. I consider my recommended objectives incorporate the matters sought by submitters in paragraph 54 above in the following ways:
- a. The objective sought by Fulton Hogan is provided in UFD-O4(1).
 - b. Recognition of the role of resource use is provided in LF-LS-O12(3).
 - c. Land environments supporting indigenous species is provided in LF-LS-O11.
 - d. Although not specifically addressed in the submitters' words, management of the wider adverse effects of land use activities are addressed through the chapeau of LF-LS-O11 which refers to 'healthy habitats for indigenous species' as well as the reference in LF-LS-O12 to 'use, development, and protection' of land and soil resources.
59. I have recommended deleting the wording from LF-LS-O11 regarding highly productive land as I consider this is addressed in LF-LS-P19 and my new recommended LF-LS-P19A.
60. Importantly, and in reference to my earlier discussion about the planning framework in the pORPS, I consider that my redrafted LF-LS-O12 appropriately situates 'resource use' alongside 'environmental considerations', rather than as a separate consideration. In my view, that is consistent with s5(2) of the RMA – the role of these resources in providing for well-being must be recognised at the same time as the other matters in LF-LS-O11, such as safeguarding the life-supporting capacity of soil and achieving environmental outcomes for freshwater.

⁴⁷ 00139.001, 00139.253 DCC

⁴⁸ 00211.045, 00211.048 & 00211.049 LAC, 00210.045, 00210.048 & 00210.049 Lane Hocking, 00209.045, 00209.048 & 00209.049 Universal Developments, 00118.066 Maryhill Ltd, 00014.066 Mt Cardrona Station, 00139.001, 00139.253 DCC

⁴⁹ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00139.001, 00139.253 DCC

⁵⁰ 00322.038 Fulton Hogan, 00410.007 Rural Contractors NZ (in part)

⁵¹ 00236.099 Horticulture NZ

⁵² 00236.005 Horticulture NZ

⁵³ 00139.262 DCC, 00211.050 LAC, 00210.050 Lane Hocking, 00118.066 Maryhill Limited, 00014.066 Mt Cardrona Station, 00209.050 Universal Developments

⁵⁴ 00322.038 Fulton Hogan, 00230.144 Forest and Bird

61. There are many links between land and soil resources, their health, the activities they support, the impacts their use can have on other resources, and the impacts of other activities on the ability to use rural land for rural activities. This makes drafting succinct objectives challenging. My approach has been to focus on the broad outcomes for land and soil resources first in LF-LS-O11 and LF-LS-O12, followed by the more specific outcomes sought from managing development in rural areas in UFD-O4. Given this is ORC's final reply, and submitters will have no further opportunity to comment, I have focused on retaining existing direction as much as possible rather than 'starting from a blank page.'

2.4. Mining and other extractive industries

62. I have previously addressed the submissions by Oceana Gold and other submitters with an interest in mineral and aggregate extraction.⁵⁵ I consider that my recommended new objective LF-LS-O12, and its reference to the importance of resource use to well-being, assists with addressing the concerns of the submitters. I do not recommend any further amendments.

2.5. Renewable electricity generation and the National Grid

63. Mr Langman has addressed the proposals by the renewable electricity generators and electricity distribution network providers in *Reply report 11: EIT – Energy, infrastructure and transport*.

2.6. Final recommendations

64. I recommend the following amendments to the notified version of the pORPS:

LF-LS-O11 – Land and soil

~~The life-supporting capacity of Otago's soil resources is safeguarded and the availability and productive capacity of highly productive land for primary production is maintained now and for future generations.~~

Otago's land and soil resources support healthy habitats for indigenous species and ecosystems.⁵⁶

LF-LS-O12 – Use, development, and protection of land

~~The use of land in Otago maintains soil quality and contributes to achieving environmental outcomes for fresh water.~~

The use, development, and protection of land and soil:

(1) safeguards the life-supporting capacity of soil,

(2) contributes to achieving environmental outcomes for fresh water, and

⁵⁵ Ref – s42A report 1, supp evidence, opening statement

⁵⁶ 00411.006 Wayfare, 00137.084 DOC

(3) recognises the role of these resources in providing for the social, economic, and cultural well-being of Otago's people and communities.⁵⁷

UFD-O4 – Development in rural areas⁵⁸

Development in Otago's rural areas occurs in a way that:

- ~~(1) avoids impacts on significant values and features identified in this RPS,~~⁵⁹
- ~~(2) avoids as the first priority, land and soils identified as highly productive by LF-LS-P19 unless there is an *operational need* for the development to be located in rural areas,~~⁶⁰
- ~~(3) only provides for urban expansion, rural lifestyle and rural residential development and the establishment of *sensitive activities*, in locations identified through strategic planning or zoned within *district plans* as suitable for such development; and~~⁶¹
- ~~(4) outside of areas identified in (3),~~⁶² maintains and enhances provides for the ongoing use of rural areas for primary production and rural industry, and⁶³
- ~~(4A) does not compromise the *natural and physical resources* that support the~~⁶⁴ productive capacity,⁶⁵ rural character,⁶⁶ and long-term viability of primary production ~~the rural sector~~⁶⁷ and rural communities.

65. SRMR-I7 sets out that the presence of pests and predators has had a significant impact on Otago's environment. As notified, the pORPS did not appropriately address this in its provisions. I consider that my recommended revision of LF-LS-O11 is more appropriate than the notified provision because it responds to a significant resource management issue for the region and describes the outcome sought from managing this issue.

66. Earlier in this report, I have set out the planning framework in the pORPS and its relationship with section 5 of the RMA. For the reasons set out there, I consider that the objectives as I recommend them be amended are more appropriate than the notified objectives because they more clearly and accurately acknowledge the role of use and development of resources, and the importance of those activities to the well-being of people and communities.

⁵⁷ 00236.096 Horticulture NZ, 00239.197 Federated Farmers, 00115.034 Oceana Gold

⁵⁸ 00236.096 Horticulture NZ, 00237.063 Beef + Lamb and DINZ

⁵⁹ 00137.154 Director General of Conservation, 00226.310 Kāi Tahu ki Otago

⁶⁰ 00139.001, 00139.253 Dunedin City Council

⁶¹ 00211.045, 00211.048 & 00211.049 LAC Properties, 00210.045, 00210.048 & 00210.049 Lane Hocking, 00209.045, 00209.048 & 00209.049 Universal Developments Hawea Limited, 00118.066 Maryhill Ltd, 00014.066 Mt Cardrona Station, 00139.001, 00139.253 Dunedin City Council

⁶² Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00139.001, 00139.253 Dunedin City Council

⁶³ 00322.038 Fulton Hogan, 00410.007 Rural Contractors NZ (in part)

⁶⁴ 00236.099 Horticulture NZ

⁶⁵ 00236.005 Horticulture NZ

⁶⁶ 00139.262 Dunedin City Council, 00211.050 LAC Properties Trustees Limited, 00210.050 Lane Hocking, 00118.066 Maryhill Limited, 00014.066 Mt Cardrona Station, 00209.050 Universal Development Limited

⁶⁷ 00322.038 Fulton Hogan, 00230.144 Royal Forest and Bird Protection Society of New Zealand Incorporated
Proposed Otago Regional Policy Statement 2021

67. Ms White has addressed the amendments to UFD-O4 in *Reply report 15: UFD – Urban form and development*, including an evaluation under s32AA, so I do not repeat it here.

3. Pest species (including wilding conifers)

3.1. Introduction

68. As notified, the pORPS contains two policies focused on managing the impacts of wilding conifers on outstanding natural features and landscapes and significant natural areas through ECO-P9 and NFL-P5. During the hearing, a number of parties outlined their reasons for seeking a broader approach to managing pests, including wilding trees more generally.⁶⁸

69. In my opening statement for the LF hearing, I stated that I was not opposed to incorporating this type of direction in the pORPS and that the LF-LS section was the appropriate place for this given its focus on land resources. My consideration of this issue was tied to my consideration of other submission points seeking to broaden the scope of the LF-LS section. In section 2.3 of this report, I have addressed those requests and, in summary, have recommended expanding the scope to address land environments more generally, including in relation to the habitat it provides for indigenous species. That provides a foundation for considering the requests from submitters for policy direction on managing pests.

70. Three key questions arise from the submissions and evidence on this topic:

- a. Should the pORPS contain broader policy direction on the management of pest species than the specific direction for wilding conifers in ECO-P9 and NFL-P5?
- b. Should policy direction apply to wilding conifers as defined in the pORPS or to wilding trees more broadly?
- c. What activities should be managed?

71. I address these in turn.

3.2. Broader policy direction on pests

72. Wayfare seeks that the pORPS include new provisions, or amendments to existing provisions, to provide clear policy direction on pest control.⁶⁹ Both Wayfare and Federated Farmers seek to include the definition of ‘pest’ from the Biosecurity Act 1993 in the pORPS.⁷⁰ DOC seeks to insert a new policy in the ECO chapter addressing pests other than wilding conifers, to complement ECO-P9.⁷¹ Mr Brass for DOC⁷² supports the introduction of a policy on pest species more generally to instead be included in LF-LS, but incorporating the direction from ECO-P9 and NFL-P5. At the hearing, Mr Brass for

⁶⁸ For example: Opening statement of Katie James for DCC (ECO), paras [11]-[17]

⁶⁹ 00411.006 Wayfare

⁷⁰ 00411.017 Wayfare, 00239.007 Federated Farmers

⁷¹ 00137.084 DOC

⁷² Murray Brass for DOC, paras [104]-[106]

DOC also highlighted the need to enable pest control activities such as the use of pesticides.

73. Mr Bruce McKinlay for DOC outlines the range of impacts wilding conifers can have on the environment.⁷³ He highlights, in particular, the effects on indigenous species and pastoral farming.⁷⁴ He considers that a policy addressing pests should be included in the pORPS and supports the request by Federated Farmers and Wayfare to define the term ‘pest’ consistently with the Biosecurity Act 1993.⁷⁵
74. Dr Thorsen states in his evidence that he considers the primary causes of biodiversity loss in Otago are:⁷⁶
- a. Habitat and ecosystem effects, including the impacts of browsers and weeds, and
 - b. Effects on species, including the impacts of predators, weeds, and browsers.
75. Many of the witnesses who appeared for OWRUG, Federated Farmers, and DairyNZ noted the impacts of pests on productive land.⁷⁷
76. The evidence presented during the hearing underscores the content of SRMR-I7: Rich and varied biodiversity has been lost or degraded due to human activities and the presence of pests and predators. I consider the direction on managing pest species in the pORPS is unnecessarily narrowed to only managing the effects of specific wilding conifer species on outstanding natural features and landscapes and significant natural areas. In my opinion, SRMR-I7 and the evidence of submitters demonstrates that the impacts of pest species are much broader than this and additional policy direction is appropriate.
77. I have proposed a revised objective for the LF-LS section which requires that Otago’s land and soil resources support healthy habitats for indigenous species. A key part of achieving this outcome will be through the control of pest species. In light of the submission by DOC, I have considered whether a policy on pest management would be best included in the ECO or LF-LS chapter. Although the effects of pests on indigenous biodiversity can be significant, Mr McKinlay’s evidence highlights that there can be economic costs resulting from lost productivity due to pests and damage to land.
78. While it is primarily the role of the Biosecurity Act 1993 and the regional pest management plan to manage pest species, the spread of some types of pests can be encouraged or restricted by managing land uses, which is within the scope of the RMA. This is particularly the case for wilding conifers. Additionally, some types of pest control can be either enabled or impeded by rules in regional plans managing discharges of contaminants. For these reasons, I consider the LF-LS chapter is the best ‘home’ for direction managing pests.

⁷³ Bruce McKinlay for DOC, paras [157]-[161]

⁷⁴ Bruce McKinlay for DOC, paras [162]-[170]

⁷⁵ Bruce McKinlay for DOC, paras [176]-[178]

⁷⁶ Mike Thorsen for OGL, para [15]

⁷⁷ For example: Emma Crutchley for OWRUG, Federated Farmers and DairyNZ, para [33]-[38]; Luke Kane for OWRUG, Federated Farmers and DairyNZ, para [39]-[40]

79. Based on the evidence above, to better address SRMR-I7, and to assist with achieving my recommended objective LF-LS-O11, I consider a policy on the management of pests is appropriate. In my view, this should apply to all pests but incorporate the direction from ECO-P9 and NFL-P5, which is generally supported by submitters.

3.3. Wilding conifers or wilding trees?

80. Ms Baish for Ernslaw One proposes a policy in the LF-LS chapter addressing wilding conifers more widely than in ECO-P9 and NFL-P5 but incorporating some of the direction from those policies.⁷⁸ Lloyd McCall, Pomahaka Water Care Group, Trojan, and Wayfare seek to expand the scope of ECO-P9 to apply to all invasive/wilding tree species, not only wilding conifers.⁷⁹ Rayonier Matariki seeks to prevent the planting of wilding conifer species in any forests, shelterbelts and amenity plantings.⁸⁰

81. In his evidence, Mr Paul Freeland for DCC supports inclusion of the following additional species in APP5 which are managed under the Second Generation Dunedin City District Plan (2GP):

- a. Boxthorn (*Lycium ferocissimum*),
- b. Hawthorne (*Crataegus mongyna*),
- c. Rowan (*Sorbus aucuparial*), and
- d. Sycamore (*Acer pseudplatanus*).

82. In her opening statement for the ECO hearing, Ms Katie James for DCC states that these species were identified based on evidence Dr Lloyd provided for the hearing for the 2GP and was specifically directed to the Dunedin district.⁸¹ That evidence was not provided by DCC during the pORPS hearing and I am unsure of the extent to which these species are an issue outside the Dunedin district. Ms James notes that there will be other tree species that have a higher invasive risk in other parts of the region.⁸² The Otago Pest Management Plan 2019-2029 (PMP) identifies sycamore as a pest but boxthorn, hawthorne, and rowan as 'organisms of interest'.

83. QLDC also seeks to broaden APP5 to address wilding trees more generally and to include additional species that are controlled under Rule 34.4.2 of the QLDC Proposed District Plan.⁸³ I note that rule allows the NESPF to prevail over its content and is therefore more lenient than the direction in ECO-P9 and NFL-P5, but it does prohibit the planting of other non-conifer species.

84. City Forests seeks to remove heavy seed species such as radiata pine from APP5 as well as general amendments to the ECO chapter to acknowledge the obligations of the Wilding Tree Risk Calculator to manage the spread of wilding conifers.⁸⁴ At the hearing, Mr Oliver

⁷⁸ Lynette Baish for Ernslaw One, para [60]

⁷⁹ 00319.008 Lloyd McCall, 00207.006 Pomahaka Water Care Group, 00411.058 Wayfare

⁸⁰ 00020.021 Rayonier Matariki

⁸¹ Opening statement of Katie James on ECO hearing, para [13]

⁸² Opening statement of Katie James for ECO chapter, para [13]

⁸³ 00138.044 QLDC

⁸⁴ 00024.016 and 00024.014 City Forests

for City Forests spoke about seeing sycamore spread around Otago and considered that radiata pine did not pose a significant risk of wilding spread.

85. There are two aspects to the question of whether the pORPS should manage wilding conifers or wilding trees: the scope of policy direction and the content of APP5. In relation to policy direction, I accept that wilding conifers are not the only pest causing issues in Otago and there are other tree species that may result in wilding spread. For the reasons I have set out previously, I consider it is appropriate for the pORPS to contain broader direction on the management of pests than is currently contained in ECO-P9 and NFL-P5. However, that should not duplicate the requirements of the Biosecurity Act 1993 or the Otago Regional Pest Management Plan 2019-2029 (Otago PMP).
86. The purpose of APP5 is to list wilding conifer species that, through ECO-P9 and NFL-P5, cannot be planted for plantation forestry within significant natural areas or outstanding natural features or landscapes. APP5 did not contain other species prone to wilding (such as sycamores) because they were not considered to be relevant to plantation forestry. For this reason, I do not agree with Mr Freeland or QLDC that additional non-conifer species should be included in APP5. However, I consider that my previous recommendation to incorporate additional direction on pest species would assist with addressing the concerns of the submitters.

3.4. What activities should be managed?

87. Wilding conifers can be spread by any activity involving the planting of species prone to wilding. I understand that 90% of New Zealand's plantation forests comprise radiata pine and 6% are Douglas fir, with the remainder being eucalyptus and other softwood and hardwood species.⁸⁵ Radiata pine and Douglas fir are both identified as pests in the Otago RPMP and listed in APP5. According to DOC, there are ten species responsible for most wilding conifers, including both radiata pine and Douglas fir.⁸⁶ At the hearing, Mr Oliver for City Forests stated that he did not consider radiata pine to be problematic in terms of its wilding spread, citing his personal experience with forestry activities and the use of the Wilding Tree Risk calculator under the NESPF.
88. I acknowledge that afforestation and replanting under the NESF requires an assessment of the risk of wilding spread using the Wilding Tree Risk calculator. However, regulation 6 of the NESPF allows plan rules to be more stringent than the NESPF in the following circumstances:
- a. If the rule recognises and provides for the protection of outstanding natural features and landscapes from inappropriate use and development, or
 - b. If the rule recognises and provides for the protection of significant natural areas,
 - c. If the rule gives effect to an objective developed to give effect to the NPSFM.

⁸⁵ Ministry for Primary Industries. (2022). *About New Zealand's forests*. Available from <https://www.mpi.govt.nz/forestry/new-zealand-forests-forest-industry/about-new-zealands-forests/>

⁸⁶ Department of Conservation. (n.d.). *Wilding conifers*. Available from <https://www.doc.govt.nz/nature/pests-and-threats/weeds/common-weeds/wilding-conifers/>

d. If the rule gives effect to any of policies 11, 13, 15, and 22 of the NZCPS.

89. Given how many outstanding natural features and landscapes there are in Otago, the significance of their values, and the threat posed by wilding conifer spread, I continue to consider that it is appropriate for Otago's district plans to impose greater stringency than the NESPF in these areas. This is particularly important given the two most common species used for plantation forests are considered pests in Otago.
90. Similarly, the evidence of Mr McKinlay and Dr Thorsen highlights the significant impacts of pests on indigenous biodiversity. For that reason, I continue to consider that it is appropriate for greater stringency to be imposed within significant natural areas. In both cases, this direction is contained in existing policies ECO-P9 and NFL-P5. I recommend including a broader policy on managing pests in the LF-LS chapter and consider it would clearer to incorporate this existing direction into that policy rather than retaining it separately.
91. There are also other activities that give rise to wilding conifer spread. Submitters raised concerns about permanent forestry (also known as carbon forestry) as well as smaller planting such as shelterbelts, small woodlots, and amenity plantings.⁸⁷ Those activities are not faced with the same management constraints as plantation forestry because they are not managed by a NES. This means there is broader scope to manage those activities compared to plantation forestry.
92. There was no evidence provided about the activities that pose the greatest risk. I have read the Otago PMP and note that all wilding conifer species are identified as pests and their spread is being managed by progressive containment.⁸⁸ Progressive containment is a programme of containing or reducing the geographic distribution of an organism over time. Given the approach is the same for all wilding conifer species, I consider it would be most efficient and consistent with the Otago PMP for the policy to simply require avoiding planting of species listed in APP5.
93. I acknowledge that there are many other species declared as pests in the Otago RPMP, including sycamore, and the approach to their management varies.⁸⁹ To ensure that there is a clear framework for managing these pests in lower order plans in ways that are appropriate for those areas, I recommend requiring that the planting of other pest species is restricted in a way that is consistent with the Otago PMP.
94. Finally, I note that Ms Hardiman previously recommended accepting a submission point by Federated Farmers seeking to include the following definition of 'pest':

...an organism specified as a pest in a pest management plan.

⁸⁷ Paul Freeland for DCC, para [54]; Opening statement of Katie James for ECO chapter, para [12]; Kathryn Russell for QLDC, paras [3.4]-[3.7]

⁸⁸ Section 4.1, Otago Pest Management Plan 2019-2029.

⁸⁹ For example, spiny broom is to be managed by eradication, gorse is under sustained control (which provides for ongoing control of the organism), and sycamore is managed on a site-led basis (meaning the organism is excluded or eradicated from a specific area).

95. I agree with that inclusion and consider the use of the word ‘pest’ in my proposed new policy will assist with aligning the pORPS and the Otago PMP.

3.5. Final recommendation

96. I recommend including the following new policy in the LF-LS chapter:

LF-LS-P16A – Managing pests⁹⁰

Reduce the impact of pests, including *wilding conifers*, by:

(1) avoiding *afforestation* and *replanting of plantation forests* with *wilding conifer* species listed in APP5 within:

(a) areas identified as outstanding natural features, outstanding natural landscapes, or *significant natural areas*, and

(b) buffer zones adjacent to the areas listed in (a) where it is necessary to protect those areas,

(2) outside *plantation forests*, avoiding the planting of *wilding conifer* species listed in APP5 and any other *pests* in a way that is consistent with the Otago Regional Pest Management Plan 2019-2029,

(3) enabling the control of *pests* on *land*, and

(4) supporting initiatives to control *pests* and limit their further spread.

97. Consequential amendments are required to incorporate this direction through the rest of the LF-LS chapter and to remove duplication in the ECO and NFL chapters. As consequential amendments arising from the introduction of LF-LS-P16A above, I also recommend:

a. Including the following new clause in LF-LS-M12 (District plans):

(aa) avoiding the planting of *pest* plants in accordance with LF-LS-P16A,⁹¹

b. Including reference to the policies of the LF chapter seeking to ‘reduce the impacts of pests’ in the first line of LF-LS-E4 (Explanation),

c. Including the following new paragraph at the beginning of LF-LS-PR4 (Principal Reasons):

*Pests, including *wilding conifers*, pose a range of threats to Otago’s environment. While the regional pest management plan is the primary tool for controlling *pests* under the Biosecurity Act 1993, it is important that the management of land works alongside that tool to reduce the impacts of *pests*.*⁹²

⁹⁰ 00411.006 Wayfare

⁹¹ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00411.006 Wayfare, 00137.084 DOC (insertion of new LF-LS-P16A)

⁹² Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00411.006 Wayfare, 00137.084 DOC (insertion of new LF-LS-P16A)

- d. Including two new anticipated environmental results, LF-LS-AER12A and LF-LS-AER12B:

LF-LS-AER12A The area of *land* vegetated by *wilding conifers* is reduced.⁹³

LF-LS-AER12B The extent and distribution of *pests* does not increase.⁹⁴

- e. Deleting ECO-P9, ECO-M5(6), paragraph 3 of ECO-E1, and ECO-AER4, and
- f. Deleting NFL-P5, NFL-M3(3), the last sentence of NFL-E1, the third bullet point in NFL-PR1, and NFL-AER3.
- i. Consequential: deleting NFL-M3(3), last sentence of NFL-E1, third bullet point in NFL-PR1, NFL-AER3

98. I also consider consequential amendments are required to LF-LS-M11. However, that is part of the FPI and cannot be considered here. I have incorporated my recommendations for consequential amendments in the s42A on the FPI part of the pORPS.

99. Earlier in this report, I recommend revising LF-LS-O11 to focus on land and soil resources supporting healthy habitats for indigenous species and ecosystems. As notified, only ECO-P9 and NFL-P5 addressed the management of pests, and in a very narrow manner, which would not achieve the revised objective I now recommend. I consider that the amendments I recommend are more effective than the notified provisions because they address pest management more broadly and better respond to the issue identified in SRMR-I7. I consider they are efficient because they are consistent with the NESPF and work alongside the Biosecurity Act 1993 and RPMP and do not duplicate the provisions of those regulations.

4. Environmental limits

4.1. Introduction

100. The use of the term ‘environmental limits’ and other similar phrases throughout the pORPS was discussed in section 1.6.3 of the section 42A report, with my analysis in paragraphs [131] to [146]. In that report, I noted the inconsistency in terminology and recommended adopting the term ‘environmental limit’ consistently across the pORPS, as well as a definition of that term.

101. In my first statement of supplementary evidence,⁹⁵ I rescinded my recommendation to include a definition of the term ‘environmental limit’ and to use this term throughout the pORPS. Instead, I recommended using ‘limit’ and only defining it where it was used in

⁹³ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00411.006 Wayfare, 00137.084 DOC (insertion of new LF-LS-P16A)

⁹⁴ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00411.006 Wayfare, 00137.084 DOC (insertion of new LF-LS-P16A)

⁹⁵ [Brief of supplementary evidence of Felicity Ann Boyd – Introduction and general themes, 11 October 2022.](#)

relation to freshwater management (and in a way that was consistent with the definition of 'limit' in the NPSFM).

4.2. Submissions and evidence

102. Fish and Game highlights that multiple provisions in the pORPS use wording akin to 'limits' and seeks that clear and consistent language is used across the document.

103. My recommendations appear to have resolved some of the more general concerns about inconsistency in language across the pORPS, however I note there are specific references to 'limits' in the IM, CE, and EIT chapters that submitters continued to raise concerns with in the hearing.

4.3. Analysis

104. In relation to using the term 'limit' (or something else), I consider the issues have been narrowed to the way the term is used in three chapters:

- a. IM-P12 and IM-P14,
- b. CE-P5(3) and CE-M3(7), and
- c. EIT-INF-O4, EIT-EN-O2(1), EIT-EN-M1(4), EIT-TRAN-O10, EIT-TRAN-P23(1) and (2), and EIT-TRAN-M7(3).

105. I have addressed IM-P12 and IM-P14 in *Reply report 6: IM – Integrated management*. In summary, I recommend retaining the references to 'limits' in these provisions.

106. The CE provisions above and EIT-TRAN-P23 all use 'limits' to describe the various constraints on activities occurring in the coastal environment as a result of the CE chapter (and the NZCPS). Mr Maclennan and Mr Langman recommend deleting these references and instead refer to activities being undertaken in accordance with specific CE provisions.

107. The remaining EIT provisions above use 'limits' in a general sense, and do not describe which limits apply. I consider that the management of activities within limits occurs naturally as a result of reading all chapters of the pORPS together. On this basis, I consider references to activities occurring 'within limits', where the limits or provisions containing limits are not specified, are not necessary. This is consistent with similar amendments made to UFD provisions by Ms White in *Reply report 16: UFD – Urban form and development*.

4.4. Final recommendation

108. I recommend the following amendments to the notified version of the pORPS:

EIT-INF-O4 – Provision of infrastructure

Effective, efficient and resilient infrastructure, nationally significant infrastructure and regionally significant infrastructure⁹⁶ enables the people and communities of

⁹⁶ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00313.020 Queenstown Airport

Otago to provide for their social and cultural well-being, their health and safety, and supports sustainable economic development and growth ~~in~~ within the region⁹⁷ ~~within environmental limits.~~⁹⁸

EIT-EN-O2 – Renewable electricity generation

The generation capacity of *renewable electricity generation activities* in Otago:

- (1) is protected and⁹⁹ maintained, and if practicable maximised, ~~within environmental limits,~~¹⁰⁰ and

...

EIT-EN-M1 – Regional plans

Otago Regional Council must prepare or amend and maintain its *regional plans* to:

...

- (4) provide for the operation and maintenance of existing *renewable electricity generation activities*, including their *natural and physical resource requirements*, ~~within the~~¹⁰¹ ~~environmental limits,~~¹⁰² and

...

EIT-TRAN-O10 – Commercial port activities

Commercial port activities operate safely and efficiently, ~~and within environmental limits.~~¹⁰³

EIT-TRAN-M7 – Regional plans

Otago Regional Council must prepare or amend and maintain its *regional plans* to:

...

- (3) ~~within environmental limits,~~¹⁰⁴ facilitate the safe and efficient operation and development of *commercial port activities* at ~~Port Chalmers and Dunedin.~~ This ~~includes~~ including¹⁰⁵ previously approved *resource consents* for the following activities in the coastal development area mapped in MAP2:

...

⁹⁷ 00239.124 Federated Farmers

⁹⁸ 00231.009 Fish and Game, 00315.043 Aurora Energy

⁹⁹ 00318.024 Contact

¹⁰⁰ 00231.009 Fish and Game, 00318.024 Contact

¹⁰¹ 00223.106 Ngāi Tahu ki Murihiku

¹⁰² 00231.009 Fish and Game, 00306.061 Meridian

¹⁰³ 00231.009 Fish and Game, 00301.043 Port Otago

¹⁰⁴ 00231.009 Fish and Game, 00301.045 Port Otago

¹⁰⁵ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00301.044 Port Otago

5. Climate change

5.1. Introduction

109. There are specific climate change provisions in the IM chapter as well as some references to climate change throughout the pORPS. Some chapters do not mention climate change at all. During the hearing, clarity was sought on whether this was deliberate and, if not, whether greater consistency was needed to addressing climate change across the pORPS.

5.2. Submissions and evidence

110. Kāi Tahu ki Otago seeks to better integrate climate change provisions across the pORPS to provide clearer and stronger direction.¹⁰⁶ In her evidence, Ms McIntyre for Kāi Tahu ki Otago notes that in response to this submission point, the s42A reports recommend accepting several submission points by Kāi Tahu ki Otago on this matter and that has addressed some of the most important gaps that were apparent to Kāi Tahu in the notified provisions.¹⁰⁷ Ms McIntyre considers the most significant remaining gap is in the EIT chapter.

5.3. Analysis

111. I have reviewed the pORPS and consider that climate change has been explicitly addressed in the following chapters, including through the recommendations made by officers in response to submissions:

- a. SRMR (SRMR-I1, SRMR-I2, SRMR-I7, SRMR-I8, and SRMR-I11).
- b. RMIA (RMIA-MKB-I3, RMIA-WTA-I1, RMIA-AA-I1, RMIA-CE-I1, and RMIA-CE-I5).
- c. IM (IM-O4, IM-P4, IM-P8, IM-P10, IM-P12, IM-P14, IM-M1, and IM-M3).
- d. CE (CE-O1, CE-P9, CE-M3, and CE-M4).
- e. LF (LF-WAI-P3, LF-LS-P20).
- f. ECO (ECO-P10).
- g. EIT-EN (whole chapter).
- h. EIT-TRAN (EIT-TRAN-O7, EIT-TRAN-P19, EIT-TRAN-P20, EIT-TRAN-P21, EIT-TRAN-P22, EIT-TRAN-M8).
- i. HAZ-NH (HAZ-NH-O2, HAZ-NH-P1, HAZ-NH-P6, HAZ-NH-P10, HAZ-NH-M2, HAZ-NH, M5).
- j. HAZ-CL (HAZ-CL-P14, HAZ-CL-M8A).
- k. UFD (UFD-O1, UFD-P1, UFD-M2).

112. Climate change is not explicitly addressed in:

¹⁰⁶ 00226.006 Kāi Tahu ki Otago

¹⁰⁷ Sandra McIntyre for Kāi Tahu ki Otago, para [53]

- a. AIR,
- b. EIT-INF,
- c. HCV, or
- d. NFL.

113. In the AIR, HCV, and NFL chapters, no submitters seek to include reference to climate change. I have discussed the matter with Ms Goslin, Ms Fenemor, and Mr Maclennan, and we agree there is no clear place to incorporate direction on managing the effects of climate change in the provisions of these chapters. The three chapters require general consideration of adverse effects, which does (implicitly) provide for the consideration of the effects of climate change.

114. Mr Langman has addressed the submissions seeking improved consideration of climate change in the EIT-INF chapter in *Reply report 11: EIT – Energy, Infrastructure, and transport*. He recommends amendments which I consider address the concerns raised by Kāi Tahu ki Otago.

5.4. Final recommendation

115. I do not recommend any further amendments.

6. Integration between chapters and cross-referencing

6.1. Introduction

116. During the hearing, both submitters and the panel noted some inconsistency in the way cross-referencing was used (or not) across the pORPS. This was particularly in relation to the CE chapter and when it either applies or does not apply, but applied to many chapters where there was cross-referencing between provisions and/or chapters.

6.2. Submissions and evidence

117. The Yellow-eyed Penguin Trust seeks that all sections of the pORPS are consistent, well integrated and effectively linked.¹⁰⁸ There are many submission points seeking improved linkages between chapters, usually in relation to specific chapters or provisions. For example:

- a. DCC seeks new policies in the EIT-EN and EIT-TRAN chapters identifying the links with other chapters, similar to CE-P1.¹⁰⁹
- b. Kāi Tahu ki Otago, DOC, Transpower, and Port Otago seek clarification about which provisions apply in the coastal environment.¹¹⁰

¹⁰⁸ 00120.006 Yellow-eyed Penguin Trust

¹⁰⁹ 00139.178 DCC

¹¹⁰ 00226.013 Kāi Tahu ki Otago; 00137.107 DOC; 00314.049 Transpower; 00301.058 Port Otago

- c. Port Otago seeks clarification about the management of coastal hazards.¹¹¹
- d. Queenstown Airport seeks a bespoke management regime for nationally and regionally significant infrastructure to avoid potentially conflicting policy approaches.¹¹²
- e. DOC seeks to include references to the ECO chapter in the LF chapter.¹¹³

118. I consider there are two issues arising from the submissions:

- a. Which provisions apply in the coastal environment, and
- b. The general approach to reading and applying the pORPS, including the use of cross-references.

6.3. Analysis

119. Mr Maclennan as addressed the application of the CE chapter provisions in *Reply report 8: CE – Coastal environment*. He recommends amending CE-P1 and moving some provisions in other chapters so that there is clarity about the application of pORPS provisions in the coastal environment.

120. Turning to the broader point, the provisions of planning documents are to be read together. That is, all of the provisions are applicable unless:

- a. There is explicit direction on when provisions are not applicable, or
- b. The circumstances determine that provisions are not relevant (for example, provisions applying to the management of significant natural areas will generally not apply to an activity occurring outside a significant natural area).

121. That same premise applies to the pORPS. On this basis, I consider that cross-referencing to highlight that other provisions also apply is not necessary because all provisions are to be read together. The exception to this is where specific provisions do not apply (for example, in the coastal environment) or a provision is specifically applying another provision (for example, EIT-EN-P6(1) applies EIT-INF-P13 to the management of renewable electricity generation activities).

122. I have reviewed the use of cross-referencing across the pORPS, in consultation with relevant chapter authors. I consider that the amendments recommended across the suite of reports addresses the issue of inconsistency, and in particular:

- a. In the UFD chapter, removing references to ‘significant values and features’ and similar phrases,¹¹⁴
- b. In the CE chapter, revising CE-P1 to more clearly set out which provisions do and do not apply in the coastal environment,¹¹⁵

¹¹¹ 00301.018 Port Otago

¹¹² 00313.037 Queenstown Airport

¹¹³ 00137.063 DOC

¹¹⁴ *Reply report 15: UFD – Urban form and development*

¹¹⁵ *Reply report 8: CE – Coastal environment*

- c. In the HAZ chapter, more clearly identifying how coastal hazards are to be identified and managed,¹¹⁶
- d. In the HCV-HH chapter, correcting an error in the cross-reference to EIT-INF-P13 in HCV-HH-P5,¹¹⁷
- e. In the NFL chapter, clarifying which provisions do and do not apply in the coastal environment.¹¹⁸

123. When reviewing the pORPS, I have noted that some chapters include links to other chapters as part of the explanation to the policies or principal reasons¹¹⁹ while others do not.¹²⁰ In my view, there is a risk that the provisions that do contain these links suggest to readers that there is a relationship with these chapters that is somehow different to the relationship with other chapters. For the avoidance of doubt, and to improve clarity, I recommend deleting those references in AIR-E1, HAZ-NH-PR1, and UFD-E1. This is consistent with Mr Maclellan’s recommendation to delete the same part of CE-E1.

6.4. Final recommendation

124. In addition to the amendments set out in other reply reports, my final recommended amendments to the notified provisions of the pORPS are:

AIR-E1 – Explanation

...

~~In addition to the objectives and policies in this chapter, the air quality outcomes are also provided for in the objectives and policies listed within the following chapters of the RPS where they provide direction on the management of environments and activities that may affect air quality:~~

- ~~● IM – Integrated management~~
- ~~● EIT – Energy, infrastructure and transport~~
- ~~● UFD – Urban form and development¹²¹~~

HAZ-NH-PR1 – Principal reasons

...

~~In addition to the objectives and policies in this chapter, the management of natural hazards are also recognised and provided for in the following chapters of this RPS:~~

- ~~● IM – Integrated management~~
- ~~● CE – Coastal environment~~
- ~~● EIT – Energy, infrastructure and transport~~

¹¹⁶ Reply report 12: HAZ – Hazards and risks

¹¹⁷ Reply report 13: HCV – Historical and cultural values

¹¹⁸ Reply report 14: NFL – Natural features and landscapes

¹¹⁹ AIR-E2, CE-E2, HAZ-NH-PR1, UFD-E1.

¹²⁰ MW, IM, LF, ECO, EIT, HAZ-CL, HCV, NFL.

¹²¹ 00120.006 Yellow-eyed Penguin Trust

- ~~UFD – Urban form and development~~¹²²

UFD-E1 – Explanation

...

The following chapters of this Regional Policy Statement have particular relevance to the achievement of the objectives of this chapter by identifying particular aspects of Domains or Topics to be managed, and where there is an apparent conflict, must be balanced in accordance with the directions outlined in the Integrated Management chapter:

- ~~MW – Mana Whenua~~
- ~~AIR – Air~~
- ~~CE – Coastal environment~~
- ~~LF – Land and freshwater~~
- ~~ECO – Ecosystems and indigenous biodiversity~~
- ~~EIT – Energy, infrastructure and transport~~
- ~~HAZ – Hazards and risks~~
- ~~HCV – Historical and cultural values~~
- ~~NFL – Natural features and landscapes~~¹²³

7. Use of timeframes in methods

7.1. Introduction

125. Some of the methods in the pORPS have timeframes for their implementation, including in regional or district plans. In relation to all local authorities:

- IM-M3 requires local authorities to undertake a climate change risk assessment, identify resources vital to resilience and well-being, identify vulnerable resources and communities and develop adaptation pathways for them, and develop guidance.
- IM-M5 states that local authorities should align their strategies and plans to contribute to the attainment of IM-O1 at their next plan review or by December 2030, whichever is the sooner.
- CE-M1 requires identifying and mapping the landward extent of the coastal environment by 31 May 2023.
- ECO-M2 requires identifying the areas and values of significant natural areas by 31 December 2030 and to prioritise identification in specified areas by 31 December 2025

126. In relation to regional plans:

¹²² 00120.006 Yellow-eyed Penguin Trust

¹²³ 00120.006 Yellow-eyed Penguin Trust

- a. AIR-M1 requires ORC to review its airshed boundaries prior to reviewing its Air Plan and no later than 31 December 2022 and AIR-M2 requires ORC to prepare or amend its Air Plan to implement the AIR chapter by 31 December 2024.
- b. CE-M3 requires ORC to prepare or amend its Coastal Plan to implement the CE chapter by 31 December 2028.
- c. LW-FW-M5 requires ORC to identify outstanding water bodies and include provisions in its LWRP to protect their values by 31 December 2023 and LF-FW-M6 and LF-LS-M11 require the LWRP to implement the LF-FW and LF-LS chapters by 31 December 2023

127. In relation to district plans:

- a. AIR-M3 requires territorial authorities to prepare or amend their district plans to implement the AIR chapter by 31 December 2029.
- b. LF-FW-M7 and LF-LS-M12 require territorial authorities to prepare or amend their district plans to implement the LF-FW and LF-LS chapters by 31 December 2026.

7.2. Submissions and evidence

128. DCC seeks that any dates and timeframes set in the pORPS:¹²⁴

- a. Are realistic and achievable, and based on current work programme priorities, and
- b. Allow for amendments by mutual agreement.

129. In his oral submissions during week 2 of the hearing, Mr Michael Garbett for DCC noted that specifying timeframes for implementation in methods, particularly when they relate to amending district plans, is problematic because territorial authorities have other funding priorities that must be considered under the Local Government Act 2002. He considers imposing a timeframe is not in accordance with the RMA requirement for a district plan to give effect to a regional policy statement.

130. CODC has concerns that the timeframe in LF-FW-M7 is not achievable.¹²⁵ In her evidence, Ms Rodgers for CODC requests clarification of the rationale behind this date.¹²⁶ DCC seeks to amend the timeframe in LF-FW-M7 to provide flexibility for issues outside the control of territorial authorities.¹²⁷

131. Ms Ann Rodgers supports the submission of CODC regarding the timeframes in ECO-M2.

132. In contrast, Wise Response seeks that timeframes are set for implementing or achieving the objectives of the pORPS, either in plans or in decisions on applications for resource consent or notices of requirement that are commensurate with the urgency of the need.¹²⁸

¹²⁴ 00139.002 DCC

¹²⁵ 00201.017 CODC

¹²⁶ Ann Rodgers for CODC, para [29]

¹²⁷ 00139.115 DCC

¹²⁸ 00509.043 Wise Response.

133. In addition to the timeframes included as notified, in *Reply report 12: HAZ – Hazards and risks* Mr Maclennan recommends that the identification of areas of significant natural hazard risk under HAZ-NH-P2 and APP6 occur within five years of the pORPS becoming operative.

7.3. Analysis

134. I am advised that there is no legal impediment to incorporating timeframes in methods in a regional policy statement as has occurred in the pORPS.

135. In the IM chapter, I have previously recommended removing the reference to December 2030 in IM-M1. However, I had omitted to consider the reference in IM-M5 which I read as working alongside IM-M1. As a consequential amendment, I recommend removing the reference to December 2030 in IM-M5. For the reasons set out in this report, I also recommend removing the timeframe in IM-M3. My analysis of these changes and my recommendations are set out in *Reply report 6: IM – Integrated management*.

136. Mr Maclennan has addressed the timeframe in CE-M1 that applies to all local authorities in *Reply report 8: CE – Coastal environment*. As this is primarily a district council function, and the relevant councils are already progressing this work, he considers the timeframe is unnecessary.

137. In response to submissions, Ms Hardiman recommends amending ECO-M2(2) to require mapping of significant natural areas to be completed by no later than 31 December 2030. For the reasons she has previously set out I agree that is appropriate. As notified, ECO-M2(5) requires prioritising the identification of significant natural areas in particular places. Given the wider identification process has a timeframe associated, I consider it is appropriate for this clause to also include a timeframe. However, I note CODC seeks a longer timeframe and I agree that the notified timeframes (no later than 31 December 2025) is short given the work involved in identifying significant natural areas. To address this, and for consistency with similar amendments proposed by Mr Maclennan in HAZ-NH-M2, I recommend replacing 'no later than 31 December 2025' with 'within five years of the RPS being made operative.'

138. Ms Goslin has addressed the timeframes applying to ORC in AIR-M1 and AIR-M2 in *Reply report 7: AIR – Air* and recommends aligning them with the revised dates for notification of ORC's new Air Plan based on ORC's Long-term Plan 2021-31. She does not recommend any amendments to the timeframe for territorial authorities in AIR-M3.

139. Mr Maclennan addresses the timeframe applying to ORC in CE-M3 in *Reply report 8: CE – Coastal environment*. As the timeframe remains consistent with ORC's Long-term Plan, he does not recommend any amendments.

140. At the time the pORPS was notified, the three LF-FW and LF-LS methods relating to the LWRP included the timeframe that had been recommended by the Minister for the Environment and accepted by ORC. Earlier in 2023, ORC wrote to the Minister seeking an extension until 30 June 2024. That was approved. On that basis, I recommend updating the date in LF-FW-M5 to 30 June 2024. The other two methods are part of the FPI and I will make the same recommendation in my s42A report.

141. I agree with Mr Garbett that the funding priorities of territorial authorities are determined through their financial planning under the Local Government Act 2002. Although long-term plans set out funding over a ten-year period, the annual plan process allows some flexibility to reprioritise work. In my experience, this can result in either bringing forward or pushing back scheduled projects. I understand the intent behind including dates in AIR-M3, LF-FW-M7, and LF-LS-M12 was to ensure that particular issues with air quality and freshwater health were not ‘left until last’ when prioritising district planning projects given the effects of urban development on both resources.

142. Having reflected further, I do not consider these dates take into account the long-term plans of Otago’s territorial authorities and does not reflect the various stages their district plans are at (i.e. DCC and QLDC are in the final stages of resolving appeals on their plans whereas Waitaki DC and Clutha DC are in the early stages of preparing new plans). I also consider that, despite these dates, territorial authorities can prioritise their funding and work programmes under the Local Government Act 2002 and there is no way to know whether or how that may happen in the future. I therefore recommend deleting the timeframes in AIR-M3 and LF-LS-M12. These amendments are outlined in the reply reports on those chapters and are not repeated here.

7.4. Final recommendation

143. In addition to the amendments recommended elsewhere in the suite of reply reports, my final recommended amendments to the notified pORPS are:

ECO-M2 – Identification of *significant natural areas*

Local authorities must:

...

- (2) map and verify¹²⁹ the areas and include the indigenous biodiversity¹³⁰ values identified under (1) in the relevant regional plans¹³¹ and district plans, no later than 31 December 2030,¹³²

8. Definition of effects management hierarchy

8.1. Submissions and evidence

144. OWRUG, Aurora Energy, PowerNet, and Network Waitaki seek to include a new definition of “effects management hierarchy (other matters)” which would apply to managing the adverse effects of an activity on the extent or values of an outstanding natural feature or landscape, outstanding natural water body (excluding natural wetlands), areas of high or outstanding natural character, areas or places of significant or outstanding historic

¹²⁹ 00020.018 Rayonier Matariki

¹³⁰ 00226.228 Kāi Tahu ki Otago

¹³¹ Clause 16(2), Schedule 1, RMA

¹³² 00139.036 DCC

heritage, wāhi tūpuna, wāhi taoka, areas with protected customary rights, and areas of high recreational and high amenity value.

145. My analysis of these submission points is set out in section 1.6.6.3 of *Report 1: Introduction and general themes*. In summary, I recommended accepting them in part and making the following changes:

- a. Including two new terms in the Definitions sections of the pORPS: one for “effects management hierarchy (in relation to natural wetlands and rivers)” and one for “effects management hierarchy (in relation to indigenous biodiversity)”, with both definitions referring readers to the relevant policies (LF-FW-P13A and ECO-P6) setting out those separate effects management hierarchies.
- b. Replacing the term “effects management hierarchy” with one or other of the specific terms set out in (a)
- c. Replacing the freshwater-specific definition of “effects management hierarchy” in the Definitions section with a definition describing the concept more generally.

146. In his evidence, Mr Brass for DOC¹³³ raises concerns with having a general definition alongside two additional and specific definitions applying in different situations. He considers that there is no need for a general definition as each time the term is used, it is used in relation to one of the other two defined terms (i.e. those that apply in relation to natural wetlands and rivers, and to indigenous biodiversity).

8.2. Analysis

147. I have reviewed the uses of the term and agree with Mr Brass that in relation to the non-FPI provisions, only the specific definitions of “effects management hierarchy” have been used. I note that there is a general reference to “effects management hierarchy” in LF-FW-P9, however in section 7.5.7.4 of the s42A report on the FPI I have recommended replacing this with a reference to the specific definitions to clarify how this policy is to be applied. I recommend rescinding the previous recommendation I made in the first bullet point under paragraph 236 in section 1.6.6.4 of *Report 1: Introduction and general themes*.

8.3. Final recommendation

148. I do not recommend any further amendments except as provided for elsewhere in the suite of reply reports.

¹³³ Murray Brass for DOC, paras [31]-[37]
Proposed Otago Regional Policy Statement 2021