

Reply Report

Proposed Otago Regional Policy Statement 2021

7: AIR-Air

Hannah Goslin

Contents

1.	Introduction	3
2.	AIR-O2 – Discharges to air	3
3.	AIR-P1 – Maintain good ambient air quality.....	6
4.	AIR-P2 – Improve poor ambient air quality	8
5.	AIR-P3 – Providing for discharges to air	10
6.	AIR-P4 – Avoiding certain discharges and AIR-P5 – Managing certain discharges.....	11
7.	AIR-P6 – Impacts on <i>mana whenua</i> values.....	15
8.	New policy sought	16
9.	AIR-M1 – Review <i>airshed</i> boundaries	17
10.	AIR-M2 – <i>Regional plans</i>	19
11.	AIR-M3 – <i>Territorial authorities</i>	22
12.	Anticipated environmental results.....	23

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 Hearing Report, Chapter 7: AIR – Air, prepared by Hannah Goslin (27 April 2022);
 - b. Brief of Supplementary Evidence of Hannah Louise Goslin, AIR – Air (11 October 2022);
 - c. Opening Statement of Hannah Louise Goslin, AIR- Air (10 February 2023); and
 - d. Brief of Second Supplementary Evidence of Hannah Louise Goslin, AIR – Mineral extraction (24 February 2023).
3. The hearing session for the Air (AIR) chapter was held on 10 February 2023.
4. The key matters addressed in this reply report are:
 - a. Amendments to AIR-O2 to AIR-P6, in particular the appropriateness of the term ‘avoid’; and
 - b. Whether a new policy, method and amendments to AIR-E1 are required to address new sensitive activities near existing activities that discharge to air.
5. This report takes a provision-by-provision approach to addressing these issues. 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:
 - Objective AIR-O1
 - Methods AIR-M4 and AIR-M5
 - AIR-PR1, AIR-AER2, AIR-AER3, AIR-AER4 and AIR-AER6
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. AIR-O2 – Discharges to air

7. AIR-O2 was discussed in section 7.6 of the section 42A report, with my analysis in paragraphs [42] to [45].

8. The recommended version of this provision currently reads:¹

AIR-O2 – Discharges to air

Human health, *amenity values*² and *mana whenua* values and the life-supporting capacity of ecosystems are protected from the adverse effects of discharges to air.

2.1. Submissions and evidence

9. A number of submitters consider the outcome of ‘protection’ sought in AIR-O2 to be unqualified³ and akin to avoidance,⁴ particularly when considered in conjunction with the avoidance of particular effects in AIR-P4 and AIR-P6 (as notified). Submitters have provided varying iterations of AIR-O2⁵. Ms Taylor for Ravensdown sought amendments to ensure that AIR-O2 is clearly distinct from AIR-O1 by emphasising that AIR-O2 relates to the outcomes sought in relation to the ‘localised’ effects from discharges to air.⁶ This was supported by Ms Wharfe for Horticulture New Zealand.⁷
10. Ms Tait considers that the use of ‘protection’ is akin to ‘avoid’ and it is not appropriate for an objective to prohibit discharges to air. The suggested amendments are as follows:
- The adverse effect of discharges on hHuman health, amenity values and mana whenua values and the life-supporting capacity of ecosystems are appropriately managed ~~protected from the adverse effects of discharges to air.~~⁸
11. Ms Wharfe’s rebuttal evidence is supportive of Ms Tait’s amendments, but seeks further amendments of a similar nature to Ms Taylor’s suggestion to ensure it is the ‘localised’ adverse effects of discharges that require appropriate management as follows:
- The localised adverse effects of discharges on hHuman health, amenity values and mana whenua values and the life-supporting capacity of ecosystems are appropriately managed ~~protected from the adverse effects of discharges to air.~~⁹
12. In presentations to the Panel by Ms Tait and Ms Wharfe¹⁰ it was noted that there is general consensus among the planners for Fonterra, Horticulture NZ, Ravensdown and Silver Fern Farms in relation to the proposed amended wording for AIR-O2 as set out in the rebuttal evidence of Ms Wharfe (and set out above).

¹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

² 00226.115 Kāi Tahu ki Otago

³ Lynette Wharfe for Horticulture NZ, para [34] – [35]; Steve Tuck for Silver Fern Farms Limited, para [6.1]

⁴ Susannah Tait for Fonterra, paras [9.2] – [9.4]

⁵ Including: Lynette Wharfe for Horticulture NZ, para [37]; Carmen Taylor for Ravensdown, para [5.21]; Susannah Tait for Fonterra, para [9.4]; Steve Tuck for Silver Fern Farms, Appendix C.

⁶ Para 5.23 of the EIC for Ravensdown (Carmen Taylor)

⁷ Para [37] – [41] of the Rebuttal Statement of Evidence for Horticulture NZ (Lynette Wharfe)

⁸ Para [9.4] of the EIC of Fonterra (Susannah Tait)

⁹ Rebuttal evidence of Lynette Wharfe for Horticulture NZ, para [41]

¹⁰ On 7 February 2023

13. In addition, as originally raised in submissions, Ms O’Sullivan for QAC seeks that human ‘safety’ is included as a value which must be protected.¹¹

2.2. Analysis

14. In my view, the key consideration for the Panel is deciding whether the objective should retain the goal of ‘protecting human health, amenity values and mana whenua values’, whether the objective should be softened to include a qualifier to the goal of protection, or whether the objective requires redrafting so it relates to managing adverse effects.
15. I do not consider that ‘protection’ is akin to ‘avoid’ or infers prohibition of discharges to air as stated by Ms Tait. As I understand it the goal of ‘protection’ of particular values can be achieved in a number of ways which are expressed by the policies (particularly AIR-P3 to AIR-P5). Based on this, I do not agree with the amended wording put forward by Ms Wharfe in her rebuttal evidence and supported by Ms Tait, Ms Taylor and Mr Tuck. I consider this amended wording reduces the bar of protection substantially and reads more as a policy. I also consider the phrase ‘appropriately manage’ to potentially cause some confusion for plan users on what management is appropriate in any case.
16. I consider the objective could benefit from some refocusing and I consider Ms Taylor’s suggested amendment to include the term ‘localised’. Similar to the reasons expressed in Ms Taylor’s evidence in chief, I consider the amendment clarifies that AIR-O2 relates to the outcomes sought in relation to the localised effects from discharges to air.
17. I have addressed the concern raised by Ms O’Sullivan in section 7.6.3 of my section 42A report and do not consider any further changes to address this concern are required.

2.3. Final recommendation

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

AIR-O2 – Discharges to air

Human health, *amenity values*¹² and *mana whenua* values and the life-supporting capacity of ecosystems are protected from the localised¹³ adverse *effects* of *discharges* to air.

19. In terms of s32AA, I consider the revised wording of AIR-O2 is more appropriate to achieve the purpose of the RMA as it:
- a. Clarifies the outcome sought by the policy framework; and
 - b. More clearly responds to parts of the issues of regional significance, including SRMR-I4.

¹¹ Kirsty O’Sullivan for Queenstown Airport Limited, para [7.4]

¹² 00226.115 Kāi Tahu ki Otago

¹³ 00121.030 Ravensdown

3. AIR-P1 – Maintain good ambient air quality

20. AIR-P1 was discussed in Section 7.7 of the section 42A report, with my analysis in paragraphs [53] to [56]. AIR-P1 was further discussed in my brief of supplementary evidence (11 October 2022).

21. The recommended version of this provision currently reads:¹⁴

AIR-P1 – Maintain ~~good~~ ambient air quality

~~Where Good ambient air quality is at or better than the limits set, that air quality is maintained at least at the existing quality by only allowing discharges to air across Otago by:~~

~~(1) — ensuring discharges to air comply with ambient air quality limits where those limits have been set, and~~

~~(2) — where limits have not been set, only allowing discharges to air if the adverse effects of the discharge, including cumulative effects on ambient air quality are no more than minor and any limits are not exceeded.~~¹⁵

3.1. Submissions and evidence

22. Ms Tait and Ms Taylor share concerns that the provision is ineffective and requires numerous amendments. Ms Tait states that appropriate standards already exist via the NESAQ and that the pORPS should be focussing on establishing a framework to support a future review of the Air Plan in order to limit or avoid breaches of NESAQ standards, rather than setting bespoke limits for the Otago region.¹⁶ Both also seek deletion of the phrase ‘no more than minor’.¹⁷ Their suggested amendments are as follows:

AIR-P1 – Maintain ~~good~~ ambient air quality

~~Where Good ambient air quality is at or better than the limits set, that air quality is maintained at least at the existing quality by only allowing discharge to air across Otago by:~~

~~(1) — ensuring discharges to air comply with ambient air quality limits where those limits have been set, and~~

~~(2) — where limits have not been set, only allowing discharges to air if the adverse effects of the discharge, including cumulative effects on ambient air quality are no more than minor and any limits are not exceeded.~~¹⁸

¹⁴ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

¹⁵ 00121.031 Ravensdown, 00138.014 QLDC

¹⁶ Susannah Tait for Fonterra, para [9.9]

¹⁷ Susannah Tait for Fonterra, para [9.11]; Carmen Taylor for Ravensdown, para [5.8]

¹⁸ 00121.031 Ravensdown, 00138.014 QLDC, 00213.026 Fonterra

Otago's ambient air quality is, at a minimum, maintained, where ambient air quality standards are complied with, by allowing discharges to air where the discharge complies with relevant air quality standards, limits or guidelines.

3.2. Analysis

23. Discussion at the hearing centred on whether ambient air quality should be maintained where it is better than standards set out in the NESAQ, or whether use of the air resource should be enabled so long as standards set in the NESAQ are not breached.
24. The intent of the NESAQ is to provide a guaranteed minimum level of health protection for all New Zealanders. I consider this outcome is reflected in AIR-O1. This is intended to be achieved via the setting of ambient air quality standards for five contaminants¹⁹ listed in Schedule 1 of the NESAQ. The NESAQ enables a more stringent rule, resource consent or bylaw to prevail over the NESAQ.²⁰ As part of this hearing process there has been no technical evidence provided that indicates a more stringent regime than that set out in the NESAQ is required in the Otago Region. A more stringent regime has also not been assessed as part of the Section 32 analysis.
25. I consider the process to determine whether a more stringent regime is required for the future Regional Air Plan needs to be evidence based and should be completed as part of that plan making process. That process will also need to determine whether any contaminants, other than those managed by the NESAQ, will need limits to be set. Based on this, I agree with submitters that a more stringent regime than that prescribed in the NESAQ is not required in the pORPS and the pORPS direction needs to be high level setting out that ambient air quality is, at a minimum, maintained where ambient air quality limits are complied with. I consider this policy direction is adequately supported by accompanying method AIR-M2 clause (1A) which requires limits to be set as part of the plan making process.
26. As a starting point, where ambient air quality complies with limits, it should not be used to the extent that limits are then breached. This is consistent with the approach set out in the NESAQ and would assist with achieving AIR-O1 and AIR-O2. I consider this to be similar to the wording of the notified version of AIR-P1 (prior to amendments made in supplementary evidence dated 11 October 2022). I consider the notified version of AIR-P1 provides the actions to ensure ambient air quality is maintained where ambient air quality limits have been set and where ambient air quality limits have not been set. I am supportive of the phrase 'at a minimum' as suggested by Ms Tait and Ms Taylor in their alternative wording of AIR-P1. I consider this reinforces that maintenance of ambient air quality, where ambient air quality limits are complied with, is the lowest acceptable standard.
27. I acknowledge the concerns raised by some submitters in relation to the phrase 'no more than minor'. In circumstances where there have been no limits set for a particular contaminant, I consider an assessment to ensure that adverse effects on ambient air

¹⁹ Carbon monoxide, nitrogen dioxide, Ozone, PM₁₀ and sulphur dioxide.

²⁰ NESAQ, Regulation 28.

quality are no more than minor is appropriate as the future Regional Air plan is unlikely to provide an exhaustive list of all contaminants that could be discharged into air.

28. I consider Ms Tait and Ms Taylor’s reference to compliance with ‘relevant air quality standards, limits or guidelines’ to be uncertain. I have discussed this in paragraph [8] of my brief of supplementary evidence (11 October 2022) and I still hold the view that the current Air Plan sets ambient air quality guidelines and it is likely the future Air Plan will also adopt this approach, this provided for by AIR-M2 clause (1A). Based on this, I consider maintaining the less specific reference to ‘limits’ in the policy provides flexibility for the future Air Plan to set limits that are not prescribed in the NESAQ currently or that may be set in the future.

3.3. Final recommendation

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

AIR-P1 – Maintain ~~good~~ ambient air quality²¹

~~Good~~ Ambient air quality is, at a minimum,²² maintained across Otago by:

- (1) ensuring *discharges* to air comply with ambient air quality limits where those limits have been set, and
- (2) where limits have not been set, only allowing *discharges* to air if the adverse *effects* on ambient air quality are no more than minor.

30. In terms of s32AA, I consider the change is more effective in achieving the outcome sought as:

- a. It aligns with the outcomes sought in AIR-O1 and AIR-O2;
- b. There has been no technical evidence provided during the course of this hearing that indicates a more stringent regime than that set out in the NESAQ is required in the Otago Region; and
- c. The amended wording provides flexibility for the future Air Plan to set limits that are not prescribed in the NESAQ currently or that may be set in the future.

4. AIR-P2 – Improve poor ambient air quality

31. AIR-P2 was discussed in Section 7.8 of the section 42A report, with my analysis in paragraphs [65] to [70].

32. The recommended version of this provision currently reads:²³

AIR-P2 – Improve ~~poor~~ degraded²⁴ ambient air quality

²¹ 00121.031 Ravensdown; 00213.026 Fonterra

²² 00121.031 Ravensdown; 00213.026 Fonterra

²³ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

²⁴ 00121.032 Ravensdown

~~Poor~~ Degraded²⁵ ambient air quality is improved across Otago by:

- (1) establishing, maintaining and enforcing plan provisions that set limits and timeframes for improving ambient air quality, including by managing the spatial distribution of activities and transport, and
- (2) prioritising actions to reduce *PM₁₀* and *PM_{2.5}* concentrations in *polluted airsheds*, including phasing out existing domestic *solid fuel* burning appliances and preventing any *discharges* from new domestic *solid fuel* burning appliances that do not comply with the standards set in the NESAQ.

4.1. Submissions and evidence

33. During the hearing on 10 February 2023, Commissioner Sullivan noted an opportunity for clause (2) of AIR-P2 to clarify that that it is only existing domestic solid fuel burning appliances that do not comply with the standards set in the NESAQ which require phasing out and not all domestic solid fuel burning appliances.

4.2. Analysis

34. I agree that the provision would benefit from a minor adjustment to ensure that the intent of the provision was clarified.

4.3. Final recommendation

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

AIR-P2 – Improve ~~poor~~ degraded²⁶ ambient air quality

Degraded ~~Poor~~²⁷ ambient air quality is improved across Otago by:

- (1) establishing, maintaining and enforcing plan provisions that set limits and timeframes for improving ambient air quality, including by managing the spatial distribution of activities and transport, and
- (2) prioritising actions to reduce *PM₁₀* and *PM_{2.5}* concentrations in *polluted airsheds*, including:
 - (a) phasing out existing domestic *solid fuel* burning appliances, and
 - (b) preventing any *discharges* from new domestic *solid fuel* burning appliances

that do not comply with the standards set in the NESAQ.²⁸

36. In terms of S32AA, I consider the change to be very minor but is more efficient at achieving the outcome sought in AIR-O1 and AIR-O2 by reducing ambiguity.

²⁵ 00121.032 Ravensdown

²⁶ 00121.032 Ravensdown

²⁷ 00121.032 Ravensdown

²⁸ RMA Clause 16(2)

5. AIR-P3 – Providing for discharges to air

37. AIR-P3 was discussed in Section 7.9 of the section 42A report, with my analysis from paragraphs [79] to [81].

38. The recommended version of this provision currently reads:²⁹

AIR-P3 – Providing for discharges to air

Allow *discharges* to air provided they do not adversely affect human health, amenity values, and³⁰ *mana whenua* values and the life supporting capacity of ecosystems.

5.1. Submissions and evidence

39. Ms Wharfe and Mr Tuck consider AIR-P3 appropriately gives effect to amendments sought to AIR-O2 in their evidence.³¹ Ms Tait seeks the term ‘allow’ is replaced with ‘enable’, while Ms Taylor seeks the term is replaced with ‘provide and manage’.³²

5.2. Analysis

40. The intent of AIR-P3 is to provide a bookend for how effects are to be managed at the lower end of the effects spectrum. Such a policy is required as discharges of contaminants to air are not permitted unless allowed by a rule in a plan, a resource consent or other resource management planning instrument.³³

41. I agree with evidence and discussions at the hearing that some redrafting of the policy is required to clarify the terminology used. I prefer Ms Taylor’s use of ‘provide for’ instead of ‘allow’ as this would direct the future Regional Air Plan to provide for such activities in a range of ways – in my experience, ‘enable’ generally leads to a permitted activity status which may not be appropriate in all situations. I also consider a slight wording change to replace ‘provided they’ with ‘that’ will assist in clarifying what is intended by the policy.

5.3. Final recommendation

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

AIR-P3 – Providing for discharges to air

Provide for ~~Allow~~ *discharges* to air that ~~provided they~~³⁴ do not adversely affect human health, amenity values, and³⁵ *mana whenua* values and the life supporting capacity of ecosystems.

²⁹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

³⁰ 00226.118 Kāi Tahu ki Otago

³¹ Lynette Wharfe for Horticulture NZ, para [42]; Steve Tuck for Silver Fern Farms, Appendix C

³² Susannah Tait for Fonterra, para [9.16]; Carmen Taylor for Ravensdown, para [5.29]

³³ RMA section 15

³⁴ 00121.033 Ravensdown

³⁵ 00226.118 Kāi Tahu ki Otago

43. In terms of S32AA, I consider the change to be more efficient at achieving the outcome sought in AIR-O1 and AIR-O2 by reducing ambiguity.

6. AIR-P4 – Avoiding certain discharges and AIR-P5 – Managing certain discharges

44. AIR-P4 was discussed in Section 7.10 of the section 42A report, with my analysis from paragraphs [91] to [94]. AIR-P4 was also discussed in my first brief of Supplementary Evidence (11 October 2022) and further discussed in my second brief of Supplementary Evidence (24 February 2023).

45. AIR-P5 was discussed in Section 7.11 of the section 42A report, with my analysis from paragraphs [103] to [107].

46. There is interplay between the two policies. AIR-P4 sets out how activities with the potential for significant adverse effects are intended to be managed, informing how the management of effects arising from activities will occur under AIR-P5. Both policies have been the focus of evidence and discussion at the hearing. I consider it may assist the Panel to discuss both policies as a package instead of considering each separately.

47. The recommended version of AIR-P4 currently reads:³⁶

AIR-P4 – Avoiding certain discharges

~~Generally~~ Avoid *discharges to air that cause noxious or dangerous effects and avoid, as the first priority, discharges to air that cause offensive, or objectionable, noxious or dangerous effects.*³⁷

48. The recommended version of AIR-P5 currently reads:³⁸

AIR-P5 – Managing certain discharges

Manage the adverse³⁹ *effects of discharges to air beyond the boundary of the property of origin from activities that include but are not limited to:*

- (1) outdoor burning of organic material,
- (2) agrichemical and fertiliser ~~spraying~~ applications,⁴⁰
- (3) ~~farming~~ primary production⁴¹ activities,
- (4) activities that produce dust, and
- (5) industrial and trade activities.

³⁶ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

³⁷ 00213.029 Fonterra, 00115.013 Oceana Gold, 00121.034 Ravensdown

³⁸ This version includes the recommendations from the hearing reports prepared under s42A of the RMA

³⁹ 00233.030 Fonterra, 00022.014 Graymont

⁴⁰ 00236.045 Horticulture NZ

⁴¹ 00236.045 Horticulture NZ, 00240.015 New Zealand Pork Industry

6.1. Submissions and evidence

6.1.1. AIR-P4 – Avoiding certain discharges

49. At the hearing, the issues originally raised in submissions on AIR-P4 were largely still active. Some submitters seek outright deletion of the policy as a whole.⁴² Some submitters agree that noxious and dangerous effects should be avoided and seek less stringent direction for offensive or objectionable effects (such as to avoid, remedy or mitigate such effects or deletion of the terms offensive and objectionable).⁴³ The main reasons for these amendments is the subjectivity associated with determining offensive and objectionable effects and concern that ‘avoid as the first priority’ would be complete avoidance of an activity.
50. Ms McIntyre for Kai Tahu ki Otago considers AIR-P4 (as amended by my first brief of Supplementary Evidence (11 October 2022)) does not provides sufficient clarity of the approach to be taken in the event avoidance as a first priority cannot be achieved.⁴⁴ Ms Taylor considers AIR-P4 can be redrafted to retain the intent of the policy whilst ensuring the potential issues associated with the term ‘avoid’ do not occur.⁴⁵

6.1.2. AIR-P5- Managing certain discharges

51. Ms Taylor seeks to remove the phrase ‘beyond the boundary of the property of origin’ from AIR-P5, stating that adverse effects should be managed irrespective of whether the discharge extends beyond the boundary of origin.⁴⁶ Ms Taylor also raises concerns that the policy may be misinterpreted as requiring the management of discharges to air only once the adverse effects of the discharge extends beyond the boundary of the property of origin.
52. Mr Taylor for DCC raises concern that discharges from lifeline utilities and infrastructure are not provided for in AIR-P3 or acknowledged in AIR-P5.⁴⁷ This is supported in the rebuttal evidence of Mr Place for QLDC who indicates a preference for acknowledgement of lifeline utilities and infrastructure in AIR-P5.⁴⁸

6.2. Analysis

53. As mentioned above, AIR-P4 and AIR-P5 were the focus of much discussion at the hearing and are intended to provide a framework to manage the effects of specific discharges, giving effect to AIR-O2. During the hearing, the Chair suggested both provisions were merged into one provision setting out how discharges to air should be managed. I have

⁴² Including: James Taylor for Dunedin City Council, para [16]; Lynette Wharfe for Horticulture NZ, para [49]

⁴³ Including: Claire Hunter for Oceana Gold, para [9.3]; Steve Tuck for Silver Fern Farms, para [6.7]; Susannah Tait for Fonterra, para [9.17]

⁴⁴ Sandra McIntyre for Kai Tahu Ki Otago, para [89]

⁴⁵ Carmen Taylor for Ravensdown, para [5.21]

⁴⁶ Carmen Taylor for Ravensdown, para [5.23]

⁴⁷ James Taylor for Dunedin City Council, para [18]

⁴⁸ Luke Peters for Queenstown Lakes District Council, para [4.7]

considered this suggestion and agree that given the relationship between the two provisions, merging them is a more efficient and effective approach.

54. I consider there is general consensus across the evidence that noxious and dangerous effects should be avoided, and based on this I have recommended this direction be retained.
55. The use of 'avoid' with respect to offensive and objectionable effects was the subject of much discussion at the hearing. I acknowledge concerns raised by submitters that offensive and objectionable effects can, in some circumstances, be subjective, however as I understand it, the process to determine whether effects are offensive and objectionable is well understood via the use of a FIDOL assessment. In my supplementary evidence dated 11 October 2022, I sought to replace 'avoid' with 'avoid, as the first priority'. Following evidence exchange at the hearing, I understand that because there is no further direction on managing these effects, there is a risk the policy may be misinterpreted.
56. I consider the provision seeks to avoid the effects of an activity, not avoid the activity itself, to ensure discharges are not offensive or objectionable when assessed using a FIDOL assessment. FIDOL assessments are identified in the Ministry for the Environment's Good Practice Guidance documents⁴⁹ and are used to assess amenity or nuisance impacts, requiring consideration of the Frequency, Intensity Duration, Offensiveness/Character and Location of a discharge. I consider use of a FIDOL assessment is a well-established method to determine when an offensive or objectionable threshold is met. At a consenting level, activities and their effects are usually managed with consent conditions to ensure that the offensive and objectionable threshold is not exceeded.
57. Ms Taylor has sought for 'avoid' to be replaced with 'ensure discharge to air do not cause[...]'. In my view there is little difference between the two terms. Ms Taylor commented that the term avoid typically infers a prohibited activity status. As I've set out above, the notified version of the provision seeks to avoid the effects, not the activity itself. I recommend adoption of Ms Taylor's approach will provide the opportunity for the future Air Plan to set out a more nuanced approach to the management of activities that have potential to produce such effects.
58. In relation to the changes sought to AIR-P5, I agree with the amendment sought by Ms Taylor to remove 'beyond the boundary of the property of origin.' I agree that there is potential that the policy could be interpreted as meaning that the management of the discharge only occurs beyond the boundary of the property of origin, but this should not prevent the management of the discharge at the location of the discharge. AIR-P5 provides a list of activities known to discharge contaminants into air. It is not intended to be an exhaustive list of all activities that would discharge contaminants into air. Based on this, I do not agree with the inclusion of 'lifeline utilities' or 'regionally significant

⁴⁹ Ministry for the Environment. 2016. Good Practice Guide for Assessing and Managing Dust. Wellington: Ministry for the Environment and Ministry for the Environment. 2016. Good Practice Guide for Assessing and Managing Odour. Wellington: Ministry for the Environment
Proposed Otago Regional Policy Statement 2021

infrastructure' as sought by Mr Taylor and supported by Mr Place. There are other provisions in the pORPS which manage infrastructure and these other provisions will also require consideration.

59. AIR-P5 signals that there are a range of activities known to discharge contaminants into air and that the adverse effects of these activities will be managed. In combining both AIR-P4 and AIR-P5 into a general policy for 'managing certain discharges', further direction on how effects are to be managed is necessary to ensure the policy does not contain gaps and provides meaningful direction for plan makers. I consider that the methods for managing discharges from activities will vary and will be dependent on a number of factors that are too detailed for inclusion in an RPS policy. I considered use of the term 'appropriately managing' but its use is unhelpful as the thrust of the policy overall is to manage the adverse effects of discharges. In this case I consider the management regime for the listed activities would likely be to avoid, remedy or mitigate other adverse effects. This is consistent with S17 of the RMA and will enable the future Regional Air Plan to determine what is appropriate and better provides for the outcome sought in AIR-O2.

6.3. Final recommendation

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

AIR-P4 – ~~Avoiding~~ Managing certain discharges

~~Avoid discharges to air that cause offensive, objectionable, noxious or dangerous effects.~~

Manage the adverse effects of discharges to air by:

- (1) avoiding noxious or dangerous effects,
- (2) ensuring discharges to air do not cause offensive or objectionable effects,
- (3) avoiding, remedying or mitigating other adverse effects from discharges to air, including but not limited to discharges arising from:
 - (a) outdoor burning of organic material,
 - (b) agrichemical and fertiliser applications,
 - (c) primary production activities,
 - (d) activities that produce dust, and
 - (e) industrial and trade activities.

AIR-P5 – Managing certain discharges

~~Manage the effects of discharges to air beyond the boundary of the property of origin from activities that include but are not limited to:~~

- ~~(1) outdoor burning of organic material,~~
- ~~(2) agrichemical and fertiliser spraying,~~
- ~~(3) farming activities,~~

~~(4) activities that produce dust, and~~

~~(5) industrial and trade activities.~~⁵⁰

61. In relation to Section 32AA, I consider redrafting of the policy is more effective and efficient at providing for AIR-O2. This is because:

- a. The intent of the policy is clarified and ambiguity is reduced; and
- b. The policy enables the future Air Plan to provide additional detail for specific activities that is not appropriate at an RPS-level.

7. AIR-P6 – Impacts on *mana whenua* values

62. AIR-P6 was discussed in Section 7.12 of the section 42A Report, with my analysis from paragraphs [109] to [114].

63. The recommended version of this provision currently reads:⁵¹

AIR-P6 – Impacts on *mana whenua* values

Avoid *discharges* to air that adversely affect *mana whenua* values by having particular regard to values and areas of significance to *mana whenua*, including *wāhi tūpuna*, *wāhi tapu*, and *wāhi taoka*.⁵²

7.1. Submissions and evidence

64. Ms Wharfe seeks deletion of AIR-P6, as she considers the policy duplicates the direction in AIR-O1, AIR-O2 and AIR-P3.⁵³

65. Ms Tait and Ms Taylor both raise concerns regarding the use of the term ‘avoid’. Ms Tait considers that use of the term ‘avoid’ without qualification regarding the extent or level of adverse effects is inappropriate, and that either the term should be replaced with ‘manage’ or a qualifier specifying ‘significant’ effects should be added.⁵⁴ Ms Taylor considers AIR-P6 can be redrafted to retain the intent of the policy, while making it clear that a prohibited activity status is not required to give effect to the policy.⁵⁵

7.2. Analysis

66. Following discussion at the AIR hearing, and broader discussion across other chapters relating to use of the term ‘avoid’ in the pORPS, I have reconsidered use of the term ‘avoid’ in AIR-P6. While I agree that that the relationship of Māori and their culture and

⁵⁰ 00233.030 Fonterra, 00022.014 Graymont, 00236.045 Horticulture NZ, 00236.045 Horticulture NZ, 00240.015 New Zealand Pork Industry, 00213.029 Fonterra, 00115.013 Oceana Gold, 00121.034 Ravensdown, 00121.035 Ravensdown

⁵¹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

⁵² 00226.121 Kāi Tahu ki Otago and 00223.062 Ngāi Tahu ki Murihiku

⁵³ Lynette Wharfe for Horticulture NZ, para [55]

⁵⁴ Susannah Tait for Fonterra, para [9.26]

⁵⁵ Carmen Taylor for Ravensdown, para [5.21](e)

traditions with their ancestral lands, water, sites, wāhi tapu and other taoka is a matter of national importance which must be recognised and provided for, I agree with Ms Tait that unqualified use of the term ‘avoid’ could be unnecessarily stringent. For this reason, I consider replacing ‘avoid’ with ‘ensure’ as suggested by Ms Taylor will retain the intent of the provision, while also recognising that the future Air Plan may set out a more nuanced approach.

7.3. Final recommendation

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

AIR-P6 – Impacts on *mana whenua* values

~~Avoid~~ Ensure that discharges to air that do not⁵⁶ adversely affect *mana whenua* values by having particular regard to values and areas of significance to *mana whenua*, including *wāhi tūpuna*, *wāhi tapu*, and *wāhi taoka*.⁵⁷

68. In terms of S32AA, I consider the redrafting of the policy will still be effective and efficient at providing for AIR-O1 and AIR-O2. In relation to the changes recommended in the section 42A Report to include examples of areas that are significant to *mana whenua*, I consider this will be helpful for implementation of the provision therefore assisting with its efficiency and effectiveness.

8. New policy sought

69. Inclusion of a new policy to address new sensitive activities near existing activities that discharge to air was discussed at Section 7.3 of the section 42A report, with my analysis at paragraphs [13] to [14].

70. In para 14 of my s42A report, I did not recommend accepting the submission point as I considered the approach too detailed for the pORPS and that the specifics of reverse sensitivity matters are more appropriate for the future Air Plan.

8.1. Submissions and evidence

71. At the hearing, Ms Wharfe reiterated that she considered that it was important to have a policy relating to the relationship between land use and air discharges in the pORPS, as a district plan must ‘give effect to’ the RPS, compared to ‘have regard to’ the regional plan.⁵⁸ Ms Wharfe also stated the policy is concerned with more than simply ‘reverse sensitivity’ and that it concerns the location of sensitive activities so that adverse effects are avoided, which reflects the outcome expressed in AIR-AER2.⁵⁹

72. Ms Tait supports the inclusion of a new policy as suggested by Ms Wharfe. Ms Tait considers that explicit reference to reverse sensitivity has been addressed in other

⁵⁶ 00121.036 Ravensdown

⁵⁷ 00226.121 Kāi Tahu ki Otago, 00223.062 Ngāi Tahu ki Murihiku

⁵⁸ Lynette Wharfe for Horticulture New Zealand, para [62]-[68]; Susannah Tait for Fonterra, para [9.28]-[9.31]

⁵⁹ Lynette Wharfe for Horticulture New Zealand, para [63]

chapters of the pORPS but not in the AIR chapter. Ms Tait also states that a new policy would ensure that regional and district plans appropriately account for all discharges to air (noise, odour, spray drift, dust) that may give rise to reverse sensitivity effects.⁶⁰

73. Mr Tuck also seeks a similar new policy, but considers it is more appropriate to refer to ‘non-rural activities’ instead of ‘sensitive activities’.⁶¹

8.2. Analysis

74. As discussed at the hearing, I do not agree with the inclusion of a new policy as sought by Ms Wharfe, Ms Tait and Mr Tuck. This is for the following reasons:

- a. Reverse sensitivity with respect to rural areas and rural lifestyle development is addressed in UFD-P7 and UFD-P8 (noting these policies are recommended to be incorporating in the LF-LS chapter).
- b. The examples raised by submitters at the hearing included a range of other potential effects (including noise, traffic and light). Because of this I do not consider an isolated response to address the issue in the Air chapter to be appropriate.
- c. A potential policy response would need to be more specific, and place-based. Based on this I consider it is a level of detail that is more appropriately addressed at a regional plan level.

8.3. Final recommendation

75. I do not recommend any further amendments.

9. AIR-M1 – Review *airshed* boundaries

76. AIR-M1 was discussed in Section 7.13 of the section 42A report, with my analysis at paragraph [121].

77. The recommended version of this provision currently reads:⁶²

AIR-M1 – Review *airshed* boundaries

Prior to implementing AIR-M2, and ~~no later than 31 December 2022~~ within 12 months of the AIR chapter being made operative,⁶³ the Otago Regional Council must review existing *airshed* boundaries and apply to the Ministry for the Environment to gazette amended boundaries where *airsheds* do not account for:

- (1) current or anticipated areas of development,
- (2) weather patterns and geography, or

⁶⁰ Susannah Tait for Fonterra, para [9.28]-[9.31]

⁶¹ Steve Tuck for Silver Fern Farms, para [6.9]

⁶² This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

⁶³ RMA Clause 16(2)

- (3) existing areas of degraded ~~poor~~⁶⁴ air quality.

9.1. Submissions and evidence

78. At the hearing on 10 February, the Panel queried the date by which the Council must apply to the Ministry for the Environment to gazette amended airshed boundaries, pointing out that the date had already passed. Commissioner Crosby suggested removing the specific date and referring to a timeframe, such as 12 months after the pORPS has become operative.

9.2. Analysis

79. As discussed at the hearing, a review of the airshed boundaries would ideally occur prior to the review of the Air Plan as specified in AIR-M2. Based on discussions with ORC staff and the Long Term Plan 2021-31⁶⁵, the future Air Plan is not intended to be notified until 30 June 2025.
80. I still consider that a review of the airshed boundaries is necessary prior to the notification of a new Air Plan and I understand the process for reviewing airshed boundaries can occur in isolation to a review of the current Air Plan. I support the suggestion made by Commissioner Crosby, but I consider the timeframe should be limited to the AIR chapter becoming operative as there may be other topics which could be appealed and take some time to resolve.

9.3. Final recommendation

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

AIR-M1 – Review airshed boundaries

Prior to implementing AIR-M2, and no later than ~~31 December 2022~~ 12 months following the AIR – Air chapter being made operative,⁶⁶ the Otago Regional Council must review existing *airshed* boundaries and apply to the Ministry for the Environment to gazette amended boundaries where *airsheds* do not account for:

- (1) current or anticipated areas of development,
- (2) weather patterns and geography, or
- (3) existing areas of degraded ~~poor~~⁶⁷ air quality.

82. In terms of S32AA I consider the amendments fixes an obvious error in the method, and no further assessment is necessary.

⁶⁴ 00138.020 QLDC

⁶⁵ ORC Long Term Plan 2021-2031. Pg: 28.

⁶⁶ RMA Clause 16(2)

⁶⁷ 00138.020 Queenstown Lakes District Council
Proposed Otago Regional Policy Statement 2021

10. AIR-M2 – Regional plans

83. AIR-M2 was discussed in Section 7.14 of the section 42A report, with my analysis from paragraphs [132] to [138]. AIR-M2 was discussed in my first brief of Supplementary Evidence (11 October 2022) as consequential changes were required to appropriately provide for AIR-P4 (the addition of clause 1A).
84. The recommended version of this provision currently reads:⁶⁸

AIR-M2 – Regional plans

No later than 31 December 2024, Otago Regional Council must prepare or amend and maintain its *regional plans* to:

- (1) avoid ~~offensive, objectionable, noxious or dangerous~~ discharges to air that cause noxious or dangerous effects and avoid, as the first priority, discharges to air that cause offensive or objectionable effects,⁶⁹
- (1A) set limits (including any ambient air quality standards) to maintain ambient air quality in accordance with AIR-P1, and improve ambient air quality in accordance with AIR-P2,⁷⁰
- (2) include provisions to mitigate the adverse *effects* from *discharges* to air beyond the boundary of the property of origin,
- (3) implement the prioritisation of actions set out in AIR-P2,
- (4) mitigate the adverse *effects* of *discharges* to air in areas adjacent to *polluted airsheds* where the *discharge* will adversely affect air quality in the *polluted airshed*, ~~and~~
- (5) give effect to the Air Quality Strategy for Otago and any subsequent amendments or updates, ~~and~~
- (6) include measures to avoid adverse effects of discharges to air on *mana whenua* values and wāhi tūpuna.⁷¹

10.1. Submissions and evidence

85. As discussed at the hearing, I consider that consequential amendments are required in clauses (1) and (2) to appropriately provide for the recommended changes to the policy framework discussed above. I consider that a minor change is also required to align the date of notification for the future Air Plan.
86. In relation to clause (4), Ms Tait suggests the term ‘mitigate’ be replaced with ‘manage’.

⁶⁸ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

⁶⁹ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00213.029 Fonterra, 00115.013 Oceana Gold, 00121.034 Ravensdown

⁷⁰ 00121.031 Ravensdown, 00138.014 QLDC

⁷¹ 00226.122 Kāi Tahu ki Otago and 00234.012 Te Rūnanga o Ngāi Tahu
Proposed Otago Regional Policy Statement 2021

87. In relation to clause (5), both Ms Wharfe and Ms Tait consider it inappropriate for the provision to require councils to 'give effect to' the Air Quality Strategy for Otago, as it is a non-statutory document that has not been subject to a Schedule 1 process. Ms Tait seeks to delete the clause, and Ms Wharfe seeks amendments to replace 'give effect to' with 'have regard to'.⁷² Additionally, Ms Wharfe states that a date for the current Air Quality Strategy is required, as otherwise it would be unclear whether there have been any subsequent amendments or updates.⁷³
88. In relation to clause (6), Ms McIntyre seeks to remove the term 'wāhi tūpuna' as recommended in the section 42A report, stating that wāhi tūpuna would be provided for under the broader term 'mana whenua values' and therefore it is unnecessary to include it explicitly.⁷⁴

10.2. Analysis

89. For ease, I have addressed each clause in the paragraphs below:
- a. In relation to the chapeau, I consider a minor amendment is required to amend the date to align with the new date for notification of the Air Plan. Based on my discussions with Council staff and the draft Annual Plan 2021-2031, the future Regional Air Plan is not intended to be notified until 30 June 2025.
 - b. The addition of clause (1A) is discussed in my first brief of Supplementary Evidence (11 October 2022) and following the hearing I still consider the clause is required.
 - c. In relation to clauses (1) and (2), I consider consequential amendments are required to appropriately provide for the recommended changes to the policy framework discussed above.
 - d. Ms Tait has suggested amended wording for clause (3) to clarify the actions that are to be prioritised. I agree with the amended wording proposed by Ms Tait.
 - e. In relation to clause (4), Ms Tait considers it is more appropriate for effects to be 'managed' instead of 'mitigated'. This clause requires the future Air Plan to acknowledge that discharges into air adjacent to polluted airsheds could further degrade the air resource within the polluted airshed. I understand 'mitigated' to mean taking specific actions to reduce the severity or risk of an issue, while manage is less directive. Given the direction in AIR-P2, I do not recommend the amended wording proposed by Ms Tait.
 - f. I consider amendments are required to clause (5) as sought by Ms Tait. I originally considered there was merit in the clause being retained.⁷⁵ However, on reflection I consider the clause is unnecessary as it is not listed as a document in section 61(2) of the RMA which the council must have regard to when preparing an RPS. For this reason, I consider the clause should be deleted as sought by Ms Tait and Ms Taylor.

⁷² Lynette Wharfe for Horticulture New Zealand, paras [78]-[79] Susannah Tait for Fonterra, para [9.33](d)

⁷³ Lynette Wharfe for Horticulture New Zealand, para [77]

⁷⁴ Sandra McIntyre for Kāi Tahu ki Otago, para [89](a)

⁷⁵ Para [137] of the Section 42A Report, dated 27 April 2022.

- g. I have set out the analysis for including clause (6) in the section 42A report at paragraph [138] and I support the further amendments sought by Ms McIntyre set out above.

10.3. Final recommendation

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

AIR-M2 – Regional plans

No later than ~~31 December 2024~~ 30 June 2025,⁷⁶ Otago Regional Council must prepare or amend and maintain its *regional plans* to:

- (1A) set limits (including *ambient air quality standards*) to maintain ambient air quality in accordance with AIR-P1, and improve ambient air quality in accordance with AIR-P2.⁷⁷
- (1) manage the adverse effects of discharges to air by avoiding noxious or dangerous effects and ensuring discharges to air do not cause offensive or objectionable effects, avoid offensive, objectionable, noxious or dangerous discharges to air,⁷⁸
- (2) include provisions to avoid, remedy or mitigate other the adverse effects from *discharges* to air beyond the boundary of the property of origin,⁷⁹
- (3) ~~implement the prioritisation of~~ prioritise the actions set out in AIR-P2 to reduce PM_{10} and $PM_{2.5}$ concentrations in *polluted airsheds*,⁸⁰
- (4) mitigate the adverse *effects* of *discharges* to air in areas adjacent to *polluted airsheds* where the *discharge* will adversely affect air quality in the *polluted airshed*, and
- ~~(5) give effect to the Air Quality Strategy for Otago and any subsequent amendments or updates.~~⁸¹
- (5) include measures to ensure that discharges to air do not adversely affect *mana whenua* values.⁸²

91. In relation to s32AA, I consider several of the suggested changes are consequential to the recommended changes to policy direction set out above. Therefore, I consider the amendments to provide the basis for policy implementation which is more efficient and effective and achieving AIR-O1 and AIR-O2.

⁷⁶ RMA Clause 16(2)

⁷⁷ 00121.031 Ravensdown, 00138.014 Queenstown Lakes District Council

⁷⁸ Consequential to 00213.029 Fonterra, 00115.013 Oceana Gold, 00121.034 Ravensdown

⁷⁹ 00121.035 Ravensdown

⁸⁰ 00233.032 Fonterra

⁸¹ 00121.037 Ravensdown; 00213.032 Fonterra;

⁸² 00226.122 Kāi Tahu ki Otago, 00234.012 Te Rūnanga o Ngāi Tahu

11. AIR-M3 – Territorial authorities

92. AIR-M3 was discussed in Section 7.15 of the section 42A report, with my analysis from paragraphs [148] to [152].

93. The recommended version of this provision currently reads:⁸³

AIR-M3 – Territorial authorities

No later than 31 December 2029, *territorial authorities* must prepare or amend and maintain their *district plans* to include provisions that direct an urban form that assists in achieving good air quality by:

- (1) ~~reducing~~ encouraging or facilitating a reduced⁸⁴ reliance on private non-electric⁸⁵ motor vehicles and enabling the adoption of *active transport*, shared transport and *public transport* options to assist in achieving good air quality, and
- (2) managing the spatial distribution of activities.

11.1. Submissions and evidence

94. Mr Freeland for DCC reiterates his request for this method to focus on the Future Development Strategy (FDS) prepared under the NPSUD rather than the district plan.⁸⁶ This is on the basis that the regional council determines public transport routes, and transport planning should be approached in an integrated way. He considers that it would be appropriate for the FDS to set the strategic framework on the desired overall urban form that the district plan would then implement.

95. Mr Place, in rebuttal to the EIC of Mr Freeland, disagrees that the suggested amendment was the most effective or efficient way to draft the method, noting that not all territorial authorities are directed to prepare an FDS.⁸⁷ Mr Place considers that this would mean some territorial authorities would be excluded from the provision, and therefore district plans are better suited as they contain detailed approaches necessary to direct urban form that achieves good air quality.⁸⁸

11.2. Analysis

96. I addressed the request raised by Mr Freeland in paragraph [148] of my section 42A report, stating that I did not agree that an explicit reference to the FDS was required.⁸⁹

⁸³ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

⁸⁴ 00239.056 Federated Farmers

⁸⁵ 00411.038 Wayfare

⁸⁶ 00139.054 DCC

⁸⁷ Rebuttal evidence of Luke Place for QLDC, para [3.4]

⁸⁸ Ibid.

⁸⁹ Section 42A report on Chapter 7: AIR – Air (27 April 2022)
Proposed Otago Regional Policy Statement 2021

97. I have discussed the proposed changes sought by DCC on the inclusion of dates for notification of plans in AIR-M3 with Ms Boyd and agree with her recommendation to delete the timeframe.

11.3. Final recommendation

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

AIR-M3 – Territorial authorities

~~No later than 31 December 2029, the~~ *Territorial*⁹⁰ authorities must prepare or amend and maintain their *district plans* to include provisions that direct an urban form that assists in achieving good air quality by:

(1) ~~reducing~~ encouraging or facilitating a reduced⁹¹ reliance on private non-electric⁹² motor vehicles and enabling the adoption of *active transport*, shared transport and *public transport* options to assist in achieving good air quality, and

(2) managing the spatial distribution of activities.

99. In relation to S32AA, I consider the proposed amendments further clarify the method and as result is more efficient and effective at achieving AIR-O1 and AIR-O2.

12. Anticipated environmental results

100. A small number of submissions were received on the anticipated environmental results (AER) for the Air Chapter. These submissions are analysed in Sections 7.20 to 7.22 of the section 42A Report.

12.1. Submissions and evidence

101. There was no additional evidence provided at the hearing relating to AERs, but it was discussed with the Panel that some minor wording changes are required to AIR-AER1 and AIR-AER5 consequential to the amendments made to the policy framework discussed above.

12.2. Final recommendation

102. I recommend the following amendments:

AIR-AER1 Where air quality is degraded ~~poor~~,⁹³ there is a decreasing trend in concentrations of *PM₁₀* and *PM_{2.5}*.

⁹⁰ 00139.002 DCC

⁹¹ 00239.056 Federated Farmers

⁹² 00411.038 Wayfare

⁹³ Consequential to 00121.032 Ravensdown

AIR-AERS Where air quality complies with ambient air quality limits ~~is good~~⁹⁴ it is maintained.

103. In terms of S32AA, I consider these changes are consequential to changes to the policy framework addressed above. I consider they are more efficient and effective at achieving AIR-O1 and AIR-O2 as they ensure the direction provided by the chapter is consistent.

⁹⁴ Consequential to 00121.031 Ravensdown, 00138.014 QLDC, 00213.026 Fonterra
Proposed Otago Regional Policy Statement 2021