

Reply Report

Proposed Otago Regional Policy Statement 2021

3: Definitions and abbreviations

Lisa Hawkins

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1. Introduction

1. This report forms part of a suite of 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). The approach to the whole suite is set out in the first report in this series, *Reply Report – Chapter 1: Introduction and General Themes*. Appended to the suite of reports is a consolidated version of the pORPS containing all final recommendations from the reporting officers.
2. This report should be read and considered in conjunction with the previous evidence provided in relation to this topic, being:
 - a. Section 42A report on Chapter 3: Definitions and abbreviations (27 April 2022)
 - b. First brief of supplementary evidence of Lisa Maree Hawkins: Definitions and abbreviations chapter (11 October 2022)
 - c. Opening statement of Lisa Maree Hawkins: Part one – Interpretations (26 January 2023).
3. The key matters addressed in this reply report are:
 - a. Definitions that were still in contention at the time of hearing:
 - i. Minimise
 - ii. Precautionary approach
 - iii. Receiving environment
 - iv. Restore
 - v. Waterways
 - b. Clarification sought on the following definitions:
 - i. Essential human health
 - ii. Sensitive activities
 - c. Consequential amendments to the list of abbreviations.
4. I consider the remaining issues with the definitions and abbreviations section of the pORPS have been resolved through recommendations in my section 42A report or supplementary evidence. The attached marked up version of the pORPS includes my final recommendations from this hearings report, my s42A report and supplementary evidence.

2. Definitions still in contention

2.1. Minimise

2.1.1. Introduction

5. The term “minimise” was discussed in section 3.6.7 of the s42A report, with my analysis in paragraphs [100]-[103].

6. This term is not currently defined.

2.1.2. Submissions and evidence

7. As set out in paragraph 4 and 5 of my opening statement there is continued support through the evidence in chief for the term ‘minimise’ to be defined within the pORPS.¹ Mr Ben Farrell for Fish and Game proposes a definition that has been recently adopted by the Environment Court in the context of the Southland Land and Water Plan² and has also been included in the proposed Greater Wellington Natural Resources Plan (GWNRP).³ Ms Stephanie Styles for Manawa Energy also seeks the definition be included as part of the new suite of stand-alone energy provisions as part of the EIT chapter.

8. The wording requested by Fish and Game is:⁴

Reduce to the smallest amount reasonably practicable, minimised, minimising and minimisation have the corresponding meaning.

9. In paragraphs 102 of my s42A report I identify a number of further submitters who were either neutral or opposed the request to include the word minimise within the definition⁵. Those opposing the inclusion state concerns that it would be too restrictive and is a common and well understood term⁶.

2.1.3. Analysis

10. In response to the evidence presented by Mr Farrell, I have reviewed the Environment Court decision for the Environment Southland Land and Water Plan⁷. There is limited reasoning within the Environment Court decision as to why it is appropriate to include a definition of minimise. Therefore it is difficult to understand whether the same application is appropriate in the context of the pORPS. In reviewing documentation from

¹ Opening Statement: Definitions and Abbreviations, Lisa Maree Hawkins, 26 January 2023, paras 4-5.

² Aratiatia Livestock Limited v Southland Regional Council (2022) NZEnvC265 [Aratiatia Livestock Limited v Southland Regional Council \[2022\] NZEnvC 265 \(23 December 2022\) \(nzlii.org\)](https://www.nzlii.org/nz/aukct/other/nzenvc/2022/265.html), pg 30

³ Greater Wellington Proposed NRP - <http://pnrp.gw.govt.nz/> ; <http://pnrp.gw.govt.nz/assets/Uploads/s42A-Officers-Report-Overall-Policy-Framework-of-the-Proposed-Plan-Part-B.pdf>; <http://pnrp.gw.govt.nz/assets/Uploads/HS1-Officers-Right-of-Reply-Overall-plan-framework.pdf>

⁴ 00231.017 Fish and Game, 00119.035 Blackthorn Lodge, 00411.015 Wayfare, 00206.009 Trojan.

⁵ s42A report Chapter 3: interpretations 27 April 2022

⁶ FS00235.079 / .080 / .081 OWRUG, 00115.000 / .023 / 0.24 Oceana Gold, 00233.005 Fonterra, 00318.001 Contact, 00239.028 Federated Farmers, 00226.563 / .484 Kāi Tahu ki Otago

⁷ Aratiatia Livestock Limited v Southland Regional Council (2022) NZEnvC265, pg 30.

the Greater Wellington Proposed Natural Resources Plan⁸, contention appeared to relate to whether a definition should replace a policy (policy P4) within the proposed GWNRP. Policy P4 specifically set out considerations to be undertaken when being required to minimise an adverse effect, and considered different approaches required in the context of different provisions throughout the plan. This is a different policy drafting approach than that which has been undertaken within the pORPS, and I do not consider it applicable to this consideration.

11. Whilst I acknowledge the inclusion of a definition within other Regional Plans, albeit in different circumstances, plan architecture and policy drafting approaches, I am still of the opinion as set out in paragraph 103 of my S42A report⁹ that it is not appropriate to do so for the pORPS. In my opinion the term is a common term, with a common meaning and I do not consider it good practice or helpful to define such terms within a higher order document such as the pORPS. In addition, the term is used widely across the pORPS and in many instances where direction is needed, it is qualified within the provision itself. This approach enables the pORPS to provide appropriate direction to lower order plans (using the common meaning) and to only refine its application in those areas that have been identified within the pORPS. This leaves the opportunity for lower order plans to apply the term without being constrained by the pORPS. It may be more appropriate to define minimise in the context of the more defined focus of a regional plan or district plan.

2.1.4. Final recommendation

12. I do not recommend any further amendments.

2.2. Precautionary approach

2.2.1. Introduction

13. The term “precautionary approach” was discussed in section 3.6.10 of the s42A report, with my analysis in paragraphs [117]-[122].

14. This term is not currently defined.

2.2.2. Submissions and evidence

15. As set out in paragraph 6 of my opening statement¹⁰ Mr Ben Farrell for Otago Fish and Game, Real Group Limited and NZ Ski Limited seeks relief to provide a definition of

⁸ S42A report Overall policy framework of the proposed plan – Part B, Issue 7

<http://pnrp.gw.govt.nz/assets/Uploads/s42A-Officers-Report-Overall-Policy-Framework-of-the-Proposed-Plan-Part-B.pdf>; Right of Reply Report: HS1 – Topic: Part B, section 10.8

<http://pnrp.gw.govt.nz/assets/Uploads/HS1-Officers-Right-of-Reply-Overall-plan-framework.pdf>

⁹ s42A report: Chapter 3 Definitions and Abbreviations, 27 April in 2022

¹⁰ Opening Statement: Definitions and Abbreviations, Lisa Maree Hawkins, 26 January 2023, paras 4-5.

precautionary approach within the pORPS¹¹. Mr Farrell includes the following definition in his evidence¹²:

Precautionary approach means an approach that:

- a. Avoids not acting due to uncertainty about the quality and quantity of the information available; and
- b. Interprets uncertain information in a way that best supports the health, well-being and resilience of the natural environment

16. As set out in paragraph 116 of my s42A report, Waitaki Irrigators also seeks to have a definition included in the pORPS¹³, although they did not present further evidence in response to my s42A recommendation to reject the relief sought.

17. Ms Susannah Tait for Fonterra¹⁴ supports my s42A recommendation to reject the relief sought to include a definition for precautionary approach, citing that it is a well understood term and there is sufficient context provided in the pORPS, particularly in light of amendments to IM-P6.

2.2.3. Analysis

18. In my s42A report paragraphs from 117 to 123, I set out my analysis of the relief sought to include a definition of precautionary approach within the pORPS. For brevity I have not included that analysis in this report.

19. A focus of my s42A recommendation relies on the approach to redraft provisions IM-P6 and IM-P15 to provide greater clarity to the application of precautionary approach and using best information. I have discussed this approach with the relevant s42A author. I am aware that whilst amendments are proposed to the policy through the relevant reply report¹⁵, these changes are not substantive in content and do not change the intent of the original redraft.

20. It remains my opinion that as the details of applying a precautionary approach will differ depending on resource, context etc, it is not appropriate to provide a definition in the pORPS. Coupled with the policy approach in IM-P6, I continue to support my S42A report recommendation, to not include a definition for precautionary approach.

2.2.4. Final recommendation

21. I do not recommend any further amendments.

¹¹ Ben Farrell for Otago Fish and Game Council and Central South island Fish and Game council, real Group Limited and NZ Ski Limited , para [49]

¹² Ben Farrell for Otago Fish and Game Council and Central South island Fish and Game council, real Group Limited and NZ Ski Limited , para [48]

¹³ S42A report: Chapter Definitions and Abbreviations, 27 April in 2022

¹⁴ Susannah Tait for Fonterra, para [6.5]

¹⁵ Reply report: Chapter 6 Integrated Management May 2023

2.3. Receiving environment

2.3.1. Introduction

22. The term “receiving environment” was discussed in section 3.5.8 of the s42A report, with my analysis in paragraph [55].

23. The recommended version of this term currently reads:¹⁶

Receiving environment

has the same meaning as in in clause 1.4 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)

includes, but is not limited to, any water body (such as a river, lake, wetland or aquifer) and the coastal marine area (including estuaries)

2.3.2. Submissions and evidence

24. The evidence of Ms Carmen Taylor for Ravensdown Limited seeks to remove the definition of ‘receiving environment’ from the pORPS.¹⁷

2.3.3. Analysis

25. In her evidence Ms Taylor acknowledges that ‘receiving environment’ is used narrowly within the pORPS in the context of freshwater and coastal marine area and that the definition from the NPSFM 2020 is entirely appropriate in this context.¹⁸ However, concern remains that the definition does not reflect the broader understanding of the term when applied in other areas of resource management. Ms Taylor’s concerns also relate to the role of the pORPS in providing direction to lower order plans and that the current definition may constrain application.

26. I appreciate the concerns raised by Ms Taylor, particularly that of the role that pORPS plays in providing direction to lower order plans. I have reviewed the pORPS and am confident ‘receiving environment’ is only used in the context of freshwater and coastal environment. In this context it is helpful for the pORPS to refer to the relevant definition from the NPSFM. However, to avoid all doubt of its application I consider it would be helpful to provide clarification within the definition as to where it applies.

27. Therefore, I make an amended recommendation to provide further clarity as to where the definition contained in the pORPS is applied.

2.3.4. Final recommendation

28. My final recommended amendments to the notified version of the pORPS are:

¹⁶ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

¹⁷ Carmen Taylor for Ravensdown Limited, paras [3.1]-[3.8]

¹⁸ Carmen Taylor for Ravensdown Limited, para [3.4]

Receiving environment (in relation to fresh water and the coastal marine area)¹⁹

has the same meaning as in in clause 1.4 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)

includes, but is not limited to, any water body (such as a *river, lake, wetland* or aquifer) and the *coastal marine area* (including estuaries)

2.4. Restore

29. The term “restore” was discussed in section 3.6.12 of the s42A report, with my analysis in paragraphs [130]-[132].

30. This term is not currently defined.

2.4.1. Submissions and evidence

31. In paragraph 8 and 9 of my opening statement, I set out the contention still present with regard to the pORPS containing a definition for ‘restore’. In Mr Ben Farrell’s evidence for Fish and Game, and in Ms Marie Baker-Galloway’s opening legal submissions for Fish and Game, this relief is continued to be sought. Set out below is the definition sought to be included:

Restore means to return to a state of good health, well-being and resilience.

32. Ms Susannah Tait, for Fonterra, in her evidence, suggests that the definition put forward by Fish and Game introduces subjective language²⁰.

2.4.2. Analysis

33. The evidence presented by Fish and Game²¹ identifies the importance of restoring the degradation of Otago’s natural environment, and hence the inclusion of a definition will support a consistent approach across the region.

34. In my s42A report paragraphs from 130 to 132, I set out my analysis of the relief sought to include a definition of restore within the pORPS. For brevity I have not included this analysis in this report.

35. Whilst I acknowledge the position put forward by Fish and Game on the importance of achieving the restoration of the natural environment in Otago, I do not consider the definition put forward to be helpful in this matter. The definition introduces subjective language that will likely be a source of argument in future contexts, and may not achieve the consistent approach desired. The action of restoration is better dealt with in responding directly to particular issues or themes of resource management, rather than applied at a higher level. To that end a definition is likely to be more helpfully applied at

¹⁹ 00121.009 Ravensdown

²⁰ Susannah Tait for Fonterra, para 6.9

²¹ Legal opening statement of Marie Baker-Galloway for Otago Fish and Game, para [18]-[21]; Ben Farrell for Otago Fish and Game Council and Central South Island Fish and Game Council, Real Group Limited and NZ Ski Limited, para [50]

a regional or district plan level. As such it is important for the pORPS to not constrain how this term is to be applied at lower order plans.

36. For these reasons I continue to support my s42A recommendation on this matter.

2.4.3. Final recommendation

37. I do not recommend any further amendments.

2.5. Waterways

2.5.1. Introduction

38. The term “waterways” was discussed in section 3.6.17 of the s42A report, with my analysis in paragraphs [157]-[158].

39. This term is not currently defined.

2.5.2. Submissions and evidence

40. In evidence presented by Mr Keith Frentz for DCC²², he no longer requests a definition be provided for the term waterways, but rather for this term to be replaced with the term waterbodies.

2.5.3. Analysis

41. There is a definition for ‘waterbody’ within the pORPS and it has the same meaning as section 2 of the RMA.²³ The relief sought is therefore not so much about a definition but rather the use of the term.

42. In paragraph 157 of my s42A report I set out the reasoning for why ‘waterways’ has been used within the pORPS. I have reviewed the use of the term ‘waterways’ across the pORPS in light of the request to change the term to waterbodies. I do not consider this request necessary or helpful. Waterways is used in a general manner, as set out in my s42A report. In these instances, changing the terminology to waterbodies is not appropriate, primarily because the definition of waterbodies refers to freshwater or geothermal water in a river, lake, stream etc.... This nuance of the definition applying to the water and not the features themselves makes waterbodies an inappropriate replacement term in the context of where it has been applied in the pORPS.

43. For these reasons I continue to support my s42A recommendation on this matter.

2.5.4. Final recommendation

44. I do not recommend any further amendments.

²² Keith Frentz for Dunedin City Council, para [7.2]-[7.6]

²³ Water body definition - *means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area*

3. Matters for clarification

45. To assist the Panel I provide a summary of the issues relevant to the following definitions. These definitions are not in contention per se but rather resolution of the issue at play is consequential to decisions made elsewhere in the pORPS.

3.1. Essential human health

3.1.1. Introduction

46. The term “essential human health” was discussed in section 3.6.6 of the s42A report, with my analysis in paragraph [96].

47. This term is not currently defined.

3.1.2. Submission and evidence

48. As set out in my opening statement paragraph 11, this is not a term that is currently used within the pORPS.²⁴ Mr Vance Hodgson for Horticulture New Zealand, requests that a definition be included in the pORPS as it is contained within relief sought in the SRMR Chapter and IM-M4.²⁵

3.1.3. Analysis

49. I have confirmed with the authors of both SRMR and the IM chapters²⁶ and the amendments sought by Horticulture New Zealand have not been adopted in the relevant reply reports. Therefore, it remains that Essential Human Health is not a term used within the pORPS and a definition is not required.

3.1.4. Final recommendation

50. I do not recommend any further amendments.

3.2. Sensitive activities

3.2.1. Introduction

51. The term “sensitive activities” was discussed in section 3.5.9 of the s42A report, with my analysis in paragraphs [60]-[63].

52. The recommended version of this term currently reads:²⁷

²⁴ Opening Statement: Definitions and Abbreviations, Lisa Maree Hawkins, 26 January 2023, paras 11

²⁵ Vance Hodgson for Horticulture New Zealand, paras [39]-[42]

²⁶ Ms Jacqui Todd and Ms Felicity Boyd respectively

²⁷ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

**Sensitive activities
(in relation to the
EIT Chapter)**²⁸²⁹

~~where used in the EIT chapter,~~³⁰³¹ has the same meaning as in the Interpretation section of the National Policy Statement on Electricity Transmission 2008 (as set out in the box below)

includes schools, residential buildings and hospitals

3.2.2. Submissions and evidence

53. As set out in paragraphs 12 and 13 of my opening statement³², my supplementary evidence³³ in relation to the definition of ‘sensitive activities’ was to amend my s42A recommendation³⁴ by seeking to delete the definition as it related to urban form and development. This was in response to the supplementary evidence of Ms Liz White which recommended amendments to relevant provisions within the Urban Form Development (UFD) Chapter. These amendments saw the removal of ‘sensitive activities’. Therefore, there was no longer a need for a definition for sensitive activities as they relate to the UFD chapter. However, as the drafting of the UFD Chapter was revisited during the hearing, the need for a definition for sensitive activities needs to be reviewed.

3.2.3. Analysis

54. I have confirmed with the author of the UFD chapter, Ms Liz White, that in her review and redraft submitted as part of her reply report, the term ‘sensitive activities’ is not used in the provisions of the chapter.³⁵ On this basis there is no need to include a definition for sensitive activities as it relates to the UFD Chapter.

55. Sensitive activities as it relates to infrastructure provision and in relation to the EIT chapter still remains. As such my s42A recommendation still stands in relation to the EIT chapter.³⁶

3.2.4. Final recommendation

56. I do not recommend any amendments to the notified provision.

4. Unused definitions

57. When reviewing the definitions list, I have noted that some defined terms are not used in the pORPS:

²⁸ 00233.009 Fonterra

²⁹ Clause 10(2)(b)(i) - Consequential amendment arising from 00213.009 Fonterra

³⁰ 00233.009 Fonterra

³¹ Clause 10(2)(b)(i) - Consequential amendment arising from 00213.009 Fonterra

³² Opening Statement: Definitions and Abbreviations, Lisa Maree Hawkins, 26 January 2023, paras 12-13

³³ Supplementary evidence: Definitions and abbreviations, Lisa Maree Hawkins, para 9-11, 11 October 2022

³⁴ s42A report: Chapter 3 Definitions and Abbreviations, para 64, 27 April in 2022

³⁵ Reply Report Chapter 15: UFD – Urban form and Development, Liz White May 2023

³⁶ s42A report: Chapter 3 Definitions and Abbreviations, para 64, 27 April in 2022

- a. Multiple hazards, and
 - b. Residual risk (used once in APP6 but proposed to be deleted through the amendments recommended by Mr MacLennan in *Reply report 12: HAZ – Hazards and risks*), and
 - c. Primary contact site.
58. I note that ‘road’ only used in contextual parts of the pORPS and therefore I do not consider it requires definition.
59. I recommend deleting these as an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA.

5. Consequential amendments to abbreviations

60. The abbreviations table contains abbreviations for the suite of national policy statements that were operative at the time the pORPS was notified. Since then, the National policy Statement for Highly Productive Land 2022 (NPSHPL) has become operative and is implemented in the pORPS. I recommend incorporating this policy statement into the abbreviations table in the same way as the other national policy statements.
61. In the same way, the Water Plan and Waste Plan are included in the abbreviations table but the Air Plan is not, and is referred to in the AIR chapter. I recommend incorporating the Air Plan into the abbreviations table in the same way as the other regional plans. For completeness, I note the Coast Plan is not referred to by name in the pORPS and so no abbreviation is necessary.
62. I have reviewed the use of each abbreviated term across the pORPS. The following abbreviations are not used at all, therefore I recommend deleting them from the table:
- a. LGA: Local Government Act 2002.
 - b. NES: National Environmental Standard.
 - c. NESMA: National Environmental Standards for Marine Aquaculture 2020.
 - d. NESHWDW: National Environmental Standard for Sources of Human Drinking Water 2017
 - e. PORPS 2016: Proposed Otago Regional Policy Statement 2016 – decisions version.
 - f. PORPS 2019: Partially Operative Otago Regional Policy Statement 2019.
 - g. PORPS 2021: Proposed Otago Regional Policy Statement 2021.
 - h. RPS 1998: Regional Policy Statement for Otago 1998.
 - i. TAs: Territorial authorities: Central Otago District Council, Clutha District Council, DCC, Queenstown-Lakes District Council and Waitaki District Council.
63. There is only one use of the following terms in the pORPS and so I do not consider an abbreviation is necessary. I recommend deleting the following from the table:
- a. HAIL: Hazardous Activities and Industries List.

b. OCCRA: Otago Climate Change Risk Assessment Phase 1 report.

c. RMS: Regional Monitoring Strategy.

64. I consider these amendments are of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA as they do not alter the application of the pORPS in any way.