

Reply Report

Proposed Otago Regional Policy Statement 2021

6: IM – Integrated management

Felicity Boyd

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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 is the final set of advice on this chapter and is in addition to:
 - a. [Section 42A report on Chapter 6: IM – Integrated management \(27 April 2022\)](#)
 - b. [First brief of supplementary evidence of Felicity Ann Boyd: IM – Integrated management \(11 October 2022\)](#)
3. The hearing session for the Integrated management (IM) chapter was held on the 8th and 9th of February 2023.
4. The key issues addressed in this reply report are:
 - a. Decision-making priorities (IM-P1 and IM-P2),
 - b. Climate change mitigation projects (IM-P12), and
 - c. Environmental limits (IM-P14).
5. This report addresses those matters first, then the remaining (and less significant) matters provision-by-provision. It does not address the following provisions because I do not consider there are any additional matters to address as a result of the hearing:
 - a. Objectives IM-O2 and IM-O4,
 - b. Policies IM-P3, IM-P4, IM-P7, IM-P8, IM-P9, IM-P11,
 - c. Methods IM-M2, IM-M3, IM-M4 and IM-M5,
 - d. IM-E1, IM-PR1, IM-AER1, IM-AER2, IM-AER3, and IM-AER4.
6. My previously recommended amendments to those provisions, in addition to my amended recommendations in this report, are incorporated in the Reply Report version of the pORPS attached to this suite of reports.

2. Decision-making priorities (IM-P1 and IM-P2)

2.1. Introduction

7. As notified, IM-P1 set out how provisions in the pORPS were to be considered by readers and IM-P2 set out priorities to guide decision-making should there be irreconcilable differences between provisions in the pORPS. In section 6.12 and 6.13 of my s42A report I recommended a range of amendments to these provisions, including combining them into one policy and altering the hierarchy of decision-making priorities originally contained in IM-P2. Those amendments are shown below:

IM-P1 – Integrated approach to decision-making¹

Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise:

- (1) the life-supporting capacity and mauri of the natural environment and the health needs of people, and then
- (2) the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.²

~~The objectives and policies in this RPS form an integrated package, in which:~~

- ~~(1) all activities are carried out within the environmental constraints of this RPS,~~
- ~~(2) all provisions relevant to an issue or decision must be considered,~~
- ~~(3) if multiple provisions are relevant, they must be considered together and applied according to the terms in which they are expressed, and~~
- ~~(4) notwithstanding the above, all provisions must be interpreted and applied to achieve the integrated management objectives IM-O1 to IM-O4.~~

2.2. Submissions and evidence

8. A number of parties are concerned that IM-P1 directs an inappropriate prioritisation in decision-making that is not in accordance with section 5 of the RMA.³ This is summarised in Ms Claire Hunter’s opening statement on the IM chapter for Oceana Gold, where she states:

The section 42A report writer has recommended amalgamating the notified IM-P1 and IM-P2. In my view, the policy (and the subsequent amendment) is unnecessary and should be either deleted in whole or further amended to make it clear that this relates only to freshwater, given that it reflects the prioritisation of considerations stated within the NPSFM. A broader application of the NPSFM prioritisation to all resources, as set out in IM-P2 [now IM -P1], is, in my opinion, inappropriate (and if it is to occur, it must also give effect to other national policy statements).

9. In contrast, other submitters consider the approach is appropriate, noting that if it can be adopted in the NPSFM then it must be a lawful approach available to the pORPS.⁴

¹ Clause 16(2), Schedule 1, RMA

² 00139.026 DCC, 00235.062 OWRUG, 00314.011 Transpower, 00239.036 Federated Farmers, 00139.027 DCC, 00231.033 Fish and Game, 00314.011 Transpower, 00230.032 Forest and Bird, 00230.033 Forest and Bird, 00206.016 Trojan, 00411.026 Wayfare, 00306.020 Meridian

³ For example, opening statement of Claire Hunter for Oceana Gold on the IM chapter dated 9 February; Susannah Tait for Fonterra, para [3.5]; Megan Justice for Aurora Energy, Network Waitaki, and Powernet, paras [9.1]-[9.2].

⁴ Sandra McIntyre for Kāi Tahu ki Otago, para [83]; Murray Brass for DOC, para [54] and [56]

10. Ms O’Callahan for Port Otago seeks to replace the reference to the ‘health needs of people’ to the ‘health and safety needs of people.’⁵
11. Ms McIntyre for Kāi Tahu ki Otago considers that the reference to the health needs of people should be moved from clause (1) to clause (2).⁶ She considers this better aligns with section 5 of the RMA.

2.3. Analysis

12. Ms Sefton addressed the legal basis for these provisions in paragraphs 24-38 of her opening legal submissions on the IM chapter and concluded that the NPSFM and pORPS take a similar, but legitimate approach to sustainable management and are derived from the same statutory mandate.⁷
13. I previously addressed the question of whether these policies adopt the hierarchy of obligations from the NPSFM, and whether that is appropriate, at paragraphs 197 to 201 of my section 42A report.⁸ My opinions have not changed. While I acknowledge there are similarities between IM-P1 and the objective of the NPSFM, I do not consider that IM-P1 has ‘co-opted’ the concept of Te Mana o te Wai.
14. There was discussion in the hearing about the evidential basis for adopting this policy. In *Reply report 1: Introduction and general themes* I have discussed the planning framework set out in the pORPS and the reasons why I consider that framework is appropriate. Very briefly, I consider that the largely unchallenged evidence of the technical experts presented to the hearing demonstrates that the life-supporting capacity of some of Otago’s natural and physical resources, and their potential to meet the needs of future generations, is at risk.
15. That is occurring within a context where the effects of climate change are being felt around New Zealand and the world, including in Otago. Dr Keesing states in his evidence that in his opinion, climate change “will lead to a fundamental exacerbation of the current rate of loss of indigenous biodiversity.”⁹ Dr Richardson made similar comments in her oral presentation on the LF chapter. In my view, given the current state of some of Otago’s natural and physical resources, and the additional pressures they face as a result of climate change, it is appropriate, in the very narrow circumstances this policy will apply, to favour protection over use and development of those resources.
16. I have listened to the concerns of submitters during the hearing and been concerned that some submitters still seem to view IM-P1 as ‘overriding’ direction in the rest of the pORPS. I discussed in detail when this policy applies and what it requires in decision-making in sections 6.13.3.1 and 6.13.3.2 of my section 42A report on this chapter and I do not repeat it here, other than to note that my views are unchanged.

⁵ Mary O’Callahan for Port Otago, page 22

⁶ Sandra McIntyre for Kāi Tahu ki Otago, para [83] and p.15 of Appendices

⁷ ORC opening legal submissions on the IM chapter, para [38]

⁸ Chapter 6: IM – Integrated management (27 April 2022)

⁹ Vaughan Keesing for Contact, para [12.13]

17. In my opinion, this policy *only* affects decision-making if there is conflict between provisions that cannot be resolved by first considering all of the relevant provisions of the pORPS and applying them according to the terms in which they are expressed, and second, considering and applying the direction in higher order documents in the same way. Ms Sefton addressed this approach in her legal submissions.¹⁰ In my experience, when implementing this approach to plan interpretation, there are few ‘true’ situations of conflict between the provisions of plans or higher order documents. Given the few situations this policy is likely to apply to, and the evidence I have outlined above, I consider its approach is an effective way to achieve the objectives of this chapter, and in particular the long-term vision outlined in IM-O1.
18. Commissioner Crosby noted some concern with the phrase “natural environment” in IM-P1(1). This phrase is not defined, and I do not consider it would be useful to define it as sought by some submitters.¹¹ In his response to questions from the panel, Mr Brass for DOC did not consider “environment” was an appropriate substitution because of the broad definition that term has in the RMA, noting that the effect would be to essentially conflate clauses (1) and (2). I agree with Mr Brass. He seemed to support replacing “natural environment” with “natural and physical resources”. I do not share his support – in the context of clause (1), this would mean referring to the life-supporting capacity and mauri of physical resources, and I am not sure either of those concepts are applicable to physical resources.
19. I have reflected on the wording in this policy further and consider it would assist users to align the language more clearly with section 5 of the RMA, which has been tested through case law and I consider to be generally well-understood. I therefore recommend replacing “natural environment” with “air, water, soil, and ecosystems.”
20. In my s42A report, I recommended including the health of people in clause (1). Ms McIntyre opposes this and seeks that the health of people be incorporated into clause (2) instead. During the hearing, I noted my concerns that there may be situations where providing for people’s health and safety should be a priority in decision-making. Having reflected on this policy further, I am no longer concerned that this policy would be problematic. The first reason for that is its limited applicability, which I have discussed earlier. The second reason is that clause (1) does not require prioritising ‘the natural environment’ generally – it requires prioritising the life-supporting capacity and mauri ahead of the matters in clause (2). In situations where resources are healthy, this is unlikely to be an impediment to progressing to clause (2). In situations where life-supporting capacity is at risk, it may be more difficult. I consider this is appropriate for achieving the purpose of the RMA.
21. I agree with Ms O’Callahan that IM-P1 should refer to the health and safety of people, not only their health needs. This is consistent with section 5(2). I note that section 5(2) refers to health and safety, rather than health and safety needs. For consistency, and to

¹⁰ ORC opening legal submissions on the IM chapter, paras 43-49

¹¹ Ben Farrell for Otago Fish and Game Council, Wayfare Group Ltd, Trojan Holdings, paras [45]-[46]

avoid any suggestion that IM-P1 is addressing anything different, I recommend using the phrase 'health and safety'.

22. I consider the amended recommendations I have made in this report in relation to IM-P1 and IM-P2 will better achieve the objectives of this chapter because they more clearly articulate how, and in what circumstances, the life-supporting capacity of the environment must be prioritised in decision-making where there is an irreconcilable conflict. This assists with achieving a healthy and resilient environment and supporting the well-being of future generations (IM-O1) as well as ensuring that people act in ways that safeguard the life-supporting capacity of air, water, soil, and ecosystems (IM-O3).
23. I also consider they are more efficient because they reduce unclear and uncertain language and clarify how and when the direction is to be applied, assisting with reducing implementation costs compared to the notified provisions.

2.4. Final recommendation

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

IM-P1 – Integrated approach to decision-making¹²

Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise:

- (1) the life-supporting capacity and mauri of air, water, soil, and ecosystems, and then
- (2) the health and safety of people and communities, and their ability to provide for their social, economic, and cultural well-being, now and in the future.¹³

~~The objectives and policies in this RPS form an integrated package, in which:~~

- ~~(1) all activities are carried out within the environmental constraints of this RPS,~~
- ~~(2) all provisions relevant to an issue or decision must be considered,~~
- ~~(3) if multiple provisions are relevant, they must be considered together and applied according to the terms in which they are expressed, and~~
- ~~(4) notwithstanding the above, all provisions must be interpreted and applied to achieve the integrated management objectives IM-O1 to IM-O4.¹⁴~~

~~IM-P2 – Decision priorities~~

¹² Clause 16(2), Schedule 1, RMA

¹³ 00139.026 DCC, 00235.062 OWRUG, 00314.011 Transpower, 00239.036 Federated Farmers, 00139.027 DCC, 00231.033 Fish and Game, 00314.011 Transpower, 00230.032 Forest and Bird, 00230.033 Forest and Bird, 00206.016 Trojan, 00411.026 Wayfare, 00306.020 Meridian

¹⁴ 00139.026 DCC, 00235.062 OWRUG, 00314.011 Transpower, 00239.036 Federated Farmers, 00139.027 DCC, 00231.033 Fish and Game, 00314.011 Transpower, 00230.032 Forest and Bird, 00230.033 Forest and Bird, 00206.016 Trojan, 00411.026 Wayfare, 00306.020 Meridian

~~Unless expressly stated otherwise, all decision making under this RPS shall:~~

- ~~(1) firstly, secure the long-term life-supporting capacity and mauri of the natural environment,~~
- ~~(2) secondly, promote the health needs of people, and~~
- ~~(3) thirdly, safeguard the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.¹⁵~~

3. Requirement to set limits

3.1. Introduction

25. Many submitters commented more generally on the use of the term ‘limits’ (and similar terms) across the pORPS which I have addressed in *Reply report 1: General themes*. As outlined in that report, those concerns are particularly relevant to IM-P14 because it is the primary provision in the pORPS requiring limits to be identified.
26. IM-P14 is discussed in section 6.25 of the section 42A report, with my analysis in paragraphs 425 to 434. As notified, this provision requires the identification of environmental limits to both growth and adverse effects of human activities beyond which the environment will be degraded.
27. The recommended version of this provision currently reads:¹⁶

IM-P14 – Human impact

When preparing *regional plans* and *district plans*, ~~P~~preserve¹⁷ opportunities for future generations by:

- (1) identifying environmental limits¹⁸ ~~wherever practicable,~~¹⁹ ~~to both growth and adverse effects of human activities beyond which the environment will be degraded,~~
- (2) requiring that activities are established in places, and carried out in ways, that are within those environmental limits²⁰ and are compatible with the natural capabilities and capacities of the resources they rely on, ~~and~~

¹⁵ 00121.020 Ravensdown, 00315.016 Aurora Energy, 00322.007 Fulton Hogan, 00235.063 OWRUG, 00314.011 Transpower, 00016.001 Alluvium and Stoney Creek, 00017.001 Danny Walker and Others, 00023.003 Waterfall Park, 00025.016 Boxer Hill Trust, 00320.013 Network Waitaki, 00511.013 PowerNet, 00313.005 Queenstown Airport, 00311.009 Trustpower, 00240.012 NZ Pork, 00301.013 Port Otago, 00236.036 Horticulture NZ, 00115.010 Oceana Gold, 00138.008 QLDC

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

¹⁷ 00235.071 OWRUG

¹⁸ 00231.009 Fish and Game

¹⁹ 00235.071 OWRUG

²⁰ 00231.009 Fish and Game

- (3) regularly assessing and adjusting ~~environmental~~ limits and thresholds²¹ for activities over time in light of the actual and potential environmental impacts, including those related to *climate change*, and²²
- (4) promoting activities that reduce, mitigate, or avoid adverse *effects* on the environment.²³

3.2. Submissions and evidence

28. The most contentious elements of this policy are clauses (1) and (2) which, in short, require identifying limits and then requiring activities to operate within those limits. Parties consider the wording is too uncertain because the term ‘limit’ is not defined and therefore it is unclear what regional and district plans must do to implement the policy.
29. There is a range of relief sought, including:
- a. Deletion in full or, alternatively, unspecified redrafting to provide certainty and clarity,²⁴
 - b. Removing the requirement to identify limits and revising clauses (2) and (3) so that they focus on providing for activities in a way that is compatible with the capabilities and capacities of the resources they rely on,²⁵
 - c. Retaining the policy with amendments to:
 - i. clarify that the identification of limits is only required where necessary to achieve the objectives of the pORPS,²⁶
 - ii. refer to ‘environmental and resource use limits’ and require activities to be carried out in ways that support the health, well-being and resilience of the environment,²⁷ or
 - iii. require consultation with resource users.²⁸
30. Ms Tait considers the title of the policy is misleading and seeks that it be amended to “Sustaining resource potential” instead.
31. In his evidence on IM-P4, Mr Farrell for Fish and Game, Trojan, and Wayfare seeks a range of amendments to that policy, including more specific direction on setting limits and recognition of activities that support the direction in that policy.²⁹ I address those

²¹ 00231.009 Fish and Game

²² 00226.102 Kāi Tahu ki Otago

²³ 00137.046 DOC

²⁴ Megan Justice for Aurora Energy, Network Waitaki, PowerNet, para [9.5]; Claire Hunter for Contact Energy, para [8.30]; Claire Hunter for Oceana Gold, para [8.9]; Mike Freeman for OWRUG, Fed Farms, DairyNZ, page [23]; Kirsty O’Sullivan for QAC, para [6.13]; Steve Tuck for Silver Fern Farms, para [5.5].

²⁵ Ainsley McLeod for Transpower, para [7.24]

²⁶ Sandra McIntyre for Kāi Tahu ki Otago, para [85]

²⁷ Ben Farrell for Otago Fish and Game Council, Wayfare Group Ltd, Trojan Holdings, para [38]

²⁸ Susannah Tait for Fonterra, para [8.21]

²⁹ Ben Farrell for Otago Fish and Game Council, Wayfare Group Ltd, Trojan Holdings, para [65]

amendments in this section because I consider they relate more closely to the content of IM-P14 than IM-P4.

3.3. Analysis

32. Ms Sefton addressed the lawfulness of this provision in paragraphs 24-37 of her opening legal submissions on the IM chapter, stating that limits are a part of sustainable management and that sections 5(2)(a), (b), and (c) and section 6 all contain limits.³⁰ The way Ms Sefton has described limits is consistent with the way I understand them.

33. Listening to the presentations of parties at the hearing, it is apparent that there are multiple interpretations of the term ‘limit’ amongst planners.³¹ My first supplementary statement of evidence on *Introduction and general themes* canvassed my views on the term limit and what it means.³² That discussion is relevant to considering this policy, and in particular the following statement at paras 19-20 (my emphasis added):

I have discussed the use of the term “environmental limits” with other reporting officers in order to understand the intent behind the use of the term where it appears in the pORPS. Those authors have confirmed that their intention in using this term (and/or other similar terms) was to describe ‘boundaries’ on the use and development of resources in order for that use and development to remain sustainable. In some chapters, for example LF – Land and freshwater, this was primarily in reference to biophysical limits such as those described in the NPSFM. In other chapters, for example CE – Coastal environment, this was more general and intended to capture biophysical limits as well as policy constraints.

In my opinion, “limit” as it has been used within the term “environmental limits” was intended by the authors to refer to the general meaning of the word, as described in the Oxford Dictionary (my emphasis added):

Any of the fixed points between which the possible or permitted extent, amount, duration, range of action, or variation of anything is confined; a bound which may not be passed, or beyond which something ceases to be possible or allowable.

34. My view has not changed. I consider ‘limits’ as it is used in IM-P14 is describing the various ways that regional and district plans manage activities in order to promote sustainable management. This may include the types of numeric limits required by the NPSFM (for example, take limits on the volume or rate of water that can be taken) or policy constraints (for example, Policies 11, 13, and 15 of the NZCPS). I do not agree with the submitters seeking either full deletion of the policy or deletion of clause (1).

³⁰ ORC opening submissions on the IM chapter, para 30

³¹ For example, during the IM hearing Ms McIntyre stated that she considered tools were a tool to achieve at outcome and that the type of limit and the process for identifying them would depend on the outcome sought. In contrast, Ms O’Callahan appearing in week 9 stated that she considered limits referred only to numeric or quantitative limits.

³² Brief of supplementary evidence of Felicity Ann Boyd – Introduction and general themes, dated 11 October 2022, paras 15-25

35. Ms McIntyre opposes the inclusion of ‘where practicable’ in clause (2) and instead seeks that limits are identified ‘where necessary to achieve the objectives of this RPS’. I agree that is a sensible addition. It was not intended that IM-P14 would require limits ‘for the sake of it’ – they are a management tool that should be applied in a context-specific way.
36. In relation to clause (2), I do not consider that replacing ‘requiring’ with ‘providing for’ is appropriate. If ‘limit’ is read as having its ordinary meaning, it is a boundary beyond which something ceases to be allowable. Requiring activities to be established in places and carried out in ways that are within those limits is therefore the appropriate response.
37. In relation to IM-P4, Mr Farrell for Fish and Game, Trojan, and Wayfare seeks to include a new clause that provides more specific and detailed direction on the setting of limits. For the same reasons I have set out above, and particularly because they curtail the concept of ‘limits’ to only biophysical limits, I do not agree those amendments are appropriate. Mr Farrell also seeks amendments to clause (2) to require activities to be carried out in ways that support the health, well-being, and resilience of the environment, in addition to being within limits and compatible with the natural capabilities and capacities of the resources they rely on. I consider the additional wording sought is unnecessary because it is already captured by operating within limits and within the capabilities and capacities of resources.
38. It is clear from the chapeau of this policy that it applied to regional and district plans, which must be prepared or changed in accordance with Schedule 1 of the RMA. All of the planning processes available in Schedule 1 require some type of consultation with communities. For this reason, I consider the amendment sought by Ms Tait to include ‘in consultation with resource users’ in clause (3) is unnecessary.
39. Mr Farrell seeks to introduce an additional clause to IM-P4 to promote the use and development of resources which supports the rest of the direction in IM-P4. He also seeks a similar new clause (4) in IM-P14. I consider IM-P14 is the appropriate place to include this direction because the policy relates to managing activities (within limits). Rather than ‘promote’, however, I consider the new clause should ‘provide for’ these activities which are, in my view, the types of activities the pORPS is seeking to provide for (i.e. those that appropriately manage their adverse effects).
40. In week 2 of the hearing, Commissioner Sullivan noted that IM-M1(6) links the establishment of limits to supporting healthy ecosystem services and intrinsic values in a way that does not occur in IM-P14. In light of my recommendation above, and so that the method is consistent with the policy, I recommend replacing IM-M1(6) with the following:
- Establish limits and manage activities in accordance with IM-P14
41. Fish and Game seeks similar amendments to this clause and I consider that submission provides scope for my recommendation.
42. I agree that Ms Tait’s recommended title for the policy more accurately reflects its content. Fonterra did not submit on IM-P14 and therefore I do not consider Ms Tait has scope for this recommendation. However, I consider that amending the title is an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA because it does not alter the application of the policy.

43. In my view, my recommendations do not significantly alter the application or scope of IM-P14 but clarifies what is required of lower order plans and reduces uncertainty. The amendment to IM-M1 is consequential and of minor effect. I do not consider any further evaluation under section 32AA is required.

3.4. Final recommendation

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

IM-P14 – ~~Human impact~~ Sustaining resource potential³³

When preparing regional plans and district plans, preserve³⁴ opportunities for future generations by:

- (1) where necessary to achieve the objectives of this RPS,³⁵ identifying environmental³⁶ limits to both growth and adverse effects of human activities³⁷ beyond which the environment will be degraded,
- (2) requiring that activities are established in places, and carried out in ways, that are within those environmental³⁸ limits and are compatible with the natural capabilities and capacities of the resources they rely on, ~~and~~
- (3) regularly assessing and adjusting environmental limits and thresholds for the way³⁹ activities are managed⁴⁰ over time in light of the actual and potential environmental impacts, ~~including those related to climate change, and⁴¹~~
- (4) providing for activities that reduce, mitigate, or avoid adverse effects on the environment.⁴²

IM-M1 – Regional plans⁴³ and district plans

Local authorities must prepare or amend and maintain their *regional plans⁴⁴* and *district plans* to:

...

- (6) establish clear thresholds for, and limits on, activities that have the potential to adversely affect healthy ecosystem services and intrinsic values. establish limits and manage activities in accordance with IM-P14.⁴⁵

³³ Clause 16(2), Schedule 1, RMA

³⁴ 00235.071 OWRUG

³⁵ 00210.008 Lane Hocking

³⁶ 00231.009 Fish and Game

³⁷ 00235.071 OWRUG

³⁸ 00231.009 Fish and Game

³⁹ 00314.012 Transpower, 00118.014 Maryhill

⁴⁰ 00314.012 Transpower, 00118.014 Maryhill

⁴¹ 00226.102 Kāi Tahu ki Otago

⁴² 00137.046 DOC

⁴³ Clause 16(2), Schedule 1, RMA

⁴⁴ Clause 16(2), Schedule 1, RMA

⁴⁵ 00231.042 Fish and Game

4. Climate change mitigation projects

4.1. Introduction

45. Over the course of the hearing, the renewable electricity generators emphasised the importance of increasing renewable electricity generation as a method for reducing greenhouse gas emissions.⁴⁶ These submitters generally considered that IM-P12 provided an important pathway for developing climate change mitigation projects.
46. IM-P12 is discussed in section 6.23 of the section 42A report, with my analysis in paragraphs 381 - 400. The recommended version of this provision currently reads:⁴⁷

IM-P12 – Contravening environmental ~~bottom lines~~ limits⁴⁸ for climate change mitigation

~~Despite other provisions in this RPS, where⁴⁹ a proposed activity provides or will provide enduring regionally or nationally significant climate change mitigation⁵⁰ of ~~climate change impacts~~, with commensurate benefits for the well-being of people and communities and the wider *environment*, decision makers may, at their discretion, allow non-compliance with an ~~environmental bottom line limit~~⁵¹ set in, or resulting from,⁵² any policy or method of this RPS only if they are satisfied that:~~

- ~~(1) the activity is designed and carried out to have the smallest possible environmental impact consistent with its purpose and functional needs, adverse effects on the environment resulting from the activity are avoided, remedied, or mitigated so that they are reduced to the smallest amount reasonably practicable,⁵³~~
- (2) the activity is consistent and coordinated with other regional and national *climate change mitigation* activities,
- (3) ~~adverse *effects* on the *environment* that cannot be avoided, remedied, or mitigated are offset, or compensated for, and for adverse *effects* on indigenous biodiversity: if an offset is not possible, in accordance with any specific criteria for using offsets or compensation, and ensuring that any offset is:~~

⁴⁶ For example, see Legal submissions of Manawa Energy, paras [27] to [34]; Legal submissions of Meridian Energy, paras [10] to [21]; Legal submissions of Contact Energy, paras [9] to [12]

⁴⁷ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

⁴⁸ 00119.003 Blackthorn Lodge, 00231.009 Fish and Game, 00231.038 Fish and Game, 00306.025 Meridian, 00206.019 Trojan, 00411.030 Wayfare

⁴⁹ 00306.025 Meridian

⁵⁰ 00301.014 Port Otago

⁵¹ 00231.009 Fish and Game

⁵² 00306.025 Meridian

⁵³ 00306.025 Meridian, 00311.011 Trustpower

- (aa) where there are residual adverse effects after avoidance, remediation, and mitigation, residual adverse effects are offset in accordance with APP3, and
- (ab) if biodiversity offsetting of residual adverse effects is not possible, then those residual adverse effects are compensated for in accordance with APP4,
- (a) ~~undertaken where it will result in the best ecological outcome,~~
- (b) ~~close to the location of the activity, and~~
- (c) ~~within the same ecological district or coastal marine biogeographic region,⁵⁴~~
- (4) the activity will not impede ~~either the achievement of the objectives of this RPS or the objectives of regional policy statements in neighbouring regions,⁵⁵~~ and
- (5) the activity will not contravene ~~a bottom line~~ an environmental limit set in⁵⁶ a national policy statement or national environmental standard.

4.2. Submissions and evidence

47. Ms McIntyre supports the s42A and supplementary evidence version of the provision, with a minor grammatical amendment to the chapeau, replacing ‘an’ with ‘a’.⁵⁷
48. A number of the renewable electricity generation companies consider this policy critical for determining whether the pORPS will enable or constrain the ‘electrification of the economy’ which Ms Claire Hunter for Contact Energy emphasises as a requirement in order to meet national climate change targets.⁵⁸ Those submitters consider the policy contains ‘restrictive’ qualifiers, constraints and limits and seek similar amendments to:
- a. Require the policy to be used by decision-makers rather than be at their discretion,⁵⁹
 - b. Reduce the stringency of the effects management required in clause (1) and better align its direction with clause (3),⁶⁰
 - c. Improve the clarity of clause (2),⁶¹

⁵⁴ 00119.003 Blackthorn Lodge, 00206.019 Trojan, 00411.030 Wayfare, 00306.025 Meridian, 00311.011 Trustpower, 00318.009 Contact

⁵⁵ 00306.025 Meridian

⁵⁶ 00231.009 Fish and Game

⁵⁷ Sandra McIntyre for Kāi Tahu, page 19 of Appendices

⁵⁸ Claire Hunter for Contact Energy, para [8.17]

⁵⁹ Claire Hunter for Contact Energy, para [8.21]; Susan Ruston for Meridian Energy Limited, para [84](c) and paras [86]-[88]

⁶⁰ Claire Hunter for Contact Energy, paras [8.20] and [8.22]; Stephanie Styles for Manawa Energy, page 28; Susan Ruston for Meridian Energy Limited, para [84](b)

⁶¹ Claire Hunter for Contact Energy, paras [8.23]; Stephanie Styles for Manawa Energy, page 28; Susan Ruston for Meridian Energy Limited, para [35]

- d. Remove the requirement for biodiversity offsetting and compensation to be in accordance with APP3 and APP4 of the pORPS,⁶² and
 - e. Remove the requirement in clause (4) that activities do not impede the achievement of the objectives of the pORPS.⁶³
49. Mr Farrell for Fish and Game, Trojan Holdings, Wayfare seeks to include a new clause requiring that there are no other reasonable alternatives, including changes in the nature or scale of associated activities. He considers this is particularly appropriate if a proposal is going to have significant adverse effects on the environment.⁶⁴

4.3. Analysis

50. IM-P12 is one of the provisions in the pORPS that relies on use of the term ‘limits.’ The policy seeks to, in limited circumstances, allow non-compliance with ‘environmental bottom lines’ set in, or resulting from, any policy or method of the pORPS. I have discussed the use of the term ‘limits’ across the pORPS in *Reply report 1: Introduction and general themes*. I have also addressed this in relation to IM-P14 in this chapter. For the same reasons as I outline in relation to IM-P14, I consider ‘limits’ to be an appropriate term to use in IM-P12. I note that while I have previously recommended replacing ‘environmental bottom line’ with ‘limit’ in the chapeau of this policy, a consequential amendment to the title of the policy is also required for consistency.
51. In my s42A report, I recommended including the phrase ‘despite other provisions in this RPS’ at the beginning of the policy in response to the submission by Meridian. As a result of the hearing on this topic, I have reflected on that recommendation and now consider it does not assist with clarifying when this policy can be applied. Given the policy itself contains the criteria for its application, I do not consider the additional words are required. I rescind my previous recommendation. For grammatical reasons, I consider ‘if’ is more correct than ‘where’, and I recommend this amendment in accordance with clause 16(2) of Schedule 1 of the RMA.
52. Ms Ruston, Ms Styles, and Ms Hunter consider there should not be discretion for decision-makers to decide not to apply IM-P12 if the criteria in the policy are met and seek to delete ‘may’ from the chapeau. I did not recommend this amendment in my s42A report and I maintain that view. Allowing the contravention of limits has the potential to undermine the objectives of the pORPS and should not be ‘commonplace’. I consider it is appropriate for application of this policy to be context-dependent and that there may be good reasons for choosing not to apply it. I consider that ‘may’ confers discretion and therefore that ‘at their discretion’ is a redundant phrase. I recommend its deletion in accordance with clause 16(2) of Schedule 1 of the RMA.
53. I have reflected on my proposed amendment to clause (1) and consider it could be further improved. At a high level, this clause, as notified and as amended by my recommendations, requires adverse effects to be minimised in a way that is practicable.

⁶² Stephanie Styles for Manawa Energy, page 28; Susan Ruston for Meridian Energy Limited, para [84](d)

⁶³ Claire Hunter for Contact Energy, paras [8.24]; Stephanie Styles for Manawa Energy, page 28;

⁶⁴ 00230.036 Forest and Bird, 00231.038 Fish and Game

Elsewhere in the pORPS, I have adopted the terminology ‘to the greatest extent practicable.’ I consider that wording more clearly describes the direction I previously recommended including in clause (1).

54. I agree with Ms Hunter that it is unclear what ‘coordination’ is required by clause (2). I note Manawa seeks to delete this reference and I recommend accepting that amendment.
55. My recommended amendments to clause (1) mean this clause requires adverse effects to be minimised, whereas clause (3) refers to avoiding, remedying, mitigating, offsetting or compensating for adverse effects. This inconsistency was unintentional, and I consider it is problematic for applying the policy. I continue to recommend deleting notified clause (1), however I now consider the additional direction I had recommended including in that clause should instead be incorporated in clause (3).
56. Submitters are concerned with my recommended amendments to clause (3) to require that any offset or compensation of effects on indigenous biodiversity is provided in accordance with APP3 and APP4 of the pORPS. Their concerns stem from the stringency of those appendices and the limitations they place on the ability to offset or compensate for adverse effects.⁶⁵ As I understand it, the issue raised during the hearing was that if IM-P12 is designed to allow limits (including for the purpose of managing indigenous biodiversity) to be contravened in certain circumstances, then requiring activities to still adhere to part of the framework establishing those limits is self-defeating.
57. I agree that IM-P12 provides an alternative pathway for nationally or regionally significant climate change mitigation projects and that the significance of these activities warrants the ability to consider contravening limits, including those for indigenous biodiversity. Submitters have drawn attention to the provision in s104(1)(ab) for considering offsetting and compensation measures in decision-making on resource consent applications⁶⁶ and to Policy C2 of the NPSREG which requires decision-makers to have regard to offsetting measures or environmental compensation.⁶⁷
58. I agree those provisions allow for broader application of those measures than is provided in APP3 and APP4. For these reasons, and given this policy applies only to projects that will provide enduring nationally or regionally significant climate change mitigation, I recommend removing the references to APP3 and APP4. This policy cannot override national direction and therefore the principles for aquatic offsetting and compensation in the NPSFM will apply. In the event the draft NPSIB is gazetted and contains similar appendices, those will also apply.
59. To bring together the content of clauses (1) and (3), I recommend amending clause (3) so that it reads:
- (3) adverse *effects* on the environment ~~that cannot be~~ are avoided, remedied, or mitigated so that they are minimised to the greatest extent practicable

⁶⁵ Susan Ruston for Meridian, para [84]-[88]; Legal submissions for Contact, para [73]-[77]

⁶⁶ Opening statement of Claire Hunter for Oceana Gold, para [35]-[43]

⁶⁷ Legal submissions of Contact Energy (SRMR, IM and AIR), para [18](c)(ii); Legal submissions of Manawa, para [25](c)(ii)

~~and any residual adverse effects are offset, or compensated for if an offset is not possible, in accordance with any specific criteria for using offsets or compensation, and ensuring that any offset is:~~

- ~~(a) — undertaken where it will result in the best ecological outcome,~~
- ~~(b) — close to the location of the activity, and~~
- ~~(c) — within the same ecological district or coastal marine biogeographic region,⁶⁸~~

60. During the hearing, submitters and commissioners noted that allowing non-compliance with policies and methods (in the chapeau) but requiring that activities do not impede the achievement of the objective (in clause (4)) created practical difficulties, including whether clause (4) essentially prevented the ability for the policy to be applied. The wording of clause (4) is broad and refers to “the objectives of this RPS” as a suite of objectives, not to the achievement of any one single objective. I had read that clause, therefore, as requiring consideration of the objectives as a package. However, I acknowledge that others have read it as requiring achievement of all objectives. I agree that this is problematic and would be resolved by deleting clause (4).

61. I agree with Mr Farrell that if an activity is to be provided the ability to ‘get around’ the policies and methods of the pORPS (to the extent that is allowed by higher order documents) then it is appropriate that this should be as a ‘last resort’ – i.e. after assessment has determined that there are no other reasonable alternatives. I am unsure what ‘associated activities’ is referring to in the wording proposed by Mr Farrell and consider that this clause could simply refer to there being no other reasonable alternatives to the activity proposed. Given the alternative pathway this policy provides, I consider it is appropriate to clarify in this clause that it must be demonstrated that there are no other reasonable alternatives, in order for a decision-maker to determine whether the clause has been met or not.

62. Section 32AA – to complete once analysis finalised.

4.4. Final recommendation

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

IM-P12 – Contravening ~~environmental bottom lines~~ limits⁶⁹ for climate change mitigation

~~Where if⁷⁰ a proposed activity provides or will provide enduring regionally or nationally significant climate change mitigation mitigation of climate change impacts,⁷¹ with commensurate benefits for the well-being of people and communities and the wider *environment*, decision makers may, ~~at their~~~~

⁶⁸ 00119.003 Blackthorn Lodge, 00206.019 Trojan, 00411.030 Wayfare, 00306.025 Meridian, 00311.011 Trustpower, 00318.009 Contact

⁶⁹ 00119.003 Blackthorn Lodge, 00231.009 Fish and Game, 00231.038 Fish and Game, 00306.025 Meridian, 00206.019 Trojan, 00411.030 Wayfare

⁷⁰ Clause 16(2), Schedule 1, RMA

⁷¹ 00301.014 Port Otago

discretion,⁷² allow non-compliance with an ~~environmental bottom line limit~~⁷³ set in, or resulting from,⁷⁴ any policy or method of this RPS only if they are satisfied that:

- (1) ~~the activity is designed and carried out to have the smallest possible environmental impact consistent with its purpose and functional needs,~~⁷⁵
and
- (2) the activity is consistent ~~and coordinated~~⁷⁶ with other regional and national *climate change mitigation* activities, and
- (3) adverse *effects* on the *environment* ~~that cannot be~~ are avoided, remedied, or mitigated so that they are minimised to the greatest extent practicable and any residual adverse effects are offset, or compensated for, and if an offset is not possible, in accordance with any specific criteria for using offsets or compensation, and ensuring that any offset is:
 - (a) ~~undertaken where it will result in the best ecological outcome,~~
 - (b) ~~close to the location of the activity, and~~
 - (c) ~~within the same ecological district or coastal marine biogeographic region,~~⁷⁷
- (4) ~~the activity will not impede either the achievement of the objectives of this RPS or the objectives of regional policy statements in neighbouring regions, and~~⁷⁸
- (5) the activity will not contravene a ~~bottom line set in~~⁷⁹ a national policy statement or national environmental standard., and
- (6) it is demonstrated that there are no other reasonable alternatives to the activity proposed.⁸⁰

⁷² Clause 16(2), Schedule 1, RMA

⁷³ 00231.009 Fish and Game

⁷⁴ 00306.025 Meridian

⁷⁵ 00306.025 Meridian, 00311.011 Trustpower

⁷⁶ 00311.011 Trustpower

⁷⁷ 00119.003 Blackthorn Lodge, 00206.019 Trojan, 00411.030 Wayfare, 00306.025 Meridian, 00311.011 Trustpower, 00318.009 Contact

⁷⁸ 00311.011 Trustpower

⁷⁹ 00231.009 Fish and Game

⁸⁰ 00231.038 Fish and Game

5. Other provisions

5.1. IM-O1 – Long term vision

5.1.1. Introduction

64. IM-O1 is discussed in section 6.6 of the section 42A report, with my analysis in paragraphs [88] – [97]. The recommended version of this provision currently reads:⁸¹

IM-O1 – Long term vision

The management of *natural and physical resources in Otago*,⁸² by and for the people of Otago, ~~including in partnership with~~⁸³ Kāi Tahu, ~~and as expressed in all resource management plans and decision making,~~⁸⁴ achieves a healthy, and resilient, ~~and safeguarded~~⁸⁵ natural systems environment,⁸⁶ ~~and including~~⁸⁷ the ecosystem services ~~they offer it provides,~~⁸⁸ and supports the well-being of present and future generations, (mō tātou, ā, mō kā uri ā muri ake nei).⁸⁹

5.1.2. Submissions and evidence

65. While expressing general support for the provision, Ms McLeod for Transpower⁹⁰ seeks amendments to reflect outcomes for physical resources and reference to ‘health and safety’ alongside the reference to ‘well-being’.
66. Ms Tait for Fonterra supports the relief sought by Ms McLeod. She seeks to replace ‘well-being’ with ‘social, economic, and cultural well-being’ to better reflect the phrasing in s5 of the RMA.⁹¹ This amendment is supported by Ms Ho for Waka Kotahi who also seeks to delete the words ‘including the ecosystem services it provides.’⁹² Ms Ho considers the objective “is focused on the natural environment and fails to recognise the importance of meeting people’s social, economic, and cultural needs of which infrastructure forms a key part.”⁹³

⁸¹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

⁸² 00239.034 Federated Farmers

⁸³ 00226.085 Kāi Tahu ki Otago

⁸⁴ 00121.015 Ravensdown

⁸⁵ 00211.004 LAC, 00210.004 Lane Hocking, 00209.004 Universal Developments, 00118.005 Maryhill, 00014.005 Mt Cardrona Station

⁸⁶ 00231.03 Fish and Game

⁸⁷ 00139.022 DCC

⁸⁸ 00239.034 Federated Farmers

⁸⁹ 00239.034 Federated Farmers

⁹⁰ Ainsley McLeod for Transpower, paras [7.13]-[7.14]

⁹¹ Susannah Tait for Fonterra, paras [8.1]-[8.5]

⁹² Sarah Ho for Waka Kotahi (IM), para [8.3]

⁹³ Sarah Ho for Waka Kotahi (IM), para [8.2]

5.1.3. Analysis

67. I have previously addressed the reference to ‘well-being’ in paragraph 89 of my s42A report and I continue to maintain that the broad reference is appropriate, given this is a long-term vision for the region. In line with paragraph 92 of my s42A report, I also continue to consider that well-being incorporates health and safety and so specific reference to health and safety, or any other specific type of well-being, is not required.
68. I disagree with Ms Ho’s view that this objective is focused on the natural environment. The objective refers to achieving a healthy and resilient environment and supporting the health, safety, and well-being of people and communities. I do not consider her amendments necessary.
69. Federated Farmers seeks to include brackets around the phrase ‘mō tātou, ā, mō kā uri ā muri ake nei’ which I recommended accepting in my s42A report. I understand the te reo Māori phrase at the end of this objective translates to “for us and for our future generations.” Its placement at the end of this objective therefore repeats the preceding words. On further reflection, I consider this phrase is intended to capture the general sentiment of the objective and should instead be included as part of the title. I consider this is a minor amendment in accordance with clause 16(2) of Schedule 1 of the RMA.
70. The amendments I recommend are minor, and generally to clarify wording rather than to alter the outcome sought to be achieved by the objective. For this reason, I do not consider further evaluation until s32AA is necessary.

5.1.4. Final recommendation

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

IM-O1 – Long term vision (mō tātou, ā, mō kā uri ā muri ake nei)⁹⁴

The management of *natural and physical resources in Otago*,⁹⁵ by and for the people of Otago, including in partnership with⁹⁶ Kāi Tahu, ~~and as expressed in all resource management plans and decision making,~~⁹⁷ achieves a healthy, and resilient, and safeguarded⁹⁸ natural systems environment,⁹⁹ and including¹⁰⁰ the ecosystem services they offer it provides,¹⁰¹ and supports the well-being of present and future generations, ~~mō tātou, ā, mō kā uri ā muri ake nei.~~¹⁰²

⁹⁴ Clause 16(2), Schedule 1, RMA.

⁹⁵ 00239.034 Federated Farmers

⁹⁶ 00226.085 Kāi Tahu ki Otago

⁹⁷ 00121.015 Ravensdown

⁹⁸ 00211.004 LAC, 00210.004 Lane Hocking, 00209.004 Universal Developments, 00118.005 Maryhill, 00014.005 Mt Cardrona Station

⁹⁹ 00231.03 Fish and Game

¹⁰⁰ 00139.022 DCC

¹⁰¹ 00239.034 Federated Farmers

¹⁰² 00239.034 Federated Farmers

5.2. IM-03 – Sustainable impact

5.2.1. Introduction

72. IM-03 is discussed in section 6.8 of the section 42A report, with my analysis in paragraphs 121 – 127. IM-03 is also discussed in my brief of supplementary evidence (11 October 2022), in paragraphs 8 – 19.

73. The recommended version of this provision currently reads:¹⁰³

IM-03 – Environmentally Sustainable impact¹⁰⁴

Otago’s communities ~~carry out their activities in a way~~ provide for their social, economic, and cultural well-being in ways¹⁰⁵ that support or restore ~~preserves~~¹⁰⁶ environmental integrity, form, function, and *resilience*, so that the life-supporting capacities of air, *water*, *soil*, and ecosystems are safeguarded, and indigenous biodiversity ~~endure~~¹⁰⁷ for future generations.

5.2.2. Submissions and evidence

74. Ms McIntyre for Kāi Tahu ki Otago considers coastal waters should be explicitly recognised in this objective as she is concerned that people may not think of coastal waters when they read ‘water’ in the objective, despite the RMA definition that does in fact include these waters.¹⁰⁸

75. Dr Freeman for OWRUG, Federated Farmers and DairyNZ seeks to replace ‘function’ with ‘functioning’. He considers that the latter is consistent with RMA terminology and scientifically more accurate because ‘function’ more accurately describes the multiple linkages of ecosystems.¹⁰⁹

5.2.3. Analysis

76. While I acknowledge Ms McIntyre’s concerns, I continue to consider that ‘water’ is the appropriate term and that it must be read as it is defined in the RMA.

77. I agree with the amendment sought by Dr Freeman to change ‘function’ to ‘functioning’, as the provision is concerned with supporting or restoring how the ecosystems are functioning as opposed to the function of ecosystems themselves.

78. The amendments I recommend are minor and I do not consider further evaluation under s32AA is necessary.

¹⁰³ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

¹⁰⁴ 00231.031 Fish and Game, 00411.024 Wayfare

¹⁰⁵ 00121.017 Ravensdown

¹⁰⁶ 00211.005 LAC, 00210.005 Lane Hocking, 00118.006 Maryhill, 00114.006 Mt Cardrona Station, 00209.005 Universal Developments

¹⁰⁷ 00121.017 Ravensdown

¹⁰⁸ Sandra McIntyre for Kāi Tahu ki Otago, para [82](a).

¹⁰⁹ Mike Freeman for OWRUG, Federated Farmers and DairyNZ, table following para [43].

5.2.4. Final recommendation

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

IM-03 – ~~Environmentally~~ Sustainable impact¹¹⁰

Otago’s communities ~~carry out their activities in a way~~ provide for their social, economic, and cultural well-being in ways¹¹¹ that support or restore ~~preserves¹¹²~~ environmental integrity, form, functioning,¹¹³ and *resilience*, so that the life-supporting capacities of air, *water*, soil, and ecosystems are safeguarded, ~~and indigenous biodiversity endure~~ for future generations.¹¹⁴

5.3. IM-P5 – Managing environmental interconnections

5.3.1. Introduction

80. IM-P5 is discussed in section 6.16 of the section 42A report, with my analysis in paragraphs 250 – 255. In that report I recommended deleting a different policy, IM-P13, on managing cumulative effects. Some submitters opposed my recommended deletion of IM-P13 and so in response, I recommended incorporating its content into IM-P5. This is discussed in my brief of supplementary evidence (11 October 2022), in paragraphs 31 – 39.

81. The recommended version of this provision currently reads:¹¹⁵

IM-P5 – Managing environmental interconnections

In resource management decision-making,¹¹⁶ manage the use and development ~~Coordinate the management¹¹⁷~~ of interconnected *natural and physical resources* by recognising ~~and providing for:~~¹²

- (1) situations where the value and function of a *natural or physical resource* extends beyond the immediate, or directly adjacent, area of interest,
- (2) the effects of activities on a *natural or physical resource* as a whole, or on the environment,¹³ when that resource is managed as sub-units, ~~and~~
- (3) the impacts of management of one *natural or physical resource* on the values of another, or on the *environment*, ~~and~~

¹¹⁰ 00231.031 Fish and Game, 00411.024 Wayfare

¹¹¹ 00121.017 Ravensdown

¹¹² 00211.005 LAC, 00210.005 Lane Hocking, 00118.006 Maryhill, 00114.006 Mt Cardrona Station, 00209.005 Universal Developments

¹¹³ 00235.060 OWRUG

¹¹⁴ 00121.017 Ravensdown

¹¹⁵ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

¹¹⁶ Clause 16(2), Schedule 1, RMA

¹¹⁷ Clause 16(2), Schedule 1, RMA

(4) the impact of individual and cumulative effects on the form, function, and resilience of Otago’s environment and the opportunities available for future generations.¹¹⁸

5.3.2. Submissions and evidence

82. Ms McIntyre for Kāi Tahu ki Otago seeks three amendments to this policy:
- a. To remove reference to “resource management decision-making” as the direction should apply to all resource management processes,¹¹⁹
 - b. To rephrase clause (2) to improve its clarity,¹²⁰ and
 - c. To delete my recommended new clause (4) and instead reinstate IM-P13.¹²¹
83. In relation to the last point, Ms McIntyre clarified in her opening statement to the IM hearing that she considers that my recommendation to incorporate new clause (4) fails to recognise that cumulative effects may also arise in respect to use of a single resource, not only in respect of the interconnections between resources (which is the focus of IM-P5). She seeks to remove my recommended clause (4) from IM-P5 and reinstate IM-P13 with different wording.¹²²

5.3.3. Analysis

84. My recommendation to refer to ‘resource management decision-making’ was in response to submissions seeking clarification on how and when this policy would be applied. I agree with Ms McIntyre that it should apply to all resource management processes, and I consider this is what the wording I recommend provides for. Decision-making occurs in a range of resource management processes, such as plan-making, consent applications, and during monitoring and enforcement. In my view, the wording I have recommended is not limited to one or other of those processes.
85. I consider the amendments Ms McIntyre seeks to clause (2) are helpful and clarify what the clause requires from decision-makers. I recommend making this amendment.
86. I agree with Ms McIntyre that cumulative effects can arise from the use of one resource, and that therefore my recommended clause (4) sits uncomfortably in this policy given its scope. I have addressed her proposed wording for a reinstated IM-P13 in relation to that policy, and for the reasons I have set out in that part of this report, I now recommend rescinding my previously recommended clause (4) to IM-P5.
87. The amendments I recommend are minor and primarily to improve clarity. I do not consider any further evaluation under s32AA is necessary.

¹¹⁸ 00013.006 Environment Canterbury, 00137.045 DOC

¹¹⁹ EIC of Sandra McIntyre for Kāi Tahu ki Otago, para 82(b).

¹²⁰ EIC of Sandra McIntyre for Kāi Tahu ki Otago, para 82(b).

¹²¹ EIC of Sandra McIntyre for Kāi Tahu ki Otago, para 80(b).

¹²² Opening statement of Sandra McIntyre on IM chapter, para 2(b).

5.3.4. Final recommendation

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

IM-P5 – Managing environmental interconnections

In resource management decision-making,¹²³ manage the use and development
~~Coordinate the management¹²⁴ of interconnected *natural and physical resources*~~
by recognising ~~and providing for:~~¹²

- (1) situations where the value and function of a *natural or physical resource* extends beyond the immediate, or directly adjacent, area of interest,
- (2) ~~the effects of activities on a *natural or physical resource* as a whole when that resource is managed as sub-units~~ situations where the *effects of an activity* extend to a different part of the *environment*,¹²⁵ and
- (3) the impacts of management of one *natural or physical resource* on the values of another, or on the *environment*.

5.4. IM-P6 – Acting on best available information

5.4.1. Introduction

89. IM-P6 is discussed in section 6.17 of the section 42A report, with my analysis in paragraphs 268 - 273. In that report, I recommended including the content of IM-P15 as a new clause in IM-P6, as both provisions were concerned with the management of uncertainties in decision-making.¹²⁶ Additionally, I recommended amendments to provide further assistance to decision-makers on how to balance the need for quality information with timely decision-making.¹²⁷

90. The recommended version of this provision currently reads:¹²⁸

IM-P6 – Acting on best available information

Avoid unreasonable delays and manage uncertainties¹²⁹ in decision-making processes by using the best information available at the time, including ~~but not limited to~~ complete and scientifically robust data, mātauraka Māori, local knowledge, and reliable partial data. ~~and:~~¹³⁰

- (1) in the absence of complete and scientifically robust data, using information obtained from modelling, reliable partial data, and local knowledge, but in doing so:

¹²³ Clause 16(2), Schedule 1, RMA

¹²⁴ Clause 16(2), Schedule 1, RMA

¹²⁵ 00226.093 Kāi Tahu ki Otago

¹²⁶ Para 268, Chapter 6: IM – Integrated management (27 April 2022)

¹²⁷ Para 270, Chapter 6: IM – Integrated management (27 April 2022)

¹²⁸ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

¹²⁹ 00239.038 Federated Farmers, 00235.065 OWRUG

¹³⁰ 00137.042 DOC, 00014.022 John Highton, 00239.038 Federated Farmers, 00235.065 OWRUG, 00233.023 Fonterra, 00406.005 Lauder Creek Farming, 00120.024 Yellow-eyed Penguin Trust, 00509.036 Wise Response Proposed Otago Regional Policy Statement 2021

- (a) prefer sources of information that provide the greatest level of certainty, and
- (b) take all practicable steps to reduce uncertainty, and¹³¹
- (2) adopt a precautionary approach towards activities whose effects are uncertain, unknown, or little understood, but potentially significantly adverse.¹³²

5.4.2. Submissions and evidence

91. In response to my recommendation to include IM-P15 in IM-P6, Ms McIntyre for Kāi Tahu ki Otago has raised concerns that this amalgamation significantly alters the effect of the provision and considers further amendments are required to address this.¹³³
92. Ms McIntyre is concerned that the effect of amalgamating the policies may mean the adoption of a precautionary approach is interpreted as being secondary to the direction to avoid delays in decision-making processes. Additionally, in response to the s42A report comments on managing uncertainty, Ms McIntyre emphasised that the adoption of a precautionary approach must be clearly expressed as the approach to managing uncertainty, not just a means of avoiding delay in decision-making.¹³⁴ She seeks to move clause (2) regarding the precautionary approach to become clause (1).
93. Ms McIntyre also seeks a range of amendments to clause (2) to clarify how uncertainties should be reduced before seeking to avoid unreasonable delays (shown in blue):
- (2) taking all practicable steps to reduce uncertainty, and
 - ~~(1)(a)~~ in the absence of complete and scientifically robust data, using information obtained from modelling, reliable partial data, and local knowledge, but in doing so: with preference for (a) prefer sources of information that provide the greatest level of certainty, and
 - ~~(b)~~ take all practicable steps to reduce uncertainty, and avoiding unreasonable delays in making decisions because of uncertainty about the quality or quantity of the information available.
94. Dr Freeman for OWRUG, Federated Farmers, and DairyNZ considers my recommended amendments to IM-P6 are an improvement but states that the policy should adopt the wording from clause 1.6 of the NPSFM for additional clarity.¹³⁵
95. During the hearing, there has been discussion about the potential for adaptive management approaches to be used in situations where adverse effects are uncertain or unknown. In relation to IM-P15 (which I have recommended incorporating into IM-P6),

¹³¹ 00137.042 DOC, 00014.022 John Highton, 00239.038 Federated Farmers, 00235.065 OWRUG, 00233.023 Fonterra, 00406.005 Lauder Creek Farming, 00120.024 Yellow-eyed Penguin Trust, 00509.036 Wise Response

¹³² 00139.040 DCC, 00121.027 Ravensdown,

¹³³ Sandra McIntyre for Kāi Tahu, para [80](c)

¹³⁴ Ibid.

¹³⁵ Mike Freeman for OWRUG, Federated Farmers, and DairyNZ, page 19.

Port Otago seeks to clarify that a precautionary approach might include the use of adaptive management.

5.4.3. Analysis

96. While I appreciate Ms McIntyre’s concerns, in my view the policy appropriately addresses, firstly, the means to reduce uncertainties, and second, when that uncertainty is paired with the potential for significant adverse effects, the adoption of a precautionary approach. In my view, this is preferable to adopting a precautionary approach ahead of attempts to reduce those uncertainties.
97. I consider that Ms McIntyre’s amendments to clause (2) helpfully clarify the steps to be taken to reduce uncertainties, first, before highlighting the need to avoid unreasonable delay. As with adopting the precautionary approach, I agree it is important that these steps are taken first and therefore recommend accepting her amendments.
98. In relation to the amendments sought by Dr Freeman, I consider the amendments proposed by Ms McIntyre retain the same general approach as set out in clause 1.6 of the NPSFM. I prefer her amendments because I consider that they more clearly set out the steps to be taken to reduce uncertainty. In my view, Dr Freeman’s amendments result in a disconnect between the ‘practicable steps to reduce uncertainty’ in clause (1) and how decision-makers must consider and use information in clause (2).
99. In light of the discussions at the hearing about the use of adaptive management (and particularly in relation to activities in the coastal environment), I agree that the amendment sought by Port Otago is appropriate and clarifies that these approaches may form part of a precautionary approach.
100. I consider the amendments I recommend in this report make IM-P6 more effective at achieving the objectives in this chapter because they assist decision-makers to understand how to manage uncertainty in decision-making, when unnecessary delays to decision-making should be avoided, and when to adopt a precautionary approach. While more procedural than substantial, this type of direction can assist with reducing the costs of lengthy resource management processes and I consider it is more efficient than the notified provision.

5.4.4. Final recommendation

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

IM-P6 – Acting on best available information Managing uncertainties¹³⁶

~~Avoid unreasonable delays in decision-making processes by using the best information available at the time, including but not limited to mātauraka Māori, local knowledge, and reliable partial data.~~

¹³⁶ 00226.094 Kāi Tahu ki Otago
Proposed Otago Regional Policy Statement 2021

In resource management decision-making, manage uncertainties by using the best information available at the time, including scientific data and mātauraka Māori, and:

- (1) taking all practicable steps to reduce uncertainty, and:
 - (a) in the absence of complete and scientifically robust data, using information obtained from modelling, reliable partial data, and local knowledge, with preference for sources of information that provide the greatest level of certainty, and
 - (b) avoiding unreasonable delays in making decisions because of uncertainty about the quality or quantity of the information available, and
- (2) adopting a precautionary approach, including through use of adaptive management, towards activities whose effects are uncertain, unknown, or little understood, but potentially significantly adverse.¹³⁷

5.5. IM-P10 – Climate change adaptation and climate change mitigation

5.5.1. Introduction

102. IM-P10 is discussed in section 6.28 of the section 42A report, with my analysis in paragraphs 482 - 493. The relationship between IM-P10(1) and HAZ-NH-P4 is also discussed in paragraphs 42 – 48 of my first statement of supplementary evidence (11 October 2022).

103. The recommended version of this provision currently reads:¹³⁸

IM-P10 – Climate change adaptation and climate change mitigation¹³⁹

Identify and implement *climate change adaptation* and *climate change mitigation*¹⁴⁰ methods for Otago that:

- (1) minimise the *effects* of *climate change processes or risks*¹⁴¹ ~~to existing activities~~ on the environment,¹⁴² and on existing activities¹⁴³ (including in accordance with HAZ-NH-P4),¹⁴⁴

¹³⁷ 00137.042 DOC, 00014.022 John Highton, 00239.038 Federated Farmers, 00235.065 OWRUG, 00233.023 Fonterra, 00406.005 Lauder Creek Farming, 00120.024 Yellow-eyed Penguin Trust, 00509.036 Wise Response, 00139.040 DCC, 00121.027 Ravensdown, 00301.015 Port Otago

¹³⁸ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

¹³⁹ Clause 10(2)(b)(i), Schedule 1, RMA – Consequential amendment arising from 00509.015 Wise Response

¹⁴⁰ Clause 10(2)(b)(i), Schedule 1, RMA – Consequential amendment arising from 00509.015 Wise Response

¹⁴¹ 00509.044 Wise Response

¹⁴² 00137.044 DOC, 00226.098 Kāi Tahu ki Otago

¹⁴³ 00137.044 DOC

¹⁴⁴ 00138.009 Queenstown Lakes District Council

- (2) ~~prioritise avoiding~~¹⁴⁵ the establishment of new activities in areas subject to significant¹⁴⁶ risk from the *effects of climate change*, unless those activities reduce, or are resilient to, those significant¹⁴⁷ risks, and
- (3) provide Otago’s communities, including Kāi Tahu, with the best chance to thrive, even under the most extreme *climate change* scenarios, ~~and~~
- (4) enhance environmental, social, economic, and cultural¹⁴⁸ *resilience* to the *adverse effects of climate change*, including¹⁴⁹ by facilitating activities that reduce negative¹⁵⁰ human impacts on the *environment*.¹⁵¹

5.5.2. Submissions and evidence

104. Ms McIntyre for Kāi Tahu ki Otago considers that the amendment I recommended in my supplementary evidence would have a broader, and inappropriate, effect than was intended. She highlights a potential argument for the modification of natural processes to protect any existing activities, including for reasons like convenience, financial cost, and health and safety (as referred to in HAZ-NH-P4).¹⁵² She seeks an amendment to address this:

- (1) minimise the effects of climate change on the environment and
(1A) manage the effects of climate change-related natural hazard risks on existing activities (~~including~~ in accordance with HAZ-NH-P4),...

105. Dr Freeman for OWRUG, Federated Farmers, and DairyNZ considers that the use of the term ‘thriving’ alongside the phrase ‘the most extreme climate change scenarios’ is inappropriate as the two are not compatible concepts, and that the policy must reflect the reality of the threat posed by climate change.¹⁵³ He also considers that ‘cultural resilience’ and ‘the best chance to thrive’ are too uncertain and broad for the provision, leading to a lack a clarity.¹⁵⁴ He seeks the following amendments:

- (3) Facilitate adaptation to the effects of climate change, including by facilitating activities that would reduce the effects of climate change on the environment including communities.

~~provide Otago’s communities, including Kāi Tahu, with the best chance to thrive, even under the most extreme climate change scenarios, and~~

¹⁴⁵ 00137.044 DOC

¹⁴⁶ 00119.002 Blackthorn Lodge, 00206.018 Trojan, 00411.029 Wayfare

¹⁴⁷ 00119.002 Blackthorn Lodge, 00206.018 Trojan, 00411.029 Wayfare

¹⁴⁸ 00322.008 Fulton Hogan

¹⁴⁹ 00307.011 CIAL

¹⁵⁰ 00235.068 OWRUG

¹⁵¹ 00509.040 Wise Response

¹⁵² Sandra McIntyre for Kāi Tahu, para [84]

¹⁵³ Mike Freeman for OWRUG, Federated Farmers, Dairy NZ, page 21

¹⁵⁴ Mike Freeman for OWRUG, Federated Farmers, Dairy NZ, page 21

~~(4) — enhance environmental, social, economic, and cultural resilience to the adverse effects of climate change, including by facilitating activities that reduce negative human impacts on the environment.~~

5.5.3. Analysis

106. During the hearing, concerns were raised by submitters and commissioners about whether there was a consistent approach to cross-referencing across the pORPS. I have addressed this more general point in relation to the pORPS as a whole in section X of *Reply report 1: General themes*. However, it is particularly relevant to this policy because of my recommendation to include a specific cross-reference to HAZ-NH-P4 and the potential for overlap with the HAZ-NH chapter more generally.
107. Having now reconsidered the approach to cross-referencing, my previous recommendation to reference HAZ-NH-P7 is inconsistent with the approach taken elsewhere in the pORPS. I recommend rescinding the recommendation I made in my supplementary evidence and returning to the version of clause (1) I recommended in my s42A report. I consider this addresses the issue raised by Ms McIntyre and therefore her proposed amendments are no longer necessary.
108. While clause (1) addresses the effects of climate change generally, clause (2) focuses on risk which, as defined in the pORPS, relates to natural hazards. I consider clause (2) cuts across the direction in the HAZ-NH chapter and does not accurately reflect the nuance in those provisions. For this reason, I recommend deleting clause (2). I consider there is scope for this in the submissions of LAC, Lane Hocking, and Maryhill all of whom seek to remove avoidance provisions from this policy.
109. Climate change scenarios are scientifically-based projections of plausible future climates for a region based on greenhouse gas emissions.¹⁵⁵ I agree with Dr Freeman that communities are unlikely to be able to thrive under the most extreme climate change scenarios. I recommend deleting ‘even under the most extreme climate change scenarios’ from clause (3). I do not consider there is scope in the submissions of OWRUG, Federated Farmers, or DairyNZ for this amendment, however Wise Response seeks to delete this phrase alongside introducing additional clauses regarding reducing human impacts. I consider that this provides scope for the amendment I recommend to clause (3), noting that I have incorporated a new clause (4) to address the remaining part of Wise Response’s submission point.
110. While I do not agree with the revised clauses (3) and (4) sought by Dr Freeman, I have further considered his use of ‘the effects of climate change’ as opposed to ‘negative human impacts on the environment.’ This clause is intended to encourage activities that improve resilience to climate change, and this may be by undertaking positive actions – not only by reducing negative actions. I recommend a minor amendment to the wording of clause (4) to reflect this.

¹⁵⁵ NIWA. (n.d.) *Climate change scenarios for New Zealand*. Available from <https://niwa.co.nz/our-science/climate/information-and-resources/clivar/scenarios>

111. The amendments I recommend to clauses (1) and (2) improve the efficiency of the pORPS generally because they remove the potential for duplication and conflict between chapters. My amendment to clause (3) also improves efficiency by reducing costs, recognising the practical difficulties in ‘thriving’ under the most extreme climate change scenarios. My recommended new clause (4) encourages positive actions to be taken to address climate change and is therefore more effective at achieving IM-O4.

5.5.4. Final recommendation

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

***IM-P10 – Climate change adaptation and climate change mitigation*¹⁵⁶**

Identify and implement *climate change adaptation* and *climate change mitigation*¹⁵⁷ methods for Otago that:

- (1) minimise the *effects of climate change processes or risks*¹⁵⁸ ~~to existing activities on the environment,~~¹⁵⁹
- ~~(2) prioritise avoiding the establishment of new activities in areas subject to risk from the effects of climate change, unless those activities reduce, or are resilient to, those risks, and~~¹⁶⁰
- (3) provide Otago’s communities, including Kāi Tahu, with the best chance to thrive, ~~even under the most extreme climate change scenarios, and~~¹⁶¹
- (4) enhance environmental, social, economic, and cultural¹⁶² *resilience to the adverse effects of climate change, including*¹⁶³ by facilitating activities that reduce those effects.¹⁶⁴

5.6. IM-P13 – Managing cumulative effects

5.6.1. Introduction

113. IM-P13 is discussed in section 6.24 of the section 42A report, with my analysis in paragraphs 410-412. I recommended deleting this policy because I did not think it provided particularly clear direction on how it should be implemented. I addressed this policy again in paragraphs 34-38 of my first statement of supplementary evidence, where I responded to submitters concerned about its deletion by proposing to incorporate the direction about managing cumulative effects in a new clause in IM-P5 instead.

¹⁵⁶ Clause 10(2)(b)(i), Schedule 1, RMA – Consequential amendment arising from 00509.015 Wise Response

¹⁵⁷ Clause 10(2)(b)(i), Schedule 1, RMA – Consequential amendment arising from 00509.015 Wise Response

¹⁵⁸ 00509.044 Wise Response

¹⁵⁹ 00137.044 DOC, 00226.098 Kāi Tahu ki Otago

¹⁶⁰ 00211.057 LAC, 00210.057 Lane Hocking, 00118.011 Maryhill

¹⁶¹ 00509.039 Wise Response

¹⁶² 00322.008 Fulton Hogan

¹⁶³ 00307.011 CIAL

¹⁶⁴ 00509.040 Wise Response, 00235.067 OWRUG

5.6.2. Submissions and evidence

114. In their evidence on this provision, Ms Carmen Taylor for Ravensdown, Ms Sarah Ho for Waka Kotahi, Ms Tait for Fonterra, and Dr Freeman for OWRUG, Federated Farmers, and DairyNZ support my recommendation to delete IM-P13.¹⁶⁵ However, Mr Brass opposes the deletion and seeks that the policy is instead reworded as follows:¹⁶⁶

Recognise and explicitly account for cumulative effects in resource management decisions

115. Ms McIntyre for Kāi Tahu ki Otago remains similarly opposed to deletion, and seeks reinstatement of the policy but with the following wording:¹⁶⁷

IM-P13 – Managing cumulative effects

In plan development and resource management decision making, recognise and manage the impact of cumulative effects on the form, function and resilience of Otago’s environment (including resilience to climate change) and the opportunities available for future generations.

5.6.3. Analysis

116. I have reconsidered the inclusion of cumulative effects in IM-P5 previously in this report and recommended removing that clause. Doing so means there is no particular direction on the management of cumulative effects in this chapter, which is an important part of achieving integrated management.
117. I have the same concerns about Mr Brass’s suggested amendments as I did in relation to the notified provision – namely that it is unclear how the policy will be implemented. For this reason, I prefer the drafting of Ms McIntyre which I consider retains some of the helpful direction from the notified policy (particularly on the intergenerational aspect of the impact of cumulative effects).
118. The only amendments I recommend to Ms McIntyre’s drafting is to delete the reference to plan development and to change ‘function’ to ‘functioning’. I consider plan development is incorporated in ‘resource management decision-making’ and deletion would align with the wording in IM-P5. ‘Functioning’ is consistent with my amendments to IM-O3 and more grammatically correct.
119. Reinstating this policy with improved wording essentially returns it to its notified state, which was assessed in the s32 evaluation report. I do not consider further evaluation under s32AA is necessary.

5.6.4. Final recommendation

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

¹⁶⁵ Carmen Taylor for Ravensdown, para [4.1]; Sarah Ho for Waka Kotahi (IM), para [1.1]; Susannah Tait for Fonterra, para [3.5]; Mike Freeman for OWRUG, Federated Farmers and DairyNZ, page 23

¹⁶⁶ Murray Brass for DOC, paras [57]-[59]

¹⁶⁷ Sandra McIntyre for Kāi Tahu ki Otago, para [80](a) and Appendix 1 page 20

IM-P13 – Managing cumulative effects

~~Otago’s environmental integrity, form, function, and resilience, and opportunities for future generations, are protected by recognising and specifically managing the cumulative effects of activities on natural and physical resources in plans and explicitly accounting for these effects in other resource management decisions.~~

In resource management decision-making, recognise and manage the impact of cumulative effects on the form, functioning and resilience of Otago’s environment (including resilience to climate change) and the opportunities available for future generations.¹⁶⁸

5.7. IM-M3 – Identification and community guidance

121. As notified, IM-M3 requires local authorities to implement this method by December 2025. Elsewhere in this chapter, and in others, I recommend removing references to timeframes that do not have a clear rationale. I am unaware of the reason for this timeframe and consider it is particularly short, given the work it requires. I understand from Mr Jean-Luc Payan’s presentation for ORC at the hearing that ORC is currently undertaking a region-wide natural hazard risk assessment which will assist with implementing this method. I note Mr MacLennan has recommended including a requirement in HAZ-NH-M2(1) for risk assessments in accordance with APP6 to occur within five years, despite work already commencing.

122. In my view, it would not be practical to require IM-M3 to be implemented prior to HAZ-NH-M2(1) being implemented, given there is likely to be crossover. For the reasons I have set out in *Reply report 1: Introduction and general themes*, I also have concerns about timeframes which may not have been anticipated by councils’ long-term financial planning. I recommend deleting the timeframe from IM-M3.

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

IM-M3 – Identification of ~~climate change impacts~~¹⁶⁹ and community guidance

~~By December 2025,~~¹⁷⁰ Otago Regional Council Local authorities¹⁷¹ must:

...

5.8. IM-M5 – Other methods

124. As notified, IM-M1(1) requires, by December 2030, ensuring that regional and district plans are amended so that they contribute to achieving the objectives in IM-O1 to IM-O4. In my s42A report I recommended deleting this timeframe.

125. IM-M5(1) contains a similar requirement and the same timeframe but applies to strategies and management plans prepared under other legislation. I note that this method is not mandatory – local authorities “should” implement its requirements. For

¹⁶⁸ 00137.045 DOC, 00119.004 Blackthorn Lodge

¹⁶⁹ 00119.006 Blackthorn Lodge, 00509.044 Wise Response

¹⁷⁰ 00139.002 DCC

¹⁷¹ 00139.044 DCC

consistency with IM-M1, I recommend also deleting this timeframe as well as the reference to 'plan reviews' as it is unclear whether this applies to strategies. Given the method is optional, I do not consider a timeframe is necessary.

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

IM-M5 – Other methods

Local authorities should:

- (1) ~~at their next plan review or by December 2030, whichever is sooner,~~¹⁷² align (to the extent ~~possible~~ practicable)¹⁷³ all strategies and management plans prepared under other legislation to contribute to the attainment of the long-term vision for Otago, and

...

¹⁷² 00139.042 DCC, 00239.046 Federated Farmers

¹⁷³ 00119.008 Blackthorn Lodge, 00206.026 Trojan, 00411.037 Wayfare